

**State Water Infrastructure Authority
Viable Utility Committee
October 12, 2022 Meeting
Agenda Item C – Assessment Criteria for Districts within Counties**

Division of Water Infrastructure Staff Report

Background

Session Law 2020-79, entitled in part “An Act to Improve the Viability of the Water and Wastewater Systems of Certain Units of Local Government...”, created the Viable Utility Reserve (VUR) and established VUR funding eligibility criteria. Pursuant to § 159G, Local Government Units (LGU) are established in NCGS 159G-31 as eligible applicants for Division funding (including the VUR). LGUs are defined by NCGS 159G-20(13), in part, as:

- d. Any of the following entities created pursuant to Chapter 162A of the General Statutes:*
- 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.***

Article 6 of NCGS Chapter 162A, Water and Sewer Systems, allows county boards of commissioners to create county water and sewer districts, after holding a public hearing, and per a resolution stating that the governing board finds that:

- 1. There is a demonstrable need for providing in the district water services, or sewer services, or both;*
- 2. The residents of all the territory to be included in the district will benefit from the district's creation; and*
- 3. It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.*

Although the historical use of county water and sewer districts is not entirely clear, the Division is aware that many counties do have multiple districts. Staff’s understanding is that subdivision of county systems into smaller districts was driven in part by requirements of the USDA-Rural Development funding program.

Division staff were contacted by consultants preparing applications for the Fall 2022 funding round, inquiring about whether the ARPA Implementation Plan’s \$400,000 study grant funding limit applied to a county as a whole or each district created pursuant to Article 6. Based on staff’s review of the statutory language, the Division advised that each district is indeed eligible for \$400,000 in study grant funding. By the same logic, other funding program limits would also apply to districts individually, including the \$15 million lifetime LGU limit for VUR funds.

Discussion

Division staff believe that the intent of the enabling legislation for the VUR, Session Law 2020-79, was to allocate up to \$15 million to local governments as a whole (e.g., the county), rather than to subdivisions of local governments (e.g., county water and sewer districts), for several reasons, including:

- A \$15 million limit for individual county water and sewer districts is unreasonably large and would require significant fund capitalization if applied.
- Such a funding allowance would incentivize counties to create smaller and smaller districts to maximize overall funding, which is in direct opposition to the State's interest in maximizing economic and service efficiencies through consolidation.

During its October 4, 2022 meeting, the LGC asked the Authority to define county water districts as part of the county unless the water districts have separate enterprise funds, in which case those districts will be considered unique LGUs. Furthermore, staff notes that the annual assessment/reassessment of LGUs typically utilizes data from individual enterprise funds, so the LGC's request is to establish the existing assessment and identification criteria as formal policy.

Conversely, staff considered how an LGU reports its compliance data which is often aggregated on a county-wide basis. While this method supports utilizing counties as the basis for county water and sewer districts' access to VUR funding, staff also notes that assessing a LGU's financial and organizational strengths are better measures of long-term viability.

The Authority could consider several *criteria to determine how local government units should be assessed and reviewed*:

- Whether audited financial (i.e. enterprise fund) data are reported at the district or county level.
- Whether compliance information for districts is aggregated to the county level.
- The type of governing body of the LGU (e.g., County boards are generally governing bodies for districts, as noted in Article 6 162A-89).
- Leverage requirements of NCGS 162A-87(a)(3), which state that *(i) it is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies*, which establishes economic criteria for the formation (though not necessarily continued existence) of county water and sewer districts.

Finally, staff notes that information on the use and establishment of county water and sewer districts is relatively hard to come by and storage of resolutions is dispersed. That is, resolutions establishing districts appear to generally be housed in the county offices, rather than a central repository (e.g., Office of Secretary of State). The LGC, however, has existing procedures for

collecting and reviewing audited financial statements which can be used as the basis for establishing VUR-eligible units.

For these reasons, staff suggests that the Viable Utility Committee and Authority (with the LGC) consider options for establishing and clarifying VUR funding eligibilities and limits. Although a statutory fix (clarification) is possible, staff believe that the Authority and the LGC currently have relatively broad authority to determine how to identify a distressed LGU, under NCGS 159G-45, *Assessment of local government units; assistance*, which gives the Authority and the LGC the power to (1) develop criteria to determine how local government units should be assessed and reviewed, and (2) identify distressed units.