

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 115

Environment & Natural Resources Committee Substitute Adopted 5/8/89

Short Title: Solid Waste Revolving Fund.

(Public)

Sponsors:

Referred to:

February 6, 1989

A BILL TO BE ENTITLED

**AN ACT TO CREATE THE NORTH CAROLINA SOLID WASTE MANAGEMENT
REVOLVING LOAN FUND.**

Whereas, the 1987 Session of the General Assembly authorized the Legislative Research Commission to study the subject of solid waste management in North Carolina; and

Whereas, the Legislative Research Commission, through its Solid Waste Management Study Committee, has determined that the State of North Carolina confronts a crisis in solid waste management in the immediate future, in that 13 counties will run out of landfill space within two years and one-third of all landfills in the State will have reached their capacity within five years; and

Whereas, many units of local government do not have the resources to implement alternative methods of solid waste management or to meet increasingly stricter standards applicable to landfills; and

Whereas, improved solid waste management practices are necessary to preserve the quality of North Carolina's groundwater and to insure that North Carolina remains competitive with other states in economic development; and

Whereas, the Legislative Research Commission and its Solid Waste Management Study Committee has determined that it would serve the interests of the State to establish a revolving loan fund to provide low interest loans to those units of local government that are trying to address their solid waste problems but which do not have the funds to do so; and

1 Whereas, the North Carolina Commission on Jobs and Economic Growth is
2 charged to identify the major economic concerns facing this State and to recommend
3 solutions; and

4 Whereas, on March 29, 1988, the North Carolina Commission on Jobs and
5 Economic Growth adopted a recommendation that a solid waste management revolving
6 loan fund be established; Now, therefore,
7 The General Assembly of North Carolina enacts:

8 Section 1. A new Chapter is added to the General Statutes to read:

9 **“CHAPTER 159I**

10 **“NORTH CAROLINA SOLID WASTE**
11 **MANAGEMENT REVOLVING LOAN PROGRAM.**

12 **“§ 159I-1. Short title.**

13 This Chapter may be cited as the North Carolina Solid Waste Management
14 Revolving Loan Program.

15 **“§ 159I-2. Findings and purpose.**

16 The General Assembly finds that units of local government need a low-interest
17 source of funds to implement solid waste management programs. Units of local
18 government will confront a crisis in solid waste management in the near future. Within
19 five years of the creation of this program, one-third of all the landfills in this State will
20 have reached their capacity. Many local governments do not have the funds to meet:

- 21 (1) The increased costs of constructing new landfills that meet current
22 standards for the protection of the environment; or
23 (2) The cost of constructing a local or regional incinerator that would
24 serve to reduce the volume of waste to be landfilled; or
25 (3) The costs of implementing alternative programs to reduce the amount
26 of waste generated, to decrease the volume of waste that is generated,
27 or to recover or to recycle that part of the waste stream that can be
28 recovered or used for another purpose.

29 The General Assembly finds that comprehensive solid waste management programs
30 at a local or regional level are needed in order to preserve the quality of North Carolina's
31 groundwater. It is the purpose of the General Assembly to facilitate the implementation
32 of local and regional solid waste management programs by establishing a revolving loan
33 fund for financing the capital expenses of these programs. The General Assembly seeks
34 to encourage and assist units of local government to continue to voluntarily provide
35 solid waste collection and disposal for their citizens, thereby maintaining a clean and
36 healthful environment and an adequate supply of clean water.

37 **“§ 159I-3. Definitions.**

38 (a) Unless a different meaning is required by the context, the following
39 definitions shall apply throughout this Chapter:

- 40 (1) ‘Debt instrument’ means an instrument in the nature of a promissory
41 note executed by a unit of local government under the provisions of
42 G.S. 159I-10, to evidence a debt to the State and obligation to repay
43 the principal, plus interest, under stated terms.

- 1 (2) 'Division' means the Division of Health Services of the Department of
2 Human Resources.
- 3 (3) 'Loan' means moneys loaned by the State to a unit of local government
4 for a project authorized by this Chapter, with an obligation to repay
5 these moneys plus interest.
- 6 (4) 'Local Government Commission' means the Local Government
7 Commission of the Department of the State Treasurer, established by
8 Article 2 of Chapter 159 of the General Statutes.
- 9 (5) 'Unit of local government' means (i) a unit of local government as
10 defined in G.S. 159-44(4), (ii) any combination of units, as defined in
11 G.S. 160A-460(2), entering into a contract or agreement with each
12 other under G.S. 160A-461, or (iii) any joint agency established under
13 G.S. 160A-462, as any such section may be amended from time to
14 time.

15 (b) Unless a different meaning is required by the context, the definitions set out
16 in G.S. 130A-290, as such section may be amended from time to time, shall apply
17 throughout this Chapter.

18 **"§ 159I-4. Solid Waste Management Revolving Loan Fund.**

19 (a) A Fund to be known as the Solid Waste Management Revolving Loan Fund
20 is established. Moneys appropriated to, paid to, or earned by this Fund shall be
21 deposited with the State Treasurer. This Fund shall be administered by the Office of
22 State Budget and Management. The Office of State Budget and Management shall be
23 responsible for receipt and disbursement of all moneys as provided for in this Chapter.

24 (b) Moneys in the Solid Waste Management Loan Fund may be invested in the
25 same manner as permitted for investments of funds belonging to the State or held in the
26 State treasury. Interest earnings derived from such investments shall be credited to the
27 Fund.

28 (c) All payments of interest and principal resulting from loans shall be credited to
29 the Fund. Terms and conditions for repayment of loans are set forth in G.S. 159I-10.

30 **"§ 159I-5. Eligible purpose.**

31 (a) Moneys received into the Solid Waste Management Revolving Loan Fund
32 shall be available for loans to units of local government for capital expenditures to
33 implement a solid waste management project. Eligible uses shall be for the purchase of
34 equipment or facilities, and shall include but are not limited to construction costs of an
35 incinerator; land to be used for recycling facilities; leachate collection and treatment
36 systems; liners for landfills; monitoring wells; recycling equipment and facilities;
37 volume reduction equipment; and financing charges, including estimated interest during
38 construction and for one year thereafter.

39 (b) Loans may not be extended for:

- 40 (1) The operational and maintenance costs of solid waste management
41 facilities or programs;
- 42 (2) General planning or feasibility studies; or
- 43 (3) The purchase of land, unless the land is to be used for a recycling
44 facility.

1 **"§ 159I-6. Loan limit.**

2 The maximum principal amount of a loan made to a unit of local government during
3 any fiscal year shall be two million dollars (\$2,000,000).

4 **"§ 159I-7. Application.**

5 (a) All applications for loans shall be filed with the Division. The information
6 required in the application shall be sufficient to permit the Division to determine the
7 eligibility of the applicant pursuant to G.S. 159I-8 and to establish the priority of the
8 application pursuant to G.S. 159I-9. An applicant shall furnish information in addition
9 or supplemental to the information contained in its application upon written request.

10 (b) Applicants may apply for a loan prior to arranging for repayment pursuant to
11 G.S. 159I-10.

12 **"§ 159I-8. Eligible applicant.**

13 Any applicant is eligible for a loan under this Chapter if it can demonstrate to the
14 satisfaction of the Division that:

- 15 (1) The applicant is a unit of local government;
16 (2) The applicant has the financial capacity to pay the principal and the
17 interest on the loan for which application is made;
18 (3) The applicant has substantially complied or will substantially comply
19 with all applicable laws, rules, regulations and ordinances, federal,
20 State, and local; and
21 (4) The applicant has agreed by official resolution of the unit of local
22 government, or by official resolution of each unit of local government
23 entering into a contract under G.S. 160A-461 or comprising a joint
24 agency, to adopt and place into effect on or before completion of the
25 project a schedule of repayment of all principal and interest on the
26 loan.

27 **"§ 159I-9. Priority factors.**

28 (a) The Division shall develop and adopt, pursuant to Chapter 150B of the
29 General Statutes, rules for the assignment of a priority to each application for a loan
30 under this Chapter.

31 (b) An application for a loan under this Chapter shall be assigned a priority by
32 the Division. Factors to be taken into consideration in assigning such priorities shall
33 include, but are not limited to, current implementation by the unit of local government
34 of a recycling program or a waste stream reduction program; financial need;
35 groundwater protection needs; local effort; public health needs; and the proposed
36 purpose of the applicant's loan is to implement a method of disposal that is an
37 alternative to landfilling.

38 (c) A written statement of each priority assigned shall be prepared by the
39 Division and shall be attached to the application. The priority assigned shall be
40 conclusive.

41 (d) Any application that does not qualify for a loan for the period in which the
42 application was eligible for consideration by reason of the priority assigned shall be
43 considered for a loan during the next period upon written request of the applicant. If the
44 second application should fail to qualify for a loan during the period for consideration

1 by reason of the priority assigned, the application shall receive no further consideration.
2 An applicant may file a new or amended application at any time.

3 **"§ 159I-10. Interest rate; methods of repayment.**

4 (a) At the beginning of each quarter, the interest rate for all loans made during
5 that quarter shall be the lesser of four percent (4%) or one-half of the prevailing national
6 market rate for tax exempt general obligation debt of similar maturities derived from a
7 published indicator. The interest rate established for a given loan shall apply throughout
8 the period of that loan.

9 (b) A unit of local government may arrange to repay a loan by executing a debt
10 instrument payable to the State as a method of repayment. A unit of local government
11 shall pledge as security for such obligations the user fee revenues derived from
12 operation of solid waste facilities, other nontax revenues, or their faith and credit. The
13 faith and credit of a unit of local government shall not be pledged or be deemed to have
14 been pledged unless the requirements of Article 4 of Chapter 159 of the General
15 Statutes, have been met. The Office of State Budget and Management and the State
16 Treasurer, with the assistance of the Local Government Commission, shall develop and
17 adopt appropriate debt instruments for use under this Chapter. The Local Government
18 Commission shall develop and adopt appropriate procedures for the delivery of debt
19 instruments to the State without any public bidding.

20 (c) The Local Government Commission shall review and approve proposed loans
21 to applicants under this Chapter under the provisions of Articles 4 and 5 of Chapter 159
22 of the General Statutes, as if the issuance of bonds was proposed, so far as those
23 provisions are applicable. Loans under this Chapter shall be outstanding debt for the
24 purpose of Article 10 of Chapter 159 of the General Statutes.

25 (d) The proposed schedule for repayment of the loan shall be recommended by
26 the Local Government Commission and agreed to by the unit of local government prior
27 to final award of the loan.

28 (e) Upon any default in the repayment of a loan, the Local Government
29 Commission may, on behalf of the State, initiate such proceedings provided by statute
30 and regulation, including the provisions of G.S. 159-181, as it may deem necessary to
31 recover unpaid principal, interest, penalties, costs and fees due to the State.

32 **"§ 159I-11. Disbursement.**

33 (a) No funds shall be disbursed by the Office of State Budget and Management
34 for any loan until:

35 (1) It has received from the Division a certificate of eligibility that states
36 that the applicant meets all eligibility criteria, and that all procedural
37 requirements of this Chapter have been met; and

38 (2) The unit of local government has confirmed a method of repayment of
39 the loan pursuant to G.S. 159I-10.

40 (b) Once the prerequisites for disbursement have been satisfied pursuant to
41 subsection (a) of this section, the State Treasurer shall establish an account in the
42 amount of the loan and these moneys shall be disbursed as expended through warrants
43 drawn on the State Treasurer.

44 **"§ 159I-12. Withdrawal of commitment.**

1 Failure of an applicant, within one year of the date of acceptance of a loan to arrange
2 for necessary financing of the proposed project, shall constitute sufficient cause for
3 withdrawal of the commitment. Prior to withdrawal of a commitment, the Division
4 shall give due consideration to any extenuating circumstances presented by the
5 applicant as reasons for its failure to arrange necessary financing. The commitment
6 may be extended for an additional period of time if, in the judgment of the Division, an
7 extension is justified.

8 **"§ 159I-13. Inspection.**

9 (a) The Division shall perform one or more inspections of each project and shall
10 monitor its progress. If the Division determines that the project is not in substantial
11 compliance with the approved schedule of implementation, the Division shall revoke its
12 approval of the project, no further disbursement of loan proceeds shall be made, and the
13 outstanding loan, together with accrued interest, shall immediately become due and
14 payable.

15 (b) Inspection of a project for which a loan has been made under this Chapter
16 may be performed by qualified personnel of the Division or by qualified professional
17 engineers, registered in this State, who have been approved by the Division. No person
18 may be approved to perform inspections who is an officer or employee of the unit of
19 local government to which the loan was made or who is an owner, officer, employee or
20 agent of a contractor or subcontractor engaged in the construction of any project for
21 which the loan was made.

22 **"§ 159I-14. Rules.**

23 (a) The Office of State Budget and Management and the Commission for Health
24 Services of the Department of Human Resources may adopt, modify and repeal rules
25 establishing the procedures to be followed in the administration of this Chapter and
26 regulations interpreting and applying the provisions of this Chapter, as provided in the
27 Administrative Procedure Act. Uniform rules may be jointly adopted where feasible
28 and desirable, and no rule jointly adopted may be modified or revoked except upon the
29 concurrence of both agencies involved.

30 (b) A copy of the rules adopted to implement the provisions of this Chapter shall
31 be furnished free of charge by the Division and the Office of State Budget and
32 Management to any unit of local government.

33 **"§ 159I-15. Annual reports to Joint Legislative Commission on Government**
34 **Operations.**

35 (a) The Office of State Budget and Management and the Division shall prepare
36 and file on or before July 31 of each year with the Joint Legislative Commission on
37 Governmental Operations a consolidated report for the preceding fiscal year concerning
38 the allocation of loans authorized by this Chapter.

39 (b) The portion of the report prepared by the Office of State Budget and
40 Management shall set forth for the preceding fiscal year itemized and total allocations
41 from the Solid Waste Management Revolving Loan Fund for loans authorized by the
42 Division. The Office of State Budget and Management shall also prepare a summary
43 report of all allocations made from the Fund for each fiscal year; the total funds

1 received and allocations made; and the total unallocated funds in the Fund as of the end
2 of the preceding fiscal year.

3 (c) The portion of the report prepared by the Division shall include:

4 (1) Identification of each loan made during the preceding fiscal year; the
5 total amount of the loan commitments; the sums actually paid during
6 the preceding fiscal year to each loan disbursed and to each loan
7 previously committed but unpaid; and the total loan funds paid during
8 the preceding fiscal year;

9 (2) A summary for all preceding years of the total number of loans made;
10 the total funds committed to these loans; the total sum actually paid to
11 loans; and

12 (3) Assessment and evaluation of the effects that approved projects have
13 had upon solid waste management within the purposes of this Chapter.

14 (d) The report shall be signed by each of the chief executive officers of the two
15 State agencies preparing the report."

16 Sec. 2. G.S. 159-7(b)(4) reads as rewritten:

17 "(4) 'Debt service' is the sum of money required to pay installments of
18 principal and interest on bonds, notes, and other evidences of debt
19 accruing within a fiscal year, to maintain sinking funds, and to pay
20 installments on debt instruments issued pursuant to Chapter 159G of
21 the General Statutes or Chapter 159I of the General Statutes accruing
22 within a fiscal year."

23 Sec. 3. G.S. 159-35(c) reads as rewritten:

24 "(c) The secretary shall mail to each unit of local government not later than 30
25 days prior to the due date of each payment due to the State under debt instruments
26 issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General
27 Statutes a statement of the amount so payable, the due date, the amount of any moneys
28 due to the unit of local government that will be withheld by the State and applied to the
29 payment, the amount due to be paid by the unit of local government from local sources,
30 the place to which payment should be sent, and a summary of the legal penalties for
31 failing to honor the debt instrument according to its terms. Failure of the secretary
32 timely to mail such statement or otherwise comply with the provisions of this subsection
33 (c) shall not affect in any manner the obligation of a unit of local government to make
34 payments to the State in accordance with any such debt instrument."

35 Sec. 4. G.S. 159-36(b) reads as rewritten:

36 "(b) This section does not apply to contractual obligations undertaken by a unit of
37 local government in a debt instrument issued pursuant to Chapter 159G of the General
38 Statutes or Chapter 159I of the General Statutes unless such debt instrument is secured
39 by a pledge of the faith and credit of the unit of local government."

40 Sec. 5. ♦G.S. 159-45 reads as rewritten:

41 "**§ 159-45. All general obligation bonds subject to Local Government Bond Act.**

42 No unit of local government in this State shall have authority to enter into any
43 contract or agreement, whether oral or written, whereby it borrows money and makes an

1 express or implied pledge of its power to levy taxes as security for repayment of the
2 loan, except by the issuance of:

3 (1) ~~issuance of its~~ Its bonds in accordance with the limitations and
4 procedures prescribed in this Article; ~~or by the~~

5 (2) ~~issuance of its~~ Its negotiable notes in accordance with the limitations
6 and procedures prescribed in Article 9 of this Chapter; ~~or by the~~

7 (3) ~~issuance of debt~~ Debt instruments in accordance with the limitations
8 and procedures prescribed in Chapter 159G of the General Statutes; ~~;~~
9 or

10 (4) Debt instruments in accordance with the limitations and procedures
11 prescribed in Chapter 159I of the General Statutes." ♦ ♦

12 Sec. 6. G.S. 159-46 reads as rewritten:

13 **"§ 159-46. Faith and credit pledged.**

14 The faith and credit of the issuing unit are hereby pledged for the payment of the
15 principal of and interest on all bonds issued under this Article and debt instruments
16 secured by a pledge of its faith and credit in accordance with the limitations and
17 procedures prescribed in Chapter 159G of the General Statutes or Chapter 159I of the
18 General Statutes according to their terms, and the power and obligation of the issuing
19 unit to levy taxes and raise other revenues for the prompt payment of installments of
20 principal and interest or for the maintenance of sinking funds shall be unrestricted as to
21 rate or amount, notwithstanding any other provisions of law whether general, special,
22 local, or private."

23 Sec. 7. G.S. 159-123(d) reads as rewritten:

24 "(d) This section shall not apply to funding or refunding bonds when the
25 governing board of the issuing unit and the holders of the debt to be funded or refunded
26 have agreed to exchange the original obligations for new ones at the same or an adjusted
27 rate of interest. This section also shall not apply to debt instruments that the State has
28 previously agreed to purchase pursuant to Chapter 159G of the General Statutes; ~~or~~
29 Chapter 159I of the General Statutes."

30 Sec. 8. This act shall be construed liberally to effectuate the legislative intent
31 and the purposes as complete and independent authority for the performance of each
32 and every act and thing authorized by this act, and all powers granted shall be broadly
33 interpreted to effectuate the intent and purposes and not as a limitation of powers.

34 Sec. 9. The provisions of this act are severable, and if any provision of this
35 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
36 other provisions of the act which can be given effect without the invalid provision.

37 Sec. 10. There is appropriated from the General Fund to the Solid Waste
38 Management Revolving Loan Fund created in Section 1 of this act the sum of ten
39 million dollars (\$10,000,000) for fiscal year 1989-90 and ten million dollars
40 (\$10,000,000) for fiscal year 1990-91 for the purposes set forth in this act.

41 Sec. 11. This act is effective upon ratification.