

Chapter 159I.

Solid Waste Management Loan Program and Local Government Special Obligation Bonds.

§ 159I-1. Short title.

This Chapter may be cited as the Solid Waste Management Loan Program and Local Government Special Obligation Bond Act. (1989, c. 756, s. 1; 2002-72, s. 21.)

§ 159I-2. Findings and purpose.

The General Assembly finds that units of local government need a source of funds to implement solid waste management programs. Units of local government will confront a crisis in solid waste management in the near future. Within five years of the creation of this program, one-third of all the landfills in this State will have reached their capacity. Many local governments do not have the funds to meet:

- (1) The increased costs of constructing new landfills that meet current standards for the protection of the environment; or
- (2) The cost of constructing a local or regional incinerator that would serve to reduce the volume of waste to be landfilled; or
- (3) The costs of implementing alternative programs to reduce the amount of waste generated, to decrease the volume of waste that is generated, or to recover or to recycle that part of the waste stream that can be recovered or used for another purpose.

The General Assembly finds that comprehensive solid waste management programs at a local or regional level are needed in order to preserve the quality of North Carolina's groundwater. It is the purpose of the General Assembly to facilitate the implementation of local and regional solid waste management programs by establishing a loan fund for financing the capital expenses of these programs. The General Assembly seeks to encourage and assist units of local government to continue to voluntarily provide solid waste collection and disposal for their citizens, thereby maintaining a clean and healthful environment and an adequate supply of clean water. (1989, c. 756, s. 1.)

§ 159I-3. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Chapter:

- (1), (2) Repealed by Session Laws 2011-266, s. 1.26(a), effective July 1, 2011.
- (3) "Board" means the Clean Water Management Trust Fund Board of Trustees.
- (4) "Bonds" means the revenue bonds authorized to be issued by the Board under this Chapter. As used in this Chapter, the term "bonds" does not include any loan agreement.
- (5) "Costs" means the capital cost of acquiring or constructing any project, including, without limitation, the following:
 - a. The costs of doing any or all of the following deemed necessary or convenient by a unit of local government:
 1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping;

2. Reconstructing, remodeling, altering, renovating, replacing, refurbishing, and re-equipping;
 3. Enlarging, expanding, and extending; and
 4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.
- b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the purpose authorized;
 - c. The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures thereafter are to be moved;
 - d. Financing charges, including estimated interest during the acquisition or construction of such project and for six months thereafter;
 - e. The costs of services to provide and the cost of plans, specifications, studies and reports, surveys, and estimates of costs and revenues;
 - f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of a project;
 - g. Administrative and legal expenses and administrative charges;
 - h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities and interest-rate agreements, and of establishing and maintaining debt service and other reserves; and
 - i. Any other services, costs, and expenses necessary or incidental to the purpose authorized.
- (6) "Division" means the Division of Waste Management of the Department of Environmental Quality and any successor of the Division of Waste Management.
 - (7) "Loan" means moneys loaned by the Board to a unit of local government for a project authorized by this Chapter.
 - (8) "Loan agreement" means any bond, note, contract, loan agreement, or other written agreement of a unit of local government delivered to the Board and evidencing the unit's receipt of loan proceeds from the sale of all or a portion of the Board's bonds or from other available money of the Board and setting forth the terms of the unit's agreement to make payments to the Board in respect of such loan.
 - (9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes and any successor of said Commission.
 - (10) "Notes" means the revenue notes or revenue bond anticipation notes authorized to be issued by the Board under this Chapter. As used in this Chapter, the term "notes" does not include any loan agreement.
 - (11) "Project" means any capital project authorized to be financed in G.S. 159I-8.

- (12) "Revenues" means all moneys received by the Board, other than the proceeds received by the Board from the sale of bonds or notes and moneys appropriated by the State for the Solid Waste Management Loan Fund, in connection with the providing of financing to units of local government, including without limitation:
- a. The payments received by the Board of the principal of and premium, if any, and interest on loan agreements;
 - b. Administrative charges, but only to the extent determined by the Board; and
 - c. Investment earnings on all revenues, funds, and other moneys of the Board.
- (13) "Unit of local government" or "unit" means:
- a. A unit of local government as defined in G.S. 159-44(4);
 - b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461;
 - c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to time;
 - d. Any regional solid waste management authority created pursuant to G.S. 153A-421; or
 - e. A consolidated city-county as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county.

(b) Unless a different meaning is required by the context, the definitions set out in G.S. 130A-290, as such section may be amended from time to time, shall apply throughout this Chapter. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 888, s. 2; c. 1004, ss. 20, 47.1; c. 1024, s. 48; 1995, c. 461, s. 12; 1995 (Reg. Sess., 1996), c. 743, s. 24; 1997-443, s. 11A.123; 2011-266, s. 1.26(a), (c); 2015-241, s. 14.30(u).)

§ 159I-4: Repealed by Session Laws 2011-266, s. 1.26(b), effective July 1, 2011.

§ 159I-5. General powers of the Board.

The Board shall have all of the powers necessary or convenient to carry out and to effect the purposes and provisions of this Chapter, including, without limitation, the powers:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including, without limitation, agreements in respect of loan agreements and agreements with issuers of credit-enhancement facilities, liquidity facilities, bond insurance policies, reserve fund insurance policies and investment contracts, and interest-rate agreements;
- (2) To contract with any unit of local government with respect to any of the matters covered by this Chapter;
- (3) To establish a debt service reserve fund or funds, from moneys in the Solid Waste Management Loan Fund or from other available moneys,

- and other reserve funds and to borrow money to purchase insurance and investment contracts to establish, maintain, or increase such funds;
- (4) To agree to apply and assign any money, loan agreements, and other revenues;
 - (5) To borrow money as herein provided to carry out and effect its corporate purposes and to issue in evidence thereof bonds, notes, or bond anticipation notes for the purpose of providing funds therefor, including funds for the financing and refinancing of the cost of the acquisition or construction of projects, including the payment or advance on behalf of units of local government of the costs of such projects;
 - (6) To apply any payments, or prepayments, or principal of or interest on any loan agreement, to the extent such payment or prepayment is not necessary to pay debt service on the Board's bonds or notes, to the financing of the cost of the acquisition or construction of projects for units of local government to the same extent as provided in G.S. 159I-6;
 - (7) To fix, revise, charge and collect, or cause to be fixed, revised, charged, and collected, and to apportion administrative charges among units of local government participating in any program of the Board.
 - (8) To employ an administrator to administer the operations of the Board, fiscal and financial consultants, underwriters, attorneys, trustees, remarketing agents, and such other consultants, agents, and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Board;
 - (9) To apply for, accept, receive and agree to, and to comply with the terms and conditions governing grants, loans, advances, contributions, gifts, and other aid from any source whatsoever, including federal and State sources;
 - (10) To sue and be sued in its own name, to plead and be impleaded;
 - (11) To adopt an official seal and to alter the same at its pleasure;
 - (12) To establish and revise from time to time minimum financial standards and criteria for determining the eligibility of specific units of local government to obtain financing and to make loans as provided in this Chapter;
 - (13) To deposit, disburse, and invest, pursuant to the provisions of this Chapter, the proceeds of any fund established in accordance with this Chapter and to determine the application of the proceeds of any earnings thereon, subject to the specific provisions of this Chapter; and
 - (14) To act as otherwise necessary or convenient to carry out the purposes of this Chapter. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-6. Specific powers of the Board.

(a) The Board shall have the discretion to enter into one or more loan agreements with a unit of local government, providing for the making of a loan by the Board to the unit

of local government, to finance or refinance the cost of the acquisition or construction of a project; and

(b) Any loan agreement entered into by the Board with a unit of local government shall be in writing and shall set forth the terms and conditions agreed to between the Board and the unit of local government for the Board's loan to such unit of local government including, without limitation, the following:

- (1) The term of such loan agreement;
- (2) The payment provisions and prepayment provisions, if any, required:
 - a. To enable the Board to administer its programs;
 - b. To pay when due the principal of and premium, if any, and interest on bonds or notes or other obligations of the Board incurred to make such loan; and
 - c. To pay or reimburse the Board for such unit's administration charges and the cost of establishing and maintaining any reserves;
- (3) The security for payment by the unit of local government of the loan; and
- (4) Such other provisions and covenants as the Board may require.

(c) Nothing in this Chapter shall be deemed to change the application of the provisions of Article 8 of Chapter 143 of the General Statutes, relating to competitive bidding for public contracts, or the application of the provisions of Article 3 of Chapter 143 of the General Statutes specifically including the provisions of G.S. 143-49(6), as it applies to units of local government financing projects under this Chapter. To the extent that units comply with such competitive bidding requirements, there shall be no further requirements in respect of the Board. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-7. Solid Waste Management Loan Fund.

(a) A Fund to be known as the Solid Waste Management Loan Fund is established. Moneys appropriated to, paid to, or earned by this Fund shall be deposited with the State Treasurer or a corporate trustee as provided for in G.S. 159I-16, as may be determined by the Board.

(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Board, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

(b1) In connection with solid waste research to be contracted for by the Division, the Secretary of Environmental Quality shall negotiate, with the Board of the Board, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match

requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the Board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds.

(c) Moneys in the Solid Waste Management Loan Fund may be used, as shall be determined by the Board, for any one or more of the following purposes:

- (1) The establishment of one or more debt service reserve funds;
- (2) The obtaining of one or more credit facilities as hereinafter defined in this Chapter;
- (3) The making of loans to units of local government, which loans may be evidenced by debt instruments; and
- (4) The subsidization of interest rates on loans to units of local government.

In addition, any investment income or profit on moneys in the Solid Waste Management Loan Fund or on any moneys transferred from the Fund to a debt service reserve fund may be used, as shall be determined by the Board, to pay administrative expenses of the Board.

(d) As used in this section, "debt instrument" means an instrument in the nature of a promissory note executed by a unit of local government to evidence a debt to the Board in respect of a loan made to the unit from the Solid Waste Management Loan Fund and obligation to repay the principal, plus interest, under stated terms. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 21; c. 1024, s. 49; 1997-443, s. 11A.119(a); 2011-266, s. 1.26(c); 2015-241, s. 14.30(v).)

§ 159I-8. Eligible purpose.

(a) Loans may be made by the Board to finance the cost of acquisition or construction of projects. Projects shall include solid waste management projects and capital expenditures to implement such projects, including, without limitation, the purchase of equipment or facilities, construction costs of an incinerator; land to be used for recycling facilities or landfills; leachate collection and treatment systems; liners for landfills; monitoring wells; recycling equipment and facilities; volume reduction equipment; and financing charges.

(b) Projects may not include:

- (1) The operational and maintenance costs of solid waste management facilities or programs;
- (2) General planning or feasibility studies; or
- (3) The purchase of land, unless the land is to be used for a recycling facility or a landfill. (1989, c. 756, s. 1; 1995, c. 384, s. 1; 2011-266, s. 1.26(c).)

§ 159I-9. Application.

(a) All applications for loans shall be filed with the Division. The information required in the application shall be sufficient to permit the Division to determine the eligibility of the applicant pursuant to G.S. 159I-10 and to establish the priority of the application pursuant to G.S. 159I-11.

An applicant shall furnish information in addition or supplemental to the information contained in its application upon written request.

- (b) Applicants may apply for a loan prior to arranging for repayment. (1989, c. 756, s. 1.)

§ 159I-10. Eligible applicant.

(a) In determining the eligibility of a unit of local government for financing a project with a loan from the Board, the Board may consider:

- (1) The type and useful life of and the need for the project to be financed or refinanced;
- (2) The amount of financing or the cost of the project sought;
- (3) The credit rating, if any, of the unit of local government;
- (4) The future financing and capital needs of the unit of local government;
- (5) The availability and cost to the unit of local government of other methods of financing;
- (6) The construction, disbursement, and management procedures in effect in the unit of local government; and
- (7) Such other factors as the Board may, in its discretion, determine to be relevant in the providing of such financing.

(b) As a condition of determining eligibility for participating in one or more financing programs, the Board may establish:

- (1) Procedures requiring compliance by units of local government with such construction, disbursement and accounting procedures, and programs as the Board may determine;
- (2) Minimum credit ratings or criteria;
- (3) Minimum and maximum amounts with respect to the cost of the projects to be financed under this Chapter;
- (4) Procedures that may be employed by the Board in respect of units of local government that default in their obligations under loan agreements; and
- (5) Such other procedures, conditions, and requirements as the Board determines to be necessary or desirable in establishing its programs.

Nothing in this Chapter shall be deemed to restrict or limit the powers otherwise available to a unit of local government except to the extent restricted by the terms of any loan agreements or other agreements between a unit and the Board, to obtain financing or refinancing for projects from a source other than the Board or to establish or continue its own financing program or to enter into any other financing program.

(c) A unit of local government is not eligible to finance a project with a loan from the Board unless the unit holds a public hearing on the issue of obtaining a loan from the Board before it applies for the loan. The unit must publish notice of the hearing in a newspaper that is qualified for legal advertising in the unit at least ten days before the date fixed for the hearing. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-11. Priority factors.

(a) The Commission for Public Health shall adopt, pursuant to Chapter 150B of the General Statutes, rules for the assignment of a priority to each application for a loan under this Chapter.

(b) An application for a loan under this Chapter shall be assigned a priority by the Division. Factors to be taken into consideration in assigning such priorities shall include, but are not limited to, projects identified by the Division as addressing emergency solid waste management situations, current implementation by the unit of local government of a recycling program or a waste stream reduction program; financial need; multi-county solid waste management projects; groundwater protection needs; local effort; public health needs; and the proposed purpose of the applicant's loan is to implement a method of disposal that is an alternative to landfilling.

(c) A written statement of each priority assigned shall be prepared by the Division and shall be attached to the application. The priority assigned shall be conclusive.

(d) Any application that does not qualify for a loan for the period in which the application was eligible for consideration by reason of the priority assigned shall be considered for a loan during the next period upon written request of the applicant. If the second application should fail to qualify for a loan during the period for consideration by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new or amended application at any time. (1989, c. 756, s. 1; 2007-182, s. 2.)

§ 159I-12. Units of local government authorized to borrow money from the Board by loans.

(a) Any unit of local government determined by the Board to be eligible pursuant to G.S. 159I-10 may borrow money from the Board for the purpose of financing or refinancing the cost of the acquisition or construction of a project by a unit. The unit shall enter into a loan agreement with the Board. The loan agreement shall set forth the terms and conditions of the loan, including the terms and conditions described in G.S. 159I-6(b), as determined and approved by the governing body of the unit.

(b) The obligation of a unit of local government under any loan agreement entered into with the Board pursuant to this section shall be payable and otherwise secured as provided in G.S. 159I-13.

(c) In connection with entering into a loan obligation, any unit of local government may enter into a credit facility, as defined in G.S. 159I-13(g), and the obligation of a unit of local government under the credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in G.S. 159I-13.

(d) The Board or a unit of local government may propose an amendment, including an amendment restructuring or otherwise relating to the principal repayment schedule and the interest payment schedule set forth in such loan agreement, upon a determination by the Board that such amendment is:

- (1) Consistent with the then existing financial condition of the unit of local government and its ability to meet its agreement under the loan agreement; and
- (2) Consistent with the then existing financial condition of the Board and the administration of the Board's duties and responsibilities under this Chapter.

Nothing in this Chapter shall be deemed as restricting the power of the Board or the unit of local government to agree to any amendment to a loan agreement.

(e) No loan agreement or amendment to a loan agreement may become effective without the approval of the Local Government Commission. In determining whether a loan agreement or any amendment thereto should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86. The Local Government Commission shall approve any such loan agreement, or any amendment thereto, if, upon the information and evidence it receives, it finds and determines that such loan agreement, or amendment thereto, will satisfy its criteria and is consistent with the purposes of this Chapter. After considering a loan agreement or an amendment thereto, the Local Government Commission shall enter its order either approving or disapproving such agreement or amendment. An order of approval may not be regarded as an approval of the legality of such agreement or amendment. The order of the Local Government Commission disapproving such agreement or amendment is final. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-13. Sources and security for units of local government.

(a) The source or sources of and the security for payment of each loan agreement shall be determined by the governing body of such unit of local government and shall be set forth in the loan agreement.

(b) In the event that, under the provisions of The Local Government Bond Act a bond order authorizing the issuance of bonds that pledge the faith and credit of a unit of local government, that is otherwise authorized to issue bonds under the act, for the purpose of providing funds for one or more purposes that constitute eligible projects within the meaning of this Chapter has taken effect, then, in lieu of issuing any bonds authorized or any bond anticipation note in anticipation of such bonds, but not sold and delivered pursuant to such order, the governing body of any unit of local government may enter into a loan agreement authorized by this Chapter and may pledge the faith and credit of such unit to secure its obligation to make the payments required under such loan agreement or a credit facility in support of such loan agreement, provided the following conditions are met:

- (1) The aggregate principal amount due under such loan agreement does not exceed the aggregate amount of authorized but unissued bonds, or any bond anticipation notes in anticipation of such bonds, under the bond order; and
- (2) The project to be acquired is a purpose for which proceeds of bonds or bond anticipation notes may be expended under the bond order.

(c) Each unit of local government may agree to apply to the payment of a loan agreement any available source or sources of revenues of such unit and, to the extent the generation of such revenues is within the power of such unit, to enter into covenants to take action in order to generate such revenues, provided such agreement to use such sources to

make payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

(d) Each unit of local government otherwise having the power of taxation may enter into loan agreements constituting a continuing contract and providing for the making of payments in ensuing fiscal years from any available source or sources of revenues, including the proceeds of taxes realized from the exercise of the unit's power of taxation, appropriated by the unit in its annual budget provided:

- (1) The governing body of such unit shall have appropriated sufficient funds to pay any amount to be paid under the loan agreement in the fiscal year in which such contract is entered into, this appropriation to be made prior to the entering into of the loan agreement;
- (2) There is included in the loan agreement a provision automatically cancelling the loan agreement in the event the governing body of the unit decides not to appropriate funds to make payment in an ensuing fiscal year in which event the obligation of the unit to make any future payments in any ensuing fiscal year shall cease;
- (3) No deficiency judgment requiring the exercise of the unit's power of taxation may be entered against the unit in any action for breach of a contractual obligation authorized by this subsection; and
- (4) The taxing power of the unit is not pledged to secure any payments to be made pursuant to the loan agreement and the Board shall have agreed that it has no right to require the exercise of a unit's power of taxation to secure such loan agreement.

No loan agreement may contain a nonsubstitution clause which restricts the right of a unit to replace or provide a substitute for any project financed pursuant to the loan agreement.

(e) The obligation of a unit of local government with respect to the sources of revenues authorized by subsections (c) and (d) of this section shall be specifically identified in the proceedings of the governing body authorizing the unit to enter into a loan agreement. This loan agreement shall be valid and binding from the date the unit enters into the loan agreement. The sources of payment so specifically identified and then held or thereafter received by a unit, any fiduciary, or the Board shall immediately be subject to the lien of the loan agreement without any physical delivery of such sources or further act. This lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether such parties have notice thereof. The proceedings, the loan agreement, or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in the Chapter.

Any loan agreement secured by a source or sources of revenue authorized by subsection (b), (c) or (d) of this section may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by the loan agreement, including a deed of trust on any real property so acquired.

(f) The interest payable by a unit to the Board on any loan agreement may be at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the governing body of such unit. Such approval may be given as the governing body of such unit may direct, including without limitation, a certificate signed by a representative of the unit designated by the governing body of such unit. The Board may determine that it is necessary that certain provisions in the Board's bonds or notes be reflected, in similar terms, in loan agreements, so that if it is necessary to vary the interest rate or call the principal prior to maturity of certain of the Board's bonds or notes the Board will have the power to effect a similar variation in interest rate or a similar call prior to maturity of certain loan agreements. Accordingly, in fixing the details of a loan agreement, the governing body of such unit may provide that a loan agreement be:

- (1) Made payable from time to time on demand or tender for purchase by the Board, provided a credit facility supports such a loan agreement. A credit facility is not required if the governing body of such unit specifically determines that a credit facility is not required upon a finding and determination by the governing body that the absence of a credit facility will not affect the unit's ability to make payments on demand or tender, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit;
 - (2) Additionally supported by a credit facility;
 - (3) Made subject to redemption or a mandatory tender for purchase by the unit prior to maturity; and
 - (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings of the governing body providing for the entering into of the loan agreement, including, without limitation, such variation as may be permitted pursuant to a par formula.
- (g) As used in this section:
- (1) "Credit facility" means an agreement entered into by the unit of local government with a bank, savings and loan association, or other banking institution; an insurance company, reinsurance company, surety company or other insurance institution; a corporation, investment banking firm or other investment institution; or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any loan agreement payable on demand or tender by the Board, in consideration of the unit agreeing to repay the provider of such credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

- (2) "Par formula" shall mean any provision or formula adopted by the unit to provide for the adjustment from time to time, of the interest rate or rates borne by any loan agreement, including:
- a. A provision for such adjustment so that the purchase price of such loan agreement in the open market would be as close to par as possible.
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.
 - c. A provision providing for such adjustment based upon the adjustments of the interest rate or rates of the Board's bonds and notes, or
 - d. Such other provision as the unit may determine to be consistent with this Chapter and will not affect the unit's ability to pay the principal of and the interest on any loan agreement, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit.

(h) Any loan agreement may provide for an acceleration of the repayment schedule. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-14. Credit of State not pledged.

Bonds or notes issued by the Board under the provisions of this Chapter shall not be secured by a pledge of the faith and credit of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from Board revenues and other funds provided therefor. Each bond or note issued by the Board under this Chapter shall contain on its face a statement to the effect that the Board shall not be obligated to pay the same, the interest, or the premium thereon except from Board revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of or the interest or premium on such Board bond or note.

Expenses incurred by the Board in carrying out the provisions of this Chapter shall be payable from revenues and other funds provided pursuant to, or available for use under, this Chapter. No liability may be incurred by the Board beyond the extent to which moneys shall have been so provided. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-15. Bonds and notes.

(a) The Board may provide for the issuance at one time or from time to time of bonds and notes, including bond anticipation notes and renewal notes, of the Board to carry out and effectuate its corporate purposes. The principal of and interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, notes may be paid from any available Board revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of

the Board or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the Board. The bonds or notes may also be made payable from time to time on demand or tender for purchase by owner, all upon such terms and conditions as may be determined by the Board. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the Board.

The Board may also issue one or more series of bonds and notes, including bond anticipation notes and renewal notes, from time to time, to make loans to an individual unit of local government upon a determination, by resolution, of the Board as follows:

- (1) The issuance of a series of bonds or notes by the Board in order to make a loan to an individual unit of local government, as distinct from the proceeds of such series of bonds or notes being used to provide a pool of money to make a number of such loans, does not materially adversely affect the ability of the Board to effect its general policy of making loans on a pooled basis.
- (2) The issuance of the series of bonds or notes will not economically disadvantage the Board and will provide an economic benefit to the individual unit of local government.
- (3) The use, if any, of any of the proceeds of the Solid Waste Management Loan Fund in connection with the Board financing for an individual unit of local government is consistent with the Board's use of any proceeds in connection with loans made on a pooled basis.

All of the provisions of this Chapter, including, without limitation, G.S. 159I-13 relating to the sources and security that may be used by units of local government in making loans, shall apply to any Board financing for an individual unit of local government.

(b) In fixing the details of bonds or notes, the Board may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the Board and the marketing of the bonds or notes at a reasonable interest cost to the Board;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Board.
- (c) As used in this section:
- (1) "Credit facility" means an agreement entered into by the Board with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the Board agreeing to repay the provider of such credit facility in accordance with the terms and provisions of such agreement; the provider of any credit facility may be located either within or without the United States of America.
 - (2) "Par formula" means any provision or formula adopted by the Board to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes including:
 - a. A provision providing for the adjustment so that the purchase price of the bonds or notes in the open market would be as close to par as possible;
 - b. A provision providing for the adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
 - c. Such other provisions as the Board may determine to be consistent with this Chapter and will not materially and adversely affect the financial position of the Board and the marketing of the bonds or notes at a reasonable interest cost to the Board.

(d) Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the Board. The Board shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons, if any, shall cease to be this officer before the delivery thereof, this 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 and any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time of the execution thereof shall be the proper officers to sign although at the date of the bond or note or coupon the persons may not have been these officers. The Board may also provide for the authentication of the

bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the Board may determine. Provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the Board may determine.

(e) No bonds or notes may be issued by the Board under this Chapter unless the issuance thereof is approved and the bonds or notes are sold by the Local Government Commission as provided in this Chapter. The Board shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes which application shall contain any such information and shall have attached to it any such documents concerning the proposed financing as the Secretary of the Local Government Commission may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State, by any of its agencies or departments, or by any unit of local government in the State. The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this Chapter.

Upon the filing with the Local Government Commission of a written request of the Board requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interest of the Board and to effect the purposes of this Chapter, provided that the sale shall be approved by the Board.

(f) The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of, or in any trust agreement securing, such bonds or notes.

(g) Prior to the preparation of definitive bonds, the Board 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 Board may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(h) Bonds or notes may be issued under the provision of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State 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 resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, ss. 22, 23; c. 1024, s. 38(a), (b); 2011-266, s. 1.26(c).)

§ 159I-16. Trust agreement or resolution.

(a) In the discretion of the Board, any bonds and notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the Board and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or resolution may pledge or assign all or part of the revenues or assets of the Board, including, without limitation, loan agreements, agreements or commitments to enter into loan agreements, contracts, agreements and other security or investment obligations, any fees or charges made or received by the Board, the moneys received in payment of loans and interest thereon, and any other moneys received by the Board. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues or assets of the Board, the duties of the Board with respect to the acquisition and disposition of any project and the purchase, acceptance and disposition of any loan agreement, the charges and collection of any revenues and administrative charges, the terms and conditions for the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon the revenues or assets provided in such trust agreement or resolution, without priority by reason of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this Chapter and of such trust agreement or resolution; except that the Board may provide in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in such trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, assets, or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by any such owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the Board.

(b) The Board may set the terms and conditions of loan agreements, including, without limitation, the repayment terms, so as to provide a fund sufficient, with such other funds as may be made available therefor, including, without limitation, investment income and the proceeds of administrative charges to the extent determined by the Board:

- (1) To pay the costs of operation of the Board,
- (2) To pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and
- (3) To create and maintain any reserves provided for in the trust agreement or resolution securing such bonds or notes.

(c) All pledges of any assets or revenues of the Board as authorized by this Chapter shall be valid and binding from the time when such pledges are made. All such assets or revenues so pledged and thereafter received by the Board 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 Board, irrespective of whether such parties have notice thereof. The trust agreement or resolution by which a pledge is created or any loan obligation need not be filed or recorded except in the records of the Board.

(d) The State does pledge to and agree with the holders of any bonds or notes issued by the Board that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the Board at the time of issuance of the bonds or notes to set the terms and conditions of loan agreements in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, including without limitation, investment income and the proceeds of administrative charges to the extent determined by the Board, to pay the costs of operation of the Board, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and to create and maintain any reserves provided therefor, and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, ss. 24, 25; c. 1024, s. 38(c), (d); 2011-266, s. 1.26(c).)

§ 159I-17. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to this Chapter, including, without limitation, payments made under and the proceeds received from the sale or other disposition of loan agreement, proceeds received from the disposition by the Board of any project and any other revenues and funds received by the Board, (except any portion, as designated by the Board, representing administrative charges), shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be invested temporarily pending the disbursement thereof 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 purposes of this Chapter subject to such regulations as this Chapter or such resolution or trust agreement may provide. Any such moneys may be deposited and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be amended from time to time, provided, however that:

- (1) Any deposit or investment authorized by G.S. 159-30 or G.S. 147-69.1 may be deposited or invested with any bank located inside or outside the State, including outside the United States of America, provided that any such bank is a bank whose unsecured obligations are rated in either of the two highest rating categories by either Moody's Investors Service or Standard & Poor's Corporation; and
- (2) Any deposit or investment may be made pursuant to either G.S. 159-30 or G.S. 147-69.1. If one section is less restrictive or the other section authorizes additional deposit and investment options, the Board may proceed under either section in order that the Board shall have the broadest deposit and investment options available under either section. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-18. Remedies.

Any owner of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Board pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution by the Board or by any officer thereof. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-19. Status of bonds and notes under Uniform Commercial Code.

All bonds and notes and interest coupons, if any, issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes. (1989, c. 756, s. 1.)

§ 159I-20. Bonds and notes eligible for investment.

Bonds and notes issued under the provisions of this Chapter are hereby made securities in which all public offices, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities, which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the

deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law. (1989, c. 756, s. 1.)

§ 159I-21. Refunding bonds and notes.

(a) The Board may issue bonds and notes for the purposes of refunding any bonds or notes issued pursuant to this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of such bonds or notes, and, if deemed advisable by the Board, for any additional corporate purposes of the Board.

Any such refunding bonds or notes may bear interest at rates, including variable rates as authorized in G.S. 159I-15, lower, the same as, or higher than and have maturities shorter than, the same as, or longer than the bonds or notes being refunded. The proceeds of any such refunding bonds or notes may be applied:

- (1) To the payment and retirement of the bonds or notes being refunded by direct application to such payment and retirement;
 - (2) To the payment and retirement of the bonds or notes being refunded by the deposit in trust of such proceeds;
 - (3) To the payment of any expenses incurred in connection with such refunding; and
 - (4) For any other uses not inconsistent with such refunding.
- (b) Any money so held in trust may be invested in:
- (1) Direct obligations of the United States of America.
 - (2) Obligations, the principal of and the interest on which are guaranteed by the United States of America.
 - (3) Evidences of ownership of a proportionate interest in specified obligations described in subdivision (1) and (2) of this subsection, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.
 - (4) Obligations of the State or local governments of the State, provision for the payment of the principal of and interest on which obligations shall have been made by deposit with a trustee or escrow agent of obligations described in subdivisions (1), (2) or (3) of this subsection, the maturing principal of any interest on which, when due and payable, shall provide sufficient money with any other money held in trust for such purpose to pay the principal of, premium, if any, and interest on such obligations of the State or units of local government and which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.
 - (5) Obligations of the State or local governments of the State, the principal of and interest on which, when due and payable, have been insured by a bond insurance company which is rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

- (6) Full faith and credit obligations of the State or local governments of the State, which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.
- (7) Any obligations or investments in which the State Treasurer is authorized, at the time of such investment, to invest funds of the State.

The proceedings providing for the issuance of any refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested.

(c) Nothing in this section shall be construed as a limitation on:

- (1) The duration of any deposit in trust for the retirement of bonds or notes being refunded, but which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption; or
- (2) The power to issue bonds or notes for the combined purpose of refunding bonds or notes and providing moneys for any corporate purpose as provided in this Chapter. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-22. Officers not liable.

No member or officer of the Board shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-23. Tax exemption.

All of the bonds and notes authorized by this Chapter shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes shall not be subject to taxation as income. (1989, c. 756, s. 1; 1995, c. 46, s. 19; 2015-264, s. 16(j).)

§ 159I-24. Conflicts of interest.

If any member, officer, or employee of the Board shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government interested directly or indirectly, in any contract with the Board, such interest shall be disclosed to the Board and shall be set forth in the minutes of the Board. The member, officer, or employee having an interest therein shall not participate on behalf of the Board in the authorization of any such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds, notes, or loan agreements issued pursuant to the provisions of this Chapter. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)

§ 159I-25. Disbursement.

(a) The proceeds of any bonds or notes to be used to make loans shall be disbursed by, or pursuant to the direction of, the Office of State Budget and Management. No such proceeds shall be disbursed until the Office of State Budget and Management has received from the Division a certificate of eligibility that states that the applicant meets all eligibility criteria, and that all procedural requirements of this Chapter have been met.

(b) Once the prerequisites for disbursement have been satisfied pursuant to subsection (a) of this section, the proceeds shall be disbursed as the Board may provide. (1989, c. 756, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 159I-26. Withdrawal of commitment.

Failure of an applicant, within one year of the date of acceptance of a loan application to arrange for necessary financing of the proposed project, shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Division shall give due consideration to any extenuating circumstances presented by the applicant as reasons for its failure to arrange necessary financing. The commitment may be extended for an additional period of time if, in the judgment of the Division, an extension is justified. (1989, c. 756, s. 1.)

§ 159I-27. Inspection.

(a) The Division shall perform one or more inspections of each project and shall monitor its progress. If the Division determines that the project is not in substantial compliance with the approved schedule of implementation, the Division may revoke its approval of the project, further disbursement of loan proceeds may be rescinded, and the outstanding loan, together with accrued interest, may immediately become due and payable.

(b) Inspection of a project for which a loan has been made under this Chapter may be performed by qualified personnel of the Division or by qualified professional engineers, registered in this State, who have been approved by the Division. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the loan was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of any project for which the loan was made. (1989, c. 756, s. 1.)

§ 159I-28. Rules.

(a) The Office of State Budget and Management and the Commission for Public Health may adopt, modify and repeal rules establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon the concurrence of both agencies involved.

(b) A copy of the rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the Division and the Office of State Budget and Management to any unit of local government. (1989, c. 756, s. 1; 1997-443, s. 11A.114; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-182, s. 2.)

§ 159I-29: Repealed by Session Laws 2015-286, s. 4.12(e), effective October 22, 2015.

§ 159I-30. Additional powers of units of local government; issuance of special obligation bonds and notes.

(a) Authorization. – Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section and the applicable provisions of this Chapter for this purpose.

(b) Pledge. – Each unit of local government may pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, may enter into covenants to take action in order to generate the revenues, as long as the pledge of these sources for payments or the covenant to generate revenues does not constitute a pledge of the unit's taxing power.

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

The sources of payment pledged by a unit of local government shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes.

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local Government Commission pursuant to the procedures provided in subsection (i) of this section.

The sources of payment so pledged and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the pledge without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Chapter.

(b1) Security Interest. – In connection with issuing its special obligation bonds or special obligation bond anticipation notes under this Chapter, a unit of local government may grant a security interest in the project financed, or in all or some portion of the property on which the project is located, or in both. If a unit of local government determines to provide additional security as authorized by this subsection, the following conditions apply:

- (1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to:
 - a. Continue to provide a service or activity; or
 - b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.

- (2) A bond order is subject to approval by the Commission under Article 8 of Chapter 159 of the General Statutes if it:
 - a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
 - b. Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).

The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (i) of this section.

- (3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.
- (4) Before granting a security interest under this subsection, a unit of local government shall hold a public hearing on the proposed security interest. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(c) **Payment; Call.** – Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(d) **Interest.** – The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. This approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(e) **Nature of Obligation.** – Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be secured solely by any one or more of the sources of payment authorized by this section as may be pledged in the

proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on the bond or note are secured solely by the sources of payment pledged in the bond order, resolution, or trust agreement under which it is authorized or secured. The following limitations apply to payment from the specified sources:

- (1) Any such use of these sources will not constitute a pledge of the unit's taxing power; and
- (2) The unit is not obligated to pay the principal or interest or premium except from these sources.

(f) Details. – In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof as long as a credit facility supports the bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(g) Definitions. – The following definitions apply in this section:

- (1) Credit facility. – An agreement entered into by the unit with a bank, a savings and loan association, or another banking institution; an insurance company, a reinsurance company, a surety company, or another insurance institution; a corporation, an investment banking firm, or another investment institution; or any financial institution, providing for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or

notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

- (2) Par formula. – Any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:
 - a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
 - c. Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.
- (3) Project. – Any of the following:
 - a. A project as defined in G.S. 159I-3.
 - b. Any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works.
 - c. With respect to a city, any service or facility authorized by G.S. 160A-536 and provided in a municipal service district.

(g1) Credit Facility. – The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(h) Term; Form. – Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the unit of local government, except that no such maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of the unit whose signature, or a facsimile of whose signature, appears on any bonds or notes or coupons, if any, ceases to be the officer before delivery thereof, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof were the proper officers to sign although at the date of the bond or note or coupon these persons may not have been the proper officers. The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds

or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(i) Local Government Commission Approval. – No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section and the applicable provisions of this Chapter. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section and the applicable provisions of this Chapter. An approval of an issue shall not be regarded as an approval of the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section and the applicable provisions of this Chapter, if the sale is approved by the unit.

(j) Proceeds. – The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(k) Interim Documents; Replacement. – Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when definitive bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(l) No Other Conditions. – Bonds or notes may be issued under the provisions of this section and the applicable provisions of this Chapter without obtaining, except as otherwise expressly provided in this section and the applicable provisions of this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State 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 section, the applicable provisions of this Chapter, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(m) Trust. – In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues pledged in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of the trust agreement or resolution, except that the unit may provide in the trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes.

Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(n) Applicable Provisions. – The provisions of G.S. 159I-15(a), (d), and (e) relating to the Board and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, except that the source or sources of revenue pledged to pay bonds and notes of a unit of local government shall be limited as provided in this section.

The provisions of G.S. 159I-17 relating to the Board and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, except that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to remedies, the Uniform Commercial Code, investment eligibility, and tax exemption, as they relate to the Board's bonds and notes, shall apply to a unit of local government and its bonds and notes. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 26; c. 1024, s. 38(e); 1995 (Reg. Sess., 1996), c. 742, s. 39; c. 743, s. 26; 1997-6, s. 20; 1997-307, s. 1; 2001-238, s. 1; 2004-151, ss. 2, 3; 2011-266, s. 1.26(c).)