

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-388
SENATE BILL 679**

AN ACT TO MODIFY THE PUBLIC FINANCING LAWS OF THE STATE.

Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-89 reads as rewritten:

"§ 159-89. Special covenants.

A revenue bond order or a trust agreement securing revenue bonds may be between the State or the issuing municipality and a bank or trust company located within or without the State of North Carolina, and may contain covenants as to any of the following:

- (1) The pledge of all or any part of revenues received or to be received from the undertaking to be financed by the bonds, or the utility or enterprise of which the undertaking is to become a part.
- (2) Rates, fees, rentals, tolls or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received.
- (3) The setting aside of debt service reserves and the regulation and disposition thereof.
- (4) The custody, collection, securing, investment, and payment of any moneys held for the payment of revenue bonds.
- (5) Limitations or restrictions on the purposes to which the proceeds of sale of revenue bonds then or thereafter to be issued may be applied.
- (6) Limitations or restrictions on the issuance of additional revenue bonds or notes; the terms upon which additional revenue bonds or notes may be issued and secured; or the refunding of outstanding or other revenue bonds.

- (7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the percentage of revenue bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.
- (8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this Article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.
- (9) The preparation and maintenance of a budget with respect to the expenses of the State or a municipality, as the case may be, for the operation and maintenance of revenue bond projects.
- (10) The retention or employment of consulting engineers, independent auditors, and other technical consultants in connection with revenue bond projects.
- (11) Limitations on or the prohibition of free service by revenue bond projects to any person, firm, or corporation, public or private.
- (12) The acquisition and disposal of property for revenue bond projects.
- (13) Provisions for insurance and for accounting reports and the inspection and audit thereof.
- (14) The continuing operation and maintenance of the revenue bond project or the utility or enterprise of which it is to become a part."

SECTION 2. G.S. 159-65 reads as rewritten:

"§ 159-65. Resolution fixing the details of the bonds.

(a) After the bond order has been adopted, the board shall adopt a resolution fixing the details of the bonds. In fixing details of the bonds, the board is subject to these restrictions and directions:

- (1) The ~~maturity~~ dates for payment of installments of principal shall not exceed the maximum periods of usefulness prescribed by the Commission pursuant to G.S. 159-122.
- (2) Bonds authorized by two or more bond orders may be consolidated into a single issue.
- (3) Bonds of each issue shall ~~mature~~ have principal paid in annual installments, the first of which shall be payable not more than three years after the date of the bonds, and the last within the maximum maturity period prescribed by regulation of the Commission under G.S. 159-122.
- (4) No installment of principal for any issue may be more than four times as great in amount as the smallest prior installment of principal for the same issue.
- (5) Bonds of each issue may be issued from time to time in series with different provisions for each series. Each series shall be deemed a separate issue for the purposes of this ~~section~~ section, except that two or more series may be considered to be a single issue under subdivisions (3) and (4) of this subsection if issued on the same day or two consecutive days.
- (6) Any bond may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein. When any such bond ~~shall have~~ has been validly called for redemption and provision ~~shall have~~ has 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.

(7) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be made payable in such kind of money and in such place or places within or without the State of North Carolina, as the board may determine.

(b) Subdivisions ~~(a)(3)~~ and (4) of this section ~~shall do not apply to refunding bonds or to bonds purchased by a State or federal agency. Such subdivisions~~ ~~(3)~~ Subdivisions (a)(3) and (4) also ~~shall do not apply to bonds the interest on which is or may be includable in gross income for purposes of federal income tax, provided that as long as the dates for payment of principal on these bonds have been approved by the Commission. For the purposes of subdivisions (a)(3) and (4) of this section and for bonds the interest on which is or may be includable in gross income for purposes of federal income tax, payment of an installment of principal may on which such bonds shall be stated to mature shall be approved by the Commission and the Commission may require that the payment of all or any part of the principal of and interest and any premium on such bonds be provided for by the maturity of a bond, mandatory redemption of principal prior to maturity, a sinking fund, a Credit Facility, credit facility as defined in G.S. 159-79, or such any other means as may be satisfactory to the Commission.~~"

SECTION 3. G.S. 160A-20 reads as rewritten:

"§ 160A-20. Security interests.

(a) ~~Purchase. – Units of local government, as defined in subsection (h),~~ A unit of local government may purchase, or finance or refinance the purchase of, may purchase or finance the purchase of real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) ~~Improvements. – Units of local government, as defined in subsection (h),~~ A unit of local government may finance or refinance the construction or repair of fixtures or improvements on real property by contracts that create in some or all of the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such the construction or repair.

(c) ~~Accounts. – Units of local government, as defined in subsection (h),~~ A unit of local government may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such the advance funding are invested pending disbursement. A unit of local government may also use other accounts, such as debt service payment accounts and debt service reserve accounts, to facilitate transactions authorized by this section. To secure transactions authorized by this section, a unit of local government may also create security interests in these accounts.

(d) ~~Nonsubstitution. – No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:~~

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any fixture, improvement, project, or property ~~financed~~ financed, refinanced, or purchased pursuant to such the contract.

(e) ~~Oversight. – A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:~~

- (1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
- (2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) Public Hospitals. – A nonprofit ~~corporation or association~~ entity operating or leasing a public hospital may ~~only~~ enter into a contract pursuant to this section only if the nonprofit corporation or association entity will have an ownership interest in the property being ~~financed, financed or refinanced,~~ including a leasehold interest, and the interest. The security interest granted in such the property being financed shall only be shall be only to the extent of ~~such the nonprofit entity's~~ property interest. In addition, any contract entered into by a nonprofit ~~corporation or association~~ entity operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority ~~which that~~ owns ~~such the~~ hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by ~~such the nonprofit~~ entity.
- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated ~~bank eligible~~ bank-eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a ~~material~~ material, adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or would otherwise materially interfere with an anticipated financing by ~~such the nonprofit~~ entity.

(f) Limit of Security. – No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this ~~section, and the section.~~ The taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Public Hearing. – Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) Local Government Defined. – As used in this section, the term "unit of local government" means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
- (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

- (6) A local school administrative unit whose board of education is authorized to levy a school tax.
- (6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
- (6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- (9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.
- (10) A regional natural gas district, as defined by Article 28 of this Chapter.
- (11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.
- (12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39."

SECTION 4. Chapter 159 of the General Statutes is amended by adding a new Article to read:

"Article 13.

"Interest Rate Swap Agreements For Governmental Units.

"§ 159-193. Definitions.

The following definitions apply in this Article:

- (1) Governmental unit. – Any of the following:
 - a. A unit of local government as defined in G.S. 159-44.
 - b. A municipality as defined in G.S. 159-81.
 - c. A joint agency as defined in G.S. 159B-3.
 - d. Any department, agency, board, commission, or authority of the State that is authorized by law to issue bonds.
 - e. The State Treasurer when participating in the issuance or incurrence of obligations for or on behalf of the State pursuant to an act of the General Assembly.
- (2) Obligations. – Any of the following:
 - a. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by a governmental unit.
 - b. Lease purchase or installment financing agreements entered into by a governmental unit.
- (3) Swap agreement. – Any of the following:
 - a. An agreement, including terms and conditions incorporated by reference in the agreement, that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, rate cap agreement, rate floor agreement, rate collar agreement, or other similar agreement, including any option to enter into or terminate any of the foregoing.
 - b. Any combination of the agreements described in sub-subdivision a. of this subdivision.
 - c. A master agreement for any of the agreements described in sub-subdivisions a. and b. of this subdivision, together with all supplements.
 - d. One or more transactions entered into pursuant to a master agreement.

"§ 159-194. Swap agreements.

(a) Subject to the provisions of this Article, a governmental unit may from time to time purchase, enter into, modify, amend, or terminate one or more swap agreements

that it determines are necessary or desirable in connection with the issuance, incurrence, carrying, or securing of obligations. This authorization also includes the authority to enter into modifications or reversals of a swap agreement previously entered into by the governmental unit and the authority to enter into a swap agreement that modifies the interest rate payment calculation method under a swap agreement previously entered into to another interest rate calculation method or that reverses, in whole or in part, the effect of a prior swap agreement on the governmental unit's interest rate cost or risk. A swap agreement entered into by a governmental unit may contain any provisions, including provisions regarding payments, term, termination payments, security, default, and remedies, and may be with any parties, that the governmental unit determines are necessary or desirable.

(b) No governmental unit shall enter into a swap agreement pursuant to this Article other than for the primary purpose of managing interest rate risk on or interest rate costs of its obligations. A swap agreement may provide that the payments thereunder are based upon a fixed or variable interest rate calculation method. A governmental unit shall not engage in the business of acting as a dealer in swap agreements. A swap agreement may be entered into in connection with specific obligations of the governmental unit, which may consist of multiple series or issues of obligations as specified by the governmental unit. The swap agreement may be entered into at a time before, at the same time as, or after, the obligations are issued or incurred by the governmental unit. Each swap agreement may be entered for a notional amount up to, but not exceeding, the principal amount of the obligations with respect to which the swap agreement is entered. A swap agreement may have a term as long as, or less than, the term of the obligations with respect to which the swap agreement is entered.

(c) In connection with entering into a swap agreement, a governmental unit may enter into credit enhancement agreements to secure the obligations of the governmental unit under the swap agreement, with any payment, security, default, remedy, and other terms and conditions that the governmental unit determines, including entering into binding agreements to deliver collateral, either at the time the swap agreement is entered into or at future times under conditions set forth in the swap agreement.

"§ 159-195. Nature of duties of a governmental unit under a swap agreement.

The duty of a governmental unit to make the payments required and to perform the other duties of the governmental unit under a swap agreement shall constitute a continuing contractual obligation of the governmental unit, enforceable in accordance with applicable law for the enforcement of contractual obligations of that governmental unit. A governmental unit may limit its duties under a swap agreement to designated property or a designated source of revenues or receipts of the governmental unit, such as the revenues of a specified utility or other public service enterprise system of the governmental unit. If a governmental unit enters into a swap agreement in connection with obligations that are secured by a designated form of security, then, subject to the terms of the bond order or resolution, trust indenture or trust agreement, installment contract or lease purchase agreement, or similar instrument pursuant to which the obligations are issued or incurred, the governmental unit may pledge, mortgage, or grant a security interest in the revenues of the utility or other public service enterprise system, program, receipts, property, or similar arrangement securing the obligations to secure the payment and performance of its duties under the swap agreement. Any pledge of assets, revenues, or receipts to secure the duties of a governmental unit under a swap agreement shall become effective in the same manner and to the same extent as a pledge of those assets, revenues, or receipts to secure the obligations with respect to which the swap agreement is entered.

"§ 159-196. Approval by Commission.

(a) Approval Required. – If either of the following conditions is met, a governmental unit shall not enter into a swap agreement unless the Commission first approves the governmental unit's entering into the swap agreement:

(1) The unit is a unit of local government as defined in G.S. 159-44, a municipality as defined in G.S. 159-81, or a joint agency as defined in G.S. 159B-3.

(2) The sale, issuance, or incurrence of the obligations with respect to which the swap agreement is entered into is subject to the approval of the Commission.

(b) Factors. – The Commission may consider all of the following factors in determining whether to approve the swap agreement:

(1) The nature and amount of the outstanding debt of the governmental unit proposing to enter the swap agreement.

(2) The governmental unit's debt management procedures and policies.

(3) To the extent applicable, the governmental unit's compliance with the Local Government Budget and Fiscal Control Act.

(4) Whether the governmental unit is in default in any of its debt service obligations.

(5) The credit rating of the governmental unit.

(c) Amendments. – If a swap agreement is subject to approval by the Commission pursuant to this section and is approved, then the governmental unit shall not enter into any amendment to the swap agreement that terminates or changes the time period covered by the swap agreement, changes the interest rate calculation method under the swap agreement, or changes the notional amounts covered by the swap agreement without the prior approval of the Secretary of the Commission.

(d) Approval Not Required. – A swap agreement is not subject to approval by the Commission except as provided in this section. This section does not require the approval of the Commission of a swap agreement entered into by a private entity receiving the benefit of financing through the issuance of obligations by a governmental unit.

"§ 159-197. Additional method.

This Article provides an additional and alternative method for the doing of the things authorized by it and is supplemental to powers conferred by other laws. This Article does not derogate any existing powers.

"§ 159-198. Severability.

If any provision of this Article or its application is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

"§ 159-199. Validation of preexisting swap agreements.

All proceedings taken by the governing bodies of governmental units in connection with the authorization of swap agreements and all swap agreements entered into by governmental units before the effective date of this Article are ratified.

"§ 159-200. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes."

SECTION 5. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 17th day of
July, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:21 p.m. this 7th day of August, 2003