

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 317

Short Title: Local Government Debt Changes.

(Public)

Sponsors: Senators Winner, Hartsell; Cooper, Hoyle, Kerr, and Odom.

Referred to: Finance.

March 5, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY
2 THEIR LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING
3 LOCAL GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT
4 LIMITATIONS APPLY TO INSTALLMENT PURCHASE AND LEASE DEBTS,
5 TO REQUIRE LOCAL GOVERNMENT COMMISSION APPROVAL OF MORE
6 NONVOTED DEBTS, AND TO CAP THE AMOUNT OF INSTALLMENT
7 PURCHASE AND LEASE DEBT COUNTIES AND CITIES MAY INCUR.

8 The General Assembly of North Carolina enacts:

9 Section 1. (a) G.S. 153A-158.1 reads as rewritten:

10 "**§ 153A-158.1. Acquisition and improvement of school ~~property in certain counties.~~**
11 **property.**

12 (a) Acquisition by County. – A county may acquire, by any lawful method, any
13 interest in real or personal property for use by a school administrative unit within the
14 county. In exercising the power of eminent domain a county shall use the procedures of
15 Chapter 40A. The county shall use its authority under this subsection to acquire property
16 for use by a school administrative unit within the county only upon the request of the
17 board of education of that school administrative unit and after a public hearing.

18 (b) Construction or Improvement by County. – A county may construct, equip,
19 expand, improve, renovate, or otherwise make available property for use by a school
20

1 administrative unit within the county. The local board of education shall be involved in
2 the design, construction, equipping, expansion, improvement, or renovation of the
3 property to the same extent as if the local board owned the property.

4 (c) Lease or Sale by Board of Education. – Notwithstanding the provisions of G.S.
5 115C-518 and G.S. 160A-274, a local board of education may, in connection with
6 additions, improvements, renovations, or repairs to all or part of any of its property, lease
7 or sell the property to the board of commissioners of the county in which the property is
8 located for any price negotiated between the two boards.

9 (d) Board of Education May Contract for Construction. – Notwithstanding the
10 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into
11 contracts for the erection or repair of school buildings upon sites owned in fee simple by
12 one or more counties in which the local school administrative unit is located.

13 (e) ~~Scope.— This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,~~
14 ~~Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe,~~
15 ~~Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell,~~
16 ~~Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover,~~
17 ~~Orange, Pasquotank, Pender, Person, Pitt, Randolph, Richmond, Rockingham, Rowan,~~
18 ~~Sampson, Scotland, Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."~~

19 (b) The repeal of G.S. 153A-158.1(e) gives to all counties in the State the authority
20 that was previously limited to the counties listed in that subsection.

21 Section 2. G.S. 159-55 reads as rewritten:

22 "**§ 159-55. Sworn statement of debt; debt limitation.**

23 (a) Sworn Statement of Debt. – After the bond order has been introduced and
24 before the public hearing thereon, the finance officer (or some other officer designated by
25 the governing board for this purpose) shall file with the clerk a statement showing the
26 following:

27 (1) Gross debt. – The gross debt of the unit, excluding therefrom debt
28 incurred or to be incurred in anticipation of the collection of taxes or
29 other revenues or in anticipation of the sale of bonds other than funding
30 and refunding bonds. The gross debt (after exclusions) is the sum of (i)
31 outstanding debt evidenced by bonds, (ii) bonds authorized by orders
32 introduced but not yet adopted, (iii) unissued bonds authorized by
33 adopted orders, and (iv) outstanding debt not evidenced by ~~bonds~~.
34 bonds, as determined in subsection (d) of this section. However, for
35 purposes of the sworn statement of debt and the debt limitation, revenue
36 bonds shall not be considered debt and ~~such bonds~~ shall not be included
37 in gross debt nor deducted from gross debt.

38 (2) Deductions in computing net debt. – The deductions to be made from
39 gross debt in computing net debt. The following deductions are allowed:
40 a. Funding and refunding bonds authorized by orders introduced
41 but not yet adopted.
42 b. Funding and refunding bonds authorized but not yet issued.

- 1 c. The amount of money held in sinking funds or otherwise for the
2 payment of any part of the principal of gross debt other than debt
3 incurred for water, gas, electric light or power purposes, or
4 sanitary sewer purposes (to the extent that the bonds are
5 deductible under subsection (b) of this section), or two or more
6 of these purposes.
- 7 d. The amount of bonded debt included in gross debt and incurred,
8 or to be incurred, for water, gas, or electric light or power
9 purposes, or any two or more of these purposes.
- 10 e. The amount of bonded debt included in the gross debt and
11 incurred, or to be incurred, for sanitary sewer system purposes to
12 the extent that the debt is made deductible by subsection (b) of
13 this section.
- 14 f. The amount of uncollected special assessments theretofore levied
15 for local improvements for which any part of the gross debt (that
16 is not otherwise deducted) was or is to be incurred, to the extent
17 that the assessments will be applied, when collected, to the
18 payment of any part of the gross debt.
- 19 g. The amount, as estimated by the governing board of the issuing
20 unit or an officer designated by the board for this purpose, of
21 special assessments to be levied for local improvements for
22 which any part of the gross debt (that is not otherwise deducted)
23 was or is to be incurred, to the extent that the special
24 assessments, when collected, will be applied to the payment of
25 any part of the gross debt.
- 26 (3) Net debt. – The net debt of the issuing unit, being the difference
27 between the gross debt and deductions.
- 28 (4) Assessed value of property. – The assessed value of property subject to
29 taxation by the issuing unit, as revealed by the tax records and certified
30 to the issuing unit by the assessor.
- 31 (5) Net debt percentage. – The percentage that the net debt bears to the
32 assessed value of property subject to taxation by the issuing unit.
- 33 (b) Sewer System Debt Deductible. – Debt incurred or to be incurred for sanitary
34 sewer system purposes is deductible from gross debt when the combined revenues of the
35 water system and the sanitary sewer system (whether or not the water and sewer system
36 are operated separately or as a consolidated system) were sufficient to pay all operating,
37 capital outlay, and debt service expenditures attributable to both systems in each of the
38 three complete fiscal years immediately preceding the date on which the sworn statement
39 of debt is filed. For the purposes of this subsection, the 'revenues' of a water system and
40 a sanitary sewer system include:
- 41 (1) Rates, fees, rentals, charges, and other receipts and income derived from
42 or in connection with the system.

- 1 (2) Fees, rents, or other charges collected from other offices, agencies,
2 institutions, and departments of the issuing unit at rates not in excess of
3 those charged to other consumers, customers, or users.
- 4 (3) Appropriations from the fund balance of the prior fiscal year from the
5 fund or funds established to account for the revenues and expenditures
6 of the water system or sewer system pursuant to G.S. 159-13(a) of the
7 Local Government Budget and Fiscal Control Act.

8 Before the sworn statement of debt is filed, the secretary shall determine to what extent
9 debt incurred or to be incurred for sanitary sewer system purposes qualifies for deduction
10 from gross debt pursuant to this subsection, and shall give ~~his~~a certificate to that effect.
11 The secretary's certificate shall be filed with and deemed a part of the sworn statement of
12 debt. The secretary's certificate shall be conclusive in the absence of fraud.

13 (c) Debt Limitation. – No bond order shall be adopted unless it appears from the
14 sworn statement of debt filed in connection therewith that the net debt of the unit does not
15 exceed eight percent (8%) of the assessed value of property subject to taxation by the
16 issuing unit. This limitation shall not apply to:

- 17 (1) Funding and refunding bonds.
- 18 (2) Bonds issued for water, gas, or electric power purposes, or two or more
19 of these purposes.
- 20 (3) Bonds issued for sanitary sewer system purposes when the bonds are
21 deductible pursuant to subsection (b) of this section.
- 22 (4) Bonds issued for sanitary sewers, sewage disposal, or sewage
23 purification plants when the construction of these facilities has been
24 ordered by the Environmental Management ~~Commission, which~~
25 ~~Commission is hereby authorized to make such an order,~~ Commission or by
26 a court of competent jurisdiction.
- 27 (5) Bonds or notes issued for erosion control purposes.
- 28 (6) Bonds or notes issued for the purpose of erecting jetties or other
29 protective works to prevent encroachment by the ocean, sounds, or other
30 bodies of water.

31 (d) Determination of Outstanding Debt Not Evidenced by Bonds. – For the
32 purpose of this section, outstanding debt not evidenced by bonds includes the principal
33 component of outstanding installment contracts and capital leases and the total lease
34 payments due under outstanding operating leases. Outstanding debt not evidenced by
35 bonds is includable in gross debt and deductible in determining net debt to the same
36 extent as if it were bonded debt.

37 If an installment contract, a capital lease, or an operating lease provides funds for
38 more than one purpose within the meaning of this section, the amount of funds borrowed
39 for each purpose shall be the amounts set forth in the installment contract, capital lease,
40 or operating lease. If the installment contract, capital lease, or operating lease does not
41 set forth the amount borrowed for each purpose, the finance officer shall file a certificate
42 with the clerk determining the purposes and amounts, and the determination shall be
43 conclusive and binding for purposes of complying with this section.

1 The following definitions apply in this subsection:

- 2 (1) Capital lease. – An agreement entered into under G.S. 153A-165 or G.S.
3 160A-19 that constitutes a capital lease under generally accepted
4 accounting principles and that is subject to approval by the Local
5 Government Commission under Article 8 of Chapter 159 of the General
6 Statutes.
- 7 (2) Installment contract. – An agreement entered into under G.S. 160A-20
8 that is subject to approval by the Local Government Commission under
9 Article 8 of Chapter 159 of the General Statutes.
- 10 (3) Operating lease. – An agreement entered into under G.S. 153A-165 or
11 G.S. 160A-19 that constitutes an operating lease under generally
12 accepted accounting principles and that is subject to approval by the
13 Local Government Commission under Article 8 of Chapter 159 of the
14 General Statutes.
- 15 (4) Principal component. – The aggregate amount payable under an
16 installment contract or a capital lease over its term in respect of
17 principal only, as set forth in the installment contract or capital lease or
18 in a principal component certificate.
- 19 (5) Principal component certificate. – A certificate of the finance officer, or
20 some other officer designated by the governing body for this purpose,
21 filed with the clerk setting forth the principal component of an
22 installment contract or capital lease when the installment contract or
23 capital lease does not expressly designate a principal component."

24 Section 3. G.S. 159-148 reads as rewritten:

25 "**§ 159-148. Contracts subject to Article; exceptions.**

26 (a) Except as provided in subsection (b) of this section, this Article applies to any
27 contract, agreement, memorandum of understanding, and any other transaction having the
28 force and effect of a contract (other than agreements made in connection with the
29 issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of
30 the General Statutes, or of general obligation bonds additionally secured by a pledge of
31 revenues) made or entered into by a unit of local government (as defined by G.S. 159-
32 7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General
33 Statutes), relating to the lease, acquisition, or construction of capital assets, which
34 contract

- 35 (1) Extends for five or more years from the date of the contract, including
36 periods that may be added to the original term through the exercise of
37 options to renew or extend, and
- 38 (2) Obligates the unit to pay sums of money to another, without regard to
39 whether the payee is a party to the contract, and
- 40 (3) Obligates the unit over the full term of the contract, including periods
41 that may be added to the original term through the exercise of options to
42 renew or extend, to the extent of five hundred thousand dollars
43 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of

1 the assessed value of property subject to taxation by the contracting
2 unit, whichever is less, ~~and less.~~

- 3 (4) ~~Obligates the unit, expressly or by implication, to exercise its power to~~
4 ~~levy taxes either to make payments falling due under the contract, or to~~
5 ~~pay any judgment entered against the unit as a result of the unit's breach~~
6 ~~of the contract.~~

7 Contingent ~~obligation~~ obligations shall be included in calculating the value of the
8 contract. Several contracts that are all related to the same undertaking shall be deemed a
9 single contract for the purposes of this Article. When several contracts are considered as
10 a single contract, the term shall be that of the contract having the longest term, and the
11 sums to fall due shall be the total of all sums to fall due under all single contracts in the
12 group.

13 (b) This Article shall not apply to:

- 14 (1) Contracts between a unit of local government and the State of North
15 Carolina or the United States of America (or any agency of either)
16 entered into as a condition to the making of grants or loans to the unit of
17 local government.
18 (2) Contracts for the purchase, lease, or lease with option to purchase of
19 motor vehicles or voting machines.
20 (3) Loan agreements entered into by a unit of local government pursuant to
21 the North Carolina Solid Waste Management Loan Program, Chapter
22 159I of the General Statutes."

23 Section 4. G.S. 159-150 reads as rewritten:

24 "**§ 159-150. Sworn statement of debt; debt limitation.**

25 (a) Sworn Statement of Debt. – After or at the time an application is filed under
26 G.S. 159-149, the finance officer, or some other officer designated by the board, shall
27 prepare, swear to, and file with the secretary and for public inspection in the office of the
28 clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for
29 statements of debt filed in connection with general obligation bond issues. The sums to
30 be included in gross debt and the deductions therefrom to arrive at net debt shall be the
31 same as prescribed in G.S. 159-55, ~~except that sums to fall due under contracts subject to this~~
32 ~~Article shall be treated as if they were evidenced by general obligation bonds of the unit except~~
33 that the contract to be entered into under this Article shall be treated as outstanding debt
34 not evidenced by bonds as determined under G.S. 159-55(d).

35 (b) Overall Debt Limitation. – No contract subject to this Article may be executed
36 if the net debt of the contracting unit, after execution of the contract, would exceed eight
37 percent (8%) of the assessed value of property subject to taxation by the contracting unit.
38 This subsection does not apply to contracts executed by units that do not have the power
39 to levy taxes.

40 (c) Limitation on Debt Not Evidenced by Bonds. – Unless the contract has been
41 approved by the voters of the contracting county or city as provided in subsection (e) of
42 this section, a county or city may not execute a contract subject to this Article if the net
43 outstanding debt not evidenced by bonds issued by the county or city on or after July 1,

1 1997, would, after execution of the contract, exceed one percent (1%) of the assessed
2 value of property subject to taxation by the county or city.

3 (d) Exceptions to Limitations. – Subsections (b) and (c) of this section shall not
4 apply to:

5 (1) Funding and refunding contracts.

6 (2) Contracts entered into for water, gas, or electric power purposes, or two
7 or more of these purposes.

8 (3) Contracts entered into for sanitary sewer system purposes when the
9 amounts payable under the contracts are deductible pursuant to G.S.
10 159-55(d)(2) or G.S. 159-55(d)(3).

11 (4) Contracts entered into for sanitary sewers, sewage disposal, or sewage
12 purification plants when the construction of these facilities has been
13 ordered by the Environmental Management Commission or by a court
14 of competent jurisdiction.

15 (5) Contracts entered into for erosion control purposes.

16 (6) Contracts entered into for the purpose of erecting jetties or other
17 protective works to prevent encroachment by the ocean, sounds, or other
18 bodies of water.

19 (e) Voter Approval of Certain Contracts. – If a county or city would be prohibited
20 from executing a contract subject to this Article because the net outstanding debt not
21 evidenced by bonds issued by the county or city on or after July 1, 1997, would, after
22 execution of the contract, exceed the debt limit set by subsection (c) of this section, then
23 the governing board of the county or city may, in its discretion, submit the question of
24 whether to execute the contract for approval by the qualified voters of the county or city.
25 A referendum held pursuant to this subsection shall be conducted according to the
26 standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62."

27 Section 5. This act is effective when it becomes law. This act does not affect
28 contracts and obligations entered into before July 1, 1997, or for which an application for
29 Local Government Commission approval was filed before July 1, 1997.