

## Chapter 159C.

### Industrial and Pollution Control Facilities Financing Act.

#### § 159C-1. Short title.

This Chapter may be referred to as the "Industrial and Pollution Control Facilities Financing Act." (1975, c. 800, s. 1.)

#### § 159C-2. Legislative findings and purposes.

(a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs into the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, and the generation of electric power and the supply of other services by public utilities, which are essential to the economic growth of the State and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this Chapter, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

(c) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the State, by authorizing counties to create county authorities which shall be political subdivisions and bodies corporate and politic of the State. These bodies are to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities and for public utilities; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect

favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities. (1975, c. 800, s. 1.)

### § 159C-3. Definitions.

The following definitions apply in this Chapter:

- (1) Agency. – Any agency, bureau, commission, department, or instrumentality.
- (2) Air pollution control facility. – Any structure, equipment, or other facility for, including any increment in the cost of any structure, equipment, or facility attributable to, the purpose of treating, neutralizing, or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing, or stabilizing plants and equipment and their appurtenances, which have been certified by the government entity having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.
- (3) Bonds. – Revenue bonds of an authority issued under the provisions of this Chapter.
- (3a) Code. – The Internal Revenue Code of 1986, as amended.
- (4) Cost. – This term as applied to any project embraces all capital costs of the project, including all of the following:
  - a. The cost of construction.
  - b. The cost of acquisition of all property, including rights in land and other property, real and personal and improved and unimproved.
  - c. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved or relocated.
  - d. The cost of all machinery and equipment, installation, start-up expenses, financing charges, and interest prior to, during and for a period not exceeding one year after completion of construction.
  - e. The cost of engineering and architectural surveys, plans and specifications.
  - f. The cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of the project, administrative and other expenses necessary or incident to the acquisition or construction of the project and the financing of the acquisition and construction of the project.
- (5) Repealed by Session Laws 2000, c. 179, s. 3, effective August 1, 2000.
- (6) Financing agreement. – A written instrument establishing the rights and responsibilities of the authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds.
- (6a) Governing body. – The board, commission, council, or other body in which the general legislative powers of any county or other political subdivision are vested.

- (6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or manufactured products.
- (7) Obligor. – Any person, which may include the operator, who is obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.
- (8) Operator. – The person entitled to the use or occupancy of a project.
- (9) Political subdivision. – Any county, city, town, other unit of local government or any other governmental corporation, authority, or instrumentality of the State now or hereafter existing.
- (10) Pollution or pollutants. – Any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render the air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.
- (10a) Pollution control project. – Any air pollution control facility, water pollution control facility, or solid waste disposal facility if the facility is in connection with either an industrial project or a public utility plant.
- (11) Project. – Any land or equipment or one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project, (ii) any pollution control project for industry or for public utilities, (iii) any special purpose project, or (iv) any combination of projects mentioned in clauses (i) through (iii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition to it.
- (12) Revenues. – With respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived from the project or from the financing agreement or security document in connection with the project.
- (13) Security document. – A written instrument establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, which may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an

assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

- (14) Solid waste. – Solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.
- (15) Solid waste disposal facility. – A facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.
- (15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:
  - a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
  - b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.
  - c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
  - d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.
  - e. Public auditoriums, gymnasiums, stadiums, and convention centers.
  - f. Recreational facilities, including museums.
  - g. Land, equipment, and facilities for the disposal, treatment, or recycling of (i) solid or other waste that are described in G.S. 159I-8 or (ii) solid, forestry, agricultural, or other waste, including any residual material which is the by-product or excess raw material remaining after the completion of any commercial, consumer, governmental, agricultural, or industrial production process. Facilities for the handling and transport of products resulting from treatment and recycling are included within this purpose.
  - h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons.
  - i. Orphanages and similar housing facilities for children or disadvantaged or disabled persons.

- j. Facilities for the provision of material salvage and recycling services, the proceeds of which are used to provide for low, moderate, or affordable housing.
  - k. Research facilities owned or operated by a nonprofit corporation incorporated by two or more accredited universities whose main campuses are located in North Carolina or by the Chancellor, President, or similar official of such universities.
  - l. Facilities for housing the international headquarters of a nonprofit scholarly society that is a member of the Scholarly Societies Project.
  - m. Facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds pursuant to the American Recovery and Reinvestment Tax Act of 2009.
- (16) Water pollution control facility. – Any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1975, c. 800, s. 1; 1977, 2nd Sess., c. 1197; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, ss. 4, 5; 2000-179, s. 3; 2005-238, s. 10; 2007-128, s. 1; 2009-140, s. 6; 2013-135, s. 1.)

**§ 159C-4. Creation of authorities.**

(a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The \_\_\_\_\_ (the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Commerce and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an elected official of the county for which the authority is created. Any commissioner of an authority may be removed, with or without cause, by the governing body of the county.

(c) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(d) A majority of the commissioners of an authority then in office shall constitute a quorum. The affirmative vote of a majority of the commissioners of an authority then in office shall be necessary for any action taken by the authority. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county.

(e) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, s. 1; 1989, c. 751, s. 7(47); 1991 (Reg. Sess., 1992), c. 959, s. 78.)

#### **§ 159C-5. General powers.**

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places within the boundaries of the county for which it was created as it may determine;

- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;
- (7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee interest, for the construction, operation or maintenance of any project;
- (7a) Repealed by Session Laws 2001-487, s. 94.
- (8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (9) To pledge or assign revenues of the authority;
- (10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;
- (11) To fix, charge and collect revenues with respect to any project;
- (12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and
- (13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers herein granted. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1985, c. 723, s. 3; 2000-179, s. 4; 2001-487, s. 94.)

**§ 159C-6. Bonds.**

(a) Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of the bonds shall be payable solely from the funds authorized in this Article for their payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at any time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at any price or prices and under any terms and conditions, as may be fixed by the authority before the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to them, and shall fix the

denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(a) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate any authority as the governmental entity authorized to issue recovery zone facility bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of all or part of the project for which the bonds were issued, and shall be disbursed in any manner and under any restrictions, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than this cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

(c) The proceeds of bonds shall not be used to refinance the cost of an industrial project or a pollution control project. For the purposes of this section, a cost of an industrial project or a pollution control project is considered refinanced if both of the following conditions are met:

- (1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.
- (2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of an industrial project or a pollution control project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of an industrial project or a pollution control project, such as expenditures for land acquisition and site preparation. In any event, an expenditure in connection with an industrial project or a pollution control project originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

(e) An authority may make loans to an obligor to refund outstanding loans, obligations, deeds of trust, or advances issued, made, or given by the obligor for the cost of a special purpose project.

(f) The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(g) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of the bonds and securing the bonds. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1997-111, s. 1; 1997-463, s. 1; 2000-179, s. 5; 2009-140, s. 7.)

**§ 159C-7. Approval of industrial projects and pollution control projects by Secretary of Commerce.**

(a) Approval Required. – No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution control project with the Secretary of Commerce, and shall notify the Local Government Commission of the filing.

(b) Findings. – The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

- (1) In the case of a proposed industrial project, that the proposed project will not have a materially adverse effect on the environment.
- (2) In the case of a proposed pollution control project, that the project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.
- (2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.
- (3) In the case of an industrial project or a pollution control project, except a pollution control project for a public utility,
  - a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
  - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate the project, and
  - c. That the financing of the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. – If the initial proposed operator of an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued,

the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. – The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environmental Quality. – The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environmental Quality that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environmental Quality that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environmental Quality. The Department of Environmental Quality shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. – To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit any data and information about the project the Secretary may prescribe. The Secretary may also prescribe forms and rules the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. – If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing the approval and setting forth the findings and shall cause the certificate of approval to be published in

a newspaper of general circulation within the county. This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of the findings and approval have been so published, in the Superior Court of Wake County. The superior court is vested with jurisdiction to hear the action, but if no action is filed within the 30 days prescribed, the validity of the approval is conclusively presumed, and no court has authority to inquire into the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate expires three years after the date of the first issuance of the bonds. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79; 1995 (Reg. Sess., 1996), c. 575, s. 6; 1997-443, s. 11A.123; 1997-463, s. 2; 2000-179, s. 6; 2004-132, s. 1; 2015-241, s. 14.30(u).)

#### **§ 159C-8. Approval of bonds.**

(a) No bonds may be issued by an authority unless the issuance of the bonds is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of Commerce of the filing if the project is an industrial project or pollution control project.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider any of the following:

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

(c) The Local Government Commission shall not approve the issuance of bonds for a special purpose project unless the governing body of the county in which the special purpose project is located has conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purposes of paying all or a part of the proposed special purpose project. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed special purpose project, including its general location, and any other information the governing body considers appropriate.

(d) If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (b)(1) of this section only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit any financial data and information about the proposed bond issue and the security for it, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe any forms and rules the Secretary considers reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1; 1989, c. 751, s. 7(49); 1991 (Reg. Sess., 1992), c. 959, s. 80; 1995 (Reg. Sess., 1996), c. 575, s. 7; 2000-179, s. 7.)

#### **§ 159C-9. Sale of bonds.**

Bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, provided that such sale shall be approved by the authority and the obligor. (1975, c. 800, s. 1.)

#### **§ 159C-10. Location of projects.**

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the authority created for any one of the counties may issue bonds as provided in G.S. 159C-6 for the purpose of paying all or any part of the cost of the project or group of related projects if the following conditions are met:

- (1) The board of commissioners of each county in which the project or group of related projects is located has consented.

- (2) The governing body of the authority created for each county in which the project or group of related projects is located has consented.
- (3) The bonds are issued in compliance with all other provisions of this Chapter. (1975, c. 800, s. 1; 1993, c. 130, s. 1; 1997-463, s. 3.)

**§ 159C-11. Financing agreements.**

(a) Every financing agreement shall provide that:

- (1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds issued by the authority to pay the cost of the project as they respectively become due.
- (2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others.
- (3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project.
- (4) The obligor's obligation to provide for the payment of the bonds in full is not subject to cancellation, termination or abatement until payment of the bonds or provision for their payment has been made.
- (5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (b)(1)a. and (3)b. of G.S. 159C-7 if the project is an industrial project or a pollution control project, and is subject in any event to the approval of the Local Government Commission under G.S. 159C-8.

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment, has been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor under the agreement, including any one or more of the following:

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

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

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

The financing agreement may contain any additional provisions the authority considers necessary or convenient to effectuate the purposes of this Chapter. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 8; 2000-179, s. 8.)

#### **§ 159C-12. Security documents.**

Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the authority and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except such part thereof as may be necessary to provide reserves therefor, if any, shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the security document;
- (2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
- (3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
- (4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues or other funds provided under this Chapter to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The authority may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest. (1975, c. 800, s. 1; 1977, c. 719, s. 4; 1979, c. 109, s. 1.)

**§ 159C-13. Trust funds.**

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The security document may provide that any of such moneys may be temporarily invested and reinvested pending the disbursement thereof in such securities and other investments as shall be provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to such regulations as this Chapter and such security document may provide. (1975, c. 800, s. 1.)

**§ 159C-14. Tax exemption.**

The authority shall not be required to pay any taxes on any project or on any other property owned by the authority under the provisions of this Chapter or upon the income therefrom.

The interest on bonds issued by the authority shall be exempt from all income taxes within the State.

All projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith. (1975, c. 800, s. 1; 1977, c. 719, s. 5.)

**§ 159C-15. Construction contracts.**

The authority may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approvals by the authority as the authority may require in such agreement. Such agreement may provide that the authority may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1975, c. 800, s. 1; 1977, c. 719, s. 6.)

**§ 159C-16. Conflict of interest.**

If any officer, commissioner or employee of the authority, or any member of the governing body of the county for which the authority is created, shall be interested either directly or indirectly in any contract with the authority, such interest shall be disclosed to the authority and the county board of commissioners and shall be set forth in the minutes of the authority and the county board of commissioners, and the officer, commissioner, employee or member having such interest therein shall not participate on behalf of the authority in the authorization of any such contract or on behalf of the governing body of the county in the approval of the bonds to be issued by the authority to finance the project, respectively; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section shall not affect the validity of bonds issued pursuant to the provisions of this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 7.)

**§ 159C-17. Credit of State not pledged.**

Bonds issued under the provisions of this Chapter shall not be deemed to constitute a debt of the State or any political subdivision or any agency thereof or a pledge of the faith and credit of the State or any political subdivision or any such agency, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same or the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision or any agency thereof is pledged to the payment of the principal of or the interest on such bonds. (1975, c. 800, s. 1.)

**§ 159C-18. Bonds eligible for investment.**

Bonds issued by an authority under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1975, c. 800, s. 1.)

**§ 159C-19. Revenue refunding bonds.**

(a) Each authority is authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded have been issued, and
- (2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of these bonds, their maturities and other details, the rights of their holders, and the rights, duties, and obligations of the authority in respect to them shall be governed by the provisions of this Chapter that relate to the issuance of bonds, to the extent appropriate, including that the bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds, except that if the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, their proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of the outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded by them. Pending the application of the proceeds of the refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on

which are unconditionally guaranteed by, the United States of America that mature or are subject to redemption by the holder, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended. (1975, c. 800, s. 1; 1997-463, s. 4; 2000-179, s. 9.)

**§ 159C-20. No power of eminent domain.**

No authority shall have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1975, c. 800, s. 1.)

**§ 159C-21. Dissolution of authorities.**

Whenever the board of commissioners of an authority and the governing body of the county for which such authority was created shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing body may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest in the county or in such other political subdivisions as the county shall direct, and possession of such funds and other property shall forthwith be delivered to the county or to such other political subdivisions in accordance with the direction of the county. (1975, c. 800, s. 1.)

**§ 159C-22. Annual reports; application of Article 3, Subchapter III of Chapter 159.**

Each authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing body of the county for which the authority was created. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.

The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled: "The Local Government Budget and Fiscal Control Act" shall have no application to authorities created pursuant to this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 8.)

**§ 159C-23. Officers not liable.**

No commissioner of any authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1975, c. 800, s. 1.)

**§ 159C-24. Additional method.**

The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1975, c. 800, s. 1.)

**§ 159C-25. Liberal construction.**

This Chapter, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof. (1975, c. 800, s. 2.)

**§ 159C-26. Inconsistent laws inapplicable.**

Insofar as the provisions of this Chapter are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Chapter shall be controlling. (1975, c. 800, s. 3.)

**§ 159C-27. Creation, etc., of prior authorities ratified.**

The creation, formation and organization of all authorities heretofore [prior to June 24, 1977] purported to have been created, formed and organized are hereby ratified, confirmed and validated. (1977, c. 719, s. 9.)

**§ 159C-28: Repealed by Session Laws 2001-218, s. 5.**