

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1312*
Committee Substitute Favorable 5/10/89

Short Title: Waste Amendments-1.

(Public)

Sponsors:

Referred to:

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~~13 voting public members and 10 nonvoting ex officio members. The ~~10~~13 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;

- 1 (5) One member who shall have recognized knowledge in the field of
2 radiation and its biological effects from the North Carolina Medical
3 Society;
- 4 (6) One member who shall have recognized knowledge in the field of
5 radiation and its biological effects from the North Carolina Dental
6 Society;
- 7 (7) One member who shall have recognized knowledge in the field of
8 radiation and its biological effects from the State at large;
- 9 (8) One member who shall have recognized knowledge in the field of
10 radiation and its biological effects and who shall be a practicing
11 hospital administrator from the North Carolina Hospital Association;
- 12 (9) One member who shall have recognized knowledge in the field of
13 radiation and its biological effects from the North Carolina
14 Chiropractic Association;
- 15 (10) One member who shall have recognized knowledge in the clinical
16 application of radiation, shall be a practicing radiologic technologist
17 from the North Carolina Society of Radiologic Technologists, and
18 shall be certified by the American Registry of Radiologic
19 Technologists;
- 20 (11) One member who shall have recognized knowledge in the clinical
21 application of radiation and shall be a practicing podiatrist licensed by
22 the North Carolina State Board of Podiatry ~~Examiners~~-Examiners;
- 23 (12) One member who shall have recognized knowledge in the field of
24 radiation and its biological effects from the North Carolina Chapter of
25 the Health Physics Society;
- 26 (13) One member who shall have recognized knowledge in the field of
27 radiation and its biological effects, who shall be a licensed
28 veterinarian, and who shall be appointed by the Governor upon
29 consultation with the Dean of the College of Veterinary Medicine of
30 North Carolina State University.

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

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

- 43 (1) The Utilities Commission;
- 44 (2) The Commission for Health Services;

- 1 (3) The Environmental Management Commission;
- 2 (4) The Board of Transportation;
- 3 (5) The Division of Civil Preparedness of the Department of the Military
4 and Veterans Affairs;
- 5 (6) The radiation protection program within the Department of Human
6 Resources;
- 7 (7) The Department of Labor;
- 8 (8) The Industrial Commission;
- 9 (9) The Department of Insurance;
- 10 (10) The Medical Care Commission.

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

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

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

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

20 Sec. 1.1. The initial term of public members of the Radiation Protection
21 Commission who are appointed to the positions on the Commission added by section 1
22 of this act shall be for two, three, four, or five years, depending on the expiration of the
23 current terms of current members of the Commission. In making initial appointments
24 under this section and section 1 of this act, the Governor shall specify initial terms such
25 that, as nearly as possible, the same number of terms will expire in each year.

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

27 "(14) May issue revenue bonds from time to time pursuant to The State
28 and Local Government Revenue Bond Act, Article 5 of Chapter
29 159 of the General ~~Statutes; Statutes,~~ and such bonds may be sold at
30 public or private sale pursuant to G.S. 159-123;".

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

32 "(19) ~~Shall~~ May procure and keep in force adequate insurance or
33 otherwise provide for the ~~adequate protection to indemnify and save~~
34 ~~harmless it and its~~ indemnification of itself and its members,
35 officers, agents, employees, adjoining property owners, or the
36 general public against loss or liability resulting from any act or
37 omission by or on behalf of the Authority, and for the protection of
38 its property; property, provided that the procurement of insurance
39 by the Authority shall not be deemed a waiver of any immunity
40 from liability otherwise available under any provision of law;".

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

42 "**§ 104G-8. Liability ~~and defense.~~ defense, and legal representation.**

43 (a) The provisions of Article 31 of Chapter 143 (Tort Claims Against State
44 Departments and Agencies) shall apply to the Authority. No member, officer, or

1 employee of the Authority, while acting within the scope of their authority, shall be
2 subject to any personal liability or accountability by reason of any act or omission in
3 connection with the exercise of any power or performance of any duty, whether express
4 or implied, pursuant to this Chapter.

5 ~~(b) The Authority may provide for the defense of a criminal or civil proceeding~~
6 ~~brought against any current or former member, officer, agent, or employee either in his~~
7 ~~official or individual capacity, or both, on account of any act done or omission made in~~
8 ~~the scope and course of his employment or duty as a member, officer, agent or~~
9 ~~employee of the Authority. The defense may be provided by the Attorney General or by~~
10 ~~the Authority by its own counsel, by employing other counsel, or by purchasing~~
11 ~~insurance which requires that the insurer provide the defense. The provisions of Article~~
12 ~~31A of Chapter 143 of the General Statutes shall apply to current or former members,~~
13 ~~officers, agents, or employees of the Authority.~~

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

29 Sec. 5. G.S. 104G-9(e) reads as rewritten:

30 "(e) No later than 1 ~~August~~October 1989, the Authority shall select a minimum of
31 two sites that are suitable for the location of a low-level radioactive disposal facility, for
32 characterization. No site may be selected for the location of a low-level radioactive
33 waste disposal facility without first having been characterized."

34 Sec. 6. G.S. 104G-10(c) reads as rewritten:

35 "(c) The Authority shall select and employ an operator for a low-level radioactive
36 waste disposal facility no later than ~~31 January~~1 July 1989. If no private operator is
37 employed by ~~31 January~~1 July 1989, the Authority shall designate itself as the operator
38 and shall do everything necessary to obtain all required licenses or permits to operate a
39 low-level radioactive waste disposal facility."

40 Sec. 7. G.S. 104G-21(a) reads as rewritten:

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

44 (1) The need for the facility;

- 1 (2) Any proposal to reduce the duties of the Authority under this
 2 Chapter or under any license issued for the facility;
 3 (2a) Any proposal to reduce the duties of the Board;
 4 (3) Any proposal to reduce the duties of the Commission or to make
 5 less stringent any rule of the Commission; or
 6 (4) Any decision of the Authority regarding site selection, operator
 7 selection, or technology pursuant to G.S. 104G-9, 104G-10, and
 8 104G-11."

9 Sec. 8. G.S. 104G-22(e) reads as rewritten:

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

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

19 Sec. 9. G.S. 104G-22(a) reads as rewritten:

20 "(a) To assist the Authority in the performance of its responsibilities under this
 21 Chapter and to advise the General Assembly, there is created the Inter-Agency
 22 Committee on Low-Level Radioactive Waste (herein called the 'Committee') ~~consisting~~
 23 ~~of 11 members~~. The members-Committee shall be composed of: the Chairman of the
 24 Board; the Chairman of the Board's Technical Committee on Low-Level Radioactive
 25 Waste; the Chief of the North Carolina Radiation Protection Section; the Chairman of
 26 the Commission's Low-Level Radioactive Waste Management Committee; the
 27 Chairman of the Authority; ~~the Chairman of the Authority's Technical Committee; the Vice-~~
 28 Chairman of the Authority; the Executive Director of the Authority; one additional
 29 member of the Authority designated by the Chairman; ~~three-four~~ representatives of the
 30 Department of Natural Resources and Community Development with expertise in
 31 geology, groundwater, water quality, and air quality; a representative of the Solid Waste
 32 Management Section of the Division of Health Services of the Department of Human
 33 Resources; and the two representatives of the Attorney General's office who provide
 34 legal services to the Authority and the Commission. The Chairman of the Board shall
 35 serve as the Chairman of the Committee, and the Board shall provide professional and
 36 clerical support to the Committee."

37 Sec. 10. G.S. 104G-22(d) reads as rewritten:

38 "(d) Consistent with existing law, each agency, board, commission, or authority from
 39 whose membership the Committee is drawn shall be responsible for any expenses
 40 incident to the participation of its members in the work of the Committee, including per
 41 diem, travel, and subsistence, from funds otherwise appropriated to it. ~~The Authority~~
 42 ~~shall pay the costs of any study for which provision is not otherwise made in this section from~~
 43 ~~funds otherwise appropriated to the Authority."~~

44 Sec. 11. G.S. 159-81(3) reads as rewritten:

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

1 acquisition and development of industrial parks, the acquisition
2 and resale of land suitable for industrial or commercial
3 purposes, and the construction and lease or sale of shell
4 buildings in order to provide employment opportunities for
5 citizens of the municipality.

6 ~~(n)~~n. Facilities for the use of any agency or agencies of the
7 government of the United States of America.

8 The cost of an undertaking may include all property, both real and personal and
9 improved and unimproved, plants, works, appurtenances, machinery, equipment,
10 easements, water rights, air rights, franchises, and licenses used or useful in connection
11 with any of the foregoing utilities and enterprises; the cost of demolishing or moving
12 structures from land acquired and the cost of acquiring any lands to which such
13 structures are to be moved; financing charges; the cost of plans, specifications, surveys,
14 and estimates of cost and revenues; administrative and legal expenses; and any other
15 expense necessary or incident to the project."

16 Sec. 12. G.S. 159-81(4) reads as rewritten:

17 "(4) 'Revenues' include all moneys received by the State or a
18 municipality from, in connection with, or as a result of its
19 ownership or operation of a revenue bond project or a utility or
20 public service enterprise facility or system of which a revenue bond
21 project is a part, including (to the extent deemed advisable by the
22 State or a municipality) moneys received from the United States of
23 America, the State of North Carolina, or any agency of either,
24 pursuant to an agreement with the State or a municipality, as the
25 case may be, pertaining to the project. 'Revenues' also include all
26 moneys received by, or on behalf of, the North Carolina Low-Level
27 Radioactive Waste Management Authority in connection with its
28 financing of a low-level radioactive waste facility."

29 Sec. 13. G.S. 159-83(a)(5) reads as rewritten:

30 "(5) To borrow money for the purpose of acquiring, constructing,
31 reconstructing, extending, bettering, improving, or otherwise
32 paying the cost of revenue bond projects, and to issue its revenue
33 bonds or bond anticipation notes therefor, in the name of the State
34 or a municipality, as the case may be, but no encumbrance,
35 mortgage, or other pledge or real property of the State or a
36 municipality may be created in any manner. Notwithstanding the
37 foregoing, the North Carolina Low-Level Radioactive Waste
38 Management Authority may create an encumbrance, mortgage, or
39 other pledge of real property of the Authority in connection with its
40 financing of a low-level radioactive waste facility."

41 Sec. 14. G.S. 159-83 is amended by adding a new subsection to read:

42 "(e) In the case of the State of North Carolina, any action to be taken by the
43 Council of State pursuant to this section shall be taken with respect to the issuance of

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

3 Sec. 15. G.S. 159-85 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 State
5 Treasurer pursuant to this section shall be taken with respect to the issuance of revenue
6 bonds by the North Carolina Low-Level Radioactive Waste Management Authority, by
7 the governing board of the Authority, and not by the State Treasurer."

8 Sec. 16. G.S. 159-88 is amended by adding a new subsection to read:

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

15 Sec. 17. G.S. 159-94 reads as rewritten:

16 **"§ 159-94. Limited liability.**

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

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

35 Sec. 18. G.S. 159-96 reads as rewritten:

36 **"§ 159-96. Limitation on extraterritorial operation of enterprises financed by**
37 **revenue bonds.**

38 (a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed
39 wholly or partially by revenue bonds issued under this Article, shall be owned or
40 operated by the municipality for its own use and for the use of public and private
41 consumers residing within its corporate limits. A utility or public service enterprise
42 financed wholly or partially by revenue bonds, when operated primarily for the
43 municipality's own use and for users within its corporate limits, may be operated
44 incidentally for users outside its corporate limits. Provided, however, that revenue bonds

1 may be issued for the purpose of financing in whole or in part mass transit systems,
2 aeronautical facilities, marine facilities and systems, facilities and equipment for the
3 collection, treatment or disposal of solid waste, notwithstanding that such systems,
4 facilities or equipment may be operated for users outside the corporate limits of a
5 municipality where the municipality finds that the system, facilities or equipment so
6 financed would benefit the municipality.

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

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

14 Sec. 19. The provisions of this act are severable, and if any provision of this
15 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
16 other provisions of the act which can be given effect without the invalid provision.

17 Sec. 20. Section 1 of this act is effective July 1, 1989. Sections 5 and 6 of
18 this act are effective January 31, 1989. Sections 2 through 4 and Sections 7 through 20
19 are effective upon ratification.