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Short Title: CDBG Loan Guarantees/AB.

(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 for services rendered, including but not limited to, reasonable fees or

1 charges for servicing applications. Schedules of rates, fees, or charges
2 may vary according to classes of service, and different schedules may
3 be adopted for public entities, nonprofit entities, private for-profit
4 entities, and individuals.

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

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

- 30 a. The minimum size of the Section 108 Loan Guarantee is (i)
31 seven hundred fifty thousand dollars (\$750,000) for a project
32 supported by an individual local government and (ii) two
33 hundred fifty thousand dollars (\$250,000) for a project supported
34 as part of a loan pool; and the maximum size is five million
35 dollars (\$5,000,000) per project.
- 36 b. The Section 108 Loan Guarantee cannot constitute more than
37 fifty percent (50%) of total project costs.
- 38 c. The project has ~~twenty five percent (25%)~~ ten percent (10%)
39 equity from the corporation, partnership, or sponsoring party.
40 'Equity' means cash, real estate, or other hard assets contributed
41 to the project and loans that are subordinated in payment and
42 collateral during the term of the Section 108 Loan Guarantee.

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

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

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

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

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

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

40 "(d1) Any city may receive and dispense funds from the Community Development
41 Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq.,
42 either through application to the North Carolina Department of Commerce or directly
43 from the federal government, in accordance with State and federal laws governing these

1 funds. Any city that receives these funds directly from the federal government may
2 pledge current and future CDBG funds for use as loan guarantees in accordance with
3 State and federal laws governing these funds. A city may implement the receipt,
4 dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG
5 funds and lending all or a portion of those funds to a third party in accordance with
6 applicable laws governing the CDBG program.

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

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

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

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

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

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

32 **"§ 159C-7. Approval of project.**

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

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

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

40 a. That the operator of the proposed project pays, or has agreed to
41 pay thereafter, an average weekly manufacturing wage (i) which
42 is above the average weekly manufacturing wage paid in the

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

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

1 not have an adverse effect on public health and will further the waste management goals
2 of North Carolina. In any case where the Secretary shall make all of the required findings
3 respecting a proposed industrial project except that prescribed in subparagraph (1)a of
4 this section, the Secretary may, in his discretion, approve the proposed project if he shall
5 have received (i) a resolution of the governing body of the county requesting that the
6 proposed project be approved notwithstanding that the operator will not pay an average
7 weekly manufacturing wage above the average weekly manufacturing wage in the county
8 and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect
9 that unemployment in the county is especially severe.

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

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

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

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

36 "**§159C-8. Approval of bonds.**

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

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

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

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

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

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

34 **"§159C-11. Financing agreements.**

35 Every financing agreement shall provide that:

- 36 (1) The amounts payable under the financing agreement shall be sufficient
37 to pay all of the principal of and redemption premium, if any, and
38 interest on the bonds that shall be issued by the authority to pay the cost
39 of the project as the same shall respectively become due;
- 40 (2) The obligor shall pay all costs incurred by the authority in connection
41 with the financing and administration of the project, except as may be
42 paid out of the proceeds of bonds or otherwise, including, but without
43 limitation, insurance costs, the cost of administering the financing

1 agreement and the security document and the fees and expenses of the
2 fiscal agent or trustee, paying agents, attorneys, consultants and others;

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

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

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

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

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

- 23 (1) Acceleration of all amounts payable under the financing agreement;
24 (2) Reentry and repossession of the project;
25 (3) Termination of the financing agreement;
26 (4) Leasing or sale or foreclosure of the project to others; and
27 (5) Taking whatever actions at law or in equity may appear necessary or
28 desirable to collect the amounts payable under, and to enforce covenants
29 made in, the financing agreement.

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

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

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

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