

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-463
SENATE BILL 730

AN ACT TO AMEND THE LAW RELATING TO THE ISSUANCE OF BONDS BY
INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING
AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159C-6, as amended by S.L. 1997-111, reads as rewritten:

"§ 159C-6. Bonds.

Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding ~~30 years from~~ 35 years after the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be ~~an~~ that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the person had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority

may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

The proceeds of bonds shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

- (1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.
- (2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

However, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may only be reimbursed from bond proceeds if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds ~~which shall that~~ become mutilated or ~~shall be~~ are destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of ~~either thereof, either,~~ and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same."

Section 2. G.S. 159C-7 reads as rewritten:

"§ 159C-7. Approval of ~~project~~-project by Secretary of Commerce.

(a) Approval Required. --No bonds may be issued by an authority unless the project for which ~~the issuance thereof~~ their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. --The Secretary shall not approve any proposed project unless he ~~shall make the Secretary makes~~ all of the following, applicable findings:

- (1) In the case of a proposed industrial project,
 - a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) ~~which~~ is above the average weekly manufacturing wage paid in the county, or (ii) ~~which~~ is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and
 - b. That the proposed project will not have a materially adverse effect on the ~~environment; environment.~~
- (2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise ~~occur; and occur.~~
- (2a) In the case of a hazardous waste facility or low-level radioactive waste facility ~~which that~~ is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.
- (3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,
 - a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
 - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
 - c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project. ~~In no case shall the Secretary of Commerce-~~

(c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in

which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment, Health, and Natural Resources. -- The Secretary of Commerce shall not make the findings required by subdivisions (1)b and (2) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. ~~In no case shall the~~ The Secretary of Commerce shall not make the findings required by subdivision (2a) unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment, Health, and Natural Resources. The Department of Environment, Health, and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time. ~~In any case where the Secretary shall make~~

(e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in ~~his~~ the Secretary's discretion, approve the proposed project if ~~he shall have~~ the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. --To facilitate ~~his~~ review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. ~~In addition, the Secretary may, in his discretion, request~~

~~the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem as the Secretary considers reasonably necessary to implement the provisions of this section.~~

(g) Certificate of Approval. --If the Secretary approves the proposed project, ~~he~~ the Secretary shall prepare a certificate of approval evidencing such approval and setting forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

~~Such~~ The certificate of approval shall become effective immediately following the expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. ~~Such~~ The certificate shall expire one year after its date unless extended by the Secretary who shall not extend ~~such~~ the certificate unless ~~he shall again approve~~ the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the project, however, the certificate shall expire three years after the date of the first issuance of the bonds."

Section 3. G.S. 159C-10 reads as rewritten:

"§ 159C-10. Location of projects.

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the authority created for any one of the counties may issue bonds as provided in G.S. 159C-6 for the purpose of paying all or any part of the cost of the project or group of related projects if the following conditions are met:

- (1) The board of commissioners of each county in which the project or group of related projects is located has consented.
- (2) The governing body of the authority created for each county in which the project or group of related projects is located has consented.
- (3) The bonds are issued in compliance with all other provisions of this Chapter."

Section 4. G.S. 159C-19(a) reads as rewritten:

" (a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding ~~which shall that~~ have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded ~~shall~~ have been issued, and
- (2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter ~~which that~~ relate to the issuance of bonds, insofar as such provisions may be appropriate ~~therefor. therefor,~~ including that any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall not be required as to the project financed with the bonds to be refunded."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:08 p.m. this 1st day of September, 1997