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(Public)

Sponsors:

Referred to:

March 7, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SECTION 108 LOAN GUARANTEE PROGRAM LAWS
AND THE LAWS GOVERNING INDUSTRIAL REVENUE BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-431(d) reads as rewritten:

"(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

- (1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.
- (2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges

1 for services rendered, including but not limited to, reasonable fees or
2 charges for servicing applications. Schedules of rates, fees, or charges
3 may vary according to classes of service, and different schedules may
4 be adopted for public entities, nonprofit entities, private for-profit
5 entities, and individuals.

- 6 (3) To pledge current and future federal fund appropriations to the State
7 from the Community Development Block Grant (CDBG) program for
8 use as loan guarantees in accordance with the provisions of the Section
9 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq.,
10 authorized by the Housing and Community Development Act of 1974
11 and amendments thereto. The Department may enter into loan
12 guarantee agreements in support of projects sponsored by individual
13 local governments or in support of pools of two or more projects
14 supported by local governments with authorized State and federal
15 agencies and other necessary parties in order to carry out its duties
16 under this subdivision. In making loan guarantees and grants under this
17 subdivision the Department shall take into consideration project
18 applications, geographic diversity and regional balance in the entire
19 community development block grant program. In making loan
20 guarantees authorized under this subdivision, the Department shall
21 ensure that apportionment of the risks involved in pledging future
22 federal funds in accordance with State policies and priorities for
23 financial support of categories of assistance is made primarily against
24 the category from which the loan guarantee originally derived. A
25 pledge of future CDBG funds under this subdivision is not a debt or
26 liability of the State or any political subdivision of the State or a pledge
27 of the faith and credit of the State or any political subdivision of the
28 State. The pledging of future CDBG funds under this subdivision does
29 not directly, indirectly, or contingently obligate the State or any political
30 subdivision of the State to levy or to pledge any taxes, nor may pledges
31 exceed twice the amount of annual CDBG funds.

32 Prior to issuing a Section 108 Loan Guarantee agreement, the
33 Department of Commerce must make the following findings:

- 34 a. The minimum size of the Section 108 Loan Guarantee is (i)
35 seven hundred fifty thousand dollars (\$750,000) for a project
36 supported by an individual local government and (ii) two
37 hundred fifty thousand dollars (\$250,000) for a project supported
38 as part of a loan pool; and the maximum size is five million
39 dollars (\$5,000,000) per project.
- 40 b. The Section 108 Loan Guarantee cannot constitute more than
41 fifty percent (50%) of total project costs.
- 42 c. The project has ~~twenty five percent (25%)~~ ten percent (10%)
43 equity from the corporation, partnership, or sponsoring party.

1 'Equity' means cash, real estate, or other hard assets contributed
2 to the project and loans that are subordinated in payment and
3 collateral during the term of the Section 108 Loan Guarantee.

- 4 d. The project has the personal guarantee of any person owning ten
5 percent (10%) or more of the corporation, partnership, or
6 sponsoring ~~entity.~~entity, except for projects involving Low-
7 Income Housing Tax Credits under section 42 of the Internal
8 Revenue Code or Historic Tax Credits under section 47 of the
9 Internal Revenue Code. Collateral on the loan must be sufficient
10 to cover outstanding debt obligations.
- 11 e. The project has sufficient cash flow from operations for debt
12 service to repay the Section 108 loan.
- 13 f. The project meets all underwriting and eligibility requirements of
14 the North Carolina Section 108 Guarantee Program Guidelines
15 and of the Department of Housing and Urban Development
16 regulations, except that projects involving hotels, motels, private
17 recreational facilities, private entertainment facilities, and
18 convention centers are ineligible for Section 108 loan guarantees.

19 The Department shall create a loan loss reserve fund as additional security for loans
20 guaranteed under this section and may deposit federal program income or other funds
21 governed by this section into the loan loss reserve fund. The Department shall maintain a
22 balance in the reserve fund of no less than ten percent (10%) of the outstanding
23 indebtedness secured by Section 108 loan guarantees."

24 Sec. 2. G.S. 153A-376(g) reads as rewritten:

25 "(g) Any county may receive and dispense funds from the Community
26 Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR
27 570.700 et seq., either through application to the North Carolina Department of
28 Commerce or directly from the federal government, in accordance with State and federal
29 laws governing these funds. Any county that receives these funds directly from the
30 federal government may pledge current and future CDBG funds for use as loan
31 guarantees in accordance with State and federal laws governing these funds. A county
32 may implement the receipt, dispensing, and pledging of CDBG funds under this
33 subsection by borrowing CDBG funds and lending all or a portion of those funds to a
34 third party in accordance with applicable laws governing the CDBG program.

35 Any county that has pledged current or future CDBG funds for use as loan guarantees
36 prior to the enactment of this subsection is authorized to have taken such action. A pledge
37 of future CDBG funds under this subsection is not a debt or liability of the State or any
38 political subdivision of the State or a pledge of the faith and credit of the State or any
39 political subdivision of the State. The pledging of future CDBG funds under this
40 subsection does not directly, indirectly, or contingently obligate the State or any political
41 subdivision of the State to levy or to pledge any taxes."

42 Sec. 3. G.S. 160A-456(d1) reads as rewritten:

1 "(d1) Any city may receive and dispense funds from the Community Development
2 Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq.,
3 either through application to the North Carolina Department of Commerce or directly
4 from the federal government, in accordance with State and federal laws governing these
5 funds. Any city that receives these funds directly from the federal government may
6 pledge current and future CDBG funds for use as loan guarantees in accordance with
7 State and federal laws governing these funds. A city may implement the receipt,
8 dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG
9 funds and lending all or a portion of those funds to a third party in accordance with
10 applicable laws governing the CDBG program.

11 Any city that has pledged current or future CDBG funds for use as loan guarantees
12 prior to the enactment of this subsection is authorized to have taken such action. A pledge
13 of future CDBG funds under this subsection is not a debt or liability of the State or any
14 political subdivision of the State or a pledge of the faith and credit of the State or any
15 political subdivision of the State. The pledging of future CDBG funds under this
16 subsection does not directly, indirectly, or contingently obligate the State or any political
17 subdivision of the State to levy or to pledge any taxes."

18 Sec. 4. G.S. 159C-3(6) reads as rewritten:

19 "(6) 'Financing agreement' shall mean a written instrument establishing the
20 rights and responsibilities of the ~~authority and the operator~~ authority,
21 operator, and obligor with respect to a project financed by the issuance
22 of bonds. A financing agreement may be in the nature of a lease, a lease
23 and leaseback, a sale and leaseback, a lease purchase, an installment
24 sale and purchase agreement, a conditional sales agreement, a secured
25 or unsecured loan agreement or other similar contract and may involve
26 property in addition to the property financed with the bonds."

27 Sec. 5. G.S. 159C-3(7) reads as rewritten:

28 "(7) 'Obligor' shall mean ~~collectively the operator and any others~~ any person or
29 persons, which may include the operator, who shall be obligated under a
30 financing agreement or guaranty agreement or other contract or
31 agreement to make payments to, or for the benefit of, the holders of
32 bonds of the authority. Any requirement of an obligor may be satisfied
33 by any one or more persons who are defined collectively by this Chapter
34 as the obligor."

35 Sec. 6. G.S. 159C-7 reads as rewritten:

36 **"§ 159C-7. Approval of project.**

37 No bonds may be issued by an authority unless the project for which the issuance
38 thereof is proposed is first approved by the Secretary of Commerce. The authority shall
39 file an application for approval of its proposed project with the Secretary of Commerce,
40 and shall notify the Local Government Commission of such filing.

41 The Secretary shall not approve any proposed project unless he shall make all of the
42 following, applicable findings:

43 (1) In the case of a proposed industrial project,

- 1 a. That the operator of the proposed project pays, or has agreed to
2 pay thereafter, an average weekly manufacturing wage (i) which
3 is above the average weekly manufacturing wage paid in the
4 county, or (ii) which is not less than ten percent (10%) above the
5 average weekly manufacturing wage paid in the State, and
6 b. That the proposed project will not have a materially adverse
7 effect on the environment;
- 8 (2) In the case of a proposed pollution control project, that such project will
9 have a materially favorable impact on the environment or will prevent
10 or diminish materially the impact of pollution which would otherwise
11 occur; and
- 12 (2a) In the case of a hazardous waste facility or low-level radioactive waste
13 facility which is used as a reduction, recovery or recycling facility, that
14 such project will further the waste management goals of North Carolina
15 and will not have an adverse effect upon public health or a significant
16 adverse effect on the environment.
- 17 (3) In any case (whether the proposed project is an industrial or a pollution
18 control project), except a pollution control project for a public utility,
19 a. That the jobs to be generated or saved, directly or indirectly, by
20 the proposed project will be large enough in number to have a
21 measurable impact on the area immediately surrounding the
22 proposed project and will be commensurate with the size and
23 cost of the proposed project,
24 b. That the proposed operator of the proposed project has
25 demonstrated or can demonstrate the capability to operate such
26 project, and
27 c. That the financing of such project by the authority will not cause
28 or result in the abandonment of an existing industrial or
29 manufacturing facility of the proposed operator or an affiliate
30 elsewhere within the State unless the facility is to be abandoned
31 because of obsolescence, lack of available labor in the area, or
32 site limitations.

33 If the initial proposed operator of a project is not expected to be the operator for the
34 term of the bonds proposed to be issued, the Secretary may make the findings required
35 pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The
36 initial operator shall be identified in the application for approval of the proposed project.
37 In no case shall the Secretary of Commerce make the findings required by subdivisions
38 (1)b and (2) of this section unless he shall have first received a certification from the
39 Department of Environment, Health, and Natural Resources that, in the case of a
40 proposed industrial project, the proposed project will not have a materially adverse effect
41 on the environment and that, in the case of a proposed pollution control project, the
42 proposed project will have a materially favorable impact on the environment or will
43 prevent or diminish materially the impact of pollution which would otherwise occur. In

1 no case shall the Secretary of Commerce make the findings required by subdivision (2a)
2 unless he shall have first received a certification from the Department of Environment,
3 Health, and Natural Resources that the proposed project is environmentally sound, will
4 not have an adverse effect on public health and will further the waste management goals
5 of North Carolina. In any case where the Secretary shall make all of the required findings
6 respecting a proposed industrial project except that prescribed in subparagraph (1)a of
7 this section, the Secretary may, in his discretion, approve the proposed project if he shall
8 have received (i) a resolution of the governing body of the county requesting that the
9 proposed project be approved notwithstanding that the operator will not pay an average
10 weekly manufacturing wage above the average weekly manufacturing wage in the county
11 and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect
12 that unemployment in the county is especially severe.

13 To facilitate his review of each proposed project, the Secretary may require the
14 authority to obtain and submit such data and information about such project as the
15 Secretary may prescribe. In addition, the Secretary may, in his discretion, request the
16 authority to hold a public hearing on the proposed project for the purpose of providing
17 the Secretary directly with the views of the community to be affected. The Secretary may
18 also prescribe such forms and such rules and regulations as he shall deem reasonably
19 necessary to implement the provisions of this section.

20 If the Secretary approves the proposed project, he shall prepare a certificate of
21 approval evidencing such approval and setting forth his findings and shall cause said
22 certificate of approval to be published in a newspaper of general circulation within the
23 county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B
24 of the General Statutes of North Carolina only by an action filed, within 30 days after
25 notice of such findings and approval shall have been so published, in the Superior Court
26 of Wake County. Such superior court is hereby vested with jurisdiction to hear such
27 action, but if no such action is filed within the 30 days herein prescribed, the validity of
28 such approval shall be conclusively presumed, and no court shall have authority to
29 inquire into such approval. Copies of the certificate of approval of the proposed project
30 will be given to the authority, the governing body of the county and the Secretary of the
31 Local Government Commission.

32 Such certificate of approval shall become effective immediately following the
33 expiration of such 30-day period or the expiration of any appeal period after a final
34 determination by any court of any action timely filed pursuant to this section. Such
35 certificate shall expire one year after its date unless extended by the Secretary who shall
36 not extend such certificate unless he shall again approve the proposed project as provided
37 in this section."

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

39 **"§ 159C-8. Approval of bonds.**

40 No bonds may be issued by an authority unless the issuance thereof is first approved
41 by the Local Government Commission.

1 The authority shall file an application for approval of its proposed bond issue with the
2 Secretary of the Local Government Commission, and shall notify the Secretary of the
3 Department of Commerce of such filing.

4 In determining whether a proposed bond issue should be approved, the Local
5 Government Commission may consider, without limitation, the following:

- 6 (1) Whether the proposed operator and obligor have demonstrated or can
7 demonstrate the financial responsibility and capability to fulfill their
8 obligations with respect to the financing agreement. In making such
9 determination, the Commission may consider the operator's experience
10 and the obligor's ratio of current assets to current liabilities, net worth,
11 earnings trends and coverage of fixed charges, the nature of the industry
12 or business involved and its stability and any additional security such as
13 insurance, guaranties or property to be pledged to secure such bonds.
- 14 (2) Whether the political subdivisions in or near which the proposed project
15 is to be located have the ability to cope satisfactorily with the impact of
16 such project and to provide, or cause to be provided, the public facilities
17 and services, including utilities, that will be necessary for such project
18 and on account of any increase in population which are expected to
19 result therefrom.
- 20 (3) Whether the proposed date and manner of sale will have an adverse
21 effect upon any scheduled or anticipated sale of obligations by the State
22 or any political subdivision or any agency of either of them.

23 If the initial proposed operator of the project is not expected to be the operator for the
24 term of the bonds proposed to be issued, the Local Government Commission may
25 consider the matters required under subdivision (1) only with respect to the initial
26 operator. The obligor shall be obligated to perform all of the duties of the obligor
27 required hereunder during the term the bonds are outstanding. The Local Government
28 Commission shall evaluate the obligor's ability to perform these duties without regard to
29 whether the initial proposed operator of the project is expected to be the operator for the
30 term of the bonds proposed to be issued. To facilitate the review of the proposed bond
31 issue by the Commission, the Secretary may require the authority to obtain and submit
32 such financial data and information about the proposed bond issue and the security
33 therefor, including the proposed prospectus or offering circular, the proposed financing
34 agreement and security document and annual and other financial reports and statements
35 of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such
36 forms and such rules and regulations as he shall deem reasonably necessary to implement
37 the provisions of this section."

38 Sec. 8. G.S. 159C-11 reads as rewritten:

39 **"§ 159C-11. Financing agreements.**

40 Every financing agreement shall provide that:

- 41 (1) The amounts payable under the financing agreement shall be sufficient
42 to pay all of the principal of and redemption premium, if any, and

1 interest on the bonds that shall be issued by the authority to pay the cost
2 of the project as the same shall respectively become due;

3 (2) The obligor shall pay all costs incurred by the authority in connection
4 with the financing and administration of the project, except as may be
5 paid out of the proceeds of bonds or otherwise, including, but without
6 limitation, insurance costs, the cost of administering the financing
7 agreement and the security document and the fees and expenses of the
8 fiscal agent or trustee, paying agents, attorneys, consultants and others;

9 (3) The obligor shall pay all the costs and expenses of operation,
10 maintenance and upkeep of the project; and

11 (4) The obligor's obligation to provide for the payment of the bonds in full
12 shall not be subject to cancellation, termination or abatement until such
13 payment of the bonds or provision therefor shall be made.

14 (5) If the proposed initial operator of the project is not expected
15 to be the operator for the term of the bonds proposed to be issued, the
16 financing agreement shall require that the obligor attempt to arrange
17 for a new operator when the current operator discontinues serving as
18 operator. The new operator is subject to the approval of the Secretary
19 under subdivisions (1)a. and (3)b. of G.S. 159C-7 and of the Local
20 Government Commission under G.S. 159C-8.

21 The financing agreement, if in the nature of a lease agreement, shall either provide
22 that the obligor shall have an option to purchase, or require that the obligor purchase, the
23 project upon the expiration or termination of the financing agreement subject to the
24 condition that payment in full of the principal of, and the interest and any redemption
25 premium on, the bonds, or provision therefor, shall have been made.

26 The financing agreement may provide the authority with rights and remedies in the
27 event of a default by the obligor thereunder including, without limitation, any one or
28 more of the following:

- 29 (1) Acceleration of all amounts payable under the financing agreement;
30 (2) Reentry and repossession of the project;
31 (3) Termination of the financing agreement;
32 (4) Leasing or sale or foreclosure of the project to others; and
33 (5) Taking whatever actions at law or in equity may appear necessary or
34 desirable to collect the amounts payable under, and to enforce covenants
35 made in, the financing agreement.

36 The authority's interest in a project under a financing agreement may be that of owner,
37 lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or
38 otherwise, but the authority need not have any ownership or possessory interest in the
39 project.

40 The authority may assign all or any of its rights and remedies under the financing
41 agreement to the trustee or the bondholders under a security document.

1 Any such financing agreement may contain such additional provisions as in the
2 determination of the authority are necessary or convenient to effectuate the purposes of
3 this Chapter."

4 Sec. 9. This act becomes effective October 1, 1996.