

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 585
HOUSE BILL 992

AN ACT TO AMEND CHAPTER 159, THE SAME BEING THE LOCAL GOVERNMENT FINANCE ACT, TO AUTHORIZE GENERAL OBLIGATION BONDS AND NOTES TO BE MADE PAYABLE ON DEMAND OR TENDER AND TO BEAR VARIABLE INTEREST RATES, TO PERMIT A DESIGNEE OF THE GOVERNING BOARD OF THE ISSUING UNIT TO APPROVE THE SALE PRICE OF BONDS, TO MAKE CERTAIN AMENDMENTS IN THE PROCEDURE FOR THE SALE OF BONDS, AND TO PERMIT THE SALE OF BONDS AT LESS THAN THE FACE AMOUNT THEREOF.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 159 of the General Statutes being the Local Government Bond Act, is amended by adding a new section to read:

"§ 159-79. **Variable rate demand bonds and notes.**—(a) Notwithstanding any provisions of this Chapter to the contrary, including particularly, but without limitation, the provisions of G.S. 159-65, G.S. 159-123 to G.S.159-127, inclusive, G.S. 159-130, G.S. 159-138, G.S. 159-162, G.S. 159-164 and G.S. 159-172, a unit of local government, in fixing the details of general obligation bonds to be issued pursuant to this Article or general obligation notes to be issued pursuant to Article 9 of this Chapter, may provide that such bonds or notes

- (1) may be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds or notes, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds or notes will satisfy the conditions set forth in G.S. 159-52;
- (2) may be additionally supported by a Credit Facility;
- (3) may be made subject to redemption prior to maturity, with or without premium, on such notice, at such time or times, at such price or prices and with such other redemption provisions as may be stated in the resolution fixing the details of such bonds or notes or with such variations as may be permitted in connection with a Par Formula provided in such resolution;
- (4) may bear interest at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in such resolution; and

(5) may be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchases prior to their presentment for payment to the provider of the Credit Facility or to the issuing unit.

(b) No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

(c) As used in this section, the following terms shall have the following meanings:

(1) 'Credit Facility' means an agreement entered into by an issuing unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing unit agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of a repayment agreement. A bank may include a foreign bank or branch or agency thereof the obligations of which bear the highest rating of at least one nationally-recognized rating service and do not bear a rating below the highest rating of any nationally-recognized rating service which rates such particular obligations.

(2) 'Par Formula' shall mean any provision or formula adopted by the issuing unit to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds or notes so that the purchase price of such bonds or notes in the open market would be as close to par as possible.

(d) If the aggregate principal amount repayable by the issuing unit under a repayment agreement is in excess of the aggregate principal amount of bonds or notes secured by the related Credit Facility, whether as a result of the inclusion in the Credit Facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of unissued bonds or notes during the term of such repayment agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the issuing unit subject to the approval of the Commission. In determining whether or not to grant such approval, the Commission shall consider, in addition to such other factors it may deem relevant, the ability of the issuing unit to pay such excess from other sources without incurring additional indebtedness secured by a pledge of the faith and credit of the issuing unit or levying additional taxes and the adequacy of such other sources to accomplish such purpose.

(e) Any bonds or notes issued pursuant to this section may be sold by the Commission at public or private sale according to such procedures as the Commission

may prescribe and at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices."

Sec. 2. The first sentence of G.S. 159-65(6) of The Local Government Bond Act is rewritten to read:

"Any bond may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein."

Sec. 3. G.S. 159-123(c) of The Local Government Finance Act is rewritten to read:

"(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter 159 to the contrary, the bonds may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest."

Sec. 4. The first paragraph of G.S. 159-124 of The Local Government Finance Act is rewritten to read:

"The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders within or without this State or the United States of America, taking into consideration the size and nature of the issue."

Sec. 5. G.S. 159-124(3) of The Local Government Finance Act is amended by adding before the period the words: ", which place or places may be within or without this State or the United States of America".

Sec. 6. The first sentence of G.S. 159-125(a) of The Local Government Finance Act is rewritten to read:

"Except for revenue bonds, no bid for less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained."

Sec. 7. 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 now existing.

Sec. 8. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act.

Sec. 9. 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. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.