

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2022-53
SENATE BILL 265

AN ACT TO INCREASE THE TRANSPARENCY OF BOND REFERENDA BY REQUIRING ADDITIONAL DISCLOSURES BY UNITS OF LOCAL GOVERNMENT, TO MAKE CHANGES RECOMMENDED BY THE LOCAL GOVERNMENT COMMISSION TO STRENGTHEN THE SYSTEM FOR MONITORING THE FINANCIAL OPERATIONS OF LOCAL UNITS AND OVERSIGHT OF FISCALLY TROUBLED LOCAL UNITS, AS DIRECTED BY THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2021, AND TO AUTHORIZE CHARTER SCHOOLS TO PARTICIPATE IN THE STATE TREASURER'S ANCILLARY GOVERNMENTAL PARTICIPANT INVESTMENT PROGRAM.

The General Assembly of North Carolina enacts:

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

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

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

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

SECTION 2.(a) G.S. 159-55(d) is repealed.

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

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

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

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

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



- (1) Interest. – An estimate of the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, and a summary of the assumptions upon which the estimate is based. The Commission must approve the assumptions upon which the estimate is based as provided in G.S. 159-52(b).
- (2) Property taxes. – An estimate of the increase in property tax rate, if any, necessary to service the proposed debt. If no increase in property tax rate is estimated to be needed, a brief statement to the effect that the existing projected revenues are expected to be sufficient to pay the principal and interest of the bonds. The estimated increase in property tax rate shall be stated as the rate of increase per one hundred dollars (\$100.00) of assessed valuation.
- (3) Two-thirds bonds. – The amount of two-thirds bonds capacity the unit has available for the current fiscal year, if any.

(b) The statement of disclosure shall include a statement to the effect that the information contained in it is preliminary and is for general informational purposes only, that there is no assurance that the assumptions upon which the disclosures are based will occur, that the occurrence of certain of the assumptions is beyond the control of the unit, and that differences between the actual circumstances at the time the bonds are issued from the assumptions included in the disclosure could result in significant differences between the disclosures made and the actual occurrences. The statement may include other qualifications as the finance officer deems appropriate. The validity of the bonds authorized by the order is not subject to challenge on the grounds that the actual occurrences when issued are different than the disclosures set forth in the statement.

(c) The statement of disclosure shall be filed with the Commission, posted online, and maintained by the clerk of the board."

SECTION 3. G.S. 159-56 reads as rewritten:

"§ 159-56. Publication of bond order as introduced.

After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

"The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be \$ _____ and the net debt thereof, including the proposed bonds, to be \$ _____. The finance officer of the [issuing unit] has filed a statement estimating that the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, is \$ _____. ~~The estimate is preliminary, is for general informational purposes only, and may differ from the actual interest paid on the bonds.~~ A tax will [may] is authorized to be levied to pay the principal of and interest on the bonds if they are issued. The finance officer has filed a statement estimating that [a property tax increase of \$ _____ per \$100.00 of assessed valuation] [no property tax increase] will be required to provide sufficient funds to pay the principal and interest on the proposed bonds. These estimates are preliminary, are for general informational purposes only, and may differ from the actual interest paid on the bonds or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at _____.

Clerk"

The publication may include a summary of the assumptions upon which the estimate estimates of the total amount of interest that will be paid on the bonds over the expected term of the bonds, bonds if issued, is or the amount of any property tax increase required to provide funds to pay principal and interest on the bonds if issued, are based, and may further state that there is

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

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

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

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

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

Clerk"

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

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

"§ 159-33.2. Interim event reporting.

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

financial health, operations, or internal controls of the unit of local government or public authority within 30 days after the occurrence of such events. The Commission shall adopt a policy specifying the events required to be reported under this section and the process for reporting such events. Within 30 days of adopting the policy, the Secretary shall make the policy publicly available."

SECTION 6. G.S. 159-148 reads as rewritten:

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

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

- (1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, this subdivision applies to transactions that extend for three or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend.
- (2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract.
- (3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend:
 - a. For baseball park districts, to at least five hundred thousand dollars (\$500,000).
 - b. For housing authorities, to at least five hundred thousand dollars (\$500,000) or a sum equal to two thousand dollars (\$2,000) per housing unit owned and under active management by the housing authority, whichever is less.
 - c. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, to at least fifty thousand dollars (\$50,000).
 - d. For other units, to at least five hundred thousand dollars (\$500,000) or a sum equal to one-tenth of one percent (1/10 of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less.
- (4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

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

- (b) This Article shall not apply to:

- (1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.
- (2) Contracts for the purchase, lease, or lease with option to purchase of ~~motor vehicles or~~ voting machines.
- (3) Repealed by Session Laws 2020-3, s. 4.30(g), effective retroactively to July 1, 2019.
- (4) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles. This exemption shall not apply to units included on the most recently published Unit Assistance List issued by the Department of State Treasurer where the contract amount equals or exceeds fifty thousand dollars (\$50,000)."

SECTION 7. G.S. 135-48.55 is repealed.

SECTION 8. G.S. 159-7 is amended by adding a new subsection to read:

"(e) A unit of local government that creates a public authority or unit subject to this Article must notify the Commission of its creation. A public authority or unit subject to this Article, by whatever means created, must notify the Commission within 60 days of its creation and include in its notification all of the following:

- (1) Name.
- (2) Governance structure.
- (3) Any other information requested by the Commission."

SECTION 9.(a) G.S. 159-29 reads as rewritten:

"§ 159-29. Fidelity bonds.

(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, ~~not less than fifty thousand dollars (\$50,000).~~ board. A person may not be appointed as a finance officer if the person is unable to obtain the bond required by this section. The premium on the bond shall be paid by the local government or public authority. The amount of the bond fixed by the governing board may not be less than the greater of the following:

- (1) Fifty thousand dollars (\$50,000).
- (2) An amount equal to ten percent (10%) of the unit's annually budgeted funds, up to one million dollars (\$1,000,000).

(b) Each officer, employee, or agent of a local government or public authority who handles or has in his custody more than one hundred dollars (\$100.00) of the unit's or public authority's funds at any time, or who handles or has access to the inventories of the unit or public authority, shall, before being entitled to assume his duties, give a faithful performance bond with sufficient sureties payable to the local government or public authority. A person who is unable to secure the bond required by this section cannot assume the duties for which a bond is required under this section. The governing board shall determine the amount of the bond, and the unit or public authority may pay the premium on the bond. Each bond, when approved by the governing board, shall be deposited with the clerk to the board.

If another statute requires an officer, employee, or agent to be bonded, this subsection does not require an additional bond for that officer, employee, or agent.

(c) A local government or public authority may adopt a system of blanket faithful performance bonding as an alternative to individual bonds. If such a system is adopted, statutory requirements of individual bonds, except for elected officials and for finance officers and tax collectors by whatever title known, do not apply to an officer, employee, or agent covered by the blanket bond. However, although an individual bond is required for an elected official, a tax collector, or finance officer, such an officer or elected official may also be included within the coverage of a blanket bond if the blanket bond protects against risks not protected against by the individual bond."

SECTION 9.(b) This section becomes effective January 1, 2023.

SECTION 9.5.(a) G.S. 115C-218.15 is amended by adding a new subsection to read:

"(f) Funds received by a charter school as required by G.S. 115C-218.105 may be deposited by the board of directors with the State Treasurer for investment under G.S. 147-69.2(b8), to the extent permitted by the Internal Revenue Code, as amended. The deposit and investment of such funds under this subsection are deemed essential to the provision of public education by the State and the income from such investment shall accrue solely to the charter school for the provision of public education pursuant to this Article."

SECTION 9.5.(b) G.S. 115C-218.100(a) reads as rewritten:

"(a) Funds Reserved for Closure Proceedings. – A charter school that has elected to participate in the North Carolina Retirement System pursuant to G.S. 135-5.3 shall, for as long as the charter school continues to participate in the North Carolina Retirement System, maintain for the purposes of ensuring payment of expenses related to closure proceedings in the event of a voluntary or involuntary dissolution of the charter school, one or more of the options set forth in this subsection. The minimum aggregate value of the options chosen by the charter school shall be fifty thousand dollars (\$50,000). The State Board of Education shall not allocate any funds under G.S. 115C-218.105 to a charter school unless the school has provided documentation to the State Board that the charter school has met the requirements of this subsection. Permissible options to satisfy the requirements of this subsection include one or more of the following:

- (1) An escrow account.
- (2) A letter of credit.
- (3) A bond.
- (4) A deed of trust.
- (5) Deposit of funds with the State Treasurer for investment under G.S. 147-69.2(b8), to the extent permitted by the Internal Revenue Code, as amended. The funds deposited with the State Treasurer, and any income earned thereon, are deemed State funds and shall be used solely for the provision of public education pursuant to this Article. The deposit and investment of funds under this subdivision are deemed essential to the provision of public education by the State."

SECTION 9.5.(c) G.S. 147-69.2 reads as rewritten:

"§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

- ...
- (24) Funds deposited with the State Treasurer by charter schools pursuant to G.S. 115C-218.15(f).

...

(b8) In addition to the investments authorized under subdivisions (b)(1) through (6) of this section, the State Treasurer may invest funds deposited pursuant to subdivision (24) of subsection (a) of this section in any of the investments authorized under subdivisions (b)(6c) and (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to fifty thousand dollars (\$50,000) and may assess reasonable fees of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering investments and expenditures authorized under this section."

SECTION 9.5.(d) G.S. 147-69.3(b) reads as rewritten:

"(b) Any official, board, commission, other public authority, local government, school administrative unit, charter school, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer

may deposit all or any portion of those funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any of those funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer."

SECTION 9.5.(e) G.S. 159-30(g) reads as rewritten:

"(g) A local government, public authority, an entity eligible to participate in the Local Government Employee's Retirement System, ~~or~~ a local school administrative unit-unit, or a charter school may make contributions to a Local Government Other Post-Employment Benefits Trust established pursuant to G.S. 159-30.1."

SECTION 9.5.(f) G.S. 159-30.1(a) reads as rewritten:

"(a) Trust. – A local government, a public authority, an entity eligible to participate in the Local Government Employees' Retirement System, ~~or~~ a local school administrative unit-unit, or a charter school may establish and fund an irrevocable trust for the purpose of paying (i) post-employment benefits for which the entity is liable or (ii) contribution-based benefit cap liabilities to the Local Governmental Employees' Retirement System. The irrevocable trust must be established by resolution or ordinance of the entity's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust. The irrevocable trust must designate the monies deposited in the trust, and any income earned thereon, as governmental funds to be used solely for an essential governmental purpose."

SECTION 10. Except as otherwise provided, this act is effective when it becomes law and applies to bonds issued under bond orders introduced on or after October 1, 2022, and to contracts entered into on or after October 1, 2022.

In the General Assembly read three times and ratified this the 1st day of July, 2022.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 4:03 p.m. this 7th day of July, 2022