

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2082*

Short Title: Local Water & Sewer Grants/Funds. (Public)

Sponsors: Senators Dalton, Kerr; Atwater, and Bingham.

Referred to: Appropriations/Base Budget.

May 28, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO APPROPRIATE FUNDS TO THE RURAL ECONOMIC
3 DEVELOPMENT CENTER FOR LOCAL GOVERNMENT WATER AND
4 SEWER GRANTS AND TO APPROPRIATE FUNDS TO THE DEPARTMENT
5 OF ENVIRONMENT AND NATURAL RESOURCES FOR WATER AND
6 SEWER GRANTS TO LOCAL GOVERNMENTS AND NONPROFIT WATER
7 CORPORATIONS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** Appropriation. – There is appropriated from the General
10 Fund to the Rural Economic Development Center, Inc. (Rural Center) the sum of one
11 hundred thirty-five million dollars (\$135,000,000) for the 2008-2009 fiscal year to be
12 used to provide grants to local government units for wastewater-related projects and for
13 public water system-related projects as provided by this section.

14 **SECTION 1.(b)** Definitions. – The definitions in G.S. 159G-20 apply in this
15 section, except that all census calculations are based on the most recent federal
16 decennial census. In addition, the following definitions shall apply in this section unless
17 otherwise provided:

- 18 (1) Ability to pay. – An assessment of the ability of a local government
19 unit to pay for a water infrastructure project as calculated annually by
20 the Division of Community Assistance in the Department of
21 Commerce.
- 22 (2) Economically distressed area. – Any of the following:
- 23 a. An economically distressed county as defined in
24 G.S. 143B-437.01.
- 25 b. That part of a county in which the poverty rate is at least one
26 hundred fifty percent (150%) of the State poverty rate. The
27 poverty rate is the percentage of the population whose income
28 is below the most recent federal poverty level set by the U.S.
29 Bureau of the Census.

1 c. If it is not a county, its ability to pay is less than fifty percent
2 (50%) of the ability to pay of the county in which it is located.

- 3 (3) Rural county. – A county with a population density of fewer than 250
4 people per square mile based on the most recent federal decennial
5 census.

6 **SECTION 1.(c)** Eligible Applicants; Eligible Projects. – A local government
7 unit is eligible for a grant under this section if it meets the eligibility requirements under
8 subsection (d) or subsection (e) of this section for the specific type of grant. The funds
9 appropriated under this section may be used to provide either a planning grant that
10 meets the requirements under subsection (d) of this section or a supplemental grant that
11 meets the requirements of subsection (e) of this section. The following projects are
12 eligible for receiving a grant under this section:

- 13 (1) Wastewater collection system.
14 (2) Wastewater treatment works.
15 (3) Public water system.
16 (4) Wastewater and drinking water infrastructure planning.
17 (5) Multijurisdictional wastewater, drinking water, water quality, and
18 stormwater planning.

19 **SECTION 1.(d)** Planning Grants. – A planning grant under this section is
20 available for the costs associated with preliminary planning for wastewater collection
21 system projects, wastewater treatment works projects, and public water system projects.
22 Preliminary planning includes developing a capital improvement plan, developing a
23 comprehensive land-use plan that provides for water quality protection, conducting a
24 feasibility study, developing a regional or multijurisdictional infrastructure or water
25 quality improvement plan, assembling a financing plan to carry out a project,
26 completing a grant application, and preparing a preliminary engineering report for a
27 proposed project. A planning grant is subject to the following restrictions:

- 28 (1) Eligibility. – A local government unit is eligible for a planning grant if it
29 meets the following criteria:
30 a. It is a rural county or is located in one of these counties.
31 b. It is an economically distressed county or is located in an
32 economically distressed county or an economically distressed
33 area.
34 c. For purposes of this subsection, a regional council of
35 governments organized under G.S. 160A-460 or a regional
36 planning and development commission organized under
37 G.S. 153A-391 is considered a local government unit. A
38 regional council of governments or regional planning and
39 development commission is eligible for a grant if it serves a
40 rural county and is applying for a regional or multijurisdictional
41 planning project involving two or more units of local
42 government.
43 (2) Maximum. – A planning grant shall not exceed forty thousand dollars
44 (\$40,000) for each unit of local government.

- 1 (3) Matching funds. – A local government unit shall match a planning
2 grant on a dollar-for-dollar basis unless the unit meets one or more of
3 the following descriptions, in which instance the Rural Center may
4 require a match of fifty percent (50%) or less:
5 a. It is an economically distressed county or located in an
6 economically distressed county.
7 b. Its poverty rate is at least one hundred fifty percent (150%) of
8 the State poverty rate.
9 c. If it is not a county, its ability to pay is less than fifty percent
10 (50%) of the ability to pay of the county in which it is located.

11 **SECTION 1.(e)** Supplemental Grants. – A supplemental grant is available to
12 match other funds to be applied to the construction costs of an eligible project. Other
13 funds include federal funds, State funds, and local funds. A supplemental grant is
14 subject to the following restrictions:

- 15 (1) Eligibility. – A local government unit is eligible for a supplemental
16 grant if it meets the following criteria:
17 a. It is a rural county or is located in one of these counties.
18 b. It adopts a resolution to set the household user fee for water and
19 sewer service in the area served by the project at an amount that
20 equals or exceeds the high-unit-cost threshold.
21 (2) Maximum. – A supplemental grant shall not exceed five hundred
22 thousand dollars (\$500,000) unless the applicant meets one or more of
23 these descriptions:
24 a. It is an economically distressed county or is located in an
25 economically distressed county.
26 b. Its poverty rate is at least one hundred fifty percent (150%) of
27 the State poverty rate.
28 c. If it is not a county, its ability to pay is less than fifty percent
29 (50%) of the ability to pay of the county in which it is located.

30 The maximum supplemental grant for an applicant meeting at least one
31 of these descriptions is the lesser of one million dollars (\$1,000,000) or
32 twenty-five percent (25%) of the total project cost.

- 33 (3) Matching funds. – A local government unit shall match a supplemental
34 grant on a dollar-for-dollar basis unless the unit meets one or more of
35 the following descriptions, in which instance the Rural Center may
36 require a match of fifty percent (50%) or less:
37 a. It is an economically distressed county or is located in an
38 economically distressed county.
39 b. Its poverty rate is at least one hundred fifty percent (150%) of
40 the State poverty rate.
41 c. If it is not a county, its ability to pay is less than fifty percent
42 (50%) of the ability to pay of the county in which it is located.

43 A local government unit that meets one or more of these descriptions
44 may not provide less than a dollar-for-dollar match if the supplemental

1 grant amount requested exceeds five hundred thousand dollars
2 (\$500,000).

3 **SECTION 1.(f)** Criteria for Grants. – All projects must document a current
4 critical water or wastewater need affecting human health or the environment. The
5 criteria in G.S. 159G-23, the criteria set out in this section, and any other criteria
6 established by the Board of Directors of the Rural Center shall apply to a grant provided
7 under this section. An application for a project that serves an economically distressed
8 area shall have priority over a project that does not. The Board of Directors of the Rural
9 Center may determine that a crisis need exists that merits special consideration and may
10 establish a subcategory of this program to address one or more crisis applications.

11 **SECTION 1.(g)** Grant Applications. – Any application for a grant under this
12 section shall be submitted by the local government unit to the Rural Center. An
13 application shall be submitted on a form prescribed by the Rural Center and shall
14 contain the information required by the Rural Center. An applicant shall submit to the
15 Rural Center any additional information requested by the Rural Center to enable the
16 Rural Center to make a determination on the application. An application that does not
17 contain information required on the application or requested by the Rural Center is
18 incomplete and is not eligible for consideration. An applicant may submit an application
19 in as many categories as it is eligible for consideration under this section.

20 **SECTION 1.(h)** Environmental Assessment. – An application submitted
21 under this section for a supplemental grant shall state whether the project to be funded
22 by the grant requires an environmental assessment. If the application indicates that an
23 environmental assessment is not required, it must identify the exclusion in the North
24 Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes,
25 that applies to the project. The Rural Center shall give the Department of Environment
26 and Natural Resources a copy of an application that indicates an environmental
27 assessment is not required. If the Department of Environment and Natural Resources
28 determines that the project requires an environmental assessment, the Department shall
29 notify the Rural Center, and the applicant, and the applicant shall submit the assessment
30 to the Department before the Center continues its review of the application. An
31 application that does not identify an exclusion in the North Carolina Environmental
32 Policy Act shall include the environmental assessment of the project's probable impacts
33 on the environment that was submitted to the Department of Environment and Natural
34 Resources. If the Department notifies the Rural Center that an environmental impact
35 statement is required, the Rural Center shall not award the applicant a grant until a final
36 environmental assessment impact statement has been completed and approved as
37 provided in the Environmental Policy Act.

38 **SECTION 1.(i)** Review of Applications and Award of Grant. – The Rural
39 Center shall review grant applications and award grants as provided by this subsection:

- 40 (1) Point assignment. – The Rural Center shall review all grant
41 applications submitted under this section for an application period, to
42 be determined by the Rural Center, and shall rank each application in
43 accordance with the points assigned to the evaluation criteria.
44 Applications addressing a crisis need may be ranked according to a

1 special set of criteria or be reviewed for a specifically determined
2 application period. The Rural Center shall make a written
3 determination of an application's rank and attach the determination to
4 the application. The Rural Center's determination of rank is
5 conclusive.

6 (2) Reconsideration. – When an application's rank is too low to receive an
7 award of a grant for the application period, the Rural Center may
8 reconsider an amended application, provided the application addresses
9 questions from the previous grant round.

10 (3) Notification of decision. – When the Rural Center determines that an
11 application's rank makes it eligible for an award of a grant, the Rural
12 Center shall send the applicant a letter of intent to award the grant. The
13 notice shall set out any conditions the applicant must meet to receive
14 an award of a grant. When the applicant satisfies the conditions set out
15 in the letter of intent, the Rural Center shall send the applicant an offer
16 to award a grant. The applicant shall give the Rural Center written
17 notice of whether it accepts or rejects the offer. A grant is considered
18 awarded the date the offer to award the grant is sent by the Rural
19 Center.

20 **SECTION 1.(j)** Disbursement of Grant. – A planning grant awarded under
21 this section shall be disbursed in two payments. Other grants awarded under this section
22 shall be disbursed in two or more payments based on the progress of the project for
23 which the grant was awarded. To obtain a payment, a grant recipient shall submit a
24 request for payment to the Rural Center and shall document the expenditures for which
25 the payment is requested. The Rural Center shall review the payment request for
26 compliance with all grant conditions.

27 **SECTION 1.(k)** Withdrawal of Grant. – An award for a supplemental grant
28 for a project is withdrawn if the applicant fails to enter into a construction contract for
29 the project within one year after the date of the award for supplemental grants under
30 subsection (e) of this section, unless the Board of Directors of the Rural Center finds
31 that the applicant has good cause for the failure. If the Rural Center finds good cause for
32 an applicant's failure, the Rural Center shall set a date by which the applicant must take
33 action or forfeit the grant. Planning grants may be withdrawn if there is insufficient
34 progress in meeting the scope of work within one year of the award date.

35 **SECTION 1.(l)** Inspection of Project. – The Rural Center may inspect a
36 project as provided by this subsection:

37 (1) Authority. – The Rural Center may inspect a project for which it
38 awards a grant under this section to determine the progress made on
39 the project and whether the construction of the project is consistent
40 with the project described in the grant application. The inspection may
41 be performed by personnel of the Rural Center or by a professional
42 engineer licensed under Chapter 89C of the General Statutes.

1 (2) Disqualification. – An individual may not perform an inspection of a
2 project under this section if the individual meets any of the following
3 criteria:

- 4 a. Is an officer or employee of the local government unit that
5 received the grant award for the project.
- 6 b. Is an owner, officer, employee, or agent of a contractor or
7 subcontractor engaged in the construction of the project for
8 which the grant was made.

9 **SECTION 1.(m)** Administration Costs. – The Rural Center may use a
10 portion of the funds appropriated under this section for administration, not to exceed
11 two percent (2%), for the life of the grant program created by this section.

12 **SECTION 1.(n)** Reporting Requirement. – The Rural Center shall report to
13 the Joint Legislative Commission on Governmental Operations on a quarterly basis
14 concerning the progress of the grant program created under this section. The first report
15 is due no later than December 1, 2008.

16 **SECTION 1.(o)** Separate Accounts. – Each grant that is provided under this
17 section shall be administered through a separate account.

18 **SECTION 1.(p)** Loans Prohibited. – The Rural Center shall not use the
19 funds appropriated under this section to make loans.

20 **SECTION 2.(a)** Appropriation to Department of Environment and Natural
21 Resources. – There is appropriated from the General Fund to the Department of
22 Environment and Natural Resources the sum of thirty million dollars (\$30,000,000) for
23 the 2008-2009 fiscal year to be deposited into the Water Infrastructure Fund established
24 by G.S. 159G-22 and allocated equally between the Wastewater Reserve established in
25 G.S. 159G-22(d) and the Drinking Water Reserve established in G.S. 159G-22(f).

26 **SECTION 2.(b)** Fund Use Restricted to Grants for Eligible Projects in
27 Urban Counties. – The funds appropriated by subsection (a) of this section shall be
28 awarded as provided by Article 2 of Chapter 159G of the General Statutes for grants
29 only and shall not be used for loans. In addition, notwithstanding Article 2 of Chapter
30 159G of the General Statutes, the grants awarded under this section shall be awarded
31 only to eligible projects located in the 15 urban counties.

32 **SECTION 2.(c)** Grant Subject to Administrative Fee. – A grant awarded
33 under this section is subject to a fee as provided by G.S. 159G-24. The fee is a
34 departmental receipt of the Department of Environment and Natural Resources and
35 must be applied to the Department's costs in administering grants from these reserves as
36 provided by G.S. 159G-24.

37 **SECTION 3.** This act becomes effective July 1, 2008.