

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 678
Finance Committee Substitute Adopted 7/1/93

Short Title: Bond Payment Change.

(Public)

Sponsors:

Referred to:

April 1, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY REVENUE
3 BONDS AND SPECIAL OBLIGATION BONDS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 159-94(a) reads as rewritten:

6 "(a) Revenue bonds shall be special obligations of the State or the municipality
7 issuing them. The principal of and interest on revenue bonds shall not be ~~payable from~~
8 secured by the general funds of the State or the municipality, as the case may be, nor
9 shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any
10 of its property or upon any of its income, receipts, or revenues, except the funds which
11 are pledged under the bond order authorizing the bonds. Neither the credit nor the
12 taxing power of the State or the municipality, as the case may be, are pledged for the
13 payment of the principal or interest of revenue bonds, and no holder of revenue bonds
14 has the right to compel the exercise of the taxing power by the State or the municipality,
15 as the case may be, or the forfeiture of any of its property in connection with any default
16 thereon. Every revenue bond shall recite in substance that the principal of and interest
17 on the bond is ~~payable solely from~~ secured solely by the revenues pledged to its payment
18 and that the State or the municipality, as the case may be, is not obligated to pay the
19 principal or interest except from such revenues."

20 Sec. 2. G.S. 159I-30 reads as rewritten:

21 "§ 159I-30. Additional powers of units of local government; issuance of special
22 obligation bonds and notes.

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

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

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

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

18 In addition, a unit of local government that has issued special obligation bonds or
19 notes may later pledge for the payment of a bond or note any additional available source
20 of revenue of the unit, provided the pledge of such source does not constitute a pledge
21 of the taxing power of the unit. The source of payment pledged shall be specifically
22 identified in the proceedings of the governing body of the unit pledging the source. The
23 governing body of the unit may not pledge an additional source of revenue pursuant to
24 this paragraph unless the pledge is first approved by the Local Government Commission
25 pursuant to the procedures provided in subsection (i) of this section.

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

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

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

- 1 (1) No bond order may contain a nonsubstitution clause that restricts the
2 right of a unit of local government to:
3 a. Continue to provide a service or activity; or
4 b. Replace or provide a substitute for any municipal purpose
5 financed pursuant to such bond order.
6 (2) A bond order is subject to approval by the Commission under Article 8
7 of Chapter 159 of the General Statutes if it:
8 a. Meets the standards set out in G.S. 159-148(a)(1), 159-
9 148(a)(2), and 159-148(a)(3), or involves the construction or
10 repair of fixtures or improvements on real property; and
11 b. Is not exempted from the provisions of that Article by one of
12 the exemptions contained in G.S. 159-148(b)(1) and (2).
13 The Commission approval required by this subdivision is in addition to
14 the Commission approval required by subsection (i) of this section.
15 (3) No deficiency judgment payable from sources derived from the
16 exercise of a unit of local government's taxing power may be rendered
17 against any unit of local government in any action for breach of a bond
18 order authorized by this section, and the taxing power of a unit of local
19 government is not and may not be pledged directly or indirectly to
20 secure any moneys due under a bond order authorized by this section.
21 A unit of local government may, in its sole discretion, use tax proceeds
22 to pay the principal of or interest or premium on bonds or notes, but
23 shall not pledge or agree to do so.
24 (4) Before granting a security interest under this subsection, a unit of local
25 government shall hold a public hearing on the proposed security
26 interest. A notice of the public hearing shall be published once at least
27 10 days before the date fixed for the hearing.
28 (c) Any bond anticipation notes may be made payable from the proceeds of
29 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,
30 the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or
31 notes may also be paid from the proceeds of any credit facility. The bonds and notes of
32 each issue shall be dated and may be made redeemable prior to maturity at the option of
33 the unit of local government or otherwise, at such price or prices, on such date or dates,
34 and upon such terms and conditions as may be determined by the unit. The bonds or
35 notes may also be made payable from time to time on demand or tender for purchase by
36 the owner, upon terms and conditions determined by the unit.
37 (d) The interest payable by a unit on any special obligation bonds or notes may
38 be at such rate or rates, including variable rates as authorized in this section, as may be
39 determined by the Local Government Commission with the approval of the governing
40 body of the unit. Such approval may be given as the governing body of the unit may
41 direct, including, without limitation, a certificate signed by a representative of the unit
42 designated by the governing body of the unit.
43 (e) Special obligation bonds and notes shall be special obligations of the unit of
44 local government issuing them. The principal of, and interest and any premium on,

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

13 (1) Any such use of such sources will not constitute a pledge of the unit's
14 taxing ~~owner, power,~~ and

15 (2) The ~~municipality-unit~~ is not obligated to pay such principal or interest
16 or premium except from such sources.

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

19 (1) Be made payable from time to time on demand or tender for purchase
20 by the owner thereof provided a credit facility supports such bonds or
21 notes, unless the Local Government Commission specifically
22 determines that a credit facility is not required upon a finding and
23 determination by the Local Government Commission that the absence
24 of a credit facility will not materially and adversely affect the financial
25 position of the unit and the marketing of the bonds or notes at a
26 reasonable interest cost to the unit;

27 (2) Be additionally supported by a credit facility;

28 (3) Be made subject to redemption or a mandatory tender for purchase
29 prior to maturity;

30 (4) Bear interest at a rate or rates that may vary for such period or periods
31 of time, all as may be provided in the proceedings providing for the
32 issuance of such bonds or notes including, without limitation, such
33 variations as may be permitted pursuant to a par formula; and

34 (5) Be made the subject of a remarketing agreement whereby an attempt is
35 made to remarket the bonds or notes to new purchasers prior to their
36 presentment for payment to the provider of the credit facility or to the
37 unit.

38 (g) As used in this section:

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

1 (whether at maturity, presentment, or tender for purchase, redemption,
2 or acceleration), redemption premium, if any, and interest on any
3 bonds or notes payable on demand or tender by the owner, in
4 consideration of the unit agreeing to repay the provider of such credit
5 facility in accordance with the terms and provisions of such
6 agreement; the provider of any credit facility may be located either
7 within or without 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
10 rates 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
13 close 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 other provision as the unit may determine to be consistent
19 with this section and the applicable provisions of this Chapter
20 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
25 applicable, as provided in this section.

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

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

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

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

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

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

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

1 (l) Bonds or notes may be issued under the provisions of this section and the
2 applicable provisions of this Chapter without obtaining, except as otherwise expressly
3 provided in this section and the applicable provisions of this Chapter, the consent of any
4 department, division, commission, board, body, bureau, or agency of the State and
5 without any other proceedings or the happening of any conditions or things other than
6 those proceedings, conditions, or things that are specifically required by this section, the
7 applicable provisions of this Chapter, and the provisions of the resolution authorizing
8 the issuance of, or any trust agreement securing, such bonds or notes.

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

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

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

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

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

22 Sec. 3. This act is effective upon ratification.