

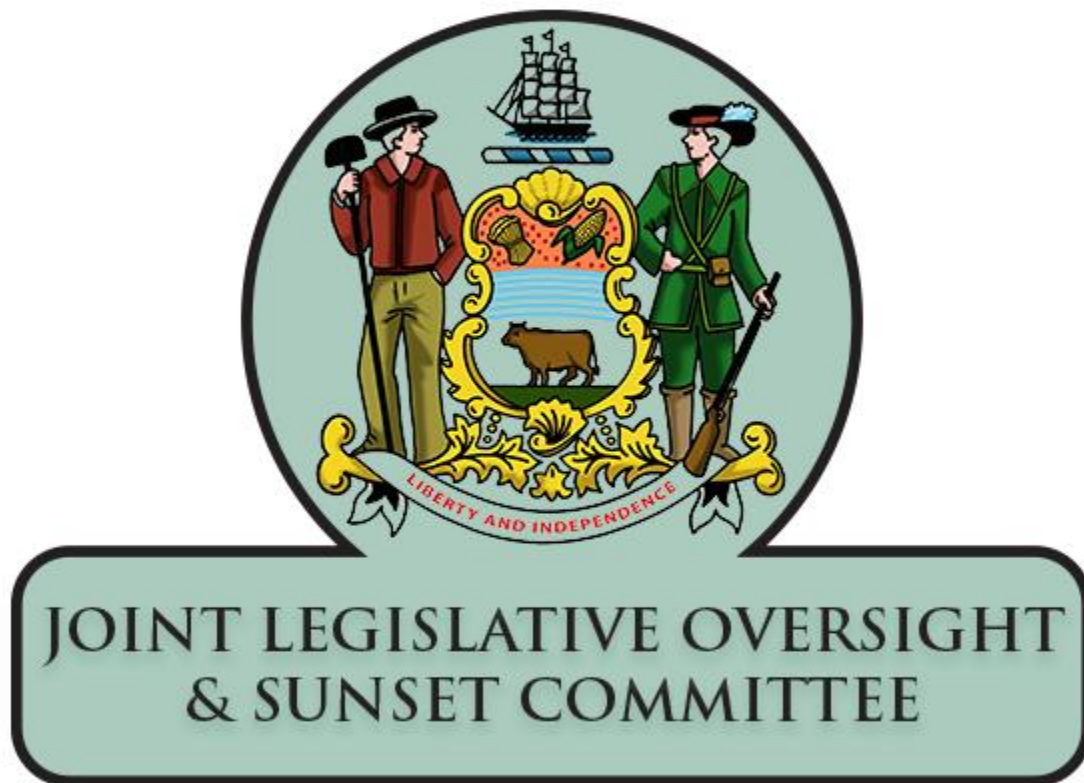
# Staff Findings and Recommendations Report

## Water Infrastructure Advisory Council

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*151<sup>st</sup> General Assembly, 2<sup>nd</sup> session*

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*Respectfully submitted to the  
Joint Legislative Oversight and Sunset Committee  
March 2022*

2022 Joint Legislative Oversight and  
Sunset Members:

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Chair**

**Senator Kyle Evans Gay, Vice Chair**

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**Senator Stephanie L. Hansen**

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The Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”) is a bipartisan 10-member legislative body which performs periodic legislative review of boards or commissions. The purpose of the oversight and sunset review is to decide genuine public need and if the entity is effectively performing. The Division of Research is a nonpartisan and confidential reference bureau for the General Assembly and supplies many services including staff support for JLOSC.

Special thanks: We appreciate the aid provided by Water Infrastructure Advisory Council staff in conducting this review.

# Table of Contents

## **ABOUT THIS REPORT**

ABOUT THIS REPORT .....	4
NEXT STEPS.....	5

## **STAFF RECOMMENDATIONS**

STAFF RECOMMENDATIONS .....	6
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## **STAFF FINDINGS**

STAFF FINDINGS .....	7
FOIA SCORECARD CHART .....	9
COUNCIL MEMBERSHIP CHART .....	10

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

OBJECTIVE.....	12
SCOPE .....	12
JLOSC STATUTORY CRITERIA #1 AND METHODOLOGY .....	12
JLOSC STATUTORY CRITERIA #2 AND METHODOLOGY .....	12
JLOSC STATUTORY CRITERIA #3 AND METHODOLOGY .....	13
JLOSC STATUTORY CRITERIA #4 AND METHODOLOGY .....	13
FIELDWORK COMPLETED .....	13
REVIEW BACKGROUND .....	14
BACKGROUND RESEARCH SYNOPSIS .....	14

## **DNREC/DHSS RESPONSE**

RESPONSE MEMO TO JLOSC STAFF RECOMMENDATIONS .....	15
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## **APPENDICES**

APPENDIX A <i>Water Infrastructure Advisory Council statute</i> .....	16
APPENDIX B <i>House Bill 200</i> .....	19

# ABOUT THIS REPORT

This is a staff findings and recommendations report (“staff report”) drafted by Division of Research staff on the sunset and oversight review (“review”) of the Water Infrastructure Advisory Council. This report has staff recommendations for JLOSC review and discussion. Recommendations are not final until discussed and adopted by JLOSC with an affirmative vote by 7 members.

The review’s purpose is to find the public need for the entity and whether the entity is effectively performing to meet the need. The goal of the review is to supply strength and support to entities that are supplying a State recognized need.

JLOSC performs its duties with support provided by the Division of Research’s dedicated and nonpartisan staff in the form of two JLOSC research analysts, a legislative attorney, legislative fellow, and administrative assistant. JLOSC staff completes a performance evaluation of the entity under review and gives a staff report to JLOSC which includes research, analysis, key findings, and recommendations. During the review process, the following is not assumed:

- There is a genuine public need for the entity under review.
- That the entity is satisfactorily and effectively meeting public need.

Rather, the entity under review has the burden of showing, through the statutory criteria for review included in their self-report and analyst requested supplemental documentation, that there is a genuine public need, and that the entity is meeting that need.

JLOSC selected the Water Infrastructure Advisory Council for review on March 25, 2021. During the review process, the Water Infrastructure Advisory Council supplied information by completing a self-report which had a performance review questionnaire.<sup>1</sup>

Division of Research staff compiled the following findings and recommendations after completion of a performance evaluation which included thorough research and analysis outlined in the Objectives, Scope, and Methodology section of this report. Division of Research staff used national auditing and evaluation standards while conducting the performance evaluation. Those standards require that we plan and perform the evaluation to obtain sufficient evidence to supply a reasonable basis for our findings and conclusions based on our evaluation objectives. We believe that the evidence obtained supplies a reasonable basis for our findings and conclusions based on our evaluation objectives. The Objectives, Scope, and Methodology section discusses the fieldwork procedures used while developing the findings and recommendations presented in this report.

The recommendations contained in this report are not final until adopted by JLOSC by affirmative vote of 7 members. Under §10213(a), Title 29, the Committee must first decide whether there is a genuine public need for an entity under review. To meet this requirement, the Committee may select to continue or terminate the entity under review. JLOSC meets publicly to review and

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<sup>1</sup> Self-reports available on the Committee’s website, <https://legis.delaware.gov/Committee/Sunset>

discuss its staff’s findings and recommendations, and the Committee is free to change, reject, or create brand new recommendations.

The JLOSC statute authorizes the Committee to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.
- Consolidation, merger, or transfer of the entity or the entity’s functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

The information contained in this report, along with the previously published self-report<sup>2</sup>, which includes background information from the entity under review, help the Committee in conducting a review of the entity and meeting its statutory requirements under Chapter 102, Title 29. The “Staff Findings” section of this report has information to support the following staff recommendations.

### **Next Steps**

After the release of this report, JLOSC will hold a public hearing in early 2022 for each entity under review to present to the Committee and accept public comment on the scope of the review.

The Committee will discuss all information received, including the findings and recommendations presented in this staff report. Recommendations become completed after review, discussion, and an affirmative vote of 7 JLOSC members. Committee members are not bound by recommendations presented by staff and are free to change, reject, or form new recommendations. Once JLOSC adopts recommendations, the review moves to the implementation phase which may include drafting legislation.

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<sup>2</sup> Self-Report is accessible on the Committee’s website, <https://legis.delaware.gov/Committee/Sunset>

# STAFF RECOMMENDATIONS

## **Recommendation #1, Option 1 – Continue the Water Infrastructure Advisory Council.**

**After review and analysis, JLOSC staff recommends option 1, continue the Water Infrastructure Advisory Council, subject to any further recommendations that JLOSC adopts.**

Continue or Terminate (standard JLOSC recommendation).

Option 1: The Water Infrastructure Advisory Council shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

Option 2: The Water Infrastructure Advisory Council is terminated, and the Committee will sponsor legislation to implement this recommendation.

## **Recommendation #2 – Statute Revisions.**

**JLOSC should consider sponsoring a bill to apply technical corrections to the governing statute of the Water Infrastructure Advisory Council, Chapter 80, Title 29, and using this review as a guide, applying revisions to sections covering topics such as:**

- **Define quorum.**
- **Subcommittee operations.**
- **Updates to reflect recent changes to FOIA regarding virtual meetings.**
- **Explore the feasibility of instituting term limits. \***

JLOSC and the DNREC Environment Finance Office will work together to develop statutory revisions. JLOSC staff will engage stakeholders as necessary.

\*Due to the subject matter expertise required to serve on the Water Infrastructure Advisory Council, JLOSC staff and DNREC's Environment Finance Office will work on language to possibly institute term limits in a manner that will not limit its operations. For example, limit the number of consecutive terms, but not nonsequential terms.

## **Recommendation #3 – Release from Review.**

**Release the Water Infrastructure Advisory Council from review upon enactment of legislation applying technical corrections and changing board composition listed under Recommendations 2.**

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# STAFF FINDINGS

## **Finding #1**

**The Water Infrastructure Advisory Council (“WIAC”) is engaged and involved in topics concerning the funding of drinking water and wastewater infrastructure projects throughout the state, performing their statutory duties as an advisory body, and serving public interests well.**

Under current statute, WIAC serves in an advisory capacity and reviews plans, standards, and applications concerned with the planning, construction, repair, renovation, or expansion of drinking water, clean water, and wastewater projects.<sup>3</sup> Additionally, WIAC provides advisory recommendations to the Secretaries of the Department of Natural Resources and Environmental Control (“DNREC”) and the Department of Health and Social Services (“DHSS”) on loans and grants funded by the Clean Water State Revolving Fund (“CWSRF”) and the Drinking Water State Revolving Fund (“DWSRF”).

During the period of review, WIAC and its subcommittees held 65 meetings.<sup>4</sup> Highlights include:

- Recommended and prioritized projects through the following programs:
  - Watershed Improvement projects.
  - SAFE Grant Pilot Program.
  - Green Project Reserve projects.
  - Planning grants (CWSRF/DWSRF).
  - Considered list of “Ready to Proceed” projects.
- Recommended funding for CWSRF and DWSRF projects from the following entities:
  - Smyrna.
  - Sussex County.
  - City of Wilmington.
  - Lewes.
  - Harrington.
  - Kent County.
  - Milford.
  - Artesian Water.
  - Tidewater.
- Nonvoting membership added by House Bill 200, the Clean Water for Delaware Act, in which WIAC will provide input to the Clean Water Trust Oversight Committee on the strategic plan, annual report, and long-term funding plan.<sup>5</sup>

## **Finding #2**

**WIAC effectively prioritizes, reviews, and recommends grants and loans for capital and maintenance projects related to drainage, stormwater management, and flood control throughout the state.**

WIAC effectively recommends targeted grants and loans for water projects in all three counties, including municipalities statewide. In some instances, WIAC recommended funding approval through a combination of CWSRF loans and grants for projects that otherwise would not have been able to move forward financially.<sup>6</sup> Applications are available through DNREC and require

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<sup>3</sup> 29 Del. C. § 8011.

<sup>4</sup> Review period: January 2019 – January 2022.

<sup>5</sup> Clean Water Trust Oversight Committee held its first meeting on January 25, 2022.

<sup>6</sup> [WIAC Bond Bill Briefing FY19](#).

applicants to provide financial information, statistical data, planning, and engineering information. The guidelines request applicants provide detailed information about the service areas, impact of the proposed project, and the readiness of the project to proceed.<sup>7</sup>

WIAC uses the *Project Priority List* of proposed water quality improvement projects to recommend funding approval through the CWSRF or DWSRF planning grants. WIAC releases the *Project Priority List* each year and updates, if needed. This list ranks applications based on the expected benefit to the state and considers readiness and timeliness of project completion. JLOSC staff would suggest updating the documentation available on WIAC's main website to include the Project Priority List, application, guidelines, and other updated funding reports.

### **Finding #3**

#### **This review observed minor FOIA compliance issues, with some subcommittee meeting minutes missing.**

WIAC and its subcommittees are public bodies as defined by the Freedom of Information Act ("FOIA").<sup>8</sup> During the course of this review JLOSC staff reviewed the past 3 years of held meetings and checked for FOIA compliance on meeting notice, agendas, and minutes. Using FOIA open meeting requirements<sup>9</sup> the *FOIA Scorecard* below notes the following FOIA compliance items:

- Every meeting must be open to the public, except for valid exception under FOIA.
  - Executive session closed to the public for FOIA named purposes.
- Public notice of regular meetings posted at least 7 days in advance of the meeting.
  - Includes agenda if determined.
    - Posted within 6 hours in advance of the meeting with reason for posting delay included.
    - Posted in public location accessible to the public, including electronic posting on designated State of Delaware website.<sup>10</sup>
  - Includes date, time, and place of meeting.
    - Indicates intent to hold executive session (if applicable).
- Agenda is subject to change, changes may include:
  - Added items, including executive session.
  - Deletion of items, including executive session.
- Minutes recorded and made available for public inspection and copying as a public record. Minutes must include the following:
  - Record of members present.
  - Record by individual members of each vote taken and action agreed on.
- Final minutes posted within 5 working days of final approval.
  - Draft minutes posted within 20 working days of meeting conclusion for public bodies who meet 4 or fewer times per year.

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<sup>7</sup> [CWSRF/DWSRF Application Forms and Guidelines.](#)

<sup>8</sup> 29 Del. C. § 10002.

<sup>9</sup> 29 Del. C. § 10004.

<sup>10</sup> Designated website is the Public Meeting Calendar: <https://publicmeetings.delaware.gov>



FOIA Scorecard for January 2019 – January 2022	
<b>Total Meetings Held</b>	<b>65</b>
<b>Properly Noticed Meetings</b>	62
<b>Properly Posted Agendas</b>	58
<b>Properly Posted Meeting Minutes</b>	28
<b>Missing Agendas</b>	4
<b>Missing Minutes</b>	37
<b>Minutes Contain Required Information</b>	28
<b>Agendas Contain Required Information</b>	61
<b>Number of Executive Sessions</b>	0

JLOSC staff reviewed Delaware’s Public Meeting Calendar for all meetings held by WIAC and its subcommittees during a 3-year review period (January 2019 – January 2022). The Public Meeting Calendar keeps a record of all administrative actions for a meeting date including announcement creation date and posting dates for agendas and minutes. During the review period, WIAC and its subcommittees properly noticed 62 out of 65 public meetings held, 2 meeting announcements did not supply 7 days’ notice and 1 subcommittee held a meeting without posting a meeting announcement. WIAC posted 58 meeting agendas properly, with 3 posted late, and 4 missing. In total, 61 meeting announcements included agendas with the needed FOIA information, and no executive sessions held. WIAC and its subcommittees started holding virtual meetings in April of 2020, allowing for more meeting attendance from members and the public. The FOIA statute was recently updated to supply provisions for virtual public meetings. JLOSC staff recommend clarifying WIAC’s statute to reflect these recent updates.<sup>11</sup>

Meeting minutes for all WIAC meetings are available on the state’s public meeting calendar. The missing minutes reflected in the numbers on the FOIA scorecard are from the 4 subcommittees. WIAC established subcommittees for wastewater, surface water, drinking water, and finance to aid the full Council. WIAC does not have established by-laws outlining the organization and duties of its subcommittees. Additionally, its statute does not outline the subcommittee mechanism. JLOSC staff recommends clarifying the WIAC statute to include the operation of subcommittees and supplying brief information on the WIAC website explaining subcommittee membership and duties for public transparency. JLOSC staff observed the finance subcommittee consistently posting meeting agendas and minutes on the public meeting calendar. Given the high meeting frequency and large agendas of each subcommittee, JLOSC staff recommends including the approval of meeting minutes on each agenda and if necessary, choosing a subcommittee member to help administrative staff with minutes. Adopting these recommendations could help remind subcommittees to keep and post meeting minutes as required by FOIA. JLOSC staff will note that subcommittees report to WIAC and WIAC meeting minutes include their reports; however, subcommittees are public bodies under FOIA and have the same public meeting requirements as WIAC.

Despite the FOIA compliance issues seen during the review period with its subcommittees, JLOSC staff saw WIAC staff working on improvements and ensuring subcommittees are compliant with public meeting laws. JLOSC staff do not anticipate FOIA compliance issues to be an ongoing concern and feel this review will supply the necessary reminders for ongoing compliance.

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<sup>11</sup> 29 Del. C. § 8011(f).

## Finding #4

### WIAC is comprised of 16 members appointed by the Governor; WIAC suggested a possible update to its governing statute instituting term limits.

According to statute, WIAC is composed of 16 members:<sup>12</sup>

- Chairperson appointed by the Governor.
- 1 member from each county and the City of Wilmington.
- 3 members representing nonprofit environmental organizations.
  - 1 of which may represent an environmental justice organization.
- 3 nonvoting members representing each of the following:<sup>13</sup>
  - Water utilities.
  - President of one conservation district.
  - Member of the Farm Bureau.
- No more than 9 members shall be affiliated with any 1 major political party.
- Members represent interests and possess expertise in the areas of wastewater, stormwater, agricultural water use, and drinking water infrastructure.
- Members may include, but not be limited to representatives from local government, public health, agriculture, and financial management.

#### Current Water Infrastructure Advisory Council Membership

Member's Name and City and State of residence.	Original Appointment Date	Appointment Expiration Date	Number of Terms Served
Jeffrey M. Bross, Wilmington, DE	March 14, 2002; Appointed Chair June 10, 2015	Serves at Pleasure of the Governor	5 as Member
Hans M. Medlarz, Milford, DE	May 17, 2007	June 28, 2021	5
Eugene S. Dvornick, Jr., Milton, DE	April 2, 2009	April 21, 2024	5
Jeff Flynn, Wilmington, DE	June 28, 2010	March 20, 2022	4
David B. Baker, Milton, DE	June 13, 2012	April 21, 2024	4
Jennifer A. Adkins, Wilmington, DE	June 13, 2012	April 21, 2024	4
Richard A. Duncan, Sr., Selbyville, DE	June 30, 2013	April 21, 2023	4
Charles D. Anderson, Seaford, DE	June 30, 2013	June 5, 2021	3
Desmond A. Baker, Wilmington, DE	March 28, 2018	April 21, 2024	2
Robert L. Stickels, Wilmington, DE	March 14, 2018	March 14, 2022	2
Carolann D. Wicks, Townsend, DE	June 6, 2018	April 21, 2024	2
J. Michael Riemann, Camden- Wyoming, DE	June 5, 2019	June 5, 2022	1
Victoria K. Petrone, Wilmington, DE	June 5, 2019	June 5, 2022	1

Note: Current membership does not reflect the 3 nonvoting members added via House Bill 200 in 2021.

<sup>12</sup> 29 Del. C. § 8011.

<sup>13</sup> These members added in 2021 through House Bill 200 and have not yet been appointed.

In its self-report, WIAC suggested exploring the possibility of instituting term limits. As reflected in current membership, half of the current members are currently serving their fourth or fifth terms. However, due to the subject matter expertise outlined in statute required of WIAC members, term limits could create vacancy issues. JLOSC staff will work with WIAC staff in exploring options to institute term limits in a manner that will not limit operations. For example, limit the number of consecutive terms, but not nonsequential terms.

In addition to exploring term limits, JLOSC staff recommends adding quorum requirements to the WIAC statute so that potential vacancies do not affect quorum. Staff has language used for other reviews to define quorum as 51% of appointed members so that vacancies do not negatively affect quorum. Membership and quorum changes will positively change WIAC by reflecting longstanding, current operations.

### **Finding #5**

**WIAC meets on a consistent basis, members have a high attendance rate (average of 85%), chronic quorum issues not seen.**

Since 2018, WIAC met 4-6 times annually, holding 20 full Council meetings in total. We calculated an average attendance rate of 85% with only 3 currently appointed members having an attendance rate below the average (between 70%-84%). All meetings held since 2018 have met quorum.

### **Finding #6**

**Positive feedback received from public outreach survey.**

JLOSC staff conducted a public outreach survey from August 9 through September 30, 2021 and received 7 responses for WIAC. Overall, the survey received positive feedback, with 86% of respondents voting WIAC as “very to extremely valuable” to the State of Delaware. No critical comments were received.

Positive feedback received indicated appreciation for the expertise WIAC offers and the important contributions to the development of sustainable water and wastewater infrastructure solutions for Delaware.

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# OBJECTIVE, SCOPE, AND METHODOLOGY

## Objective

A performance evaluation conducted as required under JLOSC statute and based on the following criteria<sup>14</sup>:

1. If the agency is a licensing agency, the extent to which the agency has permitted qualified applicants to be licensed.
2. The extent to which the agency has served the public interests.
3. The extent to which the agency has recommended statutory changes, and whether those changes directly benefit the public or whether those changes primarily benefit the agency or other entities and are of only indirect benefit to the public.
4. Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during previous legislative sessions.

## Scope

This review covers a 5-year performance period except where noted.

### JLOSC Statutory Criteria #1

If the agency is a licensing agency, the extent to which the agency has allowed qualified applicants to be licensed.

### Methodology for JLOSC Statutory Criteria #1

WIAC is not a licensing agency but does receive, review, and make recommendations related to projects funded under the CWSRF and DWSRF. This review looked at the overall process and decisions the Council made over the past 5 years.

### JLOSC Statutory Criteria #2

The extent to which the agency has served the public interests.

### Methodology for JLOSC Statutory Criteria #2

The State of Delaware established WIAC to serve the Departments of DNREC, Agriculture, DHSS, Transportation, and Finance in an advisory capacity about the public funding of drinking water, clean water, and wastewater infrastructure projects. As described in the fieldwork section of this report, this review explored the 6 main duties and responsibilities listed in statute<sup>15</sup>:

1. Evaluate, establish, recommend, and adopt a long-term, prioritized plan for the public funding of drinking water supply and wastewater facility infrastructure projects.
2. Establish standards and procedures to submit requests for funding of water and wastewater projects and recommend grants or loans based on those standards.
3. Develop and update statewide water and wastewater assessment, organized by county.

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<sup>14</sup> 29 Del. C. § 10209.

<sup>15</sup> 29 Del. C. § 8011.

4. Recommend affordability standards for water and wastewater projects.
5. Review and recommend the payment of administrative and operating expenses of the Council to DNREC and DHSS.
6. Recommend funding of ready water and wastewater infrastructure projects to the Secretaries of DNREC and DHSS.

### **JLOSC Statutory Criteria #3**

The extent to which the agency has recommended statutory changes, and whether those changes directly benefit the public or primarily benefit the agency or other entities and are of only indirect benefit to the public.

### **Methodology for JLOSC Statutory Criteria #3**

This review took a closer look at the recommendation provided by WIAC in its completed self-report. JLOSC staff explored information relevant to these recommendations as described in the fieldwork listed in this section. For quick reference, WIAC supplied the following recommendation in their self-report:

1. Possibility of term limits for members.

### **JLOSC Statutory Criteria #4**

Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during earlier legislative sessions.

### **Methodology for JLOSC Statutory Criteria #4**

This is the first JLOSC review of WIAC, statutory criteria #4 is not applicable to this review.

### **Fieldwork completed**

- Reviewed all information supplied by WIAC staff.
  - Self-report.
  - Organizational chart.
  - Past 3 years of meeting minutes and agendas for full Council meetings.
- All available public documents including:
  - CWSFR and DWSRF applications.
  - CWSFR and DWSRF instructions, guidance for applicants, current project priority list, and long-term funding plan.
  - Annual briefings.
  - Management plans.
  - Available news articles.
- Current statute and proposed revisions.
- Council's overall performance as it relates to current statute.
- Council's compliance with Freedom of Information Act ("FOIA").
  - Public meeting calendar: Council meeting notices, agendas, minutes.
- Council member size, quorum trends, and composition.
- Council member training opportunities.
- Surveyed the public to gather opinions and experiences with Council.
- Held two virtual public input sessions to collect added public comment on review.
- Held a virtual meeting with WIAC members and staff to discuss review.

## **Review Background**

This is the first review of WIAC by JLOSC. This review began in April of 2021. Support staff for WIAC completed and returned a self-report in August of 2021. JLOSC staff conducted research and drafted this findings and recommendations report.

## **Background Research Synopsis**

WIAC originally began as the Wastewater Facilities Advisory Council (“WFAC”). WFAC was created by House Bill 570 and signed into law on July 7, 1994. WFAC was created as an advisory body to the Secretary of DNREC and to make recommendations for loans and grants from the Delaware Water Pollution Control Revolving Fund (“WPCRF”), also known as the Delaware Clean Water State Revolving Fund (“CWSRF”). WFAC was amended following the Stormwater Task Force to oversee stormwater funding as well.

The Council was renamed the Clean Water Advisory Council (“CWAC”). In 2014, CWAC was again amended to oversee the Delaware Safe Drinking Water Revolving Fund or Drinking Water State Revolving Fund (“DWSRF”) and became WIAC. Most recently, the makeup of the WIAC was amended by House Bill 200, the Clean Water for Delaware Act, which was signed into law on July 22, 2021. WIAC will provide input to the Clean Water Trust Oversight Committee on the strategic plan, annual report, and long-term funding plan.

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## **RESPONSE TO JLOSC STAFF RECOMMENDATIONS**

### **Recommendation #1, Option 1 – Continue the Water Infrastructure Advisory Council.**

**After review and analysis, JLOSC staff recommends option 1, continue the Water Infrastructure Advisory Council, subject to any further recommendations that JLOSC adopts.**

Continue or Terminate (standard JLOSC recommendation).

Option 1: The Water Infrastructure Advisory Council shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

Option 2: The Water Infrastructure Advisory Council is terminated, and the Committee will sponsor legislation to implement this recommendation.

**DNREC and DHSS concur with recommendation #1.**

### **Recommendation #2 – Statute Revisions.**

**JLOSC should consider sponsoring a bill to apply technical corrections to the governing statute of the Water Infrastructure Advisory Council, Chapter 80, Title 29, and using this review as a guide, applying revisions to sections covering topics such as:**

- **Define quorum.**
- **Subcommittee operations.**
- **Updates to reflect recent changes to FOIA regarding virtual meetings.**
- **Explore the feasibility of instituting term limits. \***

JLOSC and the DNREC Environment Finance Office will work together to develop statutory revisions. JLOSC staff will engage stakeholders as necessary.

\*Due to the subject matter expertise required to serve on the Water Infrastructure Advisory Council, JLOSC staff and DNREC's Environment Finance Office will work on language to possibly institute term limits in a manner that will not limit its operations. For example, limit the number of consecutive terms, but not nonsequential terms.

**In lieu of codification, DNREC and DHSS believe that the bulk of recommendation #2 can be accomplished by the WIAC establishing by-laws that define quorum, explain subcommittee operations, and reference current FOIA laws regarding virtual meetings. The recommendation regarding term limits would require a code change.**

**If the JLOSC insists on a code change to meet the above, DNREC believes that the code should state the WIAC Chair and members can establish subcommittees as necessary, but necessarily prescribe which subcommittees are necessary nor prescribe their operations which can be handled through by-laws.**

### **Recommendation #3 – Release from Review.**

**Release the Water Infrastructure Advisory Council from review upon enactment of legislation applying technical corrections and changing board composition listed under Recommendations 2.**

**DNREC and DHSS believe that the council can be released from review after the establishment of by-laws.**

# TITLE 29

## State Government

### Departments of Government

#### CHAPTER 80. Department of Natural Resources and Environmental Control

##### *Subchapter I. Natural Resources and Environmental Control*

#### **§ 8011. Water Infrastructure Advisory Council.**

(a) There is hereby established a Water Infrastructure Advisory Council.

(b) *Definition.* — “Wastewater facility” shall mean any property, easement, equipment, pipe, pump, plant or appurtenance used in any way to collect, transport, store, handle, treat or dispose of wastewater. “Surface water management” shall mean a strategy for the integration of drainage, flood control and stormwater management through habitat protection, restoration, and other green infrastructure. “Drinking water supply or water supply” facilities shall mean any property, equipment, pipe or other conveyance, pump, tower, tank or other storage device, well, filter and any other appurtenances used to collect, treat, store, and distribute the best quality water available to address strategies to correct, present or prevent future violations of health-based drinking water standards.

(c) The Water Infrastructure Advisory Council (the “Council”) shall serve in an advisory capacity to the Secretaries of the Departments of Natural Resources and Environmental Control (“DNREC”), Agriculture (“DDA”), Health and Social Services (“DHSS”), Transportation (“DeIDOT”), and Finance (“DOF”) and collectively the (“Secretaries”). The Council shall be composed of 16 members appointed by the Governor with the advice and consent of the Senate. The Governor shall appoint a chairperson. Members of the Council shall serve for up to 3 years excluding the Chairperson who shall serve at the pleasure of the Governor. Members shall be appointed for staggered terms so that no more than 4 members’ terms expire in any calendar year. There shall be at least 1 member who is a resident of New Castle County, 1 member who is a resident of Kent County, 1 member who is a resident of Sussex County, and 1 member who is a resident of the City of Wilmington. Members of the Council shall represent interest and possess expertise in the areas of wastewater, stormwater, agricultural water use, and drinking water infrastructure. Members may include, but not be limited to representatives from local government, public health, agriculture, and financial management, and 3 members representing nonprofit environmental organizations, 1 of whom may represent an environmental justice organization. No more than 9 members shall be affiliated with any 1 major political party. The Governor shall appoint a member representing the water utilities, the president of 1 of the conservation districts, and a member of the Farm Bureau, all of whom shall serve as nonvoting members of the Council, and at the pleasure of the Governor. The nonvoting members may provide annual recommendations to the Council relating to stormwater, drainage, flood protection, resource and conservation development projects, agricultural and conservation cost share, cover crops, conservation reserve enhancement, and tax ditches.

(d) Members of the Council shall serve without compensation except that they shall be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Council.

(e) The Council’s duties and responsibilities shall include the following:

(1) To evaluate, establish, recommend, and adopt a long-term plan for the public funding of drinking water supply and wastewater facility infrastructure projects that shall cover a period of not less than 6 years. The plan shall be updated and prioritized on an annual basis and incorporated in DNREC’s and DHSS’s annual capital budget requests to the Governor. A copy of the adopted plan shall be submitted to members of the General Assembly on or before November 15 of each year. Additionally, the Council shall submit to the Clean Water Trust Fund Oversight Committee annual advisory recommendations related to wastewater, stormwater and drinking water infrastructure



addressing those elements required for inclusion in the strategic plan for clean water as required in § 8082(a) of this title on or before September 15 of each year.

(2) To establish standards and procedures for persons to submit requests for funding the construction, repair, renovation or expansion of water supply and wastewater facilities and to recommend specific grants or loans, or both, in accordance with such standards and procedures using funds authorized for such purposes by act of the General Assembly or funds approved by the Delaware State Clearinghouse Committee. The Council shall develop and recommend projects for the planning, construction, repair, renovation or expansion of water supply and wastewater facilities to be funded in whole or in part by the Delaware Water Pollution Control Revolving Fund, the Drinking Water State Revolving Loan Fund (the "Funds") and any other source of funding authorized by the General Assembly;

(3) To develop and periodically update a nonbinding comprehensive, statewide water supply and wastewater facilities assessment to be presented in 3 sections, 1 for each county. The Council may retain the services of necessary professionals and may enter into agreements in order to prepare such an assessment. Each of the counties may, at its option, designate a county agency responsible for preparing the assessment for such county, provided however, that the assessments shall be prepared in a uniform manner pursuant to criteria established by the Council. In the absence of such a designation, the DNREC and DHSS shall be the lead agencies in coordinating preparation of the assessment. The assessment shall include, but not be limited to, a description of the status of existing water supply and wastewater facilities, the current usage thereof, the adequacy of existing water supply and wastewater facilities, projected long range requirements for such facilities, the compatibility of existing land use plans with existing and long range requirements of water supply and wastewater facilities, and recommendations for improvements to existing facilities;

(4) To recommend affordability standards for water supply and wastewater facility infrastructure projects. Such recommendations shall reflect the goals of establishing fair rates that equitably distribute the costs of water supply and wastewater facilities using public funds based upon usage and relying upon private firms to provide services if it is economical and in the public interest to do so; and

(5) The Council shall review and recommend the payment of administrative and operating expenses of the Council to the DNREC and DHSS.

(6) The Council shall make funding recommendations to the Secretaries of the DNREC and DHSS of drinking water and wastewater infrastructure projects that are "ready to proceed."

(f) The Council shall adopt all motions and approve the 6-year water supply and wastewater infrastructure plan, the assessment, and recommendations for loans or grants only by a majority vote of the entire voting membership of the Council. All voting shall be done in person and at regular or special meetings of the Council. The Council shall conduct a public meeting in each county prior to annual adoption of the 6-year water supply and wastewater infrastructure plan. The Council is subject to the applicable provisions of the Administrative Procedures Act (Chapter 101 of this title).

(g) The Council shall work in concert with the DNREC, DHSS, the Department of Transportation, the Department of Agriculture, Conservation Districts, the Delaware Geological Survey, the Public Service Commission, the DOF, the Cabinet Committee on State Planning Issues and any other appropriate department, agency or committee focusing on statewide planning issues and each shall provide reasonable staff time and resources as may be required by the Council to fulfill its duties and responsibilities. The Council shall also work in concert with the Water Resources Agency of New Castle County and any other appropriate agency designated by the counties. The DNREC and DHSS shall be the lead agencies in coordinating support for the Council.

(h) The Council shall provide guidance and policy advice to the Governor and Secretaries and assistance in the statewide effort to develop infrastructure programs related to water supply, drainage, stormwater management and flood control. This guidance shall include State level direction to the DNREC and DHSS, and local agencies and operating units in the development of standardized processes and procedures for identifying and prioritizing problems and development of watershed-based solutions. The Council also shall provide guidance to the State in improving the quality of customer service and reviewing annual localized work plans.

(i) The Council shall provide assistance in defining areas of responsibility between the State and local agencies, and coordinating implementation and operations.

(j) The Council shall provide assistance to the State in the establishment of a central response unit coordinated by the DNREC to handle public calls relating to drainage, stormwater and flood control.

(k) The Council shall provide assistance in the statewide effort for the development of sustainable program funding options.

(l) The Council shall provide assistance in the development and evaluation of criteria for watershed-based plans for surface water management. The Council shall also provide assistance developing the priority needs for watershed plans. The Council shall assist in developing a strategy for long term planning for future growth as it relates to surface water management. This strategy may include options for private-public partnerships for infrastructure improvement and regional solutions.

69 Del. Laws, c. 303, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 219, §§ 1-5; 75 Del. Laws, c. 353, §§ 81(c)-(e); 77 Del. Laws, c. 430, § 66; 79 Del. Laws, c. 48, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 21; 83 Del. Laws, c. 84, §§ 2, 3;



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HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY  
HOUSE BILL NO. 200  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CLEAN WATER FOR DELAWARE.  
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 80, Title 29 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter IV. Clean Water for Delaware Act.

§ 8080. Short title.

This Act shall be known and may be cited as the “Clean Water for Delaware Act.”

§ 8081. Legislative findings.

(a) The General Assembly finds all of the following:

(1) The waters of this State are among Delaware’s most basic and valuable resources and should be conserved and protected in a manner to realize their full benefits.

(2) Delaware’s continued economic vitality is dependent upon: maintaining and improving the State’s water and wastewater systems; and protecting and enhancing the State’s water resources and natural infrastructure as the foundation for a healthy population and environment to sustain a high quality of life for residents, healthy habitats, as well as an attraction for tourism, employers and workers.

(3) Many Delaware homes, farms, agricultural lands, and businesses are at risk from flooding and drainage hazards, which have environmental, public safety, health, and economic impacts, and some Delawareans lack access to potable drinking water or basic wastewater disposal in their homes.

(4) Delaware’s list of impaired waters includes 377 bodies of water that suffer from excess nutrients, low dissolved oxygen, toxins and bacteria that negatively impact human and aquatic life.

(5) It is important that priorities for clean water projects in this State be given to projects that utilize green infrastructure and enhancement of natural systems to provide ecological benefits that improve water quality, demonstrate a high ratio of nutrient or pollution reduction to the amount of funding, and improve of community resilience to extreme weather, sea level rise, and other climate impacts.

(6) Existing federal and State funding resources alone are inadequate to meeting the State’s current and future demand for clean water projects.

(7) It is fitting and proper for the State to encourage local governments, private entities and farmers to undertake clean water projects that effectively and efficiently reduce pollution in the waters of the State by establishing mechanisms to assist planning and financing of such projects at the lowest reasonable costs.

(b) Based on its findings in subsection (a) of this section, the General Assembly determines that it is in the public interest to designate a Delaware Clean Water Trust account to ensure the greatest environmental return on investment through the management and coordination of financial resources available to the State for drinking water, wastewater, drainage, stormwater, and other eligible clean water projects to be funded from the following sources:

(1) Appropriations, including supplemental funds in the bond bill, intended to satisfy all of the following purposes:

a. § 7903(14) of this title related to the Delaware Safe Drinking Water Revolving Fund.

b. § 8003(12) of this title related to the Delaware Water Pollution Control Revolving Fund.

c. § 3923 of Title 7 related to resource conservation and development projects undertaken by the County Conservation Districts in Kent, New Castle and Sussex Counties.

(2) Moneys received as repayments of principal and interest on loans, interest received on invested funds, and other funding made available for the programs and purposes in paragraph (1) of this subsection.

#### § 8082. Clean Water Trust Oversight

(a) To ensure coordination of the management of resources available for Clean Water Trust projects and other programs that impact the quality of the State’s water resources, the Clean Water Trust Oversight Committee (“Committee”) is established and shall serve in an advisory capacity to the Governor and the General Assembly.

(b) The Committee shall be comprised of 7 members to include all of the following:

(1) The Secretary of the Department of Natural Resources who shall serve as its Chair.

(2) The Secretary of the Department of Health and Social Services.

(3) The Secretary of the Department of Finance.

(4) The Secretary of the Department of Agriculture.

(5) The Secretary of the Department of Transportation.

(6) The Chair and Co-Chair of the Joint Capital Improvement Committee of the Delaware General Assembly.

(c) Members who serve by virtue of their position may designate a designee to serve on the Committee.

(d) The Committee shall be responsible for oversight of the Clean Water Trust account and shall produce and publish an Annual Report and Strategic Plan for Clean Water that shall include all of the following:

(1) An annual report, titled “The Mulrooney Report”, accounting for the sources, benefits, and uses of the Clean Water Trust account and other water quality programs funded with State or federal resources including wastewater, stormwater and drinking water infrastructure and programs for drainage, beach preservation, waterway management, cover crop, the conservation reserve enhancement program, tax ditches and conservation cost-sharing that shall include a list of all funded projects.

(2) An annually updated strategic plan that shall include all of the following:

a. Multi-year water quality goals and progress toward meeting those goals.

b. Challenges facing the achievement of such water quality goals.

c. A prioritized list of proposed projects to attain such goals, including increased accessibility to low-income and traditionally underserved communities.

d. Drinking water testing priorities of the State.

e. Recommendations on minimum funding levels for wastewater and drinking water projects benefitting low-income and traditionally underserved communities through low interest loans and affordability grants.

f. Recommendations on strategies that support low-income consumer affordability.

g. An annual work plan report on the implementation of the Strategic Plan for the previous fiscal year addressing success indicators, deliverables and milestones.

(e) Prior to the publication of the initial Annual Report and Strategic Plan, the Committee shall hold at least 3 publicly noticed meetings in Dover to seek input and allow public comment. Thereafter, the Committee shall hold at least 1 publicly noticed meeting prior to publication of the Annual Report and annually updated Strategic Plan. All meetings under this subsection shall comply with § 10004 of this title.

(f) The Water Infrastructure Advisory Council and the Conservation Districts shall provide outside, technical assistance and advice to the Committee.

Section 2. Amend § 8011, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) The Water Infrastructure Advisory Council (the “Council”) shall serve in an advisory capacity to the Secretaries of the Departments of Natural Resources and Environmental Control (“DNREC”), Agriculture (“DDA”), Health and Social Services (“DHSS”), Transportation (“DeIDOT”, and Finance (“DOF”) and collectively the (“Secretaries”). The Council shall be composed of ~~43~~ 16 members appointed by the Governor with the advice and consent of the Senate. The Governor shall appoint a chairperson. Members of the Council shall serve for up to 3 years excluding the Chairperson who shall serve at the pleasure of the Governor. Members shall be appointed for staggered terms so that no more than 4 members’ terms expire in any calendar year. There shall be at least 1 member who is a resident of New Castle County, 1 member who is a resident of Kent County, 1 member who is a resident of Sussex County, and 1 member who is a resident of the City of Wilmington. Members of the Council shall represent

interest and possess expertise in the areas of wastewater, stormwater , agricultural water use, and drinking water infrastructure. Members may include, but not be limited to representatives from local government, public health, agriculture , and financial management , and 3 members representing non-profit environmental organizations, 1 of whom may represent an environmental justice organization . No more than 7 ~~9~~ members shall be affiliated with any 1 major political party. The Governor shall appoint a member representing the water utilities, the president of 1 of the conservation districts, and a member of the Farm Bureau, all of whom shall serve as non-voting members of the Council, and at the pleasure of the Governor. The non-voting members may provide annual recommendations to the Council relating to stormwater, drainage, flood protection, resource and conservation development projects, agricultural and conservation cost share, cover crops, conservation reserve enhancement, and tax ditches.

Section 3. Amend § 8011(e), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) The Council's duties and responsibilities shall include the following:

(1) To evaluate, establish, recommend, and adopt a long-term plan for the public funding of drinking water supply and wastewater facility infrastructure projects that shall cover a period of not less than 6 years. The plan shall be updated and prioritized on an annual basis and incorporated in DNREC's and DHSS's annual capital budget requests to the Governor. A copy of the adopted plan shall be submitted to members of the General Assembly on or before November 15 of each year ~~beginning in calendar year 1995;~~ Additionally, the Council shall submit to the Clean Water Trust Fund Oversight Committee annual advisory recommendations related to wastewater, stormwater and drinking water infrastructure addressing those elements required for inclusion in the Strategic Plan for Clean Water as required in §8082(a) of this title on or before September 15 of each year.

(f) The Council shall adopt all motions and approve the 6-year water supply and wastewater infrastructure plan, the assessment, and recommendations for loans or grants only by a majority vote of the entire voting membership of the Council. All voting shall be done in person and at regular or special meetings of the Council. The Council shall conduct a public meeting in each county prior to annual adoption of the 6-year water supply and wastewater infrastructure plan. The Council is subject to the applicable provisions of the Administrative Procedures Act [Chapter 101 of this title]