



# SENATE BILL 265: Bond Info Transparency/LGC Toolkit II.

2021-2022 General Assembly

<b>Committee:</b>		<b>Date:</b>	July 14, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Nicholas Giddings Staff Attorney
<b>Analysis of:</b>	S.L. 2022-53		

**OVERVIEW:** *S.L. 2022-53 does the following:*

- *Requires units to provide a statement of disclosures that contain the estimated interest costs of the bond issuance, estimated property tax rate changes, if any, needed to service the proposed debt, and a calculation of the two-thirds bonds capacity of the unit for the current fiscal year (Sections 1-4).*
- *Requires units to file interim reports with the Local Government Commission (LGC) for events that will or may have a material, adverse effect on the financial health, operations, or internal controls of the unit (Section 5).*
- *Limits the amount of debt a unit on the most recently published Unit Assistance List could incur without LGC approval (Section 6).*
- *Repeals a provision requiring the State Health Plan to charge interest on late premiums to local governments and charter schools as the provision is not cost-effective to administer (Section 7).*
- *Requires notice to the LGC of the creation of any new public authority or unit that is subject to the Local Government Budget and Fiscal Control Act (Section 8).*
- *Increases the fidelity bond requirements for finance officers to protect the assets of local governments and public authorities (Section 9). This section becomes effective January 1, 2023.*
- *Authorizes charter schools to participate in the State Treasurer's Ancillary Governmental Participant Investment Program (AGPIP) (Section 9.5).*

*Except as otherwise provided, this act became effective July 7, 2022, and applies to bonds issued under bond orders introduced on or after October 1, 2022, and to contracts entered into on or after October 1, 2022.*

**BILL ANALYSIS:** S.L. 2022-53 explicitly requires units to disclose certain information to voters prior to the referendum required for the issuance of general obligation bonds. It requires the information to be disclosed, filed with the LGC, maintained by the Clerk of the board, and posted online, but it does not require the information to be included on the ballot question. The courts have consistently held that the bond order submitted to the voters constitutes a contract between the governmental entity and the voters. Great care is taken to ensure the accuracy of the ballot. Bond counsel strongly advised that the ballot question not include specific information regarding interest rates, interest costs, property tax increases, etc. because the ballot is not a good place to include all the assumptions, qualifications, exceptions and provisos that would be necessary to ensure the validity of the bonds. The inclusion of these provisions would have made the ballot question long and probably more difficult to read.

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Section 2 requires the finance officer to issue a statement of disclosure regarding estimated interest costs, property tax rates, and existing two-thirds bond capacity. The disclosure must include a statement to the effect that the information contained in it is preliminary and is for general informational purposes only, that there is no assurance that the assumptions upon which it is based will occur and that the occurrences of certain assumptions is beyond the control of the unit. The validity of the bonds is not subject to challenge on the grounds that the actual occurrences when issued are different than the disclosures set forth in the statement.

- Interest. – The statement must estimate the total amount of interest that will be paid on the bonds over the expected term of the bonds. The disclosure must contain a summary of the assumptions upon which the estimate is based, and the LGC must find that those assumptions are reasonable as part of the unit's bond application approval process (Section 1).
- Property tax rates. – The statement must estimate the increase in property taxes, if any, necessary to service the proposed debt. If no increase in property tax rate is estimated to be needed, there must be a brief statement to the effect that the existing projected revenues are expected to be sufficient to pay the principal and interest of the bonds.
- Two-thirds bonds capacity. – The statement must disclose the amount of two-thirds bonds capacity the unit has available for the current fiscal year. This provision is about the constitutional and statutory provisions that allow the issuance of new general obligation debt in a fiscal year in an amount up to two-thirds of the net reduction of general obligation debt in the prior fiscal year. The determination as to a unit's two-thirds bonds capacity is made annually and is based on the net principal reduction of all outstanding general obligation debt for the given fiscal year.

Sections 3 and 4 make corresponding changes to the publication notices.

Sections 5 through 9.5 make the following changes:

- Section 5 allows the LGC to require a local unit to report an event that will or may have a material, adverse effect on the financial health, operations, or internal controls of the unit. The LGC must adopt a policy specifying what those events are. The State Treasurer requested this change because the filing of an interim report may act as an early warning sign of upcoming fiscal distress and give the LGC more information when evaluating a unit's fiscal condition for the issuance of debt that may not be reflected on the unit's current annual report.
- Section 6 further limits the types of contracts a unit included on the most recently published Unit Assistance List<sup>1</sup> could issue without LGC approval. Under current law, a unit of local government may not enter into a lease, acquisition, or construction of capital assets which extends for five years or more from the date of the contract and that obligates the unit over the full term of the contract to more than \$500,000 or 1/10th of 1% of the assessed value of property subject to taxation, whichever is less. This section reduces the length of the contract to three or more years, and the contract amount to \$50,000 for units included on the most recently published Unit Assistance List. This section also adds an exclusion for contracts for motor vehicles. This section was requested by the State Treasurer.
- Section 7 repeals a provision requiring the State Health Plan to charge interest on late premiums to local governments and charter schools that participate in the Plan. Under current law, premiums

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<sup>1</sup> The LGC compiles an annual Unit Assistance List based on audited data that rates local governments' financial risk levels across three categories: internal control issues, financial issues from general funds, and financial issues from water and sewer funds. Based on June 30, 2019 audited data, there are around 100 municipalities, 18 counties, and 5 utility districts on the Unit Assistance List.

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due to the Plan from charter schools and local government units which are not timely paid are assessed interest at 1.5% of the amount due to the Plan. The State Health Plan requested the repeal of this provision because it costs more to administer than it yields in revenue.

- Section 8 requires local governments and state entities to notify the LGC within 60 days of the creation of a new public authority or unit that is subject to the Local Government Budget and Fiscal Control Act. The LGC requested this change to ensure it has knowledge of newly created units of government that require regulatory oversight by the LGC.
- Section 9 provides that fidelity bonds for finance officers may not be less than the greater of \$50,000 or 10% of the unit's annually budgeted funds, up to \$1 million. Under current law, a fidelity bond of at least \$50,000 is required of the finance officer of each unit of local government and public authority. The LGC requested this change because the current minimum bond requirement of \$50,000 is insufficient to protect the assets of some local governments and public authorities. This section also mandates that a person who cannot be bonded may not be appointed to the position for which the bond is required.
- Section 9.5 authorizes charter schools to participate in the AGPIP. The State Treasurer maintains the AGPIP and is authorized to invest monies for governmental entities that are outside of the North Carolina Retirement System.<sup>2</sup> The Treasurer has established several investment pools (or Funds), as authorized by North Carolina law, for investment by participants in the AGPIP to help ensure these investments benefit from low-cost professional management.<sup>3</sup> A more detailed description of these funds and the program can be found [here](#) and [here](#).

**BACKGROUND:** Article 4 of Chapter 159 of the General Statutes (Local Government Bond Act) governs the ability of local governments to borrow money secured by a pledge of the taxing power. When a local government proposes to issue bonds that must be approved by a vote of the people,<sup>4</sup> it must publish a notice of intent to apply to the LGC for approval. After considering an application, the LGC enters an order either approving or denying the application after considering several factors. The LGC must approve the application if it determines the following:

- The proposed bond issue is necessary or expedient.
- The proposed amount is adequate for the proposed purpose.
- The unit's debt management procedures are good, or that reasonable assurances have been given that its debt will be managed in strict compliance with the law.
- The increase in taxes, if necessary, to service the proposed debt will not be excessive.

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<sup>2</sup> Examples of participants in the program include: local governments, traditional school administrative units, the Escheat Fund, public hospitals, Local Government Other Post-Employment Benefits Trusts, Local Government Law Enforcement Special Separation Allowance Trusts, the North Carolina Conservation Grant Fund, the State Health Plan, the Disability Income Plan, and the State Educational Assistance Authority.

<sup>3</sup> Three of these Funds are the Bond Index Fund, the Equity Index Fund, and the Short-Term Investment Fund, which allow a participant to invest across the investment-grade fixed income maturity spectrum from short-term, highly liquid money market instruments to longer maturity bonds and notes.

<sup>4</sup> Bonds issued for the following purposes do not require voter approval: (1) to suppress riots, insurrections, or any extraordinary breach of law and order; (2) to supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance; (3) to meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor; (4) to refund outstanding general obligation bonds or general obligation bond anticipation notes; and (5) bonds for certain purposes in an amount up to two-thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metro water district, or city was reduced in the preceding fiscal year.

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- The proposed bonds can be marketed at reasonable rates of interest.

After or at the same time the application is filed with the LGC, a bond order must be introduced before the governing board of the local government. Once introduced, the board must schedule a public hearing. Before the public hearing, the finance officer of the local government unit must file a statement with the clerk and the LGC indicating the estimated total amount of interest that will be paid on the bonds over the expected term of the bonds and a summary of the assumptions upon which the estimate is based, with a proviso that the estimated amount of interest is preliminary, is for general informational purposes only, and that the validity of the bonds may not be challenged on the basis of the actual interest being different than the estimated interest once the bonds are issued.

The bond order must be published after it has been introduced and again after it has been approved. Upon publication after introduction, it must include a statement describing the amount of the proposed bonds, indicating that a tax may be levied to pay the principal and interest on the bonds, and announcing when the public hearing will be held. Upon publication after adoption, it must include a statement that any action challenging the validity of the order must commence within 30 days after the date of publication of the notice. Each publication must include a statement in the order that the finance officer has filed a Statement of Estimated Interest and indicating what the estimated amount is. A summary of the assumptions may be included in the publication and disclaimer language must be included to the effect that the estimated amount of interest is preliminary, is for general informational purposes only, and that the validity of the bonds may not be challenged on the basis of the actual interest being different than the estimated interest once the bonds are issued.

Once a bond order is approved by the governing board, and the bond order published a second time, a referendum must be held. The General Assembly amended the ballot question S.L. 2013-200 to require it to say that the bonds will be repaid *plus interest* and that taxes may be levied to pay the principal and interest on the bonds. The ballot question reads:

"Shall the order authorizing \$ \_\_\_\_\_ bonds plus interest for (briefly stating the purpose) and providing that additional taxes may be levied in an amount sufficient to pay the principal of and interest on the bonds be approved?

[ ] YES

[ ] NO"

Once the bond order is approved by the voters, bonds may be issued under it at any time within seven years after the order takes effect and up to 10 years with LGC approval. Any action contesting the validity of a bond referendum must begin within 30 days after the publication of the results. After this time, no right of action may be brought. Chapter 142 governs the issuance of State debt.

**EFFECTIVE DATE:** Section 9 becomes effective January 1, 2023. The remainder of the act became effective July 7, 2022, and applies to bonds issued under bond orders introduced on or after October 1, 2022, and to contracts entered into on or after October 1, 2022.

*Cindy Avrette, staff attorney in the Legislative Analysis Division, substantially contributed to this summary.*