

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1997

SESSION LAWS 1998-132  
SENATE BILL 1354

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE CRITICAL INFRASTRUCTURE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Critical Needs Bond Act of 1998."

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

- (a) Clean Water Bonds.
  - (1) \$500,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds, to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes, and to provide funding by grants to local government units for wastewater treatment and water supply and distribution needs;
  - (2) \$300,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects.
- (b) Natural Gas Bonds.
  - \$200,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

- (1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically "perfect" unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.
- (2) "Bonds" means bonds issued under this act.
- (3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.
- (4) "Capital improvement plan" means a report that identifies water and sewer infrastructure and capital needs that address planned and strategic growth. It shall include an assessment of current water and wastewater systems and a projection of those infrastructure needs over a 20-year horizon. The report shall take into consideration government mandates, usefulness of the improvements to the community and the effect on both short and long-term operation and maintenance of the scheduled improvements and identify alternatives for meeting the identified need including regionalization, consolidation and system mergers, water reuse and conservation.
- (5) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.
- (6) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.
- (7) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:
  - a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,
  - b. The cost of engineering, architectural, and other consulting services as may be required,
  - c. Administrative expenses and charges,
  - d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,
  - e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap

agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

- f. The cost of reimbursing the State for any payments made for any cost described above, and
- g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

- (8) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (9) "Economically depressed area" means any of the following:
  - a. An economically distressed county as defined in G.S. 143B-437.01.
  - b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this section, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the Bureau of the Census.
  - c. That part of a rural county that experiences an actual or imminent loss of manufacturing jobs in a number that is equal to or exceeds five percent (5%) of the total number of manufacturing jobs in the part.
- (10) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.
- (11) "NCMC" means the North Carolina Municipal Council, Inc., a nonprofit North Carolina corporation which provides bond ratings, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the State Treasurer.

- (12) "Notes" means notes issued under this act.
- (13) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
  - a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
  - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
  - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.
- (14) "Rural county" means a county with a density of fewer than 200 people per square mile based on the 1990 United States census.
- (15) "Rural Economic Development Center" means the Rural Economic Development Center, Inc., a nonprofit North Carolina corporation, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the Governor.
- (16) "Rural school" means a school that is located in a rural county or a school that is located outside the corporate limits of any municipality located in a county that is not a rural county.
- (17) "School water or wastewater project" means a project to provide clean water or wastewater treatment for a school by upgrading, replacing, or constructing school water or wastewater facilities.
- (18) "State" means the State of North Carolina.
- (19) "Supplemental grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems.
- (20) "Unsewered communities" means those communities lacking centralized, publicly owned wastewater collection systems and wastewater treatment works.
- (21) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.
- (22) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.
- (23) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

- a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or
  - b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.
- (24) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).
- (25) "Water reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.
- (26) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes.

- (a) Clean Water Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding eight hundred million dollars (\$800,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.
- (b) Natural Gas Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Natural Gas Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Natural Gas Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred million dollars (\$200,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5.1. Use of Clean Water Bond and note proceeds.

- (a) Special Emphases. The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, public

necessity and the criteria indicated in the appropriate subsection for each allocation of Clean Water Bond proceeds shall be the primary consideration in granting and loaning funds. In addition to public necessity and the applicable criteria, special emphasis shall also be placed on the following:

- (1) The creation of efficient systems of water supply and distribution and wastewater collection and disposal. Such efficiencies may result from the merger or consolidation of smaller systems into regional water and sewer systems where warranted and deemed to be in the best interest of the communities and regions. Such efficiencies may also be obtained through projects proposing water reuse and conservation.
- (2) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.
- (3) The development of a capital improvement plan.
- (4) A reduction in the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible.
- (5) The use of bond proceeds in a manner consistent with the water supply watershed protection requirements of G.S. 143-214.5.
- (6) The use of bond proceeds to address current critical infrastructure needs.

Special emphasis is achieved by assigning a significant number of points for the items listed in this subsection in any point system developed for awarding clean water grants or loans from the Clean Water Bond proceeds.

The special emphases in this subsection do not apply to the allocation of Clean Water Bond proceeds for State matching funds or economic development under subsections (d) and (e) of this section.

(b) **Prohibited Use of Clean Water Bonds Proceeds.** Proceeds from the sale of the Clean Water Bonds shall not be used to construct new water or sewer lines to provide water or sewer connections in any area that has been designated as WS-I or the critical area of any area that has been designated as WS-II, WS-III, or WS-IV by the Environmental Management Commission pursuant to G.S. 143-214.5. The Secretary of Environment and Natural Resources may grant a waiver to allow construction of new water or sewer lines and to provide water or sewer connections if the Secretary finds that granting the waiver is necessary to protect public health or water quality. A waiver granted by the Secretary under this subsection shall include a requirement that the water or sewer line shall be designed and sized to address only the public health or water quality concerns on which the waiver is based and shall not allow for additional connections beyond those necessary to protect public health and water quality. This subsection does not prohibit the repair or replacement of existing water or sewer lines.

In addition, the proceeds shall not be used for the repair, installation, or replacement of a low-pressure pipe wastewater system with another low-pressure pipe wastewater system.

The prohibitions on the use of Clean Water Bond proceeds in this subsection do not apply to the allocation of Clean Water Bond proceeds for State matching funds under subsection (d) of this section.

(c) High-Unit Cost Grants. The proceeds of three hundred thirty million dollars (\$330,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide grants to local government units for the same purposes and in accordance with the provisions of the Clean Water Revolving Loan and Grant Act for funds in the High-Unit Cost Wastewater Account and the High-Unit Cost Water Supply Account. In addition to the provisions of the Clean Water Revolving Loan and Grant Act and the special emphases in subsection (a) of this section, significant consideration and weight in awarding a clean water grant to an eligible local government unit for expanding infrastructure to support significant additional development shall be given if the applicant, or the local government unit or units having jurisdiction over the service area of the applicant, has adopted a comprehensive land-use plan that meets the requirements of G.S. 159G-10. Any point scheme developed for awarding clean water grants or loans from the clean water bond proceeds for expanding infrastructure to support significant additional development shall assign a significant number of points for having a comprehensive land-use plan that is approved or adopted by the applicant or the local government unit or units having jurisdiction over the service area of the applicant. However, additional points awarded for having a comprehensive land-use plan shall be considered only in the evaluation of competing applications for expanding infrastructure to support additional development and shall not disadvantage other applicants for clean water grants to meet critical infrastructure needs.

The grants shall be made for the purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works, water conservation projects, water reuse projects, and school water or wastewater projects. The proceeds shall be allocated as follows:

- |     |                                      |  |
|-----|--------------------------------------|--|
| (1) | High-Unit Cost Wastewater Account:   |  |
|     | a.                                   | Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating |
|     |                                      | \$85,000,000   |
|     | b.                                   | Reserved for grants to local government units whose bond rating is 75 or greater                           |
|     |                                      | \$80,000,000.  |
| (2) | High-Unit Cost Water Supply Account: |  |
|     | a.                                   | Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating |
|     |                                      | \$85,000,000   |
|     | b.                                   | Reserved for grants to local government units whose bond rating is 75 or greater                           |
|     |                                      | \$80,000,000.  |

The proceeds shall be transferred to the Clean Water Revolving Loan and Grant Fund to make grants to the appropriate local government unit qualifying for a grant from the Clean Water Revolving Loan and Grant Fund in accordance with the provisions of this act and the Clean Water Revolving Loan and Grant Act.

A county may apply for a grant on behalf of a rural school located in the county for a school water or wastewater project.

(d) State Matching Funds. The proceeds of thirty-five million dollars (\$35,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide State funds necessary for the 1999-2000, 2000-2001, 2001-2002, 2002-2003, and 2003-2004 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other sources, in which event this allocation shall cease to exist to the extent of the availability of the other sources. The Department of Environment and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification each year of the amount of funds required for the State match for that fiscal year, the State Treasurer may issue from the thirty-five million dollars (\$35,000,000) the amount certified up to thirty-five million dollars (\$35,000,000). Upon certification for the State match required for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the thirty-five million dollars (\$35,000,000) of the Clean Water Bonds authorized by this subsection for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subsection or subsection (c) of this section. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

(e) Economic Development. The proceeds of twenty million dollars (\$20,000,000) of Clean Water Bonds shall be used for the purpose of making grants to local government units to pay the cost of clean water projects in connection with the location of industry to, and expansion of industry in, the State. These grants shall be awarded and administered by the Department of Commerce. These funds shall be applied to pay the costs of grants awarded in the same manner as funds in the Industrial Development Fund created in G.S. 143B-437.01(a), for use in accordance with G.S. 143B-437.01(a), subject to the further limitations on the provisions of G.S. 143B-437.01(a) set forth below, and shall be applied to pay the costs of grants awarded in the same manner as funds in the Utility Account of the Industrial Development Fund created in G.S. 143B-437.01(b1), for use in accordance with G.S. 143B-437.01(b1), subject to the further limitations on the provisions of G.S. 143B-437.01(b1) set forth below. In applying the provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, the following exceptions shall apply:

- (1) The funds shall be used only for grants to local governments, not for loans.

- (2) Grants shall be awarded only to projects the Secretary of Commerce finds will have a favorable impact on the clean water objectives of the State.
- (3) The only purposes for which grants may be made are construction of or improvements to new or existing water or sewer distribution lines or equipment, construction of or improvements to new or existing wastewater treatment works, or improvements that will expand the capacity of existing wastewater treatment works or water supply systems.
- (4) The projects may be located only in counties that are economically distressed as defined in G.S. 143B-437.01 or have a population of less than 50,000.
- (5) Grants may be made only with respect to the following industries as defined in G.S. 105-129.2, notwithstanding any expiration of that statute: manufacturing and warehousing and wholesale trade.
- (6) The provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, that limit the expenditure of funds to costs of utility lines or facilities located on the site of the new or proposed industrial building or that are directly related to the operation of the specific industrial activity at the building, shall not apply if the utility lines or facilities being provided will further the clean water objectives of the State.

The General Assembly finds that the purpose of providing water and sewer distribution lines and wastewater treatment works in counties eligible for grants under this subsection is to provide clean water in North Carolina in several different ways. First, these projects will reduce industrial reliance on wells, septic tanks, and other similar facilities. Second, when a distribution line is extended to an industrial facility in an area not otherwise served by water and sewer infrastructure, residents, other businesses, and local governments can connect into the distribution line, bringing clean water, wastewater treatment, or both to the unserved area. Also, the installation and expansion of water supply and wastewater treatment facilities to provide water supply and wastewater treatment in connection with new or expanding industry will result in additional water supply and treatment facilities available to the residents, other businesses, and local governments in the area where the installation or expansion occurs.

The proceeds of the Clean Water Bonds, issued for the purpose described in this subsection, shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of the cost for the purpose for which the grant is made. The Department of Commerce shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made.

(f) Supplemental and Capacity Grants. The proceeds of sixty million dollars (\$60,000,000) of Clean Water Bonds shall be used to provide supplemental and capacity grants to eligible local government units to match federal, State, and other grant or loan program funds to plan or improve needed water and sewer projects. Such

grants shall be awarded and administered by the Rural Economic Development Center. Those proceeds shall be allocated as follows:

- (1) Supplemental Grants \$48,000,000
- (2) Capacity Grants \$12,000,000.

The Rural Economic Development Center shall certify to the State Treasurer the amount of funds required, not to exceed eight million dollars (\$8,000,000) for supplemental grants and not to exceed two million dollars (\$2,000,000) for capacity grants, for each of the fiscal years ending June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, June 30, 2004, and June 30, 2005. Upon certification each year of the amount of funds required for that fiscal year, the State Treasurer may issue the amount certified up to ten million dollars (\$10,000,000). Upon certification for the fiscal year ending June 30, 2005, the State Treasurer may issue the remaining balance of the sixty million dollars (\$60,000,000) of the Clean Water Bonds authorized by this subsection for any other purposes authorized by this subsection.

Grants made from the proceeds of this sixty million dollars (\$60,000,000) for supplemental grants shall be based on the following criteria:

- (1) The applicant shall be a rural county, a local government unit located in a rural county, or a county that is applying for a grant on behalf of a rural school located in that county as provided in subdivision (5) of this subsection.
- (2) A water supply system, wastewater collection system, or wastewater treatment work shall receive funding priority if the system is located within an economically distressed county as defined in G.S. 143B-437.01.
- (3) A water supply system, wastewater collection system, or wastewater treatment works that is proposed in a rural county that is not also an economically distressed county, as defined in G.S. 143B-437.01, must meet at least one of the following criteria: (i) be located in that part of the county where the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate, (ii) be located in that part of the county where the unemployment rate is at least double the State unemployment rate for the most recent reporting period available, or (iii) be located in that part of the county that experiences an actual or imminent loss of jobs in a number that equals or exceeds five percent (5%) of the total number of jobs in that part of the county. Any grant awarded under this subdivision (3) shall be matched by the applicant on a dollar-for-dollar basis in the amount of the grant awarded.
- (4) The grant funds shall supplement other funding and shall not represent the total costs of the wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems financed.
- (5) A county may apply for a grant on behalf of a rural school located in the county for a school water or wastewater project.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this subsection in accordance with the criteria set forth in this subsection. The proceeds of the Clean Water Bonds issued for the purpose described in this subsection shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the Secretary of Commerce at the time a request for a payment to or on behalf of a grantee is to be made.

At the end of each fiscal year, the Secretary of Commerce shall review the grants awarded by the Rural Economic Development Center with proceeds from the Clean Water Bonds to verify that the grants awarded comply with the requirements of this act. The Secretary of Commerce shall provide his or her findings regarding compliance in writing to the State Treasurer. At the time the Rural Economic Development Center provides information to the Secretary of Commerce as to the grants awarded during the preceding fiscal year, the Rural Economic Development Center shall also provide the Secretary of Commerce with a copy of all records of the Rural Economic Development Center from the preceding fiscal year (to the extent not previously provided to the Secretary) that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from proceeds of the Clean Water Bonds.

(g) Unsewered Community Grants. The proceeds of fifty-five million dollars (\$55,000,000) of Clean Water Bonds shall be used to provide grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Rural Economic Development Center.

The proceeds of this fifty-five million dollars (\$55,000,000) of Clean Water Bonds shall be awarded on the following criteria:

- (1) The applicant shall be a local government unit.
- (2) The applicant's population shall not exceed 5,000 persons using the most recent annual population estimates certified by the State Planning Officer.
- (3) The applicant shall be an unsewered community.
- (4) The applicant's median household income shall not exceed ninety percent (90%) of the national median household income using the most recently updated income figures made available from the Bureau of the Census.
- (5) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees and charges for the proper operation, maintenance, and administration of the project. The schedule of fees and charges shall reflect at least the average annual water and wastewater cost per household calculated at one and one-half percent (1 1/2%) of the median household income of the applicant.

- (6) The applicant must submit as part of the application packet a preliminary engineering report, including an analysis of possible wastewater service alternatives, and an environmental assessment.

An applicant who satisfies the criteria under this subsection (g) may be eligible for up to ninety percent (90%) of the total project cost.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this subsection in accordance with the criteria set forth in this subsection. The proceeds of the Clean Water Bonds issued for the purpose described in this subsection shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the Secretary of Commerce at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year the Secretary of Commerce shall review the grants awarded by the Rural Economic Development Center with proceeds from the Clean Water Bonds to verify that the grants awarded comply with the requirements of this act. The Secretary of Commerce shall provide his or her findings regarding compliance in writing to the State Treasurer.

At the time that the Rural Economic Development Center provides information to the Secretary of Commerce as to the grants awarded during the preceding fiscal year, the Rural Economic Development Center shall also provide the Secretary of Commerce with a copy of all records of the Rural Economic Development Center from the preceding fiscal year (to the extent not previously provided to the Secretary) that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds.

(h) Loans to Local Governments. The proceeds of three hundred million dollars (\$300,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. The proceeds shall be allocated as follows:

- (1) Wastewater collection systems and wastewater treatment works:
  - a. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating \$10,000,000
  - b. Reserved for loans to local government units whose bond rating is 75 or more \$140,000,000.
- (2) Water supply and distribution systems and water conservation projects:
  - a. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating \$10,000,000
  - b. Reserved for loans to local government units

whose bond rating is 75 or more

\$140,000,000.

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds. In addition to the requirements listed above and the special emphases in subsection (a) of this section, significant consideration and weight in awarding a clean water grant to an eligible local government unit for expanding infrastructure to support significant additional development shall be given if the applicant, or the local government unit or units having jurisdiction over the service area of the applicant, has adopted a comprehensive land-use plan that meets the requirements of G.S. 159G-10. Any point scheme developed for awarding clean water grants or loans from the clean water bond proceeds for expanding infrastructure to support significant additional development shall assign a significant number of points for having a comprehensive land-use plan that is approved or adopted by the applicant or the local government unit or units having jurisdiction over the service area of the applicant. However, additional points awarded for having a comprehensive land-use plan shall be considered only in the evaluation of competing applications for expanding infrastructure to support significant additional development and shall not disadvantage other applicants for clean water loans to meet critical infrastructure needs.

A county may apply for a loan on behalf of a rural school located in the county for a school water or wastewater project.

The Department of Environment and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover substantially all payments of debt service on the three hundred million dollars (\$300,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(i) **Redistribution of the Allocation.** The General Assembly may at this session or at any subsequent session increase or decrease the allocations of the proceeds of the Clean Water Bonds set forth in subsections (c), (d), (e), (f), (g), and (h) of this section, so long as the aggregate amount of the allocations does not exceed eight hundred million dollars (\$800,000,000).

(j) **Contracts With Private Entities.** To the extent otherwise authorized by law, and to the extent the use otherwise accomplishes the clean water objectives of the State, this act does not prohibit a local government unit from using the proceeds of Clean Water Bonds for projects that accomplish the clean water objectives of this State through contracts or other arrangements with private entities.

**Section 5.2. Use of Natural Gas Bonds and note proceeds.** The proceeds of Natural Gas Bonds and notes shall be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for the costs of constructing natural gas facilities, including pipelines, compressors, interests in real property, and related equipment for the delivery of natural gas in order to facilitate the expansion of natural gas facilities to unserved areas of the State in accordance with the findings of the General Assembly as described in Section 16 of this act.

**Section 6. Allocation of proceeds.**

(a) **Clean Water Bonds.** The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund or any separate clean water fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment

earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund or any separate clean water fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Natural Gas Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer, and shall be disbursed as provided in this act. Moneys in the Natural Gas Bonds Fund shall be allocated and expended as provided in this act. The proceeds may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later providing for the allocation of the bond proceeds for the purposes provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any natural gas grants authorized by this act may be placed by the State Treasurer in the Natural Gas Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant money to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act; (ii) used to pay debt service on the Natural Gas Bonds authorized by this act; (iii) used to satisfy compliance with

applicable requirements of the federal tax law; or (iv) transferred to the General Fund of the State.

The proceeds of Natural Gas Bonds and notes may be used with any other moneys made available by the General Assembly for providing grants, loans, or other financing in accordance with this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Natural Gas Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for construction of natural gas facilities shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The North Carolina Utilities Commission shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

(c) Costs. Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(7)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The questions of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on the first Tuesday after the first Monday of November 1998. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond questions to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR [ ] AGAINST

the issuance of eight hundred million dollars (\$800,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing

funds, with any other available funds, to make loans and grants to local government units to pay all or a portion of the cost of clean water projects."

"[ ] FOR [ ] AGAINST

the issuance of two hundred million dollars (\$200,000,000) State of North Carolina Natural Gas Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to provide grants, loans, or other financing to public or private entities for construction of natural gas facilities in order to facilitate the expansion of natural gas facilities to unserved portions of the State."

If a majority of those voting on a bond question in the election vote in favor of the issuance of the bonds described in the question, those bonds may be issued as provided in this act. If a majority of those voting on a bond question in the election vote against the issuance of the bonds described in the question, those bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes.

(a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his or her facsimile signature, shall be signed by the State Treasurer or shall bear his or her facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers

to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

- a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
- b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
- c. For the renewal of any loan evidenced by notes herein authorized;
- d. For the purposes authorized in this act; and
- e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding

bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans.

(a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Account. There is established in the Department of State Treasurer a special account to be known as the Clean Water Bonds Loan Account, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Account proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 6 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Account other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing:

- a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.
- b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of

Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

- c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:
    - 1. The applicant is a local government unit;
    - 2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
    - 3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
    - 4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.
- (2) Assessment. The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.
- (3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The

determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

- (4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.
- (d) Priorities.
  - (1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment and Natural Resources with every other project eligible during this same priority period.
  - (2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall establish other priority factors criteria by rule.
  - (3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of Environment and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.
  - (4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.
  - (5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary

financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Report by Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;
- (2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;
- (3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;
- (4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and
- (5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

- a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or
- b. Their faith and credit; or
- c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4

of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

- (2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.
- (3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.
- (4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

#### Section 11. Reports on Grants.

(a) The Rural Economic Development Center shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Chair of the Board of Directors of the Rural Economic Development Center. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Rural Economic Development Center during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(b) The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Environment and Natural Resources. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Department of Environment and Natural Resources during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(c) The Department of Commerce shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Commerce. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Department of Commerce during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

Section 12. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 13. Interpretation of act.

(a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 14. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 72.

"State Infrastructure Council.

**"§ 143-690. Council established; purpose; members; terms of office; quorum; compensation; termination.**

(a) Establishment. – There is established the State Infrastructure Council. The Council shall be located within the Department of Environment and Natural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. – The purpose of the Council is to develop a State strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs.

(c) Membership. – The Council shall consist of 19 members, five of whom are ex officio and 14 of whom are appointed as follows:

- (1) Four persons appointed by the Governor.
- (2) Five persons appointed by the President Pro Tempore of the Senate, at least one of whom must be a member of the Senate.
- (3) Five persons appointed by the Speaker of the House of Representatives, at least one of whom must be a member of the House of Representatives.
- (4) The following persons or their designees, ex officio:
  - a. The Secretary of Commerce.
  - b. The Secretary of Environment and Natural Resources.
  - c. The State Treasurer.
  - d. The Executive Director of the League of Municipalities.
  - e. The Executive Director of the North Carolina Association of County Commissioners.

The members appointed to the State Infrastructure Council shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Council, including individuals who have demonstrated expertise in the fields of environmental science, particularly the areas of wastewater treatment and water supply and distribution, public planning, public financing, public health, and economic development.

(d) Terms. – Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

- (1) The Governor shall initially appoint two members for terms of two years and two members for terms of three years.
- (2) The President Pro Tempore of the Senate shall initially appoint two members for terms of two years and three members for terms of three years.
- (3) The Speaker of the House of Representatives shall initially appoint two members for terms of two years and three members for terms of three years.

Initial terms shall begin on January 1, 1999.

(e) Chair. – The chair shall be appointed biennially by the Governor from among the membership of the Council. The initial term shall begin on January 1, 1999.

(f) Vacancies. – A vacancy in the Council or as chair of the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made and the term shall be for the balance of the unexpired term.

(g) Compensation. – The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Removal. – Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. – The chair shall convene the Council. Meetings shall be held as often as necessary, but not fewer than four times a year.

(j) Quorum. – A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council shall be necessary for action to be taken by the Council.

**"§ 143-691. Duties of the Council.**

Duties. – The Council shall have the following duties:

- (1) To plan and develop a State strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs.
- (2) To evaluate the State's natural resource base and existing water and sewer systems and to project statewide future needs for water and sewer systems.
- (3) To analyze current and proposed statutes, rules, and programs that address or affect State water and sewer needs.
- (4) To analyze the roles of State and local government and other parties in addressing water and sewer needs and to recommend the appropriate roles for each with regard to addressing future water and sewer needs.
- (5) To anticipate the impact of infrastructure development on natural resources and to make recommendations on how to minimize the impact.

**"§ 143-692. Staff and offices.**

The Department of Environment and Natural Resources shall provide office space and staff for the State Infrastructure Council as requested by the Council.

**"§ 143-693. Council reports.**

The Council shall report to the Joint Legislative Commission on Governmental Operations, with a written report to the Fiscal Research Division, by October 1, 1999, and annually thereafter, regarding the implementation of this Article. In its report the Council shall include any recommendations regarding statewide water and sewer needs that require review or action by the General Assembly."

Section 15. G.S. 159G-6 reads as rewritten:

**"§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.
- (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be ~~three-eight million dollars (\$3,000,000).~~ (\$8,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be ~~one-three million dollars (\$1,000,000).~~ (\$3,000,000).
- (3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. – The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

- (1) General Wastewater Revolving Loan and Grant Account. – The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.
- (2) High-Unit Cost Wastewater Account. – The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~subdivision (a)(2) of this section.
- (3) Emergency Wastewater Revolving Loan Account. – The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. – The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

- (1) General Water Supply Revolving Loan and Grant Account. – The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.
- (2) High-Unit Cost Water Supply Account. – The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.
- (3) Emergency Water Supply Revolving Loan Account. – The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard,

related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 16. The General Assembly finds that:

- (1) The General Assembly has previously found that it is the policy of this State to facilitate the extension of natural gas facilities to unserved areas of the State; and
- (2) The extension of natural gas facilities to unserved areas of the State is necessary for the health of the people and of the environment; and
- (3) The extension of natural gas facilities to unserved areas of the State will aid and encourage the location of manufacturing enterprises and industrial facilities in those areas of the State, will encourage new construction, homes, and other businesses in those areas of the State, will increase the population, taxable property, agricultural industries, and business prospects in the State; and
- (4) The 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and
- (5) The reports of the utilities, the Commission, and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and
- (6) The 1991 General Assembly enacted G.S. 62-158 and G.S. 62-2(9) authorizing special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and
- (7) While the 1991 legislation has been successful in providing some natural gas service to previously unserved areas of the State, that legislation has not been sufficient to facilitate the extension of service that is necessary and in the public interest, and there are still counties with no gas service or virtually no gas service; and
- (8) It is therefore necessary to authorize additional funding methods, including appropriations from the General Assembly and the proceeds

of general obligation bonds, to further facilitate the expansion of natural gas service.

Section 17. Chapter 62 of the General Statutes is amended by adding a new section to read:

**"§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer to be used for other expansion projects pursuant to the provisions of this section. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission. In the event a gas district wishes to sell or otherwise dispose of facilities financed with funds received under this section, it must first notify the Commission which shall determine the method of repayment or accounting for those funds.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the

provisions of G.S. 62-36A(b). This subsection does not apply to gas districts formed under Article 28 of Chapter 160A of the General Statutes.

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."

Section 18. G.S. 62-2 reads as rewritten:

**"§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;

- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;
- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and
- (9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of ~~an expansion fund~~ funds ~~for each~~ natural gas local distribution company companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities

Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."

Section 19. Effective date. Sections 14 and 15 of this act become effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law, and the Utilities Commission shall begin immediately the rule-making process mandated by G.S. 62-159(d), as enacted by Section 17 of this act.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

s/ Dennis A. Wicker  
President of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 10:00 a.m. this 9th day of September, 1998