

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 730

Short Title: Industrial Revenue Bond Changes.

(Public)

Sponsors: Senator Ballance.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE ISSUANCE OF BONDS BY
INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING
AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159C-6 reads as rewritten:

"§ 159C-6. Bonds.

Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding ~~30 years from~~ 35 years after the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the

1 bonds and the place or places of payment of principal and interest. In case any officer
2 whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or
3 coupons ~~shall cease~~ ceases to be ~~such that~~ that officer before the delivery of such bonds, such
4 signature or such facsimile shall nevertheless be valid and sufficient for all purposes the
5 same as if ~~he the officer~~ the officer had remained in office until such delivery. The authority may
6 also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds
7 may be issued in coupon or in fully registered form, or both, as the authority may
8 determine, and provision may be made for the registration of any coupon bonds as to
9 principal alone and also as to both principal and interest, and for the reconversion into
10 coupon bonds of any bonds registered as to both principal and interest, and for the
11 interchange of registered and coupon bonds.

12 The proceeds of the bonds of each issue shall be used solely for the payment of the
13 cost of the project or projects, or a portion thereof, for which ~~such bonds shall~~ the bonds
14 have been issued, and shall be disbursed in such manner and under such restrictions, if
15 any, as the authority may provide in the financing agreement and the security document.
16 If the proceeds of the bonds of any issue, by reason of increased construction costs or
17 error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in
18 like manner be issued to provide the amount of ~~such the~~ the deficiency. The authority may
19 issue interim receipts or temporary bonds, with or without coupons, exchangeable for
20 definitive bonds when such bonds have been executed and are available for delivery. The
21 authority may also provide for the replacement of any bonds ~~which shall~~ that become
22 mutilated or ~~shall be~~ are destroyed or lost.

23 Bonds may be issued under the provisions of this Chapter without obtaining, except as
24 otherwise expressly provided in this Chapter, the consent of the State or of any political
25 subdivision or of any agency of ~~either thereof, either,~~ either, and without any other proceedings
26 or the happening of any conditions or things other than those proceedings, conditions or
27 things which are specifically required by this Chapter and the provisions of the financing
28 agreement and security document authorizing the issuance of such bonds and securing the
29 same."

30 Section 2. G.S. 159C-7 reads as rewritten:

31 "**§ 159C-7. Approval of ~~project~~ project by Secretary of Commerce.**

32 (a) Approval Required. – No bonds may be issued by an authority unless the
33 project for which ~~the issuance thereof~~ their issuance is proposed is first approved by the
34 Secretary of Commerce. The authority shall file an application for approval of its
35 proposed project with the Secretary of Commerce, and shall notify the Local Government
36 Commission of such filing.

37 (b) Findings. – The Secretary shall not approve any proposed project unless ~~he~~
38 ~~shall make~~ the Secretary makes all of the following, applicable findings:

- 39 (1) In the case of a proposed industrial project,
40 a. That the operator of the proposed project pays, or has agreed to
41 pay thereafter, an average weekly manufacturing wage that (i)
42 ~~which~~ is above the average weekly manufacturing wage paid in

- 1 the county, or (ii) ~~which~~ is not less than ten percent (10%) above
2 the average weekly manufacturing wage paid in the State, and
3 b. That the proposed project will not have a materially adverse
4 effect on the ~~environment~~; environment.
- 5 (2) In the case of a proposed pollution control project, that such project will
6 have a materially favorable impact on the environment or will prevent
7 or diminish materially the impact of pollution which would otherwise
8 ~~occur~~; and occur.
- 9 (2a) In the case of a hazardous waste facility or low-level radioactive waste
10 facility ~~which~~ that is used as a reduction, recovery or recycling facility,
11 that such project will further the waste management goals of North
12 Carolina and will not have an adverse effect upon public health or a
13 significant adverse effect on the environment.
- 14 (3) In any case (whether the proposed project is an industrial or a pollution
15 control project), except a pollution control project for a public utility,
16 a. That the jobs to be generated or saved, directly or indirectly, by
17 the proposed project will be large enough in number to have a
18 measurable impact on the area immediately surrounding the
19 proposed project and will be commensurate with the size and
20 cost of the proposed project,
21 b. That the proposed operator of the proposed project has
22 demonstrated or can demonstrate the capability to operate such
23 project, and
24 c. That the financing of such project by the authority will not cause
25 or result in the abandonment of an existing industrial or
26 manufacturing facility of the proposed operator or an affiliate
27 elsewhere within the State unless the facility is to be abandoned
28 because of obsolescence, lack of available labor in the area, or
29 site limitations.

30 If the initial proposed operator of a project is not expected to be the operator for the
31 term of the bonds proposed to be issued, the Secretary may make the findings required
32 pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The
33 initial operator shall be identified in the application for approval of the proposed project.
34 ~~In no case shall the Secretary of Commerce~~

35 (c) Public Hearing. – The Secretary of Commerce shall not approve any proposed
36 project pursuant to this section unless the governing body of the county in which the
37 project is located has first conducted a public hearing and, at or after the public hearing,
38 approved in principle the issuance of bonds under this Chapter for the purpose of paying
39 all or part of the cost of the proposed project. Notice of the public hearing shall be
40 published at least once in at least one newspaper of general circulation in the county not
41 less than 14 days before the public hearing. The notice shall describe generally the bonds
42 proposed to be issued and the proposed project, including its general location, and any
43 other information the governing body considers appropriate or the Secretary of

1 Commerce prescribes for the purpose of providing the Secretary with the views of the
2 community. The notice shall also state that following the public hearing the authority
3 intends to file an application for approval of the proposed project with the Secretary of
4 Commerce, and that any person who has an objection or reservation with respect to the
5 proposed project must file a written notice of the objection or reservation with the
6 authority or with the Secretary of Commerce before the Secretary approves the project.

7 (d) Certificate of Department of Environment, Health, and Natural Resources. –
8 The Secretary of Commerce shall not make the findings required by subdivisions (1)b
9 and (2) of this section unless he shall have the Secretary has first received a certification
10 from the Department of Environment, Health, and Natural Resources that, in the case of a
11 proposed industrial project, the proposed project will not have a materially adverse effect
12 on the environment and that, in the case of a proposed pollution control project, the
13 proposed project will have a materially favorable impact on the environment or will
14 prevent or diminish materially the impact of pollution which would otherwise occur. In no
15 case shall the The Secretary of Commerce shall not make the findings required by
16 subdivision (2a) unless he shall have the Secretary has first received a certification from
17 the Department of Environment, Health, and Natural Resources that the proposed project
18 is environmentally sound, will not have an adverse effect on public health and will
19 further the waste management goals of North Carolina. The Secretary of Commerce shall
20 deliver a copy of the application to the Department of Environment, Health, and Natural
21 Resources within two working days after it is filed. The Department of Environment,
22 Health, and Natural Resources shall provide each certification to the Secretary of
23 Commerce within seven days after the applicant satisfactorily demonstrates to it that all
24 permits, including environmental permits, necessary for the construction of the proposed
25 project have been obtained, unless the authority consents to a longer period of time. In
26 any case, for a project that is subject to the findings required by subdivision (b)(2) of this
27 section, the Secretary shall approve or disapprove the proposed project within 10 days
28 after receiving the required certification from the Department of Environment, Health,
29 and Natural Resources required, unless the authority consents to a longer period of time.
30 In any case where the Secretary shall make

31 (e) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of
32 the required findings respecting a proposed industrial project except that prescribed in
33 subparagraph (1)a of this section, the Secretary may, in his the Secretary's discretion,
34 approve the proposed project if he shall have the Secretary has received (i) a resolution of
35 the governing body of the county requesting that the proposed project be approved
36 notwithstanding that the operator will not pay an average weekly manufacturing wage
37 above the average weekly manufacturing wage in the county and (ii) a letter from an
38 appropriate State official, selected by the Secretary, to the effect that unemployment in
39 the county is especially severe.

40 (f) Rules. – To facilitate his review of each proposed project, the Secretary may
41 require the authority to obtain and submit such data and information about such project as
42 the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the
43 authority to hold a public hearing on the proposed project for the purpose of providing the

1 Secretary directly with the views of the community to be affected. The Secretary may also
2 prescribe such forms and such rules and regulations as he shall deem as the Secretary
3 considers reasonably necessary to implement the provisions of this section.

4 (g) Certificate of Approval. – If the Secretary approves the proposed project, he
5 the Secretary shall prepare a certificate of approval evidencing such approval and setting
6 forth his findings and the findings. If no objections or reservations with respect to the
7 proposed project were filed with the county at or before the public hearing or with the
8 Secretary during the period of time that the application was pending, the certificate of
9 approval shall become effective immediately upon issuance, the validity of the approval
10 shall be conclusively presumed, and no court shall have the authority to inquire into the
11 approval. In all other cases the Secretary shall cause said the certificate of approval to be
12 published in a newspaper of general circulation within the county. Any such approval
13 shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of
14 North Carolina only by an action filed, within 30 days after notice of such findings and
15 approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The
16 superior court is hereby vested with jurisdiction to hear such action, but if no such action
17 is filed within the 30 days herein prescribed, the validity of such approval shall be
18 conclusively presumed, and no court shall have authority to inquire into such approval.
19 Copies of the certificate of approval of the proposed project will be given to the authority,
20 the governing body of the county and the Secretary of the Local Government
21 Commission.

22 ~~Such~~ The certificate of approval shall become effective immediately upon issuance
23 where no publication is required, or shall become effective immediately following the
24 expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final
25 determination by any court of any action timely filed pursuant to this section. ~~Such~~ The
26 certificate shall expire one year after its date unless extended by the Secretary who shall
27 not extend ~~such~~ the certificate unless he shall again approve the Secretary again approves
28 the proposed project as provided in this section. ~~section.~~ If bonds are issued within that
29 year pursuant to the authorization of this Chapter to pay all or part of the costs of the
30 project, however, the certificate shall expire three years after the date of the first issuance
31 of the bonds."

32 Section 3. G.S. 159C-8 reads as rewritten:

33 **"§ 159C-8. Approval of ~~bonds.~~ bonds by Local Government Commission.**

34 (a) No bonds may be issued by an authority unless the issuance thereof is first
35 approved by the Local Government Commission.

36 The authority shall file an application for approval of its proposed bond issue with the
37 Secretary of the Local Government Commission, and shall notify the Secretary of the
38 Department of Commerce of such filing.

39 In determining whether a proposed bond issue should be approved, the Local
40 Government Commission may consider, without limitation, the following:

- 41 (1) Whether the proposed operator and obligor have demonstrated or can
42 demonstrate the financial responsibility and capability to fulfill their
43 obligations with respect to the financing agreement. In making such

determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (1) only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

(b) This section does not prohibit, prevent, or delay the distribution of a preliminary prospectus or offering circular before the Local Government Commission approves the bonds if the following conditions are met:

(1) The prospectus or circular is prepared by a nationally recognized underwriter counsel.

(2) The authority has issued bonds under this Chapter for the operator of the proposed project within 24 months before the application for approval was filed with the Local Government Commission."

Section 4. G.S. 159C-10 reads as rewritten:

"§ 159C-10. Location of projects.

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and

1 operation of the project, may be located in a county or counties other than the county in
2 which the principal part of the project is located so long as the additional portion or
3 portions constitute functionally appurtenant or incidental facilities and the governing
4 body of each other county in which the additional portion or portions of the project is or
5 are located approves the project. In addition, if a project or a group of related projects is
6 located in two or more adjacent counties, the project or related group of projects may be
7 considered to be one project located in any one of the counties with the consent of each
8 authority and each county for all purposes of this Chapter."

9 Section 5. G.S. 159C-19(a) reads as rewritten:

10 "(a) Each authority is hereby authorized to provide by resolution for the issuance of
11 refunding bonds of the authority for the purpose of refunding any bonds then outstanding
12 ~~which shall that~~ have been issued under the provisions of this Chapter, including the
13 payment of any redemption premium thereon and any interest accrued or to accrue to the
14 date of redemption of such bonds, and, if deemed advisable by the authority, for either or
15 both of the following additional purposes:

16 (1) Constructing improvements, additions, extensions or enlargements of
17 the project or projects in connection with which the bonds to be
18 refunded ~~shall~~ have been issued, and

19 (2) Paying all or any part of the cost of any additional project or projects.

20 The issuance of such bonds, the maturities and other details thereof, the rights of the
21 holders thereof, and the rights, duties and obligations of the authority in respect to the
22 same shall be governed by the provisions of this Chapter ~~which that~~ relate to the issuance
23 of bonds, insofar as such provisions may be appropriate ~~therefor. therefor, including that~~
24 any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

25 The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the
26 issuance of any refunding bonds; provided, however, that in the case where the refunding
27 bonds of all or a portion of an issue are to be issued solely for the purpose of refunding
28 outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall
29 not be required as to the project financed with the bonds to be refunded."

30 Section 6. This act is effective when it becomes law.