GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1018
Committee Substitute Favorable 5/6/91
Committee Substitute #2 Favorable 6/13/91

Short Title: Mun. Power Agencies Financing. (Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE JOINT MUNICIPAL POWER AGENCIES TO ENCUMBER CERTAIN PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-3(6) reads as rewritten:

"(6) 'Project' shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise. Project does not mean an administrative building or office or facilities related to the administrative building or office."

Sec. 2. G.S. 159B-14 reads as rewritten:

"§ 159B-14. Bonds of a joint agency.

A joint agency may issue ~~its~~ bonds ~~pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof,~~ for the purpose of paying the cost of a project and secure both the principal of and interest on the bonds by a pledge of part or all of the revenues derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or contributions or advances from its members. A joint agency may issue bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by a pledge of revenues, solely by a security interest in real or personal property, or by both a pledge of revenues and a security interest in real or personal property. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes."

Sec. 3. G.S. 159B-15(a) reads as rewritten:

"(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on ~~such~~ bonds issued to pay the cost of a project shall be payable solely from ~~the respective funds herein provided for such payment.~~ revenues. Bonds that are not issued to pay the cost of a project shall be payable from revenues, from property pledged as security for the bonds, or from both.

The bonds of each issue shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the issuer, provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and subsequently resold in accordance with the provisions of this Chapter."

Sec. 4. G.S. 159B-16(1) reads as rewritten:

"(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, ~~financed by the bonds,~~ or from the electric system or facilities of a municipality or a joint agency."

Sec. 5. G.S. 159B-16 is amended by adding a new subdivision to read:

"(15) For bonds that are not issued to pay the cost of a project, the pledge, assignment, mortgage, or grant of a security interest in any real or personal property or interest in real or personal property, including the pledge, assignment, or grant of a security interest in money, rents, charges, or other revenues or proceeds derived by the joint agency from the sale of property, from insurance, or from a condemnation award. In the event of default on a bond secured by a pledge, assignment, mortgage, or grant of a security interest, the rights of the bond holders and the liabilities arising from the default shall be limited, except to the extent provided in a pledge of revenues, to the specific property or interest in property pledged, assigned, or mortgaged or in which a security interest was granted to secure the bonds, and no claim for any deficiency shall be made nor any deficiency judgment entered as a result of the pledge, assignment, mortgage, or grant of a security interest in the property or the interest in property."

Sec. 6. G.S. 159B-23 reads as rewritten:

"**§ 159B-23. Limited liability.**

(a) ~~The bonds~~ Bonds shall be special obligations of the municipality or joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or joint ~~agency, nor shall they~~ agency. Bonds issued to pay the cost of a project and, except as provided in this subsection, bonds that are not issued to pay the cost of a project shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of ~~its~~ the municipality's or joint agency's property or upon any of its income, receipts, or revenues, except the funds ~~which are~~ pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Bonds that are not issued to pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property shall constitute an encumbrance on the municipality's or joint agency's property as provided in the resolution authorizing the bonds or the trust agreement securing the bonds.

(b) Neither the faith and credit nor the taxing power of a municipality or of the State are, or may be, pledged for the payment of the principal of or interest on ~~the~~ bonds, and no holder of ~~the~~ bonds shall have the right to compel the exercise of the taxing power by the State or a ~~municipality or~~ municipality. No holder of bonds issued to pay the cost of a project shall have the right to compel the forfeiture of any of ~~its~~ the municipality's or joint agency's property in connection with any default ~~thereon.~~ on the bonds. A holder of bonds that are not issued to pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property may compel the forfeiture of the property to the extent allowed in the resolution authorizing the bonds or the trust agreement securing the bonds.

(c) Every bond issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or joint agency is not obligated to pay the principal or interest except from ~~such~~ these revenues. A bond that is not issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable and secured as provided in the resolution authorizing the bond or the trust agreement securing the bond."

Sec. 7. This act is effective upon ratification.