

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 873  
Finance Committee Substitute Adopted 7/14/98  
Third Edition Engrossed 7/16/98  
House Committee Substitute Favorable 8/4/98

Short Title: Local Government Debt Changes.

(Public)

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Sponsors:

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Referred to:

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April 15, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT  
3 ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO  
4 APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. The title of Article 8 of Chapter 159 of the General Statutes reads as  
7 rewritten:

8 "ARTICLE 8.

9 "~~FINANCING AGREEMENTS. AGREEMENTS AND OTHER~~  
10 **FINANCING ARRANGEMENTS.**"

11 Section 2. Article 8 of Chapter 159 of the General Statutes is amended by  
12 adding a new section to read:

13 "**§ 159-153. Approval of other financing arrangements.**

14 (a) Commission Approval Required. – Except as provided in subsection (b) of this  
15 section, approval by the Commission in accordance with this section is required before a  
16 unit of local government, or any public body, agency, or similar entity created by any  
17 action of a unit of local government, may do any of the following:

- 1           (1) Incur indebtedness.  
2           (2) Enter into any similar type of financing arrangement.  
3           (3) Approve or otherwise participate in the incurrence of indebtedness or  
4           the entering into of a similar type of financing arrangement by another  
5           party on its behalf.
- 6       (b) Exceptions. – Approval by the Commission in accordance with this section is  
7 not required in any of the following cases:
- 8           (1) Another law of this State already specifically requires Commission  
9           approval of the indebtedness or financing arrangement and the required  
10           approval is obtained in accordance with that law.
- 11          (2) The indebtedness or financing arrangement is a contract entered into by  
12           a unit of local government pursuant to G.S. 160A-20 and is not subject  
13           to review by the Commission pursuant to G.S. 160A-20(e).
- 14          (3) The indebtedness or financing arrangement is excepted from the review  
15           requirements of this Article because it does not meet the conditions of  
16           G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-  
17           148(b).
- 18       (c) Effect of Special Act. – No special, local, or private act shall be construed to  
19 create an exception from the review of the Commission required by this section unless  
20 the act explicitly excludes the review and approval of the Commission.
- 21       (d) Factors Considered. – The Commission may consider all of the following  
22 factors in determining whether to approve the incurrence of, entering into, approval of, or  
23 participation in any indebtedness or financing arrangement subject to approval pursuant  
24 to this section:
- 25           (1) Whether the undertaking is necessary or expedient.  
26           (2) The nature and amount of the outstanding debt of the entity proposing to  
27           incur the indebtedness or enter the financing arrangement.
- 28           (3) Whether the entity proposing to operate the facilities financed by the  
29           indebtedness or financing arrangement and the entity obligating itself  
30           under the indebtedness or financing arrangement have demonstrated or  
31           can demonstrate the financial responsibility and capability to fulfill their  
32           obligations with respect to the indebtedness or financing arrangement.  
33           In making this determination, the Commission may consider the  
34           operating entity's experience and financial position, the nature of the  
35           undertaking being financed, and any additional security such as  
36           insurance, guaranties, or property to be pledged to secure the  
37           indebtedness or financing arrangement.
- 38           (4) Whether the proposed date and manner of sale of obligations will have  
39           an adverse effect upon any scheduled or anticipated sale of obligations  
40           by the State or any political subdivision or by any agency of either of  
41           them.
- 42           (5) The local government unit's debt management procedures and policies.

1           (6)    The local government unit's compliance with the Local Government  
2           Budget and Fiscal Control Act.

3           (7)    Whether the local government unit is in default in any of its debt service  
4           obligations.

5           (e)    Documentation. – To facilitate the review of the proposed indebtedness or  
6           financing arrangement by the Commission, the Secretary may require the unit or other  
7           entity to obtain and submit any financial data and information about the proposed  
8           indebtedness or financing arrangement and security for it, including any proposed  
9           prospectus or offering circular, the proposed financing arrangement and security  
10          document, and annual and other financial reports and statements of the obligated entity.  
11          Applications and other documents required by the Commission must be in the form  
12          prescribed by the Commission.

13          (f)    Conditions for Approval. – If the Commission determines that all of the  
14          following conditions are met, the Commission shall approve the incurrence of the  
15          indebtedness, entering of the financing arrangement, or approval or other participation in  
16          the indebtedness or financing arrangement, by the unit of local government or the other  
17          entity referred to in subsection (a) of this section:

18               (1)    The amount of the indebtedness to be incurred or financed is not  
19               excessive for the purpose contemplated.

20               (2)    The entity that will operate the facilities financed by the indebtedness or  
21               financing arrangement and the entity obligating itself under the  
22               indebtedness or financing arrangement have demonstrated or can  
23               demonstrate the financial responsibility and capability to fulfill their  
24               obligations with respect to the indebtedness or financing arrangement.

25               (3)    The proposed date and manner of sale of obligations will not have an  
26               adverse effect upon any scheduled or anticipated sale of obligations by  
27               the State or any political subdivision or any agency of either of them."

28          Section 3. This act becomes effective January 1, 1999, and applies to debt and  
29          financing arrangements incurred, entered into, approved, or participated in on or after that  
30          date.