

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 841*
PROPOSED COMMITTEE SUBSTITUTE H841-PCS80368-SVx-14

Short Title: Changes for Bonds Authorized Under ARRTA.

(Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA GENERAL STATUTES TO ALLOW THE STATE TO TAKE FULL ADVANTAGE OF THE EXPANSION OF EXISTING BOND PROGRAMS AND THE CREATION OF NEW BOND PROGRAMS UNDER THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009 (ARRTA).

The General Assembly of North Carolina enacts:

SECTION 1. Article 34B of Chapter 115C of the General Statutes reads as rewritten:

"Article 34B.

"Qualified Zone Academy ~~Bonds~~ Bonds and Qualified School Construction Bonds.

"§ 115C-489.5. **Qualified zone academy ~~bonds~~; bonds and qualified school construction bonds; findings.**

The General Assembly finds:

- (1) Section 226 of the Taxpayer Relief Act of 1997, as codified at ~~26 U.S.C. § 1397E~~, 26 U.S.C. § 54E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.
- (2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.
- (2a) Section 1521, et seq., of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted as 26 U.S.C. § 54F, provides a new source of funds for construction, rehabilitation, or repair of public school facilities or for acquisition of land for public school facilities through the issuance of qualified school construction bonds.
- (3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy ~~bonds~~ bonds or qualified school construction bonds. It is intended that the qualified zone academy bonds and qualified school construction bonds be sold at par value—a price so that the tax credits received are instead produce the economic equivalent of interest that



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1 otherwise would have been paid on the bonds. Therefore, issuers of qualified
2 zone academy bonds or qualified school construction bonds are obligated to
3 repay the principal amount of the qualified zone academy bonds or qualified
4 school construction bonds but need not make interest payments.

- 5 (4) Applicable federal law limits the amount of qualified zone academy bonds
6 and qualified school construction bonds that may be issued in North
7 Carolina in a calendar year. The amount of qualified school construction
8 bonds that may be issued in the State is divided between amounts
9 specifically designated for identified local school districts pursuant to
10 ARRTA ("local allocation") and amounts allocated to the entire State for use
11 throughout the State ("statewide allocation").

12 **"§ 115C-489.6. Administration; consultation; issuance of bonds.**

13 (a) ~~State Board of Education to Administer QZAB~~ Program. – The State Board of
14 Education is designated the State education agency responsible for administering the qualified
15 zone academy bond program in North Carolina for the purposes of ~~26 U.S.C. § 1397E.26~~
16 U.S.C. § 54E. The State Board of Education shall perform all activities required to implement
17 and carry out the qualified zone activity bond program in North Carolina. Those activities
18 include:

19 ...

20 (a1) Qualified School Construction Bond Program. – The State Board of Education is
21 designated the State education agency responsible for administering the statewide allocation of
22 authority to issue qualified school construction bonds under 26 U.S.C. § 54F. The State Board
23 of Education shall perform all activities required to implement and carry out the statewide
24 allocation for the qualified school construction bond program in North Carolina. Those
25 activities include:

- 26 (1) Designing an application process under which proposals may be solicited
27 from issuers wishing to issue qualified school construction bonds pursuant to
28 the statewide allocation.
- 29 (2) Awarding the State's allocation of total funds among selected applicants and
30 establishing conditions upon the usage of the allocation. These conditions
31 may include:
- 32 a. Requiring that the bond proceeds be used for purposes permitted
33 under 26 U.S.C. § 54F.
- 34 b. Conditions designed to assure that the allocation is used in a timely
35 manner and that the allocations are made in accordance with the
36 requirements of federal statutes, regulations, and rulings.
- 37 (3) Confirming that the terms of any qualified school construction bonds issued
38 in accordance with this program are consistent with the terms of the federal
39 program.
- 40 (4) Acting as the State entity designated to receive notice from any local school
41 district that it will not utilize its local allocation so that the unused resource
42 will become part of the statewide allocation. Local school districts receiving
43 a local allocation are hereby directed to coordinate the use of such allocation
44 with the State Board of Education so that any local allocation that will not be
45 used by the local school district becomes eligible for use as part of the
46 statewide allocation.

47 (b) Assistance. – The Department of Public Instruction shall provide the State Board of
48 Education any support it requires in carrying out this section.

49 (c) Consultation. – In reviewing applications and awarding allocations, the State Board
50 of Education shall consult with the Local Government Commission to determine whether a

1 prospective issuer of qualified zone academy bonds or qualified school construction bonds is
2 able to issue or incur marketable obligations.

3 (d) Issuance of Bonds. – Any ~~bonds designated as~~ qualified zone academy bonds or
4 qualified school construction bonds may be issued pursuant to the applicable provisions of and
5 in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General
6 Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to
7 the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), ~~bonds designated~~
8 ~~as~~ qualified zone academy bonds or qualified school construction bonds to be issued pursuant
9 to the Local Government Bond Act may be sold by the Local Government Commission at
10 private sale."

11 **SECTION 2.** G.S. 143-433.6 is amended by adding two new subsections to read:

12 "(c) The General Assembly further finds and determines that section 1400U-3 of the
13 American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt
14 facility bond called "recovery zone facility bonds" to be used to finance construction,
15 renovation, and equipping of recovery zone property for use in any trade or business in a
16 recovery zone, all as defined in ARRTA, and a new type of governmental bond called
17 "recovery zone economic development bonds." The ARRTA provides a formula for allocation
18 of authority to issue recovery zone facility bonds and recovery zone economic development
19 bonds to the states, and by which the authority is to be reallocated by the State to counties and
20 large municipalities within the State.

21 (d) The General Assembly further finds and determines that section 54D of the Internal
22 Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified
23 energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy
24 conservation purposes enumerated in section 54D of the Internal Revenue Code of 1986, as
25 amended. Section 54D and ARRTA provide a national bond limitation for the issuance of
26 QECBs, and the Treasury Department has allocated that authority among the states. Under
27 section 54D, the United States is required to reallocate the authority to issue QECBs to the
28 counties and large local governments within the states based on population, in accordance with
29 the guidelines provided by the Treasury Department, and to assure that not more than thirty
30 percent (30%) of the QECBs issued in a state are used for private activity bonds, as defined in
31 section 54D of the Internal Revenue Code of 1986, as amended."

32 **SECTION 3.** G.S. 143-433.8 reads as rewritten:

33 **"§ 143-433.8. Duties.**

34 The Committee shall perform the following duties:

- 35 (1) Manage the allocation of private activity bonds, low-income housing credits,
36 ~~and~~ qualified public educational facility bonds ~~bonds~~, recovery zone facility
37 bonds, recovery zone economic development bonds, and qualified energy
38 conservation bonds and receive advice from bond issuers, elected officials,
39 and the General Assembly.
- 40 (2) Continue to monitor bond markets, economic development financing trends,
41 school financing trends, housing markets, and tax incentives available to
42 induce events and programs favorable to North Carolina, its cities and
43 counties, and individual citizens.
- 44 (3) Continue to study the ways in which North Carolina can best and most fairly
45 manage and utilize the allocation of private activity bonds, low-income
46 housing credits, ~~and~~ qualified public educational facility bonds ~~bonds~~,
47 recovery zone facility bonds, recovery zone economic development bonds,
48 and qualified energy conservation bonds.
- 49 (4) Report to the Governor, Lieutenant Governor, the Speaker of the House of
50 Representatives, the President Pro Tempore of the Senate, and the Revenue

1 Laws Study Committee as requested and on not less than an annual basis.
2 The annual report is due by November 1 of each year."

3 **SECTION 4.** G.S. 143-433.9(a) reads as rewritten:

4 "(a) To provide for the orderly and prompt issuance of ~~private activity bonds and~~
5 ~~qualified public educational facility bonds, there are hereby proclaimed bonds~~ the allocation of
6 which is managed under this Article, the Committee must follow formulas for allocating the
7 following: (i) the unified volume limitation, (ii) the state housing credit ceiling, ~~and~~ (iii) the
8 annual aggregate limitation on the face amount of qualified public educational facility
9 ~~bonds.~~ bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation
10 on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance
11 of qualified energy conservation bonds. The unified volume limitation for all issues of private
12 activity bonds, other than qualified public educational facility ~~bonds,~~ bonds and recovery zone
13 facility bonds, in North Carolina shall be considered as a single resource to be allocated under
14 this Article. The annual aggregate limitation on the face amount of qualified public educational
15 facility bonds for all issues in North Carolina shall be considered as a single resource to be
16 allocated under this Article. The Committee shall issue the following: (i) allocations of the
17 unified volume limitation, (ii) allocations of the state housing credit ceiling, and (iii) allocations
18 and reallocations of the aggregate limitation on the face amount of qualified public educational
19 facility ~~bonds.~~ bonds, (iv) allocation and reallocation of the authority for issuance of recovery
20 zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for
21 issuance of recovery zone economic development bonds allocated to the State, (vi) allocation
22 and reallocation of authority for issuance of qualified energy conservation bonds allocated to
23 the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed
24 by the Governor. The Committee shall set forth procedures for making such allocations and in
25 the making of such allocations shall take into consideration the best interest of the State of
26 North Carolina with regard to the economic development, school facility needs, energy
27 conservation, green initiatives, and general prosperity of the people of North Carolina. In
28 making the initial allocations for recovery zone facility bonds and recovery zone economic
29 development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3)
30 of ARRTA. In making the initial allocation for qualified energy conservation bonds, the
31 Committee shall follow the guidelines provided in section 54D of the Internal Revenue Code of
32 1986, as amended. The Committee shall make all elective carryforwards of the unused unified
33 volume ~~limitation and~~ limitation, the annual aggregate limitation on the face amount of
34 qualified public educational facility ~~bonds on behalf of the State,~~ bonds, recovery zone facility
35 bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it
36 has allocation authority on behalf of the State. The Committee shall monitor the issuance of
37 qualified energy conservation bonds to ensure that not more than thirty percent (30%) of such
38 bonds are used for purposes that would be treated as private activity bonds under the Internal
39 Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to
40 monitor whether the initial allocations of recovery zone facility bonds or recovery zone
41 economic development bonds to counties and large municipalities pursuant to ARRTA will be
42 utilized, for an allocation that will not be utilized to be waived by notice to the Committee and
43 for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA."

44 **SECTION 5.** G.S. 159-123(b) reads as rewritten:

- 45 "(b) The following classes of bonds may be sold at private sale:
- 46 (1) Bonds that a State or federal agency has previously agreed to purchase.
 - 47 (2) Any bonds for which no legal bid is received within the time allowed for
48 submission of bids.
 - 49 (3) Revenue bonds, including any refunding bonds issued pursuant to
50 G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of
51 the General Statutes.

- 1 (4) Refunding bonds issued pursuant to G.S. 159-78.
 2 (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government
 3 Commission determines that a private sale is in the best interest of the
 4 issuing unit.
 5 (6) ~~Bonds designated as qualified zone academy bonds pursuant to~~
 6 ~~G.S. 115C-489.6, the ownership of which results in a tax credit to the~~
 7 ~~owners thereof pursuant to the provisions of the federal income tax laws, if~~
 8 the Local Government Commission determines that a private sale is in the
 9 best interest of the issuing unit.
 10 (7) Project development financing debt instruments.
 11 (8) General obligation bonds rated below AA grade issued pursuant to the Local
 12 Government Bond Act and not described in subdivisions (1) through (7) of
 13 this subsection that are sold prior to December 31, 2010."

14 **SECTION 6.** G.S. 159C-3 reads as rewritten:

15 **"§ 159C-3. Definitions.**

16 The following definitions apply in this Chapter:

- 17 ...
 18 (3a) Code. – The Internal Revenue Code of 1986, as amended.
 19 ...
 20 (6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly
 21 plant, or fabricating plant; freight terminal; industrial research, development,
 22 or laboratory facility; industrial processing facility; facility used in the
 23 manufacturing or production of tangible personal property; facility used in
 24 the creation or production of intangible property as described in section
 25 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or
 26 manufactured products.
 27 ...
 28 (15a) Special purpose project. – Any structure, equipment, or other facility for any
 29 one or more of the following purposes:
 30 ...
 31 m. Facilities that qualify as recovery zone property in connection with
 32 the issuance of recovery zone facility bonds pursuant to the
 33 American Recovery and Reinvestment Tax Act of 2009."

34 **SECTION 7.** G.S. 159C-6 is amended by adding a new subsection to read:

35 "(a1) A county or city that receives an allocation to issue recovery zone facility bonds
 36 within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance
 37 recovery zone property may designate any authority as the governmental entity authorized to
 38 issue recovery zone facility bonds."

39 **SECTION 8.** G.S. 159D-3 reads as rewritten:

40 **"§ 159D-3. Definitions.**

41 The following terms, whenever used or referred to in this Article, shall have the following
 42 respective meanings, unless a different meaning clearly appears from the context:

- 43 ...
 44 (3a) "Code" means the Internal Revenue Code of 1986, as amended.
 45 ...
 46 (13) "Project" ~~shall mean~~ means any land, equipment or any one or more
 47 buildings or other structures, whether or not on the same site or sites, and
 48 any rehabilitation, improvement, renovation or enlargement of, or any
 49 addition to, any building or structure for use as or in connection with (i) any
 50 industrial ~~project for industry which project may be any project, which may~~
 51 be an industrial or manufacturing factory, mill, assembly plant or plant,

1 fabricating plant, ~~or~~ freight terminal, ~~or~~ industrial research, development or
 2 laboratory ~~facility or~~ facility, industrial processing facility for industrial or
 3 manufactured products, a facility used in the manufacturing or production of
 4 tangible personal property, a facility used in the creation or production of
 5 intangible property as described in section 197(d)(1)(C)(iii) of the Code, or
 6 a distribution facility for industrial or manufactured products, or (ii) any
 7 pollution control project for industry which project may be any air pollution
 8 control facility, water pollution control facility, or solid waste disposal
 9 facility in connection with any factory, mill, plant, terminal or facility
 10 described in clause (i) of this subdivision, or (iii) any combination of
 11 projects mentioned in clauses (i) and (ii) of this subdivision. Any project
 12 may include all appurtenances and incidental facilities such as land,
 13 headquarters or office facilities, warehouses, distribution centers, access
 14 roads, sidewalks, utilities, railway sidings, trucking and similar facilities,
 15 parking facilities, landing strips and other facilities for aircraft, waterways,
 16 docks, wharves and other improvements necessary or convenient for the
 17 construction, maintenance and operation of any building or structure, or
 18 addition thereto.

19"

20 **SECTION 9.** G.S. 159D-45 is amended by adding a new subsection to read:

21 "(g) A county or city that receives an allocation to issue recovery zone facility bonds
 22 within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance
 23 recovery zone property may designate the agency as the governmental entity authorized to
 24 issue recovery zone facility bonds."

25 **SECTION 10.** This act is effective when it becomes law.