

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 679
Finance Committee Substitute Adopted 4/30/03
House Committee Substitute Favorable 6/27/03
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Short Title: Modify State Financing Laws.

(Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PUBLIC FINANCING LAWS OF THE STATE.

Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-89 reads as rewritten:

"§ 159-89. Special covenants.

A revenue bond order or a trust agreement securing revenue bonds may be between the State or the issuing municipality and a bank or trust company located within or without the State of North Carolina, and may contain covenants as to any of the following:

- 1 (1) The pledge of all or any part of revenues received or to be received
2 from the undertaking to be financed by the bonds, or the utility or
3 enterprise of which the undertaking is to become a part.
- 4 (2) Rates, fees, rentals, tolls or other charges to be established, maintained,
5 and collected, and the use and disposal of revenues, gifts, grants, and
6 funds received or to be received.
- 7 (3) The setting aside of debt service reserves and the regulation and
8 disposition thereof.
- 9 (4) The custody, collection, securing, investment, and payment of any
10 moneys held for the payment of revenue bonds.
- 11 (5) Limitations or restrictions on the purposes to which the proceeds of
12 sale of revenue bonds then or thereafter to be issued may be applied.
- 13 (6) Limitations or restrictions on the issuance of additional revenue bonds
14 or notes; the terms upon which additional revenue bonds or notes may
15 be issued and secured; or the refunding of outstanding or other revenue
16 bonds.
- 17 (7) The procedure, if any, by which the terms of any contract with
18 bondholders may be amended or abrogated, the percentage of revenue
19 bonds the bondholders of which must consent thereto, and the manner
20 in which such consent may be given.
- 21 (8) Events of default and the rights and liabilities arising thereupon, the
22 terms and conditions upon which revenue bonds issued under this
23 Article shall become or may be declared due before maturity, and the
24 terms and conditions upon which such declaration and its
25 consequences may be waived.
- 26 (9) The preparation and maintenance of a budget with respect to the
27 expenses of the State or a municipality, as the case may be, for the
28 operation and maintenance of revenue bond projects.
- 29 (10) The retention or employment of consulting engineers, independent
30 auditors, and other technical consultants in connection with revenue
31 bond projects.
- 32 (11) Limitations on or the prohibition of free service by revenue bond
33 projects to any person, firm, or corporation, public or private.
- 34 (12) The acquisition and disposal of property for revenue bond projects.
- 35 (13) Provisions for insurance and for accounting reports and the inspection
36 and audit thereof.
- 37 (14) The continuing operation and maintenance of the revenue bond project
38 or the utility or enterprise of which it is to become a part."

39 **SECTION 2.** G.S. 159-65 reads as rewritten:

40 **"§ 159-65. Resolution fixing the details of the bonds.**

41 (a) After the bond order has been adopted, the board shall adopt a resolution
42 fixing the details of the bonds. In fixing details of the bonds, the board is subject to
43 these restrictions and directions:

- 1 (1) The ~~maturity~~ dates for payment of installments of principal shall not
2 exceed the maximum periods of usefulness prescribed by the
3 Commission pursuant to G.S. 159-122.
- 4 (2) Bonds authorized by two or more bond orders may be consolidated
5 into a single issue.
- 6 (3) Bonds of each issue shall ~~mature~~ have principal paid in annual
7 installments, the first of which shall be payable not more than three
8 years after the date of the bonds, and the last within the maximum
9 maturity period prescribed by regulation of the Commission under
10 G.S. 159-122.
- 11 (4) No installment of principal for any issue may be more than four times
12 as great in amount as the smallest prior installment of principal for the
13 same issue.
- 14 (5) Bonds of each issue may be issued from time to time in series with
15 different provisions for each series. Each series shall be deemed a
16 separate issue for the purposes of this ~~section~~ section, except that two
17 or more series may be considered to be a single issue under
18 subdivisions (3) and (4) of this subsection if issued on the same day or
19 two consecutive days.
- 20 (6) Any bond may be made payable on demand or tender for purchase as
21 provided in G.S. 159-79, and any bond may be made subject to
22 redemption prior to maturity, with or without premium, on such notice
23 and at such time or times and with such redemption provisions as may
24 be stated therein. When any such bond ~~shall have~~ has been validly
25 called for redemption and provision ~~shall have~~ has been made for the
26 payment of the principal thereof, any redemption premium, and the
27 interest thereon accrued to the date of redemption, interest thereon
28 shall cease.
- 29 (7) The bonds may bear interest at such rate or rates, payable
30 semiannually or otherwise, may be in such denominations, and may be
31 made payable in such kind of money and in such place or places within
32 or without the State of North Carolina, as the board may determine.

33 (b) Subdivisions (a)(3) and (4) of this section shall do not apply to refunding
34 bonds or to bonds purchased by a State or federal agency. Such subdivisions
35 (3) and (4) also shall do not apply to bonds the interest on which is
36 or may be includable in gross income for purposes of federal income tax, provided
37 that as long as the dates for payment of principal on these bonds have been approved by
38 the Commission. For the purposes of subdivisions (a)(3) and (4) of this section and for
39 bonds the interest on which is or may be includable in gross income for purposes of
40 federal income tax, payment of an installment of principal may on which such bonds
41 shall be stated to mature shall be approved by the Commission and the Commission
42 may require that the payment of all or any part of the principal of and interest and any
43 premium on such bonds be provided for by the maturity of a bond, mandatory
44 redemption of principal prior to maturity, a sinking fund, a Credit Facility, credit facility

1 as defined in G.S. 159-79, or ~~such any~~ other means as ~~may be~~ satisfactory to the
2 Commission."

3 **SECTION 3.** G.S. 160A-20 reads as rewritten:

4 "**§ 160A-20. Security interests.**

5 (a) Purchase. – ~~Units of local government, as defined in subsection (h),~~ A unit of
6 local government may purchase, or finance or refinance the purchase of, may purchase
7 or finance the purchase of real or personal property by installment contracts that create
8 in some or all of the property purchased a security interest to secure payment of the
9 purchase price to the seller or to an individual or entity advancing moneys or supplying
10 financing for the purchase transaction.

11 (b) Improvements. – ~~Units of local government, as defined in subsection (h),~~ A
12 unit of local government may finance or refinance the construction or repair of fixtures
13 or improvements on real property by contracts that create in some or all of the fixtures
14 or improvements, or in all or some portion of the property on which the fixtures or
15 improvements are located, or in both, a security interest to secure repayment of moneys
16 advanced or made available for ~~such the~~ construction or repair.

17 (c) Accounts. – ~~Units of local government, as defined in subsection (h),~~ A unit of
18 local government may use escrow accounts in connection with the advance funding of
19 transactions authorized by this section, whereby the proceeds of such the advance
20 funding are invested pending disbursement. A unit of local government may also use
21 other accounts, such as debt service payment accounts and debt service reserve
22 accounts, to facilitate transactions authorized by this section. To secure transactions
23 authorized by this section, a unit of local government may also create security interests
24 in these accounts.

25 (d) Nonsubstitution. – No contract entered into under this section may contain a
26 nonsubstitution clause that restricts the right of a unit of local government to:

- 27 (1) Continue to provide a service or activity; or
28 (2) Replace or provide a substitute for any fixture, improvement, project,
29 or property ~~financed~~ financed, refinanced, or purchased pursuant to
30 ~~such the~~ contract.

31 (e) Oversight. – A contract entered into under this section is subject to approval
32 by the Local Government Commission under Article 8 of Chapter 159 of the General
33 Statutes if it:

- 34 (1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and
35 159-148(a)(3), or involves the construction or repair of fixtures or
36 improvements on real property; and
37 (2) Is not exempted from the provisions of that Article by one of the
38 exemptions contained in G.S. 159-148(b).

39 (e1) Public Hospitals. – ~~A nonprofit corporation or association entity~~ operating or
40 leasing a public hospital may ~~only~~ enter into a contract pursuant to this section only if
41 the nonprofit ~~corporation or association entity~~ will have an ownership interest in the
42 property being ~~financed~~ financed or refinanced, including a leasehold ~~interest, and~~
43 ~~the interest.~~ The security interest granted in ~~such the~~ property being financed shall only
44 be shall be only to the extent of ~~such the~~ nonprofit entity's property interest. In addition,

1 any contract entered into by a nonprofit ~~corporation or association~~ entity operating or
2 leasing a public hospital pursuant to this section is subject to the approval of the city,
3 county, hospital district, or hospital authority ~~which that~~ owns such the hospital.
4 Approval of the city, county, hospital district, or hospital authority may be withheld
5 only under one or more of the following circumstances:

6 (1) The contract would cause the city, county, hospital district, or hospital
7 authority to breach or violate any covenant in an existing financing
8 instrument entered into by ~~such the~~ nonprofit entity.

9 (2) The contract would restrict the ability of the city, county, hospital
10 district, or hospital authority to incur anticipated ~~bank~~
11 eligible bank-eligible indebtedness under federal tax laws.

12 (3) The entering into of the contract would have a ~~material~~ material,
13 adverse impact on the credit ratings of the city, county, hospital
14 district, or hospital authority or would otherwise materially interfere
15 with an anticipated financing by ~~such the~~ nonprofit entity.

16 (f) Limit of Security. – No deficiency judgment may be rendered against any
17 unit of local government in any action for breach of a contractual obligation authorized
18 by this ~~section, and the~~ section. The taxing power of a unit of local government is not
19 and may not be pledged directly or indirectly to secure any moneys due under a contract
20 authorized by this section.

21 (g) Public Hearing. – Before entering into a contract under this section involving
22 real property, a unit of local government shall hold a public hearing on the contract. A
23 notice of the public hearing shall be published once at least 10 days before the date
24 fixed for the hearing.

25 (h) Local Government Defined. – As used in this section, the term "unit of local
26 government" means any of the following:

27 (1) A county.

28 (2) A city.

29 (3) A water and sewer authority created under Article 1 of Chapter 162A
30 of the General Statutes.

31 (3a) A metropolitan sewerage district created under Article 5 of Chapter
32 162A of the General Statutes.

33 (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of
34 the General Statutes.

35 (4) An airport authority whose situs is entirely within a county that has (i)
36 a population of over 120,000 according to the most recent federal
37 decennial census and (ii) an area of less than 200 square miles.

38 (5) An airport authority in a county in which there are two incorporated
39 municipalities with a population of more than 65,000 according to the
40 most recent federal decennial census.

41 (5a) An airport board or commission authorized by agreement between two
42 cities pursuant to G.S. 63-56, one of which is located partially but not
43 wholly in the county in which the jointly owned airport is located, and
44 where the board or commission provided water and wastewater

1 services off the airport premises before January 1, 1995, except that
2 the authority granted by this subdivision may be exercised by such a
3 board or commission with respect to water and wastewater systems or
4 improvements only.

5 (6) A local school administrative unit whose board of education is
6 authorized to levy a school tax.

7 (6a) Any other local school administrative unit, but only for the purpose of
8 financing energy conservation measures acquired pursuant to Part 2 of
9 Article 3B of Chapter 143 of the General Statutes.

10 (6b) A community college, but only for the purpose of financing energy
11 conservation measures acquired pursuant to Part 2 of Article 3B of
12 Chapter 143 of the General Statutes.

13 (7) An area mental health, developmental disabilities, and substance abuse
14 authority, acting in accordance with G.S. 122C-147.

15 (8) A consolidated city-county, as defined by G.S. 160B-2(1).

16 (9) Repealed by Session Laws 2001-414, s. 52, effective September 14,
17 2001.

18 (10) A regional natural gas district, as defined by Article 28 of this Chapter.

19 (11) A regional public transportation authority or a regional transportation
20 authority created pursuant to Article 26 or Article 27 of this Chapter.

21 (12) A nonprofit corporation or association operating or leasing a public
22 hospital as defined in G.S. 159-39."

23 **SECTION 4.** Chapter 159 of the General Statutes is amended by adding a
24 new Article to read:

25 "Article 13.

26 "Interest Rate Swap Agreements For Governmental Units.

27 **"§ 159-193. Definitions.**

28 The following definitions apply in this Article:

29 (1) Governmental unit. – Any of the following:

30 a. A unit of local government as defined in G.S. 159-44.

31 b. A municipality as defined in G.S. 159-81.

32 c. A joint agency as defined in G.S. 159B-3.

33 d. Any department, agency, board, commission, or authority of the
34 State that is authorized by law to issue bonds.

35 e. The State Treasurer when participating in the issuance or
36 incurrence of obligations for or on behalf of the State pursuant
37 to an act of the General Assembly.

38 (2) Obligations. – Any of the following:

39 a. Bonds, notes, bond anticipation notes, or other evidences of
40 indebtedness issued by a governmental unit.

41 b. Lease purchase or installment financing agreements entered into
42 by a governmental unit.

43 (3) Swap agreement. – Any of the following:

- 1 a. An agreement, including terms and conditions incorporated by
2 reference in the agreement, that is a rate swap agreement, basis
3 swap, forward rate agreement, interest rate option, rate cap
4 agreement, rate floor agreement, rate collar agreement, or other
5 similar agreement, including any option to enter into or
6 terminate any of the foregoing.
- 7 b. Any combination of the agreements described in
8 sub-subdivision a. of this subdivision.
- 9 c. A master agreement for any of the agreements described in
10 sub-subdivisions a. and b. of this subdivision, together with all
11 supplements.
- 12 d. One or more transactions entered into pursuant to a master
13 agreement.

14 **"§ 159-194. Swap agreements.**

15 (a) Subject to the provisions of this Article, a governmental unit may from time
16 to time purchase, enter into, modify, amend, or terminate one or more swap agreements
17 that it determines are necessary or desirable in connection with the issuance, incurrence,
18 carrying, or securing of obligations. This authorization also includes the authority to
19 enter into modifications or reversals of a swap agreement previously entered into by the
20 governmental unit and the authority to enter into a swap agreement that modifies the
21 interest rate payment calculation method under a swap agreement previously entered
22 into to another interest rate calculation method or that reverses, in whole or in part, the
23 effect of a prior swap agreement on the governmental unit's interest rate cost or risk. A
24 swap agreement entered into by a governmental unit may contain any provisions,
25 including provisions regarding payments, term, termination payments, security, default,
26 and remedies, and may be with any parties, that the governmental unit determines are
27 necessary or desirable.

28 (b) No governmental unit shall enter into a swap agreement pursuant to this
29 Article other than for the primary purpose of managing interest rate risk on or interest
30 rate costs of its obligations. A swap agreement may provide that the payments
31 thereunder are based upon a fixed or variable interest rate calculation method. A
32 governmental unit shall not engage in the business of acting as a dealer in swap
33 agreements. A swap agreement may be entered into in connection with specific
34 obligations of the governmental unit, which may consist of multiple series or issues of
35 obligations as specified by the governmental unit. The swap agreement may be entered
36 into at a time before, at the same time as, or after, the obligations are issued or incurred
37 by the governmental unit. Each swap agreement may be entered for a notional amount
38 up to, but not exceeding, the principal amount of the obligations with respect to which
39 the swap agreement is entered. A swap agreement may have a term as long as, or less
40 than, the term of the obligations with respect to which the swap agreement is entered.

41 (c) In connection with entering into a swap agreement, a governmental unit may
42 enter into credit enhancement agreements to secure the obligations of the governmental
43 unit under the swap agreement, with any payment, security, default, remedy, and other
44 terms and conditions that the governmental unit determines, including entering into

1 binding agreements to deliver collateral, either at the time the swap agreement is entered
2 into or at future times under conditions set forth in the swap agreement.

3 **"§ 159-195. Nature of duties of a governmental unit under a swap agreement.**

4 The duty of a governmental unit to make the payments required and to perform the
5 other duties of the governmental unit under a swap agreement shall constitute a
6 continuing contractual obligation of the governmental unit, enforceable in accordance
7 with applicable law for the enforcement of contractual obligations of that governmental
8 unit. A governmental unit may limit its duties under a swap agreement to designated
9 property or a designated source of revenues or receipts of the governmental unit, such as
10 the revenues of a specified utility or other public service enterprise system of the
11 governmental unit. If a governmental unit enters into a swap agreement in connection
12 with obligations that are secured by a designated form of security, then, subject to the
13 terms of the bond order or resolution, trust indenture or trust agreement, installment
14 contract or lease purchase agreement, or similar instrument pursuant to which the
15 obligations are issued or incurred, the governmental unit may pledge, mortgage, or grant
16 a security interest in the revenues of the utility or other public service enterprise system,
17 program, receipts, property, or similar arrangement securing the obligations to secure
18 the payment and performance of its duties under the swap agreement. Any pledge of
19 assets, revenues, or receipts to secure the duties of a governmental unit under a swap
20 agreement shall become effective in the same manner and to the same extent as a pledge
21 of those assets, revenues, or receipts to secure the obligations with respect to which the
22 swap agreement is entered.

23 **"§ 159-196. Approval by Commission.**

24 (a) Approval Required. – If either of the following conditions is met, a
25 governmental unit shall not enter into a swap agreement unless the Commission first
26 approves the governmental unit's entering into the swap agreement:

27 (1) The unit is a unit of local government as defined in G.S. 159-44, a
28 municipality as defined in G.S. 159-81, or a joint agency as defined in
29 G.S. 159B-3.

30 (2) The sale, issuance, or incurrence of the obligations with respect to
31 which the swap agreement is entered into is subject to the approval of
32 the Commission.

33 (b) Factors. – The Commission may consider all of the following factors in
34 determining whether to approve the swap agreement:

35 (1) The nature and amount of the outstanding debt of the governmental
36 unit proposing to enter the swap agreement.

37 (2) The governmental unit's debt management procedures and policies.

38 (3) To the extent applicable, the governmental unit's compliance with the
39 Local Government Budget and Fiscal Control Act.

40 (4) Whether the governmental unit is in default in any of its debt service
41 obligations.

42 (5) The credit rating of the governmental unit.

43 (c) Amendments. – If a swap agreement is subject to approval by the
44 Commission pursuant to this section and is approved, then the governmental unit shall

1 not enter into any amendment to the swap agreement that terminates or changes the time
2 period covered by the swap agreement, changes the interest rate calculation method
3 under the swap agreement, or changes the notional amounts covered by the swap
4 agreement without the prior approval of the Secretary of the Commission.

5 (d) Approval Not Required. – A swap agreement is not subject to approval by the
6 Commission except as provided in this section. This section does not require the
7 approval of the Commission of a swap agreement entered into by a private entity
8 receiving the benefit of financing through the issuance of obligations by a governmental
9 unit.

10 **"§ 159-197. Additional method.**

11 This Article provides an additional and alternative method for the doing of the things
12 authorized by it and is supplemental to powers conferred by other laws. This Article
13 does not derogate any existing powers.

14 **"§ 159-198. Severability.**

15 If any provision of this Article or its application is held invalid, the invalidity does
16 not affect other provisions or applications of this Article that can be given effect without
17 the invalid provisions or application, and to this end the provisions of this Article are
18 severable.

19 **"§ 159-199. Validation of preexisting swap agreements.**

20 All proceedings taken by the governing bodies of governmental units in connection
21 with the authorization of swap agreements and all swap agreements entered into by
22 governmental units before the effective date of this Article are ratified.

23 **"§ 159-200. Liberal construction.**

24 This Article, being necessary for the prosperity and welfare of the State and its
25 inhabitants, shall be liberally construed to effect its purposes."

26 **SECTION 5.** This act is effective when it becomes law.