

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 508
HOUSE BILL 965

AN ACT TO AUTHORIZE THE ADVANCEMENT OF FUNDS FOR REVENUE BOND PROJECTS BY POLITICAL SUBDIVISIONS AND THE REPAYMENT OF THESE ADVANCES FROM REVENUE BOND PROCEEDS, AND TO PROVIDE FOR THE APPOINTMENT OF COUNTY AND CITY OFFICIALS TO GOVERNING BOARDS OF AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-81 reads as rewritten:

"§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

- (1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional sports authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, but not any other forms of local government.
- (2) 'Revenue bond' means a bond issued by the State of North Carolina or a municipality pursuant to this Article.
- (3) 'Revenue bond project' means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing ~~unit~~ unit, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by the State or a municipality to pay the costs of the undertaking:
 - a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

- b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
- c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
- d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
- e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
- f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
- g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
- h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
- i. Hospitals and other health-related facilities.
- j. Public auditoriums, gymnasiums, stadiums, and convention centers.
- k. Recreational facilities.
- l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.
- m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
- n. Facilities for the use of any agency or agencies of the government of the United States of America.
- o. Structural and natural stormwater and drainage systems of all types.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

- (4) 'Revenues' include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. 'Revenues' also include all moneys received by, or on behalf of, the North Carolina Low-Level Radioactive Waste Management Authority in connection with its financing of a low-level radioactive waste facility and all money received by, or on behalf of, the North Carolina Hazardous Waste Management Commission in connection with its financing of a hazardous waste facility."

Sec. 2. G.S. 159-83(a) reads as rewritten:

"(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

- (1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.
- (2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.
- (3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

- (4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.
- (5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner. Notwithstanding the foregoing, the North Carolina Low-Level Radioactive Waste Management Authority may create an encumbrance, mortgage, or other pledge of real property of the Authority in connection with its financing of a low-level radioactive waste facility and the North Carolina Hazardous Waste Management Commission may create an encumbrance, mortgage, or other pledge of real property of the Commission in connection with its financing of a hazardous waste facility.
- (6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.
- (7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.
- (8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond

projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

- (8a) In the case of any county, city, town, or incorporated village, to make loans or advances to a municipality to provide funds to the municipality to pay any costs of any revenue bond project. Funds received by a municipality in reimbursement of a loan or advance shall be distributed and restricted as provided in G.S. 159-27.1.
- (9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay ~~the cost of acquisition, construction, reconstruction, extension, or improvement costs~~ of the revenue bond projects authorized in the bond order ~~order~~, reimburse funds loaned or advanced for the costs of these revenue bond projects in accordance with the bond order, and ~~to~~ provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.
- (10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.
- (11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.
- (12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.
- (13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.
- (14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice

and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

- (15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.
- (16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds."

Sec. 3. Article 3 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"§ 159-27.1. Use of revenue bond project reimbursements; restrictions.

The finance officer of a unit shall deposit any funds received by the unit as a reimbursement of a loan or advance made by the unit pursuant to G.S. 159-83(a)(8a) in the fund from which the unit originally derived the funds to make the loan or advance.

If the funds originally loaned or advanced were proceeds of a bond issue, any funds received as reimbursement shall be applied as required by this section. The funds shall be applied as provided in the instrument securing payment of the bond issue if the instrument contains applicable provisions. Otherwise, the funds shall be applied to either (i) the same general purposes as those for which the bond issue was authorized, or (ii) payment of debt service on the bond issue, including principal, interest, and premium, if any, upon redemption, or payment of the purchase price of bonds for retirement at not more than their face value and accrued interest. After all the bonds of the issue have been paid or satisfied in full, any funds received as reimbursement shall be deposited in the general fund of the unit and may be used for any general fund purpose."

Sec. 4. G.S. 159-90(a) reads as rewritten:

"(a) In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

- (1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122. For bonds issued in reimbursement of a loan or

advance, the maximum maturity period to be used in determining the maturity dates of the bonds shall be the maximum permissible period prescribed by the Commission for the original project for which the loan or advance was expended, calculated from the date the original project is completed.

- (2) Any bond may be made ~~the~~ subject to redemption prior to maturity, including redemption on demand of the holder, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.
- (3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the State Treasurer or the issuing municipality, as the case may be, may determine."

Sec. 5. G.S. 128-1.2 reads as rewritten:

"§ 128-1.2. Ex officio service by county ~~commissioners.~~ and city representatives and officials.

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city ~~a board of county commissioners~~ appoints one of its own members or officials to another board or commission, the ~~county commissioner individual~~ so appointed is considered to be serving on the other board or commission as a part of the individual's duties of ~~his office of county commissioner~~ and shall not be considered to be serving in a separate office.

As used in this section, the term 'official' means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term 'city' has the meaning provided in G.S. 160A-1."

Sec. 6. This act is effective upon ratification. Sections 1 through 4 of this act apply to loans and advances made by a municipality on or after January 1, 1982.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives