

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 249
Finance Committee Substitute Adopted 3/18/97
Third Edition Engrossed 3/24/97

Short Title: Bond Payment Change.

(Public)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SPECIAL
3 OBLIGATION BONDS AND TO MAKE OTHER CHANGES IN THE LAWS
4 CONCERNING THESE BONDS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 159I-30 reads as rewritten:

7 "**§ 159I-30. Additional powers of units of local government; issuance of special**
8 **obligation bonds and notes.**

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

14 (b) Each unit of local government may ~~agree to apply to~~ pledge for the payment of a
15 special obligation bond or note any available source or sources of revenues of the unit
16 and, to the extent the generation of the revenues is within the power of the unit, ~~to~~ may
17 enter into covenants to take action in order to generate the revenues, ~~provided the~~

1 ~~agreement to use such~~ as long as the pledge of these sources ~~to make for~~ payments or such
2 ~~the covenant to generate revenues~~ does not constitute a pledge of the unit's taxing power.

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

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

9 After the issuance of special obligation bonds or notes, the governing body of the
10 issuing unit may identify one or more additional sources of payment for the bonds or
11 notes and pledge these sources, as long as the pledge of the sources does not constitute a
12 pledge of the taxing power of the unit. Each source of additional payment pledged shall
13 be specifically identified in the proceedings of the governing body of the unit pledging
14 the source. The governing body of the unit may not pledge an additional source of
15 revenue pursuant to this paragraph unless the pledge is first approved by the Local
16 Government Commission pursuant to the procedures provided in subsection (i) of this
17 section.

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

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

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

35 (1) No bond order may contain a nonsubstitution clause that restricts the
36 right of a unit of local government to:

37 a. Continue to provide a service or activity; or

38 b. Replace or provide a substitute for any municipal purpose
39 financed pursuant to the bond order.

40 (2) A bond order is subject to approval by the Commission under Article 8
41 of Chapter 159 of the General Statutes if it:

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

6 The Commission approval required by this subdivision is in addition to
7 the Commission approval required by subsection (i) of this section.

- 8 (3) No deficiency judgment may be rendered against any unit of local
9 government in any action for breach of a bond order authorized by this
10 section, and the taxing power of a unit of local government is not and
11 may not be pledged directly or indirectly to secure any moneys due
12 under a bond order authorized by this section. This prohibition does not
13 impair the right of the holder of a bond or note to exercise a remedy
14 with respect to the revenues pledged to secure the bond or note, as
15 provided in the bond order, resolution, or trust agreement under which
16 the bond or note is authorized and secured. A unit of local government
17 may, in its sole discretion, use tax proceeds to pay the principal of or
18 interest or premium on bonds or notes, but shall not pledge or agree to
19 do so.

- 20 (4) Before granting a security interest under this subsection, a unit of local
21 government shall hold a public hearing on the proposed security
22 interest. A notice of the public hearing shall be published once at least
23 10 days before the date fixed for the hearing.

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

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

39 (e) Special obligation bonds and notes shall be special obligations of the unit of
40 local government issuing them. The principal of, and interest and any premium on,
41 special obligation bonds and notes shall be ~~payable-secured~~ solely ~~from-by~~ any one or
42 more of the sources of payment authorized by this section as may be ~~specified-pledged~~ in
43 the proceedings, resolution, or trust agreement under which they are authorized or

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

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

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

- 16 (1) Be made payable from time to time on demand or tender for purchase
17 by the owner thereof ~~provided as long as~~ a credit facility supports ~~such~~
18 the bonds or notes, unless the Local Government Commission
19 specifically determines that a credit facility is not required upon a
20 finding and determination by the Local Government Commission that
21 the absence of a credit facility will not materially and adversely affect
22 the financial position of the unit and the marketing of the bonds or notes
23 at a reasonable interest cost to the unit;
24 (2) Be additionally supported by a credit facility;
25 (3) Be made subject to redemption or a mandatory tender for purchase prior
26 to maturity;
27 (4) Bear interest at a rate or rates that may vary for such period or periods
28 of time, all as may be provided in the proceedings providing for the
29 issuance of ~~such the~~ bonds or notes including, without limitation, such
30 variations as may be permitted pursuant to a par formula; and
31 (5) Be made the subject of a remarketing agreement whereby an attempt is
32 made to remarket the bonds or notes to new purchasers prior to their
33 presentment for payment to the provider of the credit facility or to the
34 unit.

35 (g) As used in this section:

- 36 (1) 'Credit facility' means an agreement entered into by the unit with a bank,
37 savings and loan association or other banking institution, an insurance
38 company, reinsurance company, surety company or other insurance
39 institution, a corporation, investment banking firm or other investment
40 institution, or any financial institution ~~proving-providing~~ for prompt
41 payment of all or any part of the principal, or purchase price (whether at
42 maturity, presentment, or tender for purchase, redemption, or
43 acceleration), redemption premium, if any, and interest on any bonds or

1 notes payable on demand or tender by the owner, in consideration of the
2 unit agreeing to repay the provider of ~~such~~the credit facility in
3 accordance with the terms and provisions of ~~such~~the agreement; the
4 provider of any credit facility may be located either within or without
5 the United States of America.

6 (2) 'Par formula' means any provision or formula adopted by the unit to
7 provide for the adjustment, from time to time of the interest rate or rates
8 borne by any bonds or notes including:

- 9 a. A provision providing for such adjustment so that the purchase
10 price of such bonds or notes in the open market would be as close
11 to par as possible;
- 12 b. A provision providing for such adjustment based upon a
13 percentage or percentages of a prime rate or base rate, which
14 percentage or percentages may vary or be applied for different
15 periods of time; or
- 16 c. ~~Such~~Any other provision as the unit may determine to be
17 consistent with this section and the applicable provisions of this
18 Chapter and does not materially and adversely affect the financial
19 position of the unit and the marketing of the bonds or notes at a
20 reasonable interest cost to the unit.

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

24 (h) Notes shall mature at such time or times and bonds shall mature, not exceeding
25 40 years from their date or dates, as may be determined by the unit of local government,
26 ~~provided except~~ that no such maturity dates may exceed the maximum maturity periods
27 prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be
28 amended from time to time. The unit shall determine the form and manner of execution
29 of the bonds or notes, including any interest coupons to be attached thereto, and shall fix
30 the denomination or denominations and the place or places of payment of principal and
31 interest, which may be any bank or trust company within or without the United States. In
32 case any officer of ~~such~~the unit whose signature, or a facsimile of whose signature, ~~shall~~
33 ~~appear~~appears on any bonds or notes or coupons, if any, ~~shall cease to be such~~ceases to be
34 the officer before delivery thereof, ~~such signature or such the signature or facsimile~~ shall
35 nevertheless be valid and sufficient for all purposes the same as if ~~such~~the officer had
36 remained in office until ~~such~~the delivery. Any bond or note or coupon may bear the
37 facsimile signatures of such persons who at the actual time or the execution thereof ~~shall~~
38 ~~be~~were the proper officers to sign although at the date of ~~such~~the bond or note or coupon
39 ~~such these~~ persons may not have been ~~such officer~~the proper officers. The unit may also
40 provide for the authentication of the bonds or notes by a trustee or other authenticating
41 agent. The bonds or notes may be issued as certificated or uncertificated obligations or
42 both, and in coupon or in registered form, or both, as the unit may determine, and
43 provision may be made for the registration of any coupon bonds or notes as to principal

1 alone and also as to both principal and interest, and for the reconversion into coupon
2 bonds or notes of any bonds or notes registered as to both principal and interest, and for
3 the interchange of registered and coupon bonds or notes. Any system for registration
4 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 this
8 Chapter. The unit shall file with the Secretary of the Local Government Commission an
9 application requesting approval of the issuance of ~~such~~the bonds or notes, which
10 application shall contain such information and shall have attached to it such documents
11 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. 159-
20 86, as either may be amended from time to time, as well as the effect of the proposed
21 financing upon any scheduled or proposed sale of obligations by the State or by any of its
22 agencies or departments or by any unit of local government in the State. The Local
23 Government Commission shall approve the issuance of ~~such~~the bonds or notes if, upon
24 the information and evidence it receives, it finds and determines that the proposed
25 financing will satisfy such criteria and will effect the purposes of this section and the
26 applicable provisions of this Chapter. An approval of an issue shall not be regarded as an
27 approval of the legality of the issue in any respect. A decision by the Local Government
28 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~~the 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~~ if the sale is approved by the
35 unit.

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

40 (k) Prior to the preparation of definitive bonds, the unit may issue interim receipts
41 or temporary bonds, with or without coupons, exchangeable for definitive bonds when
42 ~~such~~definitive bonds have been executed and are available for delivery. The unit may

1 also provide for the replacement of any bonds or notes which shall become mutilated or
2 shall be destroyed or lost.

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

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

1 administrative charge and may be paid from the revenues or from any other funds
2 available.

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

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

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

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

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