

State Water Infrastructure Authority
Meeting Date: July 8, 2020
Agenda Item M – Viable Utility Reserve

Division of Water Infrastructure Staff Report

On July 1, 2020, Governor Cooper signed into law House Bill 1087 (now Session Law 2020-79), which contains the Viable Utility Reserve program.

This program has had one of the most unique paths to becoming law. In 2018 and 2019, many organizations including the Division, the Local Government Commission, and the UNC Environmental Finance Center worked with the Rates Study Committee of the General Assembly to provide information about the financial distress of many water and wastewater utilities in rural communities across the state. That work resulted in two bills introduced in 2019 for the Viable Utility Reserve program – one in the House and one in the Senate. Later, it was included in two other bills, the regulatory reform bill, and then the budget. Even though the budget and regulatory reform bills passed, both were vetoed.

This session it was introduced again in two bills, one in the House and one in the Senate, with House Bill 1087 passing.

Under this law, the Viable Utility Reserve program provides that the Authority and the Local Government Commission shall develop criteria to determine how local government units should be assessed and shall identify distressed units which must:

- Conduct an asset assessment and rate study,
- Participate in a training and educational program, and
- Develop an action plan.

This process will result in some utilities using the new Viable Utility Reserve, which provides grants to:

- Physically interconnect and extend public water or wastewater infrastructure to provide regional service.
- Rehabilitate existing public water or wastewater infrastructure.
- Decentralize an existing public water system or wastewater system into smaller viable parts.
- Fund a study of any one or more of the following:
 - Rates
 - Asset inventory and assessment
 - Merger and regionalization options
- Fund other options deemed feasible which result in local government units generating sufficient revenues to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
- Fund emergency grants for operating deficits.

While the initial funding is only \$9 million, this law establishes the program and many elected officials have acknowledged that more funding will be needed. This is also a different type of program because the Authority and the Local Government Commission will be more actively involved, not waiting for applicants to submit projects for consideration. This type of program is very much needed to help move small, rural utility systems to viability, as envisioned in the Authority's Water and Wastewater Infrastructure Master Plan. As an example of failing systems, the Authority is already aware that the Town of Eureka and the Cliffside Sanitary District are essentially bankrupt and have been taken over by the Local Government Commission.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2020-79
HOUSE BILL 1087**

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

...

- (13) Local government unit. – Any of the following:
- a. A city as defined in G.S. 160A-1.
 - b. A county.
 - c. A consolidated city-county as defined in G.S. 160B-2.
 - d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes. 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.
- e. ~~A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.~~
 - f. ~~A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.~~
 - g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.
 - h. A joint agency created pursuant to Part 1 or Part 5 of Article 20 of Chapter 160A of the General Statutes.
 - i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.

...

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

...

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

...."

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

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

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

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

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

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

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

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

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

(e) The Local Government Commission may submit an application on behalf of a distressed unit for an emergency grant from the Viable Utility Reserve to cover operating deficits

of that local government unit's public water system or wastewater system, and any such application shall be deemed approved by the Local Government Commission upon submission."

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

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

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

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

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

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

- (1) Asset assessment and rate study grant. – An asset inventory and assessment grant is available to inventory the existing public water or wastewater system, or both, document the condition of the inventoried infrastructure, and conduct a rate study to determine a rate structure sufficient to prevent the local government unit from becoming a distressed unit.
- (2) Merger/regionalization feasibility grant. – A merger/regionalization grant is available to determine the feasibility of consolidating the management of multiple water or wastewater systems into a single operation or to provide regional treatment or water supply and the best way of carrying out the consolidation or regionalization. The Department shall not make a grant under this subdivision for a merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.
- (3) Project grant. – A project grant is available for a portion of the costs of a public water system or wastewater project as defined in G.S. 159G-32(d).
- (4) Emergency grant for operating deficit. – An emergency grant for operating deficits is available for distressed units if the Local Government Commission has exercised its powers under G.S. 159-181 to assume full or partial control over the affairs of the public water or wastewater system or of the local government unit or public authority that owns or operates the public water or wastewater system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Grants for the purposes set forth in subdivisions (1) through (5) of G.S. 159-32(d) shall not exceed fifteen million dollars (\$15,000,000) to any

single local government unit. Where two or more local government units are merging into a single utility, the total grant awarded shall not exceed thirty million dollars (\$30,000,000).

- (2) Grants for the purpose set forth in G.S. 159-32(d)(6) to any single local government unit shall not (i) exceed seven hundred fifty thousand dollars (\$750,000) in any fiscal year and (ii) be awarded for more than three consecutive fiscal years."

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

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

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

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

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

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

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

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

(a) The Authority and the Local Government Commission shall develop criteria to determine how local government units should be assessed and reviewed in accordance with this section, and these criteria shall address at least all of the following:

- (1) Whether the public water or wastewater system serves less than 10,000 customers.
- (2) Whether the public water or wastewater system has an established, operational, and adequately funded program for its repair, maintenance, and management.
- (3) Whether the annual debt service is disproportionate to the public water or wastewater system's annual revenue.
- (4) Whether the local government unit has appropriated funds from its utility or public service enterprise fund in accordance with G.S. 159-13(b)(14) in two

or more of the preceding five fiscal years without maintaining a reserve fund sufficient to provide for operating expenses, capital outlay, and debt service.

(5) Whether the local government unit has appropriated funds to supplement the operating expenses, capital outlay, or debt service on outstanding utility or enterprise bonds or notes in excess of the user fees collected in two or more of the preceding five fiscal years.

(b) Utilizing the assessment and review process, the Authority and Local Government Commission shall identify distressed units. Each distressed unit identified under this subsection shall do all of the following:

- (1) Conduct an asset assessment and rate study, as directed and approved by the Authority and the Local Government Commission.
- (2) Participate in a training and educational program approved by the Authority and the Local Government Commission for that distressed unit. Attendance shall be mandatory for any governing board members and staff whose participation is required by the Authority and Local Government Commission. The scope of training and education, and its method of delivery, shall be at the discretion of the Authority and Local Government Commission.
- (3) Develop an action plan, taking into consideration all of the following:
 - a. A short-term and a long-term plan for infrastructure repair, maintenance, and management.
 - b. Continuing education of the governing board and system operating staff.
 - c. Long-term financial management to ensure the public water system or wastewater system will generate sufficient revenue to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
 - d. Any other matters identified by the Authority or the Local Government Commission.

(c) Once an identified distressed unit has completed all of the requirements of subsection (b) of this section, that unit shall no longer be identified as a distressed unit for the remainder of that assessment and review cycle.

(d) The Authority and the Local Government Commission shall establish the frequency of the cycle for assessment and review of local government units under this section, which shall be no less than every two years."

SECTION 2. Chapter 162A of the General Statutes is amended by adding a new Article to read:

"Article 10.

"Dissolution and Merger of Units.

"§ 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.
- (3) Publish notice in any other manner required by the Environmental Management Commission.

"§ 162A-860. Merger of units.

(a) Any unit may merge with any other unit, any county, any city, any consolidated city-county, any sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes, any joint agency created pursuant to Part 1 or Part 5 of Article 20 of Chapter 160A of the General Statutes, or any joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before January 1, 1995, if the merger is a condition of receiving a grant from the Viable Utility Reserve as provided in Article 2 of Chapter 159G of the General Statutes. The Environmental Management Commission shall adopt a

resolution transferring the assets, liabilities, and other obligations to the entity with which the unit is being merged and dissolving the unit as provided for in this Article.

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

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

- (1) Both units are created pursuant to Article 5 of this Chapter.
- (2) Both units are located in the same county.
- (3) The jurisdiction of the units is contiguous.
- (4) The unit to be merged and dissolved does not directly provide sewerage services to any customers.
- (5) The unit to be merged and dissolved leases its assets to the unit with which it is proposed to be merged.
- (6) The unit to be merged and dissolved has no outstanding debts.

"§ 162A-865. Dissolution of units.

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

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

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

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

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

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

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

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

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

"Part 5. Water and Wastewater Systems.

"§ 160A-481.1. Definitions.

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

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

"§ 160A-481.2. Interlocal cooperation authorized.

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

SECTION 4. The Department of Environmental Quality shall study the statutes and rules governing subbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study shall specifically examine whether transfers of water between subbasins within the same major river basin should continue to be required to comply

with all of the same requirements under G.S. 143-215.22L as transfers of water between major river basins. In conducting this study, the Department of Environmental Quality shall consider whether the costs of complying with specific requirements, including financial costs and time, are justified by the benefits of the requirements, including the production of useful information and public notice and involvement. No later than January 15, 2021, the Department of Environmental Quality shall report its findings and recommendations to the Environmental Review Commission.

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

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

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

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

PART II. FUNDING

VIABLE UTILITY RESERVE FUNDS

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

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

SOUTHERN REGIONAL AHEC FUNDS

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

SECTION 8.(b) Appropriation. – There is appropriated from the Coronavirus Relief Fund to the Office of State Budget and Management (OSBM) the sum of four million eight hundred thousand dollars (\$4,800,000) in nonrecurring funds for the 2020-2021 fiscal year to the Board of Governors of The University of North Carolina to be allocated to the Southern Regional Area Health Education Center (SR AHEC) to be used for residencies in the SR AHEC service areas and for COVID-19 related response activities.

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

REALLOCATION OF CERTAIN PFAS FUNDS

SECTION 9.(a) Transfer and Reallocation. – Funds appropriated to the Division of Water Infrastructure of the Department of Environmental Quality for the 2018-2019 fiscal year

by Section 13.1(d) of S.L. 2018-5 and deposited into the PFAS Recovery Fund shall be transferred and reallocated for other projects as follows:

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

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

ALLOCATE FUNDS FROM WASTEWATER RESERVE

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

PART III. APPROPRIATE VW SETTLEMENT FUNDS

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

SECTION 10.(b) In accordance with Section 13.2 of S.L. 2017-57, as amended by Section 13.11 of S.L. 2018-5 (the Settlement Directives), there is appropriated from the Volkswagen Litigation Environmental Mitigation Fund (Fund) the sum of thirty million six hundred eighty-one thousand eight hundred eighty-six dollars (\$30,681,886) to fund Phase 1 of the August 28, 2018, Beneficiary Mitigation Plan (Plan) prepared as set forth in the Trust

agreement and submitted by the Department of Environmental Quality to the General Assembly pursuant to the Settlement Directives. The funds appropriated in this act shall be allocated for the following purposes set forth in Phase 1 of the Plan:

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

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

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

PART IV. WATER RESOURCES DEVELOPMENT PROJECTS

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

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

Name of Project	2020-2021
(1) Princeville Flood Damage Reduction (Pre-Constr./Design)	\$3,465,000
(2) Carolina Beach CSRM	1,750,000
(3) Kure Beach CSRM	2,187,500
(4) Wrightsville Beach CSRM	–
(5) Ocean Isle CSRM	–
(6) Planning Assistance to Communities	–
(7) Wilmington Harbor DA Maintenance	5,906,450
(8) Morehead City Maintenance	–
(9) Surf City/North Topsail CSRM (Pre-Constr./Design)	12,500,000
(10) Dan River Regional Water Supply Project	34,000
(11) Carteret County (Bogue Banks) CSRM	2,567,320
(12) Neuse River-Goldsboro Sec. 1135, CAP, Project Mods. (50/50)	–
(13) Concord Streams, Sec. 206, CAP, Ecosystem Restoration, Stricker Branch, Constr. (65/35)	–
(14) Lumberton 205, CAP, Flood Damage Reduction (50/50)	–

(15)	B. Everette Jordan Reservoir Water Supply	–
(16)	North Topsail Beach Shoreline Protection – Phase 2	–
(17)	NRCS EQIP/Stream Restoration	2,064,699
(18)	State-Local Projects (WRD Grant Program)	4,734,317
(19)	Water Resources Planning (S.L. 2010-143)	–
TOTALS		\$35,209,286

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

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

SECTION 11.(d) Fund Flexibility. – Where the actual costs are different from the estimated costs under subsection (b) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (b) of this section are delayed and the budgeted State funds cannot be used during the 2020-2021 fiscal year or if the projects funded under subsection (b) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

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

SECTION 11.(e) Reports. – The Department shall submit semiannual reports on the use of these funds to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, and the Office of State Budget and

Management on or before March 1 and September 1. Each report shall include all of the following:

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

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

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

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

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

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

...

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

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

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

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

...

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

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

"(a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository (i) for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas ~~and or the enhancement or restoration of flood storage capacity,~~ (ii) for payments made in lieu of compensatory mitigation as described in subsection (b) of this ~~section.~~ section, and (iii) for appropriations and grants supporting projects that enhance flood storage capacity and mitigate flood risk under G.S. 143-214.11A. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands, streams, ~~and riparian areas~~ riparian areas, and the enhancement and restoration of flood storage capacity in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem

taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition. The Department shall separately account for funds provided to the Ecosystem Restoration Fund in support of projects for enhancement or restoration of flood storage capacity under G.S. 143-214.11A."

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

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

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

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

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

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

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

(b) Flood Storage Capacity Basinwide Planning; Advisory Board. – To the extent of funds available for this purpose, basinwide plans developed under G.S. 143-214.10 shall include plans for restoration and enhancement of flood storage capacity to reduce the risk of flooding in flood prone areas of the State and enhance stormwater management capacity and shall set target amounts of flood storage capacity for each basin and subbasin. It is the intent of the General Assembly that appropriations, grants, and other funds received for flood storage enhancement shall be held in the Ecosystem Restoration Fund established by G.S. 143-214.12 and allocated for projects consistent with the basinwide plans, this section, and the conditions on funding for grants received in support of the program or a specific project. The Division shall establish an advisory board to guide program development and implementation.

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

- (1) Be consistent with plans for restoration and enhancement of stormwater management or flood storage capacity included in basinwide plans developed under G.S. 143-214.10.
- (2) Be designed and constructed to provide for a quantifiable increase in flood storage capacity in the designated watershed or sub-watershed based on the difference between the total number of acre-feet of flood storage in the watershed or sub-watershed before project commencement and after project completion.
- (3) Incorporate a mechanism for post-construction monitoring.

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

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

PART V. GENERAL PROVISIONS

STATE BUDGET ACT APPLIES

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

ADDITIONAL LIMITATIONS AND DIRECTIONS

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

PART VI. EFFECTIVE DATE

SECTION 14. Except as otherwise specified, this act becomes effective July 1, 2020. In the General Assembly read three times and ratified this the 26th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 5:34 p.m. this 1st day of July, 2020