

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 803

Short Title: Solid Waste Bond Payment Change.

(Public)

Sponsors: Senators Carpenter; and Speed.

Referred to: Finance.

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SOLID WASTE SPECIAL OBLIGATION BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159I-30 reads as rewritten:

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

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

(b) Each unit of local government may agree to apply to pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, ~~to may~~ enter into covenants to take action in order to generate the revenues, provided the ~~agreement to use~~ pledge of such sources ~~to make for~~ payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

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

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

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

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

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

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

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

36 (e) Special obligation bonds and notes shall be special obligations of the unit of
37 local government issuing them. The principal of, and interest and any premium on,
38 special obligation bonds and notes shall be ~~payable-secured~~ solely ~~from-by~~ any one or
39 more of the sources of payment authorized by this section as may be ~~specified-pledged~~
40 in the proceedings, resolution, or trust agreement under which they are authorized or
41 secured. Neither the faith and credit nor the taxing power of the unit of local
42 government are pledged for the payment of the principal of, or interest or any premium
43 on, any special obligation bonds or notes, and no owner of special obligation bonds or
44 notes has the right to compel the exercise of the taxing power by the unit in connection

1 with any default thereon. Every special obligation bond and note shall recite in
2 substance that the principal and interest and any premium on such bond or note are
3 ~~payable-secured solely from-by~~ the sources of payment ~~specified-pledged~~ in the bond
4 order or trust, agreement under which it is authorized or secured, provided that:

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

7 (2) The municipality is not obligated to pay such principal or interest or
8 premium except from such sources.

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

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

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

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

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

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

30 (g) As used in this section:

31 (1) 'Credit facility' means an agreement entered into by the unit with a
32 bank, savings and loan association or other banking institution, an
33 insurance company, reinsurance company, surety company or other
34 insurance institution, a corporation, investment banking firm or other
35 investment institution, or any financial institution providing [providing]
36 for prompt payment of all or any part of the principal, or purchase
37 price (whether at maturity, presentment, or tender for purchase,
38 redemption, or acceleration), redemption premium, if any, and interest
39 on any bonds or notes payable on demand or tender by the owner, in
40 consideration of the unit agreeing to repay the provider of such credit
41 facility in accordance with the terms and provisions of such
42 agreement; the provider of any credit facility may be located either
43 within or without the United States of America.

- 1 (2) 'Par formula' means any provision or formula adopted by the unit to
2 provide for the adjustment, from time to time of the interest rate or
3 rates borne by any bonds or notes including:
- 4 a. A provision providing for such adjustment so that the purchase
5 price of such bonds or notes in the open market would be as
6 close to par as possible;
 - 7 b. A provision providing for such adjustment based upon a
8 percentage or percentages of a prime rate or base rate, which
9 percentage or percentages may vary or be applied for different
10 periods of time; or
 - 11 c. Such other provision as the unit may determine to be consistent
12 with this section and the applicable provisions of this Chapter
13 and does not materially and adversely affect the financial
14 position of the unit and the marketing of the bonds or notes at a
15 reasonable interest cost to the unit.

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

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

42 (i) No bonds or notes may be issued by a unit of local government under this
43 section unless the issuance is approved and the bonds or notes are sold by the Local
44 Government Commission as provided in this section and the applicable provisions of

1 this Chapter. The unit shall file with the Secretary of the Local Government
2 Commission an application requesting approval of the issuance of such bonds or notes,
3 which application shall contain such information and shall have attached to it such
4 documents concerning the proposed financing as the Secretary of the Local Government
5 Commission may require. The Commission may prescribe the form of the application.
6 Before the Secretary accepts the application, the Secretary may require the governing
7 body of the unit or its representatives to attend a preliminary conference, at which time
8 the Secretary or the deputies of the Secretary may informally discuss the proposed issue
9 and the timing of the steps taken in issuing the special obligation bonds or notes.

10 In determining whether a proposed bond or note issue should be approved, the Local
11 Government Commission may consider, to the extent applicable as shall be determined
12 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.
13 159-86, as either may be amended from time to time, as well as the effect of the
14 proposed financing upon any scheduled or proposed sale of obligations by the State or
15 by any of its agencies or departments or by any unit of local government in the State.
16 The Local Government Commission shall approve the issuance of such bonds or notes
17 if, upon the information and evidence it receives, it finds and determines that the
18 proposed financing will satisfy such criteria and will effect the purposes of this section
19 and the applicable provisions of this Chapter. An approval of an issue shall not be
20 regarded as an approval of the legality of the issue in any respect. A decision by the
21 Local Government Commission denying an application is final.

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

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

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

37 (l) Bonds or notes may be issued under the provisions of this section and the
38 applicable provisions of this Chapter without obtaining, except as otherwise expressly
39 provided in this section and the applicable provisions of this Chapter, the consent of any
40 department, division, commission, board, body, bureau, or agency of the State and
41 without any other proceedings or the happening of any conditions or things other than
42 those proceedings, conditions, or things that are specifically required by this section, the
43 applicable provisions of this Chapter, and the provisions of the resolution authorizing
44 the issuance of, or any trust agreement securing, such bonds or notes.

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

35 The State does pledge to, and agree with, the holders of any bonds or notes issued by
36 any unit that so long as any of such bonds or notes are outstanding and unpaid the State
37 will not limit or alter the rights vested in the unit at the time of issuance of the bonds or
38 notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any
39 agreements made with the bondholders or noteholders. The State shall in no way impair
40 the rights and remedies of the bondholders or noteholders until the bonds or notes and
41 all costs and expenses in connection with any action or proceedings by or on behalf of
42 the bondholders or noteholders, are fully paid, met, and discharged.

43 (n) The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its
44 bonds and notes shall apply to a unit of local government and its bonds and notes issued

1 under this section and the applicable provisions of this Chapter, provided that the source
2 or sources of revenue ~~available~~pledged to pay bonds and notes of a unit of local
3 government shall be limited as provided in this section.

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

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

12 Sec. 2. This act is effective upon ratification.