

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 554
SENATE BILL 411

AN ACT TO PERMIT THE ISSUANCE OF REVENUE BONDS AND REVENUE NOTES BY THE STATE OF NORTH CAROLINA AND AGENCIES THEREOF AS HEREINAFTER AUTHORIZED BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-80(a) is rewritten to read:

"(a) This Article may be cited as 'The State and Local Government Revenue Bond Act'."

Sec. 1.1. G.S. 159-80(b) is amended by adding a new sentence to read:

"It is further the intent of the General Assembly by enactment of this Article to provide an alternative and supplemental procedure for the exercise by the State of North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes."

Sec. 2. G.S. 159-81(2) is rewritten to read:

"Revenue Bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article."

Sec. 2.1. G.S. 159-81(3) is amended by adding a new subparagraph to read:

"1. In addition to the foregoing, in the case of the State of North Carolina, any other project authorized by the General Assembly."

Sec. 2.2. G.S. 159-81(4) is rewritten to read:

"Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project."

Sec. 3. G.S. 159-83(a) is amended by revising the introductory language thereof to read:

"In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:".

Sec. 3.1. G.S. 159-83(a)(1) is rewritten to read:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or

without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest."

Sec. 3.2. G.S. 159-83(a)(2) is rewritten to read:

"(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose."

Sec. 3.3. G.S. 159-83(a)(4) is rewritten to read:

"(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof."

Sec. 3.4. G.S. 159-83(a)(5) is rewritten to read:

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner."

Sec. 3.5. The last sentence of G.S. 159-83(a)(6) is rewritten to read:

"The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project."

Sec. 3.6. G.S. 159-83(a)(9)(v) is rewritten to read:

"(v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes."

Sec. 3.7. G.S. 159-83(a)(15) is rewritten to read:

"(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option

to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified."

Sec. 3.8. G.S. 159-83(a)(16) is rewritten to read:

"(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds."

Sec. 4. G.S. 159-83(b) is rewritten to read:

"(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and the State or a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the commission."

Sec. 5. The first two paragraphs of G.S. 159-84 are amended to read:

"The State and each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the State or a municipality, as the case may be, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the State or the municipality, as the case may be, incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, the State or each municipality, as the case may be, may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter or any other law."

Sec. 6. G.S. 159-85 is rewritten to read:

"§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application. – (a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

(b) Before he accepts the application, the secretary may require (i) in the case of the State, the State Treasurer or (ii) in the case of a municipality, the governing board or its representatives to attend a preliminary conference at which time the secretary and his

deputies may informally discuss the proposed issue and the timing of the steps taken in issuing the bonds.

(c) After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the State Treasurer or the municipality, as the case may be, in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the State or the municipality, as the case may be, has complied with this section."

Sec. 7. G.S. 159-86(a)(3) and G.S. 159-86(a)(4) are rewritten to read:

"(3) The State's or the municipality's, as the case may be, debt management procedures and policies.

(4) Whether the State or the municipality, as the case may be, is in default in any of its debt service obligations."

Sec. 8. G.S. 159-86(b)(4) and G.S. 159-86(b)(5) are rewritten to read:

"(4) That the State's or the municipality's, as the case may be, debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.

(5) That the proposed revenue bonds can be marketed at reasonable interest cost to the State or the municipality, as the case may be."

Sec. 9. G.S. 159-88 is rewritten to read:

"§ 159-88. Adoption of revenue bond order. – (a) At any time after the Commission approves an application for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article.

(b) Notwithstanding the provisions of any city charter, general law, or local act, a revenue bond order may be introduced at any regular or special meeting of the governing board of a municipality and adopted at such a meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. Revenue bond orders are not subject to the provisions of any city charter or legal act concerning initiative or referendum.

(c) Notwithstanding any other provision of this Article, no bond order authorizing the issuance of revenue bonds of the State shall be adopted by the Council of State until such time as the General Assembly shall have enacted legislation authorizing the undertaking of the revenue bond project to be financed and fixing the maximum aggregate principal amount of revenue bonds that shall be issued for such purpose, and such legislation shall have taken effect."

Sec. 10. G.S. 159-89(9) is rewritten to read:

"The preparation and maintenance of a budget with respect to the expenses of the State or a municipality, as the case may be, for the operation and maintenance of revenue bond projects."

Sec. 11. G.S. 159-90 is rewritten to read:

"§ 159-90. Limitations on details of bonds. – In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

- (1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122.
- (2) Any bond may be made subject to redemption prior to maturity, including redemption on demand of the holder, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.
- (3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the State Treasurer or the issuing municipality, as the case may be, may determine."

Sec. 12. G.S. 159-91 is rewritten to read:

"§ 159-91. Lien of revenue bonds. – (a) All revenue bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution or delivery, in accordance with the provisions of this Article and of the bond order; except that the State or a municipality may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

(b) Any pledge made by the State or a municipality pursuant to this Article shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities, and other moneys so pledged and then held or thereafter received by the State or a municipality, as the case may be, or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the State or a municipality, as the case may be, without regard to whether such parties have notice thereof. The bond order by which a pledge is created need not be filed or recorded in any manner other than as provided in this Chapter."

Sec. 13. G.S. 159-93 is rewritten to read:

"§ 159-93. Agreement of the State. – The State of North Carolina does pledge to and agree with the holders of any revenue bonds or revenue bond anticipation notes heretofore or hereafter issued by the State or any municipality in this State that so long

as any such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the State or the municipality at the time of issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewal and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any 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."

Sec. 14. G.S. 159-94 is rewritten to read:

"§ 159-94. Limited liability. – Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues."

Sec. 15. G.S. 159-95 is rewritten to read:

"§ 159-95. Approval of State agencies. – The general design and plan of any revenue bond project undertaken for water systems or facilities or sewage disposal systems or facilities shall be subject to the approval of the Commission for Health Services or the State Environmental Management Commission to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the Commission for Health Services or the State Environmental Management Commission. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or electric power may be undertaken by the State or a municipality unless the State or municipality, as the case may be, shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission."

Sec. 16. G.S. 159-96 is amended by adding a new paragraph at the end to read:

"A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State."

Sec. 17. G.S. 159-120 is rewritten to read:

"§ 159-120. Definitions. – As used in this Article, unless the context clearly requires another meaning, the words 'unit' or 'issuing unit' mean 'unit of local government' as defined in G.S. 159-44, 'municipality' as defined in G.S. 159-81, and the State of North Carolina, and the words 'governing body', when used with respect to the State of North Carolina, mean the Council of State."

Sec. 18. Article 7 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"§ 159-141. Terms and conditions of sale. – Notwithstanding the foregoing, any bond of the State may be sold upon such terms and conditions, at such interest rate or rates, for such price and in such manner, either public or private, as the State Treasurer shall determine."

Sec. 19. G.S. 159-160 is rewritten to read:

"§ 159-160. Definitions. – As used in this Part, the words 'unit' or 'issuing unit' means 'unit of local government' as defined in G.S. 159-44, 'municipality' as defined in G.S. 159-81, and the State of North Carolina."

Sec. 20. G.S. 159-165(a) is rewritten to read:

"(a) Bond anticipation notes of a municipality shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond Anticipation Notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe."

Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 26. This act is effective upon ratification.

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