

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 878
RATIFIED BILL

AN ACT TO ALLOW CERTAIN NONPROFIT WATER CORPORATIONS TO BE
ELIGIBLE FOR REVOLVING LOANS AND GRANTS FROM THE DRINKING
WATER TREATMENT REVOLVING LOAN FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159G-2 reads as rewritten:

"§ 159G-2. Purpose.

The General Assembly hereby recognizes that a critical need exists in this State to provide for a low-interest funding source for municipal water and wastewater capital facilities. Local government efforts to meet this need have been restricted by the inability of many units to finance necessary improvements to inadequate or nonexistent water supply and wastewater treatment systems. The decrease in financial capacity has resulted in large part from the diminished availability of federal loans and grants and the elimination of the federal general revenue sharing program, which funded a wide range of local capital improvements.

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

It is the intent and purpose of the General Assembly by this Chapter to create a program to facilitate early construction of these environmental improvements by establishing a revolving loan fund for financing such projects. This fund will enable local government units to obtain low-interest loans for financing projects for wastewater treatment ~~and water supply~~, and for certain emergency purposes. This fund will also enable local government units and nonprofit water corporations to obtain low-interest loans for financing projects for water supply. It is the further intent and purpose of the General Assembly to provide grants to local government units for wastewater treatment and to provide grants to local government units and nonprofit water corporations for water supply facilities. The General Assembly seeks by this Chapter to encourage and assist local government units to meet their responsibilities to their citizens to maintain a clean and healthful environment and an abundant supply of pure water and further to provide an adequate base for economic growth."

Section 2. G.S. 159G-3 reads as rewritten:

"§ 159G-3. Definitions.

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

- (1) Repealed by Session Laws 1991, c. 186, s. 1.
- (2) "Applicant" means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that ~~unit of local government.~~ local government unit. For purposes of the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G-5(d), 'applicant' also means a nonprofit water corporation that is incorporated in compliance with Chapter 55A of the General Statutes solely for the purpose of

- providing community water or community water and wastewater and that is eligible for a federal loan or a federal loan and grant from the Rural Utility Services Division, U.S. Department of Agriculture.
- (3) "Clean Water Revolving Loan and Grant Fund" means the fund established in the Department of Environment and Natural Resources to carry out the provisions of this Chapter, with various accounts therein as herein provided.
- (4) "Construction costs" means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.
- (5) "Grant" means a sum of money given by the State to ~~a local government unit~~ an applicant to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.
- (6) "Commission for Health Services" means the Commission for Health Services created by G.S. 130A-29.
- (6a) "Debt instrument" means an instrument in the nature of a promissory note executed by ~~a local government unit~~ an applicant under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.
- (7) "Division of Environmental Health" means the Division of Environmental Health of the Department of Environment and Natural Resources.
- (7a) "Economically distressed local government unit" means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A.
- (8) "Environmental Management Commission" means the Environmental Management Commission of the Department of Environment and Natural Resources.
- (9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.
- (10) "Local government unit" means a county, city, town, incorporated village, consolidated city-county, as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, joint agency authorized by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that also provided water and wastewater services off the airport premises before January 1,

- 1995, or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.
- (11) Repealed by Session Laws 1991, c. 186, s. 1.
- (12) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Water Quality with respect to receipt of applications for revolving loans and grants for wastewater systems.
- (13) "Revolving construction loan" means a sum of money loaned by the State to ~~a local government unit an applicant~~ to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of ~~such unit the applicant~~ to repay such sum, the proceeds of such repayment to be deposited in the ~~Water Pollution Control Revolving Fund~~ fund from which the loan was made.
- (14) "Revolving emergency loan" means a sum of money loaned by the State to a local government unit upon a certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.
- (15) "Revolving loan" includes a revolving construction loan and an emergency loan.
- (15a) "State" means the State of North Carolina.
- (15b) "State Treasurer" means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.
- (16) "Wastewater Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.
- (17) "Wastewater collection system" means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.
- (18) "Wastewater treatment works" means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorous removal equipment, pumping, power and other equipment and their appurtenances.
- (19) "Water Supply Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for water supply system projects.
- (20) "Water supply system" means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures."

Section 3. G.S. 159G-4(c) reads as rewritten:

"(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, with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control 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(c), 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 if authorized by the Federal Water Pollution Control Act Regulations. It is the intent of the General Assembly to provide uniform interest payments for all loans made to ~~units of local government applicants~~ irrespective of the account from which loans are made for either wastewater or water supply projects."

Section 4. G.S. 159G-6 reads as rewritten:

"§ 159G-6. Distribution of funds.

(a) Revolving loans and grants.

- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to ~~local government units applicants~~ for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.
- (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one ~~local government unit applicant~~ during any fiscal year shall be eight million dollars (\$8,000,000). The maximum principal amount of grants made to any ~~one local government unit applicant~~ during any fiscal year shall be three million dollars (\$3,000,000).
- (3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a ~~local government unit an applicant~~ to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the ~~local government unit applicant~~ to provide funds for one or more revolving loans or grants.

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

- (1) General Wastewater Revolving Loan and Grant Account. – The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.
- (2) High-Unit Cost Wastewater Account. – The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for

high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section. However, if the applicant upon completion of the project will have only a single utility service, then the eligibility of the applicant for such a grant shall be determined by comparing estimated average household user fees for the single utility service that will be offered, for debt service and operation and maintenance costs, to three-fourths percent (3/4%) of the median household income in the local government unit in which the project is located. The single utility projects which would require estimated average household water or sewer user fees (as appropriate) greater than three-fourths percent (3/4%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section.

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

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

- (1) General Water Supply Revolving Loan and Grant Account. – The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.
- (2) High-Unit Cost Water Supply Account. – The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.
- (3) Emergency Water Supply Revolving Loan Account. – The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

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

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

Section 5. G.S. 159G-9 reads as rewritten:

"§ 159G-9. Eligibility.

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

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

Section 6. G.S. 159G-10(b) reads as rewritten:

"(b) Priority Factors. – All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for such funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. –

- a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.
 - b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for prioritizing which ~~local government units~~ applicants will receive a loan or grant. ~~A local government unit~~ An applicant that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in ~~another a~~ local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as ~~a local government unit~~ an applicant that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards. Additional points may be awarded for actions taken toward implementation of a comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan.
- (2) Wastewater Treatment Work Projects. – The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.
 - (3) Wastewater Collection System Projects. – The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

- (4) Water Supply System Projects. – The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.
- (5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. – The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).
- (6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through (5) of this subsection."

Section 7. G.S. 159G-13(a) reads as rewritten:

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

Section 8. G.S. 159G-14 reads as rewritten:

"§ 159G-14. Inspection.

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

Section 9. G.S. 159G-15(b) reads as rewritten:

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

Section 10. G.S. 159G-18 reads as rewritten:

"§ 159G-18. Local government Applicant borrowing authority.

(a) ~~Local government units Applicants~~ may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. ~~Local government units Applicants~~ shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems only, or other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of ~~such applicants that are local government units~~ shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use by applicants under this Chapter. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants to the State without any public bidding therefor.

(b) The Local Government Commission shall review and approve proposed loans to applicants that are local government units under this Chapter under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. The Local Government

Commission shall review and approve proposed loans to applicants that are nonprofit water corporations under this Chapter under the provisions of G.S. 159-153, so far as those provisions are applicable. Revolving loans under this Chapter shall be outstanding debt of applicants that are local government units for the purpose of Article 10, Chapter 159 of the General Statutes."

Section 11. G.S. 159-153 is amended by adding a new subsection to read:

"(a1) Commission Approval Required for Nonprofit Water Corporation Loans From the Clean Water Revolving Loan and Trust Fund. – In addition to the requirements of Chapter 159G of the General Statutes, approval by the Commission in accordance with this section is required before a nonprofit water corporation may be eligible to receive a revolving loan or grant under Chapter 159G of the General Statutes."

Section 12. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 15th day of June, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19