Chapter 159.

Local Government Finance.

SUBCHAPTER I. SHORT TITLE AND DEFINITIONS.

Article 1.

Short Title and Definitions.

§ 159-1. Short title and definitions.

(a) This Chapter may be cited as "The Local Government Finance Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning, or unless the word or phrase is given a more restrictive meaning by definition in another Article herein.

(1) "Chairman" means the chairman of the Local Government Commission.

(2) "City" includes towns and incorporated villages.

(3) "Clerk" means an officer or employee of a local government or public authority charged by law or direction of the governing board with the duty of keeping the minutes of board meetings and conserving records evidencing official actions of the board.

(4) "Commission" means the Local Government Commission.

(5) "Publish," "publication," and other forms of the word "publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements.

(6) "Secretary" means the secretary of the Local Government Commission.

(c) Words in the singular number include the plural, and in the plural include the singular. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender. (1927, c. 81, s. 2; 1931, c. 60, s. 2; 1971, c. 780, s. 1.)

§ 159-2. Computation of time.

(a) Notwithstanding any other provisions of law, whenever in this Chapter an act is to be done within a given period of time, the period of time shall be computed according to the rules set out in this section.

(b) When an act is to be done within a given number of days before or after a given day, the period is computed by counting forward beginning with the day following the given day, or counting backward beginning with the day next before the given day. Saturdays, Sundays, and holidays are counted as any other day.

(c) The word "month" means 30 days, unless the words "calendar month" are used, in which case the number of days in the month may vary according to the calendar.

(d) The word "year" means the calendar year.

(e) The word "day," when used to denote a period of time within which an act may be done, means a period of 24 hours beginning at 12:00 midnight.

(f) When a time of day is given, the time is local time in the City of Raleigh, North Carolina. (1971, c. 780, s. 1.)

SUBCHAPTER II.
LOCAL GOVERNMENT COMMISSION.

Article 2.

§ 159-3. Local Government Commission established.

(a) The Local Government Commission consists of nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue each serve ex officio; the remaining five members are appointed to four-year terms as follows: three by the Governor, one by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121. Of the three members appointed by the Governor, one shall be or have been the mayor or a member of the governing board of a city and one shall be or have been a member of a county board of commissioners. The State Treasurer is chairman ex officio of the Local Government Commission. Membership on the Commission is an office that may be held concurrently with one other office, as permitted by G.S. 128-1.1.

(b) The Commission shall meet at least quarterly in the City of Raleigh, and may hold special meetings at any time or place upon notice to each member given in person or by mail not later than the fifth day before the meeting. The notice need not state the purpose of the meeting.

Action of the Commission shall be taken by resolution adopted by majority vote of those present and voting. A majority of the Commission constitutes a quorum.

(c) The appointed members of the Commission are entitled to the per diem compensation and allowances prescribed by G.S. 138-5. All members are entitled to reimbursement for necessary travel and other expenses.

(d) The Commission may call upon the Attorney General for legal advice in relation to its powers and duties.

(e) The Local Government Commission shall operate as a division of the Department of the State Treasurer.

(f) The Commission may adopt rules and regulations to carry out its powers and duties.

(g) An individual serving on the Local Government Commission shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

(1) The individual was not acting within the scope of that individual's official duties.
(2) The individual was not acting in good faith.
(3) The individual committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
(4) The individual derived an improper personal financial benefit, either directly or indirectly, from the transaction.
(5) The individual incurred the liability from the operation of a motor vehicle. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1973, c. 474, s. 2; c. 476, s. 193; 1995, c. 490, s. 30(a); 2018-84, s. 6(a).)

§ 159-4. Executive committee; appeal.

(a) The State Auditor, the State Treasurer, the Secretary of State, and the Secretary of Revenue shall constitute the executive committee of the Local Government Commission. The executive committee is vested with all the powers of the Commission when it is not in session, except that the executive committee may not overrule, reverse, or disregard any action of the full Commission. Action of the executive committee shall be taken by resolution adopted by a majority

of those present and voting. Any three members of the executive committee constitute a quorum. The chairman may call meetings of the executive committee at any time.

(b) Any member of the Commission or any person affected by an action of the executive committee may appeal to the full Commission by filing a request for review with the chairman within five days after the action is taken. Review of executive committee action by the full Commission shall be de novo. (1931, c. 60, ss. 8, 10; 1933, c. 31, s. 2; 1953, c. 675, s. 27; 1971, c. 780, s. 1; 1973, c. 476, s. 193.)

§ 159-5. Secretary and staff of the Commission.

The chairman shall appoint a secretary of the Commission, and may appoint such other deputies and assistants as may be necessary, who shall be responsible to the chairman through the secretary. The secretary and his deputies and assistants shall have and may exercise any power that the chairman himself may exercise. All actions taken by the secretary, including the signing of any documents and papers provided for in this Chapter, shall be effective as though the chairman himself had taken such action or signed such documents or papers. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1983, c. 717, s. 91.)

§ 159-6. Fees of the Commission.

(a) The Commission may charge and collect fees for services rendered and for all expenses incurred by the Commission in connection with approving or denying an application for an issue of other than general obligation bonds or notes, participating in the sale, award or delivery of such issue or carrying out any other of its powers and duties with respect to such issue or the issuer thereof, pursuant to the laws of the State of North Carolina.

(b) The Commission shall establish rules and regulations concerning the setting and collection of such fees. In establishing the amount of or method of determining such fees, the Commission shall take into account, among other things, the scope of its statutory responsibilities and the nature and extent of its services for such issue or issuer or class thereof.

(c) Such fees collected by the Commission shall be incorporated into the budget of the State Treasurer and shall be expended for costs incurred by the Commission in carrying out its statutory responsibilities in the issuance of revenue bonds.

(d) Apart from the above fees, the Commission is authorized to receive reimbursement for all expenses incurred in the sale or issuance of general obligation bonds and notes by assessing and collecting fees.

(e) In addition to any other fees authorized by this section, the Commission may charge and collect fees for services rendered and expenses incurred in reviewing and processing petitions of counties or cities concerning use of local sales and use tax revenue in accordance with G.S. 105-487(c).

(f) The Commission may charge and collect fees for expenses incurred in developing and delivering the training for finance officers and other employees who perform the duties of a finance officer under G.S. 159-25. (1981 (Reg. Sess., 1982), c. 1175; 1983, c. 908, s. 2; 2016-84, s. 2.)

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

Article 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Article 7A of this Chapter or Chapter 159G of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the State Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the State Budget Act (Chapter 143C of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of

value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means.

(c) It is the intent of the General Assembly by enactment of this Article to prescribe for local governments and public authorities a uniform system of budget adoption and administration and fiscal control. To this end and except as otherwise provided in this Article, all provisions of general laws, city charters, and local acts in effect as of July 1, 1973 and in conflict with the provisions of Part 1 or Part 3 of this Article are repealed. No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of Part 1 or Part 3 of this Article unless it expressly so provides by specific reference to the appropriate section.

(d) Except as expressly provided herein, this Article does not apply to school administrative units. The adoption and administration of budgets for the public school system and the management of the fiscal affairs of school administrative units are governed by the School Budget and Fiscal Control Act, Chapter 115C, Article 31. However, this Article and the School Budget and Fiscal Control Act shall be construed together to the end that the administration of the fiscal affairs of counties and school administrative units may be most effectively and efficiently administered.

(e) A unit of local government that creates a public authority or unit subject to this Article must notify the Commission of its creation. A public authority or unit subject to this Article, by whatever means created, must notify the Commission within 60 days of its creation and include in its notification all of the following:

(1) Name.

(2) Governance structure.

(3) Any other information requested by the Commission. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173; 1987, c. 282, ss. 30, 31; c. 796, s. 3(1); 1989, c. 756, s. 3; 1995, c. 461, s. 9; 2006-203, s. 125; 2020-3, s. 4.30(d); 2022-53, s. 8; 2026-50, s. 4.7.)

§ 159-8. Annual balanced budget ordinance.

(a) Each local government and public authority shall operate under an annual balanced budget ordinance adopted and administered in accordance with this Article. A budget ordinance is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year. It is the intent of this Article that, except for moneys expended pursuant to a project ordinance or accounted for in an intragovernmental service fund or a trust and custodial fund excluded from the budget ordinance under G.S. 159-13(a), all moneys received and expended by a local government or public authority should be included in the budget ordinance. Therefore, notwithstanding any other provision of law, no local government or public authority may expend any moneys, regardless of their source (including moneys derived from bond proceeds, federal, state, or private grants or loans, or special assessments), except in accordance with a budget ordinance or project ordinance adopted under this Article or through an intragovernmental service fund or trust and custodial fund properly excluded from the budget ordinance.

(b) The budget ordinance of a unit of local government shall cover a fiscal year beginning July 1 and ending June 30. The budget ordinance of a public authority shall cover a fiscal year beginning July 1 and ending June 30, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the authority's financial operations, may enter an order permitting an authority to operate under a fiscal year other than from July 1 to June 30. If the Commission does permit an authority to operate under an altered fiscal year, the Commission's order shall also modify the budget calendar set forth in G.S. 159-10 through 159-13 so as to provide a new budget calendar for the altered fiscal year that will clearly enable the authority to comply with the intent of this Part. (1971, c. 780, s. 1; 1973, c. 474, s. 5; 1975, c. 514, s. 3; 1979, c. 402, s. 1; 1981, c. 685, s. 2; 2021-60, s. 3.1.)

§ 159-9. Budget officer.

Each local government and public authority shall appoint a budget officer to serve at the will of the governing board. In counties or cities having the manager form of government, the county or city manager shall be the budget officer. Counties not having the manager form of government may impose the duties of budget officer upon the county finance officer or any other county officer or employee except the sheriff, or in counties having a population of more than 7,500, the register of deeds. Cities not having the manager form of government may impose the duties of budget officer on any city officer or employee, including the mayor if he agrees to undertake them. A public authority or special district may impose the duties of budget officer on the chairman or any member of its governing board or any other officer or employee. (1971, c. 780, s. 1; 1973, c. 474, s. 6.)

§ 159-10. Budget requests.

Before April 30 of each fiscal year (or an earlier date fixed by the budget officer), each department head shall transmit to the budget officer the budget requests and revenue estimates for his department for the budget year. The budget request shall be an estimate of the financial requirements of the department for the budget year, and shall be made in such form and detail, with such supporting information and justifications, as the budget officer may prescribe. The revenue estimate shall be an estimate of all revenues to be realized by department operations during the budget year. At the same time, the finance officer or department heads shall transmit to the budget officer a complete statement of the amount expended for each category of expenditure in the budget ordinance of the immediately preceding fiscal year, a complete statement of the amount estimated to be expended for each category of expenditure in the current year's budget ordinance by the end of the current fiscal year, the amount realized from each source of revenue during the immediately preceding fiscal year, and the amount estimated to be realized from each source of revenue by the end of the current fiscal year, and such other information and data on the fiscal operations of the local government or public authority as the budget officer may request. (1927, c. 146, s. 5; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ 159-11. Preparation and submission of budget and budget message.

(a) Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer and department heads, the budget officer shall prepare a budget for consideration by the governing board in such form and detail as may have been prescribed by the budget officer or the governing board. The budget shall comply in all respects with the limitations imposed by G.S. 159-13(b), and unless the governing board shall have

authorized or requested submission of an unbalanced budget as provided in subsection (c) of this section, the budget shall be balanced.

(b) The budget, together with a budget message, shall be submitted to the governing board not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the governmental goals fixed by the budget for the budget year, should explain important features of the activities anticipated in the budget, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in fiscal policy.

(c) The governing board may authorize or request the budget officer to submit a budget containing recommended appropriations in excess of estimated revenues. If this is done, the budget officer shall present the appropriations recommendations in a manner that will reveal for the governing board the nature of the activities supported by the expenditures that exceed estimated revenues.

(d) The budget officer shall include in the budget a proposed financial plan for each intragovernmental service fund, as required by G.S. 159-13.1, and information concerning capital projects, grant projects, and settlement projects authorized or to be authorized by project ordinances, as required by G.S. 159-13.2.

(e) In each year in which a general reappraisal of real property has been conducted, the budget officer shall include in the budget, for comparison purposes, a statement of the revenue-neutral property tax rate for the budget. The revenue-neutral property tax rate is the rate that is estimated to produce revenue for the next fiscal year equal to the revenue that would have been produced for the next fiscal year by the current tax rate if no reappraisal had occurred. To calculate the revenue-neutral tax rate, the budget officer shall first determine a rate that would produce revenues equal to those produced for the current fiscal year and then increase the rate by a growth factor equal to the average annual percentage increase in the tax base due to improvements since the last general reappraisal. This growth factor represents the expected percentage increase in the value of the tax base due to improvements during the next fiscal year. The budget officer shall further adjust the rate to account for any annexation, deannexation, merger, or similar event. (1927, c. 146, s. 6; 1955, cc. 698, 724; 1969, c. 976, s. 1; 1971, c. 780, s. 1; 1975, c. 514, s. 4; 1979, c. 402, s. 2; 2003-264, s. 1; 2024-1, s. 1.1(b).)

§ 159-12. Filing and publication of the budget; budget hearings.

(a) On the same day that he submits the budget to the governing board, the budget officer shall file a copy of it in the office of the clerk to the board where it shall remain available for public inspection until the budget ordinance is adopted. The clerk shall make a copy of the budget available to all news media in the county. He shall also publish a statement that the budget has been submitted to the governing board, and is available for public inspection in the office of the clerk to the board. The statement shall also give notice of the time and place of the budget hearing required by subsection (b) of this section.

(b) Before adopting the budget ordinance, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. (1927, c. 146, s. 7; 1955, cc. 698, 724; 1971, c. 780, s. 1; 2020-3, s. 4.27(a).)

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

(a) Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance making appropriations and levying taxes for the budget year in such sums as the governing board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget ordinance shall authorize all financial transactions of the local government or public authority except for all of the following:

(1) Those capital, grant, or settlement projects authorized by a project ordinance, as defined in G.S. 159-13.2.

(2) Those accounted for in an intragovernmental service fund for which a financial plan is prepared and approved.

(3) Those accounted for in a trust or custodial fund established to account for moneys held by the local government or public authority as an agent or common-law trustee or to account for a retirement, pension, or similar employee benefit system.

(4) Representative payee funds received under the Social Security Agency Representative Payee Program. These restricted funds belong to and are used for the support of minor children and certain adults.

The budget ordinance may be in any form that the governing board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source.

(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) A contingency appropriation shall not exceed five percent (5%) of the total of all other appropriations in the same fund, except there is no limit on contingency appropriations for public assistance programs required by Chapter 108A. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.

(4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.

(5) The total of all appropriations for purposes which require voter approval for expenditure of property tax funds under Article V, Sec. 2(5), of the Constitution shall not exceed the total of all estimated revenues other than the property tax (not including such revenues required by law to be spent for specific purposes) and property taxes levied for such purposes pursuant to a vote of the people.

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the

preceding fiscal year. For purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax under Article 22A of Chapter 105 of the General Statutes shall be based on the nine-month period ending March 31 of the preceding fiscal year, and the collections realized in cash with respect to this levy shall be based on the 12-month period ending June 30 of the preceding fiscal year.

(7) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year, including amounts to be realized from collections of taxes levied in prior fiscal years.

(8) Repealed by Session Laws 1975, c. 514, s. 6.

(9) Appropriations made to a school administrative unit by a county may not be reduced after the budget ordinance is adopted, unless the board of education of the administrative unit agrees by resolution to a reduction, or unless a general reduction in county expenditures is required because of prevailing economic conditions. Before a board of county commissioners may reduce appropriations to a school administrative unit as part of a general reduction in county expenditures required because of prevailing economic conditions, it must do all of the following:

a. Hold a public meeting at which the school board is given an opportunity to present information on the impact of the reduction.

b. Take a public vote on the decision to reduce appropriations to a school administrative unit.

(10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund, except for appropriations from such a fund to an appropriate account in a capital reserve fund.

(11) Repealed by Session Laws 1975, c. 514, s. 6.

(12) Repealed by Session Laws 1981, c. 685, s. 4.

(13) No appropriation of the proceeds of a bond issue may be made from the capital project fund account established to account for the proceeds of the bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an account within a capital reserve fund consistent with the purposes for which the bonds were issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than bond proceeds available to the account.

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes. A county may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a

surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 153A-292(b), to support the other services supported by the county's general fund.

(15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the governing board the right to limit or not to make such appropriation.

(16) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

(17) No appropriations may be made from a county reappraisal reserve fund except for the purposes for which the fund was established.

(18) No appropriation may be made from a service district fund to any other fund except (i) to the appropriate debt service fund or (ii) to an appropriate account in a capital reserve fund unless the district has been abolished.

(19) No appropriation of the proceeds of a debt instrument may be made from the capital project fund account established to account for such proceeds except for the purpose for which such debt instrument was issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than debt instrument proceeds available to the account.

(20) If a sheriff or police chief executes an agreement to provide school resource officers pursuant to G.S. 160A-288.5(b) or G.S. 162-26.5(b), respectively, and the governing board receives the funds pursuant to the agreement, the governing board shall appropriate the funds for that purpose.

Notwithstanding subdivisions (9), (10), (12), (14), (17), or (18) of this subsection, any fund may contain an appropriation to another fund to cover the cost of (i) levying and collecting the taxes and other revenues allocated to the fund, and (ii) building maintenance and other general overhead and administrative expenses properly allocable to functions or activities financed from the fund.

(c) The budget ordinance of a local government shall levy taxes on property at rates that will produce the revenue necessary to balance appropriations and revenues, after taking into account the estimated percentage of the levy that will not be collected during the fiscal year. The budget ordinance of a public authority shall be balanced so that appropriations do not exceed revenues.

(d) The budget ordinance shall be entered in the minutes of the governing board and within five days after adoption copies thereof shall be filed with the finance officer, the budget officer, and the clerk to the governing board. (1927, c. 146, s. 8; 1955, cc. 698, 724; 1969, c. 976, s. 2; 1971, c. 780, s. 1; 1973, c. 474, ss. 7-9; c. 489, s. 3; 1975, c. 437, ss. 13, 14; c. 514, ss. 5, 6; 1981, c. 685, ss. 3-5, 10; 1987, c. 796, s. 3(2); 1989, c. 756, s. 2; 1999-261, s. 1; 2000-140, s. 80; 2002-126, s. 6.7(a); 2013-413, s. 59.4(b); 2021-60, s. 3.2; 2024-1, ss. 1.1(c), 2.8A(f).)

§ 159-13.1. Financial plan for intragovernmental service funds.

(a) If a local government or public authority establishes and operates one or more intragovernmental service funds, it need not include such a fund in its budget ordinance. However, at the same time it adopts the budget ordinance, the governing board shall approve a balanced financial plan for each intragovernmental service fund. A financial plan is balanced when estimated expenditures do not exceed estimated revenues.

(b) The budget officer shall include in the budget he submits to the board, pursuant to G.S. 159-11, a proposed financial plan for each intragovernmental service fund to be operated during the budget year by the local government or public authority. The proposed financial plan shall be in such form and detail as prescribed by the budget officer or governing board.

(c) The approved financial plan shall be entered in the minutes of the governing board, as shall each amendment to the plan approved by the board. Within five days after approval, copies of the plan and copies of each amendment thereto shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(d) Any change in a financial plan must be approved by the governing board. (1975, c. 514, s. 7.)

§ 159-13.2. Project ordinances.

(a) Definitions. – The following definitions apply in this section:

(1) Capital project. – A project financed in whole or in part by the proceeds of bonds or notes or debt instruments or a project involving the construction or acquisition of a capital asset.

(2) Grant project. – A project financed in whole or in part by revenues received from the federal and/or State government or other grant source for operating or capital purposes as defined by the grant contract.

(3) Project ordinance. – The ordinance adopted pursuant to this section governing the life of any of the following:

a. Capital project.

b. Grant project.

c. Settlement project.

(4) Settlement project. – A project financed in whole or in part by revenues received pursuant to an order of the court or other binding agreement resolving a legal dispute.

(b) Alternative Budget Methods. – A unit or public authority may, in its discretion, authorize and budget for a capital project, grant project, or settlement project either in its annual budget ordinance or in a project ordinance adopted pursuant to this section. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year. Neither a bond order nor an order authorizing any debt instrument constitutes a project ordinance.

(c) Adoption of Project Ordinances. – If a unit or public authority intends to authorize a capital project, grant project, or settlement project by a project ordinance, it shall not begin the project until it has adopted a balanced project ordinance for the life of the project. A project ordinance is balanced when revenues estimated to be available for the project equal appropriations for the project. A project ordinance shall clearly identify the project and authorize its undertaking, identify the estimated revenues that will finance the project, and make the appropriations necessary to complete the project. A local government or public authority may incur obligations and make disbursements authorized by the budget appropriations before receiving estimated revenues and

may use available fund balance from the general fund or enterprise fund associated with the project to fund the disbursements.

(d) Project Ordinance Filed. – Each project ordinance shall be entered in the minutes of the governing board. Within five days after adoption, copies of the ordinance shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(e) Amendment. – A project ordinance may be amended in any manner so long as it continues to fulfill all requirements of this section.

(f) Inclusion of Project Information in Budget. – Each year the budget officer shall include in the budget information in such detail as the budget officer or the governing board may require concerning each capital project, grant project, or settlement project (i) expected to be authorized by project ordinance during the budget year and (ii) authorized by previously adopted project ordinances which will have appropriations available for expenditure during the budget year. (1975, c. 514, s. 8; 1979, c. 402, s. 3; 1987, c. 796, s. 3(3), 3(4); 2022-74, s. 40.8; 2024-1, s. 1.1(a).)

§ 159-14. Trust and custodial funds; budgets of special districts.

(a) Budgets of Special Districts. – If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board is vested by law with discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the special district shall transmit to the governing board of the county or city on or before June 1 a request to levy taxes on its behalf for the budget year at a stated rate. The county or city governing board shall then determine what rate of tax it will approve, and shall so notify the district governing board not later than June 15. Failure of the county or city governing board to act on the district's request on or before June 15 and to so notify the district governing board by that date shall be deemed approval of the full rate requested by the district governing board. Upon receiving notification from the county or city governing board as to what rate of tax will be approved or after June 15 if no such notification is received, the district governing board shall complete its budget deliberations and shall adopt its budget ordinance.

If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board has no discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the district shall notify the city or county by June 15 of the rate of tax it wishes to have levied. If the district does not notify the county or city governing board on or before June 15 of the rate of tax it wishes to have levied, the county or city is not required to levy a tax for the district for the fiscal year.

If the taxes of a special district are collected on its behalf by a county or city, and if the county or city governing board has no power to approve the district tax levy, the district governing board shall adopt its budget ordinance not later than July 1 and on or before July 15 shall notify the county or city collecting its taxes of the rate of tax it has levied. If the district does not notify the county or city governing board on or before July 15 of the rate of tax it has levied, the county or city is not required to collect the district's taxes for the fiscal year.

(b) Transfers from Certain Trust and Custodial Funds. – Except for transfers to the appropriate special district or public authority, a unit of local government may not transfer moneys from a fund established to account for taxes collected on behalf of a special district or from a fund established to account for special assessments collected on behalf of a public authority unless the special district or public authority has ceased to function. (1971, c. 780, s. 1; 1973, c. 474, ss. 10, 11; 1975, c. 514, s. 9; 2021-60, s. 3.3.)

§ 159-15. Amendments to the budget ordinance.

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives revenues that are substantially more or less than the amount anticipated, the governing body may, before January 1 following adoption of the budget, amend the budget ordinance to reduce or increase the property tax levy to account for the unanticipated increase or reduction in revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes. (1927, c. 146, s. 13; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 12; 2001-308, s. 3; 2002-126, s. 30A.2.)

§ 159-16. Interim budget.

In case the adoption of the budget ordinance is delayed until after July 1, the governing board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government or public authority for the interval between the beginning of the budget year and the adoption of the budget ordinance. Interim appropriations so made shall be charged to the proper appropriations in the budget ordinance. (1927, c. 146, s. 14; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ 159-17. Ordinance procedures not applicable to budget or project ordinance adoption.

Notwithstanding the provisions of any city charter, general law, or local act:

(1) Any action with respect to the adoption or amendment of the budget ordinance or any project ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present;

(2) No action taken with respect to the adoption or amendment of the budget ordinance or any project ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article;

(3) The adoption and amendment of the budget ordinance or any project ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the governing board and ending with the adoption of the budget ordinance, the governing board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of G.S. 143-318.12, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up. This section does not allow the holding of closed

meetings or executive sessions by any governing board otherwise prohibited by law from holding such a meeting or session, and may not be construed to do so.

No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section. (1971, c. 780, s. 1; 1973, c. 474, s. 13; 1979, c. 402, ss. 4, 5; c. 655, s. 2.)

§ 159-17.1. Vending facilities.

Moneys received by a public authority, special district, or unit of local government on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 174.)

Part 2. Capital Reserve Funds.

§ 159-18. Capital reserve funds.

Any local government or public authority may establish and maintain a capital reserve fund for any purposes for which it may issue bonds. A capital reserve fund shall be established by resolution or ordinance of the governing board which shall state (i) the purposes for which the fund is created, (ii) the approximate periods of time during which the moneys are to be accumulated for each purpose, (iii) the approximate amounts to be accumulated for each purpose, and (iv) the sources from which moneys for each purpose will be derived. (1943, c. 593, ss. 3, 5; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ 159-19. Amendments.

The resolution or ordinance may be amended from time to time in the same manner in which it was adopted. Amendments may, among other provisions, authorize the use of moneys accumulated or to be accumulated in the fund for capital outlay purposes not originally stated. (1943, c. 593, s. 7; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 14.)

§ 159-20. Funding capital reserve funds.

Capital reserve funds may be funded by appropriations from any other fund consistent with the limitations imposed in G.S. 159-13(b). When moneys or investment securities, the use of which is restricted by law, come into a capital reserve fund, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries. (1943, c. 593, s. 4; 1945, c. 464, s. 2; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 15.)

§ 159-21. Investment.

The cash balances, in whole or in part, of capital reserve funds may be deposited at interest or invested as provided by G.S. 159-30. (1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ 159-22. Withdrawals.

Withdrawals from a capital reserve fund may be authorized by resolution or ordinance of the governing board of the local government or public authority. No withdrawal may be authorized for any purpose not specified in the resolution or ordinance establishing the fund or in a resolution or ordinance amending it. The withdrawal resolution or ordinance shall authorize an appropriation from the capital reserve fund to an appropriate appropriation in one of the funds maintained pursuant to G.S. 159-13(a). No withdrawal may be made which would result in an appropriation

for purposes for which an adequate balance of eligible moneys or investment securities is not then available in the capital reserve fund. (1943, c. 593, ss. 11, 16; 1945, c. 464, s. 2; 1949, c. 196, s. 3; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1; 1973, c. 474, s. 16.)

§ 159-23. Reserved for future codification purposes.

Part 3. Fiscal Control.

§ 159-24. Finance officer.

Each local government and public authority shall, at all times, have a finance officer appointed by the local government, public authority, or designated official to hold office at the pleasure of the appointing board or official. The finance officer may be entitled "accountant," "treasurer," "finance director," "finance officer," or any other reasonably descriptive title. The duties of the finance officer may be imposed on the budget officer or any other officer or employee on whom the duties of budget officer may be imposed. (1971, c. 780, s. 1; 1973, c. 474, s. 17; 2019-19, s. 6.1.)

§ 159-25. Duties of finance officer; dual signatures on checks; internal control procedures subject to Commission regulation.

(a) The finance officer shall have the following powers and duties:

(1) Keep the accounts of the local government or public authority in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local government or public authority in strict compliance with this Chapter, the budget ordinance, and each project ordinance and shall preaudit obligations and disbursements as required by this Chapter.

(3) Prepare and file with the board a statement of the financial condition of the local government or public authority, as often as may be requested by the governing board or the manager.

(4) Receive and deposit all moneys accruing to the local government or public authority, or supervise the receipt and deposit of money by other duly authorized officers or employees.

(5) Maintain all records concerning the bonded debt and other obligations of the local government or public authority, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all sinking funds.

(6) Supervise the investment of idle funds of the local government or public authority.

(7) Perform such other duties as may be assigned by law, by the manager, budget officer, or governing board, or by rules and regulations of the Commission.

(8) Attend any training required by the Local Government Commission under this section.

(9) Contract with outside entities, including certified public accountants in good standing with the North Carolina State Board of Certified Public Accountant Examiners, bookkeeping firms, councils of government, and other units of government, to ensure fulfillment of the duties enumerated in this subsection, excluding subdivision (6), except where specifically allowed by law, and subdivision (8). Regardless of the entity performing such duties, the authority,

powers, and duties of the finance officer shall not be superseded, and the responsibility for accurate and timely fulfillment of duties lies solely with the finance officer.

All references in other portions of the General Statutes, local acts, or city charters to county, city, special district, or public authority accountants, treasurers, or other officials performing any of the duties conferred by this section on the finance officer shall be deemed to refer to the finance officer.

(b) Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board. If the board makes no other designation, the chairman of the board or chief executive officer of the local government or public authority shall countersign these checks and drafts. The governing board of a unit or authority may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(c) The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by units of local government and public authorities, may inquire into and investigate the internal control procedures of a local government or public authority, may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public moneys, and may adopt rules establishing minimum qualifications for finance officers.

(d) The Local Government Commission has the authority to require any finance officer or any other employee who performs the duties of a finance officer to participate in training related to the powers, duties, and responsibilities of the finance officer under any of the following circumstances: (i) the Commission is exercising its authority under Article 11 of this Chapter with respect to the employing local government or public authority, (ii) the employing local government or public authority has received a letter from the Commission due to a deficiency in complying with this Chapter, (iii) the employing local government or public authority has an internal control material weakness or significant deficiency in the most recently completed financial audit, or (iv) the finance officer fails to annually meet or attest to the minimum qualifications of the position, as established by the Commission. The training may be provided by the Commission, the School of Government at the University of North Carolina, the North Carolina Community College System, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, or other qualified sources at the choice of the governing board and upon the prior approval of the Commission. When the Commission requires a finance officer or other employee to participate in training as authorized in this subsection, the Commission shall notify the finance officer or other employee and the employing local government or public authority of the required training. Upon completion of the required training by the finance officer or other employee, the employing local government or public authority shall submit, in writing, to the Commission proof that the training requirements have been satisfied.

(e) The Local Government Commission may require any local government or public authority to contract with outside entities in accordance with the terms of subdivision (9) of subsection (a) of this section if the local government or public authority has received a letter from the Commission due to a deficiency in complying with this Chapter or the local government or public authority has an internal control finding in the most recently completed financial audit.

(1971, c. 780, s. 1; 1973, c. 474, ss. 18-20; 1975, c. 514, s. 10; 1987, c. 796, s. 3(5); 2016-84, s. 1; 2017-105, s. 1; 2019-19, s. 6.2; 2021-124, s. 4; 2025-19, s. 6.1(b).)

§ 159-26. Accounting system.

(a) System Required. – Each unit or public authority shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget ordinance and each project ordinance as originally adopted and subsequently amended.

(b) Funds Required. – Each unit or public authority shall establish and maintain in its accounting system such of the following funds and ledgers as are applicable to it. The generic meaning of each type of fund or ledger listed below is that fixed by generally accepted accounting principles. The funds and ledgers are as follows:

(1) General fund.

(2) Special Revenue Funds. – One or more separate funds shall be established as separate accounts in the appropriate fund for each function, district, or project if more than one function, district, or project is accounted for in each of the following classes:

a. Functions or activities financed in whole or in part by property taxes voted by the people.

b. Service districts established pursuant to the Municipal or County Service District Acts.

c. Grant projects, as defined in G.S. 159-13.2.

d. Settlement projects, as defined in G.S. 159-13.2.

(3) Debt service funds.

(4) A Fund for Each Utility or Enterprise Owned or Operated by the Unit or Public Authority. – If a water system and a sanitary sewerage system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.

(5) Internal service funds.

(6) Capital Project Funds. – Such a fund shall be established to account for the proceeds of each bond order or order authorizing any debt instrument and for all other resources used for the capital projects financed by the bond or debt instrument proceeds. A unit or public authority may account for two or more bond orders or orders authorizing any debt instrument in one capital projects fund, but the proceeds of each such order and the other revenues associated with that order shall be separately accounted for in the fund.

(7) Trust and custodial funds, including a fund for each special district, public authority, or school administrative unit whose taxes or special assessments are collected by the unit.

(8) A ledger or group of accounts in which to record the details relating to the capital assets of the unit or public authority.

(9) A ledger or group of accounts in which to record the details relating to the general obligation bonds and notes and other long-term obligations of the unit.

In addition, each unit or public authority shall establish and maintain any other funds required by other statutes or by State or federal regulations.

(c) Basis of Accounting. – Except as otherwise provided by regulation of the Commission, units and public authorities shall use the modified accrual basis of accounting in recording transactions.

(d) Encumbrance Systems. – Except as otherwise provided in this subsection, no unit or public authority is required to record or show encumbrances in its accounting system. Each city or town with a population over 10,000 and each county with a population over 50,000 shall maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in its budget ordinance. Any other unit or any public authority may record and show encumbrances in its accounting system. In determining a unit's population, the most recent federal decennial census shall be used.

(e) Commission Regulations. – The Commission may prescribe rules and regulations having the force of law as to:

(1) Features of accounting systems to be maintained by units and public authorities.

(2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis, identifying what revenues are susceptible to accrual, and permitting or requiring use of a basis other than modified accrual in a fund that does not account for the receipt of a tax.

(3) Definitions of terms not clearly defined in this Article.

The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1971, c. 780, s. 1; 1975, c. 514, ss. 11, 16; 1979, c. 402, s. 6; 1981, c. 685, ss. 6, 7; 1987, c. 796, s. 3(6); 2021-60, s. 3.4; 2024-1, s. 1.1(d).)

§ 159-27. Distribution of tax collections among funds according to levy.

(a) The finance officer shall distribute property tax collections among the appropriate funds, according to the budget ordinance, at least monthly.

(b) Taxes collected during the current fiscal year, that were levied in any one of the two immediately preceding fiscal years, shall be distributed to the appropriate funds according to the levy of the fiscal year in which they were levied. If any fund for which such taxes were levied is not being maintained in the current fiscal year, the proportionate share of the tax that would have been distributed to the discontinued fund shall be allocated (i) to the fund from which the activity or function for which the tax was levied is then being financed, or (ii) to the general fund if the activity or function for which the tax was levied is no longer being performed.

(c) Taxes collected during the current fiscal year, that were levied in any prior fiscal year other than one of the two immediately preceding fiscal years, may be distributed in the discretion of the governing board either (i) to the general fund, or (ii) in accordance with subsection (b) of this section. This subsection shall not repeal any portion of a local act or city charter inconsistent herewith and in effect on July 1, 1973.

(d) This section applies to taxes levied by a unit of local government on behalf of another unit, including school administrative units. (1971, c. 780, s. 1; 1973, c. 474, s. 21; 1975, c. 437, s. 15.)

§ 159-27.1. Use of revenue bond project reimbursements; restrictions.

The finance officer of a unit shall deposit any funds received by the unit as a reimbursement of a loan or advance made by the unit pursuant to G.S. 159-83(a)(8a) in the fund from which the unit originally derived the funds to make the loan or advance.

If the funds originally loaned or advanced were proceeds of a bond issue, any funds received as reimbursement shall be applied as required by this section. The funds shall be applied as provided in the instrument securing payment of the bond issue if the instrument contains applicable provisions. Otherwise, the funds shall be applied to either (i) the same general purposes as those for which the bond issue was authorized, or (ii) payment of debt service on the bond issue, including principal, interest, and premium, if any, upon redemption, or payment of the purchase price of bonds for retirement at not more than their face value and accrued interest. After all the bonds of the issue have been paid or satisfied in full, any funds received as reimbursement shall be deposited in the general fund of the unit and may be used for any general fund purpose. (1991, c. 508, s. 3, c. 761, s. 29.)

§ 159-28. Budgetary accounting for appropriations.

(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project, grant project, or settlement project authorized by a project ordinance, as defined in G.S. 159-13.2, unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. Nothing in this section shall require a contract to be reduced to writing.

(a1) Preaudit Requirement. – If an obligation is reduced to a written contract or written agreement requiring the payment of money, or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with subsection (a) of this section. The certificate, which shall be signed by the finance officer, or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

> This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.
>
> _____
>
> (Signature of finance officer).

(a2) Failure to Preaudit. – An obligation incurred in violation of subsection (a) or (a1) of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section, in accordance with any rules adopted by the Local Government Commission.

(a3) Use of Automated System for Preaudit. – An automated financial computer system may be used to meet the requirements of subsection (a1) of this section if an annual certification is filed with the Secretary of the Commission pursuant to subsection (a4) of this section. The provisions of this subsection do not apply to transactions exempted by statute from the preaudit requirement. The automated computer system must have all of the following:

(1) Embedded functionality that determines that there is an appropriation to the department, function code, or project in which the transaction appropriately falls.

(2) Functionality ensuring that unencumbered funds remain in the appropriation to pay out any amounts that are expected to come due during the budgeted period.

(3) Real-time visibility to budget compliance, alert threshold notifications, and rules-based compliance measures and enforcement.

(a4) Annual Certification of Automated Preaudit System. – When an automated financial computer system is used to meet the requirements of subsection (a1) of this section, the finance officer shall certify to the Secretary of the Commission no later than 30 days after the start of the unit's or public authority's fiscal year that the automated financial computer system meets all the requirements of subsection (a3) of this section. The Secretary may reject or revoke the finance officer's certification if the annual audit for the unit's or public authority's immediately preceding fiscal year includes a finding of budgetary noncompliance or if the Secretary determines that the automated financial computer system fails to meet the requirements of subsection (a3) of this section.

(b) Disbursements. – When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project, grant project, or settlement project authorized by a project ordinance, as defined in G.S. 159-13.2, the finance officer may approve the claim only if both of the following apply:

(1) The finance officer determines the amount to be payable.

(2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or custodial fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this subsection, in accordance with any rules adopted by the Local Government Commission.

(c) Governing Board Approval of Bills, Invoices, or Claims. – The governing board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local government or public authority that has been disapproved by the finance officer. The governing board may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The governing board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board, or some other member designated for this purpose, shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. – A local government or public authority may not pay a bill, invoice, salary, or other claim except by any of the following methods:

(1) Check or draft on an official depository.

(2) Bank wire transfer from an official depository.

(3) Electronic payment or an electronic funds transfer originated by the local government or public authority through an official depository.

(4) Cash, if the local government has adopted an ordinance authorizing the use of cash, and specifying the limits of the use of cash.

(d1) Except as provided in this section, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the governing board (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act.

_____

(Signature of finance officer).

(d2) An electronic payment or electronic funds transfer shall be subject to the preaudit process in accordance with this section and any rules adopted by the Local Government Commission. The rules so adopted shall address execution of electronic payment or electronic funds transfer and how to indicate that the finance officer or duly appointed deputy finance officer has performed the preaudit process in accordance with this section. A finance officer or duly appointed deputy finance officer shall be presumed in compliance with this section if the finance officer or duly appointed deputy finance officer complies with the rules adopted by the Local Government Commission.

(e) Penalties. – If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, that officer or employee, and the sureties on any official bond for that officer or employee, are liable for any sums so committed or disbursed. If the finance officer or any duly appointed deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer or duly appointed deputy finance officer, and the sureties on any official bond, are liable for any sums illegally committed or disbursed thereby. The governing board shall determine, by resolution, if payment from the official bond shall be sought and if the governing body will seek a judgment from the finance officer or duly appointed deputy finance officer for any deficiencies in the amount.

(e1) Inclusion of the contract term in accordance with G.S. 143-133.3(b) shall be deemed in compliance with G.S. 143-133.3(a).

(f) The certifications required by subsections (a1) and (d1) of this section shall not apply to any of the following:

(1) An obligation or a document related to the obligation has been approved by the Local Government Commission.

(2) Payroll expenditures, including all benefits for employees of the local government.

(3) Electronic payments, as specified in rules adopted by the Local Government Commission.

(g) As used in this section, the following terms shall have the following meanings:

(1) Electronic funds transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(2) Electronic payment. – Payment by charge card, credit card, debit card, gas card, procurement card, or electronic funds transfer. (1971, c. 780, s. 1; 1973, c. 474, ss. 22, 23; 1975, c. 514, s. 12; 1979, c. 402, ss. 7, 8; 2010-99, s. 1; 2012-156, s. 1;

2015-246, s. 6(a); 2015-294, s. 2; 2021-58, s. 3; 2021-60, s. 3.5; 2024-1, s. 1.1(e).)

§ 159-28.1. Facsimile signatures.

The governing board of a local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 514, s. 13.)

§ 159-29. Fidelity bonds.

(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board. A person may not be appointed as a finance officer if the person is unable to obtain the bond required by this section. The premium on the bond shall be paid by the local government or public authority. The amount of the bond fixed by the governing board may not be less than the greater of the following:

(1) Fifty thousand dollars ($50,000).

(2) An amount equal to ten percent (10%) of the unit's annually budgeted funds, up to one million dollars ($1,000,000).

(b) Each officer, employee, or agent of a local government or public authority who handles or has in his custody more than one hundred dollars ($100.00) of the unit's or public authority's funds at any time, or who handles or has access to the inventories of the unit or public authority, shall, before being entitled to assume his duties, give a faithful performance bond with sufficient sureties payable to the local government or public authority. A person who is unable to secure the bond required by this section cannot assume the duties for which a bond is required under this section. The governing board shall determine the amount of the bond, and the unit or public authority may pay the premium on the bond. Each bond, when approved by the governing board, shall be deposited with the clerk to the board.

If another statute requires an officer, employee, or agent to be bonded, this subsection does not require an additional bond for that officer, employee, or agent.

(c) A local government or public authority may adopt a system of blanket faithful performance bonding as an alternative to individual bonds. If such a system is adopted, statutory requirements of individual bonds, except for elected officials and for finance officers and tax collectors by whatever title known, do not apply to an officer, employee, or agent covered by the blanket bond. However, although an individual bond is required for an elected official, a tax collector, or finance officer, such an officer or elected official may also be included within the coverage of a blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1971, c. 780, s. 1; 1975, c. 514, s. 14; 1987 (Reg. Sess., 1988), c. 975, s. 32; 2005-238, s. 2; 2022-53, s. 9(a).)

§ 159-30. Investment of idle funds.

(a) A local government or public authority may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the governing board may impose. The finance officer shall have the

power to purchase, sell, and exchange securities on behalf of the governing board. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits, including investment deposits of a mutual fund for local government investment established under subdivision (c)(8) of this section, shall be secured as provided in G.S. 159-31(b).

(b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:

(1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.

(2) The selected bank or savings and loan association arranges for the redeposit of funds in deposit accounts of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.

(3) The full amount of principal and any accrued interest of each deposit account are covered by federal deposit insurance.

(4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the deposit in the local government's or public authority's account.

(5) On the same date that the local government or public authority funds are redeposited, the selected bank or savings and loan association receives an amount of federally insured deposits from customers of other financial institutions wherever located equal to or greater than the amount of the funds invested by the local government or public authority through the selected bank or savings and loan association.

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.

(5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty

association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.

(6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.

(9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S. 147-69.3.

(10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).

(11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.

(12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

a. Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a

current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

b. A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;

c. Such securities are free and clear of any adverse third party claims; and

d. Such repurchase agreement is in a form satisfactory to the local government or public authority.

(13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local governments and public authorities may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) A local government, public authority, an entity eligible to participate in the Local Government Employee's Retirement System, a local school administrative unit, or a charter school may make contributions to a Local Government Other Post-Employment Benefits Trust established pursuant to G.S. 159-30.1.

(h) A unit of local government employing local law enforcement officers may make contributions to the Local Government Law Enforcement Special Separation Allowance Fund established in G.S. 147-69.5. (1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2; 1987, c. 672, s. 1; 1989, c. 76, s. 31; c. 751, s. 7(46); 1991 (Reg. Sess., 1992), c. 959, s. 77; c. 1007, s. 40; 1993, c. 553, s. 55; 2001-193, s. 16; 2001-487, s. 14(o); 2005-394, s. 2; 2007-384, ss. 4, 9; 2010-175, s. 1; 2013-305, s. 1; 2022-53, s. 9.5(e).)

§ 159-30.1. Trust for other post-employment benefits.

(a) Trust. – A local government, a public authority, an entity eligible to participate in the Local Government Employees' Retirement System, a local school administrative unit, or a charter school may establish and fund an irrevocable trust for the purpose of paying (i) post-employment benefits for which the entity is liable or (ii) contribution-based benefit cap liabilities to the Local Governmental Employees' Retirement System. The irrevocable trust must be established by resolution or ordinance of the entity's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust. The irrevocable trust must designate the monies deposited in the trust, and any income earned thereon, as governmental funds to be used solely for an essential governmental purpose.

(b) Restrictions. – Monies in an irrevocable trust established under subsection (a) of this section may be appropriated only for the purposes for which the trust was established. Monies in the trust are not subject to the claims of creditors of the entity that established the trust. An entity that establishes a trust may not deposit money in the trust if the total amount held in trust would exceed the entity's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purposes for which the trust was established. A trust established pursuant to subsection (a) of this section shall be referred to as a Local Government Other Post-Retirement Benefits Trust, and the assets of that trust may be invested as provided in G.S. 159-30(c) or deposited with the State Treasurer for investment pursuant to G.S. 147-69.2(b4). (2007-384, s. 5; 2010-175, s. 2; 2021-75, s. 1.1; 2022-53, s. 9.5(f).)

§ 159-30.2. Trust for law enforcement special separation allowance benefits.

(a) Trust. – A unit of local government employing local law enforcement officers may establish and fund an irrevocable trust for the purpose of paying law enforcement special separation allowance benefits for which the unit of local government is liable. The irrevocable trust must be established by resolution or ordinance of the unit's governing board. The resolution or ordinance must state the purposes for which the trust is created and the method of determining and selecting the Fund's trustees. The resolution or ordinance establishing the trust may be amended from time to time, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the resolution or ordinance establishing the trust.

(b) Restrictions. – Monies in an irrevocable trust established under subsection (a) of this section may be appropriated only for the purposes for which the trust was established. Monies in the trust are not subject to the claims of creditors of the entity that established the trust. A unit of local government that establishes a trust may not deposit money in the trust if the total amount held in trust would exceed the unit's actuarial liability, determined in accordance with the standards of

the Governmental Accounting Standards Board, for the purpose for which the trust was established. (2007-384, s. 10.)

§ 159-31. Selection of depository; deposits to be secured.

(a) The governing board of each local government and public authority shall designate as its official depositories one or more banks, savings and loan associations, or trust companies in this State or, with the written permission of the secretary, a national bank located in another state. In addition, a unit or public authority, with the written permission of the secretary, may designate a state bank or trust company located in another state as an official depository for the purpose of acting as fiscal agent for the unit or public authority. The names and addresses of the depositories shall be reported to the secretary. It shall be unlawful for any public moneys to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 159-30(b); however, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(b) The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety bonds, letters of credit issued by a Federal Home Loan Bank, or investment securities of such nature, in a sufficient amount to protect the local government or public authority on account of deposit of funds made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank, savings and loan association, or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the maturity date. (1927, c. 146, s. 19; 1929, c. 37; 1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; c. 134; 1953, c. 675, s. 28; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 26; 1979, c. 637, s. 1; 1981, c. 447, s. 2; 1983, c. 158, s. 3; 1999-74, s. 1.)

§ 159-32. Daily deposits.

(a) Except as otherwise provided by law, all taxes and other moneys collected or received by an officer or employee of a local government or public authority shall be deposited in accordance with this section. Each officer and employee of a local government or public authority whose duty it is to collect or receive any taxes or other moneys shall, on a daily basis, deposit or submit to a properly licensed and recognized cash collection service all collections and receipts. However, if the governing board gives its approval, deposits or submissions to a properly licensed and recognized cash collection service shall be required only when the moneys on hand amount to five hundred dollars ($500.00) or greater. Until deposited or officially submitted to a properly licensed and recognized cash collection service, all moneys must be maintained in a secure location. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer or employee collecting or receiving taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer or employee shall be audited at least annually.

(b) The Secretary may, during an emergency declaration issued under G.S. 166A-19.20, set the amount of moneys on hand requiring daily deposits and may require deposits on less than a

daily basis, provided the moneys are maintained in a secure location and deposited at least weekly. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 27; 2017-204, s. 6.1(a); 2020-3, s. 4.28(a).)

§ 159-32.1. Electronic payment.

A unit of local government, public hospital, or public authority may, in lieu of payment by cash or check, accept payment by electronic payment as defined in G.S. 147-86.20 for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit of local government, public hospital, or public authority may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third-party merchant bank, as a condition of contracting for the unit's or the authority's acceptance of electronic payment. A unit of local government, public hospital, or public authority may impose the fee or charge as a surcharge on the amount paid by the person using electronic payment. (1999-434, s. 5.)

§ 159-33. Semiannual reports on status of deposits and investments.

Each officer having custody of any funds of any local government or public authority shall report to the secretary of the Local Government Commission on January 1 and July 1 of each year (or such other dates as he may prescribe) the amounts of funds then in his custody, the amounts of deposits of such funds in depositories, and a list of all investment securities and time deposits held by the local government or public authority. In like manner, each bank or trust company acting as the official depository of any unit of local government or public authority may be required to report to the secretary a description of the surety bonds or investment securities securing such public deposits. If the secretary finds at any time that any funds of any unit or authority are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer or depository in charge of the funds of the failure to comply with law or applicable regulations of the Commission. Upon such notification, the officer or depository shall comply with the law or regulations within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the secretary. The Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1931, c. 60, s. 33; 1971, c. 780, s. 1; 1979, c. 637, s. 2.)

§ 159-33.1. Semiannual reports of financial information.

(a) The finance officer of each unit and public authority shall submit to the secretary on January 1 and July 1 of each year, or other dates as the secretary may prescribe, a statement of financial information concerning the unit or public authority. The secretary may prescribe the information to be included in the statement and may prescribe the form of the statement; provided, however, the secretary shall prescribe that the finance officer of each city and county shall include in the statement the total revenues received from building inspections, by source, and the total expenditures paid from all revenues received, by object.

(b) Expired pursuant to Session Laws 2020-3, s. 4.29(b), effective February 15, 2021.

(c) Expired pursuant to Session Laws 2020-3, s. 4.29(b), effective March 15, 2021. (1973, c. 474, s. 28; 2018-5, s. 21.1(a); 2018-29, s. 4.5(a); 2020-3, s. 4.29(a); 2020-48, s. 1.10(a).)

§ 159-33.2. Interim event reporting.

The Secretary has the authority to require a unit of local government or public authority to report events defined by the Secretary that will or may have a material, adverse effect on the financial health, operations, or internal controls of the unit of local government or public authority within 30 days after the occurrence of such events. The Commission shall adopt a policy specifying the events required to be reported under this section and the process for reporting such events. Within 30 days of adopting the policy, the Secretary shall make the policy publicly available. (2022-53, s. 5.)

§ 159-34. Annual independent audit; rules and regulations.

(a) Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. When specified by the secretary, the audit shall evaluate the performance of a unit of local government or public authority with regard to compliance with all applicable federal and State agency regulations. This audit, combined with the audit of financial accounts, shall be deemed to be the single audit described by the "Federal Single Audit Act of 1984". The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall (i) be in writing, (ii) include the entire entity in the scope of the audit, except that an audit for purposes other than the annual audit required by this section should include an accurate description of the scope of the audit, (iii) require that a typewritten or printed report on the audit be prepared as set forth herein, (iv) include all of its terms and conditions, and (v) be submitted to the secretary for his approval as to form, terms, conditions, and compliance with the rules of the Commission. As a minimum, the required report shall include the financial statements prepared in accordance with generally accepted accounting principles, all disclosures in the public interest required by law, and the auditor's opinion and comments relating to financial statements. The audit shall be performed in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. Before giving his approval the secretary shall determine that the audit and audit report substantially conform to the requirements of this section. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an attempt thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

(b) The Local Government Commission has authority to issue rules and regulations for the purpose of improving the quality of auditing and the quality and comparability of reporting pursuant to this section or any similar section of the General Statutes. The rules and regulations may consider the needs of the public for adequate information and the performance that the auditor has demonstrated in the past, and may be varied according to the size, purpose or function of the unit, or any other criteria reasonably related to the purpose or substance of the rules or regulation.

(c) Notwithstanding any other provision of law, except for Article 5A of Chapter 147 of the General Statutes pertaining to the State Auditor, all State departments and agencies shall rely upon the single audit accepted by the secretary as the basis for compliance with applicable federal and

State regulations. All State departments and agencies which provide funds to local governments and public authorities shall provide the Commission with documents that the Commission finds are in the prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors retained by local governments and public authorities to conduct a single audit as required by this section. The secretary shall be responsible for the annual distribution of all such standards of compliance and suggested audit procedures proposed by State departments and agencies and any amendments thereto. Further, the Commission with the cooperation of all affected State departments and agencies shall be responsible for the following:

(1) Procedures for the timely distribution of compliance standards developed by State departments and agencies, reviewed and approved by the Commission to auditors retained by local governments and public authorities.

(2) Procedures for the distribution of single audits for local governments and public authorities such that they are available to all State departments and agencies which provide funds to local units.

(3) The acceptance of single audits on behalf of all State departments and agencies; provided that, the secretary may subsequently revoke such acceptance for cause, whereupon affected State departments and agencies shall no longer rely upon such audit as the basis for compliance with applicable federal and State regulations.

(d) Notwithstanding the requirement that the auditor is selected by and reports directly to the governing board in subsection (a) of this section, the Commission may require the governing board of a local government or public authority that has been the subject of an investigative audit with findings by the State Auditor, upon receipt of the investigative audit report in accordance with G.S. 147-64.6(c)(14), to select the certified public accountant to conduct the annual audit required by this section from a list of three certified public accountants provided by the Commission. The Commission may instruct the Secretary to issue a request for proposals when selecting a certified public accountant under this subsection. Upon exercise of this authority granted by this subsection, the certified public accountant shall report directly to the Commission and governing board, shall comply with all rules of the Commission, and shall be paid by the governing board. The Commission may exercise the authority granted by this subsection for up to three fiscal years after the release of the investigative report with findings by the State Auditor.

(e) The secretary shall provide a notice of noncompliance to each county or municipality that fails to submit an annual audit report as required under subsection (a) of this section within nine months of the county or municipality's fiscal year end. The notice shall be sent to the governing board by first-class mail at the county or municipality's primary mailing address. The notice shall be issued within 30 days following nine months after the county or municipality's fiscal year end. A county or municipality that fails to comply with the notice of noncompliance and to complete the annual audit required under subsection (a) of this section within 12 months of its fiscal year end shall be deemed to have given consent to the withholding of a portion of its sales tax distributions, as provided in subsection (g) of this section.

(f) Upon receiving a notice of noncompliance under subsection (e) of this section, a county or municipality may notify the secretary in writing that it plans to appeal the action and the county or municipality will be scheduled to appear before the Commission as soon as practicable after July 1. The written notice shall state the basis for the appeal and include any evidence to support the appeal. The Commission shall establish guidelines outlining specific criteria that would warrant a

successful appeal. If a county or municipality appeals prior to the secretary taking action to withhold under subsection (g) of this section, the secretary must delay withholding if the Commission determines that the county or municipality has provided sufficient evidence that the failure to provide a copy of their annual audit report is due to circumstances within the guidelines established by the Commission. If the county or municipality appeals after the secretary takes action to withhold under subsection (g) of this section, the secretary must notify the Secretary of Revenue to release any funds withheld under subsection (g) of this section if the Commission determines that the county or municipality has provided sufficient evidence that the failure to provide a copy of their annual audit report is due to circumstances within the guidelines established by the Commission.

(g) A county or municipality that fails to file a copy of its annual audit report with the secretary within 12 months of its fiscal year end may have a portion of its sales tax distributions withheld. The total cumulative amount that may be withheld is an amount equal to one hundred fifty percent (150%) of the cost of the required annual audit as indicated in the audit contract between the county or municipality and its external auditor for the audit report, if such a contract has been executed, or one hundred fifty percent (150%) of the actual fee for the most recently filed audit report if a contract has not been executed for the current year audit.

The Secretary of Revenue must withhold from the county or municipality's distribution under G.S. 105-486, and from the county or municipality's distribution under G.S. 105-501 if necessary, the amount required to be withheld upon written notification to do so from the secretary. The notifications must be made on a quarterly basis. The amount to be withheld is five percent (5%) of one-twelfth of the county or municipality's annual general fund budget as it was adopted at the beginning of the fiscal year in which the withholding begins until the total cumulative withholding amount is reached. The total cumulative amount to be withheld and any schedule of withholding shall be provided by the secretary in its notification to the Secretary of Revenue. The Secretary of Revenue shall begin withholding from the county or municipality's first distribution of sales and use tax that is at least 45 days after they receive notification from the secretary.

(h) When the report required under subsection (a) of this section has been filed with the secretary, reviewed to ensure compliance with the requirements of this section, and accepted by the secretary or an appeal was successful under subsection (f) of this section, the secretary must notify the Secretary of Revenue within 30 days to release the funds. The Department of Revenue must release the funds in the county or municipality's first scheduled distribution of sales tax that is at least 45 days after the earlier of the following:

(1) Two years from the date of notification for the funds to be withheld.

(2) The date the Secretary of Revenue receives notification from the secretary that either (i) a report complying with the requirements of this section was filed and accepted by the secretary or (ii) the county or municipality has successfully appealed action taken under subsection (g) of this section. (1971, c. 780, s. 1; 1975, c. 514, s. 15; 1979, c. 402, s. 9; 1981, c. 685, ss. 8, 9; 1987, c. 287; 1993, c. 257, s. 20; c. 539, s. 1081; 1994, Ex. Sess., c. 24, s. 14(c); 2001-160, s. 1; 2021-191, s. 1(b); 2023-59, s. 1; 2026-50, s. 6.3.)

§ 159-35. Secretary of Local Government Commission to notify units of debt service obligations.

(a) The secretary shall mail to each local government and public authority not later than May 1 of each year a statement of its debt service obligations for the coming fiscal year, including sums to be paid into sinking funds.

(b) The secretary shall mail to each local government and public authority not later than 30 days prior to the due date of each installment of principal or interest on outstanding debt, a statement of the amount of principal and interest so payable, the due date, the place to which the payments should be sent, and a summary of the legal penalties for failing to meet debt service obligations.

(c) The secretary shall mail to each unit of local government not later than 30 days prior to the due date of each payment due to the State under debt instruments issued pursuant to Article 7A of this Chapter or Chapter 159G of the General Statutes a statement of the amount so payable, the due date, the amount of any moneys due to the unit of local government that will be withheld by the State and applied to the payment, the amount due to be paid by the unit of local government from local sources, the place to which payment should be sent, and a summary of the legal penalties for failing to honor the debt instrument according to its terms. Failure of the secretary timely to mail such statement or otherwise comply with the provisions of this subsection (c) shall not affect in any manner the obligation of a unit of local government to make payments to the State in accordance with any such debt instrument. (1931, c. 60, ss. 36, 37; 1971, c. 780, s. 1; 1987, c. 796, s. 3(7); 1989, c. 756, s. 4; 2020-3, s. 4.30(e).)

§ 159-36. Failure of local government to levy debt service taxes or provide for payment of debt.

(a) If any local government or public authority fails or refuses to levy taxes or allocate other revenues in an amount sufficient to meet all installments of principal and interest falling due on its debt during the budget year, or to adequately maintain its sinking funds, the Commission shall enter an order directing and commanding the governing board of the local government or public authority to enact a budget ordinance levying the necessary taxes or raising the necessary revenue by whatever means are legally available. If the governing board shall fail or refuse to comply with the Commission's order within 10 days, the order shall have the same legal force and effect as if the actions therein commanded had been taken by the governing board, and the appropriate officers and employees of the local government or public authority shall proceed to collect the tax levy or implement the plan for raising the revenue to the same extent as if such action had been authorized and directed by the governing board. Any officer, employee, or member of the governing board of any local government or public authority who willfully fails or refuses to implement an order of the Local Government Commission issued pursuant to this section forfeits his office or position.

(b) This section does not apply to contractual obligations undertaken by a unit of local government in a debt instrument issued pursuant to Chapter 159G of the General Statutes unless such debt instrument is secured by a pledge of the faith and credit of the unit of local government. (1971, c. 780, s. 1; 1987, c. 796, s. 3(8).)

§ 159-37. Reports on status of sinking funds.

Each unit or public authority maintaining any sinking fund shall transmit to the secretary upon his request financial reports on the status of the fund and the means by which moneys are obtained for deposit therein. The secretary shall determine from this information whether the sinking funds are being properly maintained, and if he shall find that they are not, he shall order the unit to take

such action as may be necessary to maintain the funds in accordance with law. (1931, c. 60, s. 31; 1971, c. 780, s. 1.)

§ 159-38. Local units authorized to accept their bonds in payment of certain claims and judgments.

Any unit of local government or public authority may accept its own bonds, at par, in settlement of any claim or judgment that it may have against any person, firm, corporation, or association due to funds held in an insolvent bank, trust company, or savings and loan association. (1933, c. 376; 1971, c. 780, s. 1.)

Part 4. Public Hospitals.

§ 159-39. Special regulations pertaining to public hospitals.

(a) For the purposes of this Part, "public hospital" means any hospital that

(1) Is operated by a county, city, hospital district, or hospital authority, or

(2) Is owned by a county, city, hospital district or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority, or

(3) On whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations (other than appropriations for the cost of medical care to prisoners or indigents).

(b) Except as provided in this Part, none of the provisions of Parts 1, 2, and 3 of this Article apply to public hospitals.

(c) Each public hospital shall operate under an annual balanced budget. A budget is balanced when the sum of appropriations is equal to the sum of estimated net revenues and appropriated fund balances.

(d) The governing board of each public hospital shall appoint or designate a finance officer, who shall have the following powers and duties:

(1) He shall prepare the annual budget for presentation to the governing board of the public hospital and shall administer the budget as approved by the board.

(2) He shall keep the accounts of the hospital in accordance with generally accepted principles of accounting.

(3) He shall prepare and file a statement of the financial condition of the hospital as revealed by its accounts upon the request of the hospital governing board or the governing board of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).

(4) He shall receive and deposit all moneys accruing to the hospital, or supervise the receipt and deposit of money by other duly authorized officers or employees of the hospital.

(5) He shall supervise the investment of idle funds of the hospital.

(6) He shall maintain all records concerning the bonded debt of the hospital, if any, determine the amount of money that will be required for debt service during each fiscal year, and maintain all sinking funds, but shall not be responsible for

records concerning the bonded debt of any county, city, or other unit of local government incurred on behalf of the hospital.

(e) The Local Government Commission has authority to issue rules and regulations governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by public hospitals, may inquire into and investigate the internal control procedures of a public hospital, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements, mishandling of funds, or continued operating deficits.

(f) The accounting system of a public hospital shall be so designed that the true financial condition of the hospital can be determined therefrom at any time. As soon as possible after the close of each fiscal year, the accounts shall be audited by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the hospital governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a written report embodying financial statements and his opinion and comments relating thereto. The finance officer shall file a copy of the audit with the secretary of the Local Government Commission and with the finance officer of any county, city, or other unit of local government that has issued on behalf of the hospital and has outstanding its general obligation or revenue bonds or makes current appropriations to the hospital (other than appropriations for the cost of medical care to prisoners or indigents).

(g) A public hospital may deposit or invest at interest all or part of its cash balance pursuant to G.S. 159-30 and may deposit any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, with the State Treasurer for investment pursuant to G.S. 147-69.2.

(h) Public hospitals are subject to G.S. 159-31 with regard to selection of an official depository and security of deposits.

(i) Public hospitals are subject to G.S. 159-32 with regard to daily deposits.

(i1) Public hospitals may accept electronic payments pursuant to G.S. 159-32.1.

(j) Public hospitals are subject to G.S. 159-33 with regard to semiannual reports to the Local Government Commission on the status of deposits and investments.

(k) Any hospital district or hospital authority having outstanding general obligation or revenue bonds is subject to G.S. 159-35, 159-36, 159-37, and 159-38. (1973, c. 474, s. 28.1; c. 1215; 1999-434, s. 5.1; 2005-417, s. 1.)

Part 5. Nonprofit Corporations Receiving Public Funds.

§ 159-40. Special regulations pertaining to nonprofit corporations receiving public funds.

(a) If a city or county grants or appropriates one thousand dollars ($1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.

(b) Any nonprofit corporation or organization which receives one thousand dollars ($1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which the funds were received.

(c) Every nonprofit corporation or organization which has an audit performed pursuant to this section shall file a copy of the audit report with the office of the State Auditor.

(d) This section does not apply to the following:

(1) Sheltered workshops.

(2) Adult development activity programs.

(3) Private residential facilities for individuals with an intellectual or developmental disability.

(4) Developmental day care centers.

(5) Any nonprofit corporation or organization whose sole use of public funds is to provide hospital services or operate as a volunteer fire department, rescue squad, or ambulance squad, or which operates as a junior college, college, or university duly accredited by the southern regional accrediting association.

(e) Repealed by Session Laws 1979, c. 905. (1977, c. 687, s. 1; 1977, 2nd Sess., c. 1195, s. 1; 1979, c. 905; 2018-47, s. 12.)

Part 6. Joint Municipal Power Agencies and Joint Municipal Assistance Agencies.

§ 159-41. Special regulations pertaining to joint municipal power agencies.

(a) For the purposes of this Part, "joint agency" means a public body corporate and politic organized in accordance with the provisions of Chapter 159B, or the combination or recombination of any joint agencies so organized.

(b) Except as provided in this Part, none of the provisions of Article 3 of this Chapter shall apply to joint agencies. Whenever the provisions of this Part and the provisions of Chapter 159B of the General Statutes shall conflict, the provisions of Chapter 159B shall govern.

(c) Each joint agency shall operate under an annual balanced budget resolution adopted by the governing board and entered into the minutes. A budget is balanced when the sum of the appropriations is equal to the sum of estimated net revenues and appropriated fund balances. The budget resolution of a joint agency shall cover a fiscal year beginning January 1 and ending December 31, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the agency's financial operations, may enter an order permitting an agency to operate under a fiscal year other than from January 1 to December 31.

(d) The following directions and limitations shall bind the governing board in adopting the budget resolution:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.

(4) The sum of estimated net revenue and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balances in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenue, as those figures stand at the close of the fiscal year preceding the budget year.

(e) The governing board of the joint agency may amend the budget resolution at any time after its adoption and may authorize its designated finance officer to transfer moneys from one appropriation to another, subject to such limitations and procedures as it may prescribe. All such transfers will be reported to the governing board or its executive committee at its next regular meeting and shall be entered in the minutes.

(f) Joint agencies are subject to the following sections of Article 3 of this Chapter, to the same extent as a "public authority," provided, however, the term "budget ordinance" as used in such sections shall be interpreted for the purposes of this Part to mean the budget resolution of a joint agency:

(1) G.S. 159-9, provided, however, that the governing board of an agency may designate as budget officer someone other than a member of the governing board or an officer or employee of the agency.
(2) G.S. 159-12, provided, however, that the provision relating to making the budget available to the news media of a county shall not apply to a joint agency.
(3) G.S. 159-13.2.
(4) G.S. 159-16.
(5) G.S. 159-18.
(6) G.S. 159-19.
(7) G.S. 159-21.
(8) G.S. 159-22, provided, however, that the provision restricting transfers to funds maintained pursuant to G.S. 159-13(a) shall not apply to a joint agency.
(9) G.S. 159-24.
(10) G.S. 159-25.
(11) G.S. 159-26.
(12) G.S. 159-28.
(13) G.S. 159-28.1.
(14) G.S. 159-29.
(15) G.S. 159-30.
(16) G.S. 159-31.
(17) G.S. 159-32.
(18) G.S. 159-33.
(19) G.S. 159-33.1.
(20) G.S. 159-34.
(21) G.S. 159-36.
(22) G.S. 159-38. (1979, c. 685, s. 1.)

Part 7. Public Housing Authorities.

§ 159-42. Special regulations pertaining to public housing authorities.

(a) Definition. – As used in this Part, the term "housing authority" means any entity as defined in G.S. 157-3(1) that is not subject to G.S. 157-4.2.

(b) Applicability. – Except as provided in this Part, none of the provisions of Parts 1, 2, or 3 of this Article apply to housing authorities in compliance with this Part.

(c) Annual Budget. – Each housing authority shall operate under an annual budget. The budget shall take the form of estimated revenues plus fund balances available for the program, as defined by the U.S. Department of Housing and Urban Development regulations or their successors, that are equal to or greater than estimated expenditures. The proposed budget shall be

available for public inspection in a manner consistent with G.S. 159-12(a). Before adopting the budget, the housing authority governing board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. The governing board shall cause notice of the public hearing to be published in a newspaper of general circulation in the area once a week for two consecutive weeks prior to the public hearing.

(d) Project Ordinances. – The annual budget shall not include those estimated revenues and expenditures accounted for in a project ordinance. A housing authority shall adopt a project ordinance, as defined by G.S. 159-13.2, for those programs which span two or more fiscal years. The form of the project ordinance shall be in accordance with the relevant funding agency guidelines for that project. The estimated revenues plus fund balances available for a project shall be equal to or greater than the estimated expenditures. The estimated revenues and expenditures related to approved projects for a fiscal year may be included in the annual budget on an informational basis.

(e) Finance Officer. – The housing authority governing board shall appoint or designate a finance officer with the following powers and duties:

(1) Preparation of the annual budget for presentation to the governing board.
(2) Administration of the approved budget.
(3) Maintenance of the accounts and other financial records in accordance with generally accepted principles of accounting.
(4) Preparation and filing of statements of the financial condition, at least annually and at other times as requested by the governing board.
(5) Receipt and deposit, or supervision of the receipt and deposit, of all moneys accruing to the housing authority.
(6) Supervision of the investment of the idle funds of the housing authority.
(7) Maintenance of all records concerning the bonded debt of the housing authority, if any.
(8) Maintenance of any sinking funds of the housing authority.

(f) Accounting Procedures. – A housing authority must comply with federal rules and regulations issued by the U.S. Department of Housing and Urban Development pertaining to procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets. The Commission may inquire into and investigate, with reasonable cause, the internal control procedures of a housing authority. The Commission may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlement, mishandling of funds, or continued operating deficits.

(g) Audits. – The accounting system of a housing authority shall be so designed that the true financial condition of the housing authority can be determined at any time. As soon as possible after the close of each fiscal year, the accounts shall be independently audited by a certified public accountant. The auditor shall be selected by the housing authority governing board and shall report directly to that body. The audit contract or agreement shall be in writing and shall include all its terms and conditions. The terms and conditions of the audit shall include the scope of the audit and the requirement that upon completion of the examination the auditor shall prepare a written report embodying the financial statements and the auditor's opinion and comments relating thereto. The finance officer shall file a copy of the audit with the Secretary of the Commission.

(h) Bonding of Employees. – The bonding requirements of G.S. 159-29 shall apply to the finance officer and those employees of the housing authority handling or having custody of more

than one hundred dollars ($100.00) at any one time or those employees who have access to the inventories of the housing authority.

(i) Investments. – A housing authority may deposit or invest, at interest, all or part of its cash balance pursuant to U.S. Department of Housing and Urban Development regulations.

(j) Official Depository. – Housing authorities shall comply with G.S. 159-31, except in those circumstances where the statute is in conflict with U.S. Department of Housing and Urban Development guidance, which shall control.

(k) Deposits and Payments. – Housing authorities shall comply with G.S. 159-32, 159-32.1, and 159-33. (2001-206, s. 1.)

Part 8. Nonprofit Corporation Established by Public Authority.

§ 159-42.1. Establishment of nonprofit corporation by public authority authorized.

A public authority may establish, control, and operate a nonprofit corporation that is created under Chapter 55A of the General Statutes and is a tax-exempt organization under the Internal Revenue Code to further the authorized purposes of the public authority. A nonprofit corporation established as provided in this section shall not have regulatory or enforcement powers and shall not engage in partisan political activity. (2015-122, s. 1.)

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-43. Short title; legislative intent.

(a) This Article may be cited as "The Local Government Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all units of local government in North Carolina of the power to borrow money secured by a pledge of the taxing power. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured by a pledge of the taxing power or prescribing procedures therefor are repealed. No special, local, or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. (1971, c. 780, s. 1; 1973, c. 494, s. 2.)

§ 159-44. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Finance officer" means the officer performing the duties of finance officer of a unit of local government pursuant to G.S. 159-24 of the Local Government Budget and Fiscal Control Act.

(2) "Governing board" or "board" means the governing body of a unit of local government.

(3) "Sinking fund" means a fund held for the retirement of term bonds.

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital

districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; metropolitan water and sewerage districts; county water and sewer districts; regional public transportation authorities; and special airport districts.

(5) "Utility or public service enterprise" includes:

a. Electric power transmission and distribution systems;
b. Water supply facilities and distribution systems;
c. Sewage collection and disposal systems;
d. Gas transmission and distribution systems;
e. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
f. Solid waste collection and disposal systems and facilities;
g. Cable television systems;
h. Off-street parking facilities and systems;
i. Public auditoriums, coliseums, stadiums and convention centers;
j. Airport;
k. Hospitals and other health-related facilities; and
l. Structural and natural stormwater and drainage systems of all types. (1971, c. 780, s. 1; 1973, c. 494, s. 3; 1977, c. 466, s. 2; 1979, c. 727, s. 2; 1989, c. 643, s. 3; c. 740, s. 3; 1991, c. 325, s. 4; 1995, c. 461, s. 10; 1997-456, s. 27; 2013-50, s. 3.)

§ 159-45. All general obligation bonds subject to Local Government Bond Act.

No unit of local government in this State shall have authority to enter into any contract or agreement, whether oral or written, whereby it borrows money and makes an express or implied pledge of its power to levy taxes as security for repayment of the loan, except by the issuance of its bonds in accordance with the limitations and procedures prescribed in this Article or by the issuance of its negotiable notes in accordance with the limitations and procedures prescribed in Article 9 of this Chapter or by the issuance of debt instruments in accordance with the limitations and procedures prescribed in Chapter 159G of the General Statutes. (1971, c. 780, s. 1; 1987, c. 796, s. 2(1).)

§ 159-46. Faith and credit pledged.

The faith and credit of the issuing unit are hereby pledged for the payment of the principal of and interest on all bonds issued under this Article and debt instruments secured by a pledge of its faith and credit in accordance with the limitations and procedures prescribed in Chapter 159G of the General Statutes according to their terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of installments of principal and interest or for the maintenance of sinking funds shall be unrestricted as to rate or amount, notwithstanding any other provisions of law whether general, special, local, or private. (1971, c. 780, s. 1; 1987, c. 796, s. 2(2).)

§ 159-47. Additional security for utility or public service enterprise bonds.

(a) The revenues of a utility or public service enterprise owned or leased by a unit of local government shall be applied in accordance with the following priorities:

(1) First, to pay the operating, maintenance, and capital outlay expenses of the utility or enterprise.
(2) Second, to pay when due the interest on and principal of outstanding bonds issued for capital projects that are or were a part of the utility or enterprise.
(3) Third, for any other lawful purpose.

Notwithstanding the foregoing provisions, a county which owns or leases hospitals or other health-related facilities and has not issued any general obligation bonds during the period July 1, 1973, to July 1, 1974, for a capital project that is or was a part of such hospitals or other health-related facilities shall have the option of applying the revenues of such hospitals or other health-related facilities in accordance with a bond order adopted under the Local Government Revenue Bond Act.

(b) In the discretion of the governing board of the issuing unit, the bond order may pledge the revenues (or any portion of the revenues) of a utility or public service enterprise to the payment of the interest on and principal of bonds issued under this Article to finance capital projects that are to become a part of the utility or enterprise.

(c) In the discretion of the governing board of the issuing unit, a bond order authorizing the issuance of bonds under this Article to finance capital projects that are to become a part of a utility or public service enterprise owned or leased by the issuing unit may state that the revenues of the utility or enterprise may be pledged to the payment of the interest on and principal of the bonds if and to the extent that the governing board of the unit shall thereafter determine by resolution (prior to the issuance of the bonds), and that a tax sufficient to pay the principal of and interest on the bonds shall be annually levied and collected by the issuing unit on all taxable property within its taxing jurisdiction, but that in the event that any revenues of the utility or enterprise shall be pledged to the payment of the bonds, the tax may be reduced by the amount of utility or enterprise revenues available for the payment of the principal and interest. A pledge of utility or enterprise revenues pursuant to this subsection shall be made by resolution of the governing board of the issuing unit after the bond order is adopted and before bonds are issued thereunder.

(d) When a pledge of utility or enterprise revenues is made pursuant to this section, the issuing unit shall have, with respect to the utility or enterprise whose revenues are pledged, all of the powers set out in G.S. 159-83 and G.S. 159-89. (1971, c. 780, s. 1; 1973, c. 1326.)

§ 159-48. For what purposes bonds may be issued.

(a) Each unit of local government may borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

(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 within the limits prescribed in G.S. 159-13.
(3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.
(4) To refund outstanding revenue bonds or revenue bond anticipation notes.
(5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.
(6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.

(7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.

(b) Each county and city may borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.

(2) Providing armories for the North Carolina National Guard.

(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.

(4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.

(5) Providing cemeteries.

(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.

(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of individuals with intellectual or other developmental disabilities, including facilities for training specialists and sheltered workshops for individuals with intellectual or other developmental disabilities; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

(8) Providing land for corporate purposes.

(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.

(10) Providing library facilities, including without limitation fixed and mobile libraries.

(11) Providing art galleries, museums, and art centers, and providing for historic properties.

(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge,

including without limitation meters, buildings, garages, driveways, and approaches.

(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.

(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.

(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.

(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.

(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.

(20) Providing voting machines.

(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.

(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.

(24) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.

(25) Providing property to preserve a railroad corridor.

(26) Undertaking public activities in or for the benefit of a development financing district pursuant to a development financing plan.

(c) Each county may borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of subdivisions (1) through (4b) of this subsection, paying any capital costs of any one or more of the purposes and, in the case of subdivisions (5) and (6) of this subsection, to finance the cost of the purpose:

(1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries,

auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.

(2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.

(3) Providing county homes for the indigent and infirm.

(4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.

(4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.

(4b) Providing land for present or future county corporate, open space, community college, and public school purposes.

(5) Providing for the octennial revaluation of real property for taxation.

(6) Providing housing projects for persons of low or moderate income, including construction or acquisition of projects to be owned by a county, redevelopment commission, or housing authority and the provision of loans, grants, interest supplements, and other programs of financial assistance to these persons. A housing project may provide housing for persons of other than low or moderate income if at least forty percent (40%) of the units in the project are exclusively reserved for persons of low or moderate income. No rent subsidy shall be paid from bond proceeds.

(d) Each city may borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Repealed by Session Laws 1977, c. 402, s. 2.

(2) Providing cable television systems.

(3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.

(4) Providing gas systems, including without limitation facilities for the production, storage, transmission, and distribution of gas, where systems also include the purchase or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of the systems may be located either inside or outside the State.

(5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.

(6) Improving existing systems or facilities for the transmission or distribution of telephone services.

(7) Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements

and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy shall be paid from bond proceeds.

(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513, metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, regional public transportation authority, metropolitan public transportation authority, and special airport district may borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

(1) Acquire, construct, erect, provide, develop, install, furnish, and equip.
(2) Reconstruct, remodel, alter, renovate, replace, refurnish, and reequip.
(3) Enlarge, expand, and extend.
(4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing in this section prohibits the combining of purposes from any subdivision of any subsection of this section and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, all of the following:

(1) The costs of doing any or all of the things mentioned in subsection (f) of this section.
(2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, franchises, and licenses used or useful in connection with the purpose authorized.
(3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which the structures are to be moved.
(4) Financing charges, including estimated interest during construction and for six months thereafter.
(5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues.
(6) The costs of bond printing and insurance.
(7) Administrative and legal expenses.
(8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out in this section to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2; 1987, c. 464, s. 7; c. 564, s. 10; 1989, c. 600, s. 7; c. 740, s. 4; 1991, c. 325, s. 5; 1997-6, s. 19; 1999-366, s. 4; 1999-378, s. 1; 2003-403, s. 3; 2009-281, s. 1; 2013-50, s. 4; 2019-76, s. 32; 2025-39, s. 8.8.)

§ 159-49. When a vote of the people is required.

Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

(1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).

(2) Bonds issued by a county, county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, metropolitan water district created under Article 4 of Chapter 162A of the General Statutes, or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), (d), or (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), (d), and (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5; 1977, c. 402, s. 3; 1989, c. 470.)

Part 2. Procedure for Issuing Bonds.

§ 159-50. Notice of intent to make application for issuance of voted bonds; objection by citizens and taxpayers.

When a unit of local government proposes to issue bonds that must be approved by a vote of the people, it shall first publish a notice of its intent to make application to the Commission for approval of the issue. The notice shall be published once not less than 10 days before the application is filed. The notice shall state (i) that the board intends to file an application with the Commission for approval of a bond issue, (ii) in brief and general terms the purpose of the proposed issue, (iii) the maximum amount of bonds to be issued, and (iv) that any citizen or taxpayer of the issuing unit may, within seven days after the date of the publication, file with the

governing board and the Commission a statement of any objections he may have to the issue. The Commission may prescribe the form of the notice.

Any citizen or taxpayer of the issuing unit who objects to the proposed bond issue in whole or in part may, within seven days from the date of publication of the notice, file a written statement of his objections with the board and the Commission. The statement shall set forth each objection to the proposed bond issue and shall contain the name and address of the person filing it. The Commission shall consider the statement of objections along with the application and shall notify the objector and the board of its disposition of each objection.

Failure to comply with this section shall not affect the validity of any bonds otherwise issued in accordance with the law. This section shall not apply to bonds that need not be submitted to a vote of the people. (1953, c. 1121; 1971, c. 780, s. 1.)

§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by resolutions of the special tax board of that authority and of each of the boards of county commissioners of the counties organizing the authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue. If the issuing unit is a merged school administrative unit described in G.S. 115C-513, each county in which the merged unit is located may attend the preliminary conference.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1953, c. 1121; 1971, c. 780, s. 2; 1989, c. 740, s. 5; 1991, c. 325, s. 6, c. 666, s. 6.)

§ 159-52. Approval of application by Commission.

(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the bond issue is necessary or expedient.
(2) The nature and amount of the outstanding debt of the issuing unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to service the proposed debt.

(8) The unit's appraised and assessed value of property subject to taxation.
(9) The ability of the unit to sustain the additional taxes necessary to service the debt.
(10) The ability of the Commission to market the proposed bonds at reasonable interest rates.
(11) If the proposed issue is for a utility or public service enterprise, the probable net revenues of the project to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the project to be financed, will be sufficient to service the proposed debt.
(12) Whether the amount of the proposed debt will be adequate to accomplish the purpose for which it is to be incurred.
(13) If the proposed bond issue is for a water system as described in G.S. 159-48(b)(21), whether a unit has prepared a local water supply plan in compliance with G.S. 143-355.

The Commission may inquire into and give consideration to any other matters which 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 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 unit'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.
(4) That the increase in taxes, if any, necessary to service the proposed debt will not be excessive.
(5) That the proposed bonds can be marketed at reasonable rates of interest.
(6) That the assumptions used by the finance officer of the unit in preparing the statement of estimated interest filed with the clerk pursuant to G.S. 159-55.1(a) are reasonable.

If the Commission tentatively decides to deny the application because it is of the opinion that any one or more of these conclusions cannot be supported from the information presented to it, it shall so notify the unit filing the application. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing, and to present a summary of the testimony and his recommendations for the Commission's consideration. (1931, c. 60, ss. 12, 13; 1971, c. 780, s. 1; 2011-374, s. 3.3; 2022-53, s. 1.)

§ 159-53. Order approving or disapproving an application.

(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-52(b), 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) If the Commission shall enter an order denying an application, the proceedings under this Subchapter shall be at an end. (1931, c. 60, s. 14; 1971, c. 780, s. 1.)

§ 159-54. The bond order.

After or at the same time the application is filed with the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

(1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.

(2) The maximum aggregate principal amount of the bonds.

(3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.

(4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.

(5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.

(6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.

(7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon. (1917, c. 138, s. 17; 1919, c. 178, s. 3(17); c. 285, s. 2; C.S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 9; 1931, c. 60, ss. 49, 55; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1949, c. 497, ss. 1, 3; 1957, c. 856, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 6; 2012-156, s. 2.)

§ 159-55. Sworn statement of debt; debt limitation.

(a) After the bond order has been introduced and before the public hearing thereon, the finance officer (or some other officer designated by the governing board for this purpose) shall file with the clerk a statement showing the following:

(1) The gross debt of the unit, excluding therefrom debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds. The gross debt (after exclusions) is the sum of (i) outstanding debt evidenced by bonds, (ii) bonds authorized by orders introduced but not yet adopted, (iii) unissued bonds authorized by adopted orders, and (iv) outstanding debt not evidenced by bonds. However, for purposes of the sworn statement of debt and the debt limitation, revenue bonds and project development financing debt instruments (unless additionally secured by a pledge of the issuing unit's faith and credit) shall not be considered debt and shall not be included in gross debt nor deducted from gross debt.

(2) The deductions to be made from gross debt in computing net debt. The following deductions are allowed:

a. Funding and refunding bonds authorized by orders introduced but not yet adopted.
b. Funding and refunding bonds authorized but not yet issued.
c. The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes, or sanitary sewer purposes (to the extent that the bonds are deductible under subsection (b) of this section), or two or more of these purposes.
d. The amount of bonded debt included in gross debt and incurred, or to be incurred, for water, gas, or electric light or power purposes, or any two or more of these purposes.
e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for sanitary sewer system purposes to the extent that the debt is made deductible by subsection (b) of this section.
f. The amount of uncollected special assessments theretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the assessments will be applied, when collected, to the payment of any part of the gross debt.
g. The amount, as estimated by the governing board of the issuing unit or an officer designated by the board for this purpose, of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt.

(3) The net debt of the issuing unit, being the difference between the gross debt and deductions.

(4) The assessed value of property subject to taxation by the issuing unit, as revealed by the tax records and certified to the issuing unit by the assessor. In calculating the assessed value, the incremental valuation of any development financing district located in the unit, as determined pursuant to G.S. 159-107, shall not be included.

(5) The percentage that the net debt bears to the assessed value of property subject to taxation by the issuing unit.

(b) Debt incurred or to be incurred for sanitary sewer system purposes is deductible from gross debt when the combined revenues of the water system and the sanitary sewer system (whether or not the water and sewer system are operated separately or as a consolidated system) were sufficient to pay all operating, capital outlay, and debt service expenditures attributable to both systems in each of the three complete fiscal years immediately preceding the date on which the sworn statement of debt is filed. For the purposes of this subsection, the "revenues" of a water system and a sanitary sewer system include:

(1) Rates, fees, rentals, charges, and other receipts and income derived from or in connection with the system.

(2) Fees, rents, or other charges collected from other offices, agencies, institutions, and departments of the issuing unit at rates not in excess of those charged to other consumers, customers, or users.

(3) Appropriations from the fund balance of the prior fiscal year from the fund or funds established to account for the revenues and expenditures of the water system or sewer system pursuant to G.S. 159-13(a) of the Local Government Budget and Fiscal Control Act.

Before the sworn statement of debt is filed, the secretary shall determine to what extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for deduction from gross debt pursuant to this subsection, and shall give his certificate to that effect. The secretary's certificate shall be filed with and deemed a part of the sworn statement of debt. The secretary's certificate shall be conclusive in the absence of fraud.

(c) No bond order shall be adopted unless it appears from the sworn statement of debt filed in connection therewith that the net debt of the unit does not exceed eight percent (8%) of the assessed value of property subject to taxation by the issuing unit. This limitation shall not apply to:

(1) Funding and refunding bonds.
(2) Bonds issued for water, gas, or electric power purposes, or two or more of these purposes.
(3) Bonds issued for sanitary sewer system purposes when the bonds are deductible pursuant to subsection (b) of this section.
(4) Bonds issued for sanitary sewers, sewage disposal, or sewage purification plants when the construction of these facilities has been ordered by the Environmental Management Commission, which Commission is hereby authorized to make such an order, or by a court of competent jurisdiction.
(5) Bonds or notes issued for erosion control purposes.
(6) Bonds or notes issued for the purpose of erecting jetties or other protective works to prevent encroachment by the ocean, sounds, or other bodies of water.

(d) Repealed by Session Laws 2022-53, s. 2(a), effective July 7, 2022, and applicable to bonds issued under bond orders introduced on or after October 1, 2022, and to contracts entered into on or after October 1, 2022. (1917, c. 138, s. 19; 1919, c. 178, s. 3(19); c. 285, s. 4; C.S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 13, 14; c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; c. 321; Ex. Sess. 1938, c. 3; 1955, c. 1045; 1959, c. 779, s. 10; 1967, c. 892, s. 4; 1969, c. 1092; 1971, c. 780, s. 1; 1973, c. 494, s. 7; c. 1262, s. 231; 1991, c. 11, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 1007, s. 41; 2003-403, s. 4; 2013-200, s. 1; 2022-53, s. 2(a), (b).)

§ 159-55.1. Statement of disclosures necessary for bond authorization.

(a) After the bond order has been introduced and before the public hearing on it, the finance officer shall file with the clerk of the board a statement of disclosure stating the following:

(1) Interest. – An estimate of the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, and a summary of the assumptions upon which the estimate is based. The Commission must approve the assumptions upon which the estimate is based as provided in G.S. 159-52(b).
(2) Property taxes. – An estimate of the increase in property tax rate, if any, necessary to service the proposed debt. If no increase in property tax rate is estimated to be needed, 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. The estimated increase in property tax rate shall be stated as the rate of increase per one hundred dollars ($100.00) of assessed valuation.

(3) Two-thirds bonds. – The amount of two-thirds bonds capacity the unit has available for the current fiscal year, if any.

(b) The statement of disclosure shall 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 the disclosures are based will occur, that the occurrence of certain of the assumptions is beyond the control of the unit, and that differences between the actual circumstances at the time the bonds are issued from the assumptions included in the disclosure could result in significant differences between the disclosures made and the actual occurrences. The statement may include other qualifications as the finance officer deems appropriate. The validity of the bonds authorized by the order is not subject to challenge on the grounds that the actual occurrences when issued are different than the disclosures set forth in the statement.

(c) The statement of disclosure shall be filed with the Commission, posted online, and maintained by the clerk of the board. (2022-53, s. 2(c).)

§ 159-56. Publication of bond order as introduced.

After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

"The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be $_____ and the net debt thereof, including the proposed bonds, to be $_____. The finance officer of the [issuing unit] has filed a statement estimating that the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, is $_____. A tax is authorized to be levied to pay the principal of and interest on the bonds if they are issued. The finance officer has filed a statement estimating that [a property tax increase of $_____ per $100.00 of assessed valuation] [no property tax increase] will be required to provide sufficient funds to pay the principal and interest on the proposed bonds. These estimates are preliminary, are for general informational purposes only, and may differ from the actual interest paid on the bonds or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at _____.

_____

Clerk"

The publication may include a summary of the assumptions upon which the estimates of the total amount of interest that will be paid on the bonds over the expected term of the bonds if issued, or the amount of any property tax increase required to provide funds to pay principal and interest on the bonds if issued, are based, and may further state that there is no assurance that the circumstances included in the assumptions will occur, that the occurrence of certain of the assumptions is beyond the control of the issuing unit, and that differences between the actual circumstances at the time the bonds are issued from the assumptions included in the estimates could result in significant differences between the estimated interest and the actual interest on the bonds or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds. The statement may include additional qualifications as the unit deems appropriate. The validity of bonds authorized to be issued pursuant to this act is not subject to challenge on the grounds that the actual interest cost of the bonds when issued, or the actual

property tax increases required to provide sufficient funds to pay the principal and interest on the bonds when issued, is different than the amount set forth in the estimates referenced in the publication of the bond order as introduced. (1927, c. 81, s. 16; 1971, c. 780, s. 1; 2013-200, s. 2; 2022-53, s. 3.)

§ 159-56.1. Certain proceedings ratified notwithstanding provisions of § 159-56.

All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-56; provided that the issuance of said bonds, the indebtedness to be incurred by the issuance thereof and the levy of a tax for the payment thereof shall have been approved at an election by a majority of the qualified voters of the unit voting thereon. (1973, c. 1172.)

§ 159-57. Hearing; passage of bond order.

On the date fixed for the public hearing, which shall be not earlier than six days after the date of publication of the bond order as introduced, the board shall hear anyone who may wish to be heard on the question of the validity of the order or the advisability of issuing the bonds. The hearing may be adjourned from time to time.

After the hearing, (and on the same day as the hearing, if the board so desires) the board may pass the order as introduced, or as amended. No amendment may increase the amount of bonds to be issued, nor substantially change the purpose of the issue. If the board wishes to increase the amount of bonds to be issued, or to substantially change the purpose of the issue, a new proceeding under this Article is required.

The provisions of any city charter, general law, or local act to the contrary notwithstanding, a bond order may be introduced at any regular or special meeting of the governing board and adopted at any such meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Subchapter. Bond orders shall not be subject to the provisions of any city charter or local act concerning initiative and referendum. (1927, c. 81, s. 17; 1953, c. 1065, s. 1; 1971, c. 780, s. 1.)

§ 159-58. Publication of bond order as adopted.

After adoption, the clerk shall publish the bond order once, with the following statement appended:

"The foregoing order was adopted on the _____ day of _____, ____, and is hereby published this _____ day of _____, ____. Any action or proceeding questioning the validity of the order must be begun within 30 days after the date of publication of this notice. The finance officer of the [issuing unit] has filed a statement estimating that the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, is $_____. A tax is authorized to be levied to pay the principal and interest on the bonds if they are issued. The finance officer has filed a statement estimating that [a property tax increase of $_____ per $100.00 of assessed valuation] [no property tax increase] will be required to provide sufficient funds to pay the principal and interest on the proposed bonds. These estimates are preliminary, are for general informational purposes only, and may differ from the actual interest paid on the bonds or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds.

Clerk"

The publication may include a summary of the assumptions upon which the estimates of the total amount of interest that will be paid on the bonds over the expected term of the bonds if issued, or the amount of any property tax increase required to provide sufficient funds to pay the principal and interest on the bonds if issued, are based, and may further state that there is no assurance that the circumstances included in the assumptions will occur, that the occurrence of certain of the assumptions is beyond the control of the issuing unit, and that differences between the actual circumstances at the time the bonds are issued from the assumptions included in the estimates could result in significant differences between the estimated interest and the actual interest on the bonds or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds. The statement may include such additional qualifications as the unit deems appropriate. The validity of bonds authorized to be issued pursuant to this act is not subject to challenge on the grounds that the actual interest cost of the bonds when issued, or the actual property tax increases required to provide sufficient funds to pay the principal and interest on the bonds when issued, is different than the amount set forth in the estimates referenced in the publication of the bond order as adopted. (1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 19; 1971, c. 780, s. 1; 1999-456, s. 59; 2013-200, s. 3; 2022-53, s. 4.)

§ 159-59. Limitation of action to set aside order.

Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be begun within 30 days after the date of publication of the bond order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; 1971, c. 780, s. 1.)

§ 159-60. Petition for referendum on bond issue.

A petition demanding that a bond order be submitted to the voters may be filed with the clerk within 30 days after the date of publication of the bond order as introduced. The petition shall be in writing, and shall be signed by a number of voters of the issuing unit equal to not less than ten percent (10%) of the total number of voters registered to vote in elections of the issuing unit according to the most recent figures certified by the Board of Elections. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers, and need not be all on one sheet.

The clerk shall investigate the sufficiency of the petition and present it to the governing board, with a certificate stating the results of his investigation. The governing board, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and its determination shall be conclusive.

This section does not apply to bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5). (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; c. 178, s. 3(21); C.S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; c. 102, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 8; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

(a) If a bond order is to take effect upon approval of the voters, the affirmative vote or a majority of those who vote thereon shall be required.

(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond order, only on a date permitted by G.S. 163-287. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. Several bond orders or other matters may be voted upon at the same referendum.

(c) The clerk shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the maximum amount of the proposed bonds, the purpose of the bonds, a statement that taxes will or may be levied for the payment thereof, and a statement as to the last day for registration for the referendum under the election laws then in effect.

(d) The form of the question as stated on the ballot shall be in substantially the following words:

"Additional property taxes may be levied on property located in (name of unit of local government) in an amount sufficient to pay the principal of and interest on bonds if approved by the following ballot question. 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, in light of the following:

(1) The estimated cumulative cost over the life of the bond, using the highest interest rate charged for similar debt over the last (maximum bond issuance term), would be ($).

(2) The amount of property tax liability increase for each one hundred thousand dollars ($100,000) of property tax value to service the cumulative cost over the life of the bond provided above would be ($) per year.

[ ] YES

[ ] NO"

(e) The board of elections shall canvass the referendum and certify the results to the governing board. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

"Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after

_____

(date of publication)

_____

(title of governing board)"

The statement of results shall be filed in the clerk's office and inserted in the minutes of the board. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 22, 23, 25-27, 29; 1949, c. 497, ss. 2, 4; 1953, c. 1065, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 9; 2013-200, s. 4; 2013-381, s. 10.26; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2023-134, s. 36.3(a).)

§ 159-62. Limitation on actions contesting validity of bond referenda.

Any action or proceeding in any court to set aside a bond referendum, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 30; 1949, c. 497, s. 4; 1953, c. 1065, s. 2; 1971, c. 780, s. 1.)

§ 159-63. Repeal of bond orders.

A bond order may be repealed at any time before bonds or bond anticipation notes are issued thereunder. No referendum is required on the repeal of any bond order, nor is a petition for any such referendum permitted. (1971, c. 780, s. 1.)

§ 159-64. Within what time bonds may be issued.

Bonds may be issued under a bond order at any time within seven years after the bond order takes effect. Such period may be extended prior to the expiration of such period from seven years to 10 years as hereinafter provided. The board of the issuing unit shall file an application for Commission approval of such extension with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning such extension as the secretary may require. The Commission may prescribe the form of such application. In determining whether to approve such extension, the Commission may inquire into and give consideration to any matters which it believes may relate to such extension.

The Commission may enter an order approving a proposed extension of the maximum time period for issuing bonds under a bond order from seven to 10 years if, upon the basis of the information and evidence it receives, it finds and determines that governmental approvals relative to the purpose to be financed in whole or in part with the proceeds of the bonds cannot be obtained within seven years after the bond order has taken effect, that funds to be applied together with the proceeds of the bonds to finance the purpose for which the bonds are to be issued will not be available within seven years after the bond order has taken effect or that the proposed extension is necessary for other reasons that are not within the direct control of the issuing unit other than any order of any court. If the Commission enters an order denying such extension, then the proceedings under this section shall be at an end.

If the Commission enters an order approving a proposed extension of the maximum time period for issuing bonds under a bond order as provided in this section, then the board shall fix the time and place for a public hearing on such extension and the clerk shall publish such bond order once with the following statement appended:

> "The foregoing order took effect on_____,_____. Anyone who wishes to be heard on the question of whether the maximum time period for issuing bonds under such order should be extended from seven years to 10 years after such date may appear at a public hearing or an adjournment thereof to be held at _____ on _____ at _____
>
> (time) (date) (place)

_____
Clerk"

On the date fixed for such hearing, which shall be not earlier than six days after the date of publication of the bond order with appended statement as provided in this section, the board shall hear anyone who might wish to be heard on the question of whether the maximum time period for issuing bonds under the bond order should be extended from seven years to 10 years. The hearing may be adjourned from time to time.

After such hearing, the board may adopt an order providing that the maximum time period for issuing bonds under the bond order has been extended from seven to 10 years after the bond order has taken effect. Such order shall provide that it will take effect 30 days after its publication following adoption.

After adoption, the clerk shall publish once an order extending the maximum time period for issuing bonds under a bond order with the following statement appended:

> "The foregoing order was adopted on the ____ day of_____,_____, and is hereby published this ____ day of_____, _____. Any action or proceeding questioning the validity of such order must be begun within 30 days after the date of publication of this notice.
>
> _____
> Clerk"

Any action or proceeding in any court to set aside an order extending the maximum time period for issuing bonds under a bond order, or to obtain any other relief, upon the ground that such order is invalid, must be begun within 30 days after the date of publication of such order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of such order shall be asserted nor shall the validity of such order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section.

When the issuance of bonds under any bond order is prevented or prohibited by any order of any court, the period of time within which bonds may be issued under the bond order in litigation shall be extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition.

When the issuance of bonds under any bond order, to finance public improvements in an area to be annexed, is prevented or prohibited by reason of litigation respecting the annexation and the Local Government Commission shall certify to such effect, the period of time within which bonds may be issued under the bond order shall be extended by the length of time elapsing between the date of institution of the litigation and the date of its final disposition.

The General Assembly may at any time prior to the expiration of the maximum time period herein provided extend the time for issuing bonds under bond orders.

When any such extension is effected or granted pursuant to this section, no further approval of the voters shall be required. (1917, c. 138, s. 24; 1919, c. 178, s. 3(24); C.S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81; s. 32; 1939, c. 231, ss. 1, 2(d); 1947, c. 510, ss. 1, 2; 1949, c. 190, ss. 1, 2; 1951, c. 439, ss. 1, 2; 1953, c. 693, ss. 1, 3; 1955, c. 704, ss. 1, 2; 1969, c. 99; 1971, c. 780, s. 1; 1975, c. 545, s. 1; 1977, 2nd Sess., c. 1219, s. 36; 1979, c. 444, s. 1.)

§ 159-65. Resolution fixing the details of the bonds.

(a) After the bond order has been adopted, the board shall adopt a resolution fixing the details of the bonds. In fixing details of the bonds, the board is subject to these restrictions and directions:

(1) The dates for payment of installments of principal shall not exceed the maximum periods of usefulness prescribed by the Commission pursuant to G.S. 159-122.

(2) Bonds authorized by two or more bond orders may be consolidated into a single issue.

(3) Bonds of each issue shall have principal paid in annual installments, the first of which shall be payable not more than three years after the date of the bonds, and the last within the maximum maturity period prescribed by regulation of the Commission under G.S. 159-122.

(4) No installment of principal for any issue may be more than four times as great in amount as the smallest prior installment of principal for the same issue.

(5) Bonds of each issue may be issued from time to time in series with different provisions for each series. Each series shall be deemed a separate issue for the purposes of this section, except that two or more series may be considered to be a single issue under subdivisions (3) and (4) of this subsection if issued on the same day or two consecutive days.

(6) Any bond may be made payable on demand or tender for purchase as provided in G.S. 159-79, and 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 therein. When any such bond has been validly called for redemption and provision has 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.

(7) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be made payable in such kind of money and in such place or places within or without the State of North Carolina, as the board may determine.

(b) Subdivisions (a)(3) and (4) of this section do not apply to refunding bonds or to bonds purchased by a State or federal agency. Subdivisions (a)(3) and (4) also do not apply to bonds the interest on which is or may be includable in gross income for purposes of federal income tax, as long as the dates for payment of principal on these bonds have been approved by the Commission. For the purposes of subdivisions (a)(3) and (4) of this section and for bonds the interest on which is or may be includable in gross income for purposes of federal income tax, payment of an installment of principal may be provided for by the maturity of a bond, mandatory redemption of principal prior to maturity, a sinking fund, a credit facility as defined in G.S. 159-79, or any other means satisfactory to the Commission. (1917, c. 138, s. 25; 1919, c. 178, s. 3(25); C.S., s. 2951; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3; 1969, c. 686; 1971, c. 780, s. 1; 1973, c. 494, s. 10; cc. 883, 995; 1987, c. 585, s. 2; c. 586; 2003-388, s. 2.)

§ 159-66. Validation of former proceedings and actions.

(a) All proceedings and actions heretofore taken by the governing boards of units of local government and by the Local Government Commission to fix the details of bonds and to provide

for the advertisement and sale thereof are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-65(4).

(b) This section shall apply to all bonds sold by the Local Government Commission between July 1, 1973, and February 18, 1974. (1973, c. 872, ss. 1, 2.)

§ 159-67. Procedures if a county votes to relocate the county seat.

Whenever the citizens of a county, by referendum, decide that the county's county seat, along with the courthouse and other county buildings and agencies, should be relocated, the board of county commissioners of that county shall forthwith begin discussions with the Local Government Commission concerning financing of the relocation. If bonds are to be issued for the relocation, or a financing agreement entered into, the board of commissioners shall apply to the Local Government Commission no later than 10 months after the day of the referendum. If a bond election is necessary, it shall be held no later than 22 months after the day of the referendum. (1975, c. 324, s. 5.)

§ 159-68. Certain provisions not applicable to refunding bonds.

The provisions of G.S. 159-56 and the provisions of this Article related to the holding of a public hearing prior to the adoption of the bond order do not apply to refunding bonds issued by a unit of local government so long as the refunding bonds do not extend the final maturity of the debt or obligation to be refunded and so long as the aggregate debt service over the life of the refunding bonds is less than the aggregate debt service on the debt or obligation to be refunded. When the conditions of this section are satisfied, a unit of local government may introduce a bond order, adopt a bond order, and adopt a sale resolution with respect to refunding bonds in one or more meetings of the unit's governing body. (2005-238, s. 3.)

§ 159-69. Reserved for future codification purposes.

§ 159-70. Reserved for future codification purposes.

§ 159-71. Reserved for future codification purposes.

Part 3. Funding and Refunding Bonds.

§ 159-72. Purposes for which funding and refunding bonds may be issued; when such bonds may be issued.

A unit of local government may issue funding and refunding bonds under this Article for the purposes listed in G.S. 159-48(a)(4), (5), (6), or (7). Funding bonds may be issued if the debt, judgment, or other obligation to be paid is payable at the time of the passage of the bond order or within one year thereafter. Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series of refunding bonds issued pursuant to

G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, or (iv) in certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78.

Except as expressly modified in this Part, funding and refunding bonds issued under the provisions of this Part shall be subject to the limitations and procedures set out in Parts 1 and 2 of this Article. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 257, ss. 2-4; c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; c. 484; 1939, c. 231, ss. 1, 2(c), 4(b); 1941, c. 147; 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 11; 1977, c. 201, s. 1.)

§ 159-73. Financing or refinancing agreements.

Each unit of local government is authorized to enter into agreements with the holders of its outstanding debts for the settlement, adjustment, funding, refunding, financing, or refinancing of the debt. Such an agreement may contain any provisions not inconsistent with law and before the unit may enter into it, it must be approved by the Commission. (1971, c. 780, s. 1.)

§ 159-74. Test cases testing validity of funding or refunding bonds.

At any time after the procedure for authorizing the issuance of funding or refunding bonds has been completed, but before the issuance of the bonds, the issuing unit may institute an action in the Superior Court Division of the General Court of Justice in the county in which all or any part of the unit lies, to determine the validity of the bonds and the validity of the means of payment provided therefor. The action shall be in rem, and shall be against all of the owners of taxable property within the unit and all citizens residing in the unit, but it shall not be necessary to name each such owner or citizen in the summons or complaint. Jurisdiction of all parties defendant shall be acquired by publication of a summons once a week for three successive weeks, and jurisdiction shall be complete within 20 days after the date of the last publication. Any interested party may intervene in the action. Except as otherwise provided by this section, the action shall be governed by the Rules of Civil Procedure. (1931, c. 186, ss. 4, 5; 1935, c. 290, ss. 1, 2; 1937, c. 80; 1971, c. 780, s. 1.)

§ 159-75. Judgment validating issue; costs of the action.

A final decree of the General Court of Justice validating funding or refunding bonds or the financing or refinancing agreement shall be conclusive as to the validity of the bonds or the agreement.

The costs of any action brought under G.S. 159-74 shall be borne by the issuing unit, including a reasonable attorney's fee for the attorney assigned by the court to defend the interests of the citizens and taxpayers in general. (1931, c. 186, ss. 6, 7; 1935, c. 290, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 12.)

§ 159-76. Validation of bonds and notes issued before March 26, 1931.

All bonds and notes issued before March 26, 1931, for which the issuing unit received an amount of money not less than the face amount of the bonds or notes and the proceeds of which have been spent for public purposes, and all bonds and notes subsequently issued to refund all or any portion of those bonds or notes, are hereby validated notwithstanding any lack of statutory authority or failure to observe any statutory provisions concerning the issuance of the bonds or notes. This section shall not validate any bonds or notes, the proceeds of which have been lost because of the failure of a bank. (1931, c. 186, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 13.)

§ 159-77. Validation of all proceedings in connection with the authorization of bonds taken before April 28, 1975.

All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-61(c); provided that the issuance of said bonds shall have been approved at an election by a majority of the qualified voters of the unit voting thereon and that notice of said referendum shall have been published. (1975, c. 178.)

§ 159-78. Special obligation refunding bonds.

In conjunction with the issuance of refunding bonds pursuant to G.S. 159-72 or G.S. 159-84 a unit of local government may issue a series of refunding bonds which shall be payable from the excess of the amount required by a trust fund established pursuant to G.S. 159-72 or G.S. 159-84 to provide for the payment and retirement of the obligations being retired and the amount required to pay any expenses incurred in connection with such refunding to the extent such expenses are payable from said trust fund.

Such refunding bonds shall be special obligations of the municipality issuing them. The principal of and interest on such refunding bonds shall not be payable from the general funds of the municipality, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the trust fund established pursuant to G.S. 159-72 or G.S. 159-84 from which such refunding bonds are payable. Neither the credit nor the taxing power of the municipality is pledged for the payment of the principal or interest of such refunding bonds, and no holder of such refunding bonds has the right to compel the exercise of the taxing power of the municipality or the forfeiture of any of its property in connection with any default thereon. Every such refunding bond shall recite in substance that the principal of and interest on the bond is payable solely from the trust fund established for its payment and that the municipality is not obligated to pay the principal or interest except from such trust fund.

Any refunding bonds issued under this section shall be issued in compliance with the procedure set forth in Article 5 of this Chapter.

The principal amount of any issue of refunding bonds issued pursuant to G.S. 159-72 or G.S. 159-84, together with the principal amount of refunding bonds, if any, issued pursuant to this section in conjunction with a series of bonds issued under G.S. 159-72 or G.S. 159-84, shall not

exceed the sum of the following: (i) the principal amount of the obligations being refinanced, (ii) applicable redemption premiums thereon, (iii) unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds, (iv) in the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided by G.S. 159-72 or G.S. 159-84, interest to accrue on such obligations being refinanced from the date of delivery of the refunding bonds to the first or any subsequent available redemption date or dates selected, in its discretion, by the governing body of the unit of local government, or to the date or dates of maturity, whichever shall be determined by the governing body of the unit of local government to be most advantageous or necessary and (v) expenses, including bond discount, deemed by the governing body to be necessary for the issuance of the refunding bonds. (1977, c. 201, s. 2.)

§ 159-79. Variable rate demand bonds and notes.

(a) **(See note)** Notwithstanding any provisions of this Chapter to the contrary, including particularly, but without limitation, the provisions of G.S. 159-65, G.S. 159-123 to G.S. 159-127, inclusive, G.S. 159-130, G.S. 159-138, G.S. 159-162, G.S. 159-164 and G.S. 159-172, a unit of local government, in fixing the details of general obligation bonds to be issued pursuant to this Article or general obligation notes to be issued pursuant to Article 9 of this Chapter, may provide that such bonds or notes

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds or notes, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds or notes will satisfy the conditions set forth in G.S. 159-52;

(2) May be additionally supported by a Credit Facility;

(3) May be made subject to redemption prior to maturity, with or without premium, on such notice, at such time or times, at such price or prices and with such other redemption provisions as may be stated in the resolution fixing the details of such bonds or notes or with such variations as may be permitted in connection with a Par Formula provided in such resolution;

(4) May bear interest at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in such resolution; and

(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchases prior to their presentment for payment to the provider of the Credit Facility or to the issuing unit.

(a) **(For effective date, see note)** Notwithstanding any provisions of this Chapter to the contrary, including particularly, but without limitation, the provisions of G.S. 159-65, G.S. 159-112, G.S. 159-123 to G.S. 159-127, inclusive, G.S. 159-130, G.S. 159-138, G.S. 159-162, G.S. 159-164 and G.S. 159-172, a unit of local government, in fixing the details of general obligation bonds to be issued pursuant to this Article, general obligation notes to be issued pursuant to Article 9 of this Chapter, or project development financing debt instruments or notes to be issued pursuant to Article 6 of this Chapter, may provide that the instruments or notes:

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds or notes, unless the Commission specifically determines that a Credit Facility is not required upon a

finding and determination by the Commission that the proposed bonds or notes will satisfy the conditions set forth in G.S. 159-52;

(2) May be additionally supported by a Credit Facility;

(3) May be made subject to redemption prior to maturity, with or without premium, on such notice, at such time or times, at such price or prices and with such other redemption provisions as may be stated in the resolution fixing the details of such bonds or notes or with such variations as may be permitted in connection with a Par Formula provided in such resolution;

(4) May bear interest at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in such resolution; and

(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchases prior to their presentment for payment to the provider of the Credit Facility or to the issuing unit.

(b) No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

(c) As used in this section, the following terms shall have the following meanings:

(1) "Credit Facility" means an agreement entered into by an issuing unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing unit agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of a repayment agreement. A bank may include a foreign bank or branch or agency thereof the obligations of which bear the highest rating of at least one nationally-recognized rating service and do not bear a rating below the highest rating of any nationally-recognized rating service which rates such particular obligations.

(2) "Par Formula" shall mean any provision or formula adopted by the issuing unit to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds or notes so that the purchase price of such bonds or notes in the open market would be as close to par as possible.

(d) If the aggregate principal amount repayable by the issuing unit under a repayment agreement is in excess of the aggregate principal amount of bonds or notes secured by the related Credit Facility, whether as a result of the inclusion in the Credit Facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of unissued bonds or notes during the term of such repayment agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the issuing unit subject to the approval of the Commission. In determining whether or not to grant such approval, the Commission shall consider, in addition to such other factors it may deem relevant, the ability of the issuing unit to pay such excess from other sources without incurring additional indebtedness secured by a pledge of the faith and credit of the

issuing unit or levying additional taxes and the adequacy of such other sources to accomplish such purpose.

(e) Any bonds or notes issued pursuant to this section may be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe and at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. (1987, c. 585, s. 1; 2003-403, s. 5.)

Article 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

(a) This Article may be cited as "The State and Local Government Revenue Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all municipalities in North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured solely by the revenues of the projects for which the bonds or notes are issued or prescribing procedures therefor are repealed. No special, local or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. It is further the intent of the General Assembly by enactment of this Article to provide an alternative and supplemental procedure for the exercise by the State of North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. (1971, c. 780, s. 1; 1973, c. 494, s. 14; 1983, c. 554, ss. 1, 1.1.)

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, metropolitan public transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, the North Carolina Turnpike Authority described in Article 6H of Chapter 136 of the General Statutes and transferred to the Department of Transportation pursuant to G.S. 136-89.182(b), and a Ferry Transportation Authority created pursuant to Article 29 of Chapter 160A of the General Statutes, but not any other forms of State or local government.

(2) "Revenue bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the revenue-producing utility or public service enterprise facilities or systems listed in this subdivision, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by or on the behalf of either the State or a municipality to pay the costs of the undertaking.

A revenue bond project shall be (i) owned or leased as lessee by the issuing unit or (ii) owned by one or more of the municipalities participating in an undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes. If the revenue bond project is owned by one or more municipalities as provided in (ii) of this subdivision, any one or more of the participating municipalities may each be an issuing unit consistent with their agreement to establish a joint undertaking. In addition, any joint agency established by participating municipalities pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes may be an issuing unit without owning the revenue bond project or leasing it as lessee.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with the undertaking; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which the structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

The following facilities or systems may be revenue bond projects under this subdivision:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
i. Hospitals and other health-related facilities.
j. Public auditoriums, gymnasiums, stadiums, and convention centers.
k. Recreational facilities.
l. Repealed by Session Laws 2001-474, s. 36, effective November 29, 2001.
m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
n. Facilities for the use of any agency or agencies of the government of the United States of America.
o. Structural and natural stormwater and drainage systems of all types.
p. In the case of the North Carolina Turnpike Authority, a Turnpike Project, as defined in G.S. 136-89.181, including the planning and design of a Turnpike Project, that is designated by the Authority to be a revenue bond project.
q. Cable television systems.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3; 1987 (Reg. Sess., 1988), c. 976, s. 1; 1989, c. 168, ss. 37, 38; c. 643, s. 4; c. 740, s. 2; c. 780, s. 2; 1991, c. 508, s. 1; 1995 (Reg. Sess., 1996), c. 644, s. 3; 1997-393, s. 3; 1997-426, s. 6; 2001-414, s. 48; 2001-474, ss. 36, 37; 2002-133, ss. 6, 7; 2009-527, s. 2(e); 2010-165, s. 14; 2011-84, s. 4; 2013-50, s. 5; 2017-120, s. 3; 2025-39, s. 8.9.)

§ 159-82. Purpose.

The purpose of this Article is to establish a standard, uniform procedure for the financing by a municipality of revenue bond projects through the issuance of revenue bonds. Its provisions are intended to vest authority in and enable municipalities to secure and pay revenue bonds and the

interest thereon solely out of revenues without pledging the faith and credit of the municipality. (1971, c. 780, s. 1; 1973, c. 494, s. 16.)

§ 159-83. Powers.

(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to August 15, 2006.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, and to pledge, mortgage, or grant a security interest in all or a portion of the real and personal property, whether owned or leased, comprising any revenue-producing utility or public service enterprise facilities or systems acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subdivision may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, hospital or health-related real or tangible personal property and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(8a) In the case of any county, city, town, or incorporated village, to make loans or advances to a municipality to provide funds to the municipality to pay any costs of any revenue bond project. Funds received by a municipality in reimbursement of a loan or advance shall be distributed and restricted as provided in G.S. 159-27.1.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the costs of the revenue bond projects authorized in the bond order, reimburse funds loaned or advanced for the costs of these revenue bond projects in accordance with the bond order, and provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and the State or a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the commission.

(c) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article to the contrary, in connection with the development of new and existing seaports and airports:

(1) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(2) To finance and refinance for public and private parties seaport and airport facilities and improvements that relate to, develop, or further waterborne or

airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation, and environmental facilities and improvements;

(3) To secure any such financing or refinancing by all or any portion of its revenues, income or assets or other available moneys associated with any of its seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with any of its seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(d) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article or any other statute to the contrary, in connection with the development of facilities for the use of any agency or agencies of the government of the United States of America:

(1) To acquire, construct, own jointly with public and private parties, lease as leasor or leasee, mortgage, sell, or otherwise dispose of lands, facilities and improvements, including undivided interests therein and to do so, regardless of the provisions of any other statute, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this subsection;

(2) To finance and refinance facilities and related improvements for the use of any agency of the government of the United States of America;

(3) To secure any such financing or refinancing by all or any portion of the revenue, income or assets or other available monies associated with such facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(e) Repealed by Session Laws 2001-174, s. 39, effective November 29, 2001.

(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article. (Ex. Sess., 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17; 1983, c. 554, ss. 3-4; 1985, c. 723, s. 2; 1985 (Reg. Sess., 1986), c. 795, s. 1; c. 933, s. 4; 1987 (Reg. Sess., 1988), c. 976, s. 2; 1989, c. 168, ss. 39, 40; 1991, c. 508, s. 2; 2001-474, ss. 38, 39; 2005-238, s. 4; 2005-249, s. 1; 2006-224, s. 3; 2006-259, s. 47.)

§ 159-84. Authorization of revenue bonds.

The State and each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the State or a municipality, as the case may be, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the State or the municipality, as the case may be, incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, the State or each municipality, as the case may be, may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter or any other law.

Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either, (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series or [of] refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, (iv) certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78. (1953, c. 692; 1969, c. 1118, s. 4; 1971, c. 780, s. 1; 1977, c. 201, s. 3; 1983, c. 554, s. 5.)

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.

(a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing

municipality is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

(b) Before he accepts the application, the secretary may require (i) in the case of the State, the State Treasurer or (ii) in the case of a municipality, the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps taken in issuing the bonds.

(c) 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 State Treasurer or the municipality, as the case may be, in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the State or the municipality, as the case may be, has complied with this section.

(d) Repealed by Session Laws 2001-474, s. 39. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 18; 1983, c. 554, s. 6; 1989, c. 168, s. 41; c. 740, s. 6; 2001-474, s. 39.)

§ 159-86. Approval of application by Commission.

(a) In determining whether a proposed revenue bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the revenue bond issue is necessary or expedient.
(2) Whether the proposed project is feasible.
(3) The State's or the municipality's, as the case may be, debt management procedures and policies.
(4) Whether the State or the municipality, as the case may be, is in default in any of its debt service obligations.
(5) Whether the probable net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.
(6) The ability of the Commission to market the proposed revenue 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 revenue 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 is feasible.
(4) That the State's or the municipality's, as the case may be, 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 proposed revenue bonds can be marketed at reasonable interest cost to the State or the municipality, as the case may be. (1971, c. 780, s. 1; 1983, c. 554, ss. 7, 8.)

§ 159-87. 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) If the Commission enters an order denying the application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§ 159-88. Adoption of revenue bond order.

(a) At any time after an application is filed with the Commission for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article.

(b) Notwithstanding the provisions of any city charter, general law, or local act, a revenue bond order may be introduced at any regular or special meeting of the governing board of a municipality and adopted at such a meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. Revenue bond orders are not subject to the provisions of any city charter or legal act concerning initiative or referendum.

(c) Notwithstanding any other provision of this Article, no bond order authorizing the issuance of revenue bonds of the State shall be adopted by the Council of State until such time as the General Assembly shall have enacted legislation authorizing the undertaking of the revenue bond project to be financed and fixing the maximum aggregate principal amount of revenue bonds that shall be issued for such purpose, and such legislation shall have taken effect.

(d) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001. (1971, c. 780, s. 1; 1973, c. 494, s. 19; 1983, c. 554, s. 9; 1989, c. 168, s. 42; 2001-474, s. 39; 2012-156, s. 3.)

§ 159-89. Special covenants.

A revenue bond order or a trust agreement securing revenue bonds may be between the State or the issuing municipality and a bank or trust company located within or without the State of North Carolina, and may contain covenants as to any of the following:

(1) The pledge of all or any part of revenues received or to be received from the undertaking to be financed by the bonds, or the utility or enterprise of which the undertaking is to become a part.

(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 revenue bonds.

(5) Limitations or restrictions on the purposes to which the proceeds of sale of revenue bonds then or thereafter to be issued may be applied.

(6) Limitations or restrictions on the issuance of additional revenue bonds or notes; the terms upon which additional revenue bonds or notes may be issued and secured; or the refunding of outstanding or other revenue bonds.
(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the percentage of revenue bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.
(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this Article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.
(9) The preparation and maintenance of a budget with respect to the expenses of the State or a municipality, as the case may be, for the operation and maintenance of revenue bond projects.
(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants in connection with revenue bond projects.
(11) Limitations on or the prohibition of free service by revenue bond projects to any person, firm, or corporation, public or private.
(12) The acquisition and disposal of property for revenue bond projects.
(13) Provisions for insurance and for accounting reports and the inspection and audit thereof.
(14) The continuing operation and maintenance of the revenue bond project or the utility or enterprise of which it is to become a part. (Ex. Sess. 1938, c. 2, s. 6; 1971, c. 780, s. 1; 1983, c. 554, s. 10; 2003-388, s. 1.)

§ 159-90. Limitations on details of bonds; additional provisions.

(a) In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122. For bonds issued in reimbursement of a loan or advance, the maximum maturity period to be used in determining the maturity dates of the bonds shall be the maximum permissible period prescribed by the Commission for the original project for which the loan or advance was expended, calculated from the date the original project is completed.
(2) Any bond may be made subject to redemption prior to maturity, including redemption on demand of the holder, 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 bond 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.
(3) The bonds may bear interest at 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 State Treasurer or the issuing municipality, as the case may be, may determine.

(b) In addition to the foregoing provisions of this section, in fixing the details of revenue bonds the State or the issuing municipality, as the case may be, may provide that bonds

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds will satisfy the conditions set forth in G.S. 159-86(b);

(2) May be additionally supported by a Credit Facility;

(3) 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 in the bond order or trust agreement or with such variations as may be permitted in connection with a Par Formula provided in such bond order or trust agreement;

(4) May bear interest, notwithstanding the provisions of G.S. 159-125(a), at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in the bond order or trust agreement; and

(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchasers prior to their presentment for payment to the provider of the Credit Facility or to the issuing municipality or the State.

No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

As used in this subsection, the following terms shall have the following meanings:

"Credit Facility" means an agreement entered into by an issuing municipality or by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banker or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing municipality or the State agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of such repayment agreement, provided, that any such repayment agreement shall provide that the obligation of the issuing municipality or the State thereunder shall have only such sources of payment as are permitted for the payment of bonds issued under this Article.

"Par Formula" shall mean any provision or formula adopted by the issuing municipality or the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds so that the purchase price of such bonds in the open market would be as close to par as possible. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1; 1971, c. 780, s. 1; 1983, c. 554, s. 11; 1985, c. 265, s. 1; 1991, c. 508, s. 4.)

§ 159-91. Lien of revenue bonds.

(a) All revenue bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution or delivery, in accordance with the provisions of this Article and of the bond order; except that the State or a municipality may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

(b) Any pledge made by the State or a municipality pursuant to this Article shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities, and other moneys so pledged and then held or thereafter received by the State or a municipality, as the case may be, or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the State or a municipality, as the case may be, without regard to whether such parties have notice thereof. The bond order by which a pledge is created need not be filed or recorded in any manner other than as provided in this Chapter. (1971, c. 780, s. 1; 1983, c. 554, s. 12.)

§ 159-92. Status of revenue bonds under Uniform Commercial Code.

Whether or not the revenue bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all revenue bonds represented by instruments and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1971, c. 780, s. 1; 1983, c. 322, s. 3.)

§ 159-93. Agreement of the State.

The State of North Carolina does pledge to and agree with the holders of any revenue bonds or revenue bond anticipation notes heretofore or hereafter issued by the State or any municipality in this State that so long as any such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the State or the municipality at the time of issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewal and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1971, c. 780, s. 1; 1973, c. 494, s. 20; 1983, c. 554, s. 13.)

§ 159-94. Limited liability.

(a) Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues.

(b) Repealed by Session Laws 2001-474, s. 39. (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3; 1971, c. 780, s. 1; 1983, c. 554, s. 14; 1989, c. 168, s. 43; 2001-474, s. 39.)

§ 159-95. Approval of State agencies.

The general design and plan of any revenue bond project undertaken for water systems or facilities or sewage disposal systems or facilities shall be subject to the approval of the Commission for Public Health or the State Environmental Management Commission to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the Commission for Public Health or the State Environmental Management Commission. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or electric power may be undertaken by the State or a municipality unless the State or municipality, as the case may be, shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 476, s. 128; c. 494, s. 21; c. 1262, s. 23; 1983, c. 554, s. 15; 2007-182, s. 2.)

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.

(a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits or, in the case of a joint agency or undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, for the use of the municipalities that established the joint agency or undertaking and for the use of the public and private consumers residing within their corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits or, in the case of two or more municipalities participating in a joint agency or undertaking, when operated primarily for the use of the municipalities that established the joint agency or undertaking, may be operated incidentally for users outside the corporate limits of either the issuing unit or a participating municipality. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed), facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or

equipment may be operated for users outside the corporate limits of a municipality that is an issuing unit where the municipality finds that the systems, facilities, or equipment so financed would benefit the municipality or, in the case of two or more municipalities participating in a joint agency or undertaking, where the municipalities that are the issuing units find that the systems, facilities, or equipment so financed would benefit the municipalities that established the joint agency or undertaking.

Revenue bonds may not be issued for the purpose of financing in whole or in part systems or facilities for the transmission or distribution of gas (natural, artificial, or mixed) to users outside the corporate limits of a municipality to whom service is available or will be available within a reasonable time from a local distribution natural gas utility pursuant to a certificate of public convenience and necessity issued by the North Carolina Utilities Commission. A finding by the governing body of a municipality that is an issuing unit that the systems or facilities to be provided by the financing will not provide service to users to whom such service is available or will be available within a reasonable time from a local distribution natural gas utility shall be conclusive upon (i) the expiration of a 45 day period following the making of such finding, (ii) the mailing by the municipality of a copy of such notice within five days after the making of such finding to any local distribution company certificated to provide service to the area in which the facilities are to be located, and (iii) the absence of a written objection to such finding being mailed by any such certificated local distribution company to the municipality by not later than five days prior to the end of such 45 day period, all such mailings to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid. Time shall be computed pursuant to G.S. 1A-1, Rule 6(a).

(b) A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State.

(c) Repealed by Session Laws 2001-474, s. 39, effective November 29, 2001.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section and G.S. 160A-312, municipalities may acquire sewage collection and disposal systems and water supply and distribution systems located within and without the corporate limits of such municipalities and finance such acquisition with revenue bonds. Further, municipalities may own, maintain and operate such acquired systems, enlarge and improve such acquired systems and finance the enlargement and improvement of such acquired systems with revenue bonds. This subsection applies only to acquisitions by municipalities financed by revenue bonds during the calendar year ending December 31, 1989.

(e) In the case of a Turnpike Project of the North Carolina Turnpike Authority, the Turnpike Project may be located anywhere in the State the Authority is authorized to maintain a Turnpike Project. (1971, c. 780, s. 1; 1973, c. 1325; 1983, c. 554, s. 16; c. 795, s. 5; 1989, c. 168, s. 44; c. 263; 1991, c. 511, s. 1; 2001-414, s. 50; 2001-474, s. 39; 2002-133, s. 8.)

§ 159-97. Taxes for supplementing revenue bond projects.

(a) For the purpose of supplementing the revenues of a revenue bond project, as defined in this section, any county or city may covenant with, or may enter into an agreement with a municipality for the benefit of the holders of revenue bonds of the issuing municipality issued pursuant to this Article, whereby such county or city agrees to:

(1) Levy for the life of all revenue bonds issued in connection with the revenue bond project an annual property tax not in excess of the rate set forth in the

question submitted to voters as hereinafter provided, such levy to be based upon the operating supplement requirement, as defined in this section, or

(2) Levy for the life of the revenue bonds in respect of which such tax is being levied an annual property tax not in excess of the rate required to pay the principal of and the interest on the aggregate principal amount of revenue bonds set forth in the question submitted to the voters as hereinafter provided, such levy to be based upon the debt service reserve supplement requirement, as defined in this section.

When any such covenant has been made or any such agreement has been entered into, the issuing municipality shall determine, and, in those instances in which the issuing municipality is not also the taxing county or city, the issuing municipality shall certify to the governing board of the taxing county or city, by not later than June 1 of each fiscal year the amount required, determined as hereinafter provided, to be raised by taxation by such county or city in the next fiscal year. The county or city is obligated to levy such tax only to the extent that an operating supplement requirement or a debt service reserve supplement requirement shall occur during the fiscal year preceding the fiscal year in which the tax is to be levied. In no event shall the county or city be required to levy a tax in excess of the rate required to be levied in accordance with the approval of the voters as provided in subsection (c). When any such tax is to be levied, the county or city shall include in its budget ordinance an appropriation to the issuing municipality or the appropriate fund, as the case may be, equal to the estimated yield of the tax levy, and shall pay such appropriation to the issuing municipality or transfer moneys to the appropriate fund in equal monthly installments unless another mutually satisfactory schedule of payments is agreed upon.

(b) A covenant made, or the pledge of an agreement entered into, by a county or city pursuant to this section shall be effected by the provisions of the revenue bond order or the trust agreement securing revenue bonds of the issuing municipality and where the issuing municipality is not also the taxing county or city a resolution of the county or city approving the appropriate provisions of the bond order or trust agreement relating to the pledge of the tax. If the taxing county or city is not the issuing municipality, it shall file an application for approval of the resolution with the secretary of the Commission in the manner provided in G.S. 159-149, and the Commission shall determine whether to approve the application as provided by G.S. 159-151 and 159-152; provided, however, that G.S. 159-148 and 159-150 shall have no application to this section.

(c) A covenant made, or agreement entered into, by a county or city pursuant to this section shall take effect only if approved by the affirmative vote of a majority of those who vote thereon in a referendum held in the taxing county or city. The referendum shall be called and held as provided in G.S. 159-61, except that

(1) The ballot proposition shall be in substantially one of the following forms:

Operating Supplement Requirement:

"Shall the (order or agreement) binding the (taxing county or city) to levy annually a tax on property not in excess of _____ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) in instances where the gross revenues of the project are estimated to be less than the estimated total costs of the (i) current operating expenses of the project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the project and (iii) debt service on all outstanding bonds issued in connection with the project, all

as defined in such (order or agreement), the proceeds of such tax to be used for the payment of the current operating expenses of the project so long as any revenue bonds issued therefor remain outstanding and unpaid, be approved?

[ ] Yes

[ ] No"

Debt Service Reserve Supplement Requirement:

"Shall the (order or agreement) binding the (taxing county or city) to levy annually, without limitation as to rate or amount, a tax on property subject to taxation for the purpose of supplementing the revenues of (revenue bond project) for maintaining the debt service reserve required by said (order or agreement) in connection with the issuance of not in excess of $ _____ revenue bonds of (the issuing municipality), so long as any of such revenue bonds remain outstanding and unpaid, be approved?

[ ] Yes

[ ] No"

and

(2) The published statement of result shall have the following statement appended:

"Any action or proceeding challenging the regularity or validity of this supplemental tax referendum must be begun within 30 days after (date of publication).

_____

(title of governing board)."

(d) Any action or proceeding in any court to set aside a supplemental tax referendum held under this section, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the result of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this subsection.

(e) An order or agreement submitted to and approved by the voters pursuant to this section may be repealed at any time before bonds are issued pursuant thereto.

(f) In instances where the taxing county or city is not the issuing municipality, such county or city may levy taxes as provided for in this section in respect of a revenue bond project located outside its corporate limits provided that such county or city is entitled by law to appoint one or more members of the governing body of such municipality.

(g) For the purposes of this section,

(1) A "revenue bond project" is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, (ii) hospitals and other health-related facilities, and (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste within the meaning of said G.S. 159-81;

(2) An "operating supplement requirement" occurs when, as set forth in the budget prepared by the issuing municipality in respect of the revenue bond project, the estimated cost in the next succeeding fiscal year of the (i) current operating expenses of the revenue bond project, (ii) amount required to maintain the debt

service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the revenue bond project, and (iii) debt service on all outstanding bonds issued in connection with the revenue bond project, are in excess of the pledged revenues of the revenue bond project for such fiscal year as estimated by the issuing municipality, excluding taxes levied pursuant to this section; provided, however, that the amount of the operating supplement requirement shall not exceed the total amount of the current operating expenses of the revenue bond project mentioned in clause (i) above, and

(3) A "debt service reserve supplement requirement" occurs when there have been withdrawn from the debt service reserve any moneys for the purpose of paying debt service on the bonds in respect of which the supplemental tax has been authorized by the voters; provided, however, that the amount of the debt service reserve supplement requirement shall not exceed the amount so withdrawn.

(h) Any covenant or agreement of a county or city made pursuant to this section, and the obligations assumed thereby, shall be excludable from the gross debt of the county or city for purposes of the statement of debt mentioned in G.S. 159-55.

(i) For the purposes of this section the terms county or city shall include a special airport district with respect to financing of aeronautical facilities. (1973, c. 786, s. 1; 1979, c. 727, s. 5; 1983, c. 795, s. 6.)

§ 159-98. Reserved for future codification purposes.

Article 5A.

Capital Appreciation Bonds.

§ 159-99. Definition; terms and conditions.

(a) Capital Appreciation Bond Defined. – For purposes of this Article, the term "capital appreciation bond" means a bond that meets all of the following conditions:

(1) It is sold, at public or private sale, at a price substantially less, as conclusively determined by the issuer of the bond, than the principal amount of the bond.

(2) Compounded interest on the bond is payable at maturity.

(3) The bond is designated as a capital appreciation bond within the meaning of this Article by the proceedings of the issuer of the bond providing for its issuance.

(b) Calculating Principal Amount. – For purposes of calculating the aggregate principal amount of bonds within the meaning of any constitutional or statutory limitation on the incurrence of debt, the aggregate principal amount of any capital appreciation bonds is the aggregate of the initial offering prices at which the bonds are offered for sale to the public, including private or negotiated sales, or sold to the initial purchaser of the bonds in a private placement, in either case without reduction to reflect underwriters' discount or placement agents' or other intermediaries' fees.

(c) Terms and Conditions. – The proceedings providing for the issuance of any capital appreciation bonds may provide for the issuance of terms bonds or serial bonds, or both, the establishment of sinking funds for or the redemption of term bonds, the issuance of capital appreciation bonds at the same time and as part of the same issue of any other type of bonds, the method of calculating the principal amount of any such capital appreciation bonds outstanding for the purpose of determining, within the meaning of the proceedings and otherwise, application of

debt service provisions, funds into which debt service payments are to be deposited, application of redemption provisions, bondowners' voting rights and consents, pro rata application of available funds, and any other matters the issuer considers appropriate. (1987, c. 650; 2004-170, ss. 40(a), 40(c).)

§ 159-100. Authorization.

(a) Revenue Bond Act. – The State and local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act.

(b) Local Government Bond Act. – Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act. In connection with the issuance of a series of bonds containing capital appreciation bonds issued by local governmental units pursuant to The Local Government Bond Act, the Local Government Commission may require that annual debt service on the series of bonds be as nearly level or equal as possible taking into consideration prevailing financial techniques, including, without limitation, the postponement of principal maturities in early years of the issue and the use of capitalized interest. The Local Government Commission may also limit the amount of a series of bonds that may be issued as capital appreciation bonds and to make the issuance of any capital appreciation bonds subject to a finding by the Commission or the issuer that the issuance of the bonds will not increase the aggregate amount of debt service payable on the series of bonds of which the capital appreciation bonds constitute a part.

(c) Future Acts. – Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of any law enacted in the future. (1987, c. 650; 2004-170, ss. 40(b), 40(c).)

Article 6.

Project Development Financing Act.

§ 159-101. Short title.

This Article may be cited as the "North Carolina Project Development Financing Act." (2003-403, s. 2.)

§ 159-102. Unit of local government defined.

For the purposes of this Article, the term "unit of local government" means a county or a municipal corporation. (2003-403, s. 2.)

§ 159-103. Authorization of project development financing debt instruments; purposes.

(a) Each unit of local government may issue project development financing debt instruments pursuant to this Article and use the proceeds for one or more of the purposes for which any unit may issue general obligation bonds pursuant to the following subdivisions of G.S. 159-48: (b)(1), (3), (7), (11), (12), (16), (17), (19), (21), (23), (24), or (25), (c)(1), (4), (4a), or (6), or (d)(3), (4), (5), (6) or (7), or (b)(13) excluding stadiums, arenas, golf courses, swimming pools, wading pools, or marinas. In addition, the proceeds may be used for any service or facility authorized by G.S. 160A-536 to be provided in a municipal service district, but no such district need be created.

For the purpose of this Article, the term "capital costs" as defined in G.S. 159-48(h) also includes (i) interest on the debt instruments being issued or on notes issued in anticipation of the instruments during construction and for a period not exceeding seven years after the estimated date

of completion of construction and (ii) the establishment of debt service reserves and any other reserves reasonably required by the financing documents. The proceeds of the debt instruments may be used either in a development financing district established pursuant to G.S. 160A-515.1 or G.S. 158-7.3 or, if the use directly benefits private development forecast by the development financing plan for the district, outside the development financing district. The proceeds may be used only for projects that enable, facilitate, or benefit private development within the development financing district, the revenue increment of which is pledged as security for the debt instruments. This subsection does not prohibit the use of proceeds to defray the cost of providing water and sewer utilities to a private development in a project development financing district.

(b) Subject to agreement with the holders of its project development financing debt instruments and the limitation on duration of development financing districts set out in this Article, each unit of local government may issue additional project development financing debt instruments and may issue debt instruments to refund any outstanding project development financing debt instruments at any time before the final maturity of the instruments to be refunded. General obligation bonds issued to refund outstanding project development financing debt instruments shall be issued under the Local Government Bond Act, Article 4 of this Chapter. Revenue bonds issued to refund outstanding project development financing debt instruments shall be issued under the State and Local Government Revenue Bond Act, Article 5 of this Chapter.

Project development financing debt instruments may be issued partly for the purpose of refunding outstanding project development financing debt instruments and partly for any other purpose under this Article. Project development financing debt instruments issued to refund outstanding project development financing debt instruments shall be issued under this Article and not under Article 4 of this Chapter.

(c) If the private development project to be benefited by proposed project development financing debt instruments affects tax revenues in more than one unit of local government and more than one affected unit of local government wishes to provide assistance to the private development project by issuing project development financing debt instruments, then those units may enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes for the purpose of issuing the instruments. The agreement may include a provision that a unit may pledge all or any part of the taxes received or to be received on the incremental valuation accruing to the development financing district to the repayment of instruments issued by another unit that is a party to the interlocal agreement. (2003-403, s. 2; 2007-395, s. 1.)

§ 159-104. Application to Commission for approval of project development financing debt instrument issue; preliminary conference; acceptance of application.

A unit of local government may not issue project development financing debt instruments under this Article unless the issue is approved by the Local Government Commission. The governing body of the issuing unit shall file with the secretary of the Commission an application for Commission approval of the issue. At the time of application, the governing body shall publish a public notice of the application in a newspaper of general circulation in the unit of local government. The application shall include any statements of facts and documents concerning the proposed debt instruments, development financing district, and development financing plan, and the financial condition of the unit, required by the secretary. The Commission may prescribe the form of the application.

Before accepting the application, the secretary may require the governing body or its representatives to attend a preliminary conference in order to discuss informally the proposed

issue, district, and plan and the timing of the steps to be taken in issuing the debt instruments. The development financing plan need not be adopted by the governing body at the time it files the application with the secretary. However, before the Commission may enter its order approving the debt instruments, the governing body must adopt the plan and make the findings described in G.S. 159-105(b)(1) and (5).

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 unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement is conclusive evidence that the unit has complied with this section. (2003-403, s. 2.)

§ 159-105. Approval of application by Commission.

(a) In determining whether to approve a proposed project development financing debt instrument issue, the Commission may inquire into and consider any matters that it considers relevant to whether the issue should be approved, including:

(1) Whether the projects to be financed from the proceeds of the project development financing debt instrument issue are necessary to secure significant new project development for a development financing district.

(2) Whether the proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.

(3) The unit of local government's debt management procedures and policies.

(4) Whether the unit is in default in any of its debt service obligations.

(5) Whether the private development forecast in the development financing plan would likely occur without the public project or projects to be financed by the project development financing debt instruments.

(6) Whether taxes on the incremental valuation accruing to the development financing district, together with any other revenues available under G.S. 159-110, will be sufficient to service the proposed project development financing debt instruments.

(7) The ability of the Commission to market the proposed project development financing debt instruments at reasonable rates of interest.

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

(1) The proposed project development financing debt instrument issue is necessary to secure significant new economic development for a development financing district.

(2) The amount of the proposed project development financing debt is adequate and not excessive for the proposed purpose of the issue.

(3) The proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.

(4) The unit of local government'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) The private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the project development financing debt instruments.
(6) The proposed project development financing debt instruments can be marketed at reasonable interest cost to the issuing unit.
(7) The issuing unit has, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, adopted a development financing plan for the development financing district for which the instruments are to be issued. (2003-403, s. 2.)

§ 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 is not an approval of the legality of the debt instruments in any respect.

(b) Unless the debt instruments are to be issued for a development financing district for which a project development financing debt instrument issue has already been approved, the day the Commission enters its order approving an application for project development financing debt instruments is also the effective date of the development financing district for which the instruments are to be issued.

(c) If the Commission enters an order denying the application, the proceedings under this Article are at an end. (2003-403, s. 2.)

§ 159-107. Determination of incremental valuation; use of taxes levied on incremental valuation; duration of the district.

(a) Base Valuation in the Development Financing District. – After the Local Government Commission has entered its order approving a unit of local government's application for project development financing debt instruments, the unit shall immediately notify the tax assessor of the county in which the development financing district is located of the existence of the development financing district. Upon receiving this notice, the tax assessor shall determine the base valuation of the district, which is the assessed value of all taxable property located in the district on the January 1 immediately preceding the effective date of the district. If the unit or an agency of the unit acquired property within the district within one year before the effective date of the district, the tax assessor shall presume, subject to rebuttal, that the property was acquired in contemplation of the district, and the tax assessor shall include the value of the property so acquired in determining the base valuation of the district. The unit may rebut this presumption by showing that the property was acquired primarily for a purpose other than to reduce the incremental tax base. After determining the base valuation of the development financing district, the tax assessor shall certify the valuation to: (i) the issuing unit; (ii) the county in which the district is located if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(b) Adjustments to the Base Valuation. – During the lifetime of the development financing district, the base valuation shall be adjusted as follows:

(1) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, to remove property from the development financing district, on the succeeding January 1, that property shall be removed from the district and the base valuation reduced accordingly.

(2) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, 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) Repealed by Session Laws 2007-395, s. 2, effective August 20, 2007.

Each time the base valuation is adjusted, the tax assessor shall immediately certify the new base valuation to: (i) the issuing unit; (ii) the county if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(c) Revenue Increment Fund. – When a unit of local government has established a development financing district, and the project development financing debt instruments for that district have been approved by the Commission, the unit shall establish a separate fund to account for the proceeds paid to the unit from taxes levied on the incremental valuation of the district. The unit shall also place in this fund any moneys received pursuant to an agreement entered into under G.S. 159-108.

(d) Levy of Property Taxes Within the District. – Each year the development financing district is in existence, the tax assessor shall determine the current assessed value of taxable property located in the district. The assessor shall also compute the difference between this current value and the base valuation of the district. If the current value exceeds the base value, the difference is the incremental valuation of the district. In each year the district is in existence, the county, and if the district is within a city or a special district as defined by G.S. 159-7, the city or the special district shall levy taxes against property in the district in the same manner as taxes are levied against other property in the county, city, or special district. The proceeds from ad valorem taxes levied on property in the development financing district shall be distributed as follows:

(1) In any year in which there is no incremental valuation of the district, all the proceeds of the taxes shall be retained by the county, city, or special district, as if there were no development financing district in existence.

(2) In any year in which there is an incremental valuation of the district, the amount of tax due from each taxpayer on property in the district shall be distributed as provided in this subdivision. The net proceeds of the following taxes shall be paid to the government levying the tax: (i) taxes separately stated and levied solely to service and repay debt secured by a pledge of the faith and credit of the unit; (ii) nonschool taxes levied pursuant to a vote of the people; (iii) taxes levied for a municipal or county service district; and (iv) taxes levied by a taxing unit in a development financing district established by a different taxing unit and for which there is no increment agreement between the two units. All remaining taxes on property in the 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 county, city, or special district, as if there were no development financing district in existence. The net proceeds of the remaining amount shall, when paid by the taxpayer, be turned over to the finance officer of each issuing unit, who shall place this amount in the special revenue increment fund required by subsection (c) of this section. As used in this section, "net proceeds" means

gross proceeds less refunds, releases, and any collection fee paid by the levying government to the collecting government.

(e) Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties.

(f) Use of Moneys in the Revenue Increment Fund. – If the development financing district includes property conveyed or leased by the unit of local government to a private party in consideration of increased tax revenue expected to be generated by improvements constructed on the property pursuant to G.S. 158-7.1, an amount equal to the tax revenue taken into account in arriving at the consideration, less the increased tax revenue realized since the construction of the improvement, shall be transferred from the Revenue Increment Fund to the county, city, or special district as if there were no development financing district in existence. Any money in excess of this amount in the Fund may be used for any of the following purposes, without priority other than priorities imposed by the order authorizing the project development financing debt instruments:

(1) To finance capital expenditures (including the funding of capital reserves) by the issuing unit in the development financing district pursuant to the development financing plan.

(2) To meet principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.

(3) To repay the appropriate fund of the issuing unit for any moneys actually expended on debt service on project development financing debt instruments pursuant to a pledge made pursuant to G.S. 159-111(b).

(4) To establish and maintain debt service reserves for future principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.

(5) To meet any other requirements imposed by the order authorizing the project development financing debt instruments.

If in any year there is any money remaining in the Revenue Increment Fund after these purposes have been satisfied, it shall be paid to the general fund of the county and, if applicable, of the city and any special district as defined by G.S. 159-7, in proportion to their rates of ad valorem tax on taxable property located in the development financing district.

(g) Duration of District. – A development financing district shall terminate at the earlier of (i) the end of the thirtieth year after the effective date of the district or (ii) the date all project development financing debt instruments issued for the district have been fully retired or sufficient funds have been set aside, pursuant to the order authorizing the debt instruments, to meet all future principal and interest requirements on the instruments. (2003-403, s. 2; 2005-238, s. 5; 2007-395, s. 2; 2010-95, s. 39.)

§ 159-108. Agreements with property owners.

(a) Authorization. – A unit of local government that issues project development financing debt instruments may enter into agreements with the owners of real property in the development financing district for which the instruments were issued under which the owners agree to a minimum value at which their property will be assessed for taxation. Such an agreement may extend for the life of the development financing district or for a shorter period agreed to by the parties. The agreement may vary the agreed-upon minimum assessed value from year to year.

(b) Filing and Recording Agreement. – The unit shall file a copy of any agreement entered into pursuant to this section with the tax assessor for the county in which the development financing district is located. In addition, the unit shall cause the agreement to be recorded in the office of the register of deeds of that county, and the register of deeds shall index the agreement in the grantor's index under the name of the property owner. Once the agreement has been recorded in the office of the register of deeds, as required by this subsection, it is binding, according to its terms and for its duration, on any subsequent owner of the property.

(c) Minimum Assessment of Property. – An agreement entered into pursuant to this section establishes a minimum assessment of the real property subject to the agreement. If the county tax assessor determines that the real property has a true value less than the minimum established by the agreement, the assessor shall nevertheless assess the property at the minimum set out in the agreement. If the assessor, however, determines that the real property has a true value greater than the minimum established by the agreement, the assessor shall assess the property at the true value.

(d) Effect of Reappraisal. – If an agreement entered into pursuant to this section continues in effect after a reappraisal of property conducted pursuant to G.S. 105-286, the minimum assessment established in the agreement shall be adjusted as provided in this subsection. After the issuing unit of local government has adopted its budget ordinance and levied taxes for the fiscal year that begins next after the effective date of the reappraisal, it shall certify to the county tax assessor the total rate of ad valorem taxes levied by the unit and applicable to the property subject to the agreement. It shall also certify to the assessor the total rate of ad valorem taxes levied by the unit and applicable to the property in the immediately preceding fiscal year. The assessor shall determine the total amount of ad valorem taxes levied by the unit on the property in the immediately preceding fiscal year, based on the tax rate certified by the issuing unit. The assessor shall then determine a value of the property that would provide the same total amount of ad valorem taxes based on the tax rate certified for the fiscal year beginning next after the effective date of the reappraisal. The value so determined is the new minimum assessment for the property subject to the agreement.

(e) Agreement Effective Regardless of Improvements. – An agreement entered into pursuant to this section remains in effect according to its terms regardless of whether the improvements anticipated in the development financing plan are completed or whether those improvements continue to exist during the duration of the agreement. However, if any part of the property subject to the agreement is acquired by a public agency, the agreement is automatically modified by removing the acquired property from the agreement and reducing the minimum assessment accordingly. (2003-403, s. 2.)

§ 159-109. Special covenants.

A project development financing debt instrument order or a trust agreement securing project development financing debt instruments may contain covenants regarding:

(1) The pledge of all or any part of the taxes received or to be received on the incremental valuation in the development financing district during the life of the debt instruments.
(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 of these reserves.
(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of project development financing debt instruments.
(5) Limitations or restrictions on the purposes to which the proceeds of sale of project development financing debt instruments may be applied.
(6) Limitations or restrictions on the issuance of additional project development financing debt instruments or notes for the same development financing district, the terms upon which additional project development financing debt instruments or notes may be issued or secured, or the refunding of outstanding project development financing debt instruments or notes.
(7) The acquisition and disposal of property for project development financing debt instrument projects.
(8) Provision for insurance and for accounting reports, and the inspection and audit of accounting reports.
(9) The continuing operation and maintenance of projects financed with the proceeds of the project development financing debt instruments. (2003-403, s. 2.)

§ 159-110. Security of project development financing debt instruments.

Project development financing debt instruments are special obligations of the issuing unit. Moneys in the Revenue Increment Fund required by G.S. 159-107(c) are pledged to the payment of the instruments, in accordance with G.S. 159-107(f). Except as provided in G.S. 159-111, the unit may pledge the following additional sources of funds to the payment of the debt instruments, and no other sources: the proceeds from the sale of property in the development financing district; net revenues from any public facilities, other than portions of public utility systems, in the development financing district financed with the proceeds of the project development financing debt instruments; and, subject to G.S. 159-47, net revenues from any other public facilities, other than portions of public utility systems, in the development financing district constructed or improved pursuant to the development financing plan.

Except as provided in G.S. 159-111, the principal and interest on project development financing debt instruments do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the unit'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 and G.S. 159-111, neither the credit nor the taxing power of the unit is pledged for the payment of the principal or interest of project development financing debt instruments, and no holder of project development financing debt instruments has the right to compel the exercise of the taxing power by the unit or the forfeiture of any of its property in connection with any default on the instruments. Unless the unit's taxing power has been pledged pursuant to G.S. 159-111, every project development financing debt instrument shall contain recitals sufficient to show the limited nature

of the security for the instrument's payment and that it is not secured by the full faith and credit of the unit. (2003-403, s. 2.)

§ 159-111. Additional security for project development financing debt instruments.

(a) In order to provide additional security for debt instruments issued pursuant to this Article, the issuing unit of local government may pledge its faith and credit for the payment of the principal of and interest on the debt instruments. Before such a pledge may be given, the unit shall follow the procedures and meet the requirements for approval of general obligation bonds under Article 4 of this Chapter. The unit shall also follow the procedures and meet the requirements of this Article. If debt instruments are issued pursuant to this Article and are also secured by a pledge of the issuing unit's faith and credit, the debt instruments are subject to G.S. 159-112 rather than G.S. 159-65.

(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as doing so does not constitute a pledge of the unit's taxing power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.

(c) No agreement or covenant may contain a nonsubstitution clause that restricts the right of the issuing unit of local government to replace or provide a substitute for any project financed pursuant to this subsection.

(d) The obligation of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the debt instruments. The sources of payment so specifically identified and then held or thereafter received by the unit or any fiduciary of the unit are immediately subject to the lien of the proceedings without any physical delivery of the sources or further act. The lien is valid and binding as against all parties having claims of any kind against a unit without regard to whether the parties have notice of the lien. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Article.

(e) A unit of local government that issues project development financing debt instruments may agree in the proceedings relating to an issue of project development financing debt instruments to any one or more of the following:

(1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount due on such debt instruments during the next budget year.

(2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount required to restore such reserve fund to its required level during the next budget year.

(3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation.

(f) A unit of local government that enters into an increment agreement for the purposes described in G.S. 159-107(d)(2) may include in such increment agreement any one or more of the following:

(1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for that portion of the amount due on such debt instruments during the next budget year which represents the expected percentage of such amount that would come from the taxes levied by such unit of local government.

(2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for some portion or all of the amount required to restore such reserve fund to its required level during the next budget year.

(3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation. (2003-403, s. 2; 2005-238, s. 6; 2009-525, s. 3.)

§ 159-112. Limitations on details of debt instruments.

In fixing the details of project development financing debt instruments, the governing body of the issuing unit of local government is subject to these restrictions and directions:

(1) The maturity date shall not exceed the shorter of (i) the longest of the various maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Local Government Commission pursuant to G.S. 159-122, or (ii) the end of the thirtieth year after the effective date of the development financing district.

(2) The first payment of principal shall be payable not more than seven years after the date of the debt instruments.

(3) Any debt instrument may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any debt instrument may be made subject to redemption prior to maturity, with or without premium, on such notice, at such times, and with such redemption provisions as may be stated. Interest on the debt instruments shall cease when the instruments have been validly called for redemption and provision has been made for the payment of the principal of the instruments, any redemption, any premium, and the interest on the instruments accrued to the date of redemption.

(4) The debt instruments may bear interest at such 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 this State as the issuing unit may determine. (2003-403, s. 2.)

§ 159-113. Annual report.

In July of each year, each unit of local government with outstanding project development financing debt instruments shall make a report to any other unit, and to any special district as defined in G.S. 159-7, in which the development financing district for which the instruments were issued is located. This report shall set out the base valuation for the development financing district, the current valuation for the district, the amount of remaining project development financing debt for the district, and the unit's estimate of when the debt will be retired. The unit of local government may meet this requirement by reporting this information in its annual financial statements required by G.S. 159-34. (2003-403, s. 2.)

§ 159-114: Reserved for future codification purposes.

§§ 159-115 through 159-119: Reserved for future codification purposes.

Article 7.

Issuance and Sale of Bonds.

§ 159-120. Definitions.

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 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina, and the words "governing body," when used with respect to the State of North Carolina, mean the Council of State. (1973, c. 494, s. 30; 1981 (Reg. Sess., 1982), c. 1276, s. 3; 1983, c. 554, s. 17; 2003-403, s. 6.)

§ 159-121. Coupon or registered bonds to be issued.

Bonds may be issued as (i) coupon bonds payable to bearer, (ii) coupon bonds registrable as to principal only or as to both principal and interest, or (iii) bonds without coupons registered as to both principal and interest. Each issuing unit may appoint or designate a bond registrar who shall be charged with the duty of attending to the registration and the registration of transfer of bonds. (1917, c. 138, s. 29; 1919, c. 178, s. 3(29); C.S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 36; 1971, c. 780, s. 1; 1973, c. 494, s. 22.)

§ 159-122. Maturities of bonds.

(a) **(For effective date, see note)** Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission.

(a) **(For effective date, see note)** Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission. The last installment of project development financing debt instruments shall mature on the earlier of 30 years after the effective date of the development financing district for which the instruments are issued or the longest of the various maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Commission pursuant to this section.

(b) The Commission shall by regulation establish the maximum period of usefulness of the capital projects for which units of local government may issue bonds, but no capital project may be assigned a period of usefulness in excess of 40 years.

(c) The determination of the Commission as to the classification of the capital projects for which a particular bond issue is authorized, and the Commission's determination of the maximum period of usefulness of the project, as evidenced by the secretary's certificate, shall be conclusive in any action or proceeding involving the validity of the bonds. (1917, c. 138, s. 18; 1919, c. 178, s. 3(18); C.S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 11; 1929, c. 170; c. 171, s. 2; 1931, c. 60, ss. 50, 56; cc. 188, 301; 1933, c. 259, ss. 1, 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2; 1967, c. 987, s. 3; c. 1001, s. 2; c. 1086, ss. 1, 2, 4, 5; 1969, cc. 475, 834; 1971, c. 780, s. 1; 1973, c. 494, s. 23; 1981 (Reg. Sess., 1982), c. 1276, s. 4; 2003-403, s. 7.)

§ 159-123. Sale of bonds by sealed bids; private sales.

(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.
(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Article 7A of this Chapter.
(4) Refunding bonds issued pursuant to G.S. 159-78.
(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
(6) Bonds the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
(7) Project development financing debt instruments.
(8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection.
(9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter to the contrary, general obligation bonds issued pursuant to Article 4 of this Chapter may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. This section also shall not apply to debt instruments that the State has previously agreed to purchase pursuant to Chapter 159G of the General Statutes.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 43; 2000-69, s. 2; 2003-403, s. 8; 2009-140, s. 5; 2010-125, s. 1; 2020-3, s. 4.30(f).)

§ 159-124. Date of sale; notice of sale and blank proposal.

The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders within or without this State or the United States of America, taking into consideration the size and nature of the issue.

The secretary shall maintain a mailing list for notices of sale and blank proposals, and shall place thereon any person, firm, or corporation so requesting. Failure to send copies of notices and blank proposals to persons, firms, or corporations on the mailing list shall in no way affect the legality of the bonds.

The secretary shall prepare a notice of sale and blank proposal for bids for each bond issue required to be sold by sealed bids. The notice and blank proposal may be combined with such fiscal information as the secretary deems appropriate, and shall contain:

(1) A statement that the bonds are to be sold upon sealed bids without auction.
(2) The aggregate principal amount of the issue.
(3) The time and place of sale, the time within which bids must be received, the place to which bids must be delivered, and the time and place at which bids will be opened, which place or places may be within or without this State or the United States of America.
(4) Instructions for entering bids.
(5) Instructions as to the amount of bid deposit required, the form in which it is to be made, and the effect of failure of the bidder to comply with the terms of his bid. (1931, c. 60, s. 17; c. 296, s. 1; 1933, c. 256, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1987, c. 585, ss. 4, 5.)

§ 159-125. Bid instructions; bid deposit.

(a) Except for revenue bonds and project development financing debt instruments, no bid for less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different years, and different rates of interest may be bid for bonds maturing in the same year unless the Secretary of the Commission requires one interest rate per maturity in connection with the sale of the bonds. This subsection applies to public sale of bonds only.

(b) The Secretary of the Commission may require that bids be accompanied by a bid deposit in an amount prescribed by the Secretary of the Commission or may determine that no bid deposit is required. If required, the bid deposit shall be made in a form approved by the Secretary of the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of the bid.

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 6; 1987, c. 585, s. 6; 2003-403, s. 9; 2005-238, s. 7.)

§ 159-126. Rejection of bids.

No legal bid may be rejected unless all bids are rejected. All bids shall be rejected upon objection to award by an authorized representative of the issuing unit. If bids have been rejected, another notice of sale shall be given and further bids invited. (1931, ch. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1.)

§ 159-127. Award of bonds.

All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. Bonds sold at public sale shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost to the issuing unit calculated in the manner established by the Secretary of the Commission in the notice of sale. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1; 2005-238, s. 8.)

§ 159-128. Makeup and formal execution of bonds; temporary bonds.

The governing board of the issuing unit shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto. The board may also provide for the authentication of the bonds by a trustee or fiscal agent. The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each bond that is represented by an instrument. Delivery of bonds executed in accordance with the board's determination shall be valid notwithstanding any change in officers or in the seal of the issuing unit occurring after the original execution of the bonds.

Before definitive bonds are prepared, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when they have been executed and are available for delivery. (1917, c. 138, s. 28; 1919, c. 178, s. 3(28); C.S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 35; 1969, c. 29; 1971, c. 780, s. 1; 1983, c. 322, s. 4.)

§ 159-129. Obligations of units certified by Commission.

Each bond or bond anticipation note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by the secretary that the issuance of the bond or note has been approved under the provisions of The Local Government Bond Acts, the Local Government Revenue Bond Act, or the North Carolina Project Development Financing Act. This signature may be a manual or facsimile signature as the Commission may determine. Each bond or bond anticipation note that is not represented by an instrument shall be evidenced by a writing relating to such obligation, which writing shall identify such obligation or the issue of which it is part, bear this certificate, and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate or with respect to which a writing bearing this certificate has not been filed with the Commission shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 24; 1981 (Reg. Sess., 1982), c. 1276, s. 7; 1983, c. 322, s. 5; 2003-403, s. 10.)

§ 159-130. Record of issues kept.

The secretary shall make a record of all bonds and notes issued under this Subchapter, showing the name of the issuing unit, the amount, date, the time fixed for payment of principal and interest, the rate of interest, the place at which the principal and interest will be payable, the denominations, the purpose of issuance, the name of the board in which is vested the authority and power to levy taxes or raise other revenues for the payment of the principal and interest thereof, and a reference to the law under which the bonds or notes were issued. The clerk of the issuing unit shall file with the secretary copies of all proceedings of the board in authorizing the bonds or notes, his certificate that they are correctly recorded in a bound book of the minutes and proceedings of the board, and a notation of the pages or other identification of the exact portion of the book in which the records appear. (1931, c. 60, s. 23; 1971, c. 780, s. 1; 1973, c. 494, s. 25.)

§ 159-131. Contract for services to be approved by Commission.

Any contract or agreement made by any unit with any person, firm, or corporation for services to be rendered in drafting forms of proceedings for a proposed bond issue or a proposed issue of notes shall be void unless approved by the Commission. Before giving its certificate to bonds or notes, the Commission shall satisfy itself by such evidence as it may deem sufficient, that no unapproved contract is in effect. This section shall not apply to contracts and agreements with attorneys-at-law licensed to practice before the courts of the State within which they have their residence or regular place of business so long as the contracts or agreements involve only legal services. (1931, c. 60, s. 24; 1971, c. 780, s. 1; 1973, c. 494, s. 26.)

§ 159-132. State Treasurer to deliver bonds and remit proceeds.

When the bonds are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then pay from the proceeds any notes issued in anticipation of the sale of the bonds, deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The proceeds of funding or refunding bonds may be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness. The proceeds of revenue bonds shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. Unless otherwise provided in the trust agreement or

resolution securing the debt instruments, the proceeds of project development financing debt instruments shall be remitted in the manner provided by this section for the remission of the proceeds of general obligation bonds. (1931, c. 60, s. 25; 1935, c. 356, s. 2; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 8; 2003-403, s. 11.)

§ 159-133. Suit to enforce contract of sale.

The Commission may enforce in any court of competent jurisdiction any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26; 1971, c. 780, s. 1; 1973, c. 494, s. 27.)

§ 159-134. Fiscal agents.

An issuing unit may employ a bank or trust company either within or without this State as fiscal agent for the payment of installments of principal and interest on the bonds, and for the destruction of paid or cancelled bonds and coupons, and may pay reasonable fees for this service not in excess of maximum rates to be fixed by regulation of the Commission. If an issuing unit employs another person as such fiscal agent or any other person for other services pursuant to the Registered Public Obligations Act of North Carolina, then it may pay reasonable fees for such services not in excess of maximum rates to be fixed by regulation of the Commission. (1971, c. 780, s. 1; 1983, c. 322, s. 6.)

§ 159-135. Application of proceeds.

After payment of any notes issued in anticipation of the sale of the bonds and after payment of the cost of preparing, marketing, and issuing the bonds, the proceeds of the sale of a bond issue shall be applied only to the purposes for which the issue was authorized. Any excess amount which for any reason is not needed for any such purpose shall be applied either (i) toward the purchase and retirement of bonds of that issue at not more than their face value and accrued interest, or (ii) toward payment of the earliest maturing installments of that issue, or (iii) in accordance with any trust agreement or resolution securing the bonds. (1917, c. 138, s. 31; 1919, c. 178, s. 3(31); C.S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 38; 1971, c. 780, s. 1; 1973, c. 494, s. 28.)

§ 159-136. Issuing unit to make and report debt service payments.

The finance officer of each unit having outstanding bonds or notes shall remit the funds necessary for the payment of maturing installments of principal and interest on the bonds or notes to the fiscal agent or agreed upon place of payment in sufficient time for the payment thereof, together with the agreed upon fiscal agency fees, and shall at the same time report the payment to the secretary on forms to be provided by the Commission. (1931, c. 60, s. 27; 1971, c. 780, s. 1.)

§ 159-137. Lost, stolen, defaced, or destroyed bonds or notes.

(a) If lost, stolen, or completely destroyed, any bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the secretary and the issuing unit: (i) proof of ownership, (ii) proof of loss or destruction, (iii) a surety bond in twice the face amount of the bond or note and coupons, and (iv) payment of the cost of preparing and issuing the new bond, note, or coupons.

(b) If defaced or partially destroyed, any bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or

partially destroyed bond, note, or coupon and on such other conditions as the Commission may prescribe. The Commission may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new bond, note, or coupon issued under this section shall be signed by the officers of the issuing unit who are in office at the time, or by the State Treasurer if the unit no longer exists, and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon. (1935, c. 292, ss. 1, 2; 1939, c. 259; 1971, c. 780, s. 1.)

§ 159-138. Cancellation of bonds and notes.

Each bond or note and coupon shall be cancelled when (i) it is paid, or (ii) it is acquired by the issuing unit in any manner other than purchase for investment. A full report of the cancellation of all bonds, notes, and coupons shall be made to the secretary on forms provided by the Commission. (1931, c. 60, s. 27; 1939, c. 356; 1971, c. 780, s. 1.)

§ 159-139. Destruction of cancelled bonds, notes, and coupons.

(a) All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1. – The finance officer shall make an entry in the official records of the unit, which may include the register for the bonds, notes, and coupons, showing:

a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed or marked cancelled in the manner determined by the finance officer, who shall make an entry of the destruction or cancellation in the official records of the unit. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. – The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

(b) The provisions of G.S. 121-5 and G.S. 132-3 do not apply to paid bonds, notes, and coupons. The information required to be recorded prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents. (1941, cc. 203, 293;

1961, c. 663, ss. 1, 2; 1963, c. 1173, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 29; 1983, c. 322, ss. 7, 8; 2005-238, s. 9.)

§ 159-140. Bonds or notes eligible for investment.

Subject to the provisions of G.S. 159-30, bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions and agencies and all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or politicial subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1977, c. 403.)

§ 159-141. Terms and conditions of sale.

Notwithstanding the foregoing, any bond of the State may be sold upon such terms and conditions, at such interest rate or rates, for such price and in such manner, either public or private, as the State Treasurer shall determine. (1983, c. 554, s. 18.)

§ 159-142: Reserved for future codification purposes.

§ 159-143: Reserved for future codification purposes.

§ 159-144: Reserved for future codification purposes.

§ 159-145: Reserved for future codification purposes.

Article 7A.

Special Obligation Bonds and Notes.

§ 159-146. Additional powers of units of local government; issuance of special obligation bonds and notes.

(a) Authorization. – Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section.

(b) Definitions. – Unless a different meaning is required by the context, the definitions set out in G.S. 130A-290 and the following definitions apply to this Article:

(1) Bonds. – The special obligation bonds authorized to be issued by a unit of local government under this Article.

(2) Costs. – The capital cost of acquiring or constructing any project, including, without limitation, all of the following:

a. The costs of doing one or more of the following deemed necessary or convenient by a unit of local government:

1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.
2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and re-equipping.
3. Enlarging, expanding, and extending.
4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.

b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the purpose authorized.

c. The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures thereafter are to be moved.

d. Financing charges, including estimated interest during the acquisition or construction of such project and for six months thereafter.

e. The costs of services to provide and the cost of plans, specifications, studies and reports, surveys, and estimates of costs and revenues.

f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of a project.

g. Administrative and legal expenses and administrative charges.

h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities and interest-rate agreements, and of establishing and maintaining debt service and other reserves.

i. Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(3) Credit facility. – An agreement entered into by the unit with a bank, a savings and loan association, or another banking institution; an insurance company, a reinsurance company, a surety company, or another insurance institution; a corporation, an investment banking firm, or another investment institution; or any financial institution, providing for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(4) Local Government Commission. – The Local Government Commission of the Department of the State Treasurer, established by Article 2 of this Chapter and any successor of said Commission.

(5) Notes. – The special obligation notes or special obligation bond anticipation notes authorized to be issued by a unit of local government under this Article.

(6) Par formula. – Any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including any of the following:
   a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible.
   b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.
   c. Any other provision as the unit may determine to be consistent with this section and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

(7) Project. – Any of the following:
   a. Solid waste management projects and capital expenditures to implement such projects, including, without limitation, the purchase of equipment or facilities, construction costs of an incinerator; land to be used for recycling facilities or landfills; leachate collection and treatment systems; liners for landfills; monitoring wells; recycling equipment and facilities; volume reduction equipment; and financing charges. This sub-subdivision does not include (i) the operational and maintenance costs of solid waste management facilities or programs; (ii) general planning or feasibility studies; or (iii) the purchase of land, unless the land is to be used for a recycling facility or a landfill.
   b. Any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works.
   c. With respect to a city, any service or facility authorized by G.S. 160A-536 and provided in a municipal service district.

(8) Unit of local government or unit. – Any of the following:
   a. A unit of local government as defined in G.S. 159-44(4).
   b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461.
   c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to time.
   d. Any regional solid waste management authority created pursuant to G.S. 153A-421.
   e. A consolidated city-county as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county.

(c) Pledge. – Each unit of local government may pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, may enter into covenants to take action in order to generate the revenues, as long as the pledge of these sources for payments or the covenant to generate revenues does not constitute a pledge of the unit's taxing power.

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

The sources of payment pledged by a unit of local government shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes.

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local Government Commission pursuant to the procedures provided in subsection (k) of this section.

The sources of payment so pledged and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the pledge without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this section.

(d) Security Interest. – In connection with issuing its special obligation bonds or special obligation bond anticipation notes under this Article, a unit of local government may grant a security interest in the project financed, or in all or some portion of the property on which the project is located, or in both. If a unit of local government determines to provide additional security as authorized by this subsection, the following conditions apply:

(1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to do any of the following:
   a. Continue to provide a service or activity.
   b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.

(2) A bond order is subject to approval by the Commission under Article 8 of this Chapter if both of the following apply:
   a. The order meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property.
   b. The order is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).

   The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (k) of this section.

(3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the

bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.

(4) Before granting a security interest under this subsection, a unit of local government shall hold a public hearing on the proposed security interest. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(e) Payment; Call. – Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under subsection (c) of this section. Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(f) Interest. – The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. This approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(g) Nature of Obligation. – Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be secured solely by any one or more of the sources of payment authorized by this section as may be pledged in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on the bond or note are secured solely by the sources of payment pledged in the bond order, resolution, or trust agreement under which it is authorized or secured. The following limitations apply to payment from the specified sources:

(1) Any such use of these sources will not constitute a pledge of the unit's taxing power.

(2) The unit is not obligated to pay the principal or interest or premium except from these sources.

(h) Details. – In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may do any of the following:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof as long as a credit facility supports the bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

(2) Be additionally supported by a credit facility.
(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula.
(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(i) Credit Facility. – The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(j) Term; Form. – Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the unit of local government, except that no such maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of the unit whose signature, or a facsimile of whose signature, appears on any bonds or notes or coupons, if any, ceases to be the officer before delivery thereof, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof were the proper officers to sign although at the date of the bond or note or coupon these persons may not have been the proper officers. The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(k) Local Government Commission Approval. – No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section. An approval of an issue shall not be regarded as an approval of the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section, if the sale is approved by the unit.

(*l*) Proceeds. – The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(m) Interim Documents; Replacement. – Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when definitive bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(n) No Other Conditions. – Bonds or notes may be issued under the provisions of this section without obtaining, except as otherwise expressly provided in this section, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this section, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(o) Trust. – In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues pledged in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or

notes, execution, or delivery, in accordance with the provision of this section and of the trust agreement or resolution, except that the unit may provide in the trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(p) Remedies. – Any owner of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by a unit of local government pursuant to this Article; and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution by the unit of local government or by any officer thereof.

(q) UCC Status. – All bonds and notes and interest coupons, if any, issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(r) Investment Eligibility. – Bonds and notes issued under the provisions of this Article are hereby made securities in which all public offices, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities, which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(s) Tax Exemption. – All of the bonds and notes authorized by this Article shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special,

whether imposed for the purpose of general revenue or otherwise, excluding income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes shall not be subject to taxation as income.

(t) Refunding Bonds. – Subject to agreements with the holders of its bonds or notes, a unit may issue bonds to refund outstanding bonds or notes previously issued under this Article or any predecessor provision to this Article, including bonds previously issued under Chapter 159I of the General Statutes, as amended, whether or not they have matured. Bonds may be issued partly for the purpose of refunding outstanding bonds and partly for any other purpose under this Article. Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either, (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, (iv) certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 26; c. 1024, s. 38(e); 1995 (Reg. Sess., 1996), c. 742, s. 39; c. 743, s. 26; 1997-6, s. 20; 1997-307, s. 1; 2001-238, s. 1; 2004-151, ss. 2, 3; 2011-266, s. 1.26(c); repealed by 2019-32, s. 1(d), effective July 1, 2019; 2020-3, s. 4.30(a).)

§ 159-147: Reserved for future codification purposes.

Article 8.

Financing Agreements and Other Financing Arrangements; Arrangements for Nongovernmental Control of Public Enterprises.

§ 159-148. Contracts subject to Article; exceptions.

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Article 7A of this Chapter, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as authorized in G.S. 159-146), relating to the lease, acquisition, or construction of capital assets, which contract does all of the following:

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, this subdivision applies to

transactions that extend for three or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend.

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract.

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend:

a. For baseball park districts, to at least five hundred thousand dollars ($500,000).

b. For housing authorities, to at least five hundred thousand dollars ($500,000) or a sum equal to two thousand dollars ($2,000) per housing unit owned and under active management by the housing authority, whichever is less.

c. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, to at least fifty thousand dollars ($50,000).

d. For other units, to at least five hundred thousand dollars ($500,000) or a sum equal to one-tenth of one percent (⅒ of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less.

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group. No contract agreement shall be divided for the purpose of, or that results in, evading the requirements of this Article.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.

(2) Contracts for the purchase, lease, or lease with option to purchase of voting machines.

(3) Repealed by Session Laws 2020-3, s. 4.30(g), effective retroactively to July 1, 2019.

(4) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles. This exemption shall not apply to units included on the most recently published Unit Assistance List issued by the Department of State Treasurer where the contract amount equals or exceeds fifty thousand dollars ($50,000). (1971, c. 780, s. 1; 1973, c. 494, s. 31; 1989, c. 756, s. 6; 1991, c. 11, s. 4; 1997-380, s. 4; 1998-222, s. 1; 2001-206, s. 2; 2001-414, s. 52; 2020-3, s. 4.30(g); 2022-53, s. 6; 2023-138, s. 5(a).)

§ 159-149. Application to Local Government Commission for approval of contract.

A unit of local government may not enter into any contract subject to this Article unless it is approved by the Local Government Commission as evidenced by the secretary's certificate thereon. Any contract subject to this Article that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to make any payments of money thereunder. Before executing a contract subject to this Article, the governing board of the contracting unit shall file an application for Commission approval of the contract with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed contract and the financial condition of the contracting unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed contract.

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 unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1971, c. 780, s. 1.)

§ 159-150. Sworn statement of debt; debt limitation.

After or at the time an application is filed under G.S. 159-149, the finance officer, or some other officer designated by the board, shall prepare, swear to, and file with the secretary and for public inspection in the office of the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for statements of debt filed in connection with general obligation bond issues. The sums to be included in gross debt and the deductions therefrom to arrive at net debt shall be the same as prescribed in G.S. 159-55, except that sums to fall due under contracts subject to this Article shall be treated as if they were evidenced by general obligation bonds of the unit.

No contract subject to this Article may be executed if the net debt of the contracting unit, after execution of the contract, would exceed eight percent (8%) of the assessed value of property subject to taxation by the contracting unit. (1971, c. 780, s. 1; 1991, c. 11, s. 5.)

§ 159-151. Approval of application by Commission.

(a) In determining whether a proposed contract shall be approved, the Commission may consider:

(1) Whether the undertaking is necessary or expedient.
(2) The nature and amount of the outstanding debt of the contracting unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to raise the sums to fall due under the proposed contract.
(8) The unit's appraised and assessed value of property subject to taxation.
(9) The ability of the unit to sustain the additional taxes necessary to perform the contract.

(10) If the proposed contract is for utility or public service enterprise, the probable net revenues of the undertaking to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the undertaking to be financed, will be sufficient to meet the sums to fall due under the proposed contract.

(11) Whether the undertaking could be financed by a bond issue, and the reasons and justifications offered by the contracting unit for choosing this method of financing rather than a bond issue.

The Commission shall have authority to inquire into and to give consideration to any other matters that it may believe to have bearing on whether the contract 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 contract is necessary or expedient.

(2) That the contract, under the circumstances, is preferable to a bond issue for the same purpose.

(3) That the sums to fall due under the contract are adequate and not excessive for its proposed purpose.

(4) That the unit'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 increase in taxes, if any, necessary to meet the sums to fall due under the contract will not be excessive.

(6) That the unit is not in default in any of its debt service obligations.

The Commission need not find all of these facts and conclusions if it concludes that (i) the proposed project is necessary and expedient, (ii) the proposed undertaking cannot be economically financed by a bond issue and (iii) the contract will not require an excessive increase in taxes.

If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit filing the information. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and his recommendation for the Commission's consideration. Notwithstanding the provisions of this subsection, the Commission may deny the application of any local school administrative unit or community college that fails to comply with G.S. 143-64.17A(a1). (1971, c. 780, s. 1; 1973, c. 494, s. 32; 2022-14, s. 7.1.)

§ 159-152. Order approving or denying the application.

(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-151, the Commission shall enter its order either approving or denying the application. An order approving an application shall not be regarded as an approval of the legality of the contract in any respect.

(b) If the Commission enters an order denying an application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§ 159-153. Approval of other financing arrangements.

(a) Commission Approval Required. – Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local

government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.
(2) Enter into any similar type of financing arrangement.
(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(a1) Nonprofit Water Corporation. – A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(a2) Investor-Owned Drinking Water Corporation. – A loan from the DWSRF, an account within the Water Infrastructure Fund, to an investor-owned drinking water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(b) Exceptions. – Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.
(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).
(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. – No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. – The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.
(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.
(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.
(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.
(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. – To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. – If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not 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. (1998-222, s. 2; 1999-213, s. 11; 2005-454, s. 10; 2011-145, s. 13.11A(e).)

§ 159-154. Nongovernmental control of public enterprises.

(a) For purposes of this section, the following definitions apply:

(1) Adjusted revenues. – Gross revenue of a public enterprise minus the cost of commodity purchases and wholesale electricity purchases for the public enterprise.

(2) Consolidated nongovernmental entity. – Collectively, all affiliated nongovernmental entities, which includes each entity's parents, subsidiaries, and each other entity that owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights of the entity, and each other entity in which the entity owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights.

(3) Control. – Any one or more of the following, except that a contractual arrangement by a unit of local government with a nongovernmental entity to provide specified maintenance services for a fixed fee or fee per service basis alone does not create control of the public enterprise for purposes of this section:

a. The authority to expend or otherwise manage during any fiscal year more than fifty percent (50%) of a public enterprise's adjusted revenues.

b. Responsibility for provision to the public of the services previously provided by the public enterprise.
c. Responsibility for operation and maintenance of a material portion of the assets and facilities of the public enterprise.
d. The authority to manage a material portion of the staff responsible for operation and maintenance of the assets and facilities of the public enterprise.

(4) Nongovernmental entity. – Any person or entity other than (i) the State, (ii) a unit of local government, or (iii) a public body created pursuant to Chapter 159B of the General Statutes.

(5) Public enterprise. – All or a material portion of one or more of the systems set forth in G.S. 160A-311, G.S. 153A-274, and Chapter 162A of the General Statutes.

(6) Unit of local government. – A "unit of local government" as defined in G.S. 159-7 and a "public authority" as defined in G.S. 159-7.

(b) No unit of local government may concede or transfer control of any public enterprise that the unit of local government owns or operates to any nongovernmental entity or consolidated nongovernmental entity or enter into an agreement to do so unless the concession or transfer of control and the agreement thereunder have been approved by the Commission pursuant to this section as evidenced by the secretary's certificate thereon. Any agreement subject to Commission approval under this section that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to take any actions thereunder.

(c) Before executing an agreement subject to this section, the governing board of the unit of local government shall file an application for Commission approval of the agreement with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed agreement and the arrangements proposed to be carried out thereunder as the secretary may require. The Commission may prescribe the form of the application. Before the secretary accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and deputies may informally discuss the proposed agreement and arrangements proposed to be carried out thereunder.

(d) Prior to the Commission's consideration of whether to approve an agreement subject to this section and the arrangements thereunder, the governing body of the unit of local government shall conduct a public hearing on whether the proposed arrangement is in the public interest and following the public hearing the governing body shall adopt a resolution or take a similar action stating that it determines that the proposed arrangement is in the public interest. The public hearing shall be held by the governing body of the unit of local government proposing the arrangement following publication of notice of the public hearing at least 10 days prior to the public hearing. The notice of public hearing shall describe the proposed arrangement in general terms. In determining that the arrangement is in the public interest, the governing body of the unit of local government shall consider, at a minimum, all of the following:

(1) The physical condition of the public enterprise.

(2) The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards.

(3) The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise.
(4) The willingness and the ability of the nongovernmental entity to make system upgrades and repairs and provide high-quality and cost-effective service.
(5) The reasonableness of the amount to be paid to the unit of local government to enter into the arrangement.
(6) The reasonableness of any amounts to be paid by the unit of local government to exit the arrangement.
(7) The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees.
(8) The most recent income and expense statement and asset and liabilities balance sheet of the nongovernmental entity and any consolidated nongovernmental entity.
(9) The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates.
(10) The experience of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
(11) The alternatives to entering into the arrangement and the potential impact on utility customers if the arrangement is not entered.

(e) The Commission may approve an agreement for a unit of local government to concede or transfer control of a public enterprise and the arrangement to do so if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge on the unit of local government or its customers upon termination of the arrangement. In determining whether a proposed agreement and the arrangements thereunder shall be approved, the Commission shall have authority to inquire into and to give consideration to such matters that it may believe to have bearing on whether the proposed agreement and the arrangement thereunder should be approved. Such matters may include any of the following:

(1) The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed, and its effect on the quality of services to be provided by the public enterprise under the arrangement.
(2) The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.
(3) If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
(4) If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.

(5) The financial condition of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity and its ability to carry out the undertakings required of the nongovernmental entity in the arrangement.

(6) The experience of the nongovernmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.

(7) The nongovernmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.

(8) The obligations of the nongovernmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.

(9) The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.

(10) Any ongoing financial and other commitments of the unit of local government under the arrangement during its term.

(11) Any financial payments the unit of local government is expected to be required to pay to the nongovernmental entity or any other person or entity at the end of the arrangement.

(12) The effect, if any, of the arrangement on the tax status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.

(f) The Commission may require that any projection or other analysis provided to the Commission in connection with its consideration of the arrangement be prepared by a qualified independent expert approved by the Commission.

(g) If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit of local government filing the application. If the Commission approves or denies the application, the Commission shall enter its order setting forth such approval or denial of the application. If the Commission enters an order denying the application, the proceedings under this section shall be concluded. An order approving an application shall not be construed as an approval of the legality of the agreement in any respect.

(h) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to terminate the agreement voluntarily prior to the expiration of its stated term, the unit of local government shall not enter into any such termination arrangement unless the termination is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement and arrangement required by this section. This section shall not prohibit the termination of an agreement in the exercise of legal remedies following a breach of the agreement in accordance with its terms.

(i) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to amend the agreement in a material respect, the unit of local government shall not enter into any such amendment unless the amendment is

approved by the Commission following a procedure similar to the procedure for initial approval of the agreement.

(j) Nothing in this section shall be construed to apply to the sale of a public enterprise to a utility regulated by the North Carolina Utilities Commission. (2023-138, s. 5(a).)

§ 159-155. Reserved for future codification purposes.

§ 159-156. Reserved for future codification purposes.

§ 159-157. Reserved for future codification purposes.

§ 159-158. Reserved for future codification purposes.

§ 159-159. Reserved for future codification purposes.

Article 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. Definitions.

As used in this Part, the words "unit" or "issuing unit" means "unit of local government" as defined in G.S. 159-44 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina. (1973, c. 494, s. 36; 1981 (Reg. Sess., 1982), c. 1276, s. 9; 1983, c. 554, s. 19; 2003-403, s. 12.)

§ 159-161. Bond anticipation notes.

At any time after a bond order has taken effect and with the approval of the Commission, the issuing unit may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. General obligation bond anticipation notes shall be payable not later than seven years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that, if the issuance of bonds under the bond order is extended by an order of the board of the issuing unit which takes effect pursuant to G.S. 159-64, the bond anticipation notes may be renewed and extended and shall be payable not later than 10 years after the time the bond order takes effect and that, if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing and paying notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 33; 1977, c. 404, s. 1; 1979, c. 444, s. 2.)

§ 159-162. Security of general obligation bond anticipation notes.

The faith and credit of the issuing unit are hereby pledged for the payment of each note issued in anticipation of the sale of general obligation bonds according to its terms, and the power and

obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. The proceeds of each general obligation bond issue are also hereby 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 bonds as the first priority. In the discretion of the governing board, notes issued in anticipation of the sale of general obligation bonds may be paid from current revenues or other funds instead of from the bond proceeds, but if this is done, the bond order shall be amended to reduce the aggregate authorized principal amount by the amount of the bond anticipation notes and accrued interest thereon. Such an amendment need not be published and shall take effect upon its passage. (1971, c. 780, s. 1.)

§ 159-163. Security of revenue bond anticipation notes.

Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. 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 revenue bonds, and no holder of a revenue 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 revenue bonds shall be secured, to the extent and as provided in the resolution authorizing the issuance of such notes, by a pledge, charge, and lien upon the proceeds of the revenue bonds in anticipation of the sale of which such notes are issued and upon the revenues securing such revenue bonds; provided, however, that such notes shall be payable as to both principal and interest from such revenues if not paid from the proceeds of such revenue bonds or otherwise paid. The provisions of G.S. 159-90(b) shall apply to revenue bond anticipation notes as well as to revenue bonds. (1971, c. 780, s. 1; 1979, c. 428; 1985, c. 265, s. 2.)

§ 159-163.1. Security of project development financing debt instrument anticipation notes.

Notes issued in anticipation of the sale of project development financing debt instruments are special obligations of the issuing unit. Except as provided in G.S. 159-107 and G.S. 159-110, 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 project development financing debt instruments. No holder of a project development financing debt instrument anticipation note has 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 on the note. Notes issued in anticipation of the sale of project development financing debt instruments may be secured by the same pledges, charges, liens, covenants, and agreements made to secure the project development financing debt instruments. In addition, the proceeds of each project development financing debt instrument issue are pledged for the payment of any notes issued in anticipation of the sale of the instruments, and these notes shall be retired from the proceeds of the sale as the first priority. (2003-403, s. 13.)

§ 159-164. Form of notes to be issued.

Bond anticipation loans shall be evidenced by negotiable notes in bearer form or by certificated or uncertificated registered public obligations pursuant to the Registered Public Obligations Act. Such notes and certificated registered public obligations are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond

anticipation notes by resolution which shall fix the maximum aggregate principal amount of the notes and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 34; 1983, c. 322, s. 9.)

§ 159-165. Sale and delivery of bond anticipation notes.

(a) Bond anticipation notes of a municipality, including special obligation bond anticipation notes issued pursuant to Article 7A of this Chapter, shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(b) When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes, special obligation bond anticipation notes, or project development financing debt instrument anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 35; 1983, c. 554, s. 20; 1989, c. 756, s. 7; 2003-403, s. 14; 2020-3, s. 4.30(h).)

§§ 159-166 through 159-167. Reserved for future codification purposes.

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-168. "Unit" defined.

For purposes of this Part, "unit," "unit of local government," or "issuing unit" mean a "unit of local government" as defined by G.S. 159-7(b) and a "public authority" as defined by G.S. 159-7(b). (1973, c. 494, s. 40; 1975, c. 674, s. 2.)

§ 159-169. Tax anticipation notes.

(a) A unit of local government having the power to levy taxes is authorized to borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of taxes due and payable within the fiscal year, and to issue its negotiable notes in evidence thereof. A tax anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) No tax anticipation loan shall be made if the amount thereof, together with the amount of tax anticipation notes authorized or outstanding on the date the loan is authorized, would exceed fifty percent (50%) of the amount of taxes uncollected as of the date of the proposed loan authorization, as certified in writing to the governing board by the chief financial officer of the issuing unit. Each tax anticipation note shall bear on its face or reverse the following certificate signed by the finance officer: "This note and all other tax anticipation notes of (issuing unit) authorized or outstanding as of (date) amount to fifty percent (50%) or less of the amount of taxes for the current fiscal year uncollected as of the above date." No tax anticipation note shall be valid without this certificate.

(c) The faith and credit of the issuing unit are hereby pledged for the payment of each tax anticipation note issued under this section according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. (1917, c. 138, s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 37.)

§ 159-170. Revenue anticipation notes.

(a) Authorization; Term. – A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the noted as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. – No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: "This note and all other revenue anticipation notes of (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date." No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. – Revenue anticipation notes issued under this section shall be special obligations of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital. Neither the credit nor the taxing power of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a

public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity. (1917, c. 138, s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 38; 1999-386, s. 3.)

§ 159-171. Grant anticipation notes.

(a) A unit of local government is authorized to borrow money for the purpose of paying appropriations made for a capital project in anticipation of the receipt of moneys from grant commitments for such capital project from the State or the United States or any agencies of either, and to issue its negotiable notes in evidence thereof. Grant anticipation notes shall mature not later than 12 months after the estimated completion date of such capital project as determined by the governing body of the unit of local government and may be renewed from time to time, but no renewal shall mature later than 12 months after the estimated completion date of such capital project.

(b) No grant anticipation note may be issued if the amount thereof, together with the amount of all other notes authorized or issued in anticipation of the same grant commitment, shall exceed ninety percent (90%) of the unpaid amount of said grant commitment. Each note shall bear on its face a statement to the effect that it is payable solely from moneys received from a described grant and that the faith and credit of the issuing unit are not pledged for the payment thereof, and on its face or reverse the following certificate signed by the finance officer: "This note and all other grant anticipation notes of (issuing unit) authorized or outstanding as of (date) and issued or to be issued in anticipation of (describe grant commitment) amount to ninety percent (90%) or less of the unpaid amount of said grant commitment." No grant anticipation note shall be valid without this certificate.

(c) Grant anticipation notes issued under this section shall be special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of grant anticipation notes, and no holder of such notes 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. (1975, c. 674, s. 1.)

§ 159-172. Authorization and issuance of notes.

(a) Notes issued under this Part shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. Notes that are represented by instruments shall be signed with the manual or facsimile signatures of the officers designated by the government board for that purpose, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each note that is represented by an instrument. Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(b) Before any notes may be issued pursuant to this Part, they must be approved by the Commission. In determining whether to approve the issuance of notes, the Commission may consider (i) the reasonableness of the budget estimates of the taxes or other revenues in anticipation of which the tax or revenue anticipation notes are to be issued, (ii) the firm and binding character of the grant commitment in anticipation of which the grant anticipation notes are to be issued, (iii) whether the amount of the notes, together with the amount of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments, exceeds the limitations prescribed in G.S. 159-169, 159-170 or 159-171 as the case may be, and (iv) any other matters that the Commission considers to have a bearing on whether the issue should be approved. The Commission shall approve the issuance of the notes if, upon the information and evidence it receives, it finds and determines that (i) the issue is necessary and expedient, (ii) the budget estimates of the taxes or other revenues are reasonable or the grant commitment is firm and binding, and (iii) the amount of the notes, together with the amounts of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments do not exceed the appropriate limitations prescribed by this Part. An order approving an issue shall not be regarded as an approval of the legality of the notes in any respect.

(c) Notes issued under this Part shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Each such note that is represented by an instrument 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 note has been approved under the provisions of The Local Government Finance Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each note that is not represented by an instrument shall be evidenced by a writing relating to such note, which writing shall identify such note or the issue of which it is a part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid.

(d) When the notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall also collect from their purchaser the purchase price or proceeds of notes that are not represented by instruments. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the

unit after assurance that the deposit will be adequately secured as required by law. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 39; 1975, c. 674, ss. 3-5; 1983, c. 322, ss. 10-12.)

§§ 159-173 through 159-175. Reserved for future codification purposes.

Article 9A.

Borrowing by Cities for Competitive Purposes.

§ 159-175.10. Additional requirements for review of city financing application; communications service.

The Commission shall apply additional requirements to an application for financing by a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the construction, operation, expansion, or repair of a communications system or other infrastructure for the purpose of offering communications service, as that term is defined in G.S. 160A-340(3), that is or will be competitive with communications service offered by a private communications service provider. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto, but does apply to the expansion of such existing network. The additional requirements are the following:

(1) Prior to submitting an application to the Commission, a city or joint agency shall comply with the provisions of G.S. 160A-340.3 requiring at least two public hearings on the proposed communications service project and notice of the hearings to private communications service providers who have requested notice.

(2) At the same time the application is submitted to the Commission, the city or joint agency shall serve a copy of the application on each person that provides competitive communications service within the city's jurisdictional boundaries or in areas adjacent to the city. No hearing on the application shall be heard by the Commission until at least 60 days after the application is submitted to the Commission.

(3) Upon the request of a communications service provider, the Commission shall accept written and oral comments from competitive private communications service providers in connection with any hearing or other review of the application.

(4) In considering the probable net revenues of the proposed communications service project, the Commission shall consider and make written findings on the reasonableness of the city or joint agency's revenue projections in light of the current and projected competitive environment for the services to be provided, taking into consideration the potential impact of technological innovation and change on the proposed service offerings and the level of demonstrated community support for the project.

(5) The city or joint agency making the application to the Commission shall bear the burden of persuasion with respect to subdivisions (1) through (4) of this section. (2011-84, s. 3; 2012-194, s. 36.)

Article 10.

Assistance for Defaulting Units in Refinancing Debt.

§ 159-176. Commission to aid defaulting units in developing refinancing plans.

If a unit of local government or municipality (as defined in G.S. 159-44, 159-81, or 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, project development financing debt instruments, bond anticipation notes, tax anticipation notes, or revenue anticipation notes) and remains in default for 90 days, the Commission may take such action as it deems advisable to investigate the unit's or municipality's fiscal affairs, consult with its governing board, and negotiate with its creditors in order to assist the unit or municipality in working out a plan for refinancing, adjusting, or compromising the debt. When a plan is developed that the Commission finds to be fair and equitable and reasonably within the ability of the unit or municipality to meet, the Commission shall enter an order finding that it is fair, equitable, and within the ability of the unit or municipality to meet. The Commission shall then advise the governing board to take the necessary steps to implement it. If the governing board declines or refuses to do so within 90 days after receiving the Commission's advice, the Commission may enter an order directing the governing board to implement the plan. When this order is entered, the members of the governing board and all officers and employees of the unit or municipality shall be under an affirmative duty to do all things necessary to implement the plan. The Commission may apply to the appropriate division of the General Court of Justice for a court order to the governing board and other officers and employees of the unit or municipality to enforce the Commission's order. (1935, c. 124, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 41; 1981 (Reg. Sess., 1982), c. 1276, s. 12; 2003-403, s. 15.)

§ 159-177. Power to require reports and approve budgets.

When a refinancing plan has been put into effect pursuant to G.S. 159-176, the Commission shall have authority to require any periodic reports on the unit's or municipality's financial affairs (in addition to those otherwise required by law) that the secretary deems necessary, and to approve or reject the unit's or municipality's annual budget ordinance. The governing board of the unit or municipality shall obtain the approval of the secretary before adopting the annual budget ordinance. If the Commission recommends modifications in the budget, the governing board shall be under an affirmative duty to make the modifications before adopting the budget ordinance. (1935, c. 124, ss. 3, 4; 1971, c. 780, s. 1; 1973, c. 494, ss. 41, 42.)

§ 159-178. Duration of Commission's powers.

The power and authority granted to the Commission in this Article shall continue with respect to a defaulting unit of local government or municipality until the Commission is satisfied that the unit or municipality has performed or will perform the duties required of it in the refinancing plan, and until agreements made with the unit's or municipality's creditors have been performed in accordance with the plan. (1935, c. 124, s. 5; 1971, c. 780, s. 1; 1973, c. 494, s. 41; 1975, c. 19, s. 62.)

§§ 159-179 through 159-180. Reserved for future codification purposes.

Article 11.

§ 159-181. Enforcement of Chapter.

(a) If any finance officer, governing board member, or other officer or employee of any local government or public authority (as local government and public authority are defined in G.S. 159-7(b)) shall approve any claim or bill knowing it to be fraudulent, erroneous, or otherwise invalid, or make any written statement, give any certificate, issue any report, or utter any other document required by this Chapter, knowing that any portion of it is false, or shall willfully fail or refuse to perform any duty imposed upon him by this Chapter, he is guilty of a Class 3 misdemeanor and upon conviction shall only be fined not more than one thousand dollars ($1,000) and forfeits his office, and shall be personally liable in a civil action for all damages suffered thereby by the unit or authority or the holders of any of its obligations.

(b) If any person embezzles any funds belonging to any local government or public authority, or appropriates to his own use any personal property having a value of more than fifty dollars ($50.00) belonging to any local government or public authority, in addition to the crimes and punishment otherwise provided by law, upon conviction he forfeits his office or position and is forever thereafter barred from holding any office or place of trust or profit under the State of North Carolina or any political subdivisions thereof until the disability is removed in the manner provided for restoration of citizenship in Chapter 13 of the General Statutes.

(c) The Local Government Commission shall have authority to impound the books and records of any unit of local government or public authority and assume full control of all its financial affairs (i) when the unit or authority defaults on any debt service payment or, in the opinion of the Commission, will default on a future debt service payment if the financial policies and practices of the unit or authority are not improved, (ii) when the unit or authority persists, after notice and warning from the Commission, in willfully or negligently failing or refusing to comply with the provisions of this Chapter, or (iii) when the General Assembly suspends the charter of a municipality. When the Commission takes action under this section, the Commission is vested with all of the powers of the governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing board by law. If the unit of local government or public authority failed to submit annual audit reports as required by G.S. 159-34(a), the Commission may waive the audit requirement in G.S. 159-34(a) for any or all of the missing reports provided that the use of all grant funds and borrowed funds is documented to the satisfaction of the grantors and lenders. If the Commission waives the annual audit requirement, the Commission shall consider making a recommendation to the General Assembly or other organizing body for the revocation of the charter or the dissolution of the unit of local government or public authority. This subsection does not apply to contractual obligations undertaken by a unit of local government in a debt instrument issued pursuant to Chapter 159G of the General Statutes unless such debt instrument is secured by a pledge of the faith and credit of the unit of local government.

(d) The Local Government Commission shall have authority to impound the books and records associated with the water and/or sewer enterprise system of any unit of local government or public authority, assume full control of all its affairs, or take any lesser actions deemed necessary by the Commission when, for three consecutive fiscal years, the audited financial statements of the unit or public authority demonstrate that the unit or public authority meets any one of the following three criteria: (i) the enterprise system experienced negative working capital; (ii) the enterprise system experienced a quick ratio of less than 1.0; or (iii) the unit or public authority experienced a net loss of revenue from operations in the enterprise system using the modified accrual budgetary

basis of accounting. Before the Commission assumes full control of an enterprise system as described in this subsection, it must find that the impact of items (i) through (iii) threatens the financial stability of the unit or public authority, and that the unit or public authority has failed to make corrective changes in its operation of the enterprise system after having received notice and warning from the Commission. The notice and warning may occur prior to the expiration of the three-year period. When the Commission takes action under this section, the Commission is vested with the powers of the governing board as the Commission shall deem necessary, which may include all powers of the governing board as to the operation of the enterprise system, including, but not limited to, setting rates, negotiating contracts, collecting payments that are due, suspending service to nonpaying customers, resolving disputes with third parties, and transferring the ownership of the enterprise system. For purposes of this subsection, the term "working capital" means current assets, such as cash, inventory, and accounts receivable, less current liabilities, determined in accordance with generally accepted accounting principles, and the phrase "quick ratio of less than 1.0" means that the ratio of liquid assets, cash and receivables, to current liabilities is less than 1.0. (1971, c. 780, s. 1; 1973, c. 494, s. 43; 1987, c. 796, s. 5; 1993, c. 539, s. 108; 1994, Ex. Sess., c. 24, s. 14(c); 2013-150, s. 1; 2021-58, s. 4(a).)

§ 159-182. Offending officers and employees removed from office.

If an officer or employee of a local government or public authority persists, after notice and warning from the Commission, in failing or refusing to comply with any provision of this Chapter, he forfeits his office or employment. The Commission may enter an order suspending the offender from further performance of his office or employment after first giving him notice and an opportunity to be heard in his own defense, pending the outcome of quo warranto proceedings. Upon suspending a local officer or employee under this section, the Commission shall report the circumstances to the Attorney General who shall initiate quo warranto proceedings against the officer or employee in the General Court of Justice. If an officer or employee persists in performing any official act in violation of an order of the Commission suspending him from performance of his duties, the Commission may apply to the General Court of Justice for a restraining order and injunction. (1931, c. 60, s. 45; 1971, c. 780, s. 1; 1973, c. 494, s. 44.)

§§ 159-183 through 159-187. Reserved for future codification purposes.

Article 12.

Borrowing by Development Authorities Created by General Assembly.

§ 159-188. Borrowing authority.

A development authority created as a body corporate and politic by an act of the General Assembly, and having as its purpose to stimulate, foster, coordinate, plan, improve and encourage economic development in order to relieve poverty, dependency, chronic unemployment, underemployment and to promote the improvement and development of the economy of a county of the State, and whose members are appointed by the board of commissioners of such county, shall have authority to borrow money from an agency or instrumentality of the United States government and to execute and deliver obligations for the repayment thereof and to encumber its property for the purpose of securing any such obligation and to execute and deliver such mortgages, deeds of trust and other instruments as are necessary or proper for such purpose; provided, that such obligations shall be repayable only from the revenues of such authority.

Insofar as the provisions of this section are not consistent with the provisions of any other section or law, public or private, the provisions of this section shall be controlling. (1979, c. 512, ss. 1, 2.)

§§ 159-189 through 159-192: Reserved for future codification purposes. (2003-388, s. 4.)

Article 13.

Interest Rate Swap Agreements for Governmental Units.

§ 159-193. Definitions.

The following definitions apply in this Article:

(1) Governmental unit. – Any of the following:
  a. A unit of local government as defined in G.S. 159-44.
  b. A municipality as defined in G.S. 159-81.
  c. A joint agency as defined in G.S. 159B-3.
  d. Any department, agency, board, commission, or authority of the State that is authorized by law to issue bonds.
  e. The State Treasurer in connection with the issuance, incurrence, carrying, or securing of obligations for or on behalf of the State pursuant to an act of the General Assembly.

(2) Obligations. – Any of the following:
  a. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by a governmental unit.
  b. Lease purchase or installment financing agreements entered into by a governmental unit.

(3) Swap agreement. – Any of the following:
  a. An agreement, including terms and conditions incorporated by reference in the agreement, that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, rate cap agreement, rate floor agreement, rate collar agreement, or other similar agreement, including any option to enter into or terminate any of the foregoing.
  b. Any combination of the agreements described in sub-subdivision a. of this subdivision.
  c. A master agreement for any of the agreements described in sub-subdivisions a. and b. of this subdivision, together with all supplements.
  d. One or more transactions entered into pursuant to a master agreement. (2003-388, s. 4; 2005-403, s. 4.)

§ 159-194. Swap agreements.

(a) Subject to the provisions of this Article, a governmental unit may from time to time purchase, enter into, modify, amend, or terminate one or more swap agreements that it determines are necessary or desirable in connection with the issuance, incurrence, carrying, or securing of obligations. This authorization also includes the authority to enter into modifications or reversals of a swap agreement previously entered into by the governmental unit and the authority to enter into a swap agreement that modifies the interest rate payment calculation method under a swap agreement previously entered into to another interest rate calculation method or that reverses, in

whole or in part, the effect of a prior swap agreement on the governmental unit's interest rate cost or risk. A swap agreement entered into by a governmental unit may contain any provisions, including provisions regarding payments, term, termination payments, security, default, and remedies, and may be with any parties, that the governmental unit determines are necessary or desirable.

(b) No governmental unit shall enter into a swap agreement pursuant to this Article other than for the primary purpose of managing interest rate risk on or interest rate costs of its obligations. A swap agreement may provide that the payments thereunder are based upon a fixed or variable interest rate calculation method. A governmental unit shall not engage in the business of acting as a dealer in swap agreements. A swap agreement may be entered into in connection with specific obligations of the governmental unit, which may consist of multiple series or issues of obligations as specified by the governmental unit. The swap agreement may be entered into at a time before, at the same time as, or after, the obligations are issued or incurred by the governmental unit. Each swap agreement may be entered for a notional amount up to, but not exceeding, the principal amount of the obligations with respect to which the swap agreement is entered. A swap agreement may have a term as long as, or less than, the term of the obligations with respect to which the swap agreement is entered.

(c) In connection with entering into a swap agreement, a governmental unit may enter into credit enhancement agreements to secure the obligations of the governmental unit under the swap agreement, with any payment, security, default, remedy, and other terms and conditions that the governmental unit determines, including entering into binding agreements to deliver collateral, either at the time the swap agreement is entered into or at future times under conditions set forth in the swap agreement. (2003-388, s. 4.)

§ 159-195. Nature of duties of a governmental unit under a swap agreement.

The duty of a governmental unit to make the payments required and to perform the other duties of the governmental unit under a swap agreement shall constitute a continuing contractual obligation of the governmental unit, enforceable in accordance with applicable law for the enforcement of contractual obligations of that governmental unit. A governmental unit may limit its duties under a swap agreement to designated property or a designated source of revenues or receipts of the governmental unit, such as the revenues of a specified utility or other public service enterprise system of the governmental unit. If a governmental unit enters into a swap agreement in connection with obligations that are secured by a designated form of security, then, subject to the terms of the bond order or resolution, trust indenture or trust agreement, installment contract or lease purchase agreement, or similar instrument pursuant to which the obligations are issued or incurred, the governmental unit may pledge, mortgage, or grant a security interest in the revenues of the utility or other public service enterprise system, program, receipts, property, or similar arrangement securing the obligations to secure the payment and performance of its duties under the swap agreement. Any pledge of assets, revenues, or receipts to secure the duties of a governmental unit under a swap agreement shall become effective in the same manner and to the same extent as a pledge of those assets, revenues, or receipts to secure the obligations with respect to which the swap agreement is entered. (2003-388, s. 4.)

§ 159-196. Approval by Commission.

(a) Approval Required. – If either of the following conditions is met, a governmental unit shall not enter into a swap agreement unless the Commission first approves the governmental unit's entering into the swap agreement:

(1) The unit is a unit of local government as defined in G.S. 159-44, a municipality as defined in G.S. 159-81, or a joint agency as defined in G.S. 159B-3.
(2) The sale, issuance, or incurrence of the obligations with respect to which the swap agreement is entered into is subject to the approval of the Commission.

(b) Factors. – The Commission may consider all of the following factors in determining whether to approve the swap agreement:

(1) The nature and amount of the outstanding debt of the governmental unit proposing to enter the swap agreement.
(2) The governmental unit's debt management procedures and policies.
(3) To the extent applicable, the governmental unit's compliance with the Local Government Budget and Fiscal Control Act.
(4) Whether the governmental unit is in default in any of its debt service obligations.
(5) The credit rating of the governmental unit.

(c) Amendments. – If a swap agreement is subject to approval by the Commission pursuant to this section and is approved, then the governmental unit shall not enter into any amendment to the swap agreement that terminates or changes the time period covered by the swap agreement, changes the interest rate calculation method under the swap agreement, or changes the notional amounts covered by the swap agreement without the prior approval of the Secretary of the Commission.

(d) Approval Not Required. – A swap agreement is not subject to approval by the Commission except as provided in this section. This section does not require the approval of the Commission of a swap agreement entered into by a private entity receiving the benefit of financing through the issuance of obligations by a governmental unit. (2003-388, s. 4.)

§ 159-197. Additional method.

This Article provides an additional and alternative method for the doing of the things authorized by it and is supplemental to powers conferred by other laws. This Article does not derogate any existing powers. (2003-388, s. 4.)

§ 159-198. Severability.

If any provision of this Article or its application is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable. (2003-388, s. 4.)

§ 159-199. Validation of preexisting swap agreements.

All proceedings taken by the governing bodies of governmental units in connection with the authorization of swap agreements and all swap agreements entered into by governmental units before the effective date of this Article are ratified. (2003-388, s. 4.)

§ 159-200. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (2003-388, s. 4.)

§§ 159-201 through 159-209: Reserved for future codification purposes.

Article 14.

Borrowing by Airport Authorities.

§ 159-210. Borrowing authority.

Whenever an airport authority is authorized by general or local act to erect and construct improvements and facilities and to lease these improvements and facilities, the authority may borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans. The airport authority's power to borrow money under this section is subject to the approval of the Commission. To the extent this section conflicts with any local act, then this section shall control. (2005-342, s. 4.)

Article 15.

Borrowing for Expansion of Existing Landfills and Construction of New Landfills in Certain Circumstances.

§ 159-216. Borrowing authority for landfills.

(a) Whenever a unit of local government applies to the Commission for approval to enter debt by any method authorized by this Chapter for the purpose of expansion of an existing landfill within their jurisdiction, or construction of a new landfill within their jurisdiction, and to support the repayment of the new debt by requiring by ordinance, franchise, or otherwise that all waste collected within the county must be delivered to the county facility exclusively, in addition to any other criteria the Commission is required to consider in approving such debt, the unit of local government shall demonstrate all of the following to the satisfaction of the Commission:

(1) The proposed expansion of the existing landfill, or construction of the new landfill, for which debt is to be incurred is necessary to ensure reliable, convenient, and affordable solid waste disposal service is provided consistently to all citizens under its jurisdiction for the protection of public health, safety, and welfare.

(2) The proposed expansion of the existing landfill, or construction of the new landfill, will result in lower overall costs per ton of waste disposed for the jurisdiction's citizens and businesses within the jurisdiction than would be available through privately funded and operated disposal facilities. The analysis shall take into account all direct, indirect, asset retirement, closure, post-closure, and capital costs divided by tons disposed per year to establish a "tip fee" required to support the operation and repayment of the debt. State or federal subsidies shall be disregarded for purposes of this analysis.

(3) The requirements of subdivisions (1) and (2) of this subsection have been confirmed by way of a bid or request for proposals process in which private businesses have been invited to compete for the right to provide the services subject only to compliance with State and federal law. Private company proposals will be on a "tip fee" basis for comparison to the unit of local government landfill tip fee calculated pursuant to subdivision (2) of this subsection.

(b) In determining whether debt for expansion of an existing landfill, or construction of a new landfill, shall be approved, the Commission shall consider the information submitted pursuant to subsection (a) of this section and shall approve an application only if it finds the information presented supports the need for, and cost-effectiveness of, the proposed project. If the Commission tentatively decides to deny the application because it is of the opinion that these criteria cannot be supported from the information presented to it, it shall so notify the unit filing the application. Prior to final approval of the application, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard, including any private business that has offered an alternative. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and associated recommendations for the Commission's consideration.

(c) The requirements of this section shall only apply to a unit of local government, which, at the time it submits an application to the Commission for approval to enter debt for expansion or construction of a landfill, has adopted an ordinance pursuant to G.S. 130A-291(c). Provided, however, where such debt is approved and the requirements of this section have not been satisfied, a unit of local government that later seeks to adopt an ordinance pursuant to G.S. 130A-291(c), must meet the requirements of this section prior to adopting and enforcing such an ordinance. (2017-209, s. 17(d).)