

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 115

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

Appropriations Committee Substitute #2 Adopted 7/10/89

Short Title: Solid Waste Loan Fund.

(Public)

Sponsors:

Referred to:

February 6, 1989

A BILL TO BE ENTITLED

1 AN ACT CREATING THE NORTH CAROLINA SOLID WASTE MANAGEMENT
2 CAPITAL PROJECTS FINANCING AGENCY, AUTHORIZING THE
3 ISSUANCE OF AGENCY REVENUE BONDS TO MAKE LOANS TO UNITS OF
4 LOCAL GOVERNMENT FOR SOLID WASTE MANAGEMENT PROJECTS,
5 AUTHORIZING UNITS OF LOCAL GOVERNMENT TO ISSUE SPECIAL
6 OBLIGATION BONDS FOR SOLID WASTE MANAGEMENT PROJECTS,
7 AMENDING CERTAIN GENERAL LAWS AND MAKING APPROPRIATIONS
8 TO SAID AGENCY.
9

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

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

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

21 Whereas, the pooling of the financing needs of several units of local
22 government and the issuance of bonds by an instrumentality of the State to finance the

1 cost of solid waste management projects will reduce the costs of such financing and will
2 increase the number of financing options available by, among other things, providing
3 access to a broader bond market than would otherwise be available to units of local
4 government with intermittent financing needs, by reducing issuance and marketing
5 expenses and by providing such units with the opportunity to obtain credit and liquidity
6 enhancement facilities that might otherwise be unavailable or more costly, thus reducing
7 interest costs to such units; and

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

11 Whereas, the Legislative Research Commission and its Solid Waste
12 Management Study Committee has determined that it would serve the interests of the
13 State to establish a loan fund to provide loans to those units of local government that are
14 trying to address their solid waste problems; and

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

18 Whereas, on March 29, 1988, the North Carolina Commission on Jobs and
19 Economic Growth adopted a recommendation that a solid waste management revolving
20 loan fund be established; Now, therefore,

21 The General Assembly of North Carolina enacts:

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

23 **“CHAPTER 159I**

24 **“NORTH CAROLINA SOLID WASTE**
25 **MANAGEMENT LOAN PROGRAM.**

26 **“§ 159I-1. Short title.**

27 This Chapter may be cited as the North Carolina Solid Waste Management Loan
28 Program.

29 **“§ 159I-2. Findings and purpose.**

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

- 35 (1) The increased costs of constructing new landfills that meet current
36 standards for the protection of the environment; or
37 (2) The cost of constructing a local or regional incinerator that would
38 serve to reduce the volume of waste to be landfilled; or
39 (3) The costs of implementing alternative programs to reduce the amount
40 of waste generated, to decrease the volume of waste that is generated,
41 or to recover or to recycle that part of the waste stream that can be
42 recovered or used for another purpose.

43 The General Assembly finds that comprehensive solid waste management programs
44 at a local or regional level are needed in order to preserve the quality of North Carolina's

1 groundwater. It is the purpose of the General Assembly to facilitate the implementation
2 of local and regional solid waste management programs by establishing a loan fund for
3 financing the capital expenses of these programs. The General Assembly seeks to
4 encourage and assist units of local government to continue to voluntarily provide solid
5 waste collection and disposal for their citizens, thereby maintaining a clean and
6 healthful environment and an adequate supply of clean water.

7 **"§ 159I-3. Definitions.**

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

10 (1) 'Administrative charges' means any charge made by the Agency to a
11 unit of local government for the providing of financing pursuant to this
12 Chapter and may include, without limitation, charges for financing
13 costs, charges for the costs of bond and reserve fund insurance, of
14 credit-enhancement and liquidity facilities, and of interest-rate
15 agreements, charges in respect of nonasset bond and investment
16 income deficiencies, and charges for administrative expenses of the
17 Agency incurred in the exercise of its powers and duties conferred by
18 this Chapter.

19 (2) 'Agency' means the North Carolina Solid Waste Management Capital
20 Projects Financing Agency.

21 (3) 'Board' means the board of directors of the Agency or any other
22 governing body of the Agency succeeding to the principal functions of
23 the Agency.

24 (4) 'Bonds' means the revenue bonds authorized to be issued by the
25 Agency under this Chapter. As used in this Chapter, the term 'bonds'
26 does not include any loan agreement.

27 (5) 'Costs' means the capital cost of acquiring or constructing any project,
28 including, without limitation, the following:

29 a. The costs of doing any or all of the following deemed necessary
30 or convenient by a unit of local government:

31 1. Acquiring, constructing, erecting, providing, developing,
32 installing, furnishing, and equipping;

33 2. Reconstructing, remodeling, altering, renovating,
34 replacing, refurbishing, and re-equipping;

35 3. Enlarging, expanding, and extending; and

36 4. Demolishing, relocating, improving, grading, draining,
37 landscaping, paving, widening, and resurfacing.

38 b. The costs of all property, both real and personal and both
39 improved and unimproved, and of plants, works, appurtenances,
40 structures, facilities, furnishings, machinery, equipment,
41 vehicles, easements, water rights, air rights, franchises, and
42 licenses used or useful in connection with the purpose
43 authorized;

- 1 c. The costs of demolishing or moving structures from land
2 acquired and acquiring any lands to which such structures
3 thereafter are to be moved;
- 4 d. Financing charges, including estimated interest during the
5 acquisition or construction of such project and for six months
6 thereafter;
- 7 e. The costs of services to provide and the cost of plans,
8 specifications, studies and reports, surveys, and estimates of
9 costs and revenues;
- 10 f. The costs of paying any interim financing, including principal,
11 interest, and premium, related to the acquisition or construction
12 of a project;
- 13 g. Administrative and legal expenses and administrative charges;
- 14 h. The costs of obtaining bond and reserve fund insurance and
15 investment contracts, of credit-enhancement facilities, liquidity
16 facilities and interest-rate agreements, and of establishing and
17 maintaining debt service and other reserves; and
- 18 i. Any other services, costs, and expenses necessary or incidental
19 to the purpose authorized.
- 20 (6) 'Division' means the Division of Health Services of the Department of
21 Human Resources and any successor of said Division.
- 22 (7) 'Loan' means moneys loaned by the Agency to a unit of local
23 government for a project authorized by this Chapter.
- 24 (8) 'Loan agreement' means any bond, note, contract, loan agreement, or
25 other written agreement of a unit of local government delivered to the
26 Agency and evidencing the unit's receipt of loan proceeds from the
27 sale of all or a portion of the Agency's bonds or from other available
28 money of the Agency and setting forth the terms of the unit's
29 agreement to make payments to the Agency in respect of such loan.
- 30 (9) 'Local Government Commission' means the Local Government
31 Commission of the Department of the State Treasurer, established by
32 Article 2 of Chapter 159 of the General Statutes and any successor of
33 said Commission.
- 34 (10) 'Notes' means the revenue notes or revenue bond anticipation notes
35 authorized to be issued by the Agency under this Chapter. As used in
36 this Chapter, the term 'notes' does not include any loan agreement.
- 37 (11) 'Project' means any capital project authorized to be financed in G.S.
38 159I-8.
- 39 (12) 'Revenues' means all moneys received by the Agency, other than the
40 proceeds received by the Agency from the sale of bonds or notes and
41 moneys appropriated by the State for the Solid Waste Management
42 Loan Fund, in connection with the providing of financing to units of
43 local government, including without limitation;

- 1 a. The payments received by the Agency of the principal of and
2 premium, if any, and interest on loan agreements;
3 b. Administrative charges, but only to the extent determined by
4 the Agency; and
5 c. Investment earnings on all revenues, funds, and other moneys
6 of the Agency.

7 (13) 'Unit of local government' or 'unit' means:

- 8 a. A unit of local government as defined in G.S. 159-44(4);
9 b. Any combination of units, as defined in G.S. 160A-460(2),
10 entering into a contract or agreement with each other under G.S.
11 160A-461; or
12 c. Any joint agency established under G.S. 160A-462; as any such
13 section may be amended from time to time.

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

17 **"§ 159I-4. Creation of Agency.**

18 (a) A body politic and corporate to be known as the 'North Carolina Solid Waste
19 Management Capital Projects Financing Agency' is created. This Agency shall be a
20 public agency and an instrumentality of the State for the performance of essential
21 governmental and public functions.

22 (b) The Board of Directors of this Agency shall be its governing board, which
23 shall consist of five members. One of the members of the Board shall be the State
24 Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the
25 Board of Directors. Two members shall be appointed by the Governor, one member
26 shall be appointed by the General Assembly upon the recommendation of the Speaker
27 of the House of Representatives in accordance with G.S. 120-121 and one member shall
28 be appointed by the General Assembly upon the recommendation of the President Pro
29 Tempore in accordance with G.S. 120-121. The appointments to be made initially by
30 the Governor shall be for terms beginning on the dates of their respective appointments
31 and expiring on June 30, 1990, and June 30, 1992. The appointments to be made
32 initially by the General Assembly as recommended by the Speaker of the House of
33 Representatives and by the General Assembly as recommended by the President Pro
34 Tempore of the Senate shall be for terms beginning on the date of their respective
35 appointments and expiring on June 30, 1991. Appointments made to succeed the initial
36 appointments shall be for two-year terms commencing, respectively, on July 1, 1990,
37 July 1, 1991, and July 1, 1992, and subsequent appointments shall be for two-year
38 terms.

39 (c) All members of the Board shall remain in office until their successors are
40 appointed and qualify. Vacancies in appointments made by the Governor shall be filled
41 by the Governor for the remainder of the unexpired terms. Vacancies in appointments
42 made by the General Assembly shall be filled in accordance with G.S. 120-122.
43 Persons appointed to fill vacancies shall qualify in the same manner as persons
44 appointed for full terms.

1 (d) Any member of the Board may be removed from office for misfeasance,
2 malfesance, nonfesance, or improper influence in accordance with the provisions of
3 G.S. 143B-13 and the resulting vacancy shall be filled as provided herein for vacancies
4 in general.

5 (e) The Board of Directors shall adopt bylaws with respect to the call of
6 meetings, quorums, voting procedures, the keeping of records, and such other
7 organizational and administrative matters as the Board of Directors may determine. A
8 quorum shall consist of no less than three members of the Board.

9 (f) No vacancy in the membership of the Board of Directors shall impair the
10 right of a quorum to exercise all rights and to perform all the duties of the Board of
11 Directors and the Agency.

12 (g) No part of the revenues or assets of the Agency shall inure to the benefit of or
13 be distributable to its members or officers or other private persons. The members of the
14 Board of Directors shall receive no salary for their services but shall be entitled to
15 receive per diem and allowances in accordance with the provisions of G.S. 138-5.

16 (h) The Agency shall be contained within the Department of State Treasurer as if
17 it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-
18 6(b).

19 **"§ 159I-5. General powers of the Agency.**

20 The Agency shall have all of the powers necessary or convenient to carry out and to
21 effect the purposes and provisions of this Chapter, including, without limitation, the
22 powers:

- 23 (1) To make and execute contracts and agreements necessary or incidental
24 to the exercise of its powers and duties under this Chapter, including,
25 without limitation, agreements in respect of loan agreements and
26 agreements with issuers of credit-enhancement facilities, liquidity
27 facilities, bond insurance policies, reserve fund insurance policies and
28 investment contracts, and interest-rate agreements;
- 29 (2) To contract with any unit of local government with respect to any of
30 the matters covered by this Chapter;
- 31 (3) To establish a debt service reserve fund or funds, from moneys in the
32 Solid Waste Management Loan Fund or from other available moneys,
33 and other reserve funds and to borrow money to purchase insurance
34 and investment contracts to establish, maintain, or increase such funds;
- 35 (4) To agree to apply and assign any money, loan agreements, and other
36 revenues;
- 37 (5) To borrow money as herein provided to carry out and effect its
38 corporate purposes and to issue in evidence thereof bonds, notes, or
39 bond anticipation notes for the purpose of providing funds therefor,
40 including funds for the financing and refinancing of the cost of the
41 acquisition or construction of projects, including the payment or
42 advance on behalf of units of local government of the costs of such
43 projects;

- 1 (6) To apply any payments, or prepayments, or principal of or interest on
2 any loan agreement, to the extent such payment or prepayment is not
3 necessary to pay debt service on the Agency's bonds or notes, to the
4 financing of the cost of the acquisition or construction of projects for
5 units of local government to the same extent as provided in G.S. 159I-
6 6;
- 7 (7) To fix, revise, charge and collect, or cause to be fixed, revised,
8 charged, and collected, and to apportion administrative charges among
9 units of local government participating in any program of the Agency;
- 10 (8) To employ an administrator to administer the operations of the
11 Agency, fiscal and financial consultants, underwriters, attorneys,
12 trustees, remarketing agents, and such other consultants, agents, and
13 employees as may be required in the judgment of the Agency and to
14 fix and pay their compensation from funds available to the Agency;
- 15 (9) To apply for, accept, receive and agree to, and to comply with the
16 terms and conditions governing grants, loans, advances, contributions,
17 gifts, and other aid from any source whatsoever, including federal and
18 State sources;
- 19 (10) To sue and be sued in its own name, to plead and be impleaded;
- 20 (11) To adopt an official seal and to alter the same at its pleasure;
- 21 (12) To establish and revise from time to time minimum financial standards
22 and criteria for determining the eligibility of specific units of local
23 government to obtain financing and to make loans as provided in this
24 Chapter;
- 25 (13) To deposit, disburse, and invest, pursuant to the provisions of this
26 Chapter, the proceeds of any fund established in accordance with this
27 Chapter and to determine the application of the proceeds of any
28 earnings thereon, subject to the specific provisions of this Chapter; and
- 29 (14) To act as otherwise necessary or convenient to carry out the purposes
30 of this Chapter.

31 **"§ 159I-6. Specific powers of the Agency.**

32 (a) The Agency shall have the discretion to enter into one or more loan
33 agreements with a unit of local government, providing for the making of a loan by the
34 Agency to the unit of local government, to finance or refinance the cost of the
35 acquisition or construction of a project; and

36 (b) Any loan agreement entered into by the Agency with a unit of local
37 government shall be in writing and shall set forth the terms and conditions agreed to
38 between the Agency and the unit of local government for the Agency's loan to such unit
39 of local government including, without limitation, the following:

- 40 (1) The term of such loan agreement;
- 41 (2) The payment provisions and prepayment provisions, if any, required:
- 42 a. To enable the Agency to administer its programs;

- 1 b. To pay when due the principal of and premium, if any, and
2 interest on bonds or notes or other obligations of the Agency
3 incurred to make such loan; and
4 c. To pay or reimburse the Agency for such unit's administration
5 charges and the cost of establishing and maintaining any
6 reserves;
7 (3) The security for payment by the unit of local government of the loan;
8 and
9 (4) Such other provisions and covenants as the Board may require.

10 (c) Nothing in this Chapter shall be deemed to change the application of the
11 provisions of Article 8 of Chapter 143 of the General Statutes, relating to competitive
12 bidding for public contracts, or the application of the provisions of Article 3 of Chapter
13 143 of the General Statutes specifically including the provisions of G.S. 143-49(6), as it
14 applies to units of local government financing projects under this Chapter. To the extent
15 that units comply with such competitive bidding requirements, there shall be no further
16 requirements in respect of the Agency.

17 **"§ 159I-7. Solid Waste Management Loan Fund.**

18 (a) A Fund to be known as the Solid Waste Management Loan Fund is
19 established. Moneys appropriated to, paid to, or earned by this Fund shall be deposited
20 with the State Treasurer or a corporate trustee as provided for in G.S. 159I-16, as may
21 be determined by the Board.

22 (b) Moneys in the Solid Waste Management Loan Fund may be invested in the
23 same manner as permitted for investments of funds belonging to the State or held in the
24 State treasury. Interest earnings derived from such investments shall be credited to the
25 Fund, credited to such other use as may be provided in a trust agreement or resolution
26 securing any bonds or notes issued under the provisions of this Chapter, or credited to
27 such other use, including the payment of administrative expenses of the Agency, the
28 costs of research for solid waste management programs and the making of grants for
29 such research, as may be directed by the Board.

30 In connection with solid waste research to be contracted for by the Solid Waste
31 Branch, the Secretary of the Department to which that Branch is assigned, statutorially,
32 shall negotiate, with the Board of the Agency, a memorandum of agreement which shall
33 contain necessary rules and provisions for certifying that proper competitive bid
34 procedures, and when appropriate, proper sole source bid procedures, for contracts have
35 been executed in connection with a Request for Proposals (RFP); and, which shall state
36 that previously determined one-to-one match requirement from private sector sources
37 has been met in accordance with rules and provisions set out in the memorandum of
38 agreement, that the Secretary is ready to award a contract for a specified amount. The
39 Treasurer, at the direction of the board, shall certify that funds are available and that the
40 purpose of the contract is consistent with provisions for the use of solid waste loan
41 program proceeds.

42 (c) Moneys in the Solid Waste Management Loan Fund may be used, as shall be
43 determined by the Board, for any one or more of the following purposes:

- 44 (1) The establishment of one or more debt service reserve funds;

- 1 (2) The obtaining of one or more credit facilities as hereinafter defined in
2 this Chapter;
- 3 (3) The making of loans to units of local government, which loans may be
4 evidenced by debt instruments; and
- 5 (4) The subsidization of interest rates on loans to units of local
6 government.

7 In addition, any investment income or profit on moneys in the Solid Waste
8 Management Loan Fund or on any moneys transferred from the Fund to a debt service
9 reserve fund may be used, as shall be determined by the Board, to pay administrative
10 expenses of the Agency.

11 (d) As used in this section, 'debt instrument' means an instrument in the nature of
12 a promissory note executed by a unit of local government to evidence a debt to the
13 Agency in respect of a loan made to the unit from the Solid Waste Management Loan
14 Fund and obligation to repay the principal, plus interest, under stated terms.

15 **"§ 159I-8. Eligible purpose.**

16 (a) Loans may be made by the Agency to finance the cost of acquisition or
17 construction of projects. Projects shall include solid waste management projects and
18 capital expenditures to implement such projects, including, without limitation, the
19 purchase of equipment or facilities, construction costs of an incinerator; land to be used
20 for recycling facilities; leachate collection and treatment systems; liners for landfills;
21 monitoring wells; recycling equipment and facilities; volume reduction equipment; and
22 financing charges.

23 (b) Projects may not include:

- 24 (1) The operational and maintenance costs of solid waste management
25 facilities or programs;
- 26 (2) General planning or feasibility studies; or
- 27 (3) The purchase of land, unless the land is to be used for a recycling
28 facility.

29 **"§ 159I-9. Application.**

30 (a) All applications for loans shall be filed with the Division. The information
31 required in the application shall be sufficient to permit the Division to determine the
32 eligibility of the applicant pursuant to G.S. 159I-10 and to establish the priority of the
33 application pursuant to G.S. 159I-11. An applicant shall furnish information in addition
34 or supplemental to the information contained in its application upon written request.

35 (b) Applicants may apply for a loan prior to arranging for repayment.

36 **"§ 159I-10. Eligible applicant.**

37 (a) In determining the eligibility of a unit of local government for financing a
38 project with a loan from the Agency, the Agency may consider:

- 39 (1) The type and useful life of and the need for the project to be financed
40 or refinanced;
- 41 (2) The amount of financing or the cost of the project sought;
- 42 (3) The credit rating, if any, of the unit of local government;
- 43 (4) The future financing and capital needs of the unit of local government;

- 1 (5) The availability and cost to the unit of local government of other
2 methods of financing;
3 (6) The construction, disbursement, and management procedures in effect
4 in the unit of local government; and
5 (7) Such other factors as the Agency may, in its discretion, determine to
6 be relevant in the providing of such financing.
7 (b) As a condition of determining eligibility for participating in one or more
8 financing programs, the Agency may establish:
9 (1) Procedures requiring compliance by units of local government with
10 such construction, disbursement and accounting procedures, and
11 programs as the Agency may determine;
12 (2) Minimum credit ratings or criteria;
13 (3) Minimum and maximum amounts with respect to the cost of the
14 projects to be financed under this Chapter;
15 (4) Procedures that may be employed by the Agency in respect of units of
16 local government that default in their obligations under loan
17 agreements; and
18 (5) Such other procedures, conditions, and requirements as the Agency
19 determines to be necessary or desirable in establishing its programs.

20 Nothing in this Chapter shall be deemed to restrict or limit the powers otherwise
21 available to a unit of local government except to the extent restricted by the terms of any
22 loan agreements or other agreements between a unit and the Agency, to obtain financing
23 or refinancing for projects from a source other than the Agency or to establish or
24 continue its own financing program or to enter into any other financing program.

25 **"§ 159I-11. Priority factors.**

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

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

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

40 (d) Any application that does not qualify for a loan for the period in which the
41 application was eligible for consideration by reason of the priority assigned shall be
42 considered for a loan during the next period upon written request of the applicant. If the
43 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-12. Units of local government authorized to borrow money from the**
4 **Agency by loans.**

5 (a) Any unit of local government determined by the Agency to be eligible
6 pursuant to G.S. 159I-10 may borrow money from the Agency for the purpose of
7 financing or refinancing the cost of the acquisition or construction of a project by a unit.
8 The unit shall enter into a loan agreement with the Agency. The loan agreement shall
9 set forth the terms and conditions of the loan, including the terms and conditions
10 described in G.S. 159I-6(b), as determined and approved by the governing body of the
11 unit.

12 (b) The obligation of a unit of local government under any loan agreement
13 entered into with the Agency pursuant to this section shall be payable and otherwise
14 secured as provided in G.S. 159I-13.

15 (c) In connection with entering into a loan obligation, any unit of local
16 government may enter into a credit facility, as defined in G.S. 159I-13(g), and the
17 obligation of a unit of local government under the credit facility to repay any drawing
18 thereunder may be made payable and otherwise secured, to the extent applicable, as
19 provided in G.S. 159I-13.

20 (d) The Agency or a unit of local government may propose an amendment,
21 including an amendment restructuring or otherwise relating to the principal repayment
22 schedule and the interest payment schedule set forth in such loan agreement, upon a
23 determination by the Agency that such amendment is:

24 (1) Consistent with the then existing financial condition of the unit of local
25 government and its ability to meet its agreement under the loan
26 agreement; and

27 (2) Consistent with the then existing financial condition of the Agency and
28 the administration of the Agency's duties and responsibilities under
29 this Chapter.

30 Nothing in this Chapter shall be deemed as restricting the power of the Agency or
31 the unit of local government to agree to any amendment to a loan agreement.

32 (e) No loan agreement or amendment to a loan agreement may become effective
33 without the approval of the Local Government Commission. In determining whether a
34 loan agreement or any amendment thereto should be approved, the Local Government
35 Commission may consider, to the extent applicable as shall be determined by the Local
36 Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86. The
37 Local Government Commission shall approve any such loan agreement, or any
38 amendment thereto, if, upon the information and evidence it receives, it finds and
39 determines that such loan agreement, or amendment thereto, will satisfy its criteria and
40 is consistent with the purposes of this Chapter. After considering a loan agreement or
41 an amendment thereto, the Local Government Commission shall enter its order either
42 approving or disapproving such agreement or amendment. An order of approval may
43 not be regarded as an approval of the legality of such agreement or amendment. The

1 order of the Local Government Commission disapproving such agreement or
2 amendment is final.

3 **"§ 159I-13. Sources and security for units of local government.**

4 (a) The source or sources of and the security for payment of each loan agreement
5 shall be determined by the governing body of such unit of local government and shall be
6 set forth in the loan agreement.

7 (b) In the event that, under the provisions of The Local Government Bond Act a
8 bond order authorizing the issuance of bonds that pledge the faith and credit of a unit of
9 local government, that is otherwise authorized to issue bonds under the act, for the
10 purpose of providing funds for one or more purposes that constitute eligible projects
11 within the meaning of this Chapter has taken effect, then, in lieu of issuing any bonds
12 authorized or any bond anticipation note in anticipation of such bonds, but not sold and
13 delivered pursuant to such order, the governing body of any unit of local government
14 may enter into a loan agreement authorized by this Chapter and may pledge the faith
15 and credit of such unit to secure its obligation to make the payments required under
16 such loan agreement or a credit facility in support of such loan agreement, provided the
17 following conditions are met:

18 (1) The aggregate principal amount due under such loan agreement does
19 not exceed the aggregate amount of authorized but unissued bonds, or
20 any bond anticipation notes in anticipation of such bonds, under the
21 bond order; and

22 (2) The project to be acquired is a purpose for which proceeds of bonds or
23 bond anticipation notes may be expended under the bond order.

24 (c) Each unit of local government may agree to apply to the payment of a loan
25 agreement any available source or sources of revenues of such unit and, to the extent the
26 generation of such revenues is within the power of such unit, to enter into covenants to
27 take action in order to generate such revenues, provided such agreement to use such
28 sources to make payments or such covenant to generate revenues does not constitute a
29 pledge of the unit's taxing power.

30 (d) Each unit of local government otherwise having the power of taxation may
31 enter into loan agreements constituting a continuing contract and providing for the
32 making of payments in ensuing fiscal years from any available source or sources of
33 revenues, including the proceeds of taxes realized from the exercise of the unit's power
34 of taxation, appropriated by the unit in its annual budget provided:

35 (1) The governing body of such unit shall have appropriated sufficient
36 funds to pay any amount to be paid under the loan agreement in the
37 fiscal year in which such contract is entered into, this appropriation to
38 be made prior to the entering into of the loan agreement;

39 (2) There is included in the loan agreement a provision automatically
40 cancelling the loan agreement in the event the governing body of the
41 unit decides not to appropriate funds to make payment in an ensuing
42 fiscal year in which the obligation of the unit to make any future
43 payments in any ensuing fiscal year shall cease;

1 (3) No deficiency judgment requiring the exercise of the unit's power of
2 taxation may be entered against the unit in any action for breach of a
3 contractual obligation authorized by this subsection; and

4 (4) The taxing power of the unit is not pledged to secure any payments to
5 be made pursuant to the loan agreement and the Agency shall have
6 agreed that it has no right to require the exercise of a unit's power of
7 taxation to secure such loan agreement.

8 No loan agreement may contain a nonsubstitution clause which restricts the right of
9 a unit to replace or provide a substitute for any project financed pursuant to the loan
10 agreement.

11 (e) The obligation of a unit of local government with respect to the sources of
12 revenues authorized by subsections (c) and (d) of this section shall be specifically
13 identified in the proceedings of the governing body authorizing the unit to enter into a
14 loan agreement. This loan agreement shall be valid and binding from the date the unit
15 enters into the loan agreement. The sources of payment so specifically identified and
16 then held or thereafter received by a unit, any fiduciary, or the Agency shall
17 immediately be subject to the lien of the loan agreement without any physical delivery
18 of such sources or further act. This lien shall be valid and binding as against all parties
19 having claims of any kind in tort, contract, or otherwise against a unit without regard to
20 whether such parties have notice thereof. The proceedings, the loan agreement, or any
21 other document or action by which the lien on a source of payment is created need not
22 be filed or recorded in any manner other than as provided in the Chapter.

23 Any loan agreement secured by a source or sources of revenue authorized by
24 subsection (b), (c) or (d) of this section may provide additional security by the granting
25 of a security interest in the project financed to secure payment of the purchase money
26 provided by the loan agreement, including a deed of trust on any real property so
27 acquired.

28 (f) The interest payable by a unit to the Agency on any loan agreement may be at
29 such rate or rates, including variable rates, as may be determined by the Local
30 Government Commission with the approval of the governing body of such unit. Such
31 approval may be given as the governing body of such unit may direct, including without
32 limitation, a certificate signed by a representative of the unit designated by the
33 governing body of such unit. The Agency may determine that it is necessary that certain
34 provisions in the Agency's bonds or notes be reflected, in similar terms, in loan
35 agreements, so that if it is necessary to vary the interest rate or call the principal prior to
36 maturity of certain of the Agency's bonds or notes the Agency will have the power to
37 effect a similar variation in interest rate or a similar call prior to maturity of certain loan
38 agreements. Accordingly, in fixing the details of a loan agreement, the governing body
39 of such unit may provide that a loan agreement be:

40 (1) Made payable from time to time on demand or tender for purchase by
41 the Agency, provided a credit facility supports such a loan agreement.
42 A credit facility is not required if the governing body of such unit
43 specifically determines that a credit facility is not required upon a
44 finding and determination by the governing body that the absence of a

1 credit facility will not affect the unit's ability to make payments on
2 demand or tender, and will not materially and adversely affect the
3 financial position of the unit and the entering into of the loan
4 agreement at a reasonable interest cost to the unit;

5 (2) Additionally supported by a credit facility;

6 (3) Made subject to redemption or a mandatory tender for purchase by the
7 unit prior to maturity; and

8 (4) Bear interest at a rate or rates that may vary for such period or periods
9 of time, all as may be provided in the proceedings of the governing
10 body providing for the entering into of the loan agreement, including,
11 without limitation, such variations as may be permitted pursuant to a
12 par formula.

13 (g) As used in this section:

14 (1) 'Credit facility' means an agreement entered into by the unit of local
15 government with a bank, savings and loan association, or other
16 banking institution; an insurance company, reinsurance company,
17 surety company or other insurance institution; a corporation,
18 investment banking firm or other investment institution; or any
19 financial institution providing for prompt payment of all or any part of
20 the principal or purchase price (whether at maturity, presentment, or
21 tender for purchase, redemption, or acceleration), redemption
22 premium, if any, and interest on any loan agreement payable on
23 demand or tender by the Agency, in consideration of the unit agreeing
24 to repay the provider of such credit facility in accordance with the
25 terms and provisions of the agreement; the provider of any credit
26 facility may be located either within or without the United States of
27 America.

28 (2) 'Par formula' shall mean any provision or formula adopted by the unit
29 to provide for the adjustment from time to time, of the interest rate or
30 rates borne by any loan agreement, including:

31 a. A provision providing for such adjustment so that the purchase
32 price of such loan agreement in the open market would be as
33 close to par as possible.

34 b. A provision providing for such adjustment based upon a
35 percentage or percentages of a prime rate or base rate, which
36 percentage or percentages may vary or be applied for different
37 periods of time.

38 c. A provision providing for such adjustment based upon the
39 adjustments of the interest rate or rates of the Agency's bonds
40 and notes, or

41 d. Such other provision as the unit may determine to be consistent
42 with this Chapter and will not affect the unit's ability to pay the
43 principal of and the interest on any loan agreement, and will not
44 materially and adversely affect the financial position of the unit

1 and the entering into of the loan agreement at a reasonable
2 interest cost to the unit.

3 (h) Any loan agreement may provide for an acceleration of the repayment
4 schedule.

5 **"§ 159I-14. Credit of State not pledged.**

6 Bonds or notes issued by the Agency under the provisions of this Chapter shall not
7 be secured by a pledge of the faith and credit of the State or of any political subdivision
8 thereof or be deemed to create an indebtedness of the State, or of any such political
9 subdivision thereof, requiring any voter approval, but shall be payable solely from
10 Agency revenues and other funds provided therefor. Each bond or note issued by the
11 Agency under this Chapter shall contain on its face a statement to the effect that the
12 Agency shall not be obligated to pay the same, the interest, or the premium thereon
13 except from Agency revenues and other funds pledged therefor and that neither the faith
14 and credit nor the taxing power of the State or of any political subdivision thereof is
15 pledged as security for the payment of the principal of or the interest or premium on
16 such Agency bond or note.

17 Expenses incurred by the Agency in carrying out the provisions of this Chapter shall
18 be payable from revenues and other funds provided pursuant to, or available for use
19 under, this Chapter. No liability may be incurred by the Agency beyond the extent to
20 which moneys shall have been so provided.

21 **"§ 159I-15. Bonds and notes.**

22 (a) The Agency may provide for the issuance at one time or from time to time of
23 bonds and notes, including bond anticipation notes and renewal notes, of the Agency to
24 carry out and effectuate its corporate purposes. The principal of and interest on such
25 bonds or notes shall be payable solely from funds provided under this Chapter for such
26 payment. Any bond anticipation notes may be made payable from the proceeds of
27 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,
28 notes may be paid from any available Agency revenues or other funds provided for this
29 purpose. Bonds and notes may also be paid from the proceeds of any credit facility.
30 The bonds and notes of each issue shall be dated and may be made redeemable prior to
31 maturity at the option of the Agency or otherwise, at such price or prices, on such date
32 or dates, and upon such terms and conditions as may be determined by the Agency. The
33 bonds or notes may also be made payable from time to time on demand or tender for
34 purchase by owner, all upon such terms and conditions as may be determined by the
35 Agency. Any such bonds or notes shall bear interest at such rate or rates, including
36 variable rates, as may be determined by the Local Government Commission with the
37 approval of the Agency.

38 The Agency may also issue one or more series of bonds and notes, including bond
39 anticipation notes and renewal notes, from time to time, to make loans to an individual
40 unit of local government upon a determination, by resolution, of the Board as follows:

- 41 (1) The issuance of a series of bonds or notes by the Agency in order to
42 make a loan to an individual unit of local government, as distinct from
43 the proceeds of such series of bonds or notes being used to provide a
44 pool of money to make a number of such loans, does not materially

1 adversely affect the ability of the Agency to effect its general policy of
2 making loans on a pooled basis.

3 (2) The issuance of the series of bonds or notes will not economically
4 disadvantage the Agency and will provide an economic benefit to the
5 individual unit of local government.

6 (3) The use, if any, of any of the proceeds of the Solid Waste Management
7 Loan Fund in connection with the Agency financing for an individual
8 unit of local government is consistent with the Agency's use of any
9 proceeds in connection with loans made on a pooled basis.

10 All of the provisions of this Chapter, including, without limitation, G.S. 159I-13 relating
11 to the sources and security that may be used by units of local government in making
12 loans, shall apply to any Agency financing for an individual unit of local government.

13 (b) In fixing the details of bonds or notes, the Agency may provide that any of
14 the bonds or notes may:

15 (1) Be made payable from time to time on demand or tender for purchase
16 by the owner thereof provided a credit facility supports such bonds or
17 notes, unless the Local Government Commission specifically
18 determines that a credit facility is not required upon a finding and
19 determination by the Local Government Commission that the absence
20 of a credit facility will not materially and adversely affect the financial
21 position of the Agency and the marketing of the bonds or notes at a
22 reasonable interest cost to the Agency;

23 (2) Be additionally supported by a credit facility;

24 (3) Be made subject to redemption or a mandatory tender for purchase
25 prior to maturity;

26 (4) Bear interest at a rate or rates that may vary for such period or periods
27 of time, all as may be provided in the proceedings providing for the
28 issuance of such bonds or notes including, without limitation, such
29 variations as may be permitted pursuant to a par formula; and

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

34 (c) As used in this section:

35 (1) 'Credit facility' means an agreement entered into by the Agency with a
36 bank, savings and loan association or other banking institution, an
37 insurance company, reinsurance company, surety company or other
38 insurance institution, a corporation, investment banking firm or other
39 investment institution, or any financial institution providing for prompt
40 payment of all or any part of the principal or purchase price (whether
41 at maturity, presentment or tender for purchase, redemption or
42 acceleration), redemption premium, if any, and interest on any bonds
43 or notes payable on demand or tender by the owner, in consideration of
44 the Agency agreeing to repay the provider of such credit facility in

1 accordance with the terms and provisions of such agreement; the
2 provider of any credit facility may be located either within or without
3 the United States of America.

4 (2) 'Par formula' means any provision or formula adopted by the Agency
5 to provide for the adjustment, from time to time, of the interest rate or
6 rates borne by any bonds or notes including:

7 a. A provision providing for the adjustment so that the purchase
8 price of the bonds or notes in the open market would be as close
9 to par as possible;

10 b. A provision providing for the adjustment based upon a
11 percentage or percentages of a prime rate or base rate, which
12 percentage or percentages may vary or be applied for different
13 periods of time; or

14 c. Such other provisions as the Agency may determine to be
15 consistent with this Chapter and will not materially and
16 adversely affect the financial position of the Agency and the
17 marketing of the bonds or notes at a reasonable interest cost to
18 the Agency.

19 (d) Notes shall mature at such time or times and bonds shall mature, not
20 exceeding 40 years from their date or dates, as may be determined by the Agency. The
21 Agency shall determine the form and manner of execution of the bonds or notes,
22 including any interest coupons to be attached thereto, and shall fix the denomination or
23 denominations and the place or place of payment of principal and interest, which may
24 be any bank or trust company within or without the United States. In case any officer
25 whose signature or a facsimile of whose signature shall appear on any bonds or notes or
26 coupons, if any, shall cease to be this officer before the delivery thereof, this signature
27 or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if
28 the officer had remained in office until the delivery and any bond or note or coupon may
29 bear the facsimile signatures of such persons who at the actual time of the execution
30 thereof shall be the proper officers to sign although at the date of the bond or note or
31 coupon the persons may not have been these officers. The Agency may also provide for
32 the authentication of the bonds or notes by a trustee or other authenticating agent. The
33 bonds or notes may be issued as certificated or uncertificated obligations or both, and in
34 coupon or in registered form, or both, as the Agency may determine. Provision may be
35 made for the registration of any coupon bonds or notes as to principal alone and also as
36 to both principal and interest, and for the reconversion into coupon bonds or notes of
37 any bonds or notes registered as to both principal and interest, and for the interchange of
38 registered and coupon bonds or notes. Any system for registration may be established
39 as the Agency may determine.

40 (e) No bonds or notes may be issued by the Agency under this Chapter unless the
41 issuance thereof is approved and the bonds or notes are sold by the Local Government
42 Commission as provided in this Chapter. The Agency shall file with the Secretary of
43 the Local Government Commission an application requesting approval of the issuance
44 of the bonds or notes which application shall contain any such information and shall

1 have attached to it any such documents concerning the proposed financing as the
2 Secretary of the Local Government Commission may require.

3 In determining whether a proposed bond or note issue should be approved, the Local
4 Government Commission may consider, to the extent applicable as shall be determined
5 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.
6 159-86, as well as the effect of the proposed financing upon any scheduled or proposed
7 sale of obligations by the State, by any of its agencies or departments, or by any unit of
8 local government in the State. The Local Government Commission shall approve the
9 issuance of such bonds or notes if, upon the information and evidence it receives, it
10 finds and determines that the proposed financing will satisfy such criteria and will effect
11 the purposes of this Chapter.

12 Upon the filing with the Local Government Commission of a written request of the
13 Agency requesting that its bonds or notes be sold, the bonds or notes may be sold by the
14 Local Government Commission in such manner, either at public or private sale, and for
15 such price or prices at the Local Government Commission shall determine to be in the
16 best interest of the Agency and to effect the purposes of this Chapter, provided that the
17 sale shall be approved by the Agency.

18 (f) The proceeds of any bonds or notes shall be used solely for the purposes for
19 which the bonds or notes were issued and shall be disbursed in such manner and under
20 such restrictions, if any, as the Agency may provide in the resolution authorizing the
21 issuance of, or in any trust agreement securing, such bonds or notes.

22 (g) Prior to the preparation of definitive bonds, the Agency may issue interim
23 receipts or temporary bonds, with or without coupons, exchangeable for definitive
24 bonds when the bonds have been executed and are available for delivery. The Agency
25 may also provide for the replacement of any bonds or notes which shall become
26 mutilated or shall be destroyed or lost.

27 (h) Bonds or notes may be issued under the provision of this Chapter without
28 obtaining, except as otherwise expressly provided in this Chapter, the consent of any
29 department, division, commission, board, body, bureau, or agency of the State and
30 without any other proceedings or the happening of any conditions or things other than
31 those proceedings, conditions, or things that are specifically required by this Chapter
32 and the provisions of the resolution authorizing the issuance of, or any trust agreement
33 securing, such bonds or notes.

34 **"§ 159I-16. Trust agreement or resolution.**

35 (a) In the discretion of the Agency, any bonds and notes issued under the
36 provisions of this Chapter may be secured by a trust agreement by and between the
37 Agency and a corporate trustee or by a resolution providing for the appointment of a
38 corporate trustee. The corporate trustee may be, in either case, any trust company or
39 bank having the powers of a trust company within or without the State. Such trust
40 agreement or resolution may pledge or assign all or part of the revenues or assets of the
41 Agency, including, without limitation, loan agreements, agreements or commitments to
42 enter into loan agreements, contracts, agreements and other security or investment
43 obligations, any fees or charges made or received by the Agency, the moneys received
44 in payment of loans and interest thereon, and any other moneys received by the Agency.

1 The trust agreement or resolution may contain such provisions for protecting and
2 enforcing the rights and remedies of the owners of any bonds or notes issued thereunder
3 as may be reasonable and proper and not in violation of law, including covenants setting
4 forth the duties of the Agency in respect of the purposes to which bond or note proceeds
5 may be applied, the disposition and application of the revenues or assets of the Agency,
6 the duties of the Agency with respect to the acquisition and disposition of any project
7 and the purchase, acceptance and disposition of any loan agreement, the charges and
8 collection of any revenues and administrative charges, the terms and conditions for the
9 issuance of additional bonds and notes, and the custody, safeguarding, investment, and
10 application of all moneys. All bonds and notes issued under this Chapter shall be
11 equally and ratably secured by a pledge, charge, and lien upon the revenues or assets
12 provided in such trust agreement or resolution, without priority by reason of number, or
13 dates of bonds or notes, execution, or delivery, in accordance with the provision of this
14 Chapter and of such trust agreement or resolution; except that the Agency may provide
15 in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to
16 the extent and in the manner prescribed in such trust agreement or resolution, be
17 subordinated and junior in standing, with respect to the payment of principal and
18 interest and to the security thereof, to any other bonds or notes. It shall be lawful for
19 any bank or trust company that may act as depository of the proceeds of bonds or notes,
20 revenues, assets, or other money hereunder to furnish such indemnifying bonds or to
21 pledge such securities as may be required by the Agency. Any trust agreement or
22 resolution may set out the rights and remedies of the owners of any bonds or notes and
23 of any trustee, and may restrict the individual rights of action by any such owners. In
24 addition to the foregoing, any trust agreement or resolution may contain such other
25 provisions as the Agency may deem reasonable and proper for the security of the
26 owners of any bonds or notes. Expenses incurred in carrying out the provisions of any
27 trust agreement or resolution may be treated as a part of the cost of any project or as an
28 administrative charge and may be paid from the revenues or assets pledged or assigned
29 to the payment of the principal of and the interest on bonds and notes or from any other
30 funds available to the Agency.

31 (b) The Agency may set the terms and conditions of loan agreements, including,
32 without limitation, the repayment terms, so as to provide a fund sufficient, with such
33 other funds as may be made available therefor, including, without limitation, investment
34 income and the proceeds of administrative charges to the extent determined by the
35 Agency:

36 (1) To pay the costs of operation of the Agency,

37 (2) To pay the principal of and the interest on all bonds and notes as the
38 same shall become due and payable, and

39 (3) To create and maintain any reserves provided for in the trust
40 agreement or resolution securing such bonds or notes.

41 (c) All pledges of any assets or revenues of the Agency as authorized by this
42 chapter shall be valid and binding from the time when such pledges are made. All such
43 assets or revenues so pledged and thereafter received by the Agency shall immediately
44 be subject to the lien of such pledge without any physical delivery thereof or further act,

1 and the lien of any such pledge shall be valid and binding as against all parties having
2 claims of any kind in tort, contract, or otherwise against the Agency, irrespective of
3 whether such parties have noticed thereof. The trust agreement or resolution by which a
4 pledge is created or any loan obligation need not be filed or recorded except in the
5 records of the Agency.

6 (d) The State does pledge to and agree with the holders of any bonds or notes
7 issued by the Agency that so long as any of such bonds or notes are outstanding and
8 unpaid the State will not limit or alter the rights vested in the Agency at the time of
9 issuance of the bonds or notes to set the terms and conditions of loan agreements in
10 connection with which the bonds or notes were issued, so as to provide a fund
11 sufficient, with such other funds as may be made available therefor, including without
12 limitation, investment income and the proceeds of administrative charges to the extent
13 determined by the Agency, to pay the costs of operation of the Agency to pay the
14 principal of and the interest on all bonds and notes as the same shall become due and
15 payable, and to create and maintain any reserves provided therefor, and to fulfill the
16 terms of any agreements made with the bondholders or noteholders. The State shall in
17 no way impair the rights and remedies of the bondholders or noteholders until the bonds
18 or notes and all costs and expenses in connection with any action or proceedings by or
19 on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

20 **"§ 159I-17. Trust funds.**

21 Notwithstanding any other provisions of law to the contrary, all moneys received
22 pursuant to this Chapter, including, without limitation, payments made under and the
23 proceeds received from the sale or other disposition of loan agreement, proceeds
24 received from the disposition by the Agency of any project and any other revenues and
25 funds received by the Agency, (except any portion, as designated by the Agency,
26 representing administrative charges), shall be deemed to be trust funds to be held and
27 applied solely as provided in this Chapter. The resolution authorizing the issuance of,
28 or any trust agreement securing, any bonds or notes may provide that any of such
29 moneys may be invested temporarily pending the disbursement thereof and shall
30 provide that any officer with whom or any bank or trust company with which such
31 moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply
32 the same for the purposes of this Chapter subject to such regulations as this Chapter or
33 such resolution or trust agreement may provide. Any such moneys may be deposited
34 and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be
35 amended from time to time, provided, however that:

36 (1) Any deposit or investment authorized by G.S. 159-30 or G.S. 147-69.1
37 may be deposited or invested with any bank located inside or outside
38 the State, including outside the United States of America, provided
39 that any such bank is a bank whose unsecured obligations are rated in
40 either of the two highest rating categories by either Moody's Investors
41 Service or Standard & Poor's Corporation; and

42 (2) Any deposit or investment may be made pursuant to either G.S. 159-30
43 or G.S. 147-69.1. If one section is less restrictive or the other section
44 authorizes additional deposit and investment options, the Agency may

1 proceed under either section in order that the Agency shall have the
2 broadest deposit and investment options available under either section.

3 **"§ 159I-18. Remedies.**

4 Any owner of bonds or notes issued under the provisions of this Chapter or any
5 coupons appertaining thereto, and the trustee under any trust agreement securing or
6 resolution authorizing the issuance of such bonds or notes, except to the extent the
7 rights herein given may be restricted by such trust agreement or resolution, may either
8 at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce
9 any and all rights under the laws of the State or granted hereunder or under such trust
10 agreement or resolution, or under any other contract executed by the Agency pursuant to
11 this Chapter; and may enforce and compel the performance of all duties required by this
12 Chapter or by such trust agreement or resolution by the Agency or by any officer
13 thereof.

14 **"§ 159I-19. Status of bonds and notes under Uniform Commercial Code.**

15 All bonds and notes and interest coupons, if any, issued under this Chapter are
16 hereby made investment securities within the meaning of and for all the purposes of
17 Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General
18 Statutes.

19 **"§ 159I-20. Bonds and notes eligible for investment.**

20 Bonds and notes issued under the provisions of this Chapter are hereby made
21 securities in which all public offices, agencies, and public bodies of the State and its
22 political subdivisions, all insurance companies, trust companies, investment companies,
23 banks, savings banks, building and loan associations, credit unions, pension or
24 retirement funds, other financial institutions engaged in business in the State, executors,
25 administrators, trustees, and other fiduciaries may properly and legally invest funds,
26 including capital in their control or belonging to them. Such bonds or notes are hereby
27 made securities, which may properly and legally be deposited with and received by any
28 officer or agency of the State or political subdivision of the State for any purpose for
29 which the deposit of bonds, notes, or obligations of the State or any political subdivision
30 is now or may hereafter be authorized by law.

31 **"§ 159I-21. Refunding bonds and notes.**

32 (a) The Agency may issue bonds and notes for the purposes of refunding any
33 bonds or notes issued pursuant to this Chapter, including the payment of any redemption
34 premium thereon and any interest accrued or to accrue to the date of redemption or
35 maturity of such bonds or notes, and, if deemed advisable by the Agency, for any
36 additional corporate purposes of the Agency.

37 Any such refunding bonds or notes may bear interest at rates, including variable
38 rates as authorized in G.S. 159I-15, lower, the same as, or higher than and have
39 maturities shorter than, the same as, or longer than the bonds or notes being refunded.
40 The proceeds of any such refunding bonds or notes may be applied:

- 41 (1) To the payment and retirement of the bonds or notes being refunded by
42 direct application to such payment and retirement;
- 43 (2) To the payment and retirement of the bonds or notes being refunded by
44 the deposit in trust of such proceeds;

- 1 (3) To the payment of any expenses incurred in connection with such
2 refunding; and
- 3 (4) For any other uses not inconsistent with such refunding.
- 4 (b) Any money so held in trust may be invested in:
- 5 (1) Direct obligations of the United States of America.
- 6 (2) Obligations, the principal of and the interest on which are guaranteed
7 by the United States of America.
- 8 (3) Evidences of ownership of a proportionate interest in specified
9 obligations described in subdivision (1) and (2) of this subsection,
10 which obligations are held by a bank or trust company organized and
11 existing under the laws of the United States of America or any state
12 thereof in the capacity of custodian.
- 13 (4) Obligations of the State or local governments of the State, provision
14 for the payment of the principal of and interest on which obligations
15 shall have been made by deposit with a trustee or escrow agent of
16 obligations described in subdivisions (1), (2) or (3) of this subsection,
17 the maturing principal of any interest on which, when due and payable,
18 shall provide sufficient money with any other money held in trust for
19 such purpose to pay the principal of, premium, if any, and interest on
20 such obligations of the State or units of local government and which
21 are rated in the highest category by Standard & Poor's Corporation and
22 Moody's Investors Service.
- 23 (5) Obligations of the State or local governments of the State, the principal
24 of and interest on which, when due and payable, have been insured by
25 a bond insurance company which is rated in the highest category by
26 Standard & Poor's Corporation and Moody's Investors Service.
- 27 (6) Full faith and credit obligations of the State or local governments of
28 the State, which are rated in the highest category by Standard & Poor's
29 Corporation and Moody's Investors Service.
- 30 (7) Any obligations or investments in which the State Treasurer is
31 authorized, at the time of such investment, to invest funds of the State.

32 The proceedings providing for the issuance of any refunding bonds or notes may
33 limit the investments in which the proceeds of a particular refunding issue may be
34 invested.

35 Nothing in this section shall be construed as a limitation on:

- 36 (1) The duration of any deposit in trust for the retirement of bonds or notes
37 being refunded, but which shall not have matured and which shall not
38 be then redeemable or, if then redeemable, shall not have been called
39 for redemption; or
- 40 (2) The power to issue bonds or notes for the combined purpose of
41 refunding bonds or notes and providing moneys for any corporate
42 purpose as provided in this Chapter.

43 "§ 159I-22. Officers not liable.

1 No member or officer of the Agency shall be subject to any personal liability or
2 accountability by reason of his execution of any bonds or notes or the issuance thereof.

3 **"§ 159I-23. Tax exemption.**

4 All of the bonds and notes authorized by this Chapter and the coupons, if any,
5 appertaining thereto, and their transfer (including any profit made on the sale thereof),
6 shall be exempt from all State, county, and municipal taxation or assessment, direct or
7 indirect, general or special, whether imposed for the purpose of general revenue or
8 otherwise, excluding inheritance and gift taxes. The interest on the bonds and notes
9 shall not be subject to taxation as to income, nor shall the bonds, notes, and coupons, if
10 any, be subject to taxation when constituting a part of the surplus of any bank, trust
11 company, or other corporation.

12 **"§ 159I-24. Conflicts of interest.**

13 If any member, officer, or employee of the Agency shall be interested either directly
14 or indirectly, or shall be an officer or employee of or have an ownership interest in any
15 firm or corporation, not including units of local government interested directly or
16 indirectly, in any contract with the Agency, such interest shall be disclosed to the
17 Agency and shall be set forth in the minutes of the Agency. The member, officer, or
18 employee having an interest therein shall not participate on behalf of the Agency in the
19 authorization of any such contract. Other provisions of law notwithstanding, failure to
20 take any or all actions necessary to carry out the purposes of this section may not affect
21 the validity of any bonds, notes, or loan agreements issued pursuant to the provisions of
22 this Chapter.

23 **"§ 159I-25. Disbursement.**

24 (a) The proceeds of any bonds or notes to be used to make loans shall be
25 disbursed by, or pursuant to the direction of, the Office of State Budget and
26 Management. No such proceeds shall be disbursed until the Office of State Budget and
27 Management has received from the Division a certificate of eligibility that states that the
28 applicant meets all eligibility criteria, and that all procedural requirements of this
29 Chapter have been met.

30 (b) Once the prerequisites for disbursement have been satisfied pursuant to
31 subsection (a) of this section, the proceeds shall be disbursed as the Board may provide.

32 **"§ 159I-26. Withdrawal of commitment.**

33 Failure of an applicant, within one year of the date of acceptance of a loan
34 application to arrange for necessary financing of the proposed project, shall constitute
35 sufficient cause for withdrawal of the commitment. Prior to withdrawal of a
36 commitment, the Division shall give due consideration to any extenuating
37 circumstances presented by the applicant as reasons for its failure to arrange necessary
38 financing. The commitment may be extended for an additional period of time if, in the
39 judgment of the Division, an extension is justified.

40 **"§ 159I-27. Inspection.**

41 (a) The Division shall perform one or more inspections of each project and shall
42 monitor its progress. If the Division determines that the project is not in substantial
43 compliance with the approved schedule of implementation, the Division may revoke its
44 approval of the project, further disbursement of loan proceeds may be rescinded, and the

1 outstanding loan, together with accrued interest, may immediately become due and
2 payable.

3 (b) Inspection of a project for which a loan has been made under this Chapter
4 may be performed by qualified personnel of the Division or by qualified professional
5 engineers, registered in this State, who have been approved by the Division. No person
6 may be approved to perform inspections who is an officer or employee of the unit of
7 local government to which the loan was made or who is an owner, officer, employee or
8 agent of a contractor or subcontractor engaged in the construction of any project for
9 which the loan was made.

10 **"§ 159I-28. Rules.**

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

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

21 **"§ 159I-29. Annual reports to Joint Legislative Commission on Government**
22 **Operations.**

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

27 (b) The portion of the report prepared by the Office of State Budget and
28 Management shall set forth for the preceding fiscal year itemized and total allocations
29 for loans authorized by the Division. The Office of State Budget and Management shall
30 also prepare a summary report of all allocations for each fiscal year; the total funds
31 received and allocations made; and the total unallocated funds as of the end of the
32 preceding fiscal year.

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

34 (1) Identification of each loan made during the preceding fiscal year; the
35 total amount of the loan commitments; the sums actually paid during
36 the preceding fiscal year to each loan disbursed and to each loan
37 previously committed but unpaid; and the total loan funds paid during
38 the preceding fiscal year;

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

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

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

3 **§ 159I-30. Additional powers of units of local government; issuance of special**
4 **obligation bonds and notes.**

5 (a) Any unit of local government may borrow money for the purpose of
6 financing or refinancing its cost of the acquisition or construction of a project and may
7 issue special obligation bonds and notes, including bond anticipation notes and renewal
8 notes, pursuant to the provisions of this section and the applicable provisions of this
9 Chapter for such purpose.

10 (b) Each unit of local government may agree to apply to the payment of a special
11 obligation bond or note any available source or sources of revenues of the unit and, to
12 the extent the generation of the revenues is within the power of the unit, to enter into
13 covenants to take action in order to generate the revenues, provided the agreement to
14 use such sources to make payments or such covenant to generate revenues does not
15 constitute a pledge of the unit's taxing power.

16 No agreement or covenant shall contain a nonsubstitution clause which restricts the
17 right of a unit of local government to replace or provide a substitute for any project
18 financed pursuant to this section.

19 The obligation of a unit of local government with respect to the sources of payment
20 shall be specifically identified in the proceedings of the governing body authorizing the
21 unit to issue the special obligation bonds or notes. The sources of payment so
22 specifically identified and then held or thereafter received by a unit or any fiduciary
23 thereof shall immediately be subject to the lien of the proceedings without any physical
24 delivery of the sources or further act. The lien shall be valid and binding as against all
25 parties having claims of any kind in tort, contract, or otherwise against a unit without
26 regard to whether the parties have notice thereof. The proceedings or any other
27 document or action by which the lien on a source of payment is created need not be
28 filed or recorded in any manner other than as provided in this Chapter.

29 Any special obligation bonds or notes may provide additional security by the
30 granting of a security interest in the project financed to secure payment of the purchase
31 money provided by such bonds or notes, including a deed of trust on any real property
32 so acquired.

33 (c) Any bond anticipation notes may be made payable from the proceeds of
34 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,
35 the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or
36 notes may also be paid from the proceeds of any credit facility. The bonds and notes of
37 each issue shall be dated and may be made redeemable prior to maturity at the option of
38 the unit of local government or otherwise, at such price or prices, on such date or dates,
39 and upon such terms and conditions as may be determined by the unit. The bonds or
40 notes may also be made payable from time to time on demand or tender for purchase by
41 the owner, upon terms and conditions determined by the unit.

42 (d) The interest payable by a unit on any special obligation bonds or notes may
43 be at such rate or rates, including variable rates as authorized in this section, as may be
44 determined by the Local Government Commission with the approval of the governing

1 body of the unit. Such approval may be given as the governing body of the unit may
2 direct, including, without limitation, a certificate signed by a representative of the unit
3 designated by the governing body of the unit.

4 (e) Special obligation bonds and notes shall be special obligations of the unit of
5 local government issuing them. The principal of, and interest and any premium on,
6 special obligation bonds and notes shall be payable solely from any one or more of the
7 sources of payment authorized by this section as may be specified in the proceedings,
8 resolution, or trust agreement under which they are authorized or secured. Neither the
9 faith and credit nor the taxing power of the unit of local government are pledged for the
10 payment of the principal of, or interest or any premium on, any special obligation bonds
11 or notes, and no owner of special obligation bonds or notes has the right to compel the
12 exercise of the taxing power by the unit in connection with any default thereon. Every
13 special obligation bond and note shall recite in substance that the principal and interest
14 and any premium on such bond or note are payable solely from the sources of payment
15 specified in the bond order or trust, agreement under which it is authorized or secured,
16 provided that:

17 (1) Any such use of such sources will not constitute a pledge of the unit's
18 taxing owner; and

19 (2) The municipality is not obligated to pay such principal or interest or
20 premium except from such sources.

21 (f) In fixing the details of bonds or notes, the unit of local government may
22 provide that any of the bonds or notes may:

23 (1) Be made payable from time to time on demand or tender for purchase
24 by the owner thereof provided a credit facility supports such bonds or
25 notes, unless the Local Government Commission specifically
26 determines that a credit facility is not required upon a finding and
27 determination by the Local Government Commission that the absence
28 of a credit facility will not materially and adversely affect the financial
29 position of the unit and the marketing of the bonds or notes at a
30 reasonable interest cost to the unit;

31 (2) Be additionally supported by a credit facility;

32 (3) Be made subject to redemption or a mandatory tender for purchase
33 prior to maturity;

34 (4) Bear interest at a rate or rates that may vary for such period or periods
35 of time, all as may be provided in the proceedings providing for the
36 issuance of such bonds or notes including, without limitation, such
37 variations as may be permitted pursuant to a par formula; and

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

42 (g) As used in this section:

43 (1) 'Credit facility' means an agreement entered into by the unit with a
44 bank, savings and loan association or other banking institution, an

1 insurance company, reinsurance company, surety company or other
2 insurance institution, a corporation, investment banking firm or other
3 investment institution, or any financial institution proving for prompt
4 payment of all or any part of the principal, or purchase price (whether
5 at maturity, presentment, or tender for purchase, redemption, or
6 acceleration), redemption premium, if any, and interest on any bonds
7 or notes payable on demand or tender by the owner, in consideration of
8 the unit agreeing to repay the provider of such credit facility in
9 accordance with the terms and provisions of such agreement; the
10 provider of any credit facility may be located either within or without
11 the United States of America.

12 (2) 'Par formula' means any provision or formula adopted by the unit to
13 provide for the adjustment, from time to time of the interest rate or
14 rates borne by any bonds or notes including:

- 15 a. A provision providing for such adjustment so that the purchase
16 price of such bonds or notes in the open market would be as
17 close to par as possible;
18 b. A provision providing for such adjustment based upon a
19 percentage or percentages of a prime rate or base rate, which
20 percentage or percentages may vary or be applied for different
21 periods of time; or
22 c. Such other provision as the unit may determine to be consistent
23 with this section and the applicable provisions of this Chapter
24 and does not materially and adversely affect the financial
25 position of the unit and the marketing of the bonds or notes at a
26 reasonable interest cost to the unit.

27 The obligation of a unit of local government under a credit facility to repay any
28 drawing thereunder may be made payable and otherwise secured, to the extent
29 applicable, as provided in this section.

30 (h) Notes shall mature at such time or times and bonds shall mature, not
31 exceeding 40 years from their date or dates, as may be determined by the unit of local
32 government, provided that no such maturity dates may exceed the maximum maturity
33 periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as
34 it may be amended from time to time. The unit shall determine the form and manner of
35 execution of the bonds or notes, including any interest coupons to be attached thereto,
36 and shall fix the denomination or denominations and the place or place of payment of
37 principal and interest, which may be any bank or trust company within or without the
38 United States. In case any officer of such unit whose signature, or a facsimile of whose
39 signature, shall appear on any bonds or notes or coupons, if any, shall cease to be such
40 officer before delivery thereof, such signature or such facsimile shall nevertheless be
41 valid and sufficient for all purposes the same as if such officer had remained in office
42 until such delivery. Any bond or note or coupon may bear the facsimile signatures of
43 such persons who at the actual time or the execution thereof shall be the proper officers
44 to sign although at the date of such bond or note or coupon such persons may not have

1 been such officer. The unit may also provide for the authentication of the bonds or
2 notes by a trustee or other authenticating agent. The bonds or notes may be issued as
3 certificated or uncertificated obligations or both, and in coupon or in registered form, or
4 both, as the unit may determine, and provision may be made for the registration of any
5 coupon bonds or notes as to principal alone and also as to both principal and interest,
6 and for the reconversion into coupon bonds or notes of any bonds or notes registered as
7 to both principal and interest, and for the interchange of registered and coupon bonds or
8 notes. Any system for registration may be established as the unit may determine.

9 (i) No bonds or notes may be issued by a unit of local government under this
10 section unless the issuance is approved and the bonds or notes are sold by the Local
11 Government Commission as provided in this section and the applicable provisions of
12 this Chapter. The unit shall file with the Secretary of the Local Government
13 Commission an application requesting approval of the issuance of such bonds or notes,
14 which application shall contain such information and shall have attached to it such
15 documents concerning the proposed financing as the Secretary of the Local Government
16 Commission may require. The Commission may prescribe the form of the application.
17 Before the Secretary accepts the application, the Secretary may require the governing
18 body of the unit or its representatives to attend a preliminary conference, at which time
19 the Secretary or the deputies of the Secretary may informally discuss the proposed issue
20 and the timing of the steps taken in issuing the special obligation bonds or notes.

21 In determining whether a proposed bond or note issue should be approved, the Local
22 Government Commission may consider, to the extent applicable as shall be determined
23 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.
24 159-86, as either may be amended from time to time, as well as the effect of the
25 proposed financing upon any scheduled or proposed sale of obligations by the State or
26 by any of its agencies or departments or by any unit of local government in the State.
27 The Local Government Commission shall approve the issuance of such bonds or notes
28 if, upon the information and evidence it receives, it finds and determines that the
29 proposed financing will satisfy such criteria and will effect the purposes of this section
30 and the applicable provisions of this Chapter. An approval of an issue shall not be
31 regarded as an approval of the legality of the issue in any respect. A decision by the
32 Local Government Commission denying an application is final.

33 Upon the filing with the Local Government Commission of a written request of the
34 unit requesting that its bonds or notes be sold, such bonds or notes may be sold by the
35 Local Government Commission in such manner, either at public or private sale, and for
36 such price or prices as the Local Government Commission shall determine to be in the
37 best interests of the unit and to effect the purposes of this section and the applicable
38 provisions of this Chapter, provided that such sale shall be approved by the unit.

39 (j) The proceeds of any bonds or notes shall be used solely for the purposes for
40 which the bonds or notes were issued and shall be disbursed in such manner and under
41 such restrictions, if any, as the unit may provide in the resolution authorizing the
42 issuance of, or in any trust agreement securing, the bonds or notes.

43 (k) Prior to the preparation of definitive bonds, the unit may issue interim
44 receipts or temporary bonds, with or without coupons, exchangeable for definitive

1 bonds when such bonds have been executed and are available for delivery. The unit
2 may also provide for the replacement of any bonds or notes which shall become
3 mutilated or shall be destroyed or lost.

4 (l) Bonds or notes may be issued under the provisions of this section and the
5 applicable provisions of this Chapter without obtaining, except as otherwise expressly
6 provided in this section and the applicable provisions of this Chapter, the consent of any
7 department, division, commission, board, body, bureau, or agency of the State and
8 without any other proceedings or the happening of any conditions or things other than
9 those proceedings, conditions, or things that are specifically required by this section, the
10 applicable provisions of this Chapter, and the provisions of the resolution authorizing
11 the issuance of, or any trust agreement securing, such bonds or notes.

12 (m) In the discretion of the unit of local government, any bonds and notes issued
13 under the provisions of this section may be secured by a trust agreement by and between
14 the unit and a corporate trustee or by a resolution providing for the appointment of a
15 corporate trustee. Bonds and notes may also be issued under an order or resolution
16 without a corporate trustee. The corporate trustee may be, in either case any trust
17 company or bank having the powers of a trust company within or without the State.
18 Such trust agreement or resolution may pledge or assign such sources of revenue as may
19 be permitted under this section. The trust agreement or resolution may contain such
20 provisions for protecting and enforcing the rights and remedies of the owners of any
21 bonds or notes issued thereunder as may be reasonable and proper and not in violation
22 of law, including covenants setting forth the duties of the unit in respect of the purposes
23 to which bond or note proceeds may be applied, the disposition and application of the
24 revenues of the unit, the duties of the unit with respect to the project, the disposition of
25 any charges and collection of any revenues and administrative charges, the terms and
26 conditions of the issuance of additional bonds and notes, and the custody, safeguarding,
27 investment, and application of all moneys. All bonds and notes issued under this
28 section shall be equally and ratably secured by a lien upon the revenues provided in
29 such trust agreement or resolution, without priority by reasons of number, or dates of
30 bonds or notes, execution, or delivery, in accordance with the provision of this section
31 and of such trust agreement or resolution; provided, however, that the unit may provide
32 in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to
33 the extent and in the manner prescribed in such trust agreement or resolution, be
34 subordinated and junior in standing, with respect to the payment of principal and
35 interest and to the security thereof, to any other bonds or notes. It shall be lawful for
36 any bank or trust company that may act as depository of the proceeds of bonds or notes,
37 revenues, or any other money hereunder to furnish such indemnifying bonds or to
38 pledge such securities as may be required by the unit. Any trust agreement or resolution
39 may set out the rights and remedies of the owners of any bonds or notes and of any
40 trustee, and may restrict the individual rights of action by the owners. In addition to the
41 foregoing, any trust agreement or resolution may contain such other provisions as the
42 unit may deem reasonable and proper for the security of the owners of any bonds or
43 notes. Expenses incurred in carrying out the provisions of any trust agreement or

1 resolution may be treated as a part of the cost of any project or as an administrative
2 charge and may be paid from the revenues or from any other funds available.

3 The State does pledge to, and agree with, the holders of any bonds or notes issued by
4 any unit that so long as any of such bonds or notes are outstanding and unpaid the State
5 will not limit or alter the rights vested in the unit at the time of issuance of the bonds or
6 notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any
7 agreements made with the bondholders or noteholders. The State shall in no way impair
8 the rights and remedies of the bondholders or noteholders until the bonds or notes and
9 all costs and expenses in connection with any action or proceedings by or on behalf of
10 the bondholders or noteholders, are fully paid, met, and discharged.

11 (n) The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its
12 bonds and notes shall apply to a unit of local government and its bonds and notes issued
13 under this section and the applicable provisions of this Chapter, provided that the source
14 or sources of revenue available to pay bonds and notes of a unit of local government
15 shall be limited as provided in this section.

16 (o) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and
17 investments shall apply to a unit of local government and its trust funds and
18 investments, provided that any such moneys of a unit shall be deposited and invested
19 only as provided in G.S. 159-30, as it may be amended from time to time.

20 (p) The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to
21 remedies, the Uniform Commercial Code, investment eligibility and tax exemption as
22 such relate to the Agency's bonds and notes shall apply to a unit of local government
23 and its bonds and notes."

24 Sec. 2. G.S. 159-13(15) reads as rewritten:

25 "(15) Sufficient funds to meet the amounts to be paid during the fiscal
26 year under continuing contracts previously entered into shall be
27 appropriated unless such contract reserves to the governing board
28 the right to limit or not to make such appropriation."

29 Sec. 3. G.S. 159-7(b)(4) reads as rewritten:

30 "(4) 'Debt service' is the sum of money required to pay installments of
31 principal and interest on bonds, notes, and other evidences of debt
32 accruing within a fiscal year, to maintain sinking funds, and to pay
33 installments on debt instruments issued pursuant to Chapter 159G of
34 the General Statutes or Chapter 159I of the General Statutes accruing
35 within a fiscal year."

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

37 "(c) The secretary shall mail to each unit of local government not later than 30
38 days prior to the due date of each payment due to the State under debt instruments
39 issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General
40 Statutes a statement of the amount so payable, the due date, the amount of any moneys
41 due to the unit of local government that will be withheld by the State and applied to the
42 payment, the amount due to be paid by the unit of local government from local sources,
43 the place to which payment should be sent, and a summary of the legal penalties for
44 failing to honor the debt instrument according to its terms. Failure of the secretary

1 timely to mail such statement or otherwise comply with the provisions of this subsection
2 (c) shall not affect in any manner the obligation of a unit of local government to make
3 payments to the State in accordance with any such debt instrument."

4 Sec. 5. G.S. 159-123(b)(3) reads as rewritten:

5 "(3) Revenue bonds, including any refunding bonds issued pursuant to G.S.
6 159-84, and special obligation bonds issued pursuant to Chapter 159I
7 of the General Statutes."

8 Sec. 6. G.S. 159-148 reads as rewritten:

9 **"§ 159-148. Contracts subject to Article; exceptions.**

10 (a) Except as provided in subsection (b) of this section, this Article applies to any
11 contract, agreement, memorandum of understanding, and any other transaction having
12 the force and effect of a contract (other than agreements made in connection with the
13 issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of
14 the General Statutes, or of general obligation bonds additionally secured by a pledge of
15 revenues) made or entered into by a unit of local government (as defined by G.S. 159-
16 7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the
17 General Statutes), relating to the lease, acquisition, or construction of capital assets,
18 which contract

- 19 (1) Extends for five or more years from the date of the contract, including
20 periods that may be added to the original term through the exercise of
21 options to renew or extend, and
22 (2) Obligates the unit to pay sums of money to another, without regard to
23 whether the payee is a party to the contract, and
24 (3) Obligates the unit over the full term of the contract, including periods
25 that may be added to the original term through the exercise of options
26 to renew or extend, to the extent of five hundred thousand dollars
27 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of
28 the appraised value of property subject to taxation by the contracting
29 unit (before the application of any assessment ratio), whichever is less,
30 and
31 (4) Obligates the unit, expressly or by implication, to exercise its power to
32 levy taxes either to make payments falling due under the contract, or to
33 pay any judgment entered against the unit as a result of the unit's
34 breach of the contract.

35 Contingent obligation shall be included in calculating the value of the contract.
36 Several contracts that are all related to the same undertaking shall be deemed a single
37 contract for the purposes of this Article. When several contracts are considered as a
38 single contract, the term shall be that of the contract having the longest term, and the
39 sums to fall due shall be the total of all sums to fall due under all single contracts in the
40 group.

41 (b) This Article shall not apply to:

- 42 (1) Contracts between a unit of local government and the State of North
43 Carolina or the United States of America (or any agency of either)

1 entered into as a condition to the making of grants or loans to the unit
2 of local government.

3 (2) Contracts for the purchase, lease, or lease with option to purchase of
4 motor vehicles or voting machines.

5 (3) Loan agreements entered into by a unit of local government pursuant
6 to the North Carolina Solid Waste Management Loan Program,
7 Chapter 159I of the General Statutes."

8 Sec. 7. G.S. 159-165 reads as rewritten:

9 **"§ 159-165. Sale and delivery of bond anticipation notes.**

10 (a) Bond anticipation notes of a municipality, including special obligation bond
11 anticipation notes issued pursuant to Chapter 159I of the General Statutes, shall be sold
12 by the Commission at public or private sale according to such procedures as the
13 Commission may prescribe. Bond anticipation notes of the State shall be sold by the
14 State Treasurer at public or private sale, upon such terms and conditions, and according
15 to such procedures as the State Treasurer may prescribe.

16 (b) When the bond anticipation notes are executed, they shall be delivered to the
17 State Treasurer who shall deliver them to the order of the purchaser and collect the
18 purchase price or proceeds. The Treasurer shall then deduct from the proceeds the
19 Commission's expense in connection with the issue, and remit the net proceeds to the
20 official depository of the unit after assurance that the deposit will be adequately secured
21 as required by law. The net proceeds of revenue bond anticipation notes or special
22 obligation bond anticipation notes shall be remitted to the trustee or other depository
23 specified in the trust agreement or resolution securing them. If the notes have been
24 issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price
25 or proceeds, may provide for the exchange of the newly issued notes for the notes to be
26 renewed."

27 Sec. 8. G.S. 105-198 reads as rewritten:

28 **"§ 105-198. Intangible personal property.**

29 The intangible personal properties enumerated and defined in this Article or
30 schedule are hereby classified under authority of Section 2(2), Article V of the
31 Constitution, and the taxes levied thereon are for the benefit of the State ~~and the for~~
32 distribution to political subdivisions of the State as hereinafter provided and said taxes so
33 ~~levied for the benefit of the political subdivisions of the State are levied for and on behalf of~~
34 ~~said political subdivisions of the State to the same extent and manner as if said levies were~~
35 ~~made by the governing authorities of the said subdivision for distribution therein as hereinafter~~
36 provided. Banks or banking associations, trust companies or any combination of such
37 facilities or services shall be subject to the provisions of this Article for taxable years
38 beginning on and after January 1, 1974."

39 Sec. 9. This act shall be construed liberally to effectuate the legislative intent
40 and the purposes as complete and independent authority for the performance of each
41 and every act and thing authorized by this act, and all powers granted shall be broadly
42 interpreted to effectuate the intent and purposes and not as a limitation of powers.

1 Sec. 10. The provisions of this act are severable, and if any provision of this
2 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
3 other provisions of the act which can be given effect without the invalid provision.

4 Sec. 12. G.S. 105-213(a) reads as rewritten:

5 "(a) The Secretary of Revenue shall keep a separate record by counties of the
6 taxes collected under the provisions of this Article and shall, as soon as practicable after
7 the close of each fiscal year, certify to the State Disbursing Officer and to the State
8 Treasurer the amount of such taxes to be distributed to each county and municipality in
9 the State. The State Disbursing Officer shall thereupon issue a warrant on the State
10 Treasurer to each county and municipality in the amount so certified.

11 In determining the amount to be distributed, the Secretary shall deduct from the net
12 amount of taxes collected under this Article, which is the total amount collected less
13 refunds, the cost to the State for the preceding fiscal year to:

- 14 (1) Collect and administer the taxes levied under this Article;
- 15 (2) Perform the duties imposed upon the Department of Revenue by
16 Article 15 of this Chapter;
- 17 (3) Operate the Property Tax Commission; and
- 18 (4) Operate a training program in property tax appraisal and assessment
19 administration by the Institute of Government.

20 The Secretary shall allocate the net amount of taxes collected under this Article, less
21 the deductions enumerated above, to the counties according to the county in which the
22 taxes were collected. The Secretary shall then increase the amount allocable to each
23 county by a sum equal to forty percent (40%) of the amount of tax on accounts
24 receivable allocated to the county on the basis of collections. The amounts so allocated
25 to each county shall in turn be divided between the county and all municipalities therein
26 in proportion to the total amount of ad valorem taxes levied by each during the fiscal
27 year preceding such distribution. For the purpose of computing the distribution of the
28 intangibles tax to any county and the municipalities located therein for any year with
29 respect to which the property valuation of a public service company is the subject of an
30 appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of
31 federal law, and the Department of Revenue is restrained by operation of law or by a
32 court of competent jurisdiction from certifying such valuation to the county and
33 municipalities therein, the Department shall use the last property valuation of such
34 public service company which has been so certified in order to determine the ad
35 valorem tax levies applicable to such public service company in the county and the
36 municipalities therein.

37 It shall be the duty of the chairman of the board of county commissioners of each
38 county and the mayor of each municipality therein to report to the Secretary of Revenue
39 such information as he may request for his guidance in making said allotments. In the
40 event any county or municipality fails to make such report within the time prescribed,
41 the Secretary of Revenue may disregard such defaulting unit in making said allotments.
42 The amounts so allocated to each county and municipality shall be distributed and used
43 by said county or municipality in proportion to other property tax levies made for the
44 various funds and activities of the taxing unit receiving said allotment; provided,

1 however, that a county or municipality may, without regard to any such requirement as
2 to proportionality, use amounts so allocated and amounts allocated under G.S. 105-
3 213.1 and distributed to the county or municipality to secure its obligation under a loan
4 agreement entered into pursuant to the North Carolina Solid Waste Management Loan
5 Program, Chapter 159I of the General Statutes."

6 Sec. 13. Section 11 of this act shall become effective July 1, 1989. The
7 remaining sections of this act are effective upon ratification.