

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1276
HOUSE BILL 1326

AN ACT TO PERMIT NORTH CAROLINA CITIES TO USE TAX INCREMENT
FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 159 is amended by enacting a new Article 6 thereof, to read as follows:

"ARTICLE 6.

"Tax Increment Financing Act.

"§ 159-101. **Short title.** — This Article may be cited as the "North Carolina Tax Increment Financing Act."

"§ 159-102. **Definitions.** — As used in this Article:

- (1) 'Bonds' or 'tax increment bonds' means tax increment bonds issued pursuant to this Article.
- (2) 'City' means cities, towns, and incorporated villages.
- (3) 'Costs' means 'capital costs' as defined in G.S. 159-48(h), except that 'costs' also include (i) interest on the bonds being issued or on notes issued in anticipation thereof during construction and for a period not exceeding four years after the estimated date of completion of construction and (ii) the establishment of debt service reserves.

"§ 159-103. **Authorization of tax increment bonds; purposes.** — Each city may issue tax increment bonds pursuant to this Article and use the proceeds to finance the following public activities as part of one or more downtown development projects to meet the costs of one or more redevelopment projects, as defined in G.S. 160A-503, or for any one or more of the purposes for which a city may issue general obligation bonds pursuant to G.S. 159-48, or both. However, the proceeds of such bonds may be used only in the tax increment district the tax increment of which is pledged as security for the bonds.

Subject to agreement with the holders of its tax increment bonds and the limitation on duration of tax increment districts set out in this Article, each city may issue further tax increment bonds and bonds to refund outstanding tax increment bonds of any one or more series whether or not they have matured. Tax increment bonds may be issued partly for the purpose of refunding outstanding tax increment bonds and partly for any other purpose under this Article. Tax increment bonds issued to refund outstanding tax increment bonds shall be issued under this Article and not under Article 4 of this Chapter.

"§ 159-104. **Application to Commission for approval of tax increment bond issue; preliminary conference; acceptance of application.** — A city may not issue tax increment bonds under this Article unless the issue is approved by the Local Government Commission. The council of the issuing city, or its duly authorized agent, shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed tax increment bonds, tax increment district, and tax increment plan and the financial condition of the city as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the council or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue, district, and plan and the timing of the steps to be taken in issuing the bonds. The tax increment district need not be defined and the tax increment plan need not be adopted by the city council at the time it files the application with the secretary. However, before the Commission may enter its order approving the bonds, the council shall have defined the district and adopted the plan.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the city in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement is conclusive evidence that the city has complied with this section.

"§ 159-105. Approval of application by Commission. — (a) In determining whether a proposed tax increment bond issue shall be approved, the Commission may consider:

- (1) whether the project or projects to be financed from the proceeds of the tax increment bond issue are necessary or expedient;
- (2) whether the proposed project or projects are feasible;
- (3) the city's debt management procedures and policies;
- (4) whether the city is in default in any of its debt service obligations;
- (5) whether the private development forecast in the tax increment plan would be likely to occur without the public project or projects to be financed by the tax increment bonds;
- (6) whether taxes on the incremental valuation accruing to the tax increment district, together with any other revenues available, will be sufficient to service the proposed tax increment bonds;
- (7) the ability of the Commission to market the proposed tax increment bonds at reasonable rates of interest.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

- (1) that the proposed tax increment bond issue is necessary or expedient;
- (2) that the amount proposed is adequate and not excessive for the proposed purpose of the issue;
- (3) that the proposed project or projects are feasible;
- (4) that the city's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law;
- (5) that the private development forecast in the tax increment plan would not be likely to occur without the public project or projects to be financed by the tax increment bonds;
- (6) that the proposed tax increment bonds can be marketed at reasonable interest cost to the issuing city;
- (7) that the issuing city has, pursuant to G.S. 160A-515.1, adopted a tax increment plan for the tax increment district for which the bonds are issued.

"§ 159-106. Order approving or denying the application. — (a) After considering an application the Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

(b) Unless the bonds are to be issued for a tax increment district for which a tax increment bond issue has already been approved, the day upon which the Commission enters its

order approving an application for tax increment bonds is also the effective date of the tax increment district for which the bonds are issued.

(c) If the Commission enters an order denying the application, the proceedings under this Article are at an end.

"§ 159-107. Determination of incremental valuation; use of taxes levied on incremental valuation; duration of the district. — (a) Base valuation in the tax increment district. Once the Local Government Commission has entered its order approving a city's application for tax increment bonds, the city shall forthwith notify the tax supervisor of the county in which the tax increment district is located of the existence of the tax increment district. Upon receiving this notice, the tax supervisor shall determine the base valuation of the district, which is the assessed value of taxable property situated in the district on the January 1 immediately preceding the effective date of the district. If the city or a city agency acquired property within the district within one year before the effective date of the district, the tax supervisor shall presume, subject to rebuttal, that the property was acquired in contemplation of establishment of the district and shall include the value of the property so acquired in determining the base valuation of the district. The city may rebut this presumption by showing that the property was acquired primarily for a purpose other than to reduce the tax incremental base. Once he has determined the base valuation of the district, the tax supervisor shall certify this amount to the city and to the county in which the district is located.

(b) Adjustments to the base valuation. During the lifetime of the tax increment district, the base valuation shall be adjusted as follows:

- (1) If the city amends its tax increment plan, pursuant to G.S. 160A-515.1, to remove property from the tax increment district, on the succeeding January 1, that property shall be removed from the district and the base valuation reduced accordingly.
- (2) If the city amends its tax increment plan, pursuant to G.S. 160A-515.1, to expand the district, the new property shall be added to the district immediately. The base valuation of the district shall be increased by the assessed value of the taxable property situated in the added territory on the January 1 immediately preceding the effective date of the district.
- (3) If at the time of a revaluation of property in the county in which the district is located, conducted pursuant to G.S. 105-286, it appears that, based on the schedule of values, standards, and rules approved by the board of county commissioners pursuant to G.S. 105-317, the property values of the district as they existed on the January 1 immediately preceding the effective date of the district would be increased because of the revaluation, then the base valuation shall be increased accordingly.

Any time the base valuation is adjusted, the tax supervisor shall forthwith certify the new base valuation to the city and to the county.

(c) Tax increment fund. When a city has established a tax increment district, and the tax increment bonds for that district are approved by the Commission, the city shall establish a separate fund to account for the proceeds paid to the city from taxes levied on the incremental valuation of the district.

(d) Levy of property taxes within the district. Each year the tax increment district is in existence, the tax supervisor shall determine the current assessed value of taxable property situated in the district. He shall also compute the difference between this current value and the base valuation of the district, by subtracting the base valuation from the current value. That difference, if positive, is the incremental valuation of the district. In each year the district is in existence, the city and the county shall levy taxes against property in the district in the same manner as taxes are levied against other property in the city or county. The proceeds from ad valorem taxes levied on property in the district shall be distributed as follows:

- (1) In any year in which there is no incremental valuation in the district, all the proceeds of the taxes shall be retained by the city and county, as if there were no district in existence.
- (2) In any year in which there is an incremental valuation in the district, the amount of tax due from each taxpayer on property in the district (except for taxes levied to service and repay debt secured by a pledge of the faith and credit, nonschool taxes levied pursuant to a vote of the people, and taxes levied for a municipal or county service district) shall be multiplied by a fraction, the numerator of which is the base valuation for the district and the denominator of which is the current valuation for the district. The amount shown as the product of this multiplication shall, when paid by the taxpayer, be retained by the city and county, as if there were no district in existence. The net proceeds of the remaining amount shall, when paid by the taxpayer, be turned over to the city finance officer, who shall place this amount in the special tax increment fund required by subsection (c) of this section. The net proceeds of each debt service tax, each voted tax, and each service district tax shall be paid to the government levying the tax. 'Net proceeds' is gross proceeds minus refunds, releases and any collection fee paid by the levying government to the collecting government.

(e) Use of moneys in the tax increment fund. Moneys placed in the tax increment fund may be used for any of these purposes, without priority, except as may be imposed by the bond order authorizing the tax increment bonds: (1) to finance city activities in the tax increment district pursuant to the tax increment plan; (2) to meet principal and interest requirements on tax increment bonds and bond anticipation notes issued for the district; and (3) to meet any other requirements imposed by the bond order authorizing the tax increment bonds. If in any year there is any money remaining in the tax increment fund after these purposes have been satisfied, the excess shall be paid to the city's and county's general funds, in proportion to their rates of ad valorem tax on taxable property situated in the tax increment district.

(f) Duration of district. A tax increment district shall terminate at the earlier of (1) the end of the twentieth year after the effective date of the district or (2) the date on which all tax increment bonds issued for the district have been fully retired or sufficient funds have been set aside, pursuant to the bond order authorizing the bonds, to meet all future principal and interest requirements on the bonds.

"§ 159-108. Special covenants. — A tax increment bond order or a trust agreement securing tax increment bonds may contain covenants as to:

- (1) the pledge of all or any part of the taxes received or to be received on the incremental valuation in the tax increment district during the life of the bonds;
- (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 tax increment bonds;
- (5) limitations or restrictions on the purposes to which the proceeds of sale of tax increment bonds may be applied;
- (6) limitations or restrictions on the issuance of additional tax increment bonds or notes for the same tax increment district; the terms upon which such additional tax increment bonds or notes may be issued or secured; or the refunding of outstanding tax increment bonds or notes;

- (7) the acquisition and disposal of property for tax increment bond projects;
- (8) provision for insurance and for accounting reports and the inspection and audit thereof;
- (9) the continuing operation and maintenance of any project financed with the proceeds of the tax increment bonds.

"§ 159-109. Security of tax increment bonds. — Tax increment bonds are special obligations of the issuing city. The city may pledge the following sources of funds to the payment of the bonds, and no other sources: All or a portion of the moneys in the special tax increment fund required by G.S. 159-107(c); proceeds from the sale of property in the tax increment district; net revenues from any public facilities (other than portions of public utility systems) in the tax increment district financed with the proceeds of the tax increment bonds; and, subject to G.S. 159-47, net revenues from any other public facilities (other than portions of public utility systems) in the tax increment district constructed or improved pursuant to the tax increment plan.

The principal and interest on tax increment bonds are not payable from the general funds of the city, nor do the bonds constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the city's property or upon any of its income, receipts or revenues, except as may be provided pursuant to this section. Except as provided in G.S. 159-107, neither the credit nor the taxing power of the city are pledged for the payment of the principal or interest of tax increment bonds; and no holder of tax increment bonds has the right to compel the exercise of the taxing power by the city or the forfeiture of any of its property in connection with any default thereon. Every tax increment bond shall contain such recitals as are necessary to show the limited nature of the security for the bond's payment and that it is not secured by the full faith and credit of the city.

"§ 159-110. Limitations on details of bonds. — In fixing the details of tax increment bonds, the city council is subject to these restrictions and directions:

- (1) The maturity date shall not exceed the shorter of (a) the longest of the various maximum periods of usefulness for the projects to be financed with bond proceeds, as prescribed by the Commission pursuant to G.S. 159-122, or (b) the end of the twentieth year after the effective date of the tax increment district.
- (2) The first payment of principal shall be payable not more than four years after the date of the bonds.
- (3) No bonds may be made payable on demand, but 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. When any such bonds shall have been validly called for redemption and provision shall have 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.
- (4) The bonds may bear interest as such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the issuing city may determine.

"§ 159-111. Annual report. — Each year, in July, each city with outstanding tax increment bonds shall make a report to the county in which the tax increment district for which the bonds were issued is located, setting out the base valuation for the district, the current valuation for the district, the amount of remaining tax increment debt for the district, and the city's estimate of when the debt will be retired."

Sec. 2. (a) G.S. 159-55 is amended by rewriting the last sentence of subsection (a)(1) to read as follows:

"However, for purposes of the sworn statement of debt and the debt limitation, revenue bonds and tax increment bonds shall not be considered debt, and such bonds shall not be included in gross debt nor deducted from gross debt."

(b) G.S. 159-55 is further amended by adding a new sentence at the end of subsection (a)(4) to read as follows:

"In calculating the appraised value, the incremental valuation of any tax increment district located in the unit, as determined pursuant to G.S. 159-107, shall not be included."

Sec. 3. G.S. 159-120 is rewritten as follows:

"§ 159-120. 'Unit' defined. — As used in this Article, unless the context clearly requires another meaning, the words 'unit' or 'issuing unit' mean 'unit of local government' as defined in G.S. 159-44, 'municipality' as defined in G.S. 159-81, and 'city' as defined in G.S. 159-102."

Sec. 4. G.S. 159-122 is amended by adding a sentence at the end of subsection (a) thereof to read as follows:

"The last installment of tax increment bonds shall mature on the earlier of 20 years after the effective date of the tax increment district for which the bonds are issued or the longest of the various maximum periods of usefulness for the projects to be financed with bond proceeds, as prescribed by the Commission pursuant to this section."

Sec. 5. G.S. 159-123 is amended by adding a new paragraph (6) to subsection (b) thereof, to read as follows:

"(6) Tax increment bonds."

Sec. 6. G.S. 159-125 is amended by rewriting subsection (a) thereof, to read as follows:

"(a) Except for revenue bonds and tax increment bonds, no bid for less than the face value of the bonds plus accrued interest may be entertained."

Sec. 7. G.S. 159-129 is amended by rewriting the first sentence thereof to read as follows:

"Each bond or bond anticipation note shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the bonds or notes has been approved under the provisions of the Local Government Bond Act, the Local Government Revenue Bond Act, or the North Carolina Tax Increment Financing Act."

Sec. 8. G.S. 159-132 is amended by adding a new final sentence to read as follows:

"Unless otherwise provided in the trust agreement or resolution securing the bonds, the proceeds of tax increment bonds shall be remitted in the manner provided by this section for the remission of the proceeds of general obligation bonds."

Sec. 9. G.S. 159-160 is rewritten as follows:

"§ 159-160. 'Unit' defined. — As used in this Part, the words 'unit' or 'issuing unit' mean 'unit of local government' as defined in G.S. 159-44, 'municipality' as defined in G.S. 159-81, and 'city' as defined in G.S. 159-102."

Sec. 10. A new G.S. 159-163.1 is enacted, to read as follows:

"§ 159-163.1. Security of tax increment bond anticipation notes. — Notes issued in anticipation of the sale of tax increment bonds are special obligations of the issuing unit. Except as provided in G.S. 159-107, neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of tax increment bonds; and no holder of a tax increment bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of tax increment bonds may be secured by the same pledges, charges, liens, covenants, and agreements made to secure the tax increment bonds. In addition, the proceeds of each tax increment bond issue are pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the sale as the first priority."

Sec. 11. G.S. 159-165(b) is amended by adding a new sentence, between the present third and fourth sentences, to read as follows:

"Unless provided otherwise in the trust agreement or resolution securing the notes, the net proceeds of tax increment bond anticipation notes shall be remitted in the manner provided by this subsection for the remission of the proceeds of general obligation bond anticipation notes."

Sec. 12. G.S. 159-176 is amended by rewriting the first sentence thereof as follows:

"If a unit of local government, a municipality, or a city (as respectively defined in G.S. 159-44, G.S. 159-81, and G.S. 159-102) fails to pay any installment of principal or interest on its outstanding debt on or before the due date (whether the debt is evidenced by general obligation bonds, revenue bonds, tax increment bonds, bond anticipation notes, tax anticipation notes, revenue anticipation notes, or grant anticipation notes) and remains in default for 90 days, the Commission may take such action as it deems advisable to investigate the unit's, municipality's, or city's fiscal affairs, consult with its governing board, and negotiate with its creditors in order to assist the unit, the municipality, or the city in working out a plan for refinancing, adjusting, or compromising the debt."

G.S. 159-176 is further amended by changing the phrase "unit or municipality" each time it appears in the remainder of the section to read "unit, municipality, or city". G.S. 159-177 and G.S. 159-178 are amended by changing the words "unit or municipality" or "unit of local government or municipality" each time they appear to read "unit, municipality, or city"; and by changing the words "unit's or municipality's" each time they appear to read "unit's, municipality's, or city's".

Sec. 13. G.S. 160A-505(a) is amended by rewriting the third sentence thereof to read as follows:

"In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission under this subsection, or exercises those powers, duties, and responsibilities pursuant to G.S. 153A-376 or G.S. 160A-456, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal."

Sec. 14. G.S. 160A-512 is amended in paragraph (6) thereof by rewriting the clause after the third semicolon to read as follows:

"to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the commission (although disposition of the property is still subject to G.S. 160A-514), with 'redevelopers' of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article;"

Sec. 15. A new section G.S. 160A-515.1 is enacted, to read as follows:

"§ 160A-515.1. Tax increment financing. — (a) Authorization. As part of a downtown development project, a city may finance a redevelopment project and any related public improvements with the proceeds of tax increment bonds, issued pursuant to Article 6, G.S. Chapter 159, together with any other revenues that are available to the city. Before it receives the approval of the Local Government Commission for issuance of tax increment bonds, the city's governing body must define a tax increment district and adopt a tax increment plan for the district.

(b) Tax Increment District. A tax increment district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within tax increment districts in a city may not exceed five per cent (5%) of the total land area of the city; and any such district must be located in or near the central business district of the city.

(c) Tax Increment Plan. The tax increment plan shall be compatible with the redevelopment plan or plans for the redevelopment area or areas included within the district. The tax increment plan shall include:

1. a description of the boundaries of the tax increment district;
2. a description of the proposed development of the district, both public and private;
3. the costs of the proposed public activities;
4. the sources and amounts of funds to pay for the proposed public activities;
5. the base valuation of the tax increment district;
6. the projected incremental valuation of the tax increment district;
7. the estimated duration of the tax increment district.

(d) Plan Adoption. Before adopting a plan for a tax increment district, the city council shall hold a public hearing on the plan. The council shall, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once and shall cause notice of the hearing to be mailed, by first class mail, to the board of county commissioners of the county in which the district is located. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the city clerk. At the public hearing, the council shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. The council may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the city's application to issue tax increment bonds has been approved by the Local Government Commission, pursuant to G.S. Chapter 159, Article 6.

(e) Plan Modification. Subject to the limitations of this subsection, a city council may amend a tax increment plan adopted for a tax increment district after the effective date of the district. Before making any amendment, the city council shall hold a public hearing, following the notice requirements set out in subsection (d) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the city may agree with the holders of any tax increment bonds to restrict its power to reduce district boundaries.

(f) Plan Implementation. In implementing a tax increment plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination thereof."

Sec. 16. Liberal Construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof.

Sec. 17. Severability. If any clause or other portion of this Act shall be held invalid, that decision shall not affect the validity of the remaining portions of this act. It is hereby declared that all such remaining portions are severable and that the General Assembly would have enacted such remaining portions if the portions that may be so held to be invalid had not been included in this Chapter.

Sec. 18. This act becomes effective upon the certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with the transactions of the type contemplated by this act has been approved by the people of the State.

In the General Assembly read three times and ratified, this the 22nd day of June, 1982.