



HOUSE BILL 1087: Water/Wastewater Public Enterprise Reform.

2019-2020 General Assembly

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| Committee: | | Date: | October 28, 2020 |
| Introduced by: | | Prepared by: | Jeff Cherry |
| Analysis of: | S.L. 2020-79 | | Staff Attorney |

OVERVIEW: *S.L. 2020-79 does all the following:*

- *Establishes a process for identifying distressed public water systems and wastewater systems.*
- *Establishes the Viable Utility Fund, within the Department of Environmental Quality, to be used for assisting public water and wastewater systems to become self-sustaining.*
- *Establishes a process for a water or wastewater system created under Chapter 162 of the General Statutes to request merger or dissolution of that system.*
- *Encourages interlocal cooperation between public water and wastewater systems.*
- *Makes a one-time transfer of \$9,000,000 from the One NC Fund to the Viable Utility Fund and appropriate those funds for the purposes of the Viable Utility Fund.*
- *Appropriates \$9 million to the Southern Regional Area Health Education Center in Fayetteville, reallocate \$2 million of unused funds appropriated in a prior budget bill to the PFAS Recovery Fund for a variety of local water quality and PFAS response activities., and allocate \$310,000 from the Wastewater Reserve to repair a damaged sewer line in Rockingham County.*
- *Appropriates funds received by the State from the environmental mitigation trust established in settlement of the Volkswagen Clean Diesel Marketing, Sales Practices, and Products Liability litigation in accordance with Phase 1 of the Department of Environmental Quality's Mitigation Plan.*
- *Makes one-time transfers from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and the Film and Entertainment Grant Fund and appropriate those funds for various water resources development projects, and adds flood storage capacity restoration to the purposes and permissible uses of the Ecosystem Restoration Fund administered by the Department of Environmental Quality's Division of Mitigation Services.*

This act became effective July 1, 2020, except for the reallocation of previous appropriations to the PFAS Recovery Fund\ and certain Viable Utility Fund conforming changes to previously enacted bills, which became effective June 30, 2020.

CURRENT LAW & BILL ANALYSIS:

DEQ's Division of Water Infrastructure (Division) administers programs to provide grants and low-interest loans to local government units for water and wastewater infrastructure projects. The State Water Infrastructure Authority (SWIA) consists of nine members, is within the Division, and is tasked with, among other things:

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- Establishing priorities for making loans and grants.
- Developing a master plan to meet the State's water infrastructure needs.
- Determining the rank of applications and to select the applications eligible to receive loans and grants.

In addition to federal programs such as the Community Development Block Grant, the Division and SWIA administer the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.

The Local Government Commission (LGC), composed of nine members, provides assistance to local governments and public authorities, approves the issuance of debt for all units of local government, and assists those units with fiscal management.

Part I (Sections 1-6) does the following:

- Establishes a process for identifying and assessing distressed public water systems and wastewater systems.
- Establishes the Viable Utility Fund, within DEQ, to be used for assisting public water and wastewater systems to become self-sustaining.
- Establishes a process for a water or wastewater system created under Chapter 162 of the General Statutes to request merger or dissolution of that system.
- Requires DEQ to study the statutes and rules governing subbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study must 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 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 must report its findings and recommendations to the Environmental Review Commission.
- Requires the Department of State Treasurer to 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 must 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 must report its findings and recommendations to the General Assembly.
- Repeals certain portions of other acts enacted during the 2019 Regular Session that conditionally amended versions of Part I that were ratified by the General Assembly but vetoed by the Governor. Those provisions were unnecessary or presented a conflict once this act became law. This portion became effective on June 30, 2020.

Part II of the bill provides funds for the Viable Utility Reserve and other projects:

- A transfer of \$9 million from the One North Carolina Fund cash balance to the Water Infrastructure Fund provides funds for the Viable Utility Reserve established by Part I of the bill.
- An appropriation of \$4.8 million from the Coronavirus Relief Fund to the Board of Governors of The University of North Carolina system for the Southern Regional Area Health Education Center

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in Fayetteville provides funding for medical residencies at the Center and for related facility and structural improvements associated with the Center's residency program.

- The reallocation (effective June 30, 2020) of certain funds originally appropriated to the PFAS Recovery Fund by the 2018 Appropriations Act provides funding for the following purposes:
 - Dissolution of a conservation easement for Little Alamance Creek in Alamance County.
 - Investigation by the Department of Environmental Quality of certain petroleum releases into surface waters of the State.
 - Recreational water quality testing by a western North Carolina nonprofit organization.
 - Grants for PFAS response actions to four local governments (Maysville, Benson, Angier, and Kenansville).
- An allocation of funds from the State Wastewater Reserve funds the repair of a sewer line crossing the Smith River in Rockingham County.

Part III of the bill appropriates \$30.6 million from the Volkswagen Litigation Environmental Mitigation Fund to the Department of Environmental Quality in order to carry out phase one of the Department's Beneficiary Mitigation Plan for the use of funds received by the State as a beneficiary of the environmental mitigation trust established as part of the consent decree resolving the Volkswagen "Clean Diesel" litigation. The Department's plan for phase one includes funds for diesel bus or vehicle replacements or upgrades, and for zero emissions vehicle infrastructure.

Part IV of the bill appropriates and allocates \$28.4 million to provide State matching funds for various federally funded water resources development projects. The funds were generated by transfers of \$24.6 million in equal shares from the Shallow Draft Navigation Channel and Aquatic Weed Fund and the Film and Entertainment Grant Fund, as well as carryforwards from projects funded in previous fiscal years. This part also adds projects and land acquisition that create or restore flood storage capacity to the statutory purposes and permissible uses of the Ecosystem Restoration Fund administered by DEQ's Division of Mitigation Services, and creates planning requirements and an advisory board to guide funding of projects to create or restore flood storage capacity.

Part V incorporates the State Budget Act into the bill and clarifies that other legislation enacted during the 2019 Regular Session of the General Assembly appropriating funds to any agency covered by the bill remain in effect except where expressly repealed or amended by the bill.

EFFECTIVE DATE: Except as otherwise noted, the act became effective July 1, 2020.

****Kyle Evans and Erika Churchill of the Legislative Analysis Division substantially contributed to this summary.****