

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 426

Short Title: Modify/Clarify Public Finance Statutes. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Finance.

March 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC
3 FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF
4 VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF
5 THE FINANCING STRUCTURES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 159-28(a) reads as rewritten:

8 "(a) Incurring Obligations. – No obligation may be incurred in a program, function, or
9 activity accounted for in a fund included in the budget ordinance unless the budget ordinance
10 includes an appropriation authorizing the obligation and an unencumbered balance remains in
11 the appropriation sufficient to pay in the current fiscal year the sums obligated by the
12 transaction for the current fiscal year. No obligation may be incurred for a capital project or a
13 grant project authorized by a project ordinance unless that project ordinance includes an
14 appropriation authorizing the obligation and an unencumbered balance remains in the
15 appropriation sufficient to pay the sums obligated by the transaction. ~~If-Except for obligations~~
16 ~~and related documents that have been approved by the Local Government Commission, if an~~
17 obligation is evidenced by a contract or agreement requiring the payment of money or by a
18 purchase order for supplies and materials, the contract, agreement, or purchase order shall
19 include on its face a certificate stating that the instrument has been preaudited to assure
20 compliance with this subsection. The certificate, which shall be signed by the finance officer or
21 any deputy finance officer approved for this purpose by the governing board, shall take
22 substantially the following form:

23 "This instrument has been preaudited in the manner required by the Local Government
24 Budget and Fiscal Control Act.

25 _____
26 (Signature of finance officer)."

27 Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June
28 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until
29 supplies of forms in existence on June 30, 1975, are exhausted.

30 An obligation incurred in violation of this subsection is invalid and may not be enforced.
31 The finance officer shall establish procedures to assure compliance with this subsection."

32 **SECTION 2.** G.S. 159-54 reads as rewritten:

33 "**§ 159-54. The bond order.**

34 After or at the same time the publication of the notice of intent to make application is filed
35 ~~and accepted for submission to the Commission.~~ Commission is approved by the governing
36 board of the issuing unit, a bond order shall be introduced before the governing board of the
37 issuing unit. The bond order shall state:



- (1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.
- (4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.
- (5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.
- (6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.
- (7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon."

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, thereof~~ to be \$ _____. If the bond order is adopted, the net debt thereof, after the issuance of the proposed bonds, will be \$ _____. A tax will [may] be levied to pay the principal of and interest on the bonds if they are issued. 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""

SECTION 4. G.S. 159-88(a) reads as rewritten:

"(a) At any time after the Commission ~~approves~~ accepts an application for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article."

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

"§ 159-142. Timely payments of bonds.

(a) This section applies to bonds issued by a unit of local government where (i) in the bond order, bond resolution, or trust agreement authorizing or securing the bonds and at the time of issuance of the bonds, the governing board of the unit has expressly and irrevocably elected to have the provisions of this section apply and (ii) the debt service schedule for the

1 bonds has been received by the State Treasurer. This section does not apply to any other
2 obligations of a unit of local government.

3 (b) Whenever the paying agent for the bonds has not received payment of principal of
4 or interest on bonds to which this section applies by the fifth day immediately before the date
5 on which the payment is due, the paying agent shall notify the State Treasurer by telephone,
6 facsimile, or other similar communication, followed by written verification, of the payment
7 status. The State Treasurer shall immediately contact the unit of local government and
8 determine whether the unit will make the payment by the due date.

9 (c) If the unit of local government indicates that it will not make the payment by the
10 due date, the State Treasurer shall forward the amount in immediately available funds
11 necessary to make the payment of principal of and interest on the bonds to the paying agent and
12 shall withhold that amount, in the following order of priority, from the following:

13 (1) The next succeeding allocation payable to the unit of local government
14 under Articles 34, 40, 41, 42, 46, and 60 of Chapter 105 of the General
15 Statutes.

16 (2) The next succeeding distribution payable to the unit of local government
17 from the profits of alcoholic beverage stores.

18 (3) The next succeeding allocation of intergovernmental shared revenues
19 payable to the unit of local government and not otherwise restricted by State
20 law.

21 If the amount of all of the listed allocation and distribution payments is insufficient to pay
22 the amount necessary, the State Treasurer shall withhold amounts from each succeeding listed
23 allocation and distribution payments in the priority set forth in this subsection, including
24 payments to be made in a succeeding fiscal year, but not to include more than 12 months of
25 payments, until the total amount of principal and interest has been withheld.

26 (d) The amounts forwarded to the paying agent by the State Treasurer are to be applied
27 by the paying agent solely to the payment of the principal of and interest on the portion unpaid
28 on the bonds of the unit of local government. The State Treasurer shall notify the finance
29 officer of the unit of local government whose allocation or distribution payments have been
30 withheld and the Director of the Budget of amounts withheld and payments made pursuant to
31 this section.

32 (e) The State hereby covenants with the purchasers and beneficial owners of bonds
33 issued by the unit of local government that it will not repeal, revoke, rescind, limit, or impair
34 the rights and remedies granted by the provisions of this section; however, nothing in this
35 subsection is to be construed to require the State to continue the payment of State allocations or
36 distributions to the unit of local government or to limit or prohibit the State from repealing,
37 amending, or modifying any law relating to the amount of State allocation or distribution
38 payments to the unit of local government or the manner or timing of the payments. Nothing in
39 this section is deemed or construed to create a debt of the State with respect to such bonds
40 within the meaning of any State constitutional provision or to create any liability except to the
41 extent provided in this section.

42 (f) Whenever the State Treasurer is required by this section to make a payment of
43 principal of or interest on bonds on behalf of a unit of local government, the State Treasurer or
44 the designee of the State Treasurer shall initiate an audit of the unit of local government on
45 whose behalf the bonds were issued to determine the reason for nonpayment and to assist the
46 unit of local government, if necessary, in developing and implementing measures to assure that
47 future payments will be made when due.

48 (g) Whenever the State Treasurer is required by this section to make a payment of
49 principal of or interest on bonds on behalf of a unit of local government and to withhold
50 payment of allocation or distribution payments to the unit of local government because of a
51 failure to collect revenues, the unit of local government may transfer the delinquent revenues

1 later collected out of the revenue fund created under the bond order, bond resolution, or trust
2 agreement."

3 **SECTION 6.** G.S. 159I-30(g)(3) reads as rewritten:

4 "(g) Definitions. – The following definitions apply in this section:

5 ...

6 (3) Project. – Any of the following:

7 a. A project as defined in G.S. 159I-3.

8 ~~b. Any of the following as defined in S.L. 1998-132: water supply~~
9 ~~systems, water conservation projects, water reuse projects,~~
10 ~~wastewater collection systems, and wastewater treatment works.~~

11 ~~e. With respect to a city, any service or facility authorized by~~
12 ~~G.S. 160A-536 and provided in a municipal service district.~~

13 d. Any capital cost described in G.S. 159-48(b), (c), or (d) other than
14 capital cost described in G.S. 159-48(d)(21)."

15 **SECTION 7.** If any provision of this act or its application is held invalid, the
16 invalidity does not affect the other provisions or applications of this act that can be given effect
17 without the invalid provisions or applications, and to this end the provisions of this act are
18 severable.

19 **SECTION 8.** This act is effective when it becomes law.