

**State Water Infrastructure Authority**  
**Meeting Date – September 18, 2014**  
**Agenda Item F – Potential Changes to NCGS 159-G**

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**Division of Water Infrastructure Staff Report**

**Background**

NCGS 159G is the legislation that created the Division of Water Infrastructure and the State Water Infrastructure Authority; it also defines and governs the water and wastewater funding programs that are administered by the Division. The legislation requires an annual report from the Authority – due November 1 – that includes any recommendations or legislative proposals.

The State Water Infrastructure Authority is responsible for making an annual report pursuant to §159G-72. on its activity and findings, including any recommendations or legislative proposals, to the Senate Appropriations Committee on Natural and Economic Resources, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division of the Legislative Services Commission.

The draft November 1 report broadly covers the Authority's activities and specific recommendations for improving the funding program. The Authority's activities mirror the May 1<sup>st</sup> report that the Authority submitted. However, that report did not contain any recommendations due to minimal time between the Authority being fully realized and the due date of the report. Specific recommendations on legislative action are included in the draft November 1 report and are primarily focused on the state programs.

**Issues**

The issues that staff has addressed are related to a few key items:

- Reviewing the statutes to ensure consistency between the existing 159G statutes (Articles 1 and 2) and the 2013 changes that created the Authority (Article 5). For example, to be most effective, the Department and the Authority should act in concert as much as possible. However, if the statutes provide flexibility to the Authority but not the Department, this creates a potential conflict and it is recommended that the same flexibility be provided to the Department as to the Authority.
- Stakeholders have expressed the need for different uses of grant funds outside of projects and studies related to non-compliance. Some of these other uses may be more proactive and could have secondary benefits.
- State grant eligibility requirements do not always capture the most disadvantaged communities. Without having specific qualifications in the statutes, the Authority could better address this situation.
- There are very limited grants funds available. In recognizing this, the Authority's enabling legislation requests recommendations on "ways to maximize the use of current funding resources."

**Key Suggested Changes**

Staff suggests that the changes to NCGS 159G be grouped as follows:

- Ensuring that the limited amount of grant funds from the State Reserve programs are awarded to the most economically distressed communities
- Maximizing the use of the limited amount of grant funding resources

- Developing incentives to encourage water and wastewater utilities to become more proactive in the management and financing of their systems which could help reduce or eliminate their continued reliance on grant funds
- Additional changes related to providing flexibility to the Department, provide clarity on certain requirements, reflect federal law changes, etc.

The most significant changes are related to the State grant and loan funds provided through the Wastewater Reserve and the Drinking Water Reserve and are summarized below:

I. **Affordability** (Cite: 159G-20)

- SWIA power/duty: 159G-71.(2) – to establish priorities for making loans and grants
- Key: Provide grant funds to the most disadvantaged applicants
- Method: Define affordability by using several indicators, not only as % of MHI spent on water/sewer. The SRF programs already use poverty rate in addition to rates/MHI. DENR / SWIA could then consider whether to synchronize the programs making it easier to pair grants and loans.

II. **Tiered grant funding** (Cite: 159G-31)

- SWIA power/duty: 159G-71.(8) – to make recommendations on ways to maximize the use of current funding resources
- Key: Provide grant funds to the most disadvantaged applicants
- Method: Link amount of funds provided as grant dollars to affordability index – the more disadvantaged, the higher the percentage of grant funds offered (from 100% to 25%); remainder can be offered as loan dollars.

III. **Criteria changes** (Cite: 159G-23)

- SWIA power/duty: 159G-71.(3) – to review the criteria for making loans and grants and make recommendations for additional criteria or changes to the criteria
- Key: Provide DENR/SWIA flexibility to establish criteria within an Intended Use Plan similar to SRF programs. Currently, only DENR is bound by 159G-23; SWIA is not.
- Method: Change common criteria to items DENR/SWIA must consider (i.e., may or may not use); reduce items to the most applicable. Improves consistency with SRF programs.

IV. **Broaden eligible grant uses** (Cite: 159G-33 and 34)

- SWIA power/duty: 159G-71.(3) – to review the criteria for making loans and grants and make recommendations for additional criteria or changes to the criteria
- Key: Provide non-construction grant assistance for work other than dealing with non-compliance (non-compliance is current use of technical assistance grants)
- Method: Provide grants as an incentive for proactive management/financing of infrastructure through (1) the study of feasibility of regionalization/consolidation and (2) asset inventory/condition assessment.

**Staff Recommendation**

Staff recommends that SWIA:

1. Approve the format for presenting the recommendations for changes to NCGS 159G as shown in the attached document
  2. Approve the recommended changes in principal with the understanding that specific wording can be changed if approved by SWIA during a conference call to be scheduled in October
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