

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 521

Short Title: Local Government Debt Changes.

(Public)

Sponsors: Senator Conder.

Referred to: Constitution.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO CONTRACT DEBT WITHOUT A VOTE OF THE PEOPLE TO THE EXTENT OF ONE-HALF PERCENT OF THE APPRAISED VALUE OF PROPERTY SUBJECT TO TAXATION BY THE UNIT AND TO PROVIDE A PROCEDURE FOR UNITS OF GOVERNMENT TO BORROW MONEY UP TO THAT AMOUNT.

The General Assembly of North Carolina enacts:

Section 1. Article V, Section 4, paragraph (2) of the Constitution of North Carolina reads as rewritten:

"(2) **Authorized purposes.** ~~purposes; two-thirds limitation.~~—The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) To fund or refund a valid existing debt;
- (b) To supply an unforeseen deficiency in the revenue;
- (c) To borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) To suppress riots or insurrections;
- (e) To meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

1 (f) For purposes authorized by general laws uniformly applicable
2 throughout the State, to the extent of two-thirds of the amount by
3 which the unit's outstanding indebtedness shall have been reduced
4 during the next preceding fiscal ~~year-year~~;

5 (g) For purposes authorized by general laws uniformly applicable
6 throughout the State, to the aggregate extent of one half of one percent
7 (1/2%) of the appraised value of property subject to taxation by the
8 unit."

9 Sec. 2. The amendment set out in Section 1 of this act shall be submitted to
10 the qualified voters of the State at the general election to be held in 1990. That election
11 shall be held and conducted under the laws then governing general elections in this
12 State.

13 Sec. 3. At the general election, each qualified voter presenting himself to
14 vote shall be provided a ballot on which shall be printed the following:

15 "[] FOR constitutional amendment authorizing the General Assembly to
16 authorize counties, cities and towns, and other units of local
17 government to contract general obligation debts without a vote of the
18 people to the aggregate extent of one-half of one percent (1/2%) of the
19 appraised value of property subject to taxation by the unit.

20 "[] AGAINST constitutional amendment authorizing the General
21 Assembly to authorize counties, cities and towns, and other units of
22 local government to contract general obligation debts without a vote of
23 the people to the aggregate extent of one-half of one percent (1/2%) of
24 the appraised value of property subject to taxation by the unit."

25 Sec. 4. Chapter 159 of the General Statutes is amended by adding at the end
26 a new Article to read:

27 **"ARTICLE 13.**

28 **"NONVOTED BORROWING.**

29 **"§ 159-190. Purpose and scope of Article.**

30 The purpose of this Article is to establish a standard, uniform procedure for a unit of
31 local government, as defined by G.S. 159-44, to borrow money in an amount up to one-
32 half of one percent (1/2%) of the appraised value of property subject to taxation by the
33 unit. This Article applies to any bond, note, contract, agreement, or other evidence of
34 indebtedness, other than bonds or notes issued under the Local Government Bond Act,
35 made or entered by a unit of local government that pledges the full faith and credit of
36 the unit without a vote of the people. A unit may issue obligations authorized by this
37 Article for any purpose permitted to that type of unit by the Local Government Bond
38 Act. In lieu of the procedures provided in this Article, a unit may issue a bond pursuant
39 to the Local Government Bond Act for the purposes authorized.

40 **"§ 159-191. Application to Local Government Commission for approval of**
41 **borrowing.**

42 A unit of local government may not enter into any borrowing subject to this Article
43 unless the borrowing is approved by the Local Government Commission as evidenced
44 by the secretary's certificate. Any borrowing subject to this Article that does not bear

1 the secretary's certificate shall be void, and it shall be unlawful for any officer,
2 employee, or agent of a unit of local government to make any payments of money
3 pursuant to such a borrowing. Before executing a borrowing subject to this Article, the
4 governing board of the borrowing unit shall file an application for Commission approval
5 of the borrowing with the secretary of the Commission. The application shall state such
6 facts and have attached to it such documents concerning the proposed borrowing and
7 the financial condition of the borrowing unit as the secretary may require. The
8 Commission may prescribe the form of the application.

9 Before accepting the application, the secretary may require the governing board or
10 its representative to attend a preliminary conference at which time the secretary and the
11 secretary's deputies may informally discuss the proposed borrowing.

12 After an application in proper form has been filed, and after a preliminary
13 conference if one is required, the secretary shall notify the unit in writing that the
14 application has been filed and accepted for submission to the Commission. The
15 secretary's statement shall be conclusive evidence that the unit has complied with this
16 section.

17 **"§ 159-192. Sworn statement of debt; debt limitation.**

18 After an application is filed under G.S. 159-191, the finance officer of the unit, or
19 some other officer designated by the governing board, shall prepare, swear to, and file
20 with the secretary and for public inspection in the office of the town clerk of the
21 governing board a statement of debt in the same form prescribed in G.S. 159-55 for
22 statements of debt filed in connection with general obligation bond issues. The sums to
23 be included in gross debt and the deductions from gross debt to arrive at net debt shall
24 be the same as prescribed in G.S. 159-55, except that sums to fall due under borrowings
25 subject to this Article, or if issued before this Article's enactment, that would have been
26 subject to this Article, shall be treated as if they were evidenced by general obligations
27 of the unit.

28 No borrowing subject to this Article may be executed if the net debt of the
29 borrowing unit, after execution of the borrowing agreement, would exceed eight percent
30 (8%) of the appraised value of property subject to taxation by the borrowing unit before
31 the application of any assessment ratio or if the nonvoted debt after execution of the
32 borrowing agreement would exceed one-half of one percent (1/2%) of the appraised
33 value of property subject to taxation by such unit before the application of any
34 assessment ratio.

35 **"§ 159-193. Approval of application by Commission.**

36 (a) In determining whether a proposed borrowing shall be approved, the
37 Commission may consider:

- 38 (1) Whether the undertaking is necessary or expedient.
- 39 (2) The nature and amount of the outstanding debt of the borrowing unit.
- 40 (3) The unit's debt management procedures and policies.
- 41 (4) The unit's tax and special assessments collection record.
- 42 (5) The unit's compliance with the Local Government Budget and Fiscal
43 Control Act.
- 44 (6) Whether the unit is in default in any of its debt service obligations.

- 1 (7) The unit's present tax rates, and the increase in tax rate, if any,
2 necessary to raise the sums to fall due under the proposed borrowing.
3 (8) The unit's appraised and assessed value of property subject to taxation.
4 (9) The ability of the unit to sustain the additional taxes necessary to repay
5 the debt.
6 (10) In the case of a proposed contract for utility or public service
7 enterprise, the probable net revenues of the undertaking to be financed
8 and the extent to which the revenues of the utility or enterprise, after
9 addition of the revenues of the undertaking to be financed, will be
10 sufficient to meet the sums to fall due under the proposed borrowing.

11 The Commission may inquire into and give consideration to any other matters that may
12 have bearing on whether the borrowing should be approved.

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

- 15 (1) That the proposed borrowing is necessary or expedient.
16 (2) That the sums to fall due pursuant to the borrowing are adequate and
17 not excessive for its proposed purpose.
18 (3) That the unit's debt management procedures and policies are good, or
19 that reasonable assurances have been given that its debt will
20 henceforth be managed in strict compliance with law.
21 (4) That the increase in taxes, if any, necessary to meet the sums to fall
22 due pursuant to the borrowing will not be excessive.
23 (5) That the unit is not in default in any of its debt service obligations.

24 The Commission need not find all of these facts and conclusions if it concludes that (i)
25 the proposed project is necessary and expedient, (ii) the sums to fall due pursuant to the
26 borrowing are adequate and not excessive for its proposed purpose, and (iii) the
27 borrowing will not require an excessive increase in taxes.

28 If the Commission tentatively decides to deny the application because the
29 application cannot be supported from the information presented to it, it shall so notify
30 the unit filing the information. If the unit so requests, the Commission shall hold a
31 public hearing on the application at which time any interested persons shall be heard.
32 The Commission may appoint a hearing officer to conduct the hearing, to present a
33 summary of the testimony, and to make a recommendation for the Commission's
34 consideration.

35 **"§ 159-194. Order approving or denying the application.**

36 (a) After considering an application, and conducting a public hearing if one is
37 requested under G.S. 159-193, the Commission shall enter its order either approving or
38 denying the application. An order approving an application shall not be regarded as an
39 approval of the legality of the borrowing in any respect.

40 (b) If the Commission enters an order denying an application, the proceedings
41 under this Article shall terminate."

42 Sec. 5. G.S. 159-45 reads as rewritten:

43 **"§ 159-45. All general obligation bonds subject to Local Government Bond Act.**

1 No unit of local government in this State shall have authority to enter into any
2 contract or agreement, whether oral or written, whereby it borrows money and makes an
3 express or implied pledge of its power to levy taxes as security for repayment of the
4 loan, except (i) by the issuance of its bonds in accordance with the limitations and
5 procedures prescribed in this Article or (ii) by the issuance of its negotiable notes in
6 accordance with the limitations and procedures prescribed in Article 9 of this Chapter or
7 (iii) by the issuance of debt instruments in accordance with the limitations and
8 procedures prescribed in Chapter 159G of the General Statutes, or (iv) by the issuance of
9 obligations pursuant to Article 13 of this Chapter."

10 Sec. 6. G.S. 159-123(b) reads as rewritten:

11 "(b) The following classes of bonds may be sold at private sale:

- 12 (1) Bonds that a State or federal agency has previously agreed to purchase.
- 13 (2) Any bonds for which no legal bid is received within the time allowed
14 for submission of bids.
- 15 (3) Revenue bonds, including any refunding bonds issued pursuant to
16 G.S. 159-84.
- 17 (4) Refunding bonds issued pursuant to G.S. 159-78.
- 18 (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local
19 Government Commission determines that a private sale is in the best
20 interest of the issuing unit.
- 21 (6) Nonvoted borrowings entered pursuant to Article 13 of Chapter 159."

22 Sec. 7. If a majority of the votes cast in the general election to be held in
23 1990 are in favor of the amendment set out in Section 1 of this act, then the amendment
24 shall be certified by the State Board of Elections to the Secretary of State, who shall
25 enroll the amendment so certified among the permanent records of his office, and the
26 amendment shall become effective on July 1, 1991. Sections 4 through 6 of this act
27 shall become effective upon certification by the State Board of Elections that an
28 amendment to the North Carolina Constitution authorizing general obligation debt
29 without a vote of the people to the extent of one-half of one percent (1/2%) of the
30 appraised value of property subject to taxation by a unit of government has been
31 approved by the people. The remainder of this act is effective upon ratification.