

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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1

HOUSE BILL 1499

Short Title: Amend Clean Water Loan & Grant Laws.

(Public)

Sponsors: Representative Gibson.

Referred to: Environment and Natural Resources.

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA
2 CLEAN WATER REVOLVING LOAN AND GRANT ACT INCLUDING THE
3 FOLLOWING: EXPAND BOTH THE PROJECTS AND APPLICANTS THAT
4 ARE ELIGIBLE TO RECEIVE LOANS AND GRANTS FROM THE
5 REVOLVING LOAN AND GRANT FUND, ALLOW THE DEPARTMENT OF
6 ENVIRONMENT AND NATURAL RESOURCES TO SET LOWER INTEREST
7 RATES AND EXTEND REPAYMENT TERMS TO THIRTY YEARS OF THE
8 EXPECTED LIFE OF A PROJECT, TO DIRECT THE DEPARTMENT TO
9 NEGOTIATE WITH THE ENVIRONMENTAL PROTECTION AGENCY TO
10 DEVELOP AN INTEGRATED PRIORITY SYSTEM THAT WILL ADDRESS
11 BOTH POINT AND NONPOINT SOURCE WASTEWATER PROJECTS AND
12 TO MAKE OTHER CLARIFYING, TECHNICAL, AND CONFORMING
13 CHANGES; AND TO CLARIFY THAT STORMWATER PLANNING
14 PROJECTS AND WATER SUPPLY PLANNING PROJECTS ARE PURPOSES
15 THAT MAY BE FUNDED BY THE CLEAN WATER MANAGEMENT TRUST
16 FUND.
17

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Chapter 159G of the General Statutes reads as rewritten:

20 **"Chapter 159G.**

21 **"North Carolina Clean Water and Drinking Water Revolving Loan and Grant Act**
22 **of 1987-Act.**

23 **"§ 159G-1. Short title.**

24 This Chapter shall be known and may be cited as the "North Carolina Clean Water
25 and Drinking Water Revolving Loan and Grant Act of 1987-Act.

26 **"§ 159G-2. Purpose.**

27 The General Assembly hereby recognizes that a critical need exists in this State to
28 provide for a low-interest funding source for ~~municipal~~ water and wastewater capital
29 facilities. Local government efforts to meet this need have been restricted by the

1 inability of many units to finance necessary improvements to inadequate or nonexistent
2 water supply and wastewater treatment systems. The decrease in financial capacity has
3 resulted in large part from the diminished availability of federal loans and grants and the
4 elimination of the federal general revenue sharing program, which funded a wide range
5 of local capital improvements.

6 The problems have been further complicated by the uncertainty concerning Clean
7 Water Act funding, the growing number of local units which are under moratoriums
8 against additional connections for sewer service, and the July 1, 1988, deadline for
9 compliance with federal effluent standards.

10 It is the intent and purpose of the General Assembly by this Chapter to create a
11 program to facilitate early construction of these environmental and public health
12 improvements by establishing a revolving loan fund for financing such projects. This
13 fund will enable ~~local government units~~ wastewater and drinking water systems to obtain
14 low-interest loans for financing infrastructure projects ~~for wastewater treatment~~ and for
15 certain emergency purposes. This fund will also enable ~~local government units and~~
16 ~~nonprofit water corporations~~ eligible systems to obtain low-interest loans for financing
17 projects for water ~~supply~~ supply facilities, wastewater facilities, and to address
18 stormwater quality and other nonpoint sources of pollution. It is the further intent and
19 purpose of the General Assembly to provide grants to ~~local government units~~ eligible
20 systems for wastewater treatment and ~~to provide grants to local government units and~~
21 ~~nonprofit water corporations~~ for water supply facilities. The General Assembly seeks by
22 this Chapter to encourage and assist ~~local government units~~ wastewater and drinking
23 water systems to meet their responsibilities ~~to their citizens~~ to maintain a clean and
24 healthful environment and an abundant supply of pure safe drinking water and further to
25 provide an adequate base for economic growth.

26 **"§ 159G-3. Definitions.**

27 As used in this Chapter, the following words shall have the meanings indicated,
28 unless the context clearly requires otherwise:

29 (1) Repealed by Session Laws 1991, c. 186, s. 1.

30 (2) "Applicant" means a local government unit or a nonprofit water or
31 wastewater corporation that is incorporated in compliance with
32 Chapter 55A of the General Statutes solely for the purpose of
33 providing drinking water or wastewater services and that is an eligible
34 applicant for a federal loan or grant from the Rural Utility Services
35 Division, U.S. Department of Agriculture that applies for a revolving
36 loan or grant under the provisions of this Chapter. In addition, a local
37 government may provide funds to a nonprofit agency which is
38 currently under contract and authorized to provide wastewater
39 treatment or drinking water supply services to that local government
40 unit. ~~For purposes of the Drinking Water Treatment Revolving Loan~~
41 ~~Fund established by G.S. 159G-5(d), "applicant" also means a~~
42 ~~nonprofit water corporation that is incorporated in compliance with~~
43 ~~Chapter 55A of the General Statutes solely for the purpose of~~
44 ~~providing community water or community water and wastewater and~~

1 ~~that is eligible for a federal loan or a federal loan and grant from the~~
2 ~~Rural Utility Services Division, U.S. Department of Agriculture.~~

3 (2a) "Bond rating" means the numerical rating of a local government unit
4 developed by the North Carolina Municipal Council, Inc., or any
5 successor thereto. The rating formula is based on 100 being a
6 theoretically "perfect" local government unit and is an assessment of
7 the creditworthiness of the unit. Local government units with a rating
8 below 75 or with no ratings have limited, if any, access to the private
9 markets for financing water and sewer or other debt.

10 (3) "Clean Water and Drinking Water Revolving Loan and Grant Fund"
11 means the fund established in the Department of Environment and
12 Natural Resources to carry out the provisions of this Chapter, with
13 various accounts therein as herein provided.

14 (4) "Construction costs" means the actual costs of planning, designing and
15 constructing any project for which a revolving loan or grant is made
16 under this Chapter including planning; environmental assessment;
17 wastewater system analysis, evaluation and rehabilitation; engineering;
18 legal, fiscal, administrative and contingency costs for water supply
19 systems, wastewater collection systems, stormwater quality projects,
20 nonpoint source pollution projects, wastewater treatment works and
21 any extensions, improvements, remodeling, additions, or alterations to
22 existing systems. Construction costs may include excess or reserve
23 capacity costs, attributable to no more than 20-year projected domestic
24 growth, plus ten percent (10%) unspecified industrial growth. In
25 addition, construction costs shall include any fees payable to the
26 ~~Environmental Management Commission or the Division of~~
27 ~~Environmental Health~~Department of Environment and Natural
28 Resources for review of applications and grant of permits, and fees for
29 inspections under G.S. 159G-14. Construction costs may also include
30 the costs for purchase or acquisition of real property.

31 (4a) "Department" means the Department of Environment and Natural
32 Resources.

33 (5) "Grant" means a sum of money given by the State to an applicant to
34 subsidize the construction costs of a project authorized by this Chapter,
35 without any obligation on the part of such unit to repay such sum.

36 (6) "Commission for Health Services" means the Commission for Health
37 Services created by G.S. 130A-29.

38 (6a) "Debt instrument" means an instrument in the nature of a promissory
39 note executed by an applicant under the provisions of this Chapter, to
40 evidence a debt to the State and obligation to repay the principal, plus
41 interest, under stated terms.

42 (7) "Division of Environmental Health" means the Division of
43 Environmental Health of the Department of Environment and Natural
44 Resources.

- 1 (7a) "Economically distressed local government unit" means a local
2 government unit located, in whole or in part, in a county designated as
3 economically distressed by the Secretary of Commerce under
4 G.S. 143B-437A.
- 5 (8) "Environmental Management Commission" means the Environmental
6 Management Commission of the Department of Environment and
7 Natural Resources.
- 8 (9) "Local Government Commission" means the Local Government
9 Commission of the Department of the State Treasurer, established by
10 Article 2 of Chapter 159 of the General Statutes.
- 11 (10) "Local government unit" means a county, city, town, incorporated
12 village, consolidated city-county, as defined by G.S. 160B-2(1),
13 including such a consolidated city-county acting with respect to an
14 urban service district defined by a consolidated city-county, sanitary
15 district, metropolitan sewerage district, metropolitan water district,
16 county water and sewer district, water and sewer authority, joint
17 agency authorized by agreement between two cities and towns to
18 operate an airport pursuant to G.S. 63-56 and that also provided water
19 and wastewater services off the airport premises before January 1,
20 1995, joint agency created pursuant to Part 1 of Article 20 of Chapter
21 160A of the General Statutes, or the Eastern Band of Cherokee Indians
22 in North Carolina.
- 23 (11) Repealed by Session Laws 1991, c. 186, s. 1.
- 24 (12) "Receiving agency" means the Division of Environmental Health with
25 respect to receipt of applications for revolving loans and grants for
26 water supply systems, and ~~the Environmental Management~~
27 ~~Commission~~ and the Division of Water Quality with respect to receipt
28 of applications for revolving loans and grants for wastewater systems.
- 29 (13) "Revolving construction loan" means a sum of money loaned by the
30 State to an applicant to subsidize the construction costs of a project
31 authorized by this Chapter, with an obligation on the part of the
32 applicant to repay such sum, the proceeds of such repayment to be
33 deposited in the fund from which the loan was made.
- 34 (14) "Revolving emergency loan" means a sum of money loaned by the
35 State to a local government unit upon a certification, as provided in
36 this Chapter, of a serious public health hazard, with an obligation on
37 the part of such unit to repay such sum.
- 38 (15) "Revolving loan" includes a revolving construction loan and an
39 emergency loan.
- 40 (15a) "State" means the State of North Carolina.
- 41 (15b) "State Treasurer" means the Treasurer of the State elected pursuant to
42 Article III, Section 7 of the Constitution or his designated
43 representative.

- 1 (16) "Wastewater Accounts" means the various accounts in the Clean
2 Water and Drinking Water Revolving Loan and Grant Fund
3 established in the Department of Environment and Natural Resources
4 under this Chapter for revolving loans and grants for wastewater
5 treatment work and wastewater collection system projects.
- 6 (17) "Wastewater collection system" means a unified system of pipes,
7 conduits, pumping stations, force mains, and appurtenances other than
8 interceptor sewers, for collecting and transmitting water-carried human
9 wastes and other wastewater from residences, industrial establishments
10 or any other buildings, and owned by a local government
11 ~~unit~~.buildings.
- 12 (18) "Wastewater treatment works" means the various facilities and devices
13 used in the treatment of sewage, industrial waste or other wastes of a
14 liquid nature, including the necessary interceptor sewers, outfall
15 sewers, ~~phosphorus-nutrient~~ removal equipment, pumping, power and
16 other equipment and their appurtenances.
- 17 (19) "Water Supply Accounts" means the various accounts in the Clean
18 Water and Drinking Water Revolving Loan and Grant Fund
19 established in the Department of Environment and Natural Resources
20 under this Chapter for revolving loans and grants for water supply
21 system projects.
- 22 (20) "Water supply system" means a public water ~~supply~~ system as defined
23 in G.S. 130A-313 consisting of facilities and works for supplying,
24 treating and distributing potable water including, but not limited to,
25 impoundments, reservoirs, wells, intakes, water filtration plants and
26 other treatment facilities, tanks and other storage facilities,
27 transmission mains, distribution piping, pipes connecting the system to
28 other public water ~~supply~~ systems, pumping equipment and all other
29 necessary appurtenances, equipment and structures.

30 **"§ 159G-4. Appropriations.**

31 (a) Of the funds appropriated to the Clean Water and Drinking Water Revolving
32 Loan and Grant Fund, the amount required in each fiscal year to provide the State match
33 of any federal funds deposited into the Water Pollution Control Revolving Fund and the
34 Drinking Water Treatment Revolving Loan Fund shall be allocated to that fund.

35 ~~(b) Of the appropriations made from the General Fund to the Clean Water~~
36 ~~Revolving Loan and Grant Fund for use of the Department of Environment and Natural~~
37 ~~Resources as provided in this Chapter, allocations are made as follows after first~~
38 ~~subtracting the amounts allocated under subsection (a) of this section, to the extent that~~
39 ~~there are any excess funds available:~~

40	Wastewater Accounts	
41	General Wastewater Revolving	
42	Loan Account	39.00%
43	Emergency Wastewater Revolving	
44	Loan Account	10.00%

1	High Unit Cost Wastewater	
2	Account	20.00%
3	Water Supply Accounts	
4	General Water Supply	
5	Revolving Loan Account	21.00%
6	High Unit Cost Water Supply	
7	Account	5.00%
8	Emergency Water Supply Revolving	
9	Loan Account	5.00%

(c) All payments of interest and repayments of principal resulting from revolving loans shall be credited to the respective accounts from which the revolving loan funds were disbursed. Terms and conditions for repayment of revolving loans shall be established by the ~~Department of Environment and Natural Resources, Department,~~ with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control Act ~~Act,~~ the Federal Safe Drinking Water Act, and this Chapter. Provided, the interest rate for all revolving loans authorized by this Chapter shall ~~be fixed at the same percent per annum as the interest rate fixed under the Federal Water Pollution Control Act for loans from the Water Pollution Control Revolving Fund established by G.S. 159G-5(e), not to exceed the lesser of four percent (4%) or one half (1/2) the prevailing national market rate for tax exempt general obligation debt of similar maturities derived from a published indicator. Provided further, the interest rate may be fixed at a lower rate per annum and the maximum maturity may not exceed the lesser of 30 years or the project's expected life if authorized by the Federal Water Pollution Control Act Regulations or the Federal Safe Drinking Water Act. It is the intent of the General Assembly to provide uniform interest payments for all loans made to applicants irrespective of the account from which loans are made for either wastewater or water supply projects.~~

"§ 159G-5. Clean Water and Drinking Water Revolving Loan and Grant Fund.

(a) There is established in the ~~Department of Environment and Natural Resources~~Department a fund to be known as the Clean Water and Drinking Water Revolving Loan and Grant Fund. The Fund is to be administered by the ~~Department of Environment and Natural Resources~~Department which shall be responsible for receipt and disbursement of all moneys as appropriated and provided for in this Chapter.

(b) Funds in the various accounts in the Clean Water and Drinking Water Revolving Loan and Grant Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State Treasury. Interest earnings derived from such investments shall be credited to the respective accounts from which funds were used to make such investments.

(c) Within the Clean Water and Drinking Water Revolving Loan and Grant Fund there shall be a special account known as the Water Pollution Control Revolving Fund. This account shall be established and managed in accordance with the requirements of Title VI of the Federal Water Quality Act of 1987 (P.L. 100-4), to achieve the purposes and goals of the Federal Water Pollution Control Act. The funds in the Water Pollution Control Revolving Fund shall be available in perpetuity and exclusively for the purpose

1 of providing revolving construction loans and other assistance as specified in Title VI of
2 the Federal Water Quality Act of 1987 and the regulations thereunder, including making
3 grants to the extent permitted thereby.

4 (d) The Drinking Water Treatment Revolving Loan Fund is established as a
5 special account within the Clean Water and Drinking Water Revolving Loan and Grant
6 Fund. This account shall be established and managed in accordance with the
7 requirements of section 130 of Title I of the federal Safe Drinking Water Act of 1996
8 and subsequent amendments ~~Amendments of 1996~~ (Pub. L. 104-182; 110 Stat. 1662; 42
9 U.S.C. § 300j-12), to achieve the purposes and goals of the federal Safe Drinking Water
10 Act of 1996 and subsequent ~~Amendments of 1996~~ amendments. The funds in the
11 Drinking Water Treatment Revolving Loan Fund may be used only for the purposes of
12 providing revolving construction loans and other assistance as set forth in section 130 of
13 Title I of the federal Safe Drinking Water Act of 1996 and subsequent amendments
14 ~~Amendments of 1996~~ and the regulations promulgated thereunder, including making
15 grants to the extent permitted by these amendments or these regulations.

16 **"§ 159G-6. Distribution of funds.**

17 (a) Revolving loans and grants.

18 (1) All funds appropriated or accruing to the Clean Water and Drinking
19 Water Revolving Loan and Grant Fund, other than funds set aside for
20 administrative expenses, shall be used for revolving loans and grants to
21 applicants for construction costs of wastewater treatment works,
22 wastewater collection systems and water supply systems and other
23 assistance as provided in this Chapter.

24 (2) The maximum principal amount of a revolving loan or a grant may be
25 one hundred percent (100%) of the nonfederal share of the
26 construction costs of any eligible project. The maximum principal
27 amount of revolving loans made to any one applicant during any fiscal
28 year shall be eight million dollars (\$8,000,000).

29 (2a) The maximum principal amount of grants made to any applicant over a
30 period of three fiscal years shall be three million dollars (\$3,000,000).
31 The ~~Department of Environment and Natural Resources~~Department
32 may limit the maximum principal amount of a grant under this
33 subdivision to two million dollars (\$2,000,000) or two-thirds of the
34 eligible project cost, whichever is less, when the bond rating of the
35 local government unit equals or is greater than 75 during any fiscal
36 year and when one million dollars (\$1,000,000) or one-third of the
37 eligible project cost, whichever is less, is available to the local
38 government unit as a loan from any source.

39 (2b) Notwithstanding G.S. 159G-6(a)(2a), the maximum principal amount
40 of grants made to any applicant for a high-unit cost wastewater project
41 under G.S. 159G-6(b)(2) during any fiscal year shall be three million
42 dollars (\$3,000,000) if the applicant is a sewer district that includes
43 three or more local government units. Notwithstanding
44 G.S. 159G-6(a)(2a), the maximum principal amount of grants made to

1 any applicant for a high-unit cost water supply system under
2 G.S. 159G-6(c)(2) during any fiscal year shall be three million dollars
3 (\$3,000,000) if the applicant is either: (i) a water district that includes
4 three or more local government units, or (ii) a county in which less
5 than fifty percent (50%) of the population of the county is served by a
6 public water system that is owned or operated by a local government
7 unit or a nonprofit water corporation.

8 (3) The State Treasurer shall be responsible for investing and distributing
9 all funds appropriated or accruing to the Clean Water and Drinking
10 Water Revolving Loan and Grant Fund for revolving loans and grants
11 under this Chapter. In fulfilling his responsibilities under this section,
12 the State Treasurer shall make a written request to the ~~Department of~~
13 ~~Environment and Natural Resources~~Department to arrange for the
14 appropriated funds to be (i) transferred from the appropriate accounts
15 to an applicant to provide funds for one or more revolving loans or
16 grants or (ii) invested as authorized by this Chapter with the interest on
17 and the principal of such investments to be transferred to the applicant
18 to provide funds for one or more revolving loans or grants.

19 (b) Wastewater Accounts. – The sums allocated in G.S. 159G-4 and accruing to
20 the various Wastewater Accounts in each fiscal year shall be used to make revolving
21 loans and grants to local government units as provided below. ~~The Department of~~
22 ~~Environment and Natural Resources shall disburse no funds from the Wastewater~~
23 ~~Accounts except upon receipt of written approval of the disbursement from the~~
24 ~~Environmental Management Commission.~~

25 (1) General Wastewater Revolving Loan and Grant Account. – The funds
26 in the General Wastewater Revolving Loan and Grant Account shall
27 be used exclusively for the purpose of providing for revolving
28 construction loans or grants in connection with approved wastewater
29 treatment work or wastewater collection system projects.

30 (2) High-Unit Cost Wastewater Account. – The funds in the High-Unit
31 Cost Wastewater Account shall be available for grants to applicants for
32 high-unit cost wastewater projects. Eligibility of an applicant for such
33 a grant shall be determined by comparing estimated average household
34 user fees for water and sewer service, for debt service and operation
35 and maintenance costs, to one and one-half percent (1.5%) of the
36 median household income in the local government unit or service area
37 in which the project is located. The projects which would require
38 estimated average household water and sewer user fees greater than
39 one and one-half percent (1.5%) of the median household income are
40 defined as high-unit cost wastewater projects and will be eligible for a
41 grant equal to the excess cost, subject to the limitations in subdivision
42 (a)(2) of this section. However, if the applicant upon completion of the
43 project will have only a single utility service, then the eligibility of the
44 applicant for such a grant shall be determined by comparing estimated

1 average household user fees for the single utility service that will be
2 offered, for debt service and operation and maintenance costs, to
3 three-fourths percent (3/4%) of the median household income in the
4 local government unit or service area in which the project is located.
5 The single utility projects which would require estimated average
6 household water or sewer user fees (as appropriate) greater than
7 three-fourths percent (3/4%) of the median household income are
8 defined as high-unit cost wastewater projects and will be eligible for a
9 grant equal to the excess cost, subject to the limitations in subdivision
10 (a)(2) of this section.

- 11 (3) Emergency Wastewater Revolving Loan Account. – The funds in the
12 Emergency Wastewater Revolving Loan Account shall be available for
13 revolving emergency loans to applicants in the event the
14 ~~Environmental Management Commission~~Department certifies that a
15 serious public health hazard, related to the inadequacy of existing
16 wastewater facilities, is present or imminent in a community.

17 (c) Water Supply Accounts. – The sums ~~allocated in G.S. 159G-4 and~~ accruing
18 to the various Water Supply Accounts in each fiscal year shall be used to provide
19 revolving loans and grants to applicants as provided below. The ~~Department of~~
20 ~~Environment and Natural Resources~~Department shall disburse no funds from the Water
21 Supply Accounts except upon receipt of written approval of the disbursement from the
22 Secretary of Environment and Natural Resources.

- 23 (1) General Water Supply Revolving Loan and Grant Account. – The
24 funds in the General Water Supply Revolving Loan and Grant Account
25 shall be used exclusively for the purpose of providing for revolving
26 construction loans and grants in connection with water supply systems
27 generally and not upon a county allotment basis.
- 28 (2) High-Unit Cost Water Supply Account. – The funds in the High-Unit
29 Cost Water Supply Account shall be available for grants to applicants
30 for high-unit cost water supply systems, on the same basis as provided
31 in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.
- 32 (3) Emergency Water Supply Revolving Loan Account. – The funds in the
33 Emergency Water Supply Revolving Loan Account shall be available
34 for revolving emergency loans to applicants in the event the Secretary
35 of Environment and Natural Resources certifies either that a serious
36 public health ~~hazard, related to the water supply system,~~hazard or that
37 a drought emergency related to the water supply system is present or
38 imminent in a community.
- 39 (4) Inter-Account Transfers. – The ~~Department of Environment and~~
40 ~~Natural Resources~~Department may transfer funds from the General
41 Water Supply Revolving Loan and Grant Account to the Emergency
42 Water Supply revolving Loan Account in the event that the Secretary
43 of Environment and Natural Resources certifies ~~that a drought~~
44 ~~emergency exists and that additional emergency funds are needed to~~

1 ~~assist water supply systems that are experiencing a drought~~
2 ~~emergency either that a serious public health hazard or drought~~
3 ~~emergency related to the water supply system is present or imminent in~~
4 ~~a community.~~

5 (d) Repealed by Session Laws 1991, c. 186, s. 4.

6 (e) Notwithstanding any other provision of this Chapter, funds in the Water
7 Pollution Control Revolving Fund shall not be available as grants except to the extent
8 permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations
9 thereunder.

10 **"§ 159G-7. Reserved for future codification purposes.**

11 **"§ 159G-8. Application; environmental assessment; notice; hearing.**

12 (a) Application. – All applications for revolving loans and grants for water
13 supply systems shall be filed with the Division of Environmental Health and all
14 applications for revolving loans and grants for wastewater treatment works or
15 wastewater collection systems shall be filed with the ~~Environmental Management~~
16 ~~Commission~~ Division of Water Quality. Any application may be filed in as many
17 categories as it is eligible for consideration under this Chapter. Applications for
18 revolving construction loans or grants for wastewater treatment works and wastewater
19 collection systems, except applications for emergency wastewater loans, shall first be
20 submitted for a loan or grant from the Water Pollution Control Revolving Fund
21 established by G.S. 159G-5(c). If the application is denied, the application shall then be
22 considered for a revolving loan or a grant from the General Wastewater Revolving Loan
23 and Grant account established under G.S. 159G-6(b)(1).

24 ~~The Department of Environment and Natural Resources, the Commission for Health~~
25 ~~Services, and the Environmental Management Commission~~ Department may develop
26 ~~jointly~~ and adopt a standard form of application under this Chapter. Any application for
27 construction grants under the Federal Water Pollution Control Act may be considered as
28 an application for revolving construction loans or grants under G.S. 159G-5(c) and
29 G.S. 159G-6(b)(1). The information required to be set forth in the application shall be
30 sufficient to permit the respective agencies to determine the eligibility of the applicant
31 and to establish the priority of the ~~application~~, application using the criteria outlined in
32 G.S. 159G-10 and any other criteria deemed appropriate by the Department, as set forth
33 in this Chapter.

34 Any applicant shall furnish information in addition or supplemental to the
35 information contained in its application upon request by the receiving agency.

36 (b) Environmental Assessment. – Every applicant shall file with its application
37 an assessment setting forth the impact that the project for which funds are sought will
38 have upon the environment of the area within which the project is proposed to be
39 located. The assessment shall set forth the impact of the project upon water resources,
40 other natural resources, land use pattern, and such other factors as ~~the Commission for~~
41 ~~Health Services or the Environmental Management Commission shall require~~ required
42 by duly adopted rules. Any environmental assessment required as part of an application
43 for grants under the Federal Water Pollution Control Act shall satisfy the requirement of
44 this provision. If, after reviewing the environmental assessment, the Division of

1 Environmental Health or the ~~Environmental Management Commission~~ Division of
2 Water Quality concludes that an environmental impact statement is required, then the
3 application shall receive no further consideration until a final environmental impact
4 statement has been completed and approved as provided in Article 1 of Chapter 113A of
5 the General Statutes.

6 (c) Hearing. – A public hearing may be held by the receiving agency at any time
7 on any application filed pursuant to G.S. 159G-5(c), 159G-6(b), or 159G-6(c) in
8 accordance with the provisions of this subsection. A public hearing may be held by the
9 receiving agency upon written request from any citizen or taxpayer who is a resident of
10 the county or counties in which the project is proposed to be located if it appears that
11 the public interest will be served by this hearing. The written request shall set forth each
12 objection to the proposed project or other reason for requesting a hearing on the
13 application and shall contain the name and address of the person(s) submitting it. The
14 receiving agency may consider all written objections to the proposed project and other
15 statements along with the application, including any significant adverse effects that the
16 proposed project may have on the environment, and shall determine if the public interest
17 will be served by a hearing. The determination by the receiving agency shall be
18 conclusive; but all written requests for a hearing shall be retained as a permanent part of
19 the records pertaining to the application, whether or not the request is granted.

20 **"§ 159G-9. Eligibility.**

21 No application shall be eligible for a revolving loan or grant under this Chapter
22 unless it shall demonstrate to the satisfaction of the receiving agency that:

- 23 (1) The applicant is an applicant within the meaning of G.S. 159G-3(2).
- 24 (2) The applicant has the financial capacity to pay the principal of and the
25 interest on its proposed obligations and loans.
- 26 (3) The applicant has substantially complied or will substantially comply
27 with all applicable laws, rules, regulations and ordinances, federal,
28 State and local.
- 29 (4) The applicant has formally agreed ~~by official resolution~~ to adopt and
30 place into effect on or before completion of the project a schedule of
31 fees, charges, and other available funds, including but not limited to
32 the funds described in G.S. 159G-13(b), that will adequately provide
33 for proper operation, maintenance, and administration of the project
34 and for repayment of all principal of and interest on loans.

35 **"§ 159G-10. Priorities.**

36 (a) Determination. – Determination of priorities to be assigned each eligible
37 application shall be made ~~semiannually~~ by each receiving agency during each fiscal
38 year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-5(d),
39 ~~G.S. 159G-6(b)(1)~~G.S. 159G-6(b), or ~~G.S. 159G-6(e)(1)~~G.S. 159G-6(c) shall be
40 considered by the receiving agency with every other application filed under
41 G.S. 159G-5(c), G.S. 159G-5(d), ~~G.S. 159G-6(b)(1)~~G.S. 159G-6(b), or
42 ~~G.S. 159G-6(e)(1)~~G.S. 159G-6(c), respectively, and eligible for consideration during
43 the same priority period, to determine the priority to be assigned to each application.
44 ~~The same procedure shall apply to every eligible application filed under~~

1 ~~G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter.~~ Any application which does
2 not contain the information required by this Chapter or regulations adopted by the
3 receiving agency(s) shall not be deemed received until such information is furnished by
4 the applicant to the receiving agency.

5 (a1) **(See note)** Expired.

6 (b) Priority Factors. – All applications for revolving loans or grants under this
7 Chapter eligible for consideration during each priority period shall be assigned a priority
8 for funds by the receiving agency. ~~The priority factors shall be similar to those~~
9 ~~developed under the North Carolina Clean Water Bond Act of 1977, as provided in and~~
10 ~~modified by this subsection.~~The Department shall negotiate an integrated priority
11 system with the Environmental Protection Agency that will address the point and
12 nonpoint source pollution projects for the Water Pollution Control Revolving Fund for
13 applications filed under G.S. 159G-5(c). The following priority factors shall apply to
14 eligible applications filed semiannually under G.S. 159G-6(b) and G.S. 159G-6(c).
15 Complete applications received under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) may be
16 considered for funding at any time by the receiving agency.

17 (1) General Criteria.—Criteria in Addition to Other Criteria Established
18 by the Department. –

19 a. ~~The general criteria provided in 1 NCAC 22.0401 through~~
20 ~~.0403 on January 1, 1987, shall apply, except that 1 NCAC~~
21 ~~22.0401(c) shall apply only to State funds appropriated to~~
22 ~~match available federal funds.~~

23 b. The existence of a comprehensive land-use plan that meets the
24 requirements of subsection (e) of this section is a general
25 criterion for prioritizing which applicants will receive a loan or
26 grant. An applicant that is not authorized to adopt a
27 comprehensive land-use plan but that is located in whole or in
28 part in a local government unit that has adopted a
29 comprehensive land-use plan shall receive the same priority
30 treatment as an applicant that has authority to adopt a
31 comprehensive land-use plan. A comprehensive land-use plan
32 that meets the requirements of subsection (e) of this section and
33 that exceeds the minimum State standards for protection of
34 water resources shall receive more points than a plan that does
35 not exceed those standards. Additional points may be awarded
36 for actions taken toward implementation of a comprehensive
37 land-use plan. These actions may include the adoption of a
38 zoning ordinance or any other measure that significantly
39 contributes to the implementation of the comprehensive
40 land-use plan.

41 c. The existence of a flood hazard ordinance conforming to the
42 requirements of Part 6 of Article 21 of Chapter 143 of the
43 General Statutes is a general criterion for prioritizing which
44 applicants will receive a loan or a grant. Demonstration, based

1 on the most recent maps prepared pursuant to the National
2 Flood Insurance Program or approved by the Department, that
3 no portion of the applicant's jurisdiction is located within the
4 100-year floodplain is a general criterion equivalent to the
5 existence of a flood hazard ordinance conforming to the
6 requirements of Part 6 of Article 21 of Chapter 143 of the
7 General Statutes for prioritizing which applicants will receive a
8 loan or a grant.

9 (2) ~~Wastewater Treatment Work Projects.~~—~~The priority criteria provided~~
10 ~~in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to~~
11 ~~applications for wastewater treatment work projects, except that 1~~
12 ~~NCAC 22.0503 shall not apply.~~

13 (3) ~~Wastewater Collection System Projects.~~—~~The priority criteria~~
14 ~~provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall~~
15 ~~apply to applications for wastewater collection system projects, except~~
16 ~~that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and~~
17 ~~(4) shall not apply.~~

18 (4) ~~Water Supply System Projects.~~—~~The priority criteria provided in 1~~
19 ~~NCAC 22.0701 through .0704 on January 1, 1987, shall apply to~~
20 ~~applications for water supply system projects.~~

21 (5) Wastewater Treatment Works Improvements to Meet Nitrogen and
22 Phosphorus Limits. — The ~~Environmental Management~~
23 ~~Commission~~Department shall adopt a rule specifying priority criteria
24 for modifications to existing permitted wastewater treatment facilities
25 that are owned or operated by local government units and that are
26 subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local
27 government units to comply with G.S. 143-215.1(c1) and
28 G.S. 143-215.1(c2).

29 (6) The total number of points available in the respective categories shall
30 be deemed adjusted in accordance with the provisions of subdivisions
31 (1) ~~through (5)~~ and (5) of this subsection.

32 (c) Assignment of Priority. — A written statement relative to each priority
33 assigned shall be prepared by the receiving agency and shall be attached to the
34 application. The priority assigned shall be conclusive.

35 (d) Failure to Qualify. — Any application filed under G.S. 159G-5(c),
36 G.S. 159G-5(d), ~~G.S. 159G-6(b)~~ G.S. 159G-6(b), or G.S. 159G-6(c) that does not
37 qualify for a revolving loan or grant as of the priority period in which the application
38 was eligible for consideration by reason of the priority assigned the application shall be
39 considered for a revolving loan or grant during the next succeeding priority period upon
40 request of the applicant. If such application should again fail to qualify for a revolving
41 loan or grant during the second priority period by reason of the priority assigned, the
42 application shall receive no further consideration. An applicant may file a new
43 application at any time, and may amend any pending application to include additional
44 data or information.

1 (e) Land-Use Plan. – Local government units are encouraged to adopt
2 comprehensive land-use plans. The Division of Community Assistance in the
3 Department of Commerce shall, upon request, provide technical assistance to any
4 economically distressed local government unit in preparing a comprehensive land-use
5 plan. A comprehensive land-use plan that meets the requirements of Article 18 of
6 Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General
7 Statutes shall contain reasonable provisions designed to protect existing water uses and
8 assure compliance with water quality standards and classifications in all waters of the
9 State affected by the land-use plan.

10 **"§ 159G-11. Withdrawal of commitment.**

11 Failure of an applicant, within one year of the date of acceptance of a revolving loan
12 or grant ~~award, award~~ or within two years of the date of the notification by the
13 Department of intent to make such an award, whichever is later, to (i) arrange for
14 necessary financing of the proposed project, or (ii) award a contract for the construction
15 of the proposed project, shall constitute sufficient cause for withdrawal of the
16 commitment. Prior to withdrawal of a commitment, the receiving agency shall give due
17 consideration to any extenuating circumstances presented by the applicant as reasons for
18 its failure to arrange necessary financing or to award a contract, and the commitment
19 may be extended for an additional period of time if, in the judgment of the receiving
20 agency, such an extension is justified. No project shall be deemed to have less than one
21 year to meet the provisions of this section.

22 **"§ 159G-12. Disbursement.**

23 (a) No funds shall be disbursed by the ~~Department of Environment and Natural~~
24 ~~Resources~~Department for any revolving loan or grant until it has received from the
25 receiving agency a certificate of eligibility to the effect that the applicant meets all
26 eligibility criteria, and that all procedural requirements of this Chapter have been met.

27 (b) In the event that the revolving loan or grant payments are to be made in
28 installments, no payment shall be disbursed by the ~~Department of Environment and~~
29 ~~Natural Resources~~Department until the receiving agency submits a written request for
30 disbursement.

31 (c) The receiving agency, in its sole discretion, may determine whether the
32 payment of any revolving loan or grant made under this Chapter shall be in a lump sum
33 or in installments as progress payments and shall, by adoption of appropriate rules and
34 regulations, provide for the manner of approval and payment of revolving loans or
35 grants. The State Treasurer, with the approval of the receiving agency and consistent
36 with the provisions of G.S. 159G-6(a)(3), shall, by adoption of appropriate rules,
37 provide for the payment of revolving loans or grants.

38 **"§ 159G-13. Revolving loans and grants.**

39 (a) To be eligible to receive the revolving loans and grants provided for in this
40 Chapter, applicants shall arrange to borrow the amounts necessary to be borrowed in
41 connection therewith pursuant to the Local Government Finance Act or as provided in
42 this Chapter as applicable. Applicants may apply for the revolving loans and grants
43 prior to arranging for such borrowing.

1 (b) Revenues received by municipalities from sales and use taxes levied under
2 Articles 40, 41, and 42 of Chapter 105 of the General Statutes which are restricted in
3 use for water and sewage capital outlay, and retirement of indebtedness for those
4 purposes, may be used for periodic payments on revolving loans made under this
5 Article.

6 **"§ 159G-14. Inspection.**

7 Inspection of a project for which a revolving loan or grant has been made under this
8 Chapter may be performed by qualified personnel of the ~~Division of Environmental~~
9 ~~Health or the Environmental Management Commission~~Department or may be
10 performed by qualified professional engineers, registered in this State, who have been
11 approved by the ~~Division of Environmental Health or the Environmental Management~~
12 ~~Commission;~~Department; but no person shall be approved to perform inspections who
13 is an officer or employee of the applicant to which the revolving loan or grant was made
14 or who is an owner, officer, employee or agent of a contractor or subcontractor engaged
15 in the construction of the project for which the revolving loan or grant was made. For
16 the purpose of payment of inspection fees, inspection services shall be included in the
17 term "construction cost" as used in this Chapter.

18 **"§ 159G-15. State loan and grant rules. Rules.**

19 (a) The ~~Department of Environment and Natural Resources, the Commission for~~
20 ~~Health Services, and the Environmental Management Commission~~Department may
21 adopt, modify and repeal rules establishing the procedures to be followed in the
22 administration of this Chapter and regulations interpreting and applying the provisions
23 of this Chapter, as provided in the Administrative Procedure Act. ~~Uniform rules may be~~
24 ~~jointly adopted where feasible and desirable, and no rule jointly adopted may be~~
25 ~~modified or revoked except upon concurrence of all agencies involved.~~

26 (b) A copy of its rules adopted to implement the provisions of this Chapter shall
27 be furnished free of charge by the receiving agency and the ~~Department of Environment~~
28 ~~and Natural Resources~~Department to any applicant.

29 **"§ 159G-16. Federal grants and loans. loan and grant rules.**

30 In order to carry out the purpose of this Chapter to secure the greatest benefits
31 possible to the citizens of this State from the funds herein appropriated, the ~~Department~~
32 ~~of Environment and Natural Resources, the Commission for Health Services, and the~~
33 ~~Environmental Management Commission~~Department shall adopt such rules and criteria,
34 not inconsistent with the provisions of this Chapter, as are necessary and appropriate to
35 conform to regulations for federal grants and loans for any of the purposes set forth in
36 this Chapter.

37 **"§ 159G-17. Annual reports to Joint Legislative Commission on Governmental**
38 **Operations.**

39 (a) The ~~Department of Environment and Natural Resources, the Division of~~
40 ~~Environmental Health, and the Environmental Management Commission~~Department
41 shall prepare and file on or before July 31 of each year with the Joint Legislative
42 Commission on Governmental Operations a ~~consolidated summary~~ report for the
43 ~~preceding fiscal year concerning the allocation of revolving loans and grants authorized~~
44 ~~by this Chapter~~ of all allocations made from the Clean Water and Drinking Water

1 Revolving Loan and Grant Fund for each of the previous five fiscal years; the total
2 funds received and allocations made; and unallocated funds on hand in each account as
3 of the end of the preceding fiscal year.

4 ~~(b) The portion of the report prepared by the Department of Environment and~~
5 ~~Natural Resources Department shall also set forth for the preceding fiscal year itemized~~
6 ~~and total allocations from the Wastewater Accounts of revolving loans and grants~~
7 ~~authorized by the Environmental Management Commission; and itemized and total~~
8 ~~allocations from the Water Supply Accounts of revolving loans and grants authorized by~~
9 ~~the Division of Environmental Health. The Department of Environment and Natural~~
10 ~~Resources shall also prepare a summary report of all allocations made from the Clean~~
11 ~~Water Revolving Loan and Grant Fund for each of the previous five fiscal years; the~~
12 ~~total funds received and allocations made; and unallocated funds on hand in each~~
13 ~~account as of the end of the preceding fiscal year.~~

14 ~~(c) Environmental Management Commission and Division of Environmental~~
15 ~~Health. The portions of the report prepared by the Environmental Management~~
16 ~~Commission and the Division of Environmental Health shall include: Department~~
17 ~~including:~~

- 18 (1) Identification of each revolving loan and grant made by the receiving
19 agency during the preceding fiscal year; the total amount of the
20 revolving loan and grant commitments; the sums actually paid during
21 the preceding fiscal year to each revolving loan and grant made and to
22 each revolving loan and grant previously committed but unpaid; and
23 the total revolving loan and grant funds paid during the preceding
24 fiscal year.
- 25 (2) Repealed by Session Laws 1991, c. 186, s. 9.
- 26 (3) A summary for the preceding five years of the total number of
27 revolving loans and grants made; the total funds committed to such
28 revolving loans and grants; and the total sum actually paid to such
29 revolving loans and grants.
- 30 (4) Assessment and evaluation of the effects that approved projects have
31 had upon water pollution control and water supplies within the
32 purposes of this Chapter and with relation to the total water pollution
33 control and water supply problem.

34 (d) The report shall be signed by each of the chief executive officers Secretary of
35 the State agencies preparing the report.~~Department.~~

36 **"§ 159G-18. Applicant borrowing authority.**

37 (a) Applicants may execute debt instruments payable to the State in order to
38 obtain revolving loans provided for in this Chapter. Applicants shall pledge as security
39 for such obligations the user fee revenues derived from operation of the benefited
40 facilities or systems only, or other sources of revenue, or their faith and credit, or any
41 combination thereof. The faith and credit of applicants that are local government units
42 shall not be pledged or be deemed to have been pledged unless the requirements of
43 Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with
44 the assistance of the Local Government Commission, shall develop and adopt

1 appropriate debt instruments for use by applicants under this Chapter. The Local
2 Government Commission shall develop and adopt appropriate procedures for the
3 delivery of debt instruments by applicants to the State without any public bidding
4 therefore.

5 (b) The Local Government Commission shall review and approve proposed loans
6 to applicants that are local government units under this Chapter under the provisions of
7 Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was
8 proposed, so far as those provisions are applicable. The Local Government Commission
9 shall review and approve proposed loans to all other applicants ~~that are nonprofit water~~
10 ~~corporations~~ under this Chapter under the provisions of G.S. 159-153, so far as those
11 provisions are applicable. Revolving loans under this Chapter shall be outstanding debt
12 of applicants that are local government units for the purpose of Article 10, Chapter 159
13 of the General Statutes."

14 **SECTION 2.** G.S. 113A-253(c) is amended by adding a new subdivision to
15 read:

16 "(7a) To facilitate stormwater planning projects and water supply planning
17 projects."

18 **SECTION 3.** This act becomes effective July 1, 2005.