

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-307
SENATE BILL 249

AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SPECIAL OBLIGATION BONDS AND TO MAKE OTHER CHANGES IN THE LAWS CONCERNING THESE BONDS.

The General Assembly of North Carolina enacts:

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

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

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

(b) Pledge. – Each unit of local government may ~~agree to apply to pledge for~~ the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, ~~to may~~ enter into covenants to take action in order to generate the revenues, ~~provided the agreement to use such as long as the pledge of these sources to make for~~ payments or ~~such the~~ covenant to generate revenues does not constitute a pledge of the unit's taxing power.

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

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

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local

Government Commission pursuant to the procedures provided in subsection (i) of this section.

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

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

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

- (1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to:
 - a. Continue to provide a service or activity; or
 - b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.
- (2) A bond order is subject to approval by the Commission under Article 8 of Chapter 159 of the General Statutes if it:
 - a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
 - b. Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).

The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (i) of this section.
- (3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay

the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.

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

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

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

(e) Nature of Obligation. – Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be ~~payable~~ secured solely ~~from~~ by any one or more of the sources of payment authorized by this section as may be ~~specified~~ pledged in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on the bond or note are ~~payable solely from~~ secured solely by the sources of payment ~~specified~~ pledged in the ~~bond order or trust order, resolution, or trust agreement~~ under which it is authorized or secured. The following limitations apply to payment from the specified sources:

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

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

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof ~~provided as long as~~ a credit facility supports ~~such~~ the bonds or notes, unless the Local Government Commission

specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;

- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of ~~such~~the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

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

- (1) 'Credit facility' means an agreement entered into by the 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~~providing for prompt payment of all or any part of the principal, or purchase price (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, in consideration of the unit agreeing to repay the provider of ~~such~~the credit facility in accordance with the terms and provisions of ~~such~~the agreement; the provider of any credit facility may be located either within or without the United States of America.
- (2) 'Par formula' means any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:
 - a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
 - c. ~~Such~~Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the

financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

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

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

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

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

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

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

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

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

(m) Trust. – In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. ~~Such~~The trust agreement or resolution may pledge or assign such sources of

revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues ~~provided in such pledged in the~~ trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of ~~such the~~ trust agreement or ~~resolution;~~ ~~provided, however, resolution, except~~ that the unit may provide in ~~such the~~ trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in ~~such the~~ trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as ~~depository depository~~ of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of ~~such the~~ bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no 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.

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

(⊕) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and

investments, ~~provided~~ except that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

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

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

In the General Assembly read three times and ratified this the 8th day of July, 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 10:46 a.m. this 17th day of July, 1997