

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 232

Short Title: Clean Water Bonds.

(Public)

Sponsors: Senators Kerr; Albertson, Ballance, Ballantine, Carpenter, Conder, Cooper, Dalton, Horton, Hoyle, Jordan, Martin of Pitt, Odom, Perdue, Rand, Soles, Warren, Weinstein, and Wellons.

Referred to: Finance.

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water Bond Act of 1997".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

- (1) Two hundred million dollars (\$200,000,000) to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General

1 Statutes or to provide funding by grants and loans to local government
2 units; and

- 3 (2) Five hundred million dollars (\$500,000,000) to provide loans to local
4 government units to finance all or a portion of the cost of construction,
5 improvements, enlargements, extensions, and reconstruction of water
6 supply systems, wastewater collection systems, wastewater treatment
7 works, and water conservation projects.

8 The funds to be derived from the sale of the Clean Water Bonds
9 authorized by this act are sufficient to meet no more than a fraction of
10 the needs which now exist and will arise in the immediate future. For
11 this reason, although public necessity and the criteria established by
12 Chapter 159G of the General Statutes shall be the primary consideration
13 in granting and loaning funds, great emphasis shall also be placed on
14 achieving stringent reductions in the levels of nutrients and other
15 pollutants discharged into the State's waters, particularly in nutrient
16 sensitive river basins, in reducing the overall volume of effluent
17 discharged to the State's waters by using alternative methods of
18 wastewater treatment when feasible, on the creation of efficient systems
19 of regional wastewater disposal and regional water supply, and on the
20 willingness and ability of local government units to meet their
21 responsibilities through sound fiscal policies, creative planning, and
22 efficient operation and management.

23 Section 3. Definitions. As used in this act, unless the context otherwise
24 requires:

- 25 (1) " Bonds" means bonds issued under this act.
26 (2) " Clean Water Revolving Loan and Grant Act" means Chapter 796 of
27 the 1987 Session Laws, as amended from time to time, codified as
28 Chapter 159G of the General Statutes.
29 (3) " Clean Water Revolving Loan and Grant Fund" means the Clean Water
30 Revolving Loan and Grant Fund as defined in the Clean Water
31 Revolving Loan and Grant Act.
32 (4) " Cost" means, without intending thereby to limit or restrict any proper
33 definition of this term in financing the cost of facilities or purposes
34 authorized by this act:
35 a. The cost of constructing, reconstructing, enlarging, acquiring,
36 and improving facilities, and acquiring equipment and land
37 therefor,
38 b. The cost of engineering, architectural, and other consulting
39 services as may be required,
40 c. Administrative expenses and charges,
41 d. Finance charges and interest prior to and during construction and,
42 if deemed advisable by the State Treasurer, for a period not

- 1 exceeding two years after the estimated date of completion of
2 construction,
- 3 e. The cost of bond insurance, investment contracts, credit
4 enhancement and liquidity facilities, interest-rate swap
5 agreements or other derivative products, financial and legal
6 consultants, and related costs of bond and note issuance, to the
7 extent and as determined by the State Treasurer,
- 8 f. The cost of reimbursing the State for any payments made for any
9 cost described above, and
- 10 g. Any other costs and expenses necessary or incidental to the
11 purposes of this act.
- 12 Allocations in this act of proceeds of bonds to the costs of a project or
13 undertaking in each case may include allocations to pay the costs set
14 forth in items c., d., e., f., and g. in connection with the issuance of
15 bonds for the project or undertaking.
- 16 (5) "Credit facility" means an agreement entered into by the State
17 Treasurer on behalf of the State with a bank, savings and loan
18 association, or other banking institution, an insurance company,
19 reinsurance company, surety company, or other insurance institution, a
20 corporation, investment banking firm, or other investment institution, or
21 any financial institution or other similar provider of a credit facility,
22 which provider may be located within or without the United States of
23 America, such agreement providing for prompt payment of all or any
24 part of the principal or purchase price (whether at maturity, presentment
25 or tender for purchase, redemption or acceleration), redemption
26 premium, if any, and interest on any bonds or notes payable on demand
27 or tender by the owner, in consideration of the State agreeing to repay
28 the provider of the credit facility in accordance with the terms and
29 provisions of such agreement.
- 30 (6) "Local government units" means local government units as defined in
31 the Clean Water Revolving Loan and Grant Act.
- 32 (7) "Notes" means notes issued under this act.
- 33 (8) "Par formula" means any provision or formula adopted by the State to
34 provide for the adjustment, from time to time, of the interest rate or rates
35 borne by any bonds or notes, including:
- 36 a. A provision providing for such adjustment so that the purchase
37 price of such bonds or notes in the open market would be as close
38 to par as possible,
- 39 b. A provision providing for such adjustment based upon a
40 percentage or percentages of a prime rate or base rate, which
41 percentage or percentages may vary or be applied for different
42 periods of time, or

1 c. Such other provision as the State Treasurer may determine to be
2 consistent with this act and will not materially and adversely
3 affect the financial position of the State and the marketing of
4 bonds or notes at a reasonable interest cost to the State.

5 (9) " State" means the State of North Carolina.

6 (10) " Wastewater collection systems" means wastewater collection systems
7 as defined in the Clean Water Revolving Loan and Grant Act.

8 (11) " Wastewater treatment works" means wastewater treatment works as
9 defined in the Clean Water Revolving Loan and Grant Act.

10 (12) " Water conservation projects" include but are not limited to any
11 construction, repair, renovation, expansion, replacement of components,
12 or other capital improvement, including related equipment and land
13 acquisition, designed to:

14 a. Eliminate the wasteful or unnecessary use or loss of water in the
15 operations of a wastewater collection system, wastewater
16 treatment works, or water supply system; or

17 b. Enhance the operation of a wastewater collection system,
18 wastewater treatment works, or water supply system to provide a
19 more efficient use of water.

20 (13) " Water Pollution Control Revolving Fund" means the fund described
21 by G.S. 159G-4(a) and G.S. 159G-5(c).

22 (14) " Water supply systems" means water supply systems as defined in the
23 Clean Water Revolving Loan and Grant Act.

24 Section 4. Authorization of bonds and notes. Subject to a favorable vote of a
25 majority of the qualified voters of the State who vote on the question of issuing Clean
26 Water Bonds in the election called and held as provided in this act, the State Treasurer is
27 hereby authorized, by and with the consent of the Council of State, to issue and sell, at
28 one time or from time to time, general obligation bonds of the State to be designated
29 "State of North Carolina Clean Water Bonds", with any additional designations as may be
30 determined to indicate the issuance of bonds from time to time, or notes of the State as
31 provided in this act, in an aggregate principal amount not exceeding seven hundred
32 million dollars (\$700,000,000) for the purpose of providing funds, with any other
33 available funds, for the purposes authorized in this act.

34 Section 5. Uses of bond and note proceeds. The proceeds of Clean Water
35 Bonds and notes shall be used for the purpose of making loans and grants to local
36 governments as follows:

37 (1) The proceeds of two hundred million dollars (\$200,000,000) of Clean
38 Water Bonds shall be used and allocated for the same purposes for
39 which funds in the Clean Water Revolving Loan and Grant Fund may
40 be used including, without limitation, to provide funds to be used to
41 make revolving loans and grants to local government units. The
42 revolving loans and grants shall be made for the purpose of paying the

1 cost of water supply systems, wastewater collection systems, and
2 wastewater treatment works.

3 The first priority for use of these proceeds shall be to provide State
4 funds necessary for the 1998-99 and 1999-2000 fiscal years to match the
5 federal wastewater or water supply assistance funds deposited in the
6 Clean Water Pollution Control Revolving Fund, the State Revolving
7 Water Fund account, or another fund that are available from year to
8 year, unless the General Assembly has provided other funds for this
9 purpose, in which event this priority shall cease to exist to the extent of
10 the availability of those other funds. For the purpose of implementing
11 this priority, the Department of Environment, Health, and Natural
12 Resources shall certify to the State Treasurer the amount of funds
13 required for the State match for each of the fiscal years ending June 30,
14 1999, and June 30, 2000, and the extent to which the General Assembly
15 has provided other funds for this purpose. Upon certification to the
16 State Treasurer of the amount of funds required for the State match for
17 the fiscal year ending June 30, 1999, the State may issue up to one
18 hundred million dollars (\$100,000,000) of Clean Water Bonds
19 authorized by this subdivision for the purpose of funding the State
20 match for that fiscal year and for any other purposes authorized by this
21 subdivision. Upon certification to the State Treasurer of the amount of
22 funds required for the State match for the fiscal year ending June 30,
23 2000, the State may issue the remaining balance of Clean Water Bonds
24 authorized by this subdivision for the purpose of funding the State
25 match for that fiscal year and for any other purposes authorized by this
26 subdivision. The proceeds of the bonds necessary for the State match
27 for each fiscal year shall be deposited in the Clean Water Pollution
28 Control Revolving Fund, the State Revolving Water Fund account, or
29 any other fund or account determined by the State Treasurer.

30 The proceeds may be (i) transferred directly to the Clean Water
31 Revolving Loan and Grant Fund to make revolving loans or grants, (ii)
32 used to make revolving loans or grants directly to the appropriate local
33 government qualifying for a revolving loan or grant from the Clean
34 Water Revolving Loan and Grant Fund, (iii) used for any combination
35 of (i) and (ii), or (iv) used in such other manner as shall effectuate the
36 purposes of this act. Although public necessity and the criteria
37 established by Chapter 159G of the General Statutes shall be the
38 primary consideration in granting and loaning funds, great emphasis
39 shall also be placed on achieving stringent reductions in the levels of
40 nutrients and other pollutants discharged into the State's waters,
41 particularly in nutrient sensitive river basins, in reducing the overall
42 volume of effluent discharged to the State's waters by using alternative
43 methods of wastewater treatment when feasible, on the creation of

1 efficient systems of regional wastewater disposal and regional water
2 supply, and on the willingness and ability of local government units to
3 meet their responsibilities through sound fiscal policies, creative
4 planning, and efficient operation and management. Loans and grants
5 made from bond proceeds transferred from the Clean Water Bonds Fund
6 to the Clean Water Revolving Loan and Grant Fund shall be made and
7 administered in accordance with the provisions of the Clean Water
8 Revolving Loan and Grant Act. Loans and grants made from bond
9 proceeds directly to local government units and any loan repayments
10 shall, to the extent applicable, be made, administered, and applied in
11 accordance with the provisions of the Clean Water Revolving Loan and
12 Grant Act. Repayments of any direct loans may be initially placed into
13 any fund or account as may be determined by the State Treasurer for the
14 purpose of determining compliance with the applicable requirements of
15 the federal tax law and shall be expended and disbursed therefrom under
16 the direction and supervision of the Director of the Budget.

- 17 (2) The proceeds of five hundred million dollars (\$500,000,000) of Clean
18 Water Bonds shall be used for the purpose of making loans to local
19 government units to pay the cost of water supply systems, water
20 conservation projects, wastewater collection systems, and wastewater
21 treatment works. Sixty-nine percent (69%) of the proceeds of the bonds
22 and notes shall be allocated for loans to local government units for
23 wastewater collection systems and wastewater treatment works. Thirty-
24 one percent (31%) of the proceeds of the bonds and notes shall be
25 allocated for loans to local government units for water supply systems
26 and water conservation projects.

27 The proceeds shall be used to make loans directly to local
28 government units qualifying for a loan from the Clean Water Revolving
29 Loan and Grant Fund or loaned in such other manner as shall effectuate
30 the purposes of this act. To qualify for a loan from the Clean Water
31 Bonds Fund for the purpose of paying the cost of water supply systems,
32 a local government unit must have a water supply facility plan approved
33 by the Department of Environment, Health, and Natural Resources. A
34 water supply facility plan submitted by a local government unit to the
35 Department under G.S. 143-355(l) will be sufficient to meet this
36 requirement. To qualify for a loan from the Clean Water Bonds Fund
37 for the purpose of paying the cost of wastewater collection systems or
38 wastewater treatment works, a local government unit must have a
39 wastewater facility plan approved by the Department of Environment,
40 Health, and Natural Resources. A wastewater facility plan must project
41 future wastewater treatment needs, must present a long-range plan to
42 meet those needs, and must include plans for system operations and
43 maintenance of the facilities being built with the bond proceeds.

1 The Department of Environment, Health, and Natural Resources
2 shall set the priorities and determine the eligibility of local government
3 units for these loans in accordance with Section 10 of this act. The form
4 of the loans and the details thereof including, without limitation, the
5 maturity, interest rate, and amortization schedule, shall be determined,
6 from time to time, by the State Treasurer. In making these
7 determinations, the State Treasurer shall consider the purpose of the
8 loans, the ability of local government units to repay the loans, and the
9 security for the loans. The interest rates on these loans shall reflect the
10 self-supporting nature of the loan program and shall be sufficient to
11 cover substantially all payments of debt service on the five hundred
12 million dollars (\$500,000,000) of Clean Water Bonds and the issuance
13 costs and administrative expenses associated with the issuance of these
14 bonds and the making of these loans, subject to any applicable
15 requirements of the federal tax law.

16 Repayments of the loans shall be credited to the General Fund and
17 may be used to pay, directly or indirectly, debt service on the bonds and
18 notes issued. Repayments may be initially placed into such fund or
19 account as may be determined by the State Treasurer for the purpose of
20 determining compliance with applicable requirements of the federal tax
21 law and shall be expended and disbursed therefrom under the direction
22 and supervision of the Director of the Budget.

23 Any additional moneys which may be received by means of a grant or grants
24 from the United States of America or any agency or department thereof or from any other
25 source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water
26 Bonds Fund or in a separate account or fund and shall be disbursed, to the extent
27 permitted by the terms of the grant or grants, without regard to any limitations imposed
28 by this act.

29 The proceeds of bonds and notes may be used with any other moneys made
30 available by the General Assembly for making grants and loans authorized by this act,
31 including the proceeds of any other State bond issues, whether heretofore made available
32 or which may be made available at the session of the General Assembly at which this act
33 is ratified or any subsequent sessions. The proceeds of bonds and notes shall be
34 expended and disbursed under the direction and supervision of the Director of the
35 Budget. The funds provided by this act shall be disbursed for the purposes provided in
36 this act upon warrants drawn on the State Treasurer by the State Controller, which
37 warrants shall not be drawn until requisition has been approved by the Director of the
38 Budget and which requisition shall be approved only after full compliance with the
39 Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

40 Section 6. Allocation of proceeds. The proceeds of Clean Water Bonds and
41 notes, including premium thereon, if any, except the proceeds of bonds the issuance of
42 which has been anticipated by bond anticipation notes or the proceeds of refunding bonds
43 or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean

1 Water Bonds Fund", which may include such appropriate special accounts therein as may
2 be determined by the State Treasurer, and shall be disbursed as provided in this act.
3 Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in
4 this act.

5 Allocations to the costs of a capital improvement or undertaking in each case
6 may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and g. of this
7 act in connection with the issuance of bonds for that capital improvement or undertaking.

8 Section 7. Election. The questions of the issuance of the bonds authorized by
9 this act shall be submitted to the qualified voters of the State at the next statewide
10 election or statewide primary election, whichever comes first. Any other primary,
11 election, or referendum validly called or scheduled by law at the time the election on the
12 bond questions provided for in this section is held, may be held as called or scheduled.
13 Notice of the election shall be given in the manner and at the times required by G.S. 163-
14 33(8). The election and the registration of voters therefor shall be held under and in
15 accordance with the general laws of the State. Absentee ballots shall be authorized in the
16 election.

17 The State Board of Elections shall reimburse the counties of the State for all
18 necessary expenses incurred in holding the election that are in addition to those that
19 would have otherwise been incurred, the same to be paid out of the Contingency and
20 Emergency Fund or other funds available to the State Board of Elections.

21 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
22 Statutes, or both may be used in accordance with rules prescribed by the State Board of
23 Elections. The bond question to be used in the ballots or voting systems shall be in
24 substantially the following form:

25 "[] FOR the issuance of seven hundred million dollars (\$700,000,000) State
26 of North Carolina Clean Water Bonds constituting general obligation
27 bonds of the State secured by a pledge of the faith and credit and taxing
28 power of the State for the purpose of providing funds, with any other
29 available funds, to make loans, revolving loans, and grants to local
30 government units to pay all or a portion of the cost of clean water
31 projects.

32 [] AGAINST the issuance of seven hundred million dollars
33 (\$700,000,000) State of North Carolina Clean Water Bonds constituting
34 general obligation bonds of the State secured by a pledge of the faith
35 and credit and taxing power of the State for the purpose of providing
36 funds, with any other available funds, to make loans, revolving loans,
37 and grants to local government units to pay all or a portion of the cost of
38 clean water projects."

39 If a majority of those voting on the Clean Water Bond question in the election
40 vote in favor of the issuance of the bonds, the bonds may be issued as provided in this
41 act. If a majority of those voting on the Clean Water Bond question in the election vote
42 against the issuance of the bonds, the bonds shall not be issued.

1 The results of the election shall be canvassed and declared as provided by law
2 for elections for State officers; the results of the election shall be certified by the State
3 Board of Elections to the Secretary of State, in the manner and at the time provided by
4 the general election laws of the State.

5 Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes
6 may bear such date or dates, may be serial or term bonds or notes, or any combination
7 thereof, may mature in such amounts and at such time or times, not exceeding 40 years
8 from their date or dates, may be payable at such place or places, either within or without
9 the United States of America, in such coin or currency of the United States of America as
10 at the time of payment is legal tender for payment of public and private debts, may bear
11 interest at such rate or rates, which may vary from time to time, and may be made
12 redeemable before maturity, at the option of the State or otherwise as may be provided by
13 the State, at such price or prices, including a price less than the face amount of the bonds
14 or notes, and under such terms and conditions, all as may be determined by the State
15 Treasurer, by and with the consent of the Council of State.

16 (b) Signatures; Form and Denomination; Registration. Bonds or notes may be
17 issued as certificated or uncertificated obligations. If issued as certificated obligations,
18 bonds or notes shall be signed on behalf of the State by the Governor or shall bear his
19 facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile
20 signature, and shall bear the Great Seal of the State or a facsimile thereof shall be
21 impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the
22 Governor and the State Treasurer, the bonds or notes shall also bear a manual signature
23 which may be that of a bond registrar, trustee, paying agent, or designated assistant of the
24 State Treasurer. Should any officer whose signature or facsimile signature appears on
25 bonds or notes cease to be such officer before the delivery of the bonds or notes, the
26 signature or facsimile signature shall nevertheless have the same validity for all purposes
27 as if the officer had remained in office until delivery and bonds or notes may bear the
28 facsimile signatures of persons who at the actual time of the execution of the bonds or
29 notes shall be the proper officers to sign any bond or note although at the date of the bond
30 or note such persons may not have been such officers. The form and denomination of
31 bonds or notes, including the provisions with respect to registration of the bonds or notes
32 and any system for their registration, shall be as the State Treasurer may determine in
33 conformity with this act; provided, however, that nothing in this act shall prohibit the
34 State Treasurer from proceeding, with respect to the issuance and form of the bonds or
35 notes, under the provisions of Chapter 159E of the General Statutes, the Registered
36 Public Obligations Act, as well as under this act.

37 (c) Manner of Sale; Expenses. Subject to determination by the Council of State as
38 to the manner in which bonds or notes shall be offered for sale, whether at public or
39 private sale, whether within or without the United States of America, and whether by
40 publishing notices in certain newspapers and financial journals, mailing notices, inviting
41 bids by correspondence, negotiating contracts of purchase or otherwise, the State
42 Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate
43 or rates of interest, which may vary from time to time, and at such price or prices,

1 including a price less than the face amount of the bonds or the notes, as the State
2 Treasurer may determine. All expenses incurred in preparation, sale, and issuance of
3 bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or
4 other available moneys.

5 (d) Notes; Repayment.

6 (1) By and with the consent of the Council of State, the State Treasurer is
7 hereby authorized to borrow money and to execute and issue notes of
8 the State for the same, but only in the following circumstances and
9 under the following conditions:

- 10 a. For anticipating the sale of bonds to the issuance of which the
11 Council of State shall have given consent, if the State Treasurer
12 shall deem it advisable to postpone the issuance of the bonds;
13 b. For the payment of interest on or any installment of principal of
14 any bonds then outstanding, if there shall not be sufficient funds
15 in the State treasury with which to pay the interest or installment
16 of principal as they respectively become due;
17 c. For the renewal of any loan evidenced by notes herein
18 authorized;
19 d. For the purposes authorized in this act; and
20 e. For refunding bonds or notes as herein authorized.

21 (2) Funds derived from the sale of bonds or notes may be used in the
22 payment of any bond anticipation notes issued under this act. Funds
23 provided by the General Assembly for the payment of interest on or
24 principal of bonds shall be used in paying the interest on or principal of
25 any notes and any renewals thereof, the proceeds of which shall have
26 been used in paying interest on or principal of the bonds.

27 (e) Refunding Bonds and Notes. By and with the consent of the Council of
28 State, the State Treasurer is authorized to issue and sell refunding bonds and notes
29 pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding
30 bonds or notes issued pursuant to this act. The refunding bonds and notes may be
31 combined with any other issues of State bonds and notes similarly secured.

32 (f) Tax Exemption. Bonds and notes shall be exempt from all State, county,
33 and municipal taxation or assessment, direct or indirect, general or special, whether
34 imposed for the purpose of general revenue or otherwise, excluding inheritance and gift
35 taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes.
36 The interest on bonds and notes shall not be subject to taxation as to income.

37 (g) Investment Eligibility. Bonds and notes are hereby made securities in
38 which all public officers, agencies, and public bodies of the State and its political
39 subdivisions, all insurance companies, trust companies, investment companies, banks,
40 savings banks, savings and loan associations, credit unions, pension or retirement funds,
41 other financial institutions engaged in business in the State, executors, administrators,
42 trustees, and other fiduciaries may properly and legally invest funds, including capital in
43 their control or belonging to them. Bonds and notes are hereby made securities which

1 may properly and legally be deposited with and received by any officer or agency of the
2 State or political subdivision of the State for any purpose for which the deposit of bonds,
3 notes, or obligations of the State or any political subdivision is now or may hereafter be
4 authorized by law.

5 (h) Faith and Credit. The faith and credit and taxing power of the State are
6 hereby pledged for the payment of the principal of and the interest on bonds and notes.
7 In addition to the State's right to amend any provision of this act to the extent it does not
8 impair any contractual right of a bond owner, the State expressly reserves the right to
9 amend any provision of this act with respect to the making and repayment of loans, the
10 disposition of any repayments of loans, and any intercept provisions relating to the failure
11 of a local government unit to repay a loan, the bonds not being secured in any respect by
12 loans, any repayments thereof, or any intercept provisions with respect thereto.

13 Section 9. Variable interest rates. In fixing the details of bonds and notes, the
14 State Treasurer may provide that any of the bonds or notes may:

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

33 If the aggregate principal amount repayable by the State under a credit facility
34 is in excess of the aggregate principal amount of bonds or notes secured by the credit
35 facility, whether as a result of the inclusion in the credit facility of a provision for the
36 payment of interest for a limited period of time or the payment of a redemption premium
37 or for any other reason, then the amount of authorized but unissued bonds or notes during
38 the term of such credit facility shall not be less than the amount of such excess, unless the
39 payment of such excess is otherwise provided for by agreement of the State executed by
40 the State Treasurer.

41 Section 10. Special provisions governing clean water loans. (a) Scope. The
42 provisions of this section shall apply to loans being made from the proceeds of bonds

1 authorized by this act for clean water projects, other than from funds deposited in the
2 Clean Water Revolving Loan and Grant Fund.

3 (b) Clean Water Bonds Loan Fund. There is established in the Department of
4 State Treasurer a fund to be known as the Clean Water Bonds Loan Fund, which may
5 include any special or segregated accounts the State Treasurer considers appropriate.
6 There shall be deposited in the Clean Water Bonds Loan Fund proceeds of the Clean
7 Water Bonds and notes to be used to make loans, other than loans to be made through the
8 Clean Water Revolving Loan and Grant Fund, to local government units for clean water
9 projects as provided in this act. Funds in the various accounts may be invested from time
10 to time by the State Treasurer in the same manner permitted for investments of funds
11 belonging to the State or held in the State treasury. Any investment earnings shall be
12 credited to the particular account from which the investment was made.

13 All moneys accruing to the credit of the Clean Water Bonds Loan Fund, other
14 than funds set aside for administrative expenses, including expenses related to
15 determining compliance with applicable requirements of the federal tax law and costs of
16 issuance, shall be used to make loans for the purposes provided in this act. The State
17 Treasurer shall be responsible for making and administering all loans pursuant to the
18 provisions of this section.

19 (c) Application for Loans; Hearings.

20 (1) Eligibility/Initial Hearing.

- 21 a. Prior to filing an application for a loan, a local government unit
22 shall hold a public hearing. A notice of the public hearing shall
23 be published once at least 10 days before the date fixed for the
24 hearing.
- 25 b. All applications for loans shall be filed with the Department of
26 Environment, Health, and Natural Resources. The form of the
27 application shall be prescribed by the Department and shall
28 require any information necessary to determine the eligibility for
29 a loan under the provisions of this section. All applications
30 approved by the Department of Environment, Health, and
31 Natural Resources shall be filed with the Local Government
32 Commission. Each applicant shall furnish to the Department of
33 Environment, Health, and Natural Resources and the Local
34 Government Commission information in addition or
35 supplemental to the information contained in its application,
36 upon request.
- 37 c. A local government unit shall not be eligible for a loan unless it
38 demonstrates to the satisfaction of the Department of
39 Environment, Health, and Natural Resources and the Local
40 Government Commission that:
- 41 1. The applicant is a local government unit;

1 section. The petition's sufficiency shall be determined and a
2 referendum, if any, shall be conducted, according to the standards,
3 procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

4 (d) Priorities.

5 (1) Determination. Determination of priorities to be assigned each eligible
6 project shall be made semiannually by the Department of Environment,
7 Health, and Natural Resources during each fiscal year. Every eligible
8 project shall be considered by the Department of Environment, Health,
9 and Natural Resources with every other project eligible during this same
10 priority period.

11 (2) Priority Factors. All applications for loans under this act shall be
12 assigned a priority by the Department of Environment, Health, and
13 Natural Resources. The Department of Environment, Health, and
14 Natural Resources shall establish by rule the priority factors criteria.

15 (3) Assignment of Priority. A written statement relative to each priority
16 assigned shall be prepared by the Department of Environment, Health,
17 and Natural Resources and shall be attached to the application. The
18 priority assigned shall be conclusive.

19 (4) Failure to Qualify. If an application does not qualify for a loan as of the
20 prior period in which the application was eligible for consideration by
21 reason of the priority assigned, the application shall be considered
22 during the next succeeding priority period upon request of the applicant.
23 If the application again fails to qualify for a loan during the second
24 priority period by reason of the priority assigned, the application shall
25 receive no further consideration. An applicant may file a new
26 application at any time and may amend any pending application to
27 include additional data or information.

28 (5) Withdrawal of Commitment. Failure of an applicant within one year
29 after the date of acceptance of the loan to arrange for necessary
30 financing of the proposed project or award of the contract of the
31 construction of the proposed project shall constitute sufficient cause for
32 withdrawal of the commitment. Prior to withdrawal of a commitment,
33 the Department of Environment, Health, and Natural Resources shall
34 give due consideration to any extenuating circumstances presented by
35 the applicant as reasons for failure to arrange necessary financing or to
36 award a contract, and the commitment may be extended for an
37 additional period of time if, in the judgment of the Department of
38 Environment, Health, and Natural Resources, the extension is justified.

39 (e) Disbursement. To be eligible to receive the loans provided for in this
40 section, a local government unit must arrange to borrow the amounts necessary pursuant
41 to rules adopted by the Local Government Commission. No funds shall be disbursed
42 until the Department of Environment, Health, and Natural Resources gives a certificate of
43 eligibility to the effect that the applicant meets all eligibility criteria and that all

1 procedural requirements of this act have been met. The maximum principal amount of a
2 loan shall be one hundred percent (100%) of the cost of any eligible project.

3 (f) Intercept. The governing body of a local government unit shall by
4 resolution authorize to be included in its loan agreement a provision authorizing the State
5 Treasurer, upon failure of the local government unit to make a scheduled repayment of
6 the loan, to withhold from the local government unit any State funds that would
7 otherwise be distributed to the local government unit in an amount sufficient to pay all
8 sums then due and payable to the State as a repayment of the loan. In such event,
9 notwithstanding any other provision of law, the State Treasurer is authorized to withhold
10 and apply such funds to the repayment of the loan, except that such funds shall not be
11 withheld if (i) before the execution of the loan agreement, such funds have been legally
12 pledged to secure special obligation bonds or other obligations of the local government
13 unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to
14 secure special obligation bonds or other obligations of the local government unit as
15 authorized in this subsection. After the execution of a loan agreement, all or any portion
16 of the State funds specified in the loan agreement to be so withheld may be pledged to
17 secure special obligation bonds or other obligations of the local government unit only
18 with the prior written consent of the State Treasurer.

19 The State Treasurer shall notify the Secretary of Revenue and the State
20 Controller of the amount to be withheld from the local government unit, and the
21 Secretary of Revenue and the State Controller shall transfer to the State Treasurer the
22 amount so requested to be applied by the State Treasurer to the repayment of the loan.

23 (g) Inspection. Inspection of a project for which a loan has been made under
24 this act may be performed by qualified personnel of the Department of Environment,
25 Health, and Natural Resources or may be performed by qualified engineers registered in
26 this State approved by the Department of Environment, Health, and Natural Resources.
27 No person shall be approved to perform inspections who is an officer employed by the
28 local government unit to which the loan was made or who is an owner, officer, employer,
29 or agent of a contractor or subcontractor engaged in the construction of the project for
30 which the loan was made. For the purpose of payment of inspection fees, inspection
31 services shall be included in the term "cost" as used in this act.

32 (h) Rules. The State Treasurer, the Local Government Commission, and the
33 Department of Environment, Health, and Natural Resources may adopt, modify, and
34 repeal rules necessary for the administration of their respective duties under this act.
35 Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly
36 adopted, may be modified or revoked except upon concurrence of all agencies involved.

37 (i) Federal Grants and Loans. In order to carry out the purposes of this act to
38 secure the greatest possible benefits to the citizens of this State of the funds appropriated,
39 the State Treasurer, the Local Government Commission, and the Department of
40 Environment, Health, and Natural Resources shall adopt rules and criteria, not
41 inconsistent with provisions of this act, as are necessary and appropriate to conform to
42 regulations for federal grants and loans for any of the purposes set forth in this act.

1 (j) Reports. The Department of Environment, Health, and Natural Resources
2 shall prepare and file each year on or before July 31 with the Joint Legislative
3 Commission on Governmental Operations a report for the preceding fiscal year
4 concerning the allocation and making of loans authorized by this act. The report shall set
5 forth for the preceding fiscal year:

- 6 (1) Itemized and total allocations of loans authorized and unallocated funds
7 for the loan program as of the end of the preceding fiscal year;
8 (2) Identification of each loan agreement entered into by the State during
9 the preceding fiscal year and the total amount of loans authorized by
10 such loan agreements;
11 (3) The amount disbursed to each local government unit pursuant to such
12 loan agreements during the preceding fiscal year and the total amount of
13 such disbursements;
14 (4) The loan repayments made by each local government unit pursuant to
15 such loan agreements and the total amount of such loan repayments
16 during the preceding fiscal year; and
17 (5) A summary for the five preceding years of the information required by
18 subdivisions (1) through (4).

19 The report shall be signed by the Secretary of Environment, Health, and Natural
20 Resources.

21 (k) Local Government Commission.

- 22 (1) Local government units may execute debt instruments payable to the
23 State in order to obtain loans provided for in this act. Local government
24 units shall pledge or agree to apply as security for such obligations:
25 a. Any available source of revenues of the local government unit,
26 including revenues from benefitted facilities or systems, provided
27 that (i) the local government unit has not otherwise pledged the
28 revenues as security for, or contractually agreed to apply the
29 revenues to, the payment of any other obligations of the local
30 government unit, (ii) the use of the revenues is not otherwise
31 restricted by law, or (iii) the revenues are not derived from the
32 exercise of the local government unit's taxing power; or
33 b. Their faith and credit; or
34 c. Any combination of a. or b. above.

35 The faith and credit of a local government unit shall not be pledged
36 or be deemed to have been pledged unless the requirements of Article 4
37 of Chapter 159 of the General Statutes have been met. The State
38 Treasurer, with the assistance of the Local Government Commission,
39 shall develop and adopt appropriate debt instruments for use under this
40 act.

- 41 (2) Nothing contained in this act shall prohibit any local government unit
42 from applying any funds of the local government unit not otherwise

1 restricted as to use by law to the payment of any debt instrument
2 payable to the State incurred pursuant to the provisions of this act.

3 (3) The Local Government Commission shall review and approve proposed
4 loans to local government units under this act under the provisions of
5 Articles 4 and 5 of Chapter 159 of the General Statutes. The Local
6 Government Commission in considering the ability of a local
7 government unit to repay a loan may regard as a source of revenue for
8 repayment of a loan revenue sources that may not be available other
9 than on an annual discretionary basis and that may not be subject to a
10 pledge or agreement to apply. Loans under this act shall be outstanding
11 debts for the purposes of Article 10 of Chapter 159 of the General
12 Statutes.

13 (4) The State Treasurer shall annually certify to the General Assembly the
14 financial condition of the loan program and identify existing
15 delinquencies.

16 Section 11. Minority business participation. The goals set by G.S. 143-128 for
17 participation in projects by minority businesses apply to projects funded by the proceeds
18 of bonds or notes issued under this act. The Department of Environment, Health, and
19 Natural Resources shall monitor compliance with this requirement and shall report to the
20 General Assembly by January 1 of each year on the participation by minority businesses
21 in these projects.

22 Section 12. Interpretation of act. (a) Additional Method. The foregoing sections of
23 this act shall be deemed to provide an additional and alternative method for the doing of
24 the things authorized thereby and shall be regarded as supplemental and additional to
25 powers conferred by other laws, and shall not be regarded as in derogation of any powers
26 now existing.

27 (b) Statutory References. References in this act to specific sections or Chapters of
28 the General Statutes or to specific acts are intended to be references to these sections,
29 Chapters, or acts as they may be amended from time to time by the General Assembly.

30 (c) Liberal Construction. This act, being necessary for the health and welfare of
31 the people of the State, shall be liberally construed to effect the purposes thereof.

32 (d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent
33 with the provisions of any general laws, or parts thereof, the provisions of this act shall be
34 controlling.

35 (e) Severability. If any provision of this act or the application thereof to any
36 person or circumstance is held invalid, such invalidity shall not affect other provisions or
37 applications of the act which can be given effect without the invalid provision or
38 application, and to this end the provisions of this act are declared to be severable.

39 Section 13. Authorize regional planning loans and grants. G.S. 159G-3(4)
40 reads as rewritten:

41 "(4) 'Construction costs' means the actual costs of planning, designing and
42 constructing any project for which a revolving loan or grant is made
43 under this Chapter including planning; environmental assessment;

wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property. The term may also include the costs for planning and designing a regional project or small town project. Funds for planning and designing a regional project or small town project may be advanced prior to construction of the project and may be paid even though the project is never actually constructed. A small town is defined as a municipality with a population of 1,000 or less."

Section 14. G.S. 159G-4(b) reads as rewritten:

"(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the Department of Environment, Health, and Natural Resources as provided in this Chapter, allocations are made as follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

Wastewater Accounts

General Wastewater Revolving		
Loan Account	39.00%	<u>38.00%</u>
Emergency Wastewater Revolving		
Loan Account	10.00%	<u>9.00%</u>
High-Unit Cost Wastewater		
Account	20.00%	<u>22.00%</u>

Water Supply Accounts

General Water Supply		
Revolving Loan Account	21.00%	<u>20.00%</u>
High-Unit Cost Water Supply		
Account	5.00%	<u>7.00%</u>
Emergency Water Supply Revolving		
Loan Account	5.00%	<u>4.00%</u>

Section 15. Effective date. This act is effective when it becomes law.