

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH30241-LH-199 (04/13)

Short Title: Amend Clean Water Loan & Grant Laws.

(Public)

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Sponsors: Representative Gibson.

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Referred to:

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A BILL TO BE ENTITLED

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

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.**

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

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

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

29 **"§ 159G-3. Definitions.**

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

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

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

1           ~~nonprofit water corporation that is incorporated in compliance with~~  
2           ~~Chapter 55A of the General Statutes solely for the purpose of~~  
3           ~~providing community water or community water and wastewater and~~  
4           ~~that is eligible for a federal loan or a federal loan and grant from the~~  
5           ~~Rural Utility Services Division, U.S. Department of Agriculture.~~

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

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

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

34          (4a) "Department" means the Department of Environment and Natural  
35          Resources.

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

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

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

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

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

33 **"§ 159G-4. Appropriations.**

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

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

43 ~~Wastewater Accounts~~

44 ~~General Wastewater Revolving~~

1	Loan Account	39.00%
2	<del>Emergency Wastewater Revolving</del>	
3	Loan Account	10.00%
4	<del>High-Unit Cost Wastewater</del>	
5	<del>Account</del>	20.00%
6	<del>Water Supply Accounts</del>	
7	<del>General Water Supply</del>	
8	<del>Revolving Loan Account</del>	21.00%
9	<del>High Unit Cost Water Supply</del>	
10	<del>Account</del>	5.00%
11	<del>Emergency Water Supply Revolving</del>	
12	<del>Loan Account</del>	5.00%

13 (c) All payments of interest and repayments of principal resulting from revolving  
14 loans shall be credited to the respective accounts from which the revolving loan funds  
15 were disbursed. Terms and conditions for repayment of revolving loans shall be  
16 established by the ~~Department of Environment and Natural Resources, Department,~~ with  
17 the assistance of the Local Government Commission, consistent with the requirements  
18 of the Federal Water Pollution Control ~~Act~~ Act, the Federal Safe Drinking Water Act,  
19 and this Chapter. Provided, the interest rate for all revolving loans authorized by this  
20 Chapter shall be fixed at the same percent per annum as the interest rate fixed under the  
21 Federal Water Pollution Control Act for loans from the Water Pollution Control  
22 ~~Revolving Fund established by G.S. 159G-5(e), not to exceed the lesser of four percent~~  
23 (4%) or one half (1/2) the prevailing national market rate for tax exempt general  
24 obligation debt of similar maturities derived from a published indicator. Provided  
25 further, the interest rate may be fixed at a lower rate per annum and the maximum  
26 maturity may not exceed the lesser of 30 years or the project's expected life if  
27 authorized by the Federal Water Pollution Control Act ~~Regulations~~ or the Federal Safe  
28 Drinking Water Act. It is the intent of the General Assembly to provide uniform interest  
29 payments for all loans made to applicants irrespective of the account from which loans  
30 are made for either wastewater or water supply projects.

31 **"§ 159G-5. Clean Water and Drinking Water Revolving Loan and Grant Fund.**

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

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

42 (c) Within the Clean Water and Drinking Water Revolving Loan and Grant Fund  
43 there shall be a special account known as the Water Pollution Control Revolving Fund.  
44 This account shall be established and managed in accordance with the requirements of

1 Title VI of the Federal Water Quality Act of 1987 (P.L. 100-4), to achieve the purposes  
2 and goals of the Federal Water Pollution Control Act. The funds in the Water Pollution  
3 Control Revolving Fund shall be available in perpetuity and exclusively for the purpose  
4 of providing revolving construction loans and other assistance as specified in Title VI of  
5 the Federal Water Quality Act of 1987 and the regulations thereunder, including making  
6 grants to the extent permitted thereby.

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

19 **"§ 159G-6. Distribution of funds.**

20 (a) Revolving loans and grants.

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

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

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

42 (2b) Notwithstanding G.S. 159G-6(a)(2a), the maximum principal amount  
43 of grants made to any applicant for a high-unit cost wastewater project  
44 under G.S. 159G-6(b)(2) during any fiscal year shall be three million

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

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

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

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

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



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

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

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

26 (1) General Water Supply Revolving Loan and Grant Account. – The  
27 funds in the General Water Supply Revolving Loan and Grant Account  
28 shall be used exclusively for the purpose of providing for revolving  
29 construction loans and grants in connection with water supply systems  
30 generally and not upon a county allotment basis.

31 (2) High-Unit Cost Water Supply Account. – The funds in the High-Unit  
32 Cost Water Supply Account shall be available for grants to applicants  
33 for high-unit cost water supply systems, on the same basis as provided  
34 in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

35 (3) Emergency Water Supply Revolving Loan Account. – The funds in the  
36 Emergency Water Supply Revolving Loan Account shall be available  
37 for revolving emergency loans to applicants in the event the Secretary  
38 of Environment and Natural Resources certifies either that a serious  
39 public health ~~hazard, related to the water supply system, hazard~~ or that  
40 a drought emergency related to the water supply system is present or  
41 imminent in a community.

42 (4) Inter-Account Transfers. – The ~~Department of Environment and~~  
43 ~~Natural Resources~~Department may transfer funds from the General  
44 Water Supply Revolving Loan and Grant Account to the Emergency

1 Water Supply revolving Loan Account in the event that the Secretary  
2 of Environment and Natural Resources certifies ~~that a drought~~  
3 ~~emergency exists and that additional emergency funds are needed to~~  
4 ~~assist water supply systems that are experiencing a drought~~  
5 ~~emergency~~either that a serious public health hazard or drought  
6 emergency related to the water supply system is present or imminent in  
7 a community.

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

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

13 **"§ 159G-7. Reserved for future codification purposes.**

14 **"§ 159G-8. Application; environmental assessment; notice; hearing.**

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

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

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

39 (b) Environmental Assessment. – Every applicant shall file with its application  
40 an assessment setting forth the impact that the project for which funds are sought will  
41 have upon the environment of the area within which the project is proposed to be  
42 located. The assessment shall set forth the impact of the project upon water resources,  
43 other natural resources, land use pattern, and such other factors as ~~the Commission for~~  
44 ~~Health Services or the Environmental Management Commission~~ shall ~~require~~required

1 by duly adopted rules. Any environmental assessment required as part of an application  
2 for grants under the Federal Water Pollution Control Act shall satisfy the requirement of  
3 this provision. If, after reviewing the environmental assessment, the Division of  
4 Environmental Health or the ~~Environmental Management Commission~~ Division of  
5 Water Quality concludes that an environmental impact statement is required, then the  
6 application shall receive no further consideration until a final environmental impact  
7 statement has been completed and approved as provided in Article 1 of Chapter 113A of  
8 the General Statutes.

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

23 **"§ 159G-9. Eligibility.**

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

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

38 **"§ 159G-10. Priorities.**

39 (a) Determination. – Determination of priorities to be assigned each eligible  
40 application shall be made ~~semiannually~~ by each receiving agency during each fiscal  
41 year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-5(d),  
42 ~~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  
43 considered by the receiving agency with every other application filed under  
44 G.S. 159G-5(c), G.S. 159G-5(d), ~~G.S. 159G-6(b)(1)~~ G.S. 159G-6(b), or

1 ~~G.S. 159G-6(e)(1)~~G.S. 159G-6(c), respectively, and eligible for consideration during  
2 the same priority period, to determine the priority to be assigned to each application.  
3 ~~The same procedure shall apply to every eligible application filed under~~  
4 ~~G.S. 159G-6(b)(3) and G.S. 159G-6(e)(3) of this Chapter.~~ Any application which does  
5 not contain the information required by this Chapter or regulations adopted by the  
6 receiving agency(s) shall not be deemed received until such information is furnished by  
7 the applicant to the receiving agency.

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

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

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

22 a. ~~The general criteria provided in 1 NCAC 22.0401 through~~  
23 ~~.0403 on January 1, 1987, shall apply, except that 1 NCAC~~  
24 ~~22.0401(c) shall apply only to State funds appropriated to~~  
25 ~~match available federal funds.~~

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

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

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

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

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

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

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

36 (c) Assignment of Priority. – A written statement relative to each priority  
37 assigned shall be prepared by the receiving agency and shall be attached to the  
38 application. The priority assigned shall be conclusive.

39 (d) Failure to Qualify. – Any application filed under G.S. 159G-5(c),  
40 G.S. 159G-5(d), ~~G.S. 159G-6(b)~~ G.S. 159G-6(b), or G.S. 159G-6(c) that does not  
41 qualify for a revolving loan or grant as of the priority period in which the application  
42 was eligible for consideration by reason of the priority assigned the application shall be  
43 considered for a revolving loan or grant during the next succeeding priority period upon  
44 request of the applicant. If such application should again fail to qualify for a revolving

1 loan or grant during the second priority period by reason of the priority assigned, the  
2 application shall receive no further consideration. An applicant may file a new  
3 application at any time, and may amend any pending application to include additional  
4 data or information.

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

14 **"§ 159G-11. Withdrawal of commitment.**

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

26 **"§ 159G-12. Disbursement.**

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

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

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

42 **"§ 159G-13. Revolving loans and grants.**

43 (a) To be eligible to receive the revolving loans and grants provided for in this  
44 Chapter, applicants shall arrange to borrow the amounts necessary to be borrowed in

1 connection therewith pursuant to the Local Government Finance Act or as provided in  
2 this Chapter as applicable. Applicants may apply for the revolving loans and grants  
3 prior to arranging for such borrowing.

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

9 **"§ 159G-14. Inspection.**

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

21 **"§ 159G-15. State loan and grant rules. Rules.**

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

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

32 **"§ 159G-16. Federal grants and loans. loan and grant rules.**

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

40 **"§ 159G-17. Annual reports to Joint Legislative Commission on Governmental**  
41 **Operations.**

42 (a) ~~The Department of Environment and Natural Resources, the Division of~~  
43 ~~Environmental Health, and the Environmental Management Commission~~Department  
44 shall prepare and file on or before July 31 of each year with the Joint Legislative

1 Commission on Governmental Operations a ~~consolidated summary~~ report for the  
2 preceding fiscal year concerning the allocation of revolving loans and grants authorized  
3 by this Chapter of all allocations made from the Clean Water and Drinking Water  
4 Revolving Loan and Grant Fund for each of the previous five fiscal years; the total  
5 funds received and allocations made; and unallocated funds on hand in each account as  
6 of the end of the preceding fiscal year.

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

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

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

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

39 **"§ 159G-18. Applicant borrowing authority.**

40 (a) Applicants may execute debt instruments payable to the State in order to  
41 obtain revolving loans provided for in this Chapter. Applicants shall pledge as security  
42 for such obligations the user fee revenues derived from operation of the benefited  
43 facilities or systems only, or other sources of revenue, or their faith and credit, or any  
44 combination thereof. The faith and credit of applicants that are local government units



1 shall not be pledged or be deemed to have been pledged unless the requirements of  
2 Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with  
3 the assistance of the Local Government Commission, shall develop and adopt  
4 appropriate debt instruments for use by applicants under this Chapter. The Local  
5 Government Commission shall develop and adopt appropriate procedures for the  
6 delivery of debt instruments by applicants to the State without any public bidding  
7 therefore.

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

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

19 "(7a) To facilitate stormwater planning projects and water supply planning  
20 projects."

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