

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 265
Finance Committee Substitute Adopted 5/11/21

Short Title: Bond Information Transparency.

(Public)

Sponsors:

Referred to:

March 15, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE TRANSPARENCY OF BOND REFERENDA BY REQUIRING
3 ADDITIONAL DISCLOSURES BY UNITS OF LOCAL GOVERNMENT AND TO
4 MAKE LOCAL FINANCE RELATED CHANGES RECOMMENDED BY THE STATE
5 TREASURER.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 159-52(b) reads as rewritten:

8 "(b) The Commission shall approve the application if, upon the information and evidence
9 it receives, it finds and determines:

- 10 (1) That the proposed bond issue is necessary or expedient.
11 (2) That the amount proposed is adequate and not excessive for the proposed
12 purpose of the issue.
13 (3) That the unit's debt management procedures and policies are good, or that
14 reasonable assurances have been given that its debt will henceforth be
15 managed in strict compliance with law.
16 (4) That the increase in taxes, if any, necessary to service the proposed debt will
17 not be excessive.
18 (5) That the proposed bonds can be marketed at reasonable rates of interest.
19 (6) That the assumptions used by the finance officer of the unit in preparing the
20 statement of estimated interest filed with the clerk pursuant to
21 G.S. 159-55.1(a) are reasonable.

22 If the Commission tentatively decides to deny the application because it is of the opinion that
23 any one or more of these conclusions cannot be supported from the information presented to it,
24 it shall so notify the unit filing the application. If the unit so requests, the Commission shall hold
25 a public hearing on the application at which time any interested persons shall be heard. The
26 Commission may appoint a hearing officer to conduct the hearing, and to present a summary of
27 the testimony and his recommendations for the Commission's consideration."

28 SECTION 2.(a) G.S. 159-55(d) is repealed.

29 SECTION 2.(b) The section heading of G.S. 159-55 reads as rewritten:

30 "~~§ 159-55. Sworn statement of debt; debt limitation; statement of estimated interest on the~~
31 ~~bonds limitation.~~"

32 SECTION 2.(c) Part 2 of Article 4 of Chapter 159 of the General Statutes is amended
33 by adding a new section to read:

34 "§ 159-55.1. Statement of disclosures necessary for bond authorization.

35 (a) After the bond order has been introduced and before the public hearing on it, the
36 finance officer shall file with the clerk of the board a statement of disclosure stating the following:



1 no assurance that the circumstances included in the assumptions will occur, that the occurrence
 2 of certain of the assumptions is beyond the control of the issuing unit, and that differences
 3 between the actual circumstances at the time the bonds are issued from the assumptions included
 4 in the ~~estimate-estimates~~ could result in significant differences between the estimated interest and
 5 the actual interest on the ~~bonds- bonds~~ or the actual property tax increases required to provide
 6 sufficient funds to pay the principal and interest on the bonds. The statement may include
 7 additional qualifications as the unit deems appropriate. The validity of bonds authorized to be
 8 issued pursuant to this act is not subject to challenge on the grounds that the actual interest cost
 9 of the bonds when ~~issued-issued~~, or the actual property tax increases required to provide sufficient
 10 funds to pay the principal and interest on the bonds when issued, is different than the amount set
 11 forth in the ~~estimate-estimates~~ referenced in the publication of the bond order as introduced."

12 **SECTION 4.** G.S. 159-58 reads as rewritten:

13 "**§ 159-58. Publication of bond order as adopted.**

14 After adoption, the clerk shall publish the bond order once, with the following statement
 15 appended:

16 "The foregoing order was adopted on the _____ day of _____, _____, and is hereby
 17 published this _____ day of _____, _____. Any action or proceeding questioning the validity
 18 of the order must be begun within 30 days after the date of publication of this notice. The finance
 19 officer of the [issuing unit] has filed a statement estimating that the total amount of interest that
 20 will be paid on the bonds over the expected term of the bonds, if issued, is \$ _____. ~~The estimate~~
 21 ~~is preliminary, is~~ A tax is authorized to be levied to pay the principal and interest on the bonds if
 22 they are issued. The finance officer has filed a statement estimating that [a property tax increase
 23 of \$ _____ per \$100.00 of assessed valuation] [no property tax increase] will be required to
 24 provide sufficient funds to pay the principal and interest on the proposed bonds. These estimates
 25 are preliminary, are for general informational purposes only, and may differ from the actual
 26 interest paid on the ~~bonds- bonds~~ or the actual property tax increases required to provide sufficient
 27 funds to pay the principal and interest on the bonds.

28
 29
 30 Clerk"

31 The publication may include a summary of the assumptions upon which the ~~estimate~~
 32 ~~estimates~~ of the total amount of interest that will be paid on the bonds over the expected term of
 33 the ~~bonds- bonds~~ if issued, ~~is~~ or the amount of any property tax increase required to provide
 34 sufficient funds to pay the principal and interest on the bonds if issued, are based, and may further
 35 state that there is no assurance that the circumstances included in the assumptions will occur, that
 36 the occurrence of certain of the assumptions is beyond the control of the issuing unit, and that
 37 differences between the actual circumstances at the time the bonds are issued from the
 38 assumptions included in the ~~estimate-estimates~~ could result in significant differences between the
 39 estimated interest and the actual interest on the ~~bonds- bonds~~ or the actual property tax increases
 40 required to provide sufficient funds to pay the principal and interest on the bonds. The statement
 41 may include such additional qualifications as the unit deems appropriate. The validity of bonds
 42 authorized to be issued pursuant to this act is not subject to challenge on the grounds that the
 43 actual interest cost of the bonds when ~~issued-issued~~, or the actual property tax increases required
 44 to provide sufficient funds to pay the principal and interest on the bonds when issued, is different
 45 than the amount set forth in the ~~estimate-estimates~~ referenced in the publication of the bond order
 46 as adopted."

47 **SECTION 5.** Part 3 of Article 3 of Chapter 159 of the General Statutes is amended
 48 by adding a new section to read:

49 "**§ 159-33.2. Interim event reporting.**

50 The Secretary has the authority to require a unit of local government or public authority to
 51 report events defined by the Secretary that will or may have a material, adverse effect on the

1 financial health, operations, or internal controls of the unit of local government or public
2 authority within 30 days after the occurrence of such events. The Commission shall adopt a policy
3 specifying the event required under this section. Within 30 days of adopting the policy, the
4 Secretary shall make the policy publicly available."

5 **SECTION 6.** G.S. 159-34 is amended by adding a new subsection to read:

6 "(d) The Commission may notify the State Treasurer and the Secretary of Revenue of a
7 unit's failure to comply with the annual audit requirements if the unit has failed to file a copy of
8 the audit report with the Secretary as required under subsection (a) of this section within 12
9 months of the unit's fiscal year end. Upon such notification, the Secretary of Revenue shall
10 withhold from the unit's distribution under G.S. 105-486, and from the unit's distribution under
11 G.S. 105-501 if necessary, an amount equal to one hundred fifty percent (150%) of the cost of
12 the required annual audit as indicated in the audit contract between the unit and its external
13 auditor for the audit report, if such a contract has been executed, or for the most recently filed
14 audit report if a contract has not been executed for the current year audit. The amount may be
15 withheld in subparts based upon a schedule of withholding developed by the Commission. The
16 total amount withheld shall be released to the unit upon the Commission's notification to the State
17 Treasurer and the Secretary of Revenue that the required report has been filed, reviewed to ensure
18 that the report complies with the requirements of this section, and accepted by the Secretary."

19 **SECTION 7.** G.S. 159-148 reads as rewritten:

20 **"§ 159-148. Contracts subject to Article; exceptions.**

21 (a) Except as provided in subsection (b) of this section, this Article applies to any
22 contract, agreement, memorandum of understanding, and any other transaction having the force
23 and effect of a contract (other than agreements made in connection with the issuance of revenue
24 bonds, special obligation bonds issued pursuant to Article 7A of this Chapter, or of general
25 obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of
26 local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as
27 authorized in G.S. 159-146), relating to the lease, acquisition, or construction of capital assets,
28 which contract does all of the following:

- 29 (1) Extends for five or more years from the date of the contract, including periods
30 that may be added to the original term through the exercise of options to renew
31 or extend. For units included on the most recently published Unit Assistance
32 List issued by the Department of State Treasurer, this subdivision applies to
33 transactions that extend for three or more years from the date of the contract,
34 including periods that may be added to the original term through the exercise
35 of options to renew or extend.
- 36 (2) Obligates the unit to pay sums of money to another, without regard to whether
37 the payee is a party to the contract.
- 38 (3) Obligates the unit over the full term of the contract, including periods that may
39 be added to the original term through the exercise of options to renew or
40 extend:
- 41 a. For baseball park districts, to at least five hundred thousand dollars
42 (\$500,000).
- 43 b. For housing authorities, to at least five hundred thousand dollars
44 (\$500,000) or a sum equal to two thousand dollars (\$2,000) per
45 housing unit owned and under active management by the housing
46 authority, whichever is less.
- 47 c. For units included on the most recently published Unit Assistance List
48 issued by the Department of State Treasurer, to at least fifty thousand
49 dollars (\$50,000).
- 50 d. For other units, to at least five hundred thousand dollars (\$500,000) or
51 a sum equal to one-tenth of one percent (1/10 of 1%) of the assessed

1 value of property subject to taxation by the contracting unit, whichever
2 is less.

3 (4) Obligates the unit, expressly or by implication, to exercise its power to levy
4 taxes either to make payments falling due under the contract, or to pay any
5 judgment entered against the unit as a result of the unit's breach of the contract.

6 Contingent obligation shall be included in calculating the value of the contract. Several
7 contracts that are all related to the same undertaking shall be deemed a single contract for the
8 purposes of this Article. When several contracts are considered as a single contract, the term shall
9 be that of the contract having the longest term, and the sums to fall due shall be the total of all
10 sums to fall due under all single contracts in the group. No contract agreement shall be divided
11 for the purpose of, or that results in, evading the requirements of this Article.

12 (b) This Article shall not apply to:

13 (1) Contracts between a unit of local government and the State of North Carolina
14 or the United States of America (or any agency of either) entered into as a
15 condition to the making of grants or loans to the unit of local government.

16 (2) Contracts for the purchase, lease, or lease with option to purchase of ~~motor~~
17 ~~vehicles or~~ voting machines.

18 (3) Repealed by Session Laws 2020-3, s. 4.30(g), effective retroactively to July
19 1, 2019.

20 (4) Contracts for the purchase, lease, or lease with option to purchase of motor
21 vehicles. This exemption shall not apply to units included on the most recently
22 published Unit Assistance List issued by the Department of State Treasurer
23 where the contract amount equals or exceeds fifty thousand dollars
24 (\$50,000)."

25 **SECTION 8.** This act is effective when it becomes law and applies to bonds issued
26 under bond orders introduced on or after that date and to contracts entered into on or after that
27 date.