

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1312*

Short Title: Waste Amendments-1.

(Public)

Sponsors: Representative Miller.

Referred to: Infrastructure.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AND TECHNICAL AMENDMENTS TO VARIOUS STATUTES RELATING TO LOW-LEVEL RADIOACTIVE WASTE AND TO THE ISSUANCE OF REVENUE BONDS BY THE NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 104E-8 reads as rewritten:

"§ 104E-8. Radiation Protection Commission – Members; selections; removal; compensation; quorum; services.

(a) The Commission shall consist of ~~10~~12 voting public members and 10 nonvoting ex officio members. The ~~10~~12 voting public members of the Commission shall be appointed by the Governor as follows:

- (1) One member who shall be actively involved in the field of environmental protection;
- (2) One member who shall be an employee of one of the licensed public utilities involved in the generation of power by atomic energy;
- (3) One member who shall have experience in the field of atomic energy other than power generation;
- (4) One member who shall be a scientist or engineer from the faculty of one of the institutions of higher learning in the State;
- (5) One member who shall have recognized knowledge in the field of radiation and its biological effects from the North Carolina Medical Society;

- 1 (6) One member who shall have recognized knowledge in the field of
2 radiation and its biological effects from the North Carolina Dental
3 Society;
- 4 (7) One member who shall have recognized knowledge in the field of
5 radiation and its biological effects from the State at large;
- 6 (8) One member who shall have recognized knowledge in the field of
7 radiation and its biological effects and who shall be a practicing
8 hospital administrator from the North Carolina Hospital Association;
- 9 (9) One member who shall have recognized knowledge in the field of
10 radiation and its biological effects from the North Carolina
11 Chiropractic Association;
- 12 (10) One member who shall have recognized knowledge in the clinical
13 application of radiation, shall be a practicing radiologic technologist
14 from the North Carolina Society of Radiologic Technologists, and
15 shall be certified by the American Registry of Radiologic
16 Technologists;
- 17 (11) One member who shall have recognized knowledge in the clinical
18 application of radiation and shall be a practicing podiatrist licensed by
19 the North Carolina State Board of Podiatry ~~Examiners~~ Examiners; and
- 20 (12) One member who shall have recognized knowledge in the field of
21 radiation and its biological effects from the North Carolina Chapter of
22 the Health Physics Society.

23 (b) Public members so appointed shall serve terms of office of four years. Four of
24 the initial members shall be appointed for two years, three members for three years, and
25 three members for four years. Any appointment to fill a vacancy on the Commission
26 created by the resignation, dismissal, death or disability of a public member shall be for
27 the balance of the unexpired term. At the expiration of each public member's term, the
28 Governor shall reappoint or replace the member with a member of like qualifications.
29 At its first meeting on or after July first of each year, the Commission shall designate by
30 election one of its public members as chairman and one of its public members as vice-
31 chairman to serve through June thirtieth of the following year.

32 (c) The 10 ex officio members shall be appointed by the Governor, shall be
33 members or employees of the following State agencies or their successors, and shall
34 serve at the Governor's pleasure:

- 35 (1) The Utilities Commission;
- 36 (2) The Commission for Health Services;
- 37 (3) The Environmental Management Commission;
- 38 (4) The Board of Transportation;
- 39 (5) The Division of Civil Preparedness of the Department of the Military
40 and Veterans Affairs;
- 41 (6) The radiation protection program within the Department of Human
42 Resources;
- 43 (7) The Department of Labor;
- 44 (8) The Industrial Commission;

- 1 (9) The Department of Insurance;
2 (10) The Medical Care Commission.

3 (d) The Governor shall have the power to remove any member from the
4 Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S.
5 143B-13.

6 (e) The members of the Commission shall receive per diem and necessary travel
7 and subsistence expenses in accordance with the provisions of G.S. 138-5.

8 (f) A majority of the public members of the Commission shall constitute a
9 quorum for the transaction of business.

10 (g) All clerical and other services required by the Commission shall be supplied
11 by the Secretary of the Department of Human Resources."

12 Sec. 2. G.S. 104G-6(14) reads as rewritten:

13 "(14) May issue revenue bonds from time to time pursuant to The State
14 and Local Government Revenue Bond Act, Article 5 of Chapter
15 159 of the General Statutes; Statutes, and such bonds may be sold at
16 public or private sale pursuant to G.S. 159-123;".

17 Sec. 3. G.S. 104G-6(19) reads as rewritten:

18 "(19) ~~Shall~~ May procure and keep in force adequate insurance or
19 otherwise provide for the ~~adequate protection to indemnify and save~~
20 ~~harmless it and its~~ indemnification of itself and its members,
21 officers, agents, employees, adjoining property owners, or the
22 general public against loss or liability resulting from any act or
23 omission by or on behalf of the Authority, and for the protection of
24 its property; property, provided that the procurement of insurance
25 by the Authority shall not be deemed a waiver of any immunity
26 from liability otherwise available under any provision of law;".

27 Sec. 4. G.S. 104G-8 reads as rewritten:

28 "**§ 104G-8. Liability and defense. defense, and legal representation.**

29 (a) The provisions of Article 31 of Chapter 143 (Tort Claims Against State
30 Departments and Agencies) shall apply to the Authority. No member, officer, or
31 employee of the Authority, while acting within the scope of their authority, shall be
32 subject to any personal liability or accountability by reason of any act or omission in
33 connection with the exercise of any power or performance of any duty, whether express
34 or implied, pursuant to this Chapter.

35 (b) ~~The Authority may provide for the defense of a criminal or civil proceeding~~
36 ~~brought against any current or former member, officer, agent, or employee either in his~~
37 ~~official or individual capacity, or both, on account of any act done or omission made in~~
38 ~~the scope and course of his employment or duty as a member, officer, agent or~~
39 ~~employee of the Authority. The defense may be provided by the Attorney General or by~~
40 ~~the Authority by its own counsel, by employing other counsel, or by purchasing~~
41 ~~insurance which requires that the insurer provide the defense. The provisions of Article~~
42 31A of Chapter 143 of the General Statutes shall apply to current or former members,
43 officers, agents, or employees of the Authority.

1 (c) ~~The Authority may appropriate funds for the purpose of paying all or part of a~~
2 ~~claim made or any civil judgment entered against any of its current or former members,~~
3 ~~officers, agents, or employees when such claim is made or such judgment is rendered as~~
4 ~~damages on account of any act done or omission made or in the scope and course of his~~
5 ~~current or former employment or duty as a member, officer, agent or employee;~~
6 ~~provided, however, that nothing in this section shall permit the Authority to appropriate~~
7 ~~funds for the purpose of paying a claim made or civil judgment entered against any~~
8 ~~current or former member, officer, agent or employee where the Authority or a court of~~
9 ~~competent jurisdiction finds that the claim or civil judgment resulted from malice, fraud~~
10 ~~or corruption. The Attorney General shall be the legal representative of the Authority~~
11 ~~and shall provide legal advice and counsel to the Authority. The Authority and the~~
12 ~~Department of Justice shall enter into an appropriate contract or make other mutually~~
13 ~~satisfactory arrangements for legal services, including reimbursement of the Department~~
14 ~~of Justice for any costs incurred other than routine or minor costs. The Authority may~~
15 ~~employ or retain other legal counsel with the prior approval of the Attorney General."~~

16 Sec. 5. G.S. 104G-21(a) reads as rewritten:

17 "(a) Any local government in the county or counties where a low-level radioactive
18 waste facility is proposed to be located pursuant to this Chapter may negotiate with the
19 Authority with respect to any issue relating to the facility except:

- 20 (1) The need for the facility;
- 21 (2) Any proposal to reduce the duties of the Authority under this
22 Chapter or under any license issued for the facility;
- 23 (2a) Any proposal to reduce the duties of the Board;
- 24 (3) Any proposal to reduce the duties of the Commission or to make
25 less stringent any rule of the Commission; or
- 26 (4) Any decision of the Authority regarding site selection, operator
27 selection, or technology pursuant to G.S. 104G-9, 104G-10, and
28 104G-11."

29 Sec. 6. G.S. 104G-(e) reads as rewritten:

30 "(e) In addition to those issues set out in subsection ~~(e)~~, (d), upon petition to the
31 Board by a local government in the county or counties where a low-level radioactive
32 waste facility is proposed to be located, any other issue may be submitted for arbitration
33 except:

- 34 (1) Those issues excluded from negotiation under subsection (a) of this
35 section;
- 36 (2) Any issue relating to the imposition by the General Assembly of a
37 tax, or fee not authorized by this Chapter; and
- 38 (3) Any issue requiring an appropriation by the General Assembly."

39 Sec. 7. G.S. 159-81(3) reads as rewritten:

- 40 "(3) 'Revenue bond project' means any undertaking for the acquisition,
41 construction, reconstruction, improvement, enlargement,
42 betterment, or extension of any one or combination of the
43 following revenue-producing utility or public service enterprise
44 facilities or systems owned or leased as lessee by the issuing unit:

- 1 a. Water systems or facilities, including all plants, works,
2 instrumentalities and properties used or useful in obtaining,
3 conserving, treating, and distributing water for domestic or
4 industrial use, irrigation, sanitation, fire protection, or any other
5 public or private use.
- 6 b. Sewage disposal systems or facilities, including all plants,
7 works, instrumentalities, and properties used or useful in the
8 collection, treatment, purification, or disposal of sewage.
- 9 c. Systems or facilities for the generation, production,
10 transmission, or distribution of gas (natural, artificial, or mixed)
11 or electric energy for lighting, heating, or power for public and
12 private uses, where gas systems shall include the purchase
13 and/or lease of natural gas fields and natural gas reserves and
14 the purchase of natural gas supplies, and where any parts of
15 such gas systems may be located either within the State or
16 without.
- 17 d. Systems, facilities and equipment for the collection, treatment,
18 or disposal of solid waste.
- 19 e. Public transportation systems, facilities, or equipment,
20 including but not limited to bus, truck, ferry, and railroad
21 terminals, depots, trackages, vehicles, and ferries, and mass
22 transit systems.
- 23 f. Public parking lots, areas, garages, and other vehicular parking
24 structures and facilities.
- 25 g. Aeronautical facilities, including but not limited to airports,
26 terminals, and hangars.
- 27 h. Marine facilities, including but not limited to marinas, basins,
28 docks, dry docks, piers, marine railways, wharves, harbors,
29 warehouses, and terminals.
- 30 i. Hospitals and other health-related facilities.
- 31 j. Public auditoriums, gymnasiums, stadiums, and convention
32 centers.
- 33 k. Recreational facilities.
- 34 l. In addition to the foregoing, in the case of the State of North
35 Carolina, low-level radioactive waste facilities developed
36 pursuant to Chapter 104G of the General Statutes, and any other
37 project authorized by the General Assembly.
- 38 m. ~~(For applicability see note below)~~ [For applicability, see note
39 below.] Economic development projects, including the
40 acquisition and development of industrial parks, the acquisition
41 and resale of land suitable for industrial or commercial
42 purposes, and the construction and lease or sale of shell
43 buildings in order to provide employment opportunities for
44 citizens of the municipality.

1 bonds by the North Carolina Low-Level Radioactive Waste Management Authority, by
2 the governing board of the Authority, and not by the State Treasurer."

3 Sec. 12. G.S. 159-88 is amended by adding a new subsection to read:

4 "(d) In the case of the State of North Carolina, any action to be taken by the
5 Council of State pursuant to this section shall be taken with respect to the issuance of
6 revenue bonds by the North Carolina Low-Level Radioactive Waste Management
7 Authority, by the governing board of the Authority, and not by the Council of State.
8 Subsection (c) of this section shall not apply to the issuance of revenue bonds by the
9 North Carolina Low-Level Radioactive Waste Management Authority."

10 Sec. 13. G.S. 159-94 reads as rewritten:

11 **"§ 159-94. Limited liability.**

12 (a) Revenue bonds shall be special obligations of the State or the municipality
13 issuing them. The principal of and interest on revenue bonds shall not be payable from
14 the general funds of the State or the municipality, as the case may be, nor shall they
15 constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its
16 property or upon any of its income, receipts, or revenues, except the funds which are
17 pledged under the bond order authorizing the bonds. Neither the credit nor the taxing
18 power of the State or the municipality, as the case may be, are pledged for the payment
19 of the principal or interest of revenue bonds, and no holder of revenue bonds has the
20 right to compel the exercise of the taxing power by the State or the municipality, as the
21 case may be, or the forfeiture of any of its property in connection with any default
22 thereon. Every revenue bond shall recite in substance that the principal of and interest
23 on the bond is payable solely from the revenues pledged to its payment and that the
24 State or the municipality, as the case may be, is not obligated to pay the principal or
25 interest except from such revenues.

26 (b) The provisions of this section relating to a legal or equitable pledge, charge,
27 lien, or encumbrance upon real property or the forfeiture thereof shall not apply to
28 revenue bonds issued by the North Carolina Low-Level Radioactive Waste
29 Management Authority."

30 Sec. 14. G.S. 159-96 reads as rewritten:

31 **"§ 159-96. Limitation on extraterritorial operation of enterprises financed by**
32 **revenue bonds.**

33 (a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed
34 wholly or partially by revenue bonds issued under this Article, shall be owned or
35 operated by the municipality for its own use and for the use of public and private
36 consumers residing within its corporate limits. A utility or public service enterprise
37 financed wholly or partially by revenue bonds, when operated primarily for the
38 municipality's own use and for users within its corporate limits, may be operated
39 incidentally for users outside its corporate limits. Provided, however, that revenue bonds
40 may be issued for the purpose of financing in whole or in part mass transit systems,
41 aeronautical facilities, marine facilities and systems, facilities and equipment for the
42 collection, treatment or disposal of solid waste, notwithstanding that such systems,
43 facilities or equipment may be operated for users outside the corporate limits of a

1 municipality where the municipality finds that the system, facilities or equipment so
2 financed would benefit the municipality.

3 (b) A revenue bond project financed wholly or partially by revenue bonds of the
4 State may be located either within or without the State and, when operated primarily for
5 the State's own use and for users within the State, may be operated incidentally for users
6 outside the State.

7 (c) The provisions of subsection (b) of this section shall not apply to the
8 financing of any revenue bond project by the North Carolina Low-Level Radioactive
9 Waste Management Authority."

10 Sec. 15. The provisions of this act are severable, and if any provision of this
11 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
12 other provisions of the act which can be given effect without the invalid provision.

13 Sec. 16. This act is effective upon ratification.