

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 678

Short Title: Bond Payment Change.

(Public)

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Sponsors: Senators Carpenter and Hartsell.

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Referred to: Constitution and Election Laws.

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April 1, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY REVENUE BONDS AND SPECIAL OBLIGATION BONDS.

The General Assembly of North Carolina enacts:

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

"(a) Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be ~~payable from~~ secured by the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is ~~payable solely from~~ secured solely by the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues. The State or a municipality may, in its sole discretion, use tax proceeds or general funds to pay the principal of and interest on revenue bonds, but shall not pledge or agree to do so."

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

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

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

6 (b) Each unit of local government may ~~agree to apply to~~ pledge for the payment of  
7 a special obligation bond or note any available source or sources of revenues of the unit  
8 and, to the extent the generation of the revenues is within the power of the unit, ~~to may~~  
9 enter into covenants to take action in order to generate the revenues, provided the  
10 ~~agreement to use~~ pledge of such sources to make for payments or such covenant to  
11 generate revenues does not constitute a pledge of the unit's taxing power. A unit of  
12 local government may, in its sole discretion, use tax proceeds to pay the principal of or  
13 interest or premium on the bonds or notes, but shall not pledge or agree to do so.

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

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

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

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

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

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

1 provide additional security as authorized by this subsection the following conditions  
2 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 such 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-  
11 148(a)(2), and 159-148(a)(3), or involves the construction or  
12 repair of fixtures or improvements on real property; and  
13      b. Is not exempted from the provisions of that Article by one of  
14 the exemptions contained in G.S. 159-148(b).  
15       (3) No deficiency judgment payable from sources derived from the  
16 exercise of a unit of local government's taxing power may be rendered  
17 against any unit of local government in any action for breach of a bond  
18 order authorized by this section, and the taxing power of a unit of local  
19 government is not and may not be pledged directly or indirectly to  
20 secure any moneys due under a bond order authorized by this section.  
21 A unit of local government may, in its sole discretion, use tax proceeds  
22 to pay the principal of or interest or premium on bonds or notes, but  
23 shall not pledge or agree to do so.

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

33       (d) The interest payable by a unit on any special obligation bonds or notes may  
34 be at such rate or rates, including variable rates as authorized in this section, as may be  
35 determined by the Local Government Commission with the approval of the governing  
36 body of the unit. Such approval may be given as the governing body of the unit may  
37 direct, including, without limitation, a certificate signed by a representative of the unit  
38 designated by the governing body of the unit.

39       (e) Special obligation bonds and notes shall be special obligations of the unit of  
40 local government issuing them. The principal of, and interest and any premium on,  
41 special obligation bonds and notes shall be ~~payable-secured~~ solely from-by any one or  
42 more of the sources of payment authorized by this section as may be specified-pledged in  
43 the proceedings, resolution, or trust agreement under which they are authorized or  
44 secured. Neither the faith and credit nor the taxing power of the unit of local

1 government are pledged for the payment of the principal of, or interest or any premium  
2 on, any special obligation bonds or notes, and no owner of special obligation bonds or  
3 notes has the right to compel the exercise of the taxing power by the unit in connection  
4 with any default thereon. Every special obligation bond and note shall recite in  
5 substance that the principal and interest and any premium on such bond or note are  
6 ~~payable secured solely from by~~ the sources of payment ~~specified pledged~~ in the bond  
7 order or ~~trust, trust~~ agreement under which it is authorized or secured, provided that:

8 (1) Any such use of such sources will not constitute a pledge of the unit's  
9 taxing owner; and

10 (2) The ~~municipality unit~~ is not obligated to pay such principal or interest  
11 or premium except from such sources.

12 A unit of local government may, in its sole discretion, use tax proceeds to pay the  
13 principal of or interest or premium on the bonds or notes, but shall not pledge or agree  
14 to do so.

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

17 (1) Be made payable from time to time on demand or tender for purchase  
18 by the owner thereof provided a credit facility supports such bonds or  
19 notes, unless the Local Government Commission specifically  
20 determines that a credit facility is not required upon a finding and  
21 determination by the Local Government Commission that the absence  
22 of a credit facility will not materially and adversely affect the financial  
23 position of the unit and the marketing of the bonds or notes at a  
24 reasonable interest cost to the unit;

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

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

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

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

36 (g) As used in this section:

37 (1) 'Credit facility' means an agreement entered into by the unit with a  
38 bank, savings and loan association or other banking institution, an  
39 insurance company, reinsurance company, surety company or other  
40 insurance institution, a corporation, investment banking firm or other  
41 investment institution, or any financial institution ~~proving providing~~ for  
42 prompt payment of all or any part of the principal, or purchase price  
43 (whether at maturity, presentment, or tender for purchase, redemption,  
44 or acceleration), redemption premium, if any, and interest on any

1 bonds or notes payable on demand or tender by the owner, in  
2 consideration of the unit agreeing to repay the provider of such credit  
3 facility in accordance with the terms and provisions of such  
4 agreement; the provider of any credit facility may be located either  
5 within or without the United States of America.

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

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

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

24 (h) Notes shall mature at such time or times and bonds shall mature, not  
25 exceeding 40 years from their date or dates, as may be determined by the unit of local  
26 government, provided that no such maturity dates may exceed the maximum maturity  
27 periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as  
28 it may be amended from time to time. The unit shall determine the form and manner of  
29 execution of the bonds or notes, including any interest coupons to be attached thereto,  
30 and shall fix the denomination or denominations and the place or places of payment of  
31 principal and interest, which may be any bank or trust company within or without the  
32 United States. In case any officer of such unit whose signature, or a facsimile of whose  
33 signature, shall appear on any bonds or notes or coupons, if any, shall cease to be such  
34 officer before delivery thereof, such signature or such facsimile shall nevertheless be  
35 valid and sufficient for all purposes the same as if such officer had remained in office  
36 until such delivery. Any bond or note or coupon may bear the facsimile signatures of  
37 such persons who at the actual time or the execution thereof shall be the proper officers  
38 to sign although at the date of such bond or note or coupon such persons may not have  
39 been such officer. The unit may also provide for the authentication of the bonds or  
40 notes by a trustee or other authenticating agent. The bonds or notes may be issued as  
41 certificated or uncertificated obligations or both, and in coupon or in registered form, or  
42 both, as the unit may determine, and provision may be made for the registration of any  
43 coupon bonds or notes as to principal alone and also as to both principal and interest,  
44 and for the reconversion into coupon bonds or notes of any bonds or notes registered as

1 to both principal and interest, and for the interchange of registered and coupon bonds or  
2 notes. Any system for registration may be established as the unit may determine.

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

15 In determining whether a proposed bond or note issue should be approved, the Local  
16 Government Commission may consider, to the extent applicable as shall be determined  
17 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.  
18 159-86, as either may be amended from time to time, as well as the effect of the  
19 proposed financing upon any scheduled or proposed sale of obligations by the State or  
20 by any of its agencies or departments or by any unit of local government in the State.  
21 The Local Government Commission shall approve the issuance of such bonds or notes  
22 if, upon the information and evidence it receives, it finds and determines that the  
23 proposed financing will satisfy such criteria and will effect the purposes of this section  
24 and the applicable provisions of this Chapter. An approval of an issue shall not be  
25 regarded as an approval of the legality of the issue in any respect. A decision by the  
26 Local Government Commission denying an application is final.

27 Upon the filing with the Local Government Commission of a written request of the  
28 unit requesting that its bonds or notes be sold, such bonds or notes may be sold by the  
29 Local Government Commission in such manner, either at public or private sale, and for  
30 such price or prices as the Local Government Commission shall determine to be in the  
31 best interests of the unit and to effect the purposes of this section and the applicable  
32 provisions of this Chapter, provided that such sale shall be approved by the unit.

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

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

42 (l) Bonds or notes may be issued under the provisions of this section and the  
43 applicable provisions of this Chapter without obtaining, except as otherwise expressly  
44 provided in this section and the applicable provisions of this Chapter, the consent of any

1 department, division, commission, board, body, bureau, or agency of the State and  
2 without any other proceedings or the happening of any conditions or things other than  
3 those proceedings, conditions, or things that are specifically required by this section, the  
4 applicable provisions of this Chapter, and the provisions of the resolution authorizing  
5 the issuance of, or any trust agreement securing, such bonds or notes.

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

41 The State does pledge to, and agree with, the holders of any bonds or notes issued by  
42 any unit that so long as any of such bonds or notes are outstanding and unpaid the State  
43 will not limit or alter the rights vested in the unit at the time of issuance of the bonds or  
44 notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any

1 agreements made with the bondholders or noteholders. The State shall in no way impair  
2 the rights and remedies of the bondholders or noteholders until the bonds or notes and  
3 all costs and expenses in connection with any action or proceedings by or on behalf of  
4 the bondholders or noteholders, are fully paid, met, and discharged.

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

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

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

18 Sec. 3. This act is effective upon ratification.