

**State Water Infrastructure Authority
December 9, 2020 Meeting**

Agenda Item E – Approval of Severability Language Related to Distressed Unit Work

Division of Water Infrastructure Staff Report

Background

At its meeting on November 10, 2020, the Local Government Commission (Commission) adopted a resolution entitled “Resolution Adopting the Criteria for Assessing Local Government Units and Identifying Distressed Units as Provided under North Carolina General Statute 159G-45.” As part of its motion to adopt the resolution, the Commission required the staff of the Local Government Commission insert a severability clause into the resolution. The Commission’s adopted severability language is as follows:

“Whenever possible, each provision of this Resolution shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Resolution is found to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining portions of this Resolution, or any part hereof, and this Resolution shall be construed as if such invalid, illegal or unenforceable provision had not been inserted.”

On November 18, 2020, the Authority, in four separate action items, approved language similar to the Commission’s Resolution, but without addressing the issue of severability. The four separate action items were: (1) approved the Viable Utility Reserve Assessment Criteria and the Identification Criteria; (2) identified and designated four units as Distressed Units; (3) approved the initial Evaluation Criterion for grants from the Viable Utility Reserve; and, (4) approved the allocation of Viable Utility Reserve funds for rate studies, asset inventories and assessments, alternatives analyses, and merger and regionalization studies for the four Distressed Units.

The Authority should consider approving language similar to the Commission’s severability clause so that the approvals and processes of the two bodies remain consistent.

Additional Language for Consideration by the Authority

Staff developed the following language for consideration by the Authority to address the severability issue; this is similar to the clause adopted by the Commission:

Whenever possible, each provision of the Viable Utility Reserve Assessment Criteria, Identification Criteria, identification of Distressed Units, Evaluation Criteria and allocation of Viable Utility Reserve funds approved on November 18, 2020 (“the Action Items”) shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of the Action Items is found to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining portions of the Action Items, or any part of the Action Items, and the Action Items shall be construed as if such invalid, illegal or unenforceable provision had not been inserted.

Staff Recommendation

Staff recommends that the Authority approve the following:

Whenever possible, each provision of the Viable Utility Reserve Assessment Criteria, Identification Criteria, identification of Distressed Units, Evaluation Criteria and allocation of Viable Utility Reserve funds approved on November 18, 2020 (“the Action Items”) shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of the Action Items is found to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining portions of the Action Items, or any part of the Action Items, and the Action Items shall be construed as if such invalid, illegal or unenforceable provision had not been inserted.
