SENATE BILL 758:
Build NC Bond Act of 2018.

2017-2018 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Transportation. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 5, 2018
Introduced by:	Sens. Rabon, Harrington, J. Davis	**Prepared by:**	Cindy Avrette Staff Attorney
Analysis of:	First Edition		

OVERVIEW: Senate Bill 758 would authorize the issuance of up to $3 billion in special indebtedness to finance the costs of constructing Division Need Projects and Regional Impact Projects in accordance with the Strategic Transportation Investments law in Article 14 of Chapter 136 of the General Statutes.

CURRENT LAW: The State issues two kinds of tax-supported debt:

- General obligation (GO) bonds. Except in limited circumstances, [1] the General Assembly does not have the power to authorize the issuance of GO bonds without a referendum approved by a majority of the voters voting in an election because GO bonds are secured by the general taxing power of the State.
- Special indebtedness. The term "special indebtedness" covers the following forms of debt: limited obligation bonds, certificates of participation, lease-purchase revenue bonds, capital lease obligations, and installment purchase contracts. Special indebtedness maybe issued without voter approval because it is generally secured by a security interest in the capital facilities that are being financed. If the State defaults on its special indebtedness repayments, no deficiency judgment may be rendered against the State, but the capital facilities that serve as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

The State Capital Facilities Act provides the procedural and regulatory provisions needed to carry out special indebtedness. As with revenue bonds, authorization to use special indebtedness must be given by the General Assembly through specific legislation. Before special indebtedness can be issued or incurred, the following process must be followed:

- The State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration.

[1] The North Carolina Constitution allows the General Assembly to issue non-voted general obligation bonds in an amount not to exceed 2/3 of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. Other Constitutional exceptions for non-voted general obligation debt include the following: to fund or refund an existing debt; to supply an unforeseen deficiency in the revenue; to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50% of the taxes due; to suppress riots or insurrections, or to repel invasions; and to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor.

- The Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates.
- The State Treasurer must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.
- Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

BILL ANALYSIS: Senate Bill 758 would authorize an annual issuance of up to $300 million of special indebtedness for the next 10 years to finance Build NC Projects[2]. This authorization would be known as "Build NC Bonds" and the net proceeds must be used as evenly[3] as possible to finance Division Need Projects and Regional Impact Projects, in accordance with the Strategic Transportation Investments (STI) law.[4] The State Treasurer, in consultation with the Department of Transportation, must develop and implement a debt management policy to guide the Department's practices in regards to issuing Build NC Bonds.

The bill intends that no other legislation is needed for the authorization and issuance of this debt. To this end, the bill would provide that this legislation constitutes projects as to which the General Assembly has enacted legislation expressly approving the use of a State supported financing arrangement, as required by G.S. 142-15.17. And that G.S. 142-83(a), which would require the General Assembly to enact legislation describing the capital facility to be financed through special indebtedness and the amount of indebtedness to be issued, does not apply since the guiding parameters are included in this legislation.

Senate Bill 758 would further amend the State Capital Facilities Finance Act to include the following requirements and limitations regarding the issuance and sale of Build NC Bonds:

- The source of repayment for Build NC Bonds is the Highway Trust Fund. The Highway Trust Fund consists of three primary revenue sources: highway use tax, motor fuel excise tax, and title and registration fees.
- The State Treasurer shall not issue any Build NC Bonds unless (i) the State Treasurer recommends the issuance and (ii) the State Treasurer has made a determination that all of the following requirements have been or shall be met:
    - The Department of Transportation's average month end cash balance for the first three months in the calendar year prior to the date of determination is equal to or less than one billion dollars ($1,000,000,000).
    - The total amount of Build NC Bonds outstanding will not cause the recommended transportation debt target established by the Debt Affordability Advisory Committee to be exceeded. The Debt Affordability Study published February 2018 estimates the transportation debt capacity available for each of the next five years, 2018-2022, as $284.6 million.

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[2] The State Capital Facilities Financing Act is used to finance capital facilities. Although the definition of "capital facilities" mentions that it may include streets and infrastructure, the Act has not been used for transportation-related projects to date. Senate Bill 758 does not change the definition of "capital facilities" but it does define the term "Build NC Project" as a capital facility.

[3] The legislation provides that it must be within 2% of 50% of the bond proceeds.

[4] Article 14B of Chapter 136 of the General Statutes.

  - At least 6 months prior to the expected date of a Build NC Bond issuance, the Department of Transportation has consulted with the State Treasurer, the Joint Legislative Transportation Oversight Committee, and the Joint Legislative Commission on Governmental Operations, about the total issuance, debt servicing, and post issuance debt capacity.

- The total amount of special indebtedness resulting from the sale of Build NC Bonds shall not exceed $3 billion.
- Except as otherwise provided, each individual issuance of Build NC Bonds is limited to no more than $300 million in each fiscal year.
- The Department of Transportation may not use the Build NC Proceeds for (i) non-highway projects or (ii) tolling projects.
- The limitation set forth in G.S. 142-83 regarding bond indebtedness supported by the General Fund would not apply.
- Since the projects to be financed with Build NC Bonds are selected through the STI process, the requirement set forth in G.S. 142-84(e) that the Department of Administration make decisions about the type of capital facility and amount financed would not apply.
- Provide that the maturity date for a Build NC Bond may not exceed 15 years. The maturity date for other special indebtedness issued under this Article may not exceed 40 years.

EFFECTIVE DATE: The act would become effective January 1, 2019, and expires December 31, 2028.

BACKGROUND: The Strategic Transportation Investments (STI) law established the Strategic Mobility Formula, which allocates available funds in the Highway Trust Fund based on data-driven scoring and local input. It is also used to develop the State Transportation Improvement Program (STIP), which identifies the transportation projects that will receive funding during a specified 10-year period.[5]

The Strategic Mobility Formula funds projects in 3 categories:

- Division Needs - receives 30% of the available funds, shared equally over DOT's 14 transportation divisions, which are groupings of counties. Projects in this category are analyzed according to the following criteria: congestion, benefit/cost, safety, freight and military, and accessibility/connectivity.
- Regional Impact – receives 30% of the available funds, with funding divided among the regions based on population. Project selection in this category is based 70% on data and 30% on local input. Projects not funded in this category can be funded in the Division Needs category. Projects in this category are analyzed according to the following criteria: congestion; benefit/cost; safety; accessibility/connectivity; and freight and military.
- Statewide Mobility – receives 40% of the available funds. Project selection in this category is based 100% on data. Projects not funded in this category can be funded in the Regional Impact or Division Needs categories. Projects in this category are analyzed according to the following criteria: congestion; benefit/cost; economic competitiveness; safety; multimodal and military; and freight and military.

Howard Marsilio, attorney for the House Transportation Committee, substantially contributed to this summary.

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[5] Summary from the Department of Transportation website.