

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 871*

Environment & Natural Resources Committee Substitute Adopted 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~~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. 1.1. G.S. 104G-5(c)(4) reads as rewritten:

13 "(4) Members of the Authority shall include persons with technical and
14 legal expertise in low-level radioactive waste management and shall
15 represent, insofar as practicable, the diverse interests of the State and,
16 initially, each geographic region of the State. Not more than five
17 members of the Authority may be persons who derive any significant
18 portion of their income from persons who generate or transport low-
19 level radioactive waste or who operate low-level radioactive waste
20 facilities. For purposes of this subdivision, faculty members and
21 health care professionals employed by a nonprofit institution and
22 employees of any governmental entity shall not be regarded as
23 deriving a significant portion of their income from a generator or
24 transporter of low-level radioactive waste or from a low-level
25 radioactive waste facility operator by reason of such employment. The
26 Governor, the Speaker of the House of Representatives, and the
27 President of the Senate shall consult with one another to insure that the
28 requirements of this subdivision are met. Each appointing authority
29 shall require adequate disclosure of potential conflicts of interest by
30 members of the Authority."

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

32 "(14) May issue revenue bonds from time to time pursuant to The State
33 and Local Government Revenue Bond Act, Article 5 of Chapter
34 159 of the General Statutes; Statutes, and such bonds may be sold at
35 public or private sale pursuant to G.S. 159-123;".

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

37 "(19) ~~Shall~~ May procure and keep in force adequate insurance or
38 otherwise provide for the ~~adequate protection to indemnify and save~~
39 ~~harmless it and its~~ indemnification of itself and its members,
40 officers, agents, employees, adjoining property owners, or the
41 general public against loss or liability resulting from any act or
42 omission by or on behalf of the Authority, and for the protection of
43 its ~~property;~~ property, provided that the procurement of insurance

1 by the Authority shall not be deemed a waiver of any immunity
2 from liability otherwise available under any provision of law;".

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

4 **"§ 104G-8. Liability ~~and defense.~~ defense, and legal representation.**

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

11 (b) ~~The Authority may provide for the defense of a criminal or civil proceeding~~
12 ~~brought against any current or former member, officer, agent, or employee either in his~~
13 ~~official or individual capacity, or both, on account of any act done or omission made in~~
14 ~~the scope and course of his employment or duty as a member, officer, agent or~~
15 ~~employee of the Authority. The defense may be provided by the Attorney General or by~~
16 ~~the Authority by its own counsel, by employing other counsel, or by purchasing~~
17 ~~insurance which requires that the insurer provide the defense. The provisions of Article~~
18 31A of Chapter 143 of the General Statutes shall apply to current or former members,
19 officers, agents, or employees of the Authority.

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

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

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

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

41 "(c) The Authority shall select and employ an operator for a low-level
42 radioactive waste disposal facility no later than ~~31 January~~ 1 July 1989. If no private
43 operator is employed by ~~31 January~~ 1 July 1989, the Authority shall designate itself as

1 the operator and shall do everything necessary to obtain all required licenses or permits
2 to operate a low-level radioactive waste disposal facility."

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

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

7 (1) The need for the facility;

8 (2) Any proposal to reduce the duties of the Authority under this
9 Chapter or under any license issued for the facility;

10 (2a) Any proposal to reduce the duties of the Board;

11 (3) Any proposal to reduce the duties of the Commission or to make
12 less stringent any rule of the Commission; or

13 (4) Any decision of the Authority regarding site selection, operator
14 selection, or technology pursuant to G.S. 104G-9, 104G-10, and
15 104G-11."

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

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

21 (1) Those issues excluded from negotiation under subsection (a) of this
22 section;

23 (2) Any issue relating to the imposition by the General Assembly of a
24 tax, or fee not authorized by this Chapter; and

25 (3) Any issue requiring an appropriation by the General Assembly."

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

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

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

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

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

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

- 13 a. Water systems or facilities, including all plants, works,
14 instrumentalities and properties used or useful in obtaining,
15 conserving, treating, and distributing water for domestic or
16 industrial use, irrigation, sanitation, fire protection, or any other
17 public or private use.
- 18 b. Sewage disposal systems or facilities, including all plants,
19 works, instrumentalities, and properties used or useful in the
20 collection, treatment, purification, or disposal of sewage.
- 21 c. Systems or facilities for the generation, production,
22 transmission, or distribution of gas (natural, artificial, or mixed)
23 or electric energy for lighting, heating, or power for public and
24 private uses, where gas systems shall include the purchase
25 and/or lease of natural gas fields and natural gas reserves and
26 the purchase of natural gas supplies, and where any parts of
27 such gas systems may be located either within the State or
28 without.
- 29 d. Systems, facilities and equipment for the collection, treatment,
30 or disposal of solid waste.
- 31 e. Public transportation systems, facilities, or equipment,
32 including but not limited to bus, truck, ferry, and railroad
33 terminals, depots, trackages, vehicles, and ferries, and mass
34 transit systems.
- 35 f. Public parking lots, areas, garages, and other vehicular parking
36 structures and facilities.
- 37 g. Aeronautical facilities, including but not limited to airports,
38 terminals, and hangars.
- 39 h. Marine facilities, including but not limited to marinas, basins,
40 docks, dry docks, piers, marine railways, wharves, harbors,
41 warehouses, and terminals.
- 42 i. Hospitals and other health-related facilities.
- 43 j. Public auditoriums, gymnasiums, stadiums, and convention
44 centers.

- 1 k. Recreational facilities.
- 2 l. In addition to the foregoing, in the case of the State of North
3 Carolina, low-level radioactive waste facilities developed
4 pursuant to Chapter 104G of the General Statutes, and any other
5 project authorized by the General Assembly.
- 6 m. ~~(For applicability see note below)~~ [For applicability, see note
7 below.] Economic development projects, including the
8 acquisition and development of industrial parks, the acquisition
9 and resale of land suitable for industrial or commercial
10 purposes, and the construction and lease or sale of shell
11 buildings in order to provide employment opportunities for
12 citizens of the municipality.
- 13 ~~(n)~~n. Facilities for the use of any agency or agencies of the
14 government of the United States of America.

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

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

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

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

37 "(5) To borrow money for the purpose of acquiring, constructing,
38 reconstructing, extending, bettering, improving, or otherwise
39 paying the cost of revenue bond projects, and to issue its revenue
40 bonds or bond anticipation notes therefor, in the name of the State
41 or a municipality, as the case may be, but no encumbrance,
42 mortgage, or other pledge or real property of the State or a
43 municipality may be created in any manner. Notwithstanding the
44 foregoing, the North Carolina Low-Level Radioactive Waste

1 Management Authority may create an encumbrance, mortgage, or
2 other pledge of real property of the Authority in connection with its
3 financing of a low-level radioactive waste facility."

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

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

9 Sec. 15. G.S. 159-85 is amended by adding a new subsection to read:

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

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

15 "(d) In the case of the State of North Carolina, any action to be taken by the
16 Council of State pursuant to this section shall be taken with respect to the issuance of
17 revenue bonds by the North Carolina Low-Level Radioactive Waste Management
18 Authority, by the governing board of the Authority, and not by the Council of State.
19 Subsection (c) of this section shall not apply to the issuance of revenue bonds by the
20 North Carolina Low-Level Radioactive Waste Management Authority."

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

22 **"§ 159-94. Limited liability.**

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

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

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

42 **"§ 159-96. Limitation on extraterritorial operation of enterprises financed by**
43 **revenue bonds.**

1 (a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed
2 wholly or partially by revenue bonds issued under this Article, shall be owned or
3 operated by the municipality for its own use and for the use of public and private
4 consumers residing within its corporate limits. A utility or public service enterprise
5 financed wholly or partially by revenue bonds, when operated primarily for the
6 municipality's own use and for users within its corporate limits, may be operated
7 incidentally for users outside its corporate limits. Provided, however, that revenue bonds
8 may be issued for the purpose of financing in whole or in part mass transit systems,
9 aeronautical facilities, marine facilities and systems, facilities and equipment for the
10 collection, treatment or disposal of solid waste, notwithstanding that such systems,
11 facilities or equipment may be operated for users outside the corporate limits of a
12 municipality where the municipality finds that the system, facilities or equipment so
13 financed would benefit the municipality.

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

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

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

24 Sec. 20. Section 1 of this act is effective 1 July 1989. Sections 5 and 6 of
25 this act are effective 31 January 1989. Sections 2 through 4 and sections 7 through 20
26 are effective upon ratification.