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SENATE BILL 317
Finance Committee Substitute Adopted 4/14/97
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Short Title: Local Government Debt Changes.

(Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

1 (b) Construction or Improvement by County. – A county may construct, equip,
2 expand, improve, renovate, or otherwise make available property for use by a school
3 administrative unit within the county. The local board of education shall be involved in
4 the design, construction, equipping, expansion, improvement, or renovation of the
5 property to the same extent as if the local board owned the property.

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

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

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

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

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

24 **"§ 159-55. Sworn statement of debt; debt limitation.**

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

29 (1) Gross debt. – The gross debt of the unit, excluding therefrom debt
30 incurred or to be incurred in anticipation of the collection of taxes or
31 other revenues or in anticipation of the sale of bonds other than funding
32 and refunding bonds. The gross debt (after exclusions) is the sum of (i)
33 outstanding debt evidenced by bonds, (ii) bonds authorized by orders
34 introduced but not yet adopted, (iii) unissued bonds authorized by
35 adopted orders, and (iv) outstanding debt not evidenced by ~~bonds.~~
36 bonds, including debt described in subsection (d) of this section.
37 However, for purposes of the sworn statement of debt and the debt
38 limitation, special obligation bonds, other obligations incurred under
39 Chapter 159I of the General Statutes, and revenue bonds shall not be
40 considered debt and ~~such bonds~~ shall not be included in gross debt nor
41 deducted from gross debt.

42 (2) Deductions from gross debt. – The deductions to be made from gross
43 debt in computing net debt. The following deductions are allowed:

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

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

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

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

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

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

39 If an installment contract, a capital lease, or an operating lease provides funds for
40 more than one purpose within the meaning of this section, the amount of funds borrowed
41 for each purpose shall be the amounts set forth in the installment contract, capital lease,
42 or operating lease. If the installment contract, capital lease, or operating lease does not
43 set forth the amount borrowed for each purpose, the finance officer, or some other officer

1 designated by the governing body for this purpose, shall file a certificate with the clerk
2 determining the purposes and amounts, and the determination shall be conclusive and
3 binding for purposes of complying with this section.

4 The following definitions apply in this subsection:

5 (1) Capital lease. – An agreement entered into under G.S. 153A-165 or G.S.
6 160A-19 that constitutes a capital lease of a lessee under generally
7 accepted accounting principles and that is subject to approval by the
8 Local Government Commission under Article 8 of Chapter 159 of the
9 General Statutes.

10 (2) Installment contract. – An agreement entered into under G.S. 160A-20
11 that is subject to approval by the Local Government Commission.

12 (3) Operating lease. – An agreement entered into under G.S. 153A-165 or
13 G.S. 160A-19 that constitutes an operating lease of a lessee under
14 generally accepted accounting principles and that is subject to approval
15 by the Local Government Commission under Article 8 of Chapter 159
16 of the General Statutes.

17 (4) Principal component. – The aggregate amount payable under an
18 installment contract or a capital lease over its term in respect of
19 principal only, as set forth in the installment contract or capital lease or
20 in a principal component certificate.

21 (5) Principal component certificate. – A certificate of the finance officer, or
22 some other officer designated by the governing body for this purpose,
23 filed with the clerk setting forth the principal component of an
24 installment contract or capital lease when the installment contract or
25 capital lease does not expressly designate a principal component. A
26 certificate filed with the clerk is a conclusive determination of the
27 principal component."

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

29 **"§ 159-148. Contracts subject to Article; exceptions.**

30 (a) Except as provided in subsection (b) of this section, this Article applies to any
31 contract, agreement, memorandum of understanding, and any other transaction having the
32 force and effect of a contract (other than agreements made in connection with the
33 issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of
34 the General Statutes, or of general obligation bonds additionally secured by a pledge of
35 revenues) made or entered into by a unit of local government (as defined by G.S. 159-
36 7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General
37 Statutes), relating to the lease, acquisition, or construction of capital assets, which
38 contract

39 (1) Extends for five or more years from the date of the contract, including
40 periods that may be added to the original term through the exercise of
41 options to renew or extend, and

42 (2) Obligates the unit to pay sums of money to another, without regard to
43 whether the payee is a party to the contract, and

- 1 (3) Obligates the unit over the full term of the contract, including periods
2 that may be added to the original term through the exercise of options to
3 renew or extend, to the extent of five hundred thousand dollars
4 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of
5 the assessed value of property subject to taxation by the contracting
6 unit, whichever is less, ~~and less.~~
- 7 (4) ~~Obligates the unit, expressly or by implication, to exercise its power to
8 levy taxes either to make payments falling due under the contract, or to
9 pay any judgment entered against the unit as a result of the unit's breach
10 of the contract.~~

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

17 (b) This Article shall not apply to:

- 18 (1) Contracts between a unit of local government and the State of North
19 Carolina or the United States of America (or any agency of either)
20 entered into as a condition to the making of grants or loans to the unit of
21 local government.
- 22 (2) Contracts for the purchase, lease, or lease with option to purchase of
23 motor vehicles or voting machines.
- 24 (3) Loan agreements entered into by a unit of local government pursuant to
25 the North Carolina Solid Waste Management Loan Program, Chapter
26 159I of the General Statutes.
- 27 (4) Contracts between two units of local government if utility revenues will
28 support the payments under the contract."

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

30 **"§ 159-150. Sworn statement of debt; debt limitation.**

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

41 (b) Overall Debt Limitation. – No contract subject to this Article may be executed
42 if the net debt of the contracting unit, after execution of the contract, would exceed eight
43 percent (8%) of the assessed value of property subject to taxation by the contracting unit.

1 (c) Limitation on Debt Not Evidenced by Bonds. – A unit of local government that
2 has a population of at least 10,000 may not execute a contract subject to this Article if the
3 net outstanding debt not evidenced by bonds incurred by the unit on or after July 1, 1997,
4 would, after execution of the contract, exceed one percent (1%) of the assessed value of
5 property subject to taxation by the unit. A unit of local government that has a population
6 of less than 10,000 may not execute a contract subject to this Article if the net
7 outstanding debt not evidenced by bonds incurred by the unit on or after July 1, 1997,
8 would, after execution of the contract, exceed two percent (2%) of the assessed value of
9 property subject to taxation by the unit. The unit may enter into the contract, however, if
10 the contract has been approved by the voters of the unit as provided in subsection (e) of
11 this section. The most recent annual estimate of population certified by the State
12 Planning Officer determines the population of a unit.

13 The following outstanding debt not evidenced by bonds is not counted in determining
14 whether the percentage limitations set by this subsection have been exceeded:

- 15 (1) Contracts entered into by the unit before July 1, 1997.
16 (2) Contracts approved by the voters as provided in subsection (e) of this
17 section.
18 (3) Contracts entered into for public school capital outlay purposes.
19 (4) Contracts entered into for sanitary sewers, sewage disposal, or sewage
20 purification plants.
21 (5) Contracts entered into for fire protection, rescue, or law enforcement
22 capital outlay purposes.
23 (6) Contracts entered into for projects for which the Local Government
24 Commission has determined that the probable net revenues of the
25 project, when combined with other available funds, will be sufficient to
26 pay the maximum principal component or maximum total payments, as
27 the case may be, under the contract.

28 (d) Exceptions to Limitations. – Subsections (b) and (c) of this section do not
29 apply to:

- 30 (1) Funding and refunding contracts.
31 (2) Contracts entered into for water, gas, or electric power purposes, or two
32 or more of these purposes.
33 (3) Contracts entered into for sanitary sewer system purposes when the
34 amounts payable under the contracts are deductible pursuant to G.S.
35 159-55(b).
36 (4) Contracts entered into for sanitary sewers, sewage disposal, or sewage
37 purification plants when the construction of these facilities has been
38 ordered by the Environmental Management Commission or by a court
39 of competent jurisdiction.
40 (5) Contracts entered into for erosion control purposes.
41 (6) Contracts entered into for the purpose of erecting jetties or other
42 protective works to prevent encroachment by the ocean, sounds, or other
43 bodies of water.

1 (7) Contracts entered into for jail or other confinement facility purposes, if
2 the contract is entered into to resolve litigation or to comply with a court
3 order.

4 (8) Contracts entered into by units that do not have the power to levy taxes.

5 (e) Voter Approval of Certain Contracts. – Before executing a contract subject to
6 this Article, the governing board of a unit of local government may, in its discretion,
7 submit the question of whether to execute the contract for approval by the qualified
8 voters of the unit. A referendum held pursuant to this subsection shall be conducted
9 according to the standards, procedures, and limitations set out in G.S. 159-153 and G.S.
10 159-154. This subsection does not apply to units of local government that do not have
11 the power to levy taxes."

12 Section 5. Article 8 of Chapter 159 of the General Statutes is amended by
13 adding the following new sections to read:

14 **"§ 159-153. Referendum; majority required; notice of referendum; form of ballot;**
15 **canvass.**

16 (a) Definitions. – The definitions provided in G.S. 159-55 apply in this section.

17 (b) Majority Required. – If a contract is subject to the approval of the voters
18 pursuant to G.S. 159-150(e), the affirmative vote of a majority of those who vote on the
19 question is required.

20 (c) Date of Referendum. – The date of a referendum shall be fixed by the
21 governing board of the contracting unit. The governing board may call a special
22 referendum for the purpose of voting on the contract on any day, including the day of any
23 regular or special election held for another purpose, unless the law under which the
24 referendum or other election is held specifically prohibits submission of other questions
25 at the same time. A special referendum may not be held within 30 days before or 10 days
26 after a statewide primary, election, or referendum, or within 30 days before or 10 days
27 after any other primary, election, or referendum to be held in the same unit holding the
28 referendum and already validly called or scheduled by law at the time the bond
29 referendum is called. The clerk to the board shall mail or deliver a certified copy of the
30 resolution calling a special referendum to the board of elections that is to conduct it
31 within three days after the resolution is adopted, but failure to observe this requirement
32 shall not in any manner affect the validity of the referendum or contract approved
33 pursuant thereto. Referenda shall be conducted by the board of elections conducting
34 regular elections of the contracting unit. In fixing the date of a referendum, the
35 governing board shall consult the board of elections in order that the referendum shall not
36 unduly interfere with other elections already scheduled or in process. Several contracts
37 or other matters may be voted upon at the same referendum.

38 (d) Notice. – The clerk shall publish a notice of the referendum at least twice. The
39 first publication shall be not less than 14 days and the second publication not less than
40 seven days before the last day on which voters may register for the referendum. The
41 notice shall contain all of the following:

42 (1) The date of the referendum.

43 (2) The purpose of the contract.

- 1 (3) The last day for registration for the referendum under the election laws
2 then in effect.
- 3 (4) The maximum principal component or maximum total payments, as the
4 case may be, to be made under the contract.
- 5 (5) The maximum term of the contract, including any optional renewal
6 periods.
- 7 (6) Any other information that the contracting unit, in its sole discretion,
8 considers necessary or appropriate to properly inform the voters of the
9 contract and the referendum.

10 The purpose of the contract required to be set forth in the notice of the referendum
11 and the ballot may be set forth, in either place, as the governing body of the contracting
12 unit in its discretion may determine, by inserting (i) the phrase 'providing capital
13 improvements' or (ii) a description of the purpose for which the contract is to be entered
14 into, which purpose may include several otherwise unrelated purposes.

15 In the case of a contract other than an operating lease, the notice shall also contain a
16 statement that the taxing power of the contracting unit is not and may not be pledged
17 directly or indirectly to secure any moneys due under the contract. In the case of
18 installment contracts, the notice shall also contain a statement substantially to the effect
19 that the installment contract will create in all or some portion of the property acquired or
20 improved, or in all or some portion of the real property on which the property is located,
21 a security interest to secure repayment of moneys under the installment contract, but no
22 deficiency judgment may be rendered against the contracting unit in any action for breach
23 of obligation under the installment contract. In the case of capital leases, the notice shall
24 also contain a statement substantially to the effect that title to the property subject to the
25 capital lease will be acquired upon payment of all sums due under the capital lease.

26 (e) Ballot Question. – The forms of the various questions as stated on the ballot
27 shall be in substantially the following words:

- 28 (1) In the case of installment contracts:

29 '[] FOR AGAINST []

30 The execution of an installment contract in the maximum principal amount of \$_____ for
31 (briefly stating the purpose) granting a security interest in (briefly describing collateral
32 security) to secure repayment of moneys due under the installment contract.'

- 33 (2) In the case of capital leases:

34 '[] FOR AGAINST []

35 The execution of a capital lease in the maximum principal amount of \$_____ for (briefly
36 stating the purpose) whereby title to the property subject to the capital lease will be
37 acquired upon payment of all sums due under the capital lease.'

- 38 (3) In the case of operating leases:

39 '[] FOR AGAINST []

40 The execution of an operating lease with maximum total lease payments of \$_____ and a
41 maximum term, including any optional renewal periods, of _____ for (briefly stating the
42 purpose).'

- 43 (4) In the case of any other contracts:

'[]FOR AGAINST []

The execution of a contract [in the maximum principal amount] [with total payments thereunder] of \$ _____ and a maximum term, including any optional renewal periods, of _____ for (briefly stating the purpose).'

(f) Results. – The board of elections shall canvass the referendum and certify the results to the governing board of the contracting unit. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

'Any action or proceeding challenging the regularity or validity of this referendum must be begun within 30 days after (date of publication).'

(Title of Governing Board)'

The statement of results of the referendum shall be filed in the clerk's office and inserted in the minutes of the governing board.

"§ 159-154. Limitation on actions contesting validity of referenda.

Any action or proceeding in any court to set aside a referendum conducted pursuant to G.S. 159-153, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication on the statement of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section."

Section 6. This act becomes effective July 1, 1997. This act does not affect a unit of government's right to execute a contract for which an application for Local Government Commission approval was filed before July 1, 1997.