

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 249
Finance Committee Substitute Adopted 3/18/97
Third Edition Engrossed 3/24/97
House Committee Substitute Favorable 6/9/97

Short Title: Bond Payment Change.

(Public)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SPECIAL
3 OBLIGATION BONDS AND TO MAKE OTHER CHANGES IN THE LAWS
4 CONCERNING THESE BONDS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 159I-30, as amended by Section 20 of S.L. 1997-6, reads as
7 rewritten:

8 "§ 159I-30. Additional powers of units of local government; issuance of special
9 obligation bonds and notes.

10 (a) Authorization. – Any unit of local government may borrow money for the
11 purpose of financing or refinancing its cost of the acquisition or construction of a project
12 and may issue special obligation bonds and notes, including bond anticipation notes and
13 renewal notes, pursuant to the provisions of this section and the applicable provisions of
14 this Chapter for ~~such~~ this purpose.

15 (b) Pledge. – Each unit of local government may ~~agree to apply to~~ pledge for the
16 payment of a special obligation bond or note any available source or sources of revenues
17 of the unit and, to the extent the generation of the revenues is within the power of the

1 unit, ~~to may~~ enter into covenants to take action in order to generate the revenues, ~~provided~~
2 ~~the agreement to use such as long as the pledge of these sources to make for payments or~~
3 ~~such the~~ covenant to generate revenues does not constitute a pledge of the unit's taxing
4 power.

5 No agreement or covenant shall contain a nonsubstitution clause which restricts the
6 right of a unit of local government to replace or provide a substitute for any project
7 financed pursuant to this section.

8 ~~The obligation sources of payment pledged by of a unit of local government with~~
9 ~~respect to the sources of payment~~ shall be specifically identified in the proceedings of the
10 governing body authorizing the unit to issue the special obligation bonds or notes.

11 After the issuance of special obligation bonds or notes, the governing body of the
12 issuing unit may identify one or more additional sources of payment for the bonds or
13 notes and pledge these sources, as long as the pledge of the sources does not constitute a
14 pledge of the taxing power of the unit. Each source of additional payment pledged shall
15 be specifically identified in the proceedings of the governing body of the unit pledging
16 the source. The governing body of the unit may not pledge an additional source of
17 revenue pursuant to this paragraph unless the pledge is first approved by the Local
18 Government Commission pursuant to the procedures provided in subsection (i) of this
19 section.

20 The sources of payment so ~~specifically identified pledged~~ and then held or thereafter
21 received by a unit or any fiduciary thereof shall immediately be subject to the lien of the
22 ~~proceedings pledge~~ without any physical delivery of the sources or further act. The lien
23 shall be valid and binding as against all parties having claims of any kind in tort, contract,
24 or otherwise against a unit without regard to whether the parties have notice thereof. The
25 proceedings or any other document or action by which the lien on a source of payment is
26 created need not be filed or recorded in any manner other than as provided in this
27 Chapter.

28 ~~Any special obligation bonds or notes may provide additional security by the granting~~
29 ~~of a security interest in the project financed to secure payment of the purchase money~~
30 ~~provided by such bonds or notes, including a deed of trust on any real property so~~
31 ~~acquired.~~

32 (b1) Security Interest. – In connection with issuing its special obligation bonds or
33 special obligation bond anticipation notes under this Chapter, a unit of local government
34 may grant a security interest in the project financed, or in all or some portion of the
35 property on which the project is located, or in both. If a unit of local government
36 determines to provide additional security as authorized by this subsection, the following
37 conditions apply:

- 38 (1) No bond order may contain a nonsubstitution clause that restricts the
39 right of a unit of local government to:
40 a. Continue to provide a service or activity; or
41 b. Replace or provide a substitute for any municipal purpose
42 financed pursuant to the bond order.

1 (2) A bond order is subject to approval by the Commission under Article 8
2 of Chapter 159 of the General Statutes if it:

3 a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2),
4 and 159-148(a)(3), or involves the construction or repair of
5 fixtures or improvements on real property; and

6 b. Is not exempted from the provisions of that Article by one of the
7 exemptions contained in G.S. 159-148(b)(1) and (2).

8 The Commission approval required by this subdivision is in addition to
9 the Commission approval required by subsection (i) of this section.

10 (3) No deficiency judgment may be rendered against any unit of local
11 government in any action for breach of a bond order authorized by this
12 section, and the taxing power of a unit of local government is not and
13 may not be pledged directly or indirectly to secure any moneys due
14 under a bond order authorized by this section. This prohibition does not
15 impair the right of the holder of a bond or note to exercise a remedy
16 with respect to the revenues pledged to secure the bond or note, as
17 provided in the bond order, resolution, or trust agreement under which
18 the bond or note is authorized and secured. A unit of local government
19 may, in its sole discretion, use tax proceeds to pay the principal of or
20 interest or premium on bonds or notes, but shall not pledge or agree to
21 do so.

22 (4) Before granting a security interest under this subsection, a unit of local
23 government shall hold a public hearing on the proposed security
24 interest. A notice of the public hearing shall be published once at least
25 10 days before the date fixed for the hearing.

26 (c) Payment; Call. – Any bond anticipation notes may be made payable from the
27 proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not
28 available, the notes may be paid from any sources available under G.S. 159I-30(b).
29 Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and
30 notes of each issue shall be dated and may be made redeemable prior to maturity at the
31 option of the unit of local government or otherwise, at such price or prices, on such date
32 or dates, and upon such terms and conditions as may be determined by the unit. The
33 bonds or notes may also be made payable from time to time on demand or tender for
34 purchase by the owner, upon terms and conditions determined by the unit.

35 (d) Interest. – The interest payable by a unit on any special obligation bonds or
36 notes may be at such rate or rates, including variable rates as authorized in this section, as
37 may be determined by the Local Government Commission with the approval of the
38 governing body of the unit. ~~Such~~ This approval may be given as the governing body of
39 the unit may direct, including, without limitation, a certificate signed by a representative
40 of the unit designated by the governing body of the unit.

41 (e) Nature of Obligation. – Special obligation bonds and notes shall be special
42 obligations of the unit of local government issuing them. The principal of, and interest
43 and any premium on, special obligation bonds and notes shall be ~~payable~~ secured solely

1 ~~from by~~ any one or more of the sources of payment authorized by this section as may be
2 ~~specified pledged~~ in the proceedings, resolution, or trust agreement under which they are
3 authorized or secured. Neither the faith and credit nor the taxing power of the unit of
4 local government are pledged for the payment of the principal of, or interest or any
5 premium on, any special obligation bonds or notes, and no owner of special obligation
6 bonds or notes has the right to compel the exercise of the taxing power by the unit in
7 connection with any default thereon. Every special obligation bond and note shall recite
8 in substance that the principal and interest and any premium on the bond or note are
9 ~~payable solely from~~ secured solely by the sources of payment specified pledged in the bond
10 ~~order or trust order, resolution, or trust agreement~~ under which it is authorized or secured.

11 The following limitations apply to payment from the specified sources:

- 12 (1) Any such use of these sources will not constitute a pledge of the unit's
13 taxing power; and
14 (2) The ~~municipality unit~~ is not obligated to pay the principal or interest or
15 premium except from these sources.

16 (f) Details. – In fixing the details of bonds or notes, the unit of local government
17 may provide that any of the bonds or notes may:

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

37 (g) Definitions. – As used in this section:

- 38 (1) 'Credit facility' means an agreement entered into by the unit with a bank,
39 savings and loan association or other banking institution, an insurance
40 company, reinsurance company, surety company or other insurance
41 institution, a corporation, investment banking firm or other investment
42 institution, or any financial institution ~~proving providing~~ for prompt
43 payment of all or any part of the principal, or purchase price (whether at

1 maturity, presentment, or tender for purchase, redemption, or
2 acceleration), redemption premium, if any, and interest on any bonds or
3 notes payable on demand or tender by the owner, in consideration of the
4 unit agreeing to repay the provider of ~~such~~the credit facility in
5 accordance with the terms and provisions of ~~such~~the agreement; the
6 provider of any credit facility may be located either within or without
7 the United States of America.

8 (2) 'Par formula' means any provision or formula adopted by the unit to
9 provide for the adjustment, from time to time of the interest rate or rates
10 borne by any bonds or notes including:

- 11 a. A provision providing for such adjustment so that the purchase
12 price of such bonds or notes in the open market would be as close
13 to par as possible;
- 14 b. A provision providing for such adjustment based upon a
15 percentage or percentages of a prime rate or base rate, which
16 percentage or percentages may vary or be applied for different
17 periods of time; or
- 18 c. ~~Such~~Any other provision as the unit may determine to be
19 consistent with this section and the applicable provisions of this
20 Chapter and does not materially and adversely affect the financial
21 position of the unit and the marketing of the bonds or notes at a
22 reasonable interest cost to the unit.

23 The obligation of a unit of local government under a credit facility to repay any
24 drawing thereunder may be made payable and otherwise secured, to the extent applicable,
25 as provided in this section.

26 (h) Term; Form. – Notes shall mature at such time or times and bonds shall
27 mature, not exceeding 40 years from their date or dates, as may be determined by the unit
28 of local government, ~~provided~~except that no such maturity dates may exceed the
29 maximum maturity periods prescribed by the Local Government Commission pursuant to
30 G.S. 159-122, as it may be amended from time to time. The unit shall determine the form
31 and manner of execution of the bonds or notes, including any interest coupons to be
32 attached thereto, and shall fix the denomination or denominations and the place or places
33 of payment of principal and interest, which may be any bank or trust company within or
34 without the United States. In case any officer of ~~such~~the unit whose signature, or a
35 facsimile of whose signature, ~~shall appear~~appears on any bonds or notes or coupons, if
36 any, ~~shall cease to be such~~ceases to be the officer before delivery thereof, ~~such signature or~~
37 ~~such the signature or~~ facsimile shall nevertheless be valid and sufficient for all purposes
38 the same as if ~~such~~the officer had remained in office until ~~such~~the delivery. Any bond or
39 note or coupon may bear the facsimile signatures of such persons who at the actual time
40 or the execution thereof ~~shall be were~~ the proper officers to sign although at the date of
41 ~~such the~~ bond or note or coupon ~~such these~~ persons may not have been ~~such officer the~~
42 proper officers. The unit may also provide for the authentication of the bonds or notes by
43 a trustee or other authenticating agent. The bonds or notes may be issued as certificated

1 or uncertificated obligations or both, and in coupon or in registered form, or both, as the
2 unit may determine, and provision may be made for the registration of any coupon bonds
3 or notes as to principal alone and also as to both principal and interest, and for the
4 reconversion into coupon bonds or notes of any bonds or notes registered as to both
5 principal and interest, and for the interchange of registered and coupon bonds or notes.
6 Any system for registration may be established as the unit may determine.

7 (i) Local Government Commission Approval. – No bonds or notes may be issued
8 by a unit of local government under this section unless the issuance is approved and the
9 bonds or notes are sold by the Local Government Commission as provided in this section
10 and the applicable provisions of this Chapter. The unit shall file with the Secretary of the
11 Local Government Commission an application requesting approval of the issuance of
12 ~~such~~the bonds or notes, which application shall contain such information and shall have
13 attached to it such documents concerning the proposed financing as the Secretary of the
14 Local Government Commission may require. The Commission may prescribe the form
15 of the application. Before the Secretary accepts the application, the Secretary may
16 require the governing body of the unit or its representatives to attend a preliminary
17 conference, at which time the Secretary or the deputies of the Secretary may informally
18 discuss the proposed issue and the timing of the steps taken in issuing the special
19 obligation bonds or notes.

20 In determining whether a proposed bond or note issue should be approved, the Local
21 Government Commission may consider, to the extent applicable as shall be determined
22 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-
23 86, as either may be amended from time to time, as well as the effect of the proposed
24 financing upon any scheduled or proposed sale of obligations by the State or by any of its
25 agencies or departments or by any unit of local government in the State. The Local
26 Government Commission shall approve the issuance of ~~such~~the bonds or notes if, upon
27 the information and evidence it receives, it finds and determines that the proposed
28 financing will satisfy such criteria and will effect the purposes of this section and the
29 applicable provisions of this Chapter. An approval of an issue shall not be regarded as an
30 approval of the legality of the issue in any respect. A decision by the Local Government
31 Commission denying an application is final.

32 Upon the filing with the Local Government Commission of a written request of the
33 unit requesting that its bonds or notes be sold, ~~such~~the bonds or notes may be sold by the
34 Local Government Commission in such manner, either at public or private sale, and for
35 such price or prices as the Local Government Commission shall determine to be in the
36 best interests of the unit and to effect the purposes of this section and the applicable
37 provisions of this Chapter, ~~provided that such sale shall be~~ if the sale is approved by the
38 unit.

39 (j) Proceeds. – The proceeds of any bonds or notes shall be used solely for the
40 purposes for which the bonds or notes were issued and shall be disbursed in such manner
41 and under such restrictions, if any, as the unit may provide in the resolution authorizing
42 the issuance of, or in any trust agreement securing, the bonds or notes.

1 (k) Interim Documents; Replacement. – Prior to the preparation of definitive
2 bonds, the unit may issue interim receipts or temporary bonds, with or without coupons,
3 exchangeable for definitive bonds when ~~such~~ definitive bonds have been executed and are
4 available for delivery. The unit may also provide for the replacement of any bonds or
5 notes which shall become mutilated or shall be destroyed or lost.

6 (l) No Other Conditions. – Bonds or notes may be issued under the provisions of
7 this section and the applicable provisions of this Chapter without obtaining, except as
8 otherwise expressly provided in this section and the applicable provisions of this Chapter,
9 the consent of any department, division, commission, board, body, bureau, or agency of
10 the State and without any other proceedings or the happening of any conditions or things
11 other than those proceedings, conditions, or things that are specifically required by this
12 section, the applicable provisions of this Chapter, and the provisions of the resolution
13 authorizing the issuance of, or any trust agreement securing, ~~such~~ the bonds or notes.

14 (m) Trust. – In the discretion of the unit of local government, any bonds and notes
15 issued under the provisions of this section may be secured by a trust agreement by and
16 between the unit and a corporate trustee or by a resolution providing for the appointment
17 of a corporate trustee. Bonds and notes may also be issued under an order or resolution
18 without a corporate trustee. The corporate trustee may be, in either case any trust
19 company or bank having the powers of a trust company within or without the State. ~~Such~~
20 The trust agreement or resolution may pledge or assign such sources of revenue as may
21 be permitted under this section. The trust agreement or resolution may contain such
22 provisions for protecting and enforcing the rights and remedies of the owners of any
23 bonds or notes issued thereunder as may be reasonable and proper and not in violation of
24 law, including covenants setting forth the duties of the unit in respect of the purposes to
25 which bond or note proceeds may be applied, the disposition and application of the
26 revenues of the unit, the duties of the unit with respect to the project, the disposition of
27 any charges and collection of any revenues and administrative charges, the terms and
28 conditions of the issuance of additional bonds and notes, and the custody, safeguarding,
29 investment, and application of all moneys. All bonds and notes issued under this section
30 shall be equally and ratably secured by a lien upon the revenues ~~provided in such~~ pledged
31 in the trust agreement or resolution, without priority by reasons of number, or dates of
32 bonds or notes, execution, or delivery, in accordance with the provision of this section
33 and of ~~such~~ the trust agreement or ~~resolution; provided, however, resolution, except that the~~
34 unit may provide in ~~such~~ the trust agreement or resolution that bonds or notes issued
35 pursuant thereto shall, to the extent and in the manner prescribed in ~~such~~ the trust
36 agreement or resolution, be subordinated and junior in standing, with respect to the
37 payment of principal and interest and to the security thereof, to any other bonds or notes.
38 It shall be lawful for any bank or trust company that may act as ~~depository~~ depository of
39 the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such
40 indemnifying bonds or to pledge such securities as may be required by the unit. Any
41 trust agreement or resolution may set out the rights and remedies of the owners of any
42 bonds or notes and of any trustee, and may restrict the individual rights of action by the
43 owners. In addition to the foregoing, any trust agreement or resolution may contain such

1 other provisions as the unit may deem reasonable and proper for the security of the
2 owners of any bonds or notes. Expenses incurred in carrying out the provisions of any
3 trust agreement or resolution may be treated as a part of the cost of any project or as an
4 administrative charge and may be paid from the revenues or from any other funds
5 available.

6 The State does pledge to, and agree with, the holders of any bonds or notes issued by
7 any unit that so long as any of ~~such~~the bonds or notes are outstanding and unpaid the
8 State will not limit or alter the rights vested in the unit at the time of issuance of the
9 bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the
10 terms of any agreements made with the bondholders or noteholders. The State shall in no
11 way impair the rights and remedies of the bondholders or noteholders until the bonds or
12 notes and all costs and expenses in connection with any action or proceedings by or on
13 behalf of the bondholders or noteholders, are fully paid, met, and discharged.

14 (n) Applicable Provisions. – The provisions of G.S. 159I-15(a), (d), and (e)
15 relating to the Agency and its bonds and notes shall apply to a unit of local government
16 and its bonds and notes issued under this section and the applicable provisions of this
17 Chapter, ~~provided except~~ that the source or sources of revenue ~~available pledged~~ to pay
18 bonds and notes of a unit of local government shall be limited as provided in this section.

19 (o) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and
20 investments shall apply to a unit of local government and its trust funds and investments,
21 ~~provided except~~ that any such moneys of a unit shall be deposited and invested only as
22 provided in G.S. 159-30, as it may be amended from time to time.

23 (p) The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to
24 remedies, the Uniform Commercial Code, investment ~~eligibility and tax exemption as such~~
25 eligibility, and tax exemption, as they relate to the Agency's bonds and ~~notes~~notes, shall
26 apply to a unit of local government and its bonds and notes."

27 Section 2. This act is effective when it becomes law.