

# Special Joint Meeting of the Local Government Commission and the State Water Infrastructure Authority

October 14, 2020

Note: This meeting was held via WebEx due to the COVID-19 pandemic

## Meeting Minutes

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### Local Government Commission Members Attending Meeting via WebEx or Phone

- Dale Folwell, Chairman; State Treasurer
- Elaine Marshall, Secretary of State
- Ronald Penny, Secretary of Revenue
- Kent McLamb, Chief Deputy State Auditor
- Joshua Bass, President, Currituck Chamber of Commerce
- Edward Munn, Retired Gastonia City Manager
  - Members absent: Scott Padgett, Mike Philbeck, and Viola Harris

### State Water Infrastructure Authority Members Attending Meeting via WebEx or Phone

- Kim Colson, Chair; Director, Division of Water Infrastructure
- Melody Adams, Director, Rural Grants/Programs, Rural Development Division, NC Dept. of Commerce
- Greg Gaskins, Deputy Treasurer, State & Local Finance Division; Secretary, Local Government Commission
- Leila Goodwin, Water Resources Engineer
- Ed Goscicki
- Maria Hunnicutt, Manager, Broad River Water Authority
- Dr. Bernadette Pelissier
- Cal Stiles, Cherokee County Commissioner
- Juhann Waller, Principal, JC Waller & Associates, PC

### Department of State Treasurer Staff Attending Meeting via WebEx or Phone

- Greg Gaskins, Deputy Treasurer, State & Local Finance Division; Secretary, Local Government Commission
- Sharon Edmundson, Deputy Treasurer, Director, State and Local Government Finance Division
- Tim Romocki, Director, Debt Management, State and Local Government Finance Division
- Debbie Tomasko, Director, Business Operations, State and Local Government Finance Division
- Cindy Aiken, Assistant General Counsel, State and Local Government Finance Division
- Jennifer Wimmer, Assistant Director, Debt Management, State and Local Government Finance Division
- Sam Watts, Policy Development Analyst, State and Local Government Finance Division
- Alisia Smith, Executive Assistant, State and Local Government Finance Division

### Division of Water Infrastructure & Dept. of Environmental Quality Staff Attending Meeting via WebEx or Phone

- Sheila Holman, Assistant Secretary for the Environment, Department of Environmental Quality
- Cathy Akroyd, Public Information Officer
- Linda Culpepper, Viable Utility Reserve Support
- Francine Durso, Senior Project Manager
- Susan Kubacki, Environmental Program Manager
- Jon Risgaard, State Revolving Fund Section Chief
- Amy Simes, Senior Program Manager

### Department of Justice Staff Attending Meeting via WebEx or Phone

- Jill Weese, NC Department of Justice; Assistant Attorney General, Environmental Division

### **Item A. Call to Order**

At 2:00 p.m. Treasurer Folwell called the meeting to order and reminded the members of the Local Government Commission (LGC) and the State Water Infrastructure Authority (SWIA) of General Statute Chapter 138A (the “State Government Ethics Act”) which states that any member who is aware of a known conflict of interest or potential conflict of interest with respect to any matters before the LGC or SWIA today is required to identify the conflict or potential conflict at the time the conflict becomes apparent. No conflicts were reported.

### **Item B. Local Government Commission and State Water Infrastructure Authority Members Introductions**

A list of names of LGC and SWIA members was included in the meeting materials.

### **Item C. Opening Remarks**

Treasurer Folwell remarked that access to clean and safe drinking water and the need for wastewater to be treated and disposed of appropriately is crucial for the citizens of North Carolina.

Mr. Gaskins stated that the Viable Utility Reserve (VUR) legislation is very important to the future of the state. He stated that the process is just beginning and that the LGC and SWIA may see a need to adjust or amend the process as it moves forward.

Mr. Colson stated that Ms. Sheila Holman, Assistant Secretary for the Environment in the Department of Environmental Quality, is participating in today’s meeting. He described SWIA’s work of the past several years to move units toward proactive utility management, the changes made by SWIA to prioritize such work within the funding programs under its purview, and the need for organizational management in addition to financial and infrastructure management.

### **Item D. Session Law 2020-79 Overview**

Mr. Colson presented an overview of Session Law (SL) 2020-79 which authorizes a process to develop long-term solutions for distressed water and/or wastewater utilities. The SL created the VUR grant fund and provided \$9 million in non-recurring funds. Per the SL, the LGC and SWIA are authorized to jointly: develop criteria to determine how local government units will be assessed and reviewed; identify distressed units; approve the award and terms of grants; and impose specific performance measures or conditions on any grant awarded from the VUR. The SL specifies actions that must be taken by units that are identified as distressed, and the types of work on which VUR funds may be expended including studies and construction projects.

Mr. Gaskins stated that Article 10 of the SL provides for the dissolution and merger of units which involves coordination with the Environmental Management Commission of the Department of Environmental Quality. The provisions of Article 10 will be needed if a unit’s long-term solution were to involve a change in the structure of a unit.

### **Item E. Potential Distressed Criteria**

The meeting materials included the “Draft Viable Utility Reserve Distressed Criteria Summary.” Mr. Gaskins reviewed the criteria that are specified in the SL. Mr. Colson reviewed the draft infrastructure/ organizational criteria, highlighting that some criteria reflect the potential future for a unit; for example, units with both declining population and already high utility rates will find it difficult to generate sufficient revenues to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services, as required by the SL.

Ms. Edmundson stated that the draft financial criteria are similar to information already used by the LGC to communicate with units about their status. Units that are two or more years behind on submitting their annual audits is an indicator of some distress within the unit. A high percent depreciation indicates that a unit has not been replacing or upgrading its assets which may have outlived their useful lives; it also indicates a lack of an asset replacement plan. The receivables ratio looks at the trends in bill collections.

Mr. Colson noted that the LGC and SWIA may need the ability to include or remove a unit from the distressed category, based on a unit's unique situation and information that may be available that does not expressly appear in the distressed criteria.

#### **Item F. Process Overview**

The meeting materials included the "SL 2020-79 – Reform of Water and Wastewater Public Enterprises." Mr. Risgaard reviewed the proposed approach to the local government unit assessment task which includes both the criteria and the identification of distressed units, the education requirements, and action plan implementation. The performance measures or conditions that may be imposed by the LGC and SWIA will ensure that a unit remains non-distressed into the future. A flow chart of the draft distressed system process was presented. He noted that some units are already in a critical situation such as two units which the LGC has already assumed financial control of that have water and/or wastewater utility issues; these two units are receiving VUR grant funds for emergency operating deficits. The LGC and SWIA may consider an initial designation of several units as distressed.

Secretary Marshall asked about the process or work needed to satisfy the education requirements if there is a lack of cooperation or engagement from the local elected officials. Mr. Gaskins responded that while the SL does not address this, the LGC can require financial training. Secretary Marshall stated that the communities may need to be engaged and that it is possible that the issue might become political.

Secretary Penny noted that some units are missing audit reports and may have financial management issues. He asked if units that are missing an audit or required annual report would be eligible for a system reset or new utility structure, and if such units would be eligible for funding from any source? Mr. Colson replied that it is possible to leverage funds from other funding sources and noted that if a unit does not have the capacity to administer VUR funds, a larger viable unit that they may merge with can administer the funds. Mr. Gaskins stated that the LGC staff coordinate with units that are on the Unit Assistance List, but he has concerns about the units that do not address the issues.

Ms. Goodwin followed up on the issue of missing audits or annual reports to better understand the level of seriousness of these documents not being completed. Ms. Edmundson stated that a late audit is an important issue and may be indicative of underlying issues in a unit's financial system or lack of capacity to keep financial information current. This leads to a unit's board and staff not having financial information on which to base decisions. She noted that units that are habitually late in submitting audits is a topic of discussion by the LGC.

#### **Item G. Action Items**

Next Meeting: At upcoming separate meetings of the LGC and SWIA, staff will recommend to each body that it approve several initial units as distressed and approve the allocation of VUR funds for initial work tasks for the initial units.

Future Meeting: Mr. Gaskins stated that at a future meeting the LGC will discuss historic charters and that a report and recommendations are due to the General Assembly by January 15, 2021.

#### **Item H. Remarks by Members of the Local Government Commission and State Water Infrastructure Authority**

Treasurer Folwell noted that one solution will not fit all situations and each unit may need a unique solution. Members of both bodies noted that the partnership between the two bodies will benefit many units that are in or near distress across the state, that the process is moving forward well, and expressed appreciation for the work of both staffs in developing the criteria.

**Item I. Adjourn** – The meeting was adjourned at 3:35 p.m.