

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 1087  
Committee Substitute Favorable 6/3/20  
Committee Substitute #2 Favorable 6/9/20  
Fourth Edition Engrossed 6/11/20  
Senate Appropriations/Base Budget Committee Substitute Adopted 6/17/20  
Sixth Edition Engrossed 6/22/20  
Proposed Conference Committee Substitute H1087-PCCS40701-MH-2

Short Title: Water/Wastewater Public Enterprise Reform.

(Public)

Sponsors:

Referred to:

May 14, 2020

A BILL TO BE ENTITLED

AN ACT TO IMPROVE VIABILITY OF THE WATER AND WASTEWATER SYSTEMS OF CERTAIN UNITS OF LOCAL GOVERNMENT BY REQUIRING LOCAL GOVERNMENT COMMISSION APPROVAL OF GRANT APPLICATIONS; TO REQUIRE CERTAIN WATER AND WASTEWATER SYSTEMS TO UNDERGO A REVIEW OF INFRASTRUCTURE MANAGEMENT, ORGANIZATIONAL MANAGEMENT, AND FINANCIAL MANAGEMENT; TO CREATE AND PROVIDE FUNDING FOR THE VIABLE UTILITY RESERVE TO PROVIDE GRANT MONEY FOR LOCAL GOVERNMENT UNITS; TO PROVIDE A STATUTORY PROCESS FOR MERGER AND DISSOLUTION OF WATER AND WASTEWATER SYSTEMS ESTABLISHED UNDER CHAPTER 162A OF THE GENERAL STATUTES; TO PROMOTE THE IMPORTANCE OF INTERLOCAL AGREEMENTS TO THE OPERATION OF WATER AND WASTEWATER SYSTEMS; TO STUDY SUBBASIN TRANSFERS AND HISTORICAL CHARTERS; TO REALLOCATE CERTAIN UNUSED FUNDS FROM THE PFAS RECOVERY FUND; TO PROVIDE FUNDS FOR THE SOUTHERN REGIONAL AREA HEALTH EDUCATION CENTER AND FOR WATER RESOURCES PROJECTS; AND TO INCORPORATE FLOOD STORAGE CAPACITY ENHANCEMENT PROJECTS INTO THE ACTIVITIES AND PURPOSES OF THE DIVISION OF MITIGATION SERVICES.

The General Assembly of North Carolina enacts:

**PART I. REFORM OF WATER AND WASTEWATER PUBLIC ENTERPRISES**

**SECTION 1.(a)** G.S. 159G-20 reads as rewritten:

**"§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

...

(4a) Distressed unit. – A public water system or wastewater system operated by a local government unit exhibiting signs of failure to identify or address those financial or operating needs necessary to enable that system to become or to remain a local government unit generating sufficient revenues to adequately fund management and operations, personnel, appropriate levels of



1 maintenance, and reinvestment that facilitate the provision of reliable water  
 2 or wastewater services.

3 ...

4 (13) Local government unit. – Any of the following:

- 5 a. A city as defined in G.S. 160A-1.  
 6 b. A county.  
 7 c. A consolidated city-county as defined in G.S. 160B-2.  
 8 d. ~~A county water and sewer district created pursuant to Article 6 of~~  
 9 ~~Chapter 162A of the General Statutes.~~Any of the following entities  
 10 created pursuant to Chapter 162A of the General Statutes:  
 11 1. A water and sewer authority created pursuant to Article 1.  
 12 2. A metropolitan water district created pursuant to Article 4.  
 13 3. A metropolitan sewerage district created pursuant to Article 5.  
 14 4. A metropolitan water and sewerage district created pursuant to  
 15 Article 5A.  
 16 5. A county water and sewer district created pursuant to Article  
 17 6.  
 18 e. ~~A metropolitan sewerage district or a metropolitan water district~~  
 19 ~~created pursuant to Article 4 of Chapter 162A of the General Statutes.~~  
 20 f. ~~A water and sewer authority created under Article 1 of Chapter 162A~~  
 21 ~~of the General Statutes.~~  
 22 g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter  
 23 130A of the General Statutes.  
 24 h. A joint agency created pursuant to Part 1 or Part 5 of Article 20 of  
 25 Chapter 160A of the General Statutes.  
 26 i. A joint agency that was created by agreement between two cities and  
 27 towns to operate an airport pursuant to G.S. 63-56 and that provided  
 28 drinking water and wastewater services off the airport premises before  
 29 1 January 1995.

30 ...

31 (14a) Operating deficit. – The shortage between revenues plus available reserves  
 32 and operating expenditures, including capital expenditures, necessary to  
 33 maintain operations in a distressed unit.

34 ...

35 (22a) Viable Utility Reserve. – The Viable Utility Reserve established in  
 36 G.S. 159G-22 as an account in the Water Infrastructure Fund.

37 ...."

38 **SECTION 1.(b)** G.S. 159G-22 is amended by adding two new subsections to read:

39 "(h) Viable Utility Reserve. – The Viable Utility Reserve is established as an account  
 40 within the Water Infrastructure Fund. The account is established to receive appropriated State  
 41 funds to be used for grants to local government units for those purposes authorized under this  
 42 Article. Revenue credited to the Viable Utility Reserve is neither received from the federal  
 43 government nor provided as a match for federal funds.

44 (i) Viable Utility Accounts. – The Department is directed to establish accounts within  
 45 the Viable Utility Reserve to administer grants for public water systems or wastewater systems  
 46 owned by local government units."

47 **SECTION 1.(c)** G.S. 159G-30 reads as rewritten:

48 **"§ 159G-30. Department's responsibility.**

49 The Department, through the ~~Division of Water Infrastructure,~~ Division, administers loans  
 50 the following:

- 1           (1) Loans and grants made from the CWSRF, the DWSRF, the Wastewater  
2           Reserve, and the Drinking Water Reserve and shall administer the Reserve.  
3           (2) The award of funds by the State Water Infrastructure Authority from the  
4           Community Development Block Grant program to local government units for  
5           infrastructure projects.  
6           (3) Grants made from the Viable Utility Reserve."

7           **SECTION 1.(d)** G.S. 159G-31 is amended by adding two new subsections to read:

8           "(d) A local government unit is eligible to apply for a grant from the Viable Utility  
9           Reserve.

10          (e) The Local Government Commission may submit an application on behalf of a  
11          distressed unit for an emergency grant from the Viable Utility Reserve to cover operating deficits  
12          of that local government unit's public water system or wastewater system, and any such  
13          application shall be deemed approved by the Local Government Commission upon submission."

14          **SECTION 1.(e)** G.S. 159G-32 is amended by adding a new subsection to read:

15          "(d) Viable Utility Reserve. – The Department is authorized to make grants from the  
16          Viable Utility Reserve to do any of the following:

- 17           (1) Provide physical interconnection and extension of public water or wastewater  
18           infrastructure to provide regional service.  
19           (2) Rehabilitate existing public water or wastewater infrastructure.  
20           (3) Decentralize an existing public water system or wastewater system into  
21           smaller viable parts.  
22           (4) Fund a study of any one or more of the following:  
23           a. Rates.  
24           b. Asset inventory and assessment.  
25           c. Merger and regionalization options.  
26           (5) Fund other options deemed feasible which result in local government units  
27           generating sufficient revenues to adequately fund management and  
28           operations, personnel, appropriate levels of maintenance, and reinvestment  
29           that facilitate the provision of reliable water or wastewater services.  
30           (6) Provide emergency grants for operating deficits in accordance with  
31           G.S. 159G-34.5(a)(4)."

32          **SECTION 1.(f)** Article 2 of Chapter 159G of the General Statutes is amended by  
33          adding a new section to read:

34          "**§ 159G-34.5. Grant types available from Viable Utility Reserve.**

35          (a) The Department is authorized to make the following types of grants from the Viable  
36          Utility Reserve:

- 37           (1) Asset assessment and rate study grant. – An asset inventory and assessment  
38           grant is available to inventory the existing public water or wastewater system,  
39           or both, document the condition of the inventoried infrastructure, and conduct  
40           a rate study to determine a rate structure sufficient to prevent the local  
41           government unit from becoming a distressed unit.  
42           (2) Merger/regionalization feasibility grant. – A merger/regionalization grant is  
43           available to determine the feasibility of consolidating the management of  
44           multiple water or wastewater systems into a single operation or to provide  
45           regional treatment or water supply and the best way of carrying out the  
46           consolidation or regionalization. The Department shall not make a grant under  
47           this subdivision for a merger or regionalization proposal that would result in  
48           a new surface water transfer regulated under G.S. 143-215.22L.  
49           (3) Project grant. – A project grant is available for a portion of the costs of a public  
50           water system or wastewater project as defined in G.S. 159G-32(d).

1           (4)   Emergency grant for operating deficit. – An emergency grant for operating  
2           deficits is available for distressed units if the Local Government Commission  
3           has exercised its powers under G.S. 159-181 to assume full or partial control  
4           over the affairs of the public water or wastewater system or of the local  
5           government unit or public authority that owns or operates the public water or  
6           wastewater system.

7           (b)   A grant awarded from the Viable Utility Reserve may be awarded to a regional  
8           council of government created under Part 2 of Article 20 of Chapter 160A of the General Statutes  
9           or to a regional planning commission created under Article 19 of Chapter 153A of the General  
10          Statutes, if the Department and the Local Government Commission determine it is in the best  
11          interest of the local government unit.

12          (c)   Each type of grant must be administered through a separate account within the Viable  
13          Utility Reserve."

14                **SECTION 1.(g)** G.S. 159G-35 reads as rewritten:

15        "**§ 159G-35. Criteria for loans and grants.**

16          (a)   CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or  
17          grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts  
18          must meet the criteria set under federal law. The Department is directed to establish through  
19          negotiation with the United States Environmental Protection Agency the criteria for evaluating  
20          applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to  
21          the criteria. The Department must incorporate the negotiated criteria and priorities in the  
22          Capitalization Grant Operating Agreement between the Department and the United States  
23          Environmental Protection Agency. The criteria and priorities incorporated in the Agreement  
24          apply to a loan or grant from the CWSRF or the DWSRF. The priority considerations in  
25          G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

26          (b)   Certain Reserves. – The priority considerations in G.S. 159G-23 apply to a loan or  
27          grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may  
28          establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the  
29          Drinking Water Reserve.

30          (c)   Viable Utility Reserve. – The Local Government Commission and the Authority shall  
31          jointly develop evaluation criteria for grants from the Viable Utility Reserve. These evaluation  
32          criteria shall be used to review applications and award grants as provided in G.S. 159G-39."

33                **SECTION 1.(h)** G.S. 159G-36 reads as rewritten:

34        "**§ 159G-36. Limits on loans and grants.**

35          (a)   CWSRF and DWSRF. – Federal law governs loans and grants from the CWSRF and  
36          the DWSRF. An award of a loan or grant from one of these accounts must be consistent with  
37          federal law.

38          (b)   Certain Reserve Cost Limit. – The amount of a loan or grant from the Wastewater  
39          Reserve or the Drinking Water Reserve may not exceed the construction costs of a project. A  
40          loan or grant from one of these Reserves is available only to the extent that other funding sources  
41          are not reasonably available to the applicant.

42          (b1) Viable Utility Reserve Cost Limit. – The amount of a grant from the Viable Utility  
43          Reserve shall not exceed the construction costs of a project. A grant from this Reserve is available  
44          only to the extent that other funding sources are not reasonably available to the applicant.

45          (c)   Certain Reserve Recipient Limit. – The following limits apply to the loan or grant  
46          types made from the Wastewater Reserve or the Drinking Water Reserve to the same local  
47          government unit or nonprofit water corporation:

48                (1)   The amount of loans awarded for a fiscal year may not exceed three million  
49                dollars (\$3,000,000).

50                (2)   The amount of loans awarded for three consecutive fiscal years for targeted  
51                interest rate projects may not exceed three million dollars (\$3,000,000).

- 1 (3) The amount of project grants awarded for three consecutive fiscal years may  
2 not exceed three million dollars (\$3,000,000).
- 3 (4) The amount of merger/regionalization feasibility grants awarded for three  
4 consecutive fiscal years may not exceed fifty thousand dollars (\$50,000).
- 5 (5) The amount of asset inventory and assessment grants awarded for three  
6 consecutive fiscal years may not exceed one hundred fifty thousand dollars  
7 (\$150,000).

8 (d) Viable Utility Reserve Recipient Limit. – Grants under the Viable Utility Reserve are  
9 limited as follows:

- 10 (1) Grants for the purposes set forth in subdivisions (1) through (5) of  
11 G.S. 159-32(d) shall not exceed fifteen million dollars (\$15,000,000) to any  
12 single local government unit. Where two or more local government units are  
13 merging into a single utility, the total grant awarded shall not exceed thirty  
14 million dollars (\$30,000,000).
- 15 (2) Grants for the purpose set forth in G.S. 159-32(d)(6) to any single local  
16 government unit shall not (i) exceed seven hundred fifty thousand dollars  
17 (\$750,000) in any fiscal year and (ii) be awarded for more than three  
18 consecutive fiscal years."

19 **SECTION 1.(i)** G.S. 159G-37 reads as rewritten:

20 **"§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, ~~and Drinking Water~~**  
21 **Reserve-Reserve, and Viable Utility Reserve.**

22 (a) Application. – An application for a loan or grant from the CWSRF, the Wastewater  
23 Reserve, the DWSRF, or the Drinking Water ~~Reserve-Reserve, or a grant from the Viable Utility~~  
24 ~~Reserve,~~ must be filed with the Division of Water Infrastructure of the Department. An  
25 application must be submitted on a form prescribed by the Division and must contain the  
26 information required by the Division. An applicant must submit to the Division any additional  
27 information requested by the Division to enable the Division to make a determination on the  
28 application. An application that does not contain information required on the application or  
29 requested by the Division is incomplete and is not eligible for consideration. An applicant may  
30 submit an application in as many categories as it is eligible for consideration under this Article.

31 (b) Certification. – ~~The Division of Water Infrastructure~~ shall require all local  
32 governments applying for loans or grants for water or wastewater purposes to certify that no  
33 funds received from water or wastewater utility operations have been transferred to the local  
34 government's general fund for the purpose of supplementing the resources of the general fund.  
35 The prohibition in this section shall not be interpreted to include payments made to the local  
36 government to reimburse the general fund for expenses paid from that fund that are reasonably  
37 allocable to the regular and ongoing operations of the utility, including, but not limited to, rent  
38 and shared facility costs, engineering and design work, plan review, and shared personnel costs."

39 **SECTION 1.(j)** G.S. 159G-39 is amended by adding a new subsection to read:

40 "(e) Viable Utility Reserve Terms. – The Department shall not award a grant from the  
41 Viable Utility Reserve Fund unless the Local Government Commission approves the award of  
42 the grant and the terms of the grant. Any emergency grant application submitted under  
43 G.S. 159G-31(e) shall be deemed approved by the Local Government Commission upon  
44 submission. The Department and the Local Government Commission may, in their discretion,  
45 impose specific performance measures or conditions on any grant awarded from the Viable  
46 Utility Reserve, including any grant submitted under G.S. 159G-31(e)."

47 **SECTION 1.(k)** Article 2 of Chapter 159G of the General Statutes is amended by  
48 adding a new section to read:

49 **"§ 159G-45. Assessment of local government units; assistance.**



**"§ 162A-850. "Unit" defined.**

For purposes of this Article, the term "unit" means any of the following entities created pursuant to this Chapter:

- (1) A water and sewer authority created pursuant to Article 1.
- (2) A metropolitan water district created pursuant to Article 4.
- (3) A metropolitan sewerage district created pursuant to Article 5.
- (4) A metropolitan water and sewerage district created pursuant to Article 5A.
- (5) A county water and sewer district created pursuant to Article 6.

**"§ 162A-855. Information needed to merge or dissolve.**

(a) Prior to any action by the Environmental Management Commission under this Article, for any unit to merge or dissolve, all of the following information must be supplied to the Environmental Management Commission:

- (1) The name of the unit or units to be merged or dissolved.
- (2) The names of the district board members of the unit or units to be merged or dissolved.
- (3) The proposed date of the merger or dissolution.
- (4) A map or description of the jurisdiction of the unit or units to be merged or dissolved.
- (5) The name of the entity with whom the unit or units will be merged, if applicable.
- (6) The names of the governing board members or district board members of the entity with which the unit is proposed to be merged, if applicable.
- (7) A map or description of the jurisdiction of the entity with which the unit is proposed to be merged.
- (8) Resolutions adopted by each district board or governing board requesting the merger or dissolution.
- (9) A request from each chair of a district board requesting a merger or dissolution that a representative of the Environmental Management Commission hold a public hearing in that district to discuss the proposed merger or dissolution and to receive public comment. The date, time, and place of the public hearing shall be mutually agreed to by the chair of the Environmental Management Commission and the chair of each requesting district board.
- (10) A copy of the most recent audit performed in accordance with G.S. 159-34 for the unit to be merged or dissolved.
- (11) A copy of any permits issued by the Department of Environmental Quality to the unit or units to be merged or dissolved.
- (12) A copy of any grant awarded under Article 2 of this Chapter involving the unit or units to be merged or dissolved and any conditions thereof, if applicable.
- (13) Any other information deemed necessary by the Department of Environmental Quality, the Local Government Commission, or the Environmental Management Commission.

(b) Upon receipt of a request to dissolve or merge, the Environmental Management Commission shall provide a copy of all information submitted in accordance with this section to the Department of Environmental Quality and the Local Government Commission.

(c) Upon confirmation of the time and place of the public hearing, each district board of an affected unit and any other governing board affected shall do all of the following:

- (1) Cause notice of the public hearing to be posted, at least 30 days prior to the hearing, at the courthouse in any county within which the affected unit lies.
- (2) Publish the notice at least once a week for four successive weeks in a newspaper having general circulation in the affected unit, the first publication to be at least 30 days prior to the public hearing.

1           (3) Publish notice in any other manner required by the Environmental  
2           Management Commission.

3 **"§ 162A-860. Merger of units.**

4           (a) Any unit may merge with any other unit, any county, any city, any consolidated  
5 city-county, any sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the  
6 General Statutes, any joint agency created pursuant to Part 1 or Part 5 of Article 20 of Chapter  
7 160A of the General Statutes, or any joint agency that was created by agreement between two  
8 cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water  
9 and wastewater services off the airport premises before January 1, 1995, if the merger is a  
10 condition of receiving a grant from the Viable Utility Reserve as provided in Article 2 of Chapter  
11 159G of the General Statutes. The Environmental Management Commission shall adopt a  
12 resolution transferring the assets, liabilities, and other obligations to the entity with which the  
13 unit is being merged and dissolving the unit as provided for in this Article.

14           (b) Any unit may merge with any other unit, any county, any city, any consolidated  
15 city-county, any sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the  
16 General Statutes, any joint agency created pursuant to Part 1 or Part 5 of Article 20 of Chapter  
17 160A of the General Statutes, or any joint agency that was created by agreement between two  
18 cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water  
19 and wastewater services off the airport premises before January 1, 1995, on approval by the  
20 Environmental Management Commission, upon consultation with the Department of  
21 Environmental Quality and the Local Government Commission. The Environmental  
22 Management Commission may adopt a resolution transferring the assets, liabilities, and other  
23 obligations to the entity with which the unit is being merged and dissolving the unit as provided  
24 for in this Article, if the Environmental Management Commission deems the merger in the best  
25 interest of the people of the State.

26           (c) The Environmental Management Commission shall adopt a resolution dissolving a  
27 unit and transferring the assets, liabilities, and other obligations of the unit to another unit when  
28 the procedures set forth in G.S. 162A-855 have been completed and all of the following apply:

29           (1) Both units are created pursuant to Article 5 of this Chapter.

30           (2) Both units are located in the same county.

31           (3) The jurisdiction of the units is contiguous.

32           (4) The unit to be merged and dissolved does not directly provide sewerage  
33 services to any customers.

34           (5) The unit to be merged and dissolved leases its assets to the unit with which it  
35 is proposed to be merged.

36           (6) The unit to be merged and dissolved has no outstanding debts.

37 **"§ 162A-865. Dissolution of units.**

38           (a) Any unit may be dissolved if the dissolution is a condition of a grant from the Viable  
39 Utility Reserve as provided in Article 2 of Chapter 159G of the General Statutes. The  
40 Environmental Management Commission shall adopt a resolution transferring the assets,  
41 liabilities, and other obligations as provided for in the grant conditions imposed under Article 2  
42 of Chapter 159G of the General Statutes.

43           (b) Any unit may be dissolved in order to merge that unit with any other unit, any county,  
44 any city, any consolidated city-county, any sanitary district created pursuant to Part 2 of Article  
45 2 of Chapter 130A of the General Statutes, any joint agency created pursuant to Part 1 or Part 5  
46 of Article 20 of Chapter 160A of the General Statutes, or any joint agency that was created by  
47 agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that  
48 provided drinking water and wastewater services off the airport premises before January 1, 1995,  
49 and establish a new entity created under the General Statutes, on approval by the Environmental  
50 Management Commission, upon consultation with the Department of Environmental Quality and  
51 the Local Government Commission. The Environmental Management Commission may adopt a



1 resolution transferring the assets, liabilities, and other obligations to the new entity and dissolving  
2 the unit as provided for in this Article, if the Environmental Management Commission deems the  
3 merger in the best interest of the people of the State.

4 **"§ 162A-870. Effective date of merger or dissolution.**

5 Upon the adoption of a resolution of merger or dissolution by the Environmental  
6 Management Commission as provided in this Article, the effective date for merger and  
7 dissolution shall be fixed as of June 30 following the adoption of the resolution or the second  
8 June 30 following the adoption of the resolution.

9 **"§ 162A-875. Effect of merger or dissolution.**

10 (a) Upon adoption of the resolution of merger or dissolution by the Environmental  
11 Management Commission, all of the following shall apply on the effective date set forth in the  
12 resolution:

- 13 (1) All property, real, personal, and mixed, including accounts receivable,  
14 belonging to the dissolving unit shall be transferred, disposed of, or otherwise  
15 accounted for as provided in the resolution of merger or dissolution.
- 16 (2) All judgments, liens, rights of liens, and causes of action of any nature in favor  
17 of the dissolving unit shall vest in and remain and inure to the benefit of the  
18 merged district.
- 19 (3) All taxes, assessments, sewer charges, and any other debts, charges, or fees  
20 owing to the dissolving unit shall be owed to and collected as provided in the  
21 resolution of merger or dissolution.
- 22 (4) All actions, suits, and proceedings pending against, or having been instituted  
23 by, the dissolving unit shall not be abated by merger, but all such actions,  
24 suits, and proceedings shall be continued and completed in the same manner  
25 as if merger had not occurred, and the merged entity shall be a party to all  
26 such actions, suits, and proceedings in the place and stead of the dissolving  
27 unit and shall pay or cause to be paid any judgments rendered against the  
28 dissolving unit in any such actions, suits, or proceedings. No new process is  
29 required to be served in any such action, suit, or proceeding.
- 30 (5) All obligations of the dissolving unit, including outstanding indebtedness,  
31 shall be assumed as provided in the resolution of merger or dissolution, and  
32 all such obligations and outstanding indebtedness shall constitute obligations  
33 and indebtedness as provided in the resolution of merger or dissolution.
- 34 (6) All ordinances, rules, regulations, and policies of the dissolving unit shall  
35 continue in full force and effect until repealed or amended by the governing  
36 body of the merged entity.
- 37 (7) The dissolving unit shall be abolished and shall no longer be constituted a  
38 public body or a body politic and corporate, except for purposes of carrying  
39 into effect the provisions and intent of this section.
- 40 (8) Governance of the district shall be as specified in the resolution of merger or  
41 dissolution, which may be amended by the Environmental Management  
42 Commission, as needed.

43 (b) All governing boards and district boards are authorized to take the actions and execute  
44 the documents necessary to effectuate the provisions and intent of this section."

45 **SECTION 3.** Article 20 of Chapter 160A of the General Statutes is amended by  
46 adding a new Part to read:

47 "Part 5. Water and Wastewater Systems.

48 **"§ 160A-481.1. Definitions.**

49 The words defined in this section shall have the meanings indicated when used in this Part:

- 50 (1) Local government unit. – Defined in G.S. 159G-20 and G.S. 160A-460.
- 51 (2) Undertaking. – Defined in G.S. 160A-460.

1 **"§ 160A-481.2. Interlocal cooperation authorized.**

2 Interlocal cooperation, as provided in Part 1 of this Article, is authorized between any local  
3 government units in this State for any purpose. When two or more local government units agree  
4 to contract for one or more undertakings under this Part, the provisions of Part 1 of this Article  
5 apply."

6 **SECTION 4.** The Department of Environmental Quality shall study the statutes and  
7 rules governing subbasin transfers and make recommendations as to whether the statutes and  
8 rules should be amended. The study shall specifically examine whether transfers of water  
9 between subbasins within the same major river basin should continue to be required to comply  
10 with all of the same requirements under G.S. 143-215.22L as transfers of water between major  
11 river basins. In conducting this study, the Department of Environmental Quality shall consider  
12 whether the costs of complying with specific requirements, including financial costs and time,  
13 are justified by the benefits of the requirements, including the production of useful information  
14 and public notice and involvement. No later than January 15, 2021, the Department of  
15 Environmental Quality shall report its findings and recommendations to the Environmental  
16 Review Commission.

17 **SECTION 5.** The Department of State Treasurer shall study and make  
18 recommendations as to the feasibility of authorizing historical charters for units of local  
19 government that have become, or are on the brink of becoming, defunct. The study shall  
20 specifically examine whether these historical charters are needed, the impact of these charters on  
21 the bond rating of the State and its political subdivisions, and the consequences of these historical  
22 charters. No later than January 15, 2021, the Department of State Treasurer shall report its  
23 findings and recommendations to the General Assembly.

24 **SECTION 6.(a)** Subsections (d), (e), (f), (g), and (h) of Section 11 of Session Law  
25 2019-241 are repealed.

26 **SECTION 6.(b)** If Senate Bill 553, 2019 Regular Session, becomes law, then Section  
27 14 of that act is repealed.

28 **SECTION 6.(c)** Subsection (a) of this section becomes effective June 30, 2020.

29  
30 **PART II. FUNDING**

31  
32 **VIABLE UTILITY RESERVE FUNDS**

33 **SECTION 7.(a)** Transfer. – No later than August 15, 2020, the Department of  
34 Commerce shall transfer the sum of nine million dollars (\$9,000,000) in nonrecurring funds for  
35 the 2020-2021 fiscal year from the One North Carolina Fund (Budget Code: 24609; Fund Code:  
36 2560) to the Water Infrastructure Fund administered by the Department of Environmental  
37 Quality's Division of Water Infrastructure (Budget Code: 24327).

38 **SECTION 7.(b)** Appropriation. – The funds transferred by this section are  
39 appropriated to the Viable Utility Reserve established by G.S. 159G-22, as amended by this act,  
40 to be used for the purposes set forth in G.S. 159G-32, as amended by this act.

41  
42 **SOUTHERN REGIONAL AHEC FUNDS**

43 **SECTION 8.(a)** Transfer. – The State Controller shall transfer the sum of four  
44 million eight hundred thousand dollars (\$4,800,000) from the Coronavirus Relief Reserve  
45 established in Section 2.1 of S.L. 2020-4 to the Coronavirus Relief Fund established in Section  
46 2.2 of that same act.

47 **SECTION 8.(b)** Appropriation. – There is appropriated from the Coronavirus Relief  
48 Fund to the Office of State Budget and Management (OSBM) the sum of four million eight  
49 hundred thousand dollars (\$4,800,000) in nonrecurring funds for the 2020-2021 fiscal year to the  
50 Board of Governors of The University of North Carolina to be allocated to the Southern Regional

1 Area Health Education Center (SR AHEC) to be used for residencies in the SR AHEC service  
2 areas and for COVID-19 related response activities.

3 **SECTION 8.(c)** Requirements. – The requirements and limitations set forth in Part  
4 I of S.L. 2020-4 shall apply to the funds appropriated by this section. OSBM shall include the  
5 funds transferred and appropriated under this section in the report required under Section 1.7 of  
6 S.L. 2020-4.

### 8 **REALLOCATION OF CERTAIN PFAS FUNDS**

9 **SECTION 9.(a)** Transfer and Reallocation. – Funds appropriated to the Division of  
10 Water Infrastructure of the Department of Environmental Quality for the 2018-2019 fiscal year  
11 by Section 13.1(d) of S.L. 2018-5 and deposited into the PFAS Recovery Fund shall be  
12 transferred and reallocated for other projects as follows:

- 13 (1) Eight hundred thirty-seven thousand seven hundred fifty-five dollars  
14 (\$837,755) to the Compensatory Mitigation Fund for the purpose of dissolving  
15 the conservation easement associated with the Little Alamance Creek stream  
16 restoration project in Alamance County and held by the State of North  
17 Carolina. Any additional funds needed to dissolve the conservation easement  
18 shall be provided by the Department of Environmental Quality from funds  
19 available to the Department.
- 20 (2) Two hundred thousand dollars (\$200,000) to the Oil or Other Hazardous  
21 Substances Pollution Protection Fund established by G.S. 143-215.87 to be  
22 used by the Department of Environmental Quality for investigation and  
23 remediation of discharges of petroleum products into waters of the State that  
24 are ineligible for funding from programs addressing leaking underground  
25 storage tanks.
- 26 (3) One hundred thousand dollars (\$100,000) to provide a grant to MountainTrue,  
27 a nonprofit corporation, for recreational water quality testing.
- 28 (4) Eight hundred sixty-two thousand two hundred forty-five dollars (\$862,245)  
29 to local governments to respond to PFAS contamination and other related  
30 water and wastewater infrastructure needs, allocated as follows:
  - 31 a. Five hundred thousand dollars (\$500,000) to the Town of Maysville  
32 for remediation, modification, reconstruction, or replacement of a  
33 contaminated public water supply well.
  - 34 b. One hundred thousand dollars (\$100,000) to the Town of Benson for  
35 a water and wastewater infrastructure project.
  - 36 c. One hundred thousand dollars (\$100,000) to the Town of Angier for a  
37 water and wastewater infrastructure project.
  - 38 d. One hundred sixty-two thousand two hundred forty-five dollars  
39 (\$162,245) to the Town of Kenansville for a water and wastewater  
40 infrastructure project.

41 **SECTION 9.(b)** This section becomes effective June 30, 2020.

### 43 **ALLOCATE FUNDS FROM WASTEWATER RESERVE**

44 **SECTION 9A.** Of the funds appropriated for the 2020-2021 fiscal year to the  
45 Division of Water Infrastructure of the Department of Environmental Quality for the Wastewater  
46 Reserve, the sum of three hundred ten thousand dollars (\$310,000) is allocated to rectify the  
47 imminent hazard to public health due to damage to a sewer line attached to an abandoned railroad  
48 trestle over the Smith River.

### 50 **PART III. APPROPRIATE VW SETTLEMENT FUNDS**

1           **SECTION 10.(a)** For purposes of this section, "Trust agreement" means the  
 2 document setting forth the requirements and procedures for disbursement of funds to North  
 3 Carolina and other beneficiaries of the environmental mitigation trust established in the consent  
 4 decree resolving the case *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and*  
 5 *Products Liability Litigation*, Civil Case No. 3:15-md-02672 in the United States District Court  
 6 for the Northern District of California.

7           **SECTION 10.(b)** In accordance with Section 13.2 of S.L. 2017-57, as amended by  
 8 Section 13.11 of S.L. 2018-5 (the Settlement Directives), there is appropriated from the  
 9 Volkswagen Litigation Environmental Mitigation Fund (Fund) the sum of thirty million six  
 10 hundred eighty-one thousand eight hundred eighty-six dollars (\$30,681,886) to fund Phase 1 of  
 11 the August 28, 2018, Beneficiary Mitigation Plan (Plan) prepared as set forth in the Trust  
 12 agreement and submitted by the Department of Environmental Quality to the General Assembly  
 13 pursuant to the Settlement Directives. The funds appropriated in this act shall be allocated for the  
 14 following purposes set forth in Phase 1 of the Plan:

- 15           (1) Diesel bus and vehicle replacements or upgrades.
- 16           (2) Zero emissions vehicle infrastructure – Level 2 charging stations.
- 17           (3) Zero emissions vehicle infrastructure – DC fast charging stations.

18           The Department of Environmental Quality in its capacity as the lead agency  
 19 designated under the procedures set forth in the Trust agreement may transfer and use up to one  
 20 million five hundred thirty-four thousand ninety-four dollars (\$1,534,094) for administrative  
 21 purposes in executing the Plan.

22           Funds remaining from Phase 1 of the Plan that are unobligated and unencumbered at  
 23 the end of the 2019-2021 fiscal biennium shall be returned to the Trustee by the Department of  
 24 Environmental Quality as set forth in the Trust agreement.

25  
 26 **PART IV. WATER RESOURCES DEVELOPMENT PROJECTS**

27           **SECTION 11.(a)** Transfer and Appropriations. – Notwithstanding G.S. 143-215.73F  
 28 and no later than August 15, 2020, the Department of Environmental Quality shall transfer the  
 29 sum of fifteen million seven hundred ninety-nine thousand three hundred fourteen dollars  
 30 (\$15,799,314) in nonrecurring funds from the cash balance in the Shallow Draft Navigation  
 31 Channel Dredging and Aquatic Weed Fund (Budget Code: 24300; Fund Code: 2182) to the  
 32 Division of Water Resources. These funds are appropriated for the 2020-2021 fiscal year to the  
 33 Division of Water Resources of the Department of Environmental Quality for the purposes set  
 34 forth in this section. The sum of fifteen million dollars (\$15,000,000) in nonrecurring funds for  
 35 the 2020-2021 fiscal year is appropriated from the General Fund to the Department of  
 36 Environmental Quality to be allocated to the Division of Water Resources for the purposes set  
 37 forth in this section.

38           **SECTION 11.(b)** Allocation. – The Division of Water Resources shall allocate the  
 39 funds transferred and appropriated by this section for water resources development projects in  
 40 accordance with the schedule that follows. The amounts set forth in the schedule include funds  
 41 appropriated in this act for water resources development projects and funds carried forward from  
 42 previous fiscal years in accordance with subsection (b) of this section. These funds shall provide  
 43 a State match for an estimated eighty-nine million three hundred ninety-six thousand nine  
 44 hundred seventy-nine dollars (\$89,396,979) in federal funds.

46 <b>Name of Project</b>	47 <b>2020-2021</b>
48           (1)    Princeville Flood Damage Reduction (Pre-Constr./Design)	\$3,465,000
49           (2)    Carolina Beach CSR	1,750,000
50           (3)    Kure Beach CSR	2,187,500
51           (4)    Wrightsville Beach CSR	–

1	(5)	Ocean Isle CSRM	–
2	(6)	Planning Assistance to Communities	–
3	(7)	Wilmington Harbor DA Maintenance	5,906,450
4	(8)	Morehead City Maintenance	–
5	(9)	Surf City/North Topsail CSRM (Pre-Constr./Design)	12,500,000
6	(10)	Dan River Regional Water Supply Project	34,000
7	(11)	Carteret County (Bogue Banks) CSRM	2,567,320
8	(12)	Neuse River-Goldsboro Sec. 1135, CAP, Project Mods. (50/50)	–
9	(13)	Concord Streams, Sec. 206, CAP, Ecosystem Restoration,	
10		Stricker Branch, Constr. (65/35)	–
11	(14)	Lumberton 205, CAP, Flood Damage Reduction (50/50)	–
12	(15)	B. Everette Jordan Reservoir Water Supply	–
13	(16)	North Topsail Beach Shoreline Protection – Phase 2	–
14	(17)	NRCS EQIP/Stream Restoration	2,064,699
15	(18)	State-Local Projects (WRD Grant Program)	4,734,317
16	(19)	Water Resources Planning (S.L. 2010-143)	–
17		<b>TOTALS</b>	<b>\$35,209,286</b>

18  
19           **SECTION 11.(c)** Carryforward. – It is the intent of the General Assembly that funds  
20 carried forward from previous fiscal years be used to supplement the thirty million seven hundred  
21 ninety-nine thousand three hundred fourteen dollars (\$30,799,314) allocated for water resources  
22 development projects in this section. Therefore, the following funds carried forward from  
23 previous fiscal years shall be used for the following projects:

25		<b>Name of Project</b>	<b>Amount Carried Forward</b>
26			
27	(1)	Princeville Flood Damage Reduction (Pre-Constr./Design)	\$1,400,000
28	(2)	Morehead City Harbor Maintenance	1,872,000
29	(3)	Kure Beach CSRM	1,031,854
30	(4)	Wrightsville Beach CSRM	2,206,487
31	(5)	Carolina Beach CSRM	906,354
32	(6)	Ocean Isle CSRM	1,040,017
33	(7)	Carteret County (Bogue Banks) CSRM	28,513
34	(8)	Wilmington Harbor DA Maintenance	735
35	(9)	Planning Assistance to Communities	244,613
36	(10)	Surf City/North Topsail CSRM,	
37		including West Onslow CSRM (Pre-Constr./Design)	475,500
38	(11)	Neuse River-Goldsboro Sec. 1135, CAP, Project Mods. (50/50)	333,500
39	(12)	Concord Streams, Sec. 206, CAP, Ecosystem Restoration,	
40		Stricker Branch, Constr. (65/35)	1,023,000
41	(13)	Lumberton 205, CAP, Flood Damage Reduction (50/50)	125,000
42	(14)	B. Everette Jordan Reservoir Water Supply	1,816,466
43	(15)	North Topsail Beach Shoreline Protection – Phase 2	1,500,000
44	(16)	Cape Fear Lock and Dam #2 and #3 Fish Ramp	840,000
45	(17)	NRCS EQIP/Stream Restoration	64,699
46	(18)	State-Local Projects (WRD Grant Program)	502,317
47	(19)	Water Resources Planning (S.L. 2010-143)	47,776
48		<b>TOTALS</b>	<b>\$15,458,831</b>

49  
50           **SECTION 11.(d)** Fund Flexibility. – Where the actual costs are different from the  
51 estimated costs under subsection (b) of this section, the Department may adjust the allocations

1 among projects as needed. If any projects funded under subsection (b) of this section are delayed  
2 and the budgeted State funds cannot be used during the 2020-2021 fiscal year or if the projects  
3 funded under subsection (b) of this section are accomplished at a lower cost, the Department may  
4 use the resulting fund availability to fund any of the following:

- 5 (1) U.S. Army Corps of Engineers project feasibility studies.
- 6 (2) U.S. Army Corps of Engineers projects whose schedules have advanced and  
7 require State matching funds in the 2020-2021 fiscal year.
- 8 (3) State-local water resources development projects.

9 **SECTION 11.(e) Reports.** – The Department shall submit semiannual reports on the  
10 use of these funds to the Joint Legislative Oversight Committee on Agriculture and Natural and  
11 Economic Resources, the Fiscal Research Division, and the Office of State Budget and  
12 Management on or before March 1 and September 1. Each report shall include all of the  
13 following:

- 14 (1) All projects listed in this section.
- 15 (2) The estimated cost of each project.
- 16 (3) The date that work on each project began or is expected to begin.
- 17 (4) The date that work on each project was completed or is expected to be  
18 completed.
- 19 (5) The actual cost of the project.

20 The semiannual reports also shall show those projects advanced in schedule and those  
21 projects delayed in schedule.

22 **SECTION 11.(f) Maximum Share.** – Notwithstanding any provision of law to the  
23 contrary, funds appropriated for a water resources development project shall be used to provide  
24 no more than fifty percent (50%) of the nonfederal portion of funds for the project. This  
25 subsection applies to funds appropriated in this act and to funds appropriated prior to the  
26 2019-2021 fiscal biennium that are unencumbered and proposed for reallocation to provide the  
27 nonfederal portion of funds for water resources development projects. The limitation on fund  
28 usage contained in this subsection applies only to projects in which a local government or local  
29 governments participate.

30 **SECTION 11A.(a)** G.S. 143-214.8 reads as rewritten:

31 **"§ 143-214.8. Division of Mitigation Services: established.**

32 The Division of Mitigation Services is established within the Department of Environmental  
33 Quality. The Division of Mitigation Services shall be developed by the Department as a  
34 nonregulatory statewide mitigation services program for the acquisition, maintenance,  
35 restoration, enhancement, and creation of wetland and riparian resources that contribute to the  
36 protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and  
37 recreational opportunities. The Division of Mitigation Services shall consist of the following  
38 components:

39 ...

- 40 (9) Restoration and monitoring of projects or land acquisitions that create or  
41 restore flood storage capacity."

42 **SECTION 11A.(b)** G.S. 143-214.9 reads as rewritten:

43 **"§ 143-214.9. Division of Mitigation Services: purposes.**

44 The purposes of the Division of Mitigation Services are as follows:

45 ...

- 46 (7) To reduce flood risk by creating or restoring flood storage capacity in streams,  
47 wetlands, and floodplains."

48 **SECTION 11A.(c)** G.S. 143-214.12(a) reads as rewritten:

49 "(a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a  
50 nonreverting fund within the Department. The Fund shall be treated as a special trust fund and  
51 shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and

1 G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository (i) for monetary  
2 contributions and donations or dedications of interests in real property to promote projects for  
3 the restoration, enhancement, preservation, or creation of wetlands and riparian areas ~~and or the~~  
4 enhancement or restoration of flood storage capacity, (ii) for payments made in lieu of  
5 compensatory mitigation as described in subsection (b) of this ~~section~~-section, and (iii) for  
6 appropriations and grants supporting projects that enhance flood storage capacity and mitigate  
7 flood risk under G.S. 143-214.11A. No funds shall be expended from this Fund for any purpose  
8 other than those directly contributing to the acquisition, perpetual maintenance, enhancement,  
9 restoration, or creation of wetlands, streams, ~~and riparian areas~~ riparian areas, and the  
10 enhancement and restoration of flood storage capacity in accordance with the basinwide plan as  
11 described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem  
12 taxes required under G.S. 146-22.3 when the Department is the State agency making the  
13 acquisition. The Department shall separately account for funds provided to the Ecosystem  
14 Restoration Fund in support of projects for enhancement or restoration of flood storage capacity  
15 under G.S. 143-214.11A."

16 **SECTION 11A.(d)** G.S. 143-214.13 reads as rewritten:

17 **"§ 143-214.13. Division of Mitigation Services: reporting requirement.**

18 (a) The Department of Environmental Quality shall report each year by November 1 to  
19 the Environmental Review Commission, the Joint Legislative Oversight Committee on  
20 Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding  
21 its progress in implementing the Division of Mitigation Services and its use of the funds in the  
22 Ecosystem Restoration Fund. The report shall document statewide wetlands losses and ~~gains and~~  
23 gains, compensatory mitigation performed under G.S. 143-214.8 through ~~G.S. 143-214.12.~~  
24 G.S. 143-214.12, and gains in acre-feet of flood storage capacity from projects funded under  
25 G.S. 143-214.11A. The report shall also provide an accounting of receipts and disbursements of  
26 the Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a  
27 cost comparison on a per-acre basis between the State's Division of Mitigation Services and  
28 private mitigation banks. The Department shall also send a copy of its report to the Fiscal  
29 Research Division of the General Assembly.

30 (b) The Department shall maintain an inventory of all property that is held, managed,  
31 maintained, enhanced, restored, or used to create wetlands or to enhance or restore flood storage  
32 capacity under the Division of Mitigation Services. The inventory shall also list all conservation  
33 easements held by the Department. The inventory shall be included in the annual report required  
34 under subsection (a) of this section."

35 **SECTION 11A.(e)** Article 21 of Chapter 143 of the General Statutes is amended by  
36 adding a new section to read:

37 **"§ 143-214.11A. Flood storage capacity restoration and enhancement.**

38 (a) Definition. – A flood storage project is defined as a project that creates or restores a  
39 quantity of flood storage capacity expressed in acre-feet. A flood storage project includes, but is  
40 not limited to, the creation or restoration of wetlands, streams, and riparian areas, temporary  
41 flooding of fields, pastures, or forests, and other nature-based projects that can demonstrably  
42 increase flood storage capacity.

43 (b) Flood Storage Capacity Basinwide Planning; Advisory Board. – To the extent of  
44 funds available for this purpose, basinwide plans developed under G.S. 143-214.10 shall include  
45 plans for restoration and enhancement of flood storage capacity to reduce the risk of flooding in  
46 flood prone areas of the State and enhance stormwater management capacity and shall set target  
47 amounts of flood storage capacity for each basin and subbasin. It is the intent of the General  
48 Assembly that appropriations, grants, and other funds received for flood storage enhancement  
49 shall be held in the Ecosystem Restoration Fund established by G.S. 143-214.12 and allocated  
50 for projects consistent with the basinwide plans, this section, and the conditions on funding for

1 grants received in support of the program or a specific project. The Division shall establish an  
2 advisory board to guide program development and implementation.

3 (c) Projects funded under this section shall meet all of the following requirements:

4 (1) Be consistent with plans for restoration and enhancement of stormwater  
5 management or flood storage capacity included in basinwide plans developed  
6 under G.S. 143-214.10.

7 (2) Be designed and constructed to provide for a quantifiable increase in flood  
8 storage capacity in the designated watershed or sub-watershed based on the  
9 difference between the total number of acre-feet of flood storage in the  
10 watershed or sub-watershed before project commencement and after project  
11 completion.

12 (3) Incorporate a mechanism for post-construction monitoring.

13 (d) The Division shall comply with the procurement preferences set forth in  
14 G.S. 143-214.11(i) in procuring flood storage enhancement or restoration projects with funds set  
15 aside for those purposes. Requests for proposal shall require that projects specify the number of  
16 acre-feet of flood storage capacity enhancement or restoration in a specified watershed or  
17 sub-watershed based on the watershed planning required by this section. Submitted proposals  
18 shall be prioritized and selected based on criteria to be developed by the Division with input from  
19 the advisory board. These criteria may include analysis of costs and benefits, compatibility with  
20 and maintenance of working lands, and ecological benefits."

21 **SECTION 11A.(f)** This section is effective when it becomes law.

## 22

### 23 **PART V. GENERAL PROVISIONS**

#### 24

#### 25 **STATE BUDGET ACT APPLIES**

26 **SECTION 12.** The provisions of the State Budget Act, Chapter 143C of the General  
27 Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act  
28 by reference.

#### 29

#### 30 **ADDITIONAL LIMITATIONS AND DIRECTIONS**

31 **SECTION 13.** Except where expressly repealed or amended by this act, the  
32 provisions of any other legislation enacted during the 2019 Regular Session of the General  
33 Assembly expressly appropriating funds to an agency, a department, or an institution covered  
34 under this act shall remain in effect.

#### 35

#### 36 **PART VI. EFFECTIVE DATE**

37 **SECTION 14.** Except as otherwise specified, this act becomes effective July 1, 2020.