

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 249

Short Title: Bond Payment Change.

(Public)

Sponsors: Senators Carpenter, Kerr, Hartsell; Cochrane, Conder, Garwood, and Warren.

Referred to: Finance.

February 26, 1997

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY REVENUE
2 BONDS AND SPECIAL OBLIGATION BONDS AND TO ADD AN
3 ADDITIONAL CONDITION FOR APPROVAL OF REVENUE BONDS.
4

5 The General Assembly of North Carolina enacts:

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

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

1 Section 2. G.S. 159I-30 reads as rewritten:

2 **"§ 159I-30. Additional powers of units of local government; issuance of special**
3 **obligation bonds and notes.**

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

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

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

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

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

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

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

41 (b1) In connection with issuing its special obligation bonds or special obligation
42 bond anticipation notes under this Chapter, a unit of local government may grant a
43 security interest in the project financed, or in all or some portion of the property on which

1 the project is located, or in both. If a unit of local government determines to provide
2 additional security as authorized by this subsection, the following conditions apply:

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

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

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

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

10 a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2),
11 and 159-148(a)(3), or involves the construction or repair of
12 fixtures or improvements on real property; and

13 b. Is not exempted from the provisions of that Article by one of the
14 exemptions contained in G.S. 159-148(b)(1) and (2).

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

17 (3) No deficiency judgment payable from sources derived from the exercise
18 of a unit of local government's taxing power may be rendered against
19 any unit of local government in any action for breach of a bond order
20 authorized by this section, and the taxing power of a unit of local
21 government is not and may not be pledged directly or indirectly to
22 secure any moneys due under a bond order authorized by this section.
23 A unit of local government may, in its sole discretion, use tax proceeds
24 to pay the principal of or interest or premium on bonds or notes, but
25 shall not pledge or agree to do so.

26 (4) Before granting a security interest under this subsection, a unit of local
27 government shall hold a public hearing on the proposed security
28 interest. A notice of the public hearing shall be published once at least
29 10 days before the date fixed for the hearing.

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

39 (d) The interest payable by a unit on any special obligation bonds or notes may be
40 at such rate or rates, including variable rates as authorized in this section, as may be
41 determined by the Local Government Commission with the approval of the governing
42 body of the unit. ~~Such~~ This approval may be given as the governing body of the unit may

1 direct, including, without limitation, a certificate signed by a representative of the unit
2 designated by the governing body of the unit.

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

17 (1) Any such use of ~~such-these~~ sources will not constitute a pledge of the
18 unit's taxing power; and

19 (2) The ~~municipality-unit~~ is not obligated to pay ~~such-the~~ principal or interest
20 or premium except from ~~such-these~~ sources.

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

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

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

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

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

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

42 (g) As used in this section:

1 (1) 'Credit facility' means an agreement entered into by the unit with a bank,
2 savings and loan association or other banking institution, an insurance
3 company, reinsurance company, surety company or other insurance
4 institution, a corporation, investment banking firm or other investment
5 institution, or any financial institution ~~proving~~ providing for prompt
6 payment of all or any part of the principal, or purchase price (whether at
7 maturity, presentment, or tender for purchase, redemption, or
8 acceleration), redemption premium, if any, and interest on any bonds or
9 notes payable on demand or tender by the owner, in consideration of the
10 unit agreeing to repay the provider of ~~such~~ the credit facility in
11 accordance with the terms and provisions of ~~such~~ the agreement; the
12 provider of any credit facility may be located either within or without
13 the United States of America.

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

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

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

32 (h) Notes shall mature at such time or times and bonds shall mature, not exceeding
33 40 years from their date or dates, as may be determined by the unit of local government,
34 ~~provided except~~ that no such maturity dates may exceed the maximum maturity periods
35 prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be
36 amended from time to time. The unit shall determine the form and manner of execution
37 of the bonds or notes, including any interest coupons to be attached thereto, and shall fix
38 the denomination or denominations and the place or places of payment of principal and
39 interest, which may be any bank or trust company within or without the United States. In
40 case any officer of ~~such~~ the unit whose signature, or a facsimile of whose signature, ~~shall~~
41 ~~appear~~ appears on any bonds or notes or coupons, if any, ~~shall cease to be such~~ ceases to be
42 the officer before delivery thereof, ~~such signature or such~~ the signature or facsimile shall
43 nevertheless be valid and sufficient for all purposes the same as if ~~such~~ the officer had

1 remained in office until ~~such~~the delivery. Any bond or note or coupon may bear the
2 facsimile signatures of such persons who at the actual time or the execution thereof ~~shall~~
3 ~~be~~were the proper officers to sign although at the date of ~~such~~the bond or note or coupon
4 ~~such~~these persons may not have been ~~such~~officer~~the proper officers~~. The unit may also
5 provide for the authentication of the bonds or notes by a trustee or other authenticating
6 agent. The bonds or notes may be issued as certificated or uncertificated obligations or
7 both, and in coupon or in registered form, or both, as the unit may determine, and
8 provision may be made for the registration of any coupon bonds or notes as to principal
9 alone and also as to both principal and interest, and for the reconversion into coupon
10 bonds or notes of any bonds or notes registered as to both principal and interest, and for
11 the interchange of registered and coupon bonds or notes. Any system for registration
12 may be established as the unit may determine.

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

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

37 Upon the filing with the Local Government Commission of a written request of the
38 unit requesting that its bonds or notes be sold, ~~such~~the bonds or notes may be sold by the
39 Local Government Commission in such manner, either at public or private sale, and for
40 such price or prices as the Local Government Commission shall determine to be in the
41 best interests of the unit and to effect the purposes of this section and the applicable
42 provisions of this Chapter, ~~provided that such sale shall be~~if the sale is approved by the
43 unit.

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

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

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

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

1 indemnifying bonds or to pledge such securities as may be required by the unit. Any
2 trust agreement or resolution may set out the rights and remedies of the owners of any
3 bonds or notes and of any trustee, and may restrict the individual rights of action by the
4 owners. In addition to the foregoing, any trust agreement or resolution may contain such
5 other provisions as the unit may deem reasonable and proper for the security of the
6 owners of any bonds or notes. Expenses incurred in carrying out the provisions of any
7 trust agreement or resolution may be treated as a part of the cost of any project or as an
8 administrative charge and may be paid from the revenues or from any other funds
9 available.

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

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

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

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

31 Section 3. G.S. 159-86(b) reads as rewritten:

32 "(b) The Commission shall approve the application if, upon the information and
33 evidence it receives, it finds and ~~determines~~determines all of the following:

- 34 (1) That the proposed revenue bond issue is necessary or expedient.
- 35 (2) That the amount proposed is adequate and not
36 excessive for the proposed purpose of the issue.
- 37 (3) That the proposed project is feasible.
- 38 (4) That the State's or the municipality's, as the case may be, debt
39 management procedures and policies are good, or that reasonable
40 assurances have been given that its debt will henceforth be managed in
41 strict compliance with law.
- 42 (5) That the proposed revenue bonds can be marketed at reasonable interest
43 cost to the State or the municipality, as the case may be.

1 (6) That the probable net revenues of the project to be financed will be
2 sufficient to service the proposed revenue bonds."

3 Section 4. Section 3 of this act becomes effective October 1, 1997, and applies
4 to applications filed on or after that date. The remainder of this act is effective when it
5 becomes law.