

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 322
SENATE BILL 410

AN ACT RELATING TO PUBLIC OBLIGATIONS IN REGISTERED FORM.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding thereto a new Chapter to read:

"CHAPTER 159E.

"Registered Public Obligations Act.

"§ 159E-1. Short title. – This Chapter may be cited as the 'Registered Public Obligations Act'.

"§ 159E-2. Definitions. –As used in this Chapter, the following terms have the following meanings, unless the context otherwise requires:

- (1) 'Authorized officer' means any individual required or permitted, alone or with others, by any provision of law or by the issuing public entity, to execute on behalf of the public entity a certificated registered public obligation or a writing relating to an uncertificated registered public obligation.
- (2) 'Certificated registered public obligation' means a registered public obligation which is represented by an instrument.
- (3) 'Code' means the Internal Revenue Code of 1954, as amended.
- (4) 'Commission' means the Local Government Commission.
- (5) 'Facsimile seal' means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official or official body.
- (6) 'Facsimile signature' means the reproduction by engraving, imprinting, stamping, or other means of the manual signature.
- (7) 'Financial intermediary' means a bank, broker, clearing corporation or other person or the custodian for or nominee of any of them which in the ordinary course of its business maintains registered public obligation accounts for its customers, when so acting.
- (8) 'Issuer' means a public entity which issues an obligation.
- (9) 'Obligation' means an agreement of a public entity issuer to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement or otherwise, and includes a share, participation, or other interest in any such agreement.

(10) 'Official actions' means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a registered public obligation.

(11) 'Official or official body' means the officer or board that is empowered under the laws applicable to an issuer to provide for original issuance of an obligation of the issuer, by defining the obligation and its terms, conditions and other incidents, the successor or successors of any such official or official body, and such other person or group of persons as shall be assigned duties of such official or official body with respect to a registered public obligation under applicable law from time to time. Unless otherwise provided by law, the State Treasurer shall be the 'official' for the issuance of all State obligations.

(12) 'Public entity' means any entity, department, or agency which is empowered under the laws of this State, to issue obligations any interest with respect to which may, under any provision of law, be provided an exemption from the income tax referred to in the Code. The term 'public entity' may thus include, without limitation, this State, an entity deriving powers from and acting pursuant to the State Constitution or a special legislative act, a political subdivision, a municipal corporation, a State university or college, a special district, a public authority and other similar entities.

(13) 'Registered public obligation' means an obligation issued by a public entity pursuant to a system of registration.

(14) 'System of registration' and its variants means a plan that provides:

- with respect to a certificated registered public obligation, that
 - the certificated registered public obligation specify a person entitled to the registered public obligation or the rights it represents, and
 - transfer of the certificated registered public obligation and the rights it represents may be registered upon books maintained for that purpose by or on behalf of the issuer; and
- with respect to an uncertificated registered public obligation, that
 - books maintained by or on behalf of the issuer for the purpose of registration of the transfer of a registered public obligation specify a person entitled to the registered public obligation and the rights evidenced thereby, and
 - transfer of the uncertificated registered public obligation and the rights evidenced thereby be registered upon such books.

(15) 'Uncertificated registered public obligation' means a registered public obligation which is not represented by an instrument.

"§ 159E-3. Declaration of State interest; purposes. – (a) The Code provides that interest with respect to certain obligations may not be exempt from federal income taxation unless they are in registered form. It is therefore a matter of State concern that public entities be authorized to provide for the issuance of obligations in such form. It is

a purpose of this Chapter to empower all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of the applicable provisions of the Code.

(b) Obligations have traditionally been issued predominantly in bearer rather than in registered form, and a change from bearer to registered form may affect the relationships, rights and duties of issuers of and the persons that deal with obligations, and by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently depending on their legal and financial characteristics, their markets and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of State concern that public entities be provided flexibility in the development of such systems and control over system incidents, so as to accommodate such differing impacts. It is a purpose of this Chapter to empower the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations. It is further a purpose of this Chapter to authorize systems that will facilitate the prompt and accurate transfer of registered public obligations and the development of practices with regard to the registration and transfer of registered public obligations in order to maintain market acceptance for obligations of public entities.

"§ 159E-4. Systems of registration. – (a) Each issuer, with the approval of the Commission, is authorized to establish and maintain a system of registration with respect to each obligation which it issues. The system may either be (i) a system pursuant to which only certificated registered public obligations are issued, or (ii) a system pursuant to which only uncertificated registered public obligations are issued, or (iii) a system pursuant to which both certificated and uncertificated registered public obligations are issued. The issuer may amend, discontinue and reinstitute any system, from time to time, subject to covenants.

(b) The system shall be established, amended, discontinued, or reinstated, for the issuer by the official or official body.

(c) The system shall be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer which is established by the official or official body.

(d) The system shall define the method or methods by which transfer of the public obligations shall be effective with respect to the issuer, and by which payment of principal and any interest shall be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation, or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, cancelled certificate destruction and other incidental matters. Unless the

issuer otherwise provides, the record date for interest payable on the first or fifteenth day of a month shall be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth day of a month, shall be the fifteenth calendar day before the interest payment date.

(e) Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners.

(f) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitations of the system and the effect of such on the exemption of interest from the income tax provided for by the Code.

(g) Whenever an issuer shall issue an uncertificated registered public obligation, the system of registration may provide that a true copy of the official actions of the issuer relating to such uncertificated registered public obligation be maintained by the issuer or by the person, if any, maintaining such system on behalf of the issuer, so long as the uncertificated registered public obligation remains outstanding and unpaid. A copy of such official actions, verified to be such by an authorized officer, shall be admissible before any court of record, administrative body or arbitration panel without further authentication.

(h) Nothing in this Chapter shall preclude a conversion from one of the forms of registered public obligations provided for by this Chapter to a form of obligation not provided for by this Chapter if interest on the obligation so converted will continue to be exempt from the income tax provided for by the Code.

(i) The rights provided by other laws with respect to obligations in forms not provided for by this Chapter shall, to the extent not inconsistent with this Chapter, apply with respect to registered public obligations issued in forms authorized by this Chapter. This includes Subchapter IV of Chapter 159 of the General Statutes and the 'State Debt' provisions of Chapter 142 of the General Statutes.

"§ 159E-5. Certificated registered public obligations; execution; authentication. –

(a) A certificated registered public obligation shall be executed by the issuer by the manual or facsimile signature or signatures of authorized officers. Any signature of an authorized officer may be attested by the manual or facsimile signature of another authorized officer.

(b) In addition to the signatures referred to in (a) of this subsection any certificated registered public obligation or any writing relating to an uncertificated registered public obligation may include a certificate or certificates signed by the manual or facsimile signature of an authenticating agent, registrar, transfer agent or the like.

"§ 159E-6. Certificated registered public obligation; signatures. – (a) Any certificated registered public obligation signed by the authorized officers at the time of the signing thereof shall remain valid and binding, notwithstanding that before the issuance thereof any or all of such officers shall have ceased to fill their respective offices.

(b) Any authorized officer empowered to sign any certificated registered public obligation may adopt as and for the signature of such officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated registered public obligation. An unauthorized officer incurs no liability by adoption of a predecessor's signature that would not be incurred by such authorized officer if the signature were that of such authorized officer.

"§ 159E-7. Certificated registered public obligation; seal. – When a seal is required or permitted in the execution of any certificated registered public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

"§ 159E-8. Agents; depositories. – (a) An issuer, with the approval of the Commission, may appoint for such term as may be agreed, including for so long as a registered public obligation may be outstanding, corporate or other authenticating agents, transfer agents, registrars, paying or other agents and specify the terms of their appointment, including their rights, their compensation and duties, limits upon their liabilities and provision for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to the issuer, the owner or a financial intermediary. None of such agents need have an office or do business within this State.

(b) An issuer may agree with financial intermediaries in connection with the establishment and maintenance by others of a depository system for the transfer or pledge of registered public obligations or any interest therein. Any such financial intermediaries may, if qualified and acting as fiduciaries, also serve as authenticating agents, transfer agents, registrars, paying or other agents of the issuer with respect to the same issue of public obligations.

(c) Nothing in this Chapter shall preclude the issuer from itself performing, either alone or jointly with others, any transfer, registration, authentication, payment, depository or other function described in this section.

"§ 159E-9. Costs; collection. – (a) An issuer, prior to or at original issuance of registered public obligations, may provide as a part of a system of registration that the transferor or transferee of the registered public obligations pay all or a designated part of the costs of the system as a condition precedent to transfer, that costs be paid out of proceeds of the registered public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid for by the transferor or transferee or out of proceeds shall be the responsibility of the issuer. Moneys for the discharge of this responsibility may be appropriated annually.

(b) The issuer may as a part of the system of registration provide for reimbursement or for satisfaction of its responsibility for costs by others. The issuer may enter into agreements with others respecting such reimbursement or satisfaction, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of such fees and charges shall be reimbursed or satisfied from the same sources and by means of the same collection and

enforcement procedures and with the same priority and effect as with respect to the obligation.

"§ 159E-10. Security for deposits. – Obligations issued by public entities under the laws of one or more states, territories, or possessions of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, which are in registered form, whether or not represented by an instrument, and which, except for their form, satisfy the requirements with regard to security for deposits of moneys of public agencies prescribed pursuant to any law of this State, shall be deemed to satisfy all such requirements even though they are in registered form if a security interest in such obligations is perfected under the laws of this State on behalf of the public agencies whose moneys are so deposited.

"§ 159E-11. Public records; locations. – (a) Records, with regard to the ownership of or security interests in registered public obligations, are not subject to inspection or copying under any law of this State relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary. This provision shall not exempt from public inspection records of ownership of a public entity's own holdings in this type of security.

(b) Registration records of the issuer may be maintained at such locations within or without this State as the issuer shall determine.

"§ 159E-12. Applicability; determination. – (a) Unless at any time prior to or at original issuance of a registered public obligation the official or official body of the issuer determines otherwise, this Chapter shall be applicable to such registered public obligation notwithstanding any provision of law to the contrary. When this Chapter is applicable, no contrary provision shall apply.

(b) Nothing in this Chapter limits or prevents issuance of obligations in any other form or manner authorized by law.

(c) Unless determined otherwise pursuant to subsection (a) of this section, the provisions of this Chapter shall be applicable with respect to obligations which have heretofore been approved by vote, referendum or hearing authorizing or permitting the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing for the purpose of authorizing or permitting the authorization of registered public obligations pursuant to this Chapter.

"§ 159E-13. Construction. – This Chapter shall be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

"§ 159E-14. Amendment or repeal; effect. – The State hereby covenants with the owners of any registered public obligations that it will not amend or repeal this Chapter if the effect may be to impair the exemption from income taxation of interest on registered public obligations.

"§ 159E-15. Severability. – If any provision or the application of any provision of this Chapter shall be invalid, such shall not affect the validity of other provisions or other applications, it hereby being declared that the provisions or the applications of this

Chapter are separable and this Chapter would have been enacted with the invalid provision omitted or without the invalid application in any event."

Sec. 2. G.S. 142-8 is hereby amended by adding a sentence to read: "However, any provisions of G.S. 142-1 to G.S. 142-9 in conflict with the 'Registered Public Obligations Act', Chapter 159E of the General Statutes, shall not apply."

Sec. 3. G.S. 159-92 is amended by inserting the words "represented by instruments" after the words "all revenue bonds".

Sec. 4. The third sentence of G.S. 159-128 is amended to read: "The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each bond that is represented by an instrument."

Sec. 5. G.S. 159-129 is rewritten to read:

"§ 159-129. Obligations of units certified by Commission. – Each bond or bond anticipation note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the bond or note has been approved under the provisions of The Local Government Bond Act of The Local Government Revenue Bond Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each bond or bond anticipation note that is not represented by an instrument shall be evidenced by a writing relating to such obligation, which writing shall identify such obligation or the issue of which it is part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid."

Sec. 6. G.S. 159-134 is amended by adding at the end an additional sentence to read: "If an issuing unit employs another person as such fiscal agent or any other person for other services pursuant to the Registered Public Obligations Act of North Carolina, then it may pay reasonable fees for such services not in excess of maximum rates to be fixed by regulation of the Commission."

Sec. 7. The first sentence of G.S. 159-139(2) is amended to read as follows: "Method 2. - The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent."

Sec. 8. G.S. 159-139 is amended by adding a sentence at the end thereof to read: "The information required to be entered in a substantially bound book prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents."

Sec. 9. The catch line and first sentence of G.S. 159-164 are amended to read: "Form of notes to be issued.—Bond anticipation loans shall be evidenced by negotiable notes in bearer form or by certificated or uncertificated registered public obligations pursuant to the Registered Public Obligations Act. Such notes and

certificated registered public obligations are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State."

Sec. 10. The third sentence of G.S. 159-172(a) is amended to read: "Notes that are represented by instruments shall be signed with the manual or facsimile signatures of the officers designated by the government board for that purpose, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each note that is represented by an instrument."

Sec. 11. The second and third sentences of G.S. 159-172(c) are rewritten to read: "Each such note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the note has been approved under the provisions of The Local Government Finance Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each note that is not represented by an instrument shall be evidenced by a writing relating to such note, which writing shall identify such note or the issue of which it is a part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid."

Sec. 12. G.S. 159-172(d) is amended by inserting between the first and second sentences thereof an additional sentence to read as follows: "The Treasurer shall also collect from their purchaser the purchase price or proceeds of notes that are not represented by instruments."

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 17th day of May, 1983.