

THE GENERAL STATUTES OF NORTH CAROLINA

1972 INTERIM SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
W. M. WILLSON AND SYLVIA FAULKNER

Volume 3D

**Provisions of G.S. Chapters 159, 160 and 162A in Effect until
July 1, 1973**

and

**Session Laws 1971, Chapters 1241 and 1247, Affecting G.S.
Chapter 163**

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THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1972

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Preface

Session Laws 1971, c. 780, revising the law relating to local government finance, is made effective July 1, 1973. The 1971 act rewrites Chapter 159 in its entirety and repeals or amends numerous sections elsewhere in the General Statutes. Within the scope of Replacement Volume 3D, it repeals a substantial number of sections in Chapter 160 and one in Chapter 162A and amends one section in each of Chapters 160 and 162A. Session Laws 1971, c. 780 is given full effect in Chapters 159, 160 and 162A as they appear in 1972 Replacement Volume 3D. This Interim Supplement contains the provisions of Chapters 159, 160 and 162A which are superseded, repealed or amended by c. 780 but which remain in effect until July 1, 1973.

In addition, this Interim Supplement includes two temporary acts passed at the 1971 session of the General Assembly and affecting G.S. Chapter 163: Session Laws 1971, c. 1241, which delays until July 1, 1973, the effective date of 1971 legislation changing the day of primary elections from Saturday to Tuesday, sets the filing deadline for the 1972 State primary elections, and grants certain temporary authority to the State Board of Elections; and Session Laws 1971, c. 1247, effective until July 1, 1972, which makes Chapter 163, Article 20, relating to absentee voting, applicable to civilians.



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The General Statutes of North Carolina 1972 Interim Supplement

VOLUME 3D

Chapter 159.

Local Government Acts.

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Revision of Chapter Effective July 1, 1973. — Session Laws 1971, c. 780, effective July 1, 1973, revises and rewrites this Chapter, substituting a new Chapter 159, entitled "Local Government Finance" and containing §§ 159-1 to 159-182, for the original Chapter, "Local Government Acts," containing §§ 159-1 to 159-68. The 1971 act also repeals numerous provisions in Chapters 153 and 160 and elsewhere in the General Statutes, incorporating some of their provisions, as revised, in the new Chapter 159.

This 1972 Interim Supplement to Replacement Volume 3D of the General Statutes contains provisions of Chapters 159, 160 and 162A which are repealed, superseded or amended by Session Laws 1971, c. 780, but which remain in effect until July 1, 1973.

Session Laws 1971, c. 780, ss. 38 to 41, provide:

"Sec. 38. Nothing in this act is intended to affect in any way any rights or interests (whether public or private) (i) now vested or

- Sec.
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accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act, or (ii) derived from or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of orders, ordinances, or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

"Sec. 39. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by (i) the repeal herein of any acts repealing such law, or (ii) any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

"Sec. 40. Nothing in this act shall be construed to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 41. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the

effective date of this act shall be abated or otherwise affected by the adoption of this act.”

Session Laws 1971, c. 780, s. 42, contains a severability clause.

ARTICLE 1.

Local Government Commission and Director of Local Government.

§ 159-1. **Official title.**—This Article shall be known and may be cited as the Local Government Act. (1931, c. 60, s. 1.)

§ 159-2. **Definitions.**—The word Commission will herein be used to refer to the Local Government Commission created by this Article; the word Director will refer to the Director of Local Government; the word unit will be used to refer to a county, city, town, incorporated village, township, school district, school taxing district or other district or political subdivision of government of the State; and where bonds or notes are mentioned reference shall be deemed made to any obligations to pay money issued by or in behalf of any unit unless otherwise indicated or specified. (1931, c. 60, s. 2.)

County Government Advisory Commission Abolished. — The Local Government Commission is the successor to the County Government Advisory Commission, § 3 of the Local Government Act having abolished the latter agency and ordered its books, records, documents, and files to be turned over to the Local Government Commission. It was further provided that all the functions, powers, and duties of the old commission should be transferred to the Director of Local Government. Section 6 of the Local Government Act gave the Local Government Commission discretion to require the State Auditor and the State Sinking Fund Commission to turn over books, records, and files made or filed under Public Laws 1927, c. 214, or Public Laws 1929, c. 277, or to require the same to be retained subject to the inspection of the new commission.

Duties Transferred to Director of Local Government. — The duties of the County Government Advisory Commission, now transferred to the Director of Local

Government, were set out in Public Laws 1927, c. 91, s. 16, as follows: “The duties of the Commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the Governor from time to time as they may deem advisable as to changes in the general laws controlling county government, and such recommendations may be submitted by the Governor, upon his approval, to the next meeting of the General Assembly.”

§ 159-3. **Creation of Local Government Commission.**—There is hereby created a commission to be known as the Local Government Commission, consisting of nine members of whom the State Auditor and the State Treasurer and the Secretary of State and the Commissioner of Revenue shall be members ex officio and of whom five members shall be appointed by the Governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the Commission, both ex officio members and appointed members, shall be required to give such bond, if any, as the Governor may require. The State Treasurer shall be ex officio Director of Local Government and shall also be the treasurer and chairman of the Commission. The Board shall elect a vice-chairman from its members who shall hold office at the will of the Commission. The appointed members of the Commission shall be entitled to the amount provided in G.S. 138-5 for each day actually spent in the service of the Commission, but shall

receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The Director shall appoint some competent person as secretary of the Commission and assistant to the Director and may appoint a deputy secretary and such other assistants as may be necessary, who shall be responsible to the Director. The salaries of the secretary of the Commission and the deputy secretary shall be set by the Governor subject to the approval of the Advisory Budget Commission. The deputy secretary shall have and exercise each and every power of whatsoever nature and kind as the secretary of the Commission himself may exercise, and all actions taken by the deputy secretary and the signing by him of any and all documents and papers provided for in this Article shall be effective the same as though the secretary of the Commission himself had taken such action or signed such documents and papers. The Commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this Article. The Commission shall hold quarterly regular meetings in the City of Raleigh or at such place and times as may be designated by the Commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the Attorney General or any assistant thereof for legal advice in relation to its powers and duties. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a separate and distinct division of the Department of the State Treasurer. (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.)

Editor's Note. — The 1933 amendment made the Secretary of State an ex officio member of the Commission, made the Treasurer ex officio Director, and provided for the appointment by the Director of the secretary of the Commission and assistant to the Director, and added the last sentence. Section 3 of the amendatory act provides for the transfer of the records to the State Treasurer.

Prior to the 1957 amendment the salary of the secretary to the Commission was fixed by the Director subject to the approval of the governor.

The 1963 amendment changed the seventh

and eighth sentences so as to provide for the appointment and salary of a deputy secretary and inserted the ninth sentence.

The 1969 amendment substituted "the amount provided in G.S. 138-5" for "ten dollars" in the sixth sentence.

See 11 N.C.L. Rev. 251, for comment on this section as amended in 1933.

State Government Reorganization. — The Local Government Commission was transferred to the Department of State Treasurer by § 143A-33, enacted by Session Laws 1971, c. 864.

§ 159-4. Executive committee; powers; quorum.—The State Auditor and State Treasurer, the Commissioner of Revenue and Secretary of State shall constitute the executive committee of the Commission and shall be vested with all the powers of the Commission except when the Commission is in session and except as otherwise provided in this Article. Action of the Commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon passage by a majority of the members of the Commission or the committee present at the meeting at which such resolution is passed. A majority of the Commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

Editor's Note. — The 1933 amendment substituted Secretary of State for the Director as a member of the committee.

§ 159-5. Executive committee may act for Commission; bond for expenses for attending special meetings.—All action herein required or permitted to be taken by the Commission may be taken by the executive committee and shall be regarded as action by the Commission unless otherwise herein expressly provided, but the committee shall not overrule or reverse any action of the Commission as a whole. The Commission shall not be required to meet as a whole except at the times fixed for quarterly sessions, and may demand that

any application for a special meeting be accompanied by a bond or other security for the costs and expenses of such special meeting to be given by the unit or person at whose request the special meeting is called. (1931, c. 60, s. 9; 1953, c. 675, s. 27.)

Editor's Note. — The 1953 amendment accompanied" near the middle of the second deleted "may" formerly appearing before "be sentence.

§ 159-6. Review by Commission of actions of executive committee. — Action of the Commission taken by the executive committee, except approval of notes maturing not more than six months from their date, shall be subject to review by the Commission as a whole upon the application of any aggrieved party, including any taxpayer or citizen, and including any member of the executive committee, if the aggrieved party shall within five days after such action by the executive committee file with the Commission a request for such review. (1931, c. 60, s. 10.)

§ 159-7. Application to Commission for issuance of bonds or notes. — Before any bonds or notes may be issued by or in behalf of a unit the board authorized by law to issue the same, or a duly authorized agent of said board, shall file application with the Commission on a form prescribed by the Commission for its approval of the proposed bonds or notes, which application shall state such facts and shall have annexed thereto such exhibits in regard to such bonds or notes and to such unit and its financial condition as may be required by the Commission. In any case where the question of issuance of proposed bonds or notes is required by law or the Constitution to be submitted to the voters at an election, such election with respect to such bonds or notes shall not be valid unless the application required herein shall have been filed not later than 40 days (Sundays and holidays included) prior to such election. A statement signed by either the chairman or secretary of the Commission directed to the board authorized by law to issue the proposed bonds or notes and containing the date on which such application was filed and either a description of the proposed bonds or notes as set forth in the application or reference to the order, ordinance or resolution pursuant to which the proposed bonds or notes may be issued shall be conclusive evidence that the provisions of this section are complied with. The Commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11; 1949, c. 1085.)

Cross Reference. — As to purposes for which bonds may be issued and taxes levied, see § 153-77.

Validation of Proceedings Not Complying with Section. — See Session Laws 1959, c. 318.

Editor's Note. — The 1949 amendment rewrote this section.

§ 159-7.1. Objections to any proposed bonds by a citizen or taxpayer. — In the event the question of issuance of any proposed bonds of a unit is required by law or the Constitution to be submitted to the voters at an election, the board authorized by law to issue the same shall, at least 10 days before filing the application with the Commission as required in G.S. 159-7 of this Article, cause notice to be given by publication once in each of two successive weeks of its intention to file such application. Except as herein otherwise provided, publication of such notice shall be governed by the provisions relating to publications in the law pursuant to which the bonds are authorized to be issued. Such notice shall state (i) the intention of said board to file the application, (ii) briefly, and in general terms only, the purpose or purposes of the proposed bonds and the maximum amount of bonds for each such purpose, (iii) the date of its first publication, and (iv) that any citizen or taxpayer objecting to the issuance of any or all of said bonds may, within 10 days from and after such

first publication, file a statement of his objections as hereinafter provided, and said notice shall otherwise be in such form as the Commission may prescribe.

Any citizen or taxpayer of the unit for which such bonds are proposed who objects to the issuance of any or all of said bonds may, within 10 days from the first publication of such notice, file a statement with the Commission and shall file a copy thereof with the board giving such notice. Such statement shall be in writing, shall set forth each objection to issuance of said bonds, shall have attached thereto a copy of the notice given and shall be verified by the citizen or taxpayer filing the same and shall contain his address. The statement may also contain the names and addresses of other citizens or taxpayers of the unit concurring therein. The Commission shall consider such statement with the application, shall determine whether or not a public hearing shall be held as provided in G.S. 159-9 of this Article, and shall thereupon advise the objector and the board filing the application of such determination. Failure to comply with any provision of this section shall in no way affect the validity of any bonds of a unit. (1953, c. 1121.)

Editor's Note. — The act inserting this section became effective June 1, 1953.

§ 159-8. Determining advisability of proposed issues.—In determining whether a proposed issue of bonds or notes shall be approved, the Commission may consider the necessity for any improvement to be made from the proceeds of any such bonds or notes, the amount of indebtedness of the unit then outstanding, the fact that sinking funds for existing debts have been adequately maintained or have not been adequately maintained, the percentage of collections of taxes for the preceding fiscal year, the fact of compliance or noncompliance with the law in the matter of budgetary control, the question of whether the unit is in default in the payment of any of its indebtedness or interest thereon, the existing tax rates, the increase of tax rate, if any, necessary to maintain such sinking funds adequately, the assessed value of taxable property, and the reasonable ability of the unit to sustain the additional tax levy, if any, necessary to pay the interest and principal of the proposed obligations, as the same become payable. If the proposed issue is for a public improvement in the nature of establishing or enlarging a revenue producing enterprise, the Commission shall take into consideration the probable earnings of the improvement and the extent to which such earnings will be sufficient to pay the interest and principal when due of the proposed obligations or that part thereof to be devoted to such improvement. The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and to give consideration to any other matters which it may believe to have a bearing on the question presented. (1931, c. 60, s. 12.)

§ 159-9. Commission to order issue if satisfied of certain points enumerated; public hearing on refusal.—If, upon the information and evidence received the Commission is of the opinion (i) that issuance of the proposed obligations is necessary or expedient and (ii) that the amount proposed is adequate and not excessive and, except as to funding and refunding bonds, (iii) either that adequate sinking funds have been maintained or that reasonable assurance has been given that thenceforth they will be maintained to the extent required by or under the authority of law, and (iv) that the increase in tax rate, if any, that will be necessitated for the proper maintenance of sinking funds as so required will not be unduly burdensome and (v) that the unit is not in default in the payment of the principal or interest of any of its indebtedness and (vi) that the requirements of law for budgetary control have been substantially complied with and (vii) that at least eighty percent (80%) of the general taxes of the unit for the preceding fiscal year have been col-

lected, then and in such event the Commission shall make its order approving such issuance. If upon the information presented the Commission is not of such opinion or is in doubt as to any facts or as to any conclusions to be drawn therefrom, it shall so notify the officer or board making the application, and if such officer or board so request, shall give notice that the Commission will hold a public hearing on the application at a time and place to be specified in such notice, at which public hearing the officers and citizens and taxpayers of the unit may be heard. The Commission may designate its secretary or any other suitable person to conduct any such hearing and to prepare a digest of testimony and submit the same and his recommendations for the consideration of the Commission. (1931, c. 60, s. 13.)

§ 159-10. Order of refusal after hearing; vote of unit to veto action of Commission.—If after any such hearing the Commission should not be of such opinion, it shall enter an order giving its reasons for not holding such opinion and in that event the proposed obligations shall not be issued except in such amount and in such manner, if any, as the Commission may approve, or unless, and until, the proposed indebtedness shall have been submitted to and approved by a vote of the voters of the local unit for which such indebtedness is proposed, such election to be held in the manner, if any, provided by law for the holding of elections on the question of issuing such bonds, and otherwise in such manner as may be required by the Commission. (1931, c. 60, s. 14.)

§ 159-11. Review by Commission of approval or refusal of executive committee.—An order of the Commission made by the executive committee approving such issuance shall not be reviewable by the Commission as a whole unless request for such review shall be filed with the Commission within five days, Sundays excepted, after such order shall be given (except an order passed by unanimous vote of members present approving notes running not more than six months, which shall not be reviewable) but orders of the Commission by the executive committee declining to approve issuance may be reviewed by the Commission as a whole if application therefor shall be filed with the Commission within 30 days after such order. New evidence and information may be considered upon any such review, and the Commission as a whole shall not be bound by the evidence or information considered by the executive committee. (1931, c. 60, s. 15.)

§ 159-12. Legality of bonds and notes not involved.—The approval by the Commission of bonds or notes shall not extend to or be regarded as an approval of the legality of the bonds or notes in any respect. (1931, c. 60, s. 16.)

§ 159-13. Sale of bonds and notes.—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the Commission at its office in the City of Raleigh, but the Commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the Commission shall cause a notice of the proposed sale to be published at least once at least 10 days before the date fixed for the receipt of bids (i) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse, and (ii) such notice, in the discretion of the Commission, may be published also in some other newspaper of greater general circulation published in the State. The Commission may in its discretion cause such notice to be published in a journal approved by the Commission and published in New York City, devoted primarily to the subject of State, county and municipal bonds;

provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days' notice has been given in the manner specified in clause (i) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the Commission through the State Treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids an official bank check, a cashier's check or a certified check upon an incorporated bank or trust company payable unconditionally to the order of the State Treasurer for two percent (2%) of the face value of the bonds and one half of one percent ($1/2\%$) on notes bid for, drawn upon an incorporated bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The Commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943.)

Editor's Note. — Prior to the 1933 amendment, this section provided that the bonds or notes might be exchanged for a like or greater face amount and interest on the exchanged notes collected. See 11 N.C.L. Rev. 215, for comment on this section as amended in 1933.

The 1969 amendment inserted "an official bank check, a cashier's check or" near the middle of the fourth sentence, and substituted "upon an incorporated bank" for "on some bank" near the end of the fourth sentence.

Public Laws 1941, c. 141, s. 1, repealed § 4392 of the Consolidated Statutes which made it a misdemeanor for certain agencies of a county,

city or town to sell bonds without giving the notice required by that section. Section 2 of the repealing act provided that "no bonds heretofore [March 12, 1941] sold or contracted to be sold in the manner provided by the Local Government Act, being chapter sixty, Public Laws of 1931, as amended, shall be held to have been illegally sold by reason of failure to observe the requirements of § 4392 of the Consolidated Statutes."

See 12 N.C.L. Rev. 325, where it is suggested that this agency would hold in check bond issues for erecting and extending electric systems.

§ 159-14. Proposals opened in public; award; rejection of bids.—All proposals shall be opened in public and the bonds or notes shall be awarded to the highest legal bidder, if a fixed rate of interest is named in the notice, or shall be awarded to the highest bidder for the lowest interest rate upon which a legal offer is made if the notice states that bidders may specify the rate of interest, or, if a notice of sale of bonds states that bidders may name one rate for part of the bonds of an issue and another rate or rates for the balance, to the bidder offering to purchase the bonds at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon all of the bonds until their respective maturities, or, if a notice of sale of notes so provides, to the bidder offering to purchase the notes at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon the notes until their maturity. No legal bids may be rejected unless all bids are rejected. If the bids rejected contain any legal bid which is legally acceptable under the advertisement, the bonds or notes shall not be sold until after further advertisement and under the conditions

herein prescribed for the first advertisement. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3.)

§ 159-15. **Minimum price; private sale in event of no bids.**—No bonds or notes shall be sold at less than par and accrued interest, nor except as herein otherwise provided or permitted shall any bonds or notes be sold except upon sealed proposals, after publication of notice as hereinabove provided, unless no bid is received upon such notice which is a legal bid and legally acceptable under such notice, in which event the bonds or notes may be sold at private sale at any time within 30 days after the date for receiving bids given in such notice. (1931, c. 60, s. 19.)

§ 159-16. **Rejection in event of objection by unit.**—If after the receipt of bids and before an award of the bonds or notes an authorized representative of the unit shall object to any award which the Commission may be about to make pursuant to the foregoing provisions and shall not withdraw such objection, the Commission shall reject all bids and shall make no award until after further advertisement as herein provided. (1931, c. 60, s. 20.)

§ 159-17. **Make-up of bonds or notes.**—No such bond or note shall be engraved, lithographed, printed, typewritten or written upon more than one sheet of paper (but a separate sheet or sheets may be used for interest coupons), and the Commission may in its discretion require the use of a protectograph or other means to prevent the raising of the amount thereof or imitation of such bonds or notes. (1931, c. 60, s. 21.)

§ 159-17.1. **Facsimile seals and signatures on bonds, notes or other obligations.**—All laws, whether general, local, private or special, authorizing and providing for the issuance of bonds, notes or other obligations of a unit within the meaning of G.S. 159-2, a part of the Local Government Act, as it may be amended from time to time, are hereby amended and supplemented to provide that the governing body of a unit may, in its discretion, authorize (i) the imprinting of a facsimile of the seal of the unit on any bond, note or other obligation of the unit in lieu of physically affixing such seal thereon and (ii) the execution of any bond, note or other obligation by facsimile rather than manual signatures; provided, however, that at least one manual signature must appear on every bond, note or other obligation which signature may be the manual signature of the representative of the Local Government Commission to the certificate of the Commission on such bond, note or other obligation.

The powers granted by this section are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law. (1969, c. 29.)

§ 159-18. **Obligations of units must be certified by Commission.**—No bonds or notes or other obligations of any unit hereafter issued shall be valid unless on the face or reverse thereof there be a certificate signed by the secretary of the Commission or an assistant designated by him either (i) that the issuance of the same has been approved, under the provisions of the Local Government Act, or (ii) that the bond or note is not required by law to be approved by the Commission. Such certificate shall be conclusive evidence that the requirements of this Article as to approval by the Commission, advertisement and sale have been observed, and shall also be conclusive evidence that the requirements of G.S. 159-19 and 159-20 have been complied with. (1931, c. 60, s. 22; c. 296, s. 2.)

Time Debt Contracted. — The debt is contracted during the fiscal year following that in which the debt was reduced in accordance with Constitution, Article V, § 4, even though the

certificate of the secretary of the Local Government Commission was not executed within that time. Board of Educ. v. State Bd. of Educ., 217 N.C. 90, 6 S.E.2d 833 (1940).

§ 159-19. Detailed record of all issues to be kept by Commission.—Prior to the execution of such certificate the Commission shall cause to be entered of record in its office a description of such bonds or notes, giving their amount, date, the times fixed for payment of principal and interest, the rate of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and the purpose of issuance, together with the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of such bonds or notes and a reference to the law under which it is claimed such bonds or notes are issued, and shall require to be filed with the Commission a statement of the recording officer of the unit that all proceedings of the board in authorizing the bonds or notes have theretofore been and remain correctly recorded in a bound book of the minutes and proceedings of the board, giving in such statement the designation of the book and the pages or other identification of the exact portion of the book in which such record was made. (1931, c. 60, s. 23.)

§ 159-20. Contract for services must be approved by Commission.—All contracts and agreements made by any unit with any person, firm or corporation for services to be rendered in the drafting of forms of proceedings for a proposed bond or note issue, except 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, which involve no agreement, express or implied, except for legal services, shall be void unless approved by the Commission, whose duty it shall be before causing the certificate of its approval to be endorsed or placed on any such bonds or notes to satisfy itself, by such evidence as it may deem sufficient, that no such contract not so approved by the Commission is in effect in relation to such bonds or notes. (1931, c. 60, s. 24.)

Cited in North Carolina Turnpike Authority
v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319
(1965).

§ 159-21. State Treasurer to deliver bonds or notes to purchaser; application of proceeds.—When the bonds or notes are executed by the proper officers they shall be turned over to the State Treasurer and after the certificate of the Commission hereinabove required shall be placed thereon, he shall deliver them to the purchaser or order, collect the purchase price or proceeds and before the close of the following day remit the same to the lawful custodian of funds of the unit or, in his discretion, to the properly designated depository or depositories of the unit, after assurance that the safeguarding of such proceeds has been provided as required by law and after deducting all necessary expense including the expense of advertising, selling, shipping and delivering the bonds or notes; nevertheless in the case of bonds or notes sold for refunding or funding purposes the Treasurer may provide that such proceeds shall be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness or under the conditions hereinabove provided he may provide for the exchange of such bonds or notes for the evidences of indebtedness to be refunded or funded thereby, or, if such indebtedness is not evidenced by bonds, notes, coupons or similar instruments, he may provide for the delivery of said new bonds or notes against a receipt or release from the creditor to whom or to which the indebtedness to be funded or refunded is owing. Coupons or notes issued in exchange for outstanding coupons shall be deemed to be notes issued for refunding or funding purposes, within the meaning of this section. (1931, c. 60, s. 25; 1935, c. 356, s. 2.)

Editor's Note. — The 1935 amendment added the latter part of the first sentence beginning with "or, if such indebtedness is not evidenced by bonds, notes, coupons." It also added the last sentence.

§ 159-22. Suit on behalf of unit for fulfillment of contracts of sale.—The Commission shall have power to enforce by action or suit in superior court of the county or unit affected or in the federal court of the district, for and in behalf of the State or the unit affected, any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26.)

§ 159-23. Unit must remit interest and principal as they fall due; cancellation of obligations paid.—It shall be the duty of every officer of a unit upon whom is imposed by law the duty of remitting funds for the payment of bonds, notes and interest coupons of the unit to remit to the place at which the same are payable sufficient funds for the payment of such bonds, notes and coupons in sufficient time for the payment thereof as the same fall due, and at the same time to remit to such place of payment the necessary fiscal agency fees of the disbursing bank or trust company at which such bonds, notes or coupons are payable. Upon surrender of the bonds, notes or coupons so paid the same shall be canceled. It shall be the duties of the officers remitting said funds to report to the Director, simultaneously with making the remittance, upon forms to be provided by the Director. (1931, c. 60, s. 27.)

§ 159-24. Records of unit sinking funds.—It shall be the duty of the Director to ascertain by reports which he is hereby authorized to require made to him by any financial officer of any unit and by such other means as he may determine upon, the amounts of sinking funds collected for the payment of bonds of each unit not maturing in annual series and the investments of such sinking funds and the rate of taxation levied to provide for such sinking funds. It shall be his further duty to determine from such information whether the provisions of law for the raising and maintenance and preservation of such sinking funds have been observed and if he shall find that in any respect such provisions of law have not been observed he shall issue an order to the officers and/or board members of such unit in charge of such matters who have failed to observe such provisions, requiring them to comply therewith and stating the amount or amounts to be raised annually by taxation for such purpose, and in other respects requiring such officers and/or board members fully to comply with such laws. Within five days after the issuance of any such order, unless the Commission in its discretion shall extend such time, any officer or board member receiving the same shall be entitled to apply to the Commission for a modification of such order, and unless modified by the Commission, and if so modified, to the extent of the order as so modified, it shall be the duty of all officers and board members to whom such order is directed to comply with the same. (1931, c. 60, s. 28.)

§ 159-25. Investment of unit sinking funds.—Sinking funds shall be deposited or invested as provided in this Chapter, and such deposits and investments shall be subject to the approval of the Director of Local Government. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146; 1967, c. 798, s. 2.)

Cross References. — As to investing sinking funds in bonds guaranteed by the United States, see § 53-44. As to investing sinking funds in refunding bonds, see § 142-29.

Editor's Note. — The 1933 amendment deleted two clauses from this section, one qualifying the deposit in bonds of a unit by the words "if such sinking funds are applicable to the payment of such bonds or notes"

and the other limiting the approval to cases where the unit is not in default of any payment of principal or interest. See 11 N.C.L. Rev. 216.

The 1939 amendment inserted provisions dealing with investments in shares of building and loan associations and federal savings and loan associations.

The 1967 amendment rewrote this section.

§ 159-26. Notification to unit officers of unfavorable state of sinking funds; sale of unsafe investments.—If it shall appear to the Director at any time that the sinking funds of any unit are not deposited under security or invested in

securities as required by this Article, it shall be his duty to notify the officer or officers in charge of such sinking funds of such failure to comply with law, and thereupon it shall be the duty of such officer or officers to comply therewith within 30 days, except as to the sale of investments held by any such sinking fund which are not eligible for the investment thereof, and as to such investments it shall be the duty of such officer or officers to sell the same within nine months after such notification of the Director is received, at a price approved by the Director; provided, however, that the Commission in its discretion may extend from time to time the time for sale of any such investments, but no one extension shall be made to cover a period of more than one year from the time the extension is made: Provided further, that the Director in his discretion may extend for a period not exceeding 90 days the time for securing funds deposited in banks prior to March 18, 1931, and the Commission may, in its discretion, further extend said time, but no such extension or extensions of the time for securing such funds shall be made for a period ending later than October 1, 1931, without the approval of the Commissioner of Banks. (1931, c. 60, s. 30; c. 296, s. 6.)

§ 159-27. Reports to Director as to sinking funds.—It shall be the duty of all officers in charge of the sinking funds of units to report on forms to be furnished by the Director to the Director on the first day of July, 1931, and on the first day of each January and July thereafter, a statement of the amounts of the sinking funds of such unit, and whether the same are on deposit, and if so, how the same are secured, or whether the same are invested, and if so, a description of the investments with the respective amounts thereof, in order that the Commission and the Director may be kept informed in regard to such sinking funds; but the Commission or the Director may at any other times require such reports to be made and it shall be the duty of the officers in charge of the sinking funds of any unit to make such reports as herein provided. (1931, c. 60, s. 31.)

§ 159-28. Funds of unit on deposit must be secured by corporate surety bonds.—It shall be the duty of each officer having charge or custody of funds of a unit, of whatever kind or nature or for whatever purpose the same have been raised or shall be held, to keep them safely and to deposit the same in the depository or depositories designated in the manner provided by law; but before making such deposit, if the amount then on deposit shall exceed the amount insured by the Federal Deposit Insurance Corporation, he shall require of said depository or depositories that the excess of such deposit over and above the amount so insured shall be secured by a surety bond or bonds, issued by a surety company or companies authorized to transact business in the State of North Carolina, the form of such surety bonds to be approved by the Commission in an amount sufficient to protect such excess deposits; but the Commission may, at any time, in its discretion, require an additional bond: Provided, however, that in lieu of a surety bond both as to all or any part of such excess deposits it shall be lawful to secure the same by lodging with the proper custodian hereinafter provided for such securities as are by this Article made eligible for investment of sinking funds of local units, such securities to be selected under the terms and conditions of investments of such sinking funds, including approval of certain classes of securities by the Commission. Any bank or trust company furnishing United States government bonds, North Carolina State bonds, county or municipal bonds, as security for such excess deposits, shall deposit said bonds with another bank which has been approved by the Commission as a depository bank for such purposes, the State Treasurer, or the federal reserve bank, and said bonds when so deposited shall be held for the benefit of the unit and subject to the order of the governing body or board of such unit, and subject to the inspection at any time by a representative of the

governing body or board of such unit and by a representative of the Commission. Each such officer having charge or custody of the funds of a unit and the surety or sureties on his official bond, after a deposit of said funds has been secured by him in the manner hereinabove required, shall not be liable for any losses sustained by the unit by reason of the default or the insolvency of the said depository or depositories. No security shall be required for the protection of funds of a unit remitted to and received by any bank or trust company within or without the State of North Carolina for the sole and exclusive purpose of paying the maturing principal of or interest on bonds or notes of the unit, when such bank or trust company is the agreed place of payment of such principal or interest and when such funds are remitted within 60 days prior to the maturity of such principal or interest. (1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; 1953, c. 675, s. 28.)

Local Modification. — Alleghany, Ashe, Rockingham: 1935, c. 375, s. 2.

Editor's Note. — This section was so changed by the early amendments that a statement of the changes is not practical.

Section 2 of the 1939 Act repealed all laws and

clauses of laws in conflict except subsection (d) of § 53-45.

The 1953 amendment inserted "have" in lieu of "has" preceding "been raised" near the beginning of the first sentence.

§ 159-28.1. Investment of unit funds.—(a) From time to time the governing body of a unit may deposit at interest or invest, as provided in subsections (b) and (c), all or part of the cash balance of any unit fund, including but not limited to the funds whose investment is authorized by G.S. 115-80.3, G.S. 153-142.24, G.S. 153-135.1, G.S. 159-25, G.S. 159-49.1, G.S. 160-411.5, and G.S. 160-431. The governing body may by resolution designate any officer, employee, or member of the governing body to manage the unit's deposits and investments on behalf of the governing body subject to whatever restrictions the governing body may impose, and such designee shall have the power to purchase, sell, and exchange securities on behalf of the governing body. The governing body shall exercise due diligence to assure that temporarily idle cash is invested or deposited at a reasonable rate of interest but shall be available to the unit when needed for the purpose for which it was raised.

(b) Moneys made available for investment may be deposited at interest in any bank or trust company in this State in the form of time deposits, certificates of deposit, or such other form of deposit as the Director of Local Government may approve. Such deposits shall be secured as provided in G.S. 159-28.

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

- (1) Obligations of the United States of America;
- (2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America;
- (3) Obligations of the State of North Carolina;
- (4) Bonds and notes of any North Carolina Local Government Unit, subject to such restrictions as the Director of Local Government may impose;
- (5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes, provided that in the case of a savings and loan association which is insured by a mutual deposit guaranty

association, the maximum investment each governing body may make in each such savings and loan association shall be fifteen thousand dollars (\$15,000);

- (6) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks maturing no later than 18 months after the date of purchase.
- (d) (1) The purchase, sale, and trade of securities authorized by this section may be by private negotiation, and units are authorized to pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Provisions shall be made for the adequate safekeeping of the evidences of investment and the adequate bonding of persons charged with their custody or management. Proper recording and accounting shall be made of all investment and deposit transactions.
- (2) 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 other sound accounting principle prescribed by the governing body. Interest earned on the deposit or investment of bond funds may be used for the purpose for which the bonds were sold or may be applied to the payment of principal or interest of the bonds.
- (3) If funds are invested in registered securities, the securities may be released from registration and transferred on the books of registry kept by or on behalf of the issuer by signature of a person designated to carry out that function by the governing body.

(e) Insofar as the provisions of any other statute, whether general, local, or special, are inconsistent with the provisions of this section, this section shall be controlling. (1967, c. 798, s. 1; 1969, c. 862.)

Editor's Note. — The 1969 amendment added at the end of subdivision (5) of subsection (c) the provisions as to insurance by a mutual deposit guaranty association authorized to do business in North Carolina.

§ 159-29. Semiannual reports to Director on status of unit funds.—It shall be the duty of all officers having the charge or custody of any funds of any unit to report to the Director on the first days of January and July of each year (or such other semiannual dates as may be fixed by the Director) and at other times upon direction of the Commission or the Director the amounts of funds of the unit then in their charge or custody, and the amounts of deposits of such funds in any depository or depositories, and a description of the surety bonds or collateral securities deposited to secure the same. It shall be the duty of the Director to require such reports to be made and to see that the provisions of this section are complied with. (1931, c. 60, s. 33.)

§ 159-30. Officers of local units relieved of personal liability when bank deposits are insured.—If it shall be impossible or impracticable to safeguard any funds of the unit in the manner required by this Article, if deposited in any depository within the unit, the officer having charge or custody of such funds may deposit the same without personal responsibility in any bank or trust company organized under the laws of the United States of America, or of any state within said country, either within or without the boundaries of said unit in which deposits are insured by the Federal Deposit Insurance Corporation, in accordance with the acts of Congress: Provided, that without the approval of the

Local Government Commission, the sum on deposit in any such bank, at any time, shall not exceed the amount insured by the said Federal Deposit Insurance Corporation. (1931, c. 60, s. 34; 1935, c. 424, s. 1.)

Local Modification. — Ashe: 1935, c. 424, s. 2. responsibility” and “either within or without the boundaries of said unit,” etc. It also added the

Editor's Note. — The 1935 amendment added the phrases “without personal

proviso.

§ 159-31. Appointment of unit administrator of finance in event of default.—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the Director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the Director, but not in excess of three hundred dollars (\$300.00) monthly nor for a period of more than one year except with the approval of the Governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the Director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall comply, on behalf of such units, with all the requirements of law applicable to such units, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the Commission on the application of any officer, taxpayer or citizen of the unit or on the application of the Director, and the Commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the Director and the Commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum (51%) of the indebtedness of the unit, the Director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the Director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and the entry of the order, which shall be done within 10 days after the date the petition is filed with the Director, the Director shall certify, over his hand and the seal of the Treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if

the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the Director, and cause the same to be published in a newspaper of general circulation published in the State and in a journal approved by the Commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of 30 days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said 30-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the Director, for good cause shown, shall have the right to remove the administrator of finance appointed, and, with the consent of the Director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the Director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the Director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 35; 1933, c. 374.)

Editor's Note. — The 1933 amendment added all of this section beginning with the second paragraph.

This section was amended by providing an additional method for the adjustment of the indebtedness of local government units, and the

proceeding so authorized seems to be in the nature of a creditors' bill, with a very general power in the court to make orders. The duties and powers of the administrator of finance are

not defined, but they would probably be similar to those of a receiver in a creditors' suit. See 11 N.C.L. Rev. 215.

§ 159-32. Director to inform unit of amount of taxes to be levied.—At least 30 days before the time for the levy of taxes in each unit of the State for the payment of the principal or interest of its obligations, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of each board having power to levy such taxes, a statement of the amount to be provided by taxation or otherwise for the payment of the interest and sinking fund requirements upon such obligations within the fiscal year and for the payment of the obligations maturing in such year. (1931, c. 60, s. 36.)

§ 159-33. Director to notify units of due dates of obligations.—At least 30 days before the date upon which the principal or interest of any obligation of any unit shall be payable, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of such unit a statement of the amount of principal and interest so payable and a statement of the requirement of this Article that such amount shall be remitted to the place at which the same are payable. (1931, c. 60, s. 37.)

§ 159-34. Unit must levy sufficient taxes to provide for maturing obligations.—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 38; 1933, c. 332.)

Editor's Note. — The 1933 amendment added the proviso.

§ 159-35. Failure to meet obligations when due if funds are in hand a misdemeanor.—If the officer of any unit whose duty it shall be to pay any of the principal or interest of valid obligations of the unit or to remit the same to the place of payment as provided in this Article, shall have funds for such payment at his disposal but shall fail or refuse so to do within the time required hereby and in sufficient amount for such payment, whether or not such payment or remission for payment shall have been ordered or forbidden by any board or officer of the unit, the officer so failing or refusing shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 39.)

§ 159-36. Voting for appropriation for other purposes than obligations or application of funds otherwise a misdemeanor.—Every member of any board of a local unit who shall knowingly vote for any appropriation to any purpose other than the payment of the interest or principal or sinking fund of any bonds or notes of the unit any money raised by taxation or otherwise for such purpose, until all of such principal and interest shall have been paid, and any disbursing officer who shall knowingly pay out any of such money for any other purpose than the payment of such interest or principal or sinking fund until all of such principal and interest shall have been paid, whether or not such payment shall

have been ordered or forbidden by any board or officer of the unit, shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 40.)

§ 159-37. False statement a misdemeanor.—If any officer or any member of any board upon whom duties are imposed by this Article shall knowingly make or certify any false statement in any certificate or statement required or permitted by this Article, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 41.)

§ 159-38. Willful failure to perform duty a misdemeanor.—If any officer or any member of any board of any local unit upon whom duties are imposed by this Article or of whom duties are required pursuant to the provisions of this Article shall knowingly and willfully fail or refuse to perform any such duty, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any aggrieved person. (1931, c. 60, s. 42.)

§ 159-39. Other violations misdemeanor.—Notwithstanding the declarations of this Article that certain specific offenses shall constitute misdemeanors and be punishable, the willful violation by the Director or by any member of the Commission or any officer or member of a board of a unit of any duty whatsoever imposed upon him by or under the provisions of this Article, or his willful failure, neglect or refusal to perform any such duty, shall be, and is hereby declared to be a misdemeanor, and shall be punishable by fine and/or imprisonment in the discretion of the court, and shall render the offender liable for damages at the suit of any aggrieved party. (1931, c. 60, s. 43.)

§ 159-40. Prosecution by Attorney General; investigation of charges.—In case of the violation of any criminal provisions of this Article, the Attorney General of the State of North Carolina upon complaint of the Director, whose duty it shall be to make such complaint in case of any such violation, shall investigate the charges preferred and if in his judgment the law has been violated he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. Upon request of the Governor, the Attorney General shall take charge of such prosecution and, at the request of the Governor, special counsel may be employed to assist the Attorney General or the solicitor. (1931, c. 60, s. 44.)

§ 159-41. Removal by Governor of offending persons.—Without abating any of the provisions of this Article for criminal and civil actions, and for penalties and damages, it shall be the duty of the Director in the case of any breach of the provisions of this Article or any failure or refusal to comply with any requirement made herein or permitted to be imposed hereby, by any member of the Commission or by any officer or member of a board of any unit (but in case of any such noncompliance, failure or refusal by the Director himself, it shall be the duty of the Attorney General through the solicitor of the proper district) to bring the offense to the attention of the Governor, who shall consider the same and may in his judgment remove from office the offending officer or member and appoint a successor, subject to other provisions of law as to the appointment or election of successors of officers or members so removed. Such order of removal, however, shall not be effective until after a hearing before the Commission, which shall set a time therefor and shall give due notice thereof to the offending officer or member, and the order of the Commission after such hearing, whether such order shall confirm or refuse to confirm the removal, shall be final. In the event the Commission shall refuse to confirm the order of

removal such officer or member shall continue his duties as such officer or member, but otherwise shall be removed from office pursuant to the order of removal issued by the Governor. (1931, c. 60, s. 45.)

§ 159-42. Law applicable to all counties, cities and towns.—The provisions of this Article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in 1969. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925; 1955, c. 1276; 1961, c. 1106; 1969, c. 788.)

Editor's Note. — The 1935 amendment added a clause at the end of the section reading "before the adjournment of the regular session of the General Assembly in one thousand nine hundred thirty-five." Prior to the 1941 amendment the Article applied to "all counties, cities and towns." The amendment changed the date at the end of the section from 1935 to 1941, and the 1947 amendment changed it to 1947. The 1949 amendment inserted the word "general" and changed the date to 1949.

The 1955 amendment substituted "1955" at the end of this section for "1949." It also changed the caption by substituting "counties, cities and towns" for "units having power to levy taxes ad valorem."

The 1961 amendment substituted "1961" for "1955" at the end of this section.

The 1969 amendment substituted "1969" for "1961" at the end of the section.

For brief comment on the 1947 amendment, see 25 N.C.L. Rev. 455.

§ 159-43. Temporary loans and notes therefor.—In the issuance of notes for temporary loans as provided by the County Finance Act, the Municipal Finance Act and this Article, the governing body may delegate to any officer of the unit the power to fix the face amount, the rate of interest, the time of maturity and the place of payment of principal and interest within and under the limitations, if any, established by the resolution authorizing the issue of such notes and the limitations fixed by this Article and other laws. (1931, cc. 60, 75; c. 296, s. 4.)

§ 159-44. Notes and bonds of units redeemable before maturity.—Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. There may also be incorporated in or endorsed upon notes, bonds or coupons of a unit provisions reserving to the unit the right to extend the time for payment thereof to a fixed or determinable future time, specified in such provisions. The word "determinable" is here used in the same sense that it is used in the Negotiable Instruments Law of North Carolina (Chapter 25). The negotiability of bonds, notes and coupons of a unit shall not be affected by the reservation therein of a right of redemption or extension pursuant to this section. (1931, c. 296, s. 3; 1933, c. 258, s. 2; 1935, c. 356, s. 4.)

Cross Reference. — As to accelerating maturity of bonds and notes of counties and municipalities, see § 153-81.

Editor's Note. — The 1933 amendment rewrote this section, and the 1935 amendment added the last three sentences.

The Negotiable Instruments Law, Chapter 25, referred to in this section, was repealed by Session Laws 1965, c. 700, which enacted the Uniform Commercial Code. See now §§ 25-3-101 to 25-3-805.

§ 159-45. Plans or agreements for funding or refunding; exchange for outstanding coupons or interest notes.—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating to the issuance of funding and refunding bonds. Such plan or agreement may provide among other things for

the issuance of funding bonds and refunding bonds; for the issuance of new coupons or notes in exchange for outstanding coupons, for the purpose of enabling the unit to reserve the right to extend the time for payment of the whole or a part of the interest represented by such outstanding coupons; for the endorsement or stamping of bonds, notes or coupons, for the purpose of extending the time for payment of the principal thereof or interest thereon or for the purpose of reserving the right to extend said time; and for the doing of any other thing authorized by law with respect to outstanding indebtedness of the unit. All such plans or agreements made or entered into prior to May 9, 1935, and approved by the Local Government Commission are hereby ratified and validated. New coupons or interest notes issued in exchange for outstanding coupons as aforesaid shall be executed in such manner as may be determined by said board or body, and approval thereof by the Local Government Commission need not be noted thereon. A certificate signed by the secretary of the Local Government Commission or by an assistant designated by him, stating that such new coupons or interest notes have been approved by the Local Government Commission or under the provisions of the Local Government Act, shall be conclusive evidence that the requirements of this Article with respect to approval by said Commission have been complied with. All provisions of law relating to the means of payment of coupons surrendered in exchange for new coupons or interest notes as aforesaid shall apply to the payment of such new coupons or interest notes. The powers conferred by this section with respect to the issuance of new coupons or interest notes in exchange for outstanding coupons, and with respect to the endorsement or stamping of bonds, notes or coupons, may be exercised by resolution of the board or body authorized by law to issue funding bonds or refunding bonds of a unit, and any such resolution shall be in force and effect from and after its passage, and need not be submitted to the voters of the unit.

The State of North Carolina hereby gives its assent to the act of Congress approved May 24, 1934, entitled "An Act to amend an Act entitled 'an act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," and hereby authorizes all units, after approval has been given thereto by the Local Government Commission, to proceed under the provisions of said act for the readjustment of their debts. (1933, c. 258, s. 4; 1935, c. 356, s. 5.)

Cross Reference. — As to statute authorizing local units of State to avail themselves of Federal Bankruptcy Act, see § 23-48.

Editor's Note. — The 1935 amendment added all of this section beginning with the second sentence.

Ordinance provision that holders of proposed refunding bonds should be subrogated to all rights and powers of holders of refunded bonds is sanctioned by law, and such provision will enter into and become an integral part of the bonds when issued, with contractual force and effect, and may not be impaired by subsequent legislation. *Bryson City Bank v. Bryson City*, 213 N.C. 165, 195 S.E. 398 (1938).

Defendant municipality proposed to issue refunding bonds to be exchanged for like amounts of the original bonds in the hands of the holders of the original indebtedness, the refunding bonds to be secured by all rights and

powers of taxation which protected and formed a part of the obligation of the original bonds. It was held that the parties and the debt are the same and the transaction amounts in reality to an extension and renewal of the original bonds under legislative sanction, and an act of the legislature, passed after the issuance of the original bonds, limiting the tax rate of the municipality is inoperative as to the refunding bonds when the limitation therein imposed would prevent the payment of the refunding bonds according to their tenor, and the contention that even though the refunding bonds would not create a new debt, such debt would be evidenced by a new contract, and that therefore the refunding bonds would be subject to the limitation of the statute enacted prior to the issuance of the refunding bonds, is untenable. *Bryson City Bank v. Bryson City*, 213 N.C. 165, 195 S.E. 398 (1938).

§ 159-46. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit

for the purposes of refunding, funding or renewing indebtedness, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

- (1) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so purchased or paid shall be canceled and shall not be reissued.
- (2) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.
- (3) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.
- (4) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.
- (5) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.
- (6) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the State Treasurer.
- (7) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.
- (8) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.
- (9) Provisions whereby the holders of said bonds or notes, whether such bonds or notes shall have been delivered in exchange for the indebtedness refunded or funded thereby or shall have been sold and the proceeds thereof applied to the retirement of such indebtedness, shall be subrogated to all the rights and powers of the holders of such indebtedness.
- (10) Provisions whereby bonds and notes, together with the matured and unmatured interest thereon, may be deposited with the State Treasurer as trustee, or some bank or trust company designated as trustee by the governing body of the unit with the approval of the Local Government Commission, and bonds issued from time to time or at specified intervals of time for the funding or refunding of all or any part of the indebtedness so deposited; the indebtedness of any depositor to be canceled and extinguished at such time or times as the plan or agreement for the settlement, adjustment, funding or refunding of the indebtedness of the unit may specify, and need not be canceled and extinguished simultaneously with the issuance of bonds for funding or refunding a part of such indebtedness: Provided, that the ordinance, order, or resolution authorizing the issuance of funding or refunding bonds referred to in this subdivision (10) may be adopted, or passed at such times as the plan or agreement may designate.

No such provisions shall become effective without the approval of the Local Government Commission. (1933, c. 258, s. 4; 1935, c. 356, s. 6; 1939, c. 231, s. 3.)

Cross References. — As to what the issues bonds, see § 160-379; when a county ordinance must show when a municipality issues bonds, see § 153-78.

Editor's Note. — The 1935 amendment inserted subdivisions (9) and (10) of this section. The 1939 amendment struck out "incurred before July 1, 1933," formerly appearing after "indebtedness" in the first paragraph.

Provision Becoming Part of Bonds. — A provision set out in this section and

incorporated in an ordinance authorizing the issuance of bonds will enter into and become an integral part of the bonds when issued, with contractual force and effect, which may not be impaired by subsequent legislation. *Nash v. Board of Comm'rs*, 211 N.C. 301, 190 S.E. 475 (1937).

§ 159-47. Issuance by local units of new bonds to replace mutilated bonds and bonds registered as to both principal and interest.—In case any bond heretofore or hereafter issued by any unit has heretofore or shall hereafter become mutilated or has heretofore or shall hereafter be registered as to both principal and interest, the governing body of the unit may by resolution provide for the issuance of a new bond in exchange and substitution for and upon the cancellation of the mutilated bond and its interest coupons, if any, or the bond registered as to both principal and interest. The provisions of such resolution must be approved by the Local Government Commission before any exchange shall be made thereunder. In all such cases the holder shall pay the reasonable expenses and charges of the unit and of the Commission in connection with such exchange. Such new bond shall mature at the same time and bear interest at the same rate as the bond in exchange for which it shall be issued, and shall be executed in such manner as may be provided in the resolution providing for the issuance of the new bond. Each such new bond shall be signed by the officers who are in office at the time of such signing, and shall contain a recital to the effect that it is issued in exchange for a certain bond (describing such bond sufficiently to identify it) and is to be deemed a part of the same issue as the original bond. (1939, c. 259.)

§ 159-47.1. Issuance of bonds without coupons.—Notwithstanding the provisions of any general, local, private or special laws authorizing and providing for the issuance of bonds of a unit, the governing body of a unit may authorize, subject to the approval of the Local Government Commission, the issuance, in lieu of coupon bonds, of a single bond without coupons in a denomination equal to the aggregate principal amount of such coupon bonds and payable in installments corresponding to the maturities of such coupon bonds. Such bond without coupons shall bear interest at the same rate or rates as such coupon bonds and shall be registered as to both principal and interest. At the request of the holder of a single bond without coupons, the governing body of such unit shall within 90 days after its receipt of such request, cause to be prepared and executed and delivered to the holder in exchange for such single bond without coupons, coupon bonds in an aggregate principal amount equal to the principal amount of such single bond with coupons then unpaid and having maturities corresponding to the maturities of the installments of the principal of such single bond without coupons then unpaid and bearing interest at the same rate or rates as provided in such single bond without coupons. Upon any such exchange, such single bond without coupons shall be cancelled. The reasonable expenses and charges of the unit and the Commission in connection with such exchange shall, at the option of the governing body of the unit, be paid by the holder or the unit. Until so exchanged, such single bond without coupons shall in all respects be entitled to the same benefits as the coupon bonds to be issued. (1969, c. 685, s. 1.)

Editor's Note. — Session Laws 1969, c. 685, s. 2, provides: "The powers granted by this act are in addition to and not in substitution for any

other powers heretofore or hereafter granted by any other law."

§ 159-48. Cancellation of own bonds, etc., acquired by unit.—Any bonds or other evidences of indebtedness issued by a unit which have heretofore been or may hereafter be acquired by said unit, unless so acquired for investment of

sinking funds of said unit, shall be immediately cancelled and extinguished as obligations of said unit. It shall be the duty of any officer or employee of said unit in whose possession or custody said bonds or other evidences of indebtedness are placed to cancel the same as herein provided and to promptly report such cancellation to the Local Government Commission and furnish in said report a full description of the bonds or other evidences of indebtedness so cancelled. (1939, c. 356.)

§ 159-49. State not liable for debts of units nor units for obligations of each other.—Nothing herein contained shall be construed to bind the State of North Carolina to pay any part of any debt due by any county, municipality or other unit of government, nor shall it be construed that any county or other unit shall be liable for the debts of any other county or unit. (1931, c. 60, s. 77.)

§ 159-49.1. Investment of bond proceeds.—Bond proceeds may be deposited at interest or invested as provided by G.S. 159-28.1. (1943, c. 14; 1967, c. 798, s. 2.)

Editor's Note. — The 1967 amendment rewrote this section.

Cited in *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

For comment on this section, see 21 N.C.L. Rev. 357.

§ 159-49.2: Repealed by Session Laws 1967, c. 798, s. 2.

Editor's Note. — The repealing act provides that it is the intent and purpose of the act that the investment of bond proceeds shall be as provided by §§ 159-28.1 and 159-49.1.

ARTICLE 2.

Validation of Bonds, Notes and Indebtedness of Unit.

§ 159-50. "Unit" defined.—In this Article the word "unit" means a county, city, town, township, school district, school taxing district, or other district or political subdivision of government of the State. (1931, c. 186, s. 1.)

Cited in *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

§ 159-51. Validation of bond and note issues by units.—In all cases where a unit has issued its bonds or notes prior to March 26, 1931, and has received for the bond or notes an amount of money not less than the face amount of the bonds or notes, and has expended said money for public purposes, said bonds or notes are hereby validated, and all bonds or notes subsequently issued to pay or renew said bonds or notes are also hereby validated, notwithstanding any lack of statutory authority or failure to observe any statutory provision concerning the issuance of such bonds or notes. This section shall not be construed as validating any bonds or notes, the proceeds of which have been lost by reason of the failure of any bank. (1931, c. 186, s. 2.)

§ 159-52. Test cases testing validity of funding bonds.—At any time after the adoption of an ordinance, resolution, or order for the issuance of refunding or funding bonds of a unit by the board authorized by law to issue the same, and following the approval of the issuance of such bonds by the Local Government Commission, and prior to the issuance of any such bonds, such board may cause to be instituted in the name of the unit an action in the superior court of any county in which all or any part of the unit lies, to determine the validity of such bonds and the validity of the means of payment provided therefor. Such action shall be in the nature of a proceeding in rem, and shall be against each and all the owners of taxable property within the unit and each and all the citizens residing in the unit, but without any requirement that the name of any such

owner or citizen be stated in the complaint or in the summons. Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within 20 days after the date of the last publication of such summons in the manner herein provided. Any interested person may become a party to such action, and the defendants and all others interested may at any time before the expiration of such 20 days appear and by proper proceedings contest the validity of the indebtedness to be refunded or funded or the validity of such refunding or funding bonds or the validity of the means of payment provided therefor. The complaint shall set forth briefly by allegations, references, or exhibits the proceedings taken by such board in relation to such bonds and the means of payment provided therefor, and, if an election was held to authorize such issuance, a statement of that fact, together with a copy of the election notice and of the official canvass of votes and declaration of the result. There shall similarly be set forth in the complaint a statement of the amount, purpose, and character of the indebtedness to be refunded or funded, and such other allegations as may be relevant. The prayer of the complaint shall be that the court find and determine as against the defendants the validity of such bonds and the validity of the means of payment so provided. (1931, c. 186, s. 4; 1935, c. 290, s. 1; 1937, c. 80.)

Editor's Note. — This section was rewritten by the 1935 amendment. The 1937 amendment substituted "date of the last" for "full" formerly appearing in the third sentence.

The action authorized by this and the following four sections is in the nature of a proceeding in rem, and is adversary both in form and in substance. These sections contemplate that issues both of law and of fact may be raised by pleadings duly filed, and that such issues shall be determined by the court. The court has no power by virtue of these sections to validate bonds which are for any reason invalid. It has power only to determine whether or not on the facts as found by the court and under the law applicable to these facts, the bonds are valid. *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

Service of Summons by Publication Is Sufficient. — The contention that an owner of taxable property within the unit, or a citizen

residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjudging that the bonds and tax to be levied for their payment, are valid, because it is not required by this section that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by this section to be in the nature of a proceeding in rem. In such case, all persons included within a well defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

If Published as Required by This Section. — See *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

§ 159-53. Rules of pleading and practice.—The trial of such action shall be in accordance with the Constitution and laws of the State; and the rules of pleading and practice provided by the General Statutes and court rules for civil actions, including the procedure for appeals, which are not inconsistent with the provisions of this Article, are hereby declared applicable to all actions herein provided for: Provided, however, that an appeal from a decree in such action must be taken within 30 days from the date of rendition of such decree. The court shall render a decree either validating such bonds and the means of payment provided therefor, or adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal. (1931, c. 186, s. 5; 1935, c. 290, s. 2.)

Editor's Note. — The 1935 amendment inserted the proviso at the end of the first sentence, and substituted "a decree" for

"judgment" near the beginning of the second sentence.

§ 159-54. Judgment establishing validity of issue.—If (i) the superior court shall render a decree validating such bonds and the means of payment provided therefor and no appeal shall be taken within the time prescribed herein, or (ii) if taken, the decree validating such bonds and the means of payment provided therefor shall be affirmed by the Supreme Court, or (iii) if the superior court shall render a decree adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal, and on appeal the Supreme Court shall reverse such decree and sustain the validity of such bonds and the means of payment provided therefor (in which case the Supreme Court shall issue its mandate to the superior court requiring it to render a decree validating such bonds and the means of payment provided therefor), the decree of the superior court validating such bonds and the means of payment provided therefor shall be forever conclusive as to the validity of such bonds and the validity of the means of payment provided therefor as against the unit and as against all taxpayers and citizens thereof, to the extent of matters and things pleaded or which might have been pleaded, and to such extent the validity of said bonds and means of payment thereof shall never be called in question in any court in this State. (1931, c. 186, s. 6; 1935, c. 290, s. 3.)

Editor's Note. — The 1935 amendment rewrote this section.

Section Does Not Estop Taxpayer from Challenging Validity of Bonds if Service Inadequate. — The contention that by this section an owner of taxable property within the unit, or a citizen residing therein, is estopped from challenging the validity of the bonds and of the tax, without having had an opportunity to be heard, cannot be sustained. No decree or judgment adverse to his rights can be rendered in an action instituted and prosecuted in accordance with the provisions of the statute,

until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

§ 159-55. Taxing costs.—The costs in any action brought under this Article may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court. (1931, c. 186, s. 7.)

§ 159-56. Levying special tax for proposed issues.—If the complaint in any action brought under this Article, or an exhibit attached to such complaint shows that an ordinance or resolution has been adopted by the unit providing that a tax sufficient to pay the principal and interest of the bonds or notes involved in such action is to be levied and collected, such ordinance or resolution shall be construed as meaning that such tax is to be levied without regard to any constitutional or statutory limitation of the rate or amount of taxes, unless such ordinance or resolution declares that such limitation is to be observed in levying of such tax. (1931, c. 186, s. 8.)

Constitutionality. — This section and the four preceding sections are not unconstitutional either on the ground that the statute confers nonjudicial functions on the superior courts or on the ground that the statute denies due process of law to taxpayers or citizens of a local gov-

ernmental unit, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or of Art. I, § 17, Const. 1868 (now N.C. Const., Art. I, § 19). *Castevens v. Stanly County*, 211 N.C. 642, 191 S.E. 739 (1937).

§ 159-57. Notice of proposed issue to be published by unit.—Any unit may by resolution of the official board of such unit, authorized by law to issue bonds or notes, cause to be published a notice of the intention of said board to issue bonds or notes of the unit for the purpose of funding, refunding or renewing outstanding obligations or alleged obligations issued prior to passage of such resolution. Such notice shall describe said obligations or alleged obligations in a

manner sufficient to identify them. It shall also state, either in general or specific terms, the purpose or purposes for which said outstanding obligations were incurred or issued, as determined by said official board of said unit prior to the publication of said notice. Said notice shall further state that a tax is to be levied on all taxable property in the unit sufficient to pay the bonds or notes proposed to be issued, or any bonds or notes that may be subsequently issued for the purpose of refunding, funding, renewing or paying said bonds or notes. Said notice shall be published once in each of three successive weeks in a newspaper published in the unit having the largest or next largest circulation in the unit, or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse or building where said official board usually holds its meetings, and published in some newspaper published in the State of North Carolina and circulating in said unit. Such notice shall contain a statement that it is being published under the provisions of this section. After the issuance of any bonds or notes in accordance with the intention expressed in said notice, the validity of said bonds or notes and/or of any subsequently issued instruments evidencing the same indebtedness, shall not be open to question in any court upon the ground that any of the obligations or alleged obligations for the funding or renewal of which such bonds or notes were issued, were or are invalid, nor shall the power of the unit to levy a sufficient tax on all taxable property in the unit for the payment of the principal and interest of said bonds or notes, or of any subsequently issued instruments evidencing the same indebtedness, be open to question in any court upon the ground that the obligations or alleged obligations for the funding or renewal of which said bonds or notes were issued were invalid, or upon the ground that said original obligations or alleged obligations were not issued for a purpose for which such tax can be levied, except in an action or proceeding commenced within 30 days after the first publication of said notice of intention. The date of such first publication shall be stated in said notice. (1931, c. 186, s. 9; 1935, c. 290, s. 4.)

Editor's Note. — Prior to the 1935 amendment this section applied only until July, 1932, and the outstanding obligations were those issued since March 1, 1929. The amendment makes the section general and permanent in its application. Prior to the amendment, it was required that a copy of the section be posted with the notice. Now a

statement that notice is being published according to the section is all that is required. Prior to the amendment the purposes of levy could be attacked by an action "commenced at least two days prior to the issuance of said bonds or notes." The quoted passage was deleted by the amendment.

§ 159-58. **Invalidated issues unaffected.**—This Article shall not apply to any bonds or notes that have been held invalid by any court of competent jurisdiction. (1931, c. 186, s. 11.)

ARTICLE 3.

Funding and Refunding of Debts of Local Units Other than Counties, Cities and Towns.

§ 159-59. **Local units, other than counties, cities and towns, authorized to fund outstanding debts.**—Any unit other than a county, city or town may issue bonds as provided in this Article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, political subdivision or local governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other

unit embracing only a part of the territory of the county. (1933, c. 257, s. 1; 1939, c. 231, s. 4.)

Editor's Note. — The 1939 amendment before July 1, 1933," formerly appearing at the struck out "provided, the indebtedness end of the first sentence. evidenced by said notes or bonds was incurred

§ 159-60. General law applicable.—Bonds issued pursuant to this Article shall be issued in accordance with the provisions of the County Finance Act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

- (1) They shall be issued in the name of the obligor named in the obligations to be funded or refunded, or in the name of the successor to the obligor named in the obligation to be refunded or funded;
- (2) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;
- (3) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, G.S. 153-78, 153-83, 153-84, 153-85, 153-86 and 153-87 of the County Finance Act, shall be read and understood as if they contained no requirements in respect to such matters;
- (4) The bonds shall mature at such time or times, not later than 40 years after their date, as may be fixed or provided for in the resolutions under which they are issued;
- (5) The bonds shall also be issued in accordance with the provisions of the Local Government Act, as amended. (1933, c. 257, s. 2; 1935, c. 484; 1941, c. 147.)

Editor's Note. — The 1935 amendment added the name of." The 1941 amendment rewrote the part of subdivision (1) beginning with "or in subdivision (5).

§ 159-61. Taxes to pay new obligations authorized.—Taxes for the payment of the principal and interest of bonds issued pursuant to this Article shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ 159-62. County Finance Act applicable.—Except where they are inconsistent with the provisions of this Article, all of the provisions of the County Finance Act, as amended, applicable to bonds issued under that act for the funding or refunding of indebtedness, shall be applicable to bonds issued under this Article. For the purpose of applying the provisions of said act to bonds issued under this Article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this Article to issue bonds, except the words "governing body" in G.S. 153-110 of the County Finance Act, where said words mean the board or body authorized by this Article to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this Article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means

the clerk or secretary of the board or body authorized by this Article to issue bonds; "this act" means this Article. (1933, c. 257, s. 4; 1939, c. 231, s. 4(b).)

Editor's Note. — The 1939 amendment struck out "incurred before July 1, 1933," formerly appearing after "indebtedness" in the first sentence.

ARTICLE 4.

Assistance for Defaulting Local Government Units in the Preparation of Workable Refinancing Plans.

§ 159-63. Aid of Director of Local Government to defaulting local units.—Whenever it shall appear that any county, city, town, or other local government unit of this State has defaulted for a period of six months in the payment of the principal or interest of any of its outstanding notes or bonds, the Director of Local Government is hereby given the authority to prepare and certify to the governing body of such local government unit a plan for refinancing, readjustment, or compromising said debt in order to remove the default and prevent its recurrence. (1935, c. 124, s. 1.)

§ 159-64. Investigating fiscal affairs of units; negotiations with creditors; plans for refinancing or readjustment.—For the purpose of determining the financial position, the Director of Local Government may make or cause to be made an investigation of the fiscal affairs of such units which are in default in the payment of principal or interest for a period of six months, and advise with the governing body of such unit regarding the refinancing and/or readjustment of its debts, and is authorized to negotiate with the creditors of such units for the purpose of reaching an agreement with them. Whenever a plan of refinancing and/or readjustment, whether prepared by the Director, by a private refunding agency, or by the officials of the unit, appears to the Director of Local Government as being fair and equitable and reasonably within the ability of such unit to meet, it shall be submitted by him to the Local Government Commission for its approval, and upon such approval, the governing body of such local government unit shall adopt same and pass the necessary orders or ordinances for the purpose of carrying said plan into effect. (1935, c. 124, s. 2.)

§ 159-65. Power of Director to accept or reject budget of local units.—In order to conserve the financial resources of any local government unit of this State and to provide a means of constant advisory services, the Director of Local Government is hereby given authority to approve or disapprove the budget of any unit which has accepted the plan and put same into effect, and the governing body of such unit shall first obtain the approval of the said Director before passing any order or ordinance adopting said budget. (1935, c. 124, s. 3.)

§ 159-66. Annual statements from units.—The Director of Local Government shall have authority to require of the local units in which he functions under this Article annual statements showing the collection of revenues and the disbursements for expenses, both divided as between general operating fund, debt service fund, and special funds, if any, and it shall be his duty to require the proper allocation of all collected revenues to the funds for which said revenues were levied, in accordance with the budget, and to require that disbursements shall be made only from appropriations duly made. (1935, c. 124, s. 4.)

§ 159-67. Extent and time limit of Director's authority.—The authority hereby granted to the Director of Local Government shall continue in force in such local government units until, in the discretion of the Director of Local

Government, said local government unit has performed the duties required of it or has satisfied the Director that it will do so, until the agreements made with the creditors have been discharged in accordance with the plan of refinancing and/or readjustment of its debt. (1935, c. 124, s. 5.)

§ 159-68. Certain local laws reserved.—Nothing in this Article shall be construed to repeal any public-local or private act passed by the General Assembly of 1935, relative to the readjustment or refunding of the bonded indebtedness of any local governmental unit in North Carolina, except and until an agreement has been reached between the bondholders and the governing body of said unit, and when said agreement has been reached and certified to the Director of the Local Government Commission by both contracting parties, then and in that event the provisions of said Article shall apply to such defaulting local governmental units. (1935, c. 124, s. 6.)

Chapter 160.

Municipal Corporations.

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

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- 160-417. Bond provisions.
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Article 35.

Capital Reserve Funds.

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Cross Reference. — See the note catchlined “Revision of Chapter effective July 1, 1973,” following the analysis to Chapter 159.

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

ARTICLE 25.

General Provisions.

§ 160-367. **Short title.** — This Subchapter may be cited as “The Municipal Finance Act, 1921.” (1917, c. 138, s. 1; 1919, c. 178, s. 3 (1); C. S., s. 2918; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References. — As to validation of municipal bonds, see § 159-50 et seq. As to local government acts, see Chapter 159. As to application of sinking funds to purchase of municipality’s own bonds, see §§ 153-148 and 153-150.

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined “Revision of Chapter Effective July 1, 1973,” following the analysis to Chapter 159.

Editor’s Note. — The attempt to amend and reenact the Municipal Finance Act by Public

Laws 1921, c. 8, was declared unconstitutional in *Allen v. City of Raleigh*, 181 N.C. 453, 107 S.E. 463 (1921), for failure of the General Assembly to comply with Art. II, § 14, Const. 1868. However, the amendment and reenactment was successfully accomplished by Public Laws, Ex. Sess. 1921, c. 106.

Applicability to School Districts. — This does not deal with school districts. It, therefore, does not repeal the Acts of 1915, c. 722. *Waters v. Board of Comm’rs*, 186 N.C. 719, 120 S.E. 450 (1923).

§ 160-368. **Meaning of terms.** — In this Subchapter, unless the context otherwise requires, the expressions:

“Bond ordinance” means an ordinance authorizing the issuance of bonds of a municipality;

“Clerk” means the person occupying the position of clerk or secretary of a municipality;

“Financial officer” means the chief financial officer of a municipality;

“Funding bonds” means bonds issued to pay or extend the time of payment of debts not evidenced by bonds;

“Governing body” means the board or body in which the general legislative powers of a municipality are vested;

“Local improvement” means any improvements on property the cost of which has been or is to be specially assessed in whole or in part;

“Municipality” means and includes any city, town, or incorporated village in this State, now or hereafter incorporated;

“Necessary expenses” means the necessary expenses referred to in Sec. 7 of Article VII of the Constitution of North Carolina;

“Publication” includes posting in cases where posting is authorized by this Subchapter as a substitute for publication in a newspaper;

“Refunding bonds” means bonds issued to pay or extend the time of payment of debts evidenced by bonds;

“Special assessments” means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and “specially assessed” has a corresponding meaning. (1917, c.

138, s. 2; 1919, c. 178, s. 3 (2); c. 285, s. 1; C. S., s. 2919; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1.)

Editor's Note. — The second 1921 amendment deleted the former provision relating to the determination of who is chief financial officer.

Prior to the 1933 amendment "funding bonds" and "refunding bonds" limited funding and refunding bonds to those issued for the payment of debts "incurred before July first, one

thousand nine hundred and thirty-one." The quoted clause was deleted by the amendment.

The provisions of Art. VII, § 7, Const. 1868, referred to in the definition of "necessary expenses," are now contained in N.C. Const., Art. V, § 4 (2).

§ 160-369. Publication of ordinance and notices.—An ordinance or notice required by this Subchapter to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality. (1917, c. 138, s. 3; 1919, c. 178, s. 3 (3); C. S., s. 2920; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

§ 160-370. Application and construction of Subchapter.—This Subchapter shall apply to all municipalities. Every provision of this Subchapter shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this Subchapter. If any portion of this Subchapter shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be excised. (1917, c. 138, ss. 4, 5; 1919, c. 178, s. 3 (4), (5); C. S., s. 2921; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

ARTICLE 26.

Budget and Appropriations.

§ 160-371. The fiscal year.—The first fiscal year of every municipality shall begin on the first day of July, 1931, and on the first day of July in each year thereafter. (1917, c. 138, s. 6; 1919, c. 178, s. 3 (6); C. S., s. 2922; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 66.)

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Editor's Note. — Prior to the 1931 amendment the fiscal year of a municipality began either on the first day of June or September as the governing body might determine.

§ 160-372. Special revolving fund for municipalities to avoid borrowing money on anticipations.—In order to avoid the necessity of borrowing money in anticipation of the receipt of taxes and revenues or the proceeds of the sale of bonds, a municipality may by ordinance create a special revolving fund and with the consent of the Local Government Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in G.S. 160-373, 160-374 and/or 160-375, in respect to the borrowing of the money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No ordinance creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund, without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 47.)

Cited in Bryson City Bank v. Bryson City, 213 N.C. 165, 195 S.E. 398 (1938).

ARTICLE 27.

Temporary Loans.

§ 160-373. **Money borrowed to meet appropriations.**—A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References. — As to the power of the governing body to delegate authority to fix face amount, rate of interest, time of maturity, place of payment, etc., see § 159-43. As to application to Local Government Commission for issuance of notes, see § 159-7 et seq.

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-374. **Money borrowed to pay judgments or interest.**—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent (1¢) per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July 1, 1933, and authorized by this Subchapter as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times not later than five years after the first day of July, 1933, notwithstanding anything to the contrary in this section.

In addition to the foregoing powers, a municipality may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the municipality sufficient to pay the principal and interest thereof. (1919, c. 178, s. 3 (12); C. S., s. 2933; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259, s. 1; 1939, c. 231, s. 1.)

Editor's Note. — By the second 1921 amendment this section was made applicable to a judgment or judgments and bonds, where before the amendment it provided for a judgment and debts.

The 1931 amendment added the last two sentences of the first paragraph, and the 1933 amendment changed the date in said sentences from January 1, 1931, to July 1, 1933. The 1939 amendment added the second paragraph.

City May Anticipate Collection of Taxes. — Where the levy of taxes had been approved by the qualified voters of the city, the city, under this section, has the authority to borrow money to pay judgments in anticipation of the collection of taxes validly levied for that purpose. *Hammond v. City of Charlotte*, 206 N.C. 604, 175 S.E. 148 (1934).

§ 160-375. Money borrowed in anticipation of bond sales.—At any time after a bond ordinance has taken effect as provided in Article 28 herein, a municipality 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. Such loans shall be paid not later than five years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issued by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published. (1917, c. 138, s. 13; 1919, c. 178, s. 3 (13); C. S., s. 2934; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1953, c. 693, s. 4.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment. The 1953 amendment substituted "five years" for "three years" in the second sentence.

§ 160-376. Notes issued for temporary loans.—Negotiable notes shall be issued for all moneys borrowed under the last three sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment for any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest within the limitations prescribed by said resolution. All such notes shall be executed in the manner provided in G.S. 160-393 of this Subchapter in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval endorsed on the notes. The resolution authorizing issuance of notes for money borrowed under G.S. 160-374 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (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; 1931, c. 293; 1939, c. 231, s. 1.)

Cross Reference. — As to sale of notes at public or private sale, see §§ 159-13, 159-14 and 159-15.

Editor's Note. — By the second 1921 amendment negotiable notes were provided for instead of "notes," and provision was made for maximum rate of interest instead of six percent. Provision was also made for private or public

negotiation, and the power to fix the face amount was vested in "any officer" appointed by the governing body instead of "the financial officer or chief executive officer."

The 1931 amendment substituted "three" for "two" in the first sentence of this section, and the 1939 amendment added the last sentence.

ARTICLE 28.

Permanent Financing.

§ 160-377. Not applied to temporary loans.—The provisions of this Article shall not apply to temporary loans made under Article 27, unless otherwise

provided in said Article. (1917, c. 138, s. 15; 1919, c. 178, s. 3 (15); C. S., s. 2936; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Editor's Note. — By the second 1921 amendment the application of this Article was qualified by adding the last six words.

In General. — Prior to the decision in *Fawcett v. Town of Mt. Airy*, 134 N.C. 125, 45 S.E. 1029, 101 Am. St. R. 825, 63 L.R.A. 870 (1903), it was held that the construction and maintenance of a system of light, water and sewerage was not within the meaning of the words, "necessary

expenses," as used in the State Constitution, Art. VII, § 7, Const. 1868 (now N.C. Const., Art. V, § 4(2)). In that case the court expressly overruled the earlier cases. *Mayo v. Commissioners of Town of Washington*, 122 N.C. 5, 29 S.E. 343, 40 L.R.A. 163 (1898). This decision has been uniformly approved and is now the accepted law of the State. In accordance with these decisions the legislature enacted the Municipal Finance Act. *Hill v. Elizabeth City*, 291 F. 194 (E.D.N.C. 1923).

Cited in *Twining v. City of Wilmington*, 214 N.C. 655, 200 S.E. 416 (1939).

§ 160-378. For what purpose bonds may be issued.—A municipality may issue its negotiable bonds for any one or more of the following purposes:

- (1) For any purpose or purposes for which it may raise or appropriate money, except for current expenses.
- (2) To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "debt" as used in this subdivision (2) includes all valid or enforceable debts of a municipality, whether incurred for current expenses or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July 1, 1933, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year 1946 shall be funded or refunded.
- (3) To pay any revenue bonds issued by the municipality pursuant to the Revenue Bond Act of 1938 to finance any undertaking or undertakings mentioned in subparagraphs 1 and 2 of paragraph b of subdivision (6) of G.S. 160-414 of said Revenue Bond Act, whether wholly within or partially within and partially without the municipality, if such revenue bonds are payable at the time of the passage of the ordinance or ordinances authorizing such negotiable bonds or be payable within one year thereafter or, although payable more than one year thereafter, are to be canceled prior to their maturity and simultaneously with the issuance of such negotiable bonds: Provided that the issuance of such negotiable bonds and the ordinance or ordinances authorizing the same shall be approved by the voters of the

municipality at an election as provided in this Subchapter. Such negotiable bonds may be disposed of by sale pursuant to the provisions of the Local Government Act or, upon request of the governing body of the municipality and with the consent of the holder of such revenue bonds, the Local Government Commission through the State Treasurer may exchange any such negotiable bonds for a like amount of such revenue bonds and make such adjustment of accrued interest as may be requested by said governing body, in which event the publication of notice as provided in G.S. 159-13 of the Local Government Act shall not be required. (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; 1931, c. 60, s. 48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; 1943, c. 13; 1945, c. 403; 1957, c. 856, s. 1.)

Local Modification. — Town of Columbus: 1959, c. 719; town of Lake Lure: 1953, c. 1057; town of Walnut Cove: 1949, c. 987.

Cross Reference. — As to necessity of application to Local Government Commission for issuance of bonds, see § 159-7.

Editor's Note. — The 1921 amendment inserted "negotiable" before "bonds" in the preliminary paragraph and made other changes. The 1933 amendment struck out the provision changed by the 1931 amendment and inserted the third and fourth sentences of subdivision (2).

The 1935 amendment substituted "incurred" for "issued" in the second sentence of subdivision (2). It also added the last four sentences of the subdivision.

The 1939 amendment changed the year in the last sentence of subdivision (2) from 1938 to 1940. The 1943 amendment changed the year to 1942, and the 1945 amendment changed it to 1946.

The 1957 amendment added subdivision (3).

Power to Hold Election Implied. — This section impliedly confers the power to hold the necessary election. *Hailey v. City of Winston-Salem*, 196 N.C. 17, 144 S.E. 377 (1928).

Bonds Issued by School Trustees. — The board of trustees of a city school is an official

board of the city and under this section bonds may be issued to pay the indebtedness they have incurred in operating the school. *Jones v. City of New Bern*, 184 N.C. 131, 113 S.E. 663 (1922).

Refunding Bonds. — Under the provisions of this and the following section an ordinance authorizing the issuance of refunding bonds need not be submitted to the voters. A municipal corporation does not contract a debt, within the meaning of Art. VII, § 7, Const. 1868 (now N.C. Const., Art. V, § 4(2)), when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the refunding bonds are valid and enforceable obligations of the municipality. *Bolich v. City of Winston-Salem*, 202 N.C. 786, 164 S.E. 361 (1932).

Issuance of Bonds Pursuant to Section Not Enjoined. — The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters is conferred on a municipality by this section, and where the other statutes relevant have been duly followed, the bonds so issued are a valid obligation of the town issuing them, and their issuance will not be enjoined by the courts. *Burleson v. Spruce Pine Bd. of Aldermen*, 200 N.C. 30, 156 S.E. 241 (1930).

§ 160-379. **Ordinance for bond issue.**—(a) Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

(b) What Ordinance Must Show.—The ordinance shall state:

- (1) In brief and general terms the purpose for which the bonds are to be issued, including, in the case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;
- (2) The maximum aggregate principal amount of the bonds;
- (3) That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;
- (4) That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection;
- (5) One of the following provisions:

- a. If the bonds are funding or refunding bonds or for local improvements of which at least one fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or
 - b. If the issuance of the bonds is required by the Constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this Subchapter; or
 - c. In any other case, that the ordinance shall take effect 30 days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this Subchapter, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this Subchapter.
- (6) In the case of bonds to pay any revenue bonds issued for one or more undertakings constituting two or more unrelated purposes under the provisions of this Subchapter, a statement of such purposes and the proportion of the proceeds of such revenue bonds determined by the governing body to have been applied to each such purpose, which determination shall be conclusive, and bonds to pay each such proportion of the revenue bonds, as nearly as may be within a multiple of one thousand dollars (\$1,000), shall be authorized by separate ordinances.

(c) **When the Ordinance Takes Effect.**—A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

(d) **Need Not Specify Location of Improvement.**—In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially in the language employed in G.S. 160-382 of this Subchapter to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

(e) **Application of Other Laws.**—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this Subchapter for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the Constitution of this State. The special, private and public-local laws here referred to include all such laws enacted prior to the expiration of the regular session of the General Assembly in the year 1935. Nothing herein shall be construed, however, as prohibiting a municipality from issuing bonds or notes under any special, private or public-local law applicable to such municipality, it being intended that this Subchapter shall be cumulative and additional authority for the issuance of bonds and notes. (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; 1931, c. 60, s. 49; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1949, c. 497, s. 3; 1957, c. 856, s. 2.)

Cross References. — As to provisions which Government Commission, be included in the may, upon the approval of the Local ordinance for bond issue, see § 159-46. As to

provision for accelerating the maturity of bonds and notes, see § 153-81.

Editor's Note. — The 1921 amendment made changes in subsection (b). The 1933 amendment changed subsection (b) by adding the requirement for a brief description of indebtedness in subdivision (1) of subsection (b) and the proviso to subdivision (3) of such subsection. It also deleted from subsection (e) the former limitation that the indebtedness must have been incurred before July 1, 1931. The 1935 amendment added the last two sentences of subsection (e). And the 1949 amendment rewrote paragraph b of subdivision (5) of subsection (b).

The 1957 amendment inserted subdivision (6) of subsection (b).

Ordinance Must Comply with Statutes. — It is not required by the various statutes on the subject that a bond ordinance of a municipality set forth in express terms the proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. *Leak v. Town of Wadesboro*, 186 N.C. 683, 121 S.E. 12 (1923).

Statement of Purpose. — The ordinance authorizing a bond sale and calling a special election must state the purpose in only "brief and general terms," under this section. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Substantial Deviation from Purpose. — Where the manifest purpose for which a civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center, for whose construction a bond issue

to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

The construction, acquisition, and operation of an auditorium is not a necessary expense, and the voters of the municipality must therefore approve a bond issue for such purpose. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Subsequent Ratification of Bond Issue. — If a school board borrows money and the debt is taken up by an election this ratification renders unimportant the question of whether or not the money was borrowed for necessary purposes. *Jones v. City of New Bern*, 184 N.C. 131, 113 S.E. 663 (1922).

A statement that a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected may be omitted in the ordinance in the case of funding or refunding bonds in the discretion of the governing board of the town. *Garner v. Town of Newport*, 246 N.C. 449, 98 S.E.2d 505 (1957).

Absence of Intent to Annex in Bond Ordinance and Ballots. — Where there is no irregularity in the authorization of municipal bonds for its water and sewer systems, and in the city's notice of intent to annex certain areas it is stated that it intended to use certain of the proceeds of the bonds for the construction of water and sewer lines in areas intended to be annexed, the fact that neither the bond ordinance nor the ballots used in the election at which the issuance of the bonds was approved disclosed such intent does not affect the validity of the bonds. *Upchurch v. City of Raleigh*, 252 N.C. 676, 114 S.E.2d 772 (1960).

Courts Favor Validity of Elections. — It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Section 160-387 permits the use of a broad and general ballot in bond elections. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Cited in *Adeock v. Town of Fuquay Springs*, 194 N.C. 423, 140 S.E. 24 (1927).

§ 160-380. Ordinance not to include unrelated purposes.—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection (d) of G.S. 160-382 of this Subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s.

3 (17); c. 285, s. 3; C. S., s. 2939; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note. — The second 1921 amendment deleted a provision in next to the last sentence which required the bond ordinance to “have taken effect,” before a consolidated bond issue could be had. The 1933 amendment added the last sentence.

§ 160-381. Ordinance and bond issue; when petition required.—In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed. (1919, c. 178, s. 3 (17); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ 160-382. Determining periods for bonds to run.—(a) How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection (d) of this section, determine and declare:

- (1) The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or
- (2) If the bonds are to be funding or refunding bonds, either the shorest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

(b) Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

(c) Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

(d) Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the gov-

erning body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

- (1) Sewer systems (either sanitary or surface drainage), 40 years.
- (2) Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, 40 years.
- (3) Gas systems, 30 years.
- (4) Electric light and power systems, separate or combined, 30 years.
- (5) Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), 20 years.
- (6) Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), 50 years.
- (7) Playgrounds, 50 years.
- (8) Buildings for purposes not stated in this section, if they are:
 - a. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), 40 years.
 - b. Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, 30 years.
 - c. Of other construction, 20 years.
- (9) Bridges and culverts (including retaining walls and approaches), 40 years, unless constructed of wood, and in that case, 10 years.
- (10) Land for purposes not stated in this section, 50 years.
- (11) Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:
 - a. Is constructed of sand and gravel, five years;
 - b. Is of waterbound macadam or penetration process, 10 years;
 - c. Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, 20 years.
- (12) Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, 50 years.
- (13) Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other materials of similar lasting character, 20 years.
- (14) Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, 30 years.
- (15) Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, 10 years.
- (16) Land for cemeteries, or the improvement thereof, 30 years.
- (17) Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work

is done by the municipality in connection with any permanent improvement of or in any street, 10 years.

- (18) The elimination of any grade crossing or crossings and improvements incident thereto, 30 years.
- (19) Equipment, apparatus, or furnishings not included in the foregoing subdivisions of this subsection, 10 years.
- (20) Any improvement or property not included in other subdivisions of this subsection, 40 years.
- (21) Land, including grading and drainage, buildings, equipment and other improvements for airports or landing fields, 30 years.
- (22) Cable television systems, 30 years.

(e) **Improvements and Properties Defined.**—The maximum periods fixed herein for the improvements and properties mentioned in subdivisions numbered from (1) to (9), both inclusive, of subsection (d) of this section shall be applied thereto whether such improvements or properties are to be acquired constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one subdivision of subsection (d) above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

(f) **Kind of Construction Determined.**—If the bonds are for a building referred to in subdivision (8) of subsection (d) above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in subdivision (11) of subsection (d) above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

(g) **Period of Payment.**—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, the governing body shall not deem said period to be greater than 50 years. (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; 1929, c. 170; 1931, c. 60, s. 50; cc. 188, 301; 1933, c. 259, s. 1; 1967, c. 1086, ss. 4, 5; 1969, c. 834.)

Editor's Note. — The second 1921 amendment rewrote this section. The 1929 amendment, which inadvertently referred to the wrong section, added subdivision (21) and former subdivision (22) of subsection (d). The first 1931 amendment rewrote subsection (g), the second 1931 amendment corrected the erroneous reference in the 1929 act, and the third 1931 amendment also added the two subdivisions inserted by the 1929 act.

The only change effected by the 1933 amendment occurs in subsection (g). The limitation was formerly 30 years if the gross debt of the county was less than 12 percent of the assessed valuation, and 50 years in other cases. The amendment made the limitation 50 years in all cases.

The 1967 amendment rewrote subdivision (21) of subsection (d) and repealed a former subdivision (22) of that subsection. Section 6 of the amendatory act provides that the act shall also apply to bonds authorized but not issued at the effective date of the act, which became effective upon ratification, July 3, 1967.

The 1969 amendment added a new subdivision (22) to subsection (d). Former subdivision (22) was repealed by Session Laws 1967, c. 1086, s. 5.

Maturity of Refunding Bonds. — Under this section the period for maturity of refunding bonds is in the discretion of the governing body of the city issuing them. *Bolich v. City of Winston-Salem*, 202 N.C. 786, 164 S.E. 361 (1932).

Cited in *Jones v. City of Durham*, 197 N.C. 127, 147 S.E. 824 (1929); *Austin v. Shaw*, 235 N.C. 722, 71 S.E.2d 25 (1952).

§ 160-383. Sworn statement of indebtedness.—(a) What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

- (1) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:
 - a. Outstanding debt not evidenced by bonds.
 - b. Outstanding bonded debts.
 - c. Bonded debt to be incurred under ordinances passed or introduced.
- (2) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:
 - a. Amount of unissued funding or refunding bonds included in gross debt.
 - b. Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.
 - c. The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.
 - d. The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.
 - e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.
 - f. The amount of bonded debt included in the gross debt and incurred or to be incurred for sanitary sewer system purposes if the Local Government Commission determines that (i) the revenues of the sanitary sewer system and the water system or (ii), in the event the sanitary sewer system is operated with the water system as a consolidated system, the revenues of such consolidated system or (iii), in the event the sanitary sewer system and the water system are consolidated during but not for the entire five-year period hereinafter mentioned, the revenues of such sanitary sewer and water systems and such consolidated system during such period, including any surplus from prior years, were, in each of the five complete fiscal years immediately preceding the filing of this statement, sufficient to pay the operating expenses of such systems or such consolidated system or such combination thereof and the principal of and the interest on all bonds issued therefor as the same became due and payable.
 - g. The amount which the municipality shall be entitled to receive from any railroad or street railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt.

h. Indebtedness for school purposes.

- (3) The net debt, being the difference between the gross debt and the deductions.
- (4) The assessed valuation of property as last fixed for municipal taxation.
- (5) The percentage that the net debt bears to said assessed valuation.

(b) Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight percent (8%) of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers, sewage disposal or sewage purification plants, the construction of which shall have been ordered by the Board of Water and Air Resources, which Board is hereby authorized to make such order, or by a court of competent jurisdiction or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

(c) Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this Subchapter, unless it appears (in an action or proceeding commenced within the time limited by G.S. 160-385 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (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. 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.)

Local Modification. — Alamance, city of Burlington: 1933, c. 344; Columbus, town of Whiteville: 1947, c. 42; Mecklenburg, Transylvania: 1933, c. 321; city of Charlotte: 1959, cc. 30, 871.

Editor's Note. — The second 1921 amendment rewrote this section. The 1927 amendment inserted paragraphs g and h of subdivision (2) of subsection (a). The 1931 amendment changed the date in paragraph a of subdivision (1) of subsection (a), and the first 1933 amendment eliminated the provision containing the date. The second 1933 amendment inserted paragraph f of subdivision (2) of subsection (a).

The 1938 amendment made subsection (b) applicable to bonds for erosion control and bonds for erecting jetties, etc.

The 1955 amendment inserted "or by the State Stream Sanitation Committee, which Board or Committee is hereby authorized to make such order," in subsection (b). The 1959 amendment deleted references to the State Board of Health in subsection (b).

The 1967 amendment substituted "Board of Water and Air Resources" for "State Stream Sanitation Committee" in subsection (b).

The 1969 amendment rewrote paragraph f of subdivision (2) of subsection (a).

Session Laws 1969, c. 995, which purported to

amend this section, was declared null and void and repealed by Session Laws 1969, c. 1288.

Bonds Including Amount of Assessment. — Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments under the provisions of subsection (a)(2) of this section. *Brown v. Town of Hillsboro*, 155 N.C. 368, 117 S.E. 41 (1923).

Bonds issued by a municipality for water and sewer systems should be deducted from the gross debt in computing the net debt of the municipality in relation to the prohibition against incurring debt in excess of 8 percent of the assessed valuation of property for taxation, bonds for sewer systems being necessarily included in bonds for "water purposes" within the meaning of subsection (a)(2). *Lamb v. Randleman*, 206 N.C. 837, 175 S.E. 293 (1934).

Such bonds do not come within the inhibition of subsection (b), against incurring debt in excess of 8 percent of the assessed valuation. *Lamb v. Randleman*, 206 N.C. 837, 175 S.E. 293 (1934).

§ 160-384. **Publication of bond ordinance.**—A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the day of, 19 . . , and was first published (or posted), on the day of, 19

Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

.....
Clerk (or Secretary).

(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.)

Editor's Note. — By the second 1921 amendment publication is required only twice where formerly it was required four times, except that when it was to take effect at once, then only one publication was required.

§ 160-385. **Limitation of action to set aside ordinance.**—Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within 30 days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (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.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment that the statute did not prevent a suit to determine the constitutionality of the bond issue. Sessions v. Columbus County, 214 N.C. 634, 200 S.E. 418 (1939).

Right to Test Constitutionality Not Affected. — In construing a similar provision with reference to bond issues by counties, it was held

§ 160-386. **Ordinance requiring popular vote.**—(a) **When Vote Required.**—If a bond ordinance provides that it shall take effect 30 days after its first publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

(b) **Petition Filed.**—A petition demanding that a bond ordinance be submitted to the voters may be filed with the clerk within 30 days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum (25%) of the total number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

(c) **Sufficiency of Petition.**—The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the

sufficiency of the petition and the determination of the governing body shall be conclusive. (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. 102, s. 2.)

Editor's Note. — The second 1921 amendment changed the required number of petitioning voters from thirty-three and one-third per centum to twenty-five per centum.

Where Vote of Qualified Electors Not Necessary. — Where an ordinance for the issuance of bonds to establish and maintain playgrounds for children contained a provision which afforded the prescribed time for filing a petition under this section, and no petition was filed during such time, it was held that irrespective of such provision a vote of the qualified electors was not necessary, the bonds

being a necessary expense within the meaning of Art. VII, § 7, Const. 1868 (now N.C. Const., Art. V, § 4 (2)). *Atkins v. City of Durham*, 210 N.C. 295, 186 S.E. 330 (1936).

Injunction against Bond Issue.—See *Hill v. Elizabeth City*, 291 F. 194 (E.D.N.C. 1923), construing subsection (a), and holding that there was no valid objection to proceedings taken by board of aldermen, entitling plaintiff to enjoin issuance of bonds.

Cited in *Smith v. Town of Carolina Beach*, 206 N.C. 834, 175 S.E. 313 (1934).

§ 160-387. **Elections on bond issue.**—(a) What Majority Required.—If a bond ordinance provides that it shall take effect when approved by the voters of the municipality, the affirmative vote of a majority of those who shall vote on the bond ordinance shall be required to make it operative.

(b) When Election Held.—Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinances by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election. The governing body shall not call a special election for the sole and exclusive purpose of submitting to the voters the proposition of approving or disapproving an ordinance for the issuance of bonds for the purchase of voting machines, but such ordinance may be submitted at any regular municipal election or at any special election at which another ordinance or another matter is to be voted upon.

(c) New Registration.—The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine A.M. to six P.M. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least 30 days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

(d) Notice of Election.—A notice of the election shall be deemed sufficiently published if published once not later than 20 days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The date of the election shall be stated therein.

(e) Ballots.—A ballot shall be furnished to each qualified voter at said

election, which ballot may contain the words "for the ordinance authorizing \$ bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing \$ bonds (briefly stating the purpose), and a tax therefor," with squares in front of each proposition, in one of which squares the voter may make an (X) mark, but this form of ballot is not prescribed.

(f) Returns Canvassed.—The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

(g) Application of Other Laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

(h) Statement of Result.—The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality and file the original in his office and publish it once.

(i) Limitation as to Actions.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement: Provided that G.S. 160-386 and 160-387 shall not apply to the incorporated towns of Madison County. (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; 1949, c. 497, s. 4; 1953, c. 1065, s. 2.)

Editor's Note. — The second 1921 amendment substituted "one month" for "two months" in the second sentence of subsection (b), added all of subsection (c) except the first sentence, inserted subsection (g), and changed the time in subsection (i) from 20 to 30 days. The 1949 amendment rewrote subsection (a). For brief comment on the 1949 amendment, see 27 N.C.L. Rev. 454.

The 1953 amendment added the last sentence of subsection (b).

When Election Held. — The requirement of subsection (b), that a special bond election shall not be held within one month before or after a regular municipal election, is mandatory and refers to a month according to the designation in the calendar without regard to the number of days it may contain, § 12-3, subdivision (3), and is computed by excluding the first and including the last day thereof as provided in § 1-593. *Adcock v. Town of Fuquay Springs*, 194 N.C. 423, 140 S.E. 24 (1927).

And the term "regular election" is interpreted with the antecedent words of the statute "municipal election," and excludes a general State or national election. *Adcock v. Town of Fuquay Springs*, 194 N.C. 423, 140 S.E. 24 (1927).

Necessity of Notice. — In *Hill v. Skinner*, 169 N.C. 405, 86 S.E. 351 (1915), it is said: "While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all respects free from taint of any sort, so that no well-founded suspicion can be cast upon it, it would be idle to say that this free and untrammelled expression of the popular will should be disregarded and set aside." *Board of Comm'rs v. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

This section intends that the result of an election as determined by the proper election officials shall stand until it shall be regularly contested and reversed by a tribunal having jurisdiction for that purpose. The court will not permit itself to be substituted for the proper election officials in the first instance for the

purpose of canvassing the returns from the officers holding the election and declaring the result thereof. *Garner v. Town of Newport*, 246 N.C. 449, 98 S.E.2d 505 (1957).

Courts Favor Validity of Elections. — It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Necessary Allegations in Suit to Restrain Issuance of Bonds for Irregularities in Election.

— In an action to restrain the issuance of bonds on the ground of irregularities in the bond election, a complaint which fails to allege that the officers appointed to hold the election had reported the results thereof to the governing body of the municipality and that the governing body had canvassed the returns and judicially determined the result, is demurrable. *Garner v. Town of Newport*, 246 N.C. 449, 98 S.E.2d 505 (1957).

Form of Ballot Directory. — There being nothing in the statute making the exact language essential to the validity of a ballot, and the words used carrying practically the same meaning the requirement is directory and not mandatory, and a substantial compliance, is all that is necessary. *Board of Comm'rs v. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

This section permits the use of a broad and general ballot in bond elections. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Statement of Purpose. — The ordinance authorizing a bond sale and calling a special

election must state the purpose in only "brief and general terms," under § 160-379. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Substantial Deviation from Purpose. — Where the manifest purpose for which the civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center, for whose construction a bond issue to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

The construction, acquisition, and operation of an auditorium is not a necessary expense, and the voters of the municipality must therefore approve a bond issue for such purpose. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Publication of Returns. — It is not necessary to the validity of an election that the returns be published as required by this section if it appears that no prejudice was sustained because of such failure. *Board of Comm'rs v. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

Applied in *Twining v. City of Wilmington*, 214 N.C. 655, 200 S.E. 416 (1939).

§ 160-388. Preparation for issuing bonds.—At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect. (1917, c. 138, s. 23; 1919, c. 178, s. 3 (23); C. S., s. 2949; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ 160-389. Within what time bonds issued.—After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within five years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued in anticipation of the receipts of the proceeds of the bonds and shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond ordinance taking effect on or after July 1, 1952.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an ordinance which took effect prior to July 1, 1952, and which have not been issued by July 1, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1, 1957, unless such ordinance shall have been repealed, and any loans made under authority of G.S. 160-375 of Article 27 of this Subchapter in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30, 1957,

notwithstanding the limitation of time for payment of such loans as contained in said section. (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; 1939, c. 231, s. 1; 1947, c. 510, s. 2; 1949, c. 190, s. 2; 1951, c. 439, s. 2; 1953, c. 693, s. 3; 1955, c. 704, s. 2.)

Local Modification. — Buncombe, and municipalities therein: 1943, c. 56.

Editor's Note. — The second 1921 amendment inserted the qualification following the second comma in the first paragraph, and the 1939 amendment added the proviso. The 1947 amendment added the second paragraph, and the 1949 and 1951 amendments changed the dates therein. For a brief comment on the 1947 amendment, see 25 N.C.L. Rev. 453.

The 1953 amendment inserted "five years" in lieu of "three years" near the beginning of this section, rewrote the proviso to the first paragraph and made changes in the dates appearing in the second paragraph.

The 1955 amendment changed the last three dates in the second paragraph.

§ 160-390. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. Such bonds may be made subject to redemption prior to their respective maturities with or without premium as the governing body may provide in such resolution or resolutions, with the approval of the Local Government Commission. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (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.)

Cross Reference. — As to power to fix the face amount, the rate of interest, time of maturity and place of payment of temporary loans and notes, see § 159-43.

Editor's Note. — This section was reenacted without change by the second 1921 amendment and the 1933 amendment inserted in the first sentence "or otherwise."

The 1951 amendatory act, effective March 28, 1951, which rewrote the second sentence, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

The 1953 amendment inserted the second sentence. By section 4 of the amendatory act any resolution adopted pursuant to § 160-390 and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond ordinance, or by two or more bond ordinances, may be made redeemable prior to their respective maturities as provided in the 1953 amendment to the section.

The 1969 amendment deleted "not exceeding six per centum per annum" preceding "payable semiannually" in the first sentence.

§ 160-391. Bonded debt payable in installments.—The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to G.S. 160-382 of this Subchapter. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds

of the first series. This section shall not apply to funding or refunding bonds or bonds authorized to pay revenue bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); C. S., s. 2952; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; 1951, c. 440, s. 2; 1957, c. 856, s. 3.)

Editor's Note. — This section was reenacted without change in meaning by the second 1921 amendment.

The 1933 amendment added the last sentence stating that the section shall not apply to funding or refunding bonds. Prior to the amendment the section was applicable to such bonds in municipalities having a debt of less than 12 percent of the assessed valuation.

The 1951 amendment rewrote this section.

§ 160-392. Medium and place of payment.—The bonds may be made payable in such kinds of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1917, c. 138, s. 27; 1919, c. 178, s. 3 (27); C. S., s. 2953; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note. — This section was reenacted without change by the second 1921 amendment.

§ 160-393. Formal execution of bonds.—The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds. (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.)

Cross Reference.—As to requirement that bond be on a single sheet of paper, see § 159-17.

Editor's Note.—The second 1921 amendment provided that in case no one was designated the

The amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

The 1957 amendment added "or bonds authorized to pay revenue bonds" at the end of the section.

mayor and clerk should sign the bonds. Formerly it was provided that the mayor and financial officer sign, and the clerk affix the seal of the municipality and attest it.

§ 160-394. Registration and transfer of bonds.—(a) Bonds Payable to Bearer.—Bonds issued under this Subchapter shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and Effect.—A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and Transfer Noted on Bond.—Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration

or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut off and cancel the coupons.

(d) Agreement for Registration.—A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. (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.)

Editor's Note.—By the second 1921 amendment, in subsection (b), the appointment of registrar or transfer agent is designated as appointed by the "governing body," where formerly it was by the "governing board." The

amendment deleted from subsection (d) a former provision for agreeing by a recital in the bonds to register them as to both principal and interest.

See 13 N.C.L. Rev. 76.

§ 160-395. Application of funds.—The proceeds of the sale of bonds under this Subchapter shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (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.)

Cross References.—As to penalty for misappropriating funds, see § 159-36. As to authority to invest proceeds of bonds, see § 159-49.1.

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

Law Authorizing Bond Issue Need Not Declare Proportion of Proceeds Applicable to Each Specific Purpose.—A law authorizing a bond issue for various purposes which does not declare what proportion of the proceeds of the bonds shall be applied to each specific purpose is not void. Such matter may properly rest within the sound discretion of the municipal authorities. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

Use of Bond Money.—With respect to the use of bond money, the court will not interfere with the exercise of discretionary powers of a municipal corporation unless its actions are so unreasonable and arbitrary as to amount to an abuse of discretion. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

While the law will not justify the use of the proceeds of a State or municipal bond issue for purposes other than those specified in the act authorizing the issue, it does not follow that immaterial or temporary changes consistent with the general purpose of the legislative act should be interpreted as unlawful diversions of public funds. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

It is worthy of note the cases on the use of bond money emphasize "deviation from the general purpose for which bonds are authorized" and do not outlaw such changes as are necessary under existing conditions to

accomplish the general purpose. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

In construing statutory limitations upon the use of bond money for public improvements, emphasis is placed on the final result sought to be accomplished. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

Bond ordinances are passed authorizing indebtedness for certain stated purposes. When an authorizing vote is required, the bond money is earmarked for the stated purposes. However, in planning large permanent improvements the governing authorities look ahead to the future fulfillment of the construction plans. The authorities will inspect and examine the work as it progresses and minor changes from time to time are expected if conditions change and unforeseen developments occur. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

While the municipality has a limited authority, under certain conditions, to transfer or allocate funds from one project to another, included within the general purpose for which bonds are authorized, the transfer must be to a project included in the general purpose as stated in the bond resolution, and the funds may be diverted to the proposed purposes only in the event the municipality finds in good faith that conditions have so changed since the bonds were authorized that proceeds therefrom are no longer needed for the original purpose. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

"Corporate Purpose"—A definition of corporate purpose cannot be static. Changing conditions require that application of the

limitations be tempered with due recognition of the existing situation so the purpose for which the public body was organized may be

accomplished and enjoyment thereof by the public made possible. *Coggins v. City of Asheville*, 278 N.C. 428, 180 S.E.2d 149 (1971).

§ 160-396. Bonds incontestable after delivery.—Any bonds reciting that they are issued pursuant to this Subchapter shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this Subchapter and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds. (1917, c. 138, s. 32; 1919, c. 178, s. 3 (32); C. S., s. 2958; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross Reference.—As to method of testing the validity of bonds, see § 159-52.

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ 160-397. Taxes levied for payment of bonds.—The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this Subchapter, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this Subchapter as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue-producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this Subchapter, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this Subchapter.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in G.S. 160-391 of this Subchapter, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); C. S., s. 2959; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1967, c. 799, s. 1; 1971, c. 1216, s. 1.)

Cross References.—See § 159-34. As to municipality applying sinking fund to purchase of its own bonds, see § 153-148 et seq.

Editor's Note.—By the second 1921 amendment the provision in the last sentence of the second paragraph for local improvement

and collection of assessments therefor replaced a former provision for "special assessments upon which assessment bonds or other bonds or notes are predicated."

The 1933 amendment inserted the proviso in the last paragraph.

Session Laws 1967, c. 799, s. 1, effective July 1, 1967, reenacted the third paragraph of this section "for the purpose of making the authority granted therein applicable to all cities and towns." Section 3 of the 1967 act repealed all laws and clauses of laws in conflict, whether general, local or special.

Session Laws 1971, c. 1216, s. 1, effective July 1, 1971, provides: "G.S. 160-397, as the same appears in Volume 3D, 1964 Replacement, of the General Statutes of North Carolina, is hereby reenacted for the purpose of making the authority granted therein applicable to all cities and towns."

This section earmarks the income from municipally owned revenue-producing enterprises, first to the payment of all expenses of operating, managing, maintaining, repairing, enlarging, and extending such enterprises; then to the payment of interest payable in the next succeeding year on bonds issued for such enterprises; and, finally, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. *Yokley v. Clark*, 262 N.C. 218, 136 S.E.2d 564 (1964).

Net Revenue Derived from Revenue-Producing Enterprise Should Be Applied to Bonds.—It is clear from a reading of this section that the legislature intended that, where bonds were issued to enable a municipality to carry on a revenue-producing enterprise, the net revenue derived from such enterprise should be applied to the payment of the interest and principal of such bonds. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

After Paying Operation and Maintenance Expenses.—Where a waterworks system produces revenue, it is a revenue-producing enterprise; and, if net revenues are derived from it, after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such system, this section requires that they be applied to the payment of the principal and interest due on the bonds issued "for such enterprise." *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

The requirement that net revenues after paying the expenses of operation shall be applied on bonds did not mean that the discretionary control of waterworks vested in the city authorities by former § 160-256 was in anywise limited. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

The governing body of the city may make such use of the gross revenues of the system as they may think wise for maintaining,

repairing, enlarging or extending the system, but they may not divert its revenues to other purposes so as to dissipate the net revenues which the law requires to be applied on principal and interest of waterworks bonds. *Yokley v. Clark*, 262 N.C. 218, 136 S.E.2d 564 (1964), citing *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

Without Regard as to Time Bonds Are Issued.—There is nothing in this section which limits the application of the net revenue of a revenue-producing enterprise to bonds thereafter issued and there is no reason why the section should be so interpreted. The language of the section provides in the broadest possible terms that the net revenue from such an enterprise shall be applied on the principal and interest of bonds "issued for such enterprise," without limitation as to when such bonds may have been issued. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

Where Bonds Share Alike.—As this section clearly intended that such net revenues should be applied on the principal and interest of all bonds which were issued for the system, where the sewer system is an integral and essential part of the waterworks system and with it constitutes one revenue-producing enterprise, sewer bonds should share along with waterworks bonds in the net revenues of the waterworks system. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

Injunction to Restrain Diversion of Gross Revenues.—As net revenues can be effectively diverted in advance of their ascertainment by diversion of gross revenues, injunction should be granted to restrain the diversion of gross revenues, if it appears that net revenues are in danger of being diverted in this way. However, care should be taken so as not to trench upon the discretion of the municipal authorities in the management of the water and sewer system. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

If net revenue remains after payment of operating expenses such funds are thereafter held in trust to be applied as the statute directs, and any threatened diversion or misapplication should be enjoined. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

Bonds Not a Charge upon the Taxing Power of City.—As bonds in aid of the ordinary revenue-producing enterprises of a city, i.e., enterprises for furnishing water, gas, electric light, or power, were exempted from the debt limitation of § 160-383, this shows that it was thought that, while the credit of the municipality would be pledged for bonds of this character, they

would not be a charge upon the taxing power of the city but would be taken care of by the revenues of the enterprises for which they were

issued. *George v. City of Asheville*, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

§ 160-398. Destruction of paid bonds and interest coupons.—All paid bonds and interest coupons of a municipality may, in the discretion of the governing body, be destroyed in accordance with one of the following methods:

Method 1. Before any such bonds and coupons are destroyed as hereinafter provided the treasurer of the municipality shall make a descriptive list of the same in a substantially bound book kept by him for the purpose of recording destruction of paid bonds and coupons. Said list shall include, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, the designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount of coupons. After such list has been made the paid bonds and coupons so described shall be destroyed, either by burning or by shredding, in the presence of the mayor, the treasurer of the municipality and the municipal attorney, each of whom shall certify under his hand in such book that he saw such bonds and coupons so destroyed. No paid bonds or coupons shall be so destroyed within one year from their respective maturity dates.

Method 2. The governing body may contract with any bank or trust company for the destruction, as hereinafter provided, of bonds and interest coupons which are paid and canceled. The contract shall substantially provide, among such other stipulations and provisions as may be agreed upon, that such bank or trust company shall furnish the municipality, periodically or from time to time, with a written certificate of destruction containing a description of bonds and coupons destroyed, including, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount, and certifying that such paid and canceled bonds and coupons have been destroyed either by burning or by shredding. No paid and canceled bonds or coupons shall be destroyed within one year after their respective maturities or, in the case of bonds paid prior to their maturities, within one year from such payment. Each such certificate shall be filed by the treasurer of the municipality among the permanent records of his office.

The provisions of G.S. 121-5 and 132-3 shall not apply to the paid bonds and coupons referred to in this section. (1941, c. 203; 1961, c. 663, s. 2; 1963, c. 1172, s. 2.)

Editor's Note.—The 1961 amendment rewrote this section.

The 1963 amendment rewrote the paragraph

headed "Method 2," which formerly required the contract to be with a bank or trust company acting as the paying agent of the municipality.

ARTICLE 29.

Restrictions upon the Exercise of Municipal Powers.

- § 160-399. In borrowing or expending moneys.**—(a) No municipality shall:
- (1) Make an appropriation of money except as provided in this Subchapter;
 - (2) Borrow money or issue bonds or notes except as provided in this Subchapter;
 - (3) Make an expenditure of money unless the money shall have been

appropriated as provided in this Subchapter, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

- (4) Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

(b) The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued. (1917, c. 138, s. 34; 1919, c. 178, s. 3 (34); C. S., s. 2960; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Local Modification.—Alamance, Buncombe, Cleveland, Durham, Rockingham and Wake: 1969, c. 551.

Repeal of Article.—This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

A city purchasing a cemetery in excess of the acreage formerly allowed by § 160-2, subdivision (3), although the act was ultra vires and no provision was made in the city's budget for payment, took a good title, and only the State in direct proceedings could question it. *Harrison v. City of New Bern*, 193 N.C. 555, 137 S.E. 582 (1927).

Continuing Contract.—The definition of a "continuing contract" as used in subsection

(a) (4) of this section depends largely upon the facts of particular cases. The governing principle in such contracts is successive transactions between the parties over a definite or indefinite period of time. *Gilbert C. White Co. v. City of Hickory*, 195 N.C. 42, 141 S.E. 494 (1928).

A contract with an engineer to furnish services in connection with the construction of a city's water supply, the completion of which will extend beyond the period of one year, is a continuing one under this section. *Gilbert C. White Co. v. City of Hickory*, 195 N.C. 42, 141 S.E. 494 (1928).

Cited in *Henderson v. City of New Bern*, 241 N.C. 52, 84 S.E.2d 283 (1954); *City of Greensboro v. Wall*, 247 N.C. 516, 101 S.E.2d 413 (1958); *Horton v. Redevelopment Comm'n*, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-400. Manner of passing ordinances and resolutions.—Ordinances and resolutions passed pursuant to this Subchapter shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this Subchapter shall, unless they relate solely to elections held under this Subchapter, be so approved before they take effect. (1917, c. 138, s. 35; 1919, c. 178, s. 3 (35); C. S., s. 2961; 1921, c. 8, s. 4; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment a part of the proviso reading "expenditure of money as required by law" was

changed to read "expenditure of money are required by law."

§ 160-401. Enforcement of Subchapter.—If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this Subchapter to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own

officers or other persons to carry out such order. (1917, c. 138, s. 36; 1919, c. 178, s. 3 (36); C. S., s. 2962; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment there was deleted from this section a provision for officers, creditors and taxpayers to maintain an action to declare invalid any illegal official act, and a provision for jurisdiction of the superior court to enforce by mandamus or injunction the provision of the act.

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar and fifty cents (\$1.50) on the one hundred dollar (\$100.00) valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section.

Notwithstanding the limitation upon taxation contained in this section, the governing body of any municipality is hereby authorized in its discretion to levy annually on all taxable property within the municipality a special tax for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality. The special approval of the General Assembly is hereby given to the issuance by municipalities of bonds and notes for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality. (1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); C. S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3.)

Local Modification.—City of Hendersonville: 1959, c. 868; 1969, c. 1078; city of Winston-Salem: 1957, c. 1110; town of Bakersville: 1963, c. 817; town of Elizabethtown: 1969, c. 710; town of Nashville: 1945, c. 122; town of Raeford: 1949, c. 134; town of Snow Hill: 1963, c. 508; town of Spruce Pine: 1963, c. 319; town of Warrenton: 1951, c. 108.

Editor's Note.—The second 1921 amendment changed the maximum rate from \$1.25 to \$1.00 on the one-hundred-dollar valuation of property, and added that part of the section

beginning with "notwithstanding." The 1947 amendment increased the rate from \$1.00 to \$1.50, and deleted the former proviso relating to certain cities.

Session Laws 1953, c. 44, made this section applicable to the Town of Bakersville in Mitchell County.

The 1959 amendment added the second paragraph.

Cited in *Town of Burnsville v. Boone*, 231 N.C. 577, 58 S.E.2d 351 (1950).

ARTICLE 30.

General Effect of Municipal Finance Act.

§ 160-403. Effect upon prior laws and proceedings taken.—All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject matter of this Subchapter, are hereby repealed: Provided, however, that this Subchapter shall not affect any local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of 1921, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of 1921, so that any municipality may, at its option, proceed under any

such local or private act applicable to it enacted at the extraordinary session, 1921, of the General Assembly or regular session of 1921 without regard to the restrictions imposed by this Subchapter, or may proceed under this Subchapter without regard to the restrictions imposed by any other act: Provided further, that this Subchapter shall not affect any of the provisions of Article 9 of Subchapter I of Chapter 160, except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said Article shall apply to all municipalities in this State, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this Subchapter shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the Municipal Finance Act, as it stood prior to December 20, 1921, or under any other law, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the laws under which they were done or taken, and to issue said bonds or other obligations under such acts in the same manner as if this Subchapter had not been passed: Provided further, that this Subchapter shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases when such bonds, notes or proceedings have been validated by any other act. (Ex. Sess. 1921, c. 106, s. 2; C. S., s. 2969 (a).)

Repeal of Article.—This Article is repealed by Chapter Effective July 1, 1973," following the Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of analysis to Chapter 159.

ARTICLE 31.

Municipal Fiscal Agency Act.

§ 160-404. **Title of Article.** — This Article shall be known as "The Municipal Fiscal Agency Act." (1925, c. 195, s. 1.)

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-405. **Payment of fees to bank.** — Whenever any county, city, town, township, school district or school taxing district is or shall be authorized or permitted to make payments of bonds or coupons issued by it or in its behalf at any place other than within such county, city, town, township, school district or school taxing district, and such bonds or coupons are by their terms payable at such other place, it shall be lawful for the officer disbursing the funds for such payment to pay the reasonable fees of the bank, trust company or other agency making payment at such place, and to agree to pay such fees at a fixed rate throughout the term of the bonds as to which such payment is to be made at such place, but no fee in excess of one fourth of one percent ($1/4\%$) of the amount of interest paid and one eighth of one percent ($1/8\%$) of the amount of principal paid shall be deemed reasonable. (1925, c. 195, s. 2.)

Local Modification. — Buncombe: 1937, c. 320.

ARTICLE 32.

Municipal Bond Registration Act.

§ 160-406. **Title of Article.** — This Article shall be known as "The Municipal Bond Registration Act." (1925, c. 129, s. 1.)

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-407. **Registration.** — Each county, city, town, school district and

school taxing district which has issued or shall hereafter issue bonds in its own name, and each county, city and town, which has issued or shall hereafter issue bonds in behalf of a school district or a school taxing district, is hereby authorized to keep in the office of its treasurer or financial agent or its clerk, or in the office of the bank or trust company appointed by its governing body as bond registrar, a register or registers for the registration as to principal of such bonds in the name of the owner thereof, in which it may register any such bond as to principal at the time of its issue, or at the request of the holder thereafter. Such registration shall not affect the payment of interest, but such interest shall continue to be made upon the presentation and surrender of interest coupons if issued, but after such registration as to principal, the principal shall be payable to the person in whose name registered or to the person in whose name the bonds registered may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner: Provided, however, that a registered bond may be discharged from registry by a transfer to bearer registered as herein provided. Upon the registration or transfer of a bond as aforesaid the bond registrar shall note such registration or transfer on the back of the bond. (1925, c. 129, s. 2.)

§ 160-408. **Powers in addition to existing powers.** — The powers herein granted are not in substitution of existing powers but in addition thereto. (1925, c. 129, s. 3.)

SUBCHAPTER IV. FISCAL CONTROL.

ARTICLE 33.

Fiscal Control.

§ 160-409. **Title; definitions.** — This Article shall be known and may be cited as “The Municipal Fiscal Control Act.”

In this Article, unless the context otherwise requires, certain words and expressions have the following meaning:

- (1) “Accountant” means the officer designated or appointed under the provisions of G.S. 160-409.1.
- (2) The “budget year” is the fiscal year for which a budget is being prepared.
- (3) “Debt service” means the payment of principal and interest on bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.
- (4) The “fiscal year” is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the 30th day of June.
- (5) “Fund” means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives and constituting an independent fiscal and accounting entity. Each municipality shall maintain the following funds:
 - a. General fund.
 - b. Debt service fund.
 - c. A fund for each special tax levied by the governing body.
 - d. A fund for each utility; provided, that where a water system and a sanitary sewerage system are operated as a combined and consolidated system in the manner provided by law, one fund may be established to account for the revenues and expenditures of both.
 - e. A bond fund to account for the application of the proceeds of

the sale of bonds to the specific purpose for which such bonds were duly authorized.

f. A fund for each subdivision to account for the collections of each special tax levied for a particular function or purpose of such subdivision.

g. Such other funds as may be established by the governing body, separately stated.

- (6) "Governing body" means the board or body in which the general legislative powers of a municipality are vested.
- (7) "Municipality" means any city, town, or incorporated village in this State, now or hereafter incorporated.
- (8) "Subdivision" means a school district, school taxing district, or other political corporation or subdivision wholly or partly within a municipality, the taxes for which are under the law levied by the governing body of the municipality.
- (9) The "surplus" of a fund at the close of a fiscal year means the amount by which the cash balance exceeds the total of current liabilities, the encumbrances, and the taxes or other revenue collected in advance. Encumbrances are obligations in the form of purchase orders, contracts or salary commitments which are chargeable to an appropriation made in the year just closing and which are unpaid at the close of such year. Taxes or other revenue collected in advance are sums received in the year just closing but which are not due until after the beginning of the new fiscal year. (1955, c. 698.)

Cross Reference. — As to County Fiscal Control Act, see § 153-114 et seq.

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Editor's Note. — The 1955 amendment revised and rewrote this article which formerly consisted of four sections.

Early Decisions. — For cases citing or applying sections in this Article prior to the 1955 amendment, see *Standard Inv. Co. v. Town of Snow Hill*, 78 F.2d 33 (4th Cir. 1935); *Sing v. City of Charlotte*, 213 N.C. 60, 195 S.E. 271 (1938); *Bryson City Bank v. Bryson City*, 213 N.C. 165, 195 S.E. 398 (1938).

§ 160-409.1. Municipal accountant. — In all cases where a city or town charter provides for the office of accountant or director of finance, the incumbent in such office shall be the municipal accountant of such city or town for the purposes of this Article. Where the city or town charter does not create such an office, the municipal accountant shall be designated or appointed as follows:

- (1) In cities and towns governed under the manager form of government, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the manager or on some person designated or appointed by the manager to serve at the will of the manager;
- (2) In cities and towns having a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the full-time mayor or on some person appointed or designated by the mayor to serve at the will of the mayor;
- (3) In cities and towns having neither a manager nor a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the clerk of the municipality or on some person appointed or designated by the governing body to serve at the will of the governing body.

Provided, that the experience, training, and qualifications of any person on

whom the powers and duties of the municipal accountant are imposed and conferred by or under this section shall be approved by the Local Government Commission, which approval shall continue until revoked by such Commission. If any person upon whom the powers and duties of the municipal accountant are imposed and conferred is a tax collecting officer of the municipality, it shall be the duty of the governing body to require all his books and accounts to be audited at least annually by a certified public accountant or by a public accountant registered under Chapter 93 of the General Statutes. (1955, c. 698.)

§ 160-409.2. **Bond of accountants.** — Every person designated or appointed as municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount of such bond to be fixed by the governing body, approved by the governing body and by the Local Government Commission, and conditioned for the faithful performance of his duties imposed by law. (1955, c. 698.)

§ 160-409.3. **Additional duties of municipal accountants.** — In addition to the duties imposed and powers conferred upon the municipal accountant by this Article he shall have the following duties and powers:

- (1) He shall act as accountant for the municipality and subdivisions in settling with all municipal officers.
- (2) He shall keep or cause to be kept a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made; and he shall keep or cause to be kept a copy of every contract made requiring the payment of money.
- (3) He shall examine once a month, or at such other times as the governing body may direct, all books, accounts, receipts, vouchers, and other records of all officers and employees receiving or expending money of the municipality or any subdivision thereof: Provided, that the governing body may relieve the municipal accountant of the duty of examining the records of any such officer or employee whose records are audited at least annually by a certified public accountant or by a public accountant registered under Chapter 93 of the General Statutes.
- (4) He shall, as often as he may be directed by the governing body, file with the governing body a complete statement of the financial condition of the municipality and subdivisions, showing the receipts and expenditures of the different offices, departments, institutions, and agencies.
- (5) He shall advise with the heads of offices, departments, institutions, and agencies of the municipality and its subdivisions and with State officers as to the best and most convenient method of keeping accounts, and shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the municipality and subdivisions.
- (6) He shall not allow any bill or claim unless the same be so itemized as to show the nature of the services rendered.
- (7) He shall perform such other duties having relation to the purposes of this Article as may be imposed upon him by the governing body. (1955, c. 698.)

§ 160-410. **Heads of offices, departments, institutions, and agencies to file budget statements before June 1.** — It shall be the duty of all heads of offices, departments, institutions, and agencies of the municipality and its subdivisions to file with the municipal accountant on or before such date prior to the first day of June each year as the municipal accountant may direct

- (1) A complete statement of the amounts expended for each object of expenditure in his office, department, institution, or agency, in the fiscal year preceding the then current fiscal year, and
- (2) A complete statement of the amount expended and estimated to be expended for each object in his office, department, institution, or agency in the current fiscal year and
- (3) An estimate of the requirements of his office, department, institution, or agency for each object in the budget year.

Such statements and estimates shall list each object of expenditure in such form and in such detail as may be prescribed by the municipal accountant, and shall include such other supporting information as may be prescribed by the municipal accountant. (1955, c. 698.)

§ 160-410.1. Budget estimate. — Upon receipt of such statements and estimates, the municipal accountant in municipalities not having the manager form of government or the manager in municipalities having the manager form of government, shall prepare

- (1) His estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the municipality and its subdivisions, listing the same under the appropriate funds maintained as required by G.S. 160-409, which estimate shall include the full amount of all debt service which the municipal accountant or manager through the exercise of due diligence determines will be due and payable in the budget year and also shall include the full amount of any deficit in any fund, and it may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the appropriation ordinance, and
- (2) An itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by G.S. 160-409, and
- (3) An estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year.

These estimates shall be broken down into as much detail and have appended thereto such information as the governing body may direct and otherwise to take such form as the municipal accountant or manager may determine. The estimates of revenues when added to the surplus figure for each fund shall equal the estimates of appropriations for that fund. The municipal accountant or manager shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimates of revenue: Provided, that the municipal accountant or manager shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue from taxation included in the estimates of revenue. Such estimates and statements of the municipal accountant or manager shall be termed the "budget estimate," and shall be submitted to the governing body not later than the seventh day of July of each year: Provided, that the budget estimate may be submitted to the governing body on such earlier date as the municipal accountant or manager, with the approval of the governing body may determine. The municipal accountant or manager may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the municipality for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated

changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1955, c. 698.)

§ 160-410.2. Time for filing budget estimate. — Immediately upon the submission of the budget estimate, and at least 20 days before the adoption of the budget ordinance, the governing body shall:

- (1) File the budget estimate in the office of the clerk of the municipality where it shall remain for public inspection, and
- (2) Make available a copy of the budget estimate for all newspapers published in the municipality, and
- (3) Cause to be published in at least one newspaper published in the municipality a statement that the budget estimate has been presented to the governing body and that a copy of the same is on file for public inspection in the office of the clerk of the municipality, which statement may also include such other information as the municipal accountant may determine: Provided, however, that if no newspaper be published in the municipality, such statement shall be posted at the door of the city hall or town hall and at least three other public places in the municipality at least 20 days before the passage of the budget ordinance. (1955, c. 698.)

§ 160-410.3. Budget ordinance. — It shall be the duty of the governing body, at least 20 days subsequent to the publication of the statement required by G.S. 160-410.2 but not later than the 28th day of July in each year, to adopt and record on its minutes a budget ordinance, the form of which shall be prescribed by the municipal accountant or manager. The budget ordinance shall, on the basis of the estimates and statements submitted by the municipal accountant or manager, make appropriations for the several offices, departments, institutions, and agencies of the municipality and its subdivisions, and the budget ordinance shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the governing body may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department, institution, or agency shall be made in such detail as the governing body deems advisable: Provided, however, that

- (1) No appropriation recommended by the municipal accountant or manager for debt service shall be reduced, and
- (2) The governing body shall appropriate the full amount of all lawful deficits reported in the budget estimate, and
- (3) No contingency appropriation shall be included in any fund in excess of five percent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the governing body must by ordinance authorize the expenditure, and
- (4) No appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and
- (5) The total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund.

The revenue portion of the budget ordinance shall include the following:

- (1) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by G.S. 160-409, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the governing body deems advisable to appropriate to meet expenditures of such fund for the budget year; and
- (2) The levy of such rate of tax for each fund in the budget year as will be

necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year.

In determining the rate of tax necessary to produce such sums, the governing body shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the governing body shall not estimate revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that such excess amount will actually be realized in cash during the budget year. (1955, c. 698.)

Local Modification. — Town of Whitakers:
1965, c. 996, s. 1.

§ 160-410.4. Copies of ordinance filed with municipal treasurer and municipal accountant. — A copy of the budget ordinance shall be filed with the municipal treasurer or other officer or agent performing the functions ordinarily assigned to the municipal treasurer, and another copy thereof shall be filed with the municipal accountant, both copies so filed to be kept on file for their direction in the disbursement of municipal funds. (1955, c. 698.)

§ 160-410.5. Failure to raise revenue a misdemeanor. — Any member of a governing body of any municipality who shall fail to vote to raise sufficient revenue for the operating expenses of the municipality as provided for in G.S. 160-410.3, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or both in the discretion of the court. (1955, c. 698.)

§ 160-410.6. Emergencies. — In case an emergency arises necessitating the expenditure of funds and in case under the existing budget ordinance there are no funds available to meet such expenditure, the governing body may make application to the Local Government Commission and such Commission may permit the governing body to anticipate the taxes of the next fiscal year by not more than five percent (5%) of the tax levy for the current year. In the event of the approval of such anticipation of the taxes of the next fiscal year by the Commission, the governing body of any such municipality is authorized to provide by resolution for the issuance of a note or notes in an amount not in excess of the amount authorized by such Commission, and such note or notes shall be payable not later than the 30th day of June of the next fiscal year and shall be paid by a special tax levied for such purpose. Any such note or notes shall be issued in accordance with the provisions of G.S. 160-376. (1955, c. 698.)

§ 160-410.7. Publication of statement of financial condition. — As soon as practicable after the close of each fiscal year, the municipal accountant shall prepare and cause to be published in a newspaper published in the municipality, or if no newspaper be published in the municipality then by posting at the door of the city hall or town hall and at least three other public places in the municipality, a statement of the financial condition of the municipality, containing such figures and information as the municipal accountant with the approval of the governing body may consider it advisable to publish, which statement as so published or posted shall include a statement of the assets and liabilities of several funds of the municipality as of the close of the preceding fiscal year together with a summary statement of the revenue receipts and expenditures of such funds in the preceding year, a statement of the bonded debt of the municipality as of the close of the preceding fiscal year, and a statement of assessed valuations, tax rates, tax levied and uncollected taxes for the preceding three fiscal years. (1955, c. 698.)

§ 160-410.8. Amendments to the budget ordinance.—The governing body in the event the members thereof deem it necessary, may by ordinance amend the budget ordinance after its passage in any or all of the following ways:

- (1) By transferring the unencumbered balance of any appropriation, or any portion of such balance, to any other appropriation within the same fund or to any new appropriation within the same fund;
- (2) By making a supplemental appropriation in any fund in all or any portion of the amount of the unappropriated surplus of such fund or the amount by which total revenue receipts have exceeded total estimated revenues in such fund as of the date of the making of the supplemental appropriations;
- (3) By transferring all or any portion of the unencumbered balance of any appropriation in the general fund to any existing appropriation or to any new appropriation in another fund or by making a supplemental appropriation in another fund financed by unappropriated surplus or excess revenue receipts of the general fund:

Provided, that no amendment to the budget ordinance shall be made if the effect of such amendment is to authorize an expenditure for a purpose which could not have been legally authorized in the original budget ordinance: Provided, further, that where the governing body shall determine that changed circumstances in the operation of a utility will result in the receipt in cash of revenues in excess of the estimates of revenues contained in the budget ordinance, that body may amend the estimates of revenues of the utility fund concerned as such estimates are set forth in the budget ordinance and may thereupon make a supplemental appropriation in such utility fund in the amount by which the amended estimates of revenues exceed the estimates of revenues in the budget ordinance, whether or not such excess has been actually received in cash as of the date of the making of such supplemental appropriation. Copies of any ordinance made pursuant to this section shall be made available to the municipal treasurer, municipal accountant, and the head of each office, department, institution, or agency affected thereby. (1955, c. 698.)

§ 160-410.9. Interim appropriations.—In case the adoption of the budget ordinance is delayed until after the beginning of the budget year, the governing body may make appropriations for the purpose of paying salaries, the principal and interest of indebtedness, and the usual ordinary expenses of the municipality and its subdivisions for the interval between the beginning of the budget year and the adoption of the annual budget ordinance. The interim appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual budget ordinance for the year. (1955, c. 698.)

§ 160-411. Provisions for payment.—No contract or agreement requiring the payment of money, or requisitions for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the municipality or a subdivision, unless provision for the payment thereof has been made by

- (1) An appropriation as provided by this Article or
- (2) Through the means of bonds or notes duly authorized by the General Assembly and by the governing body, and further authorized, in all cases required by law or the Constitution, by a vote of qualified voters or taxpayers or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment.

No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the municipal accountant

as follows: "Provision for the payment of moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized as required by the 'Municipal Fiscal Control Act.'" Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the municipal accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed encumbered by the amount to be paid on such contract or agreement until the municipality is discharged therefrom. (1955, c. 698.)

§ 160-411.1. Warrants for payment.—No bill or claim against the municipality or any subdivision shall be paid unless the same shall have been approved by the head of the office, department, institution, or agency for which the expense was incurred nor unless the same shall have been presented to and approved by the municipal accountant, or in the case of his disapproval of such bill or claim, by the governing body. The governing body shall not approve any bill or claim which has been disallowed by the municipal accountant without entering upon the minutes of the governing body its reason for approving the same in such detail as may show the governing body's reason for reversing the municipal accountant's disallowance. No bill or claim against the municipality or any subdivision shall be paid except by means of a warrant or order on the municipal treasurer or depository, and no warrant or order, except a warrant or order for the payment of maturing bonds, notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the governing body over the disallowance of the municipal accountant as above provided, shall be valid unless the same shall bear the signature of the municipal accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'Municipal Fiscal Control Act.'" (1955, c. 698.)

§ 160-411.2. Contracts or expenditures in violation of preceding section.—If any municipal accountant shall make any certificate on any contract, agreement, requisition, warrant, or order as required by G.S. 160-411 or G.S. 160-411.1, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be personally liable for all damages caused thereby. If any officer or employee shall make any contract, agreement, or requisition without having obtained the certificate of the municipal accountant as required by G.S. 160-411, or if any officer or employee shall pay out or cause to be paid out any funds in violation of the provisions of G.S. 160-411.1, he shall be personally liable for all damages caused thereby. (1955, c. 698.)

§ 160-411.3. Accounts to be kept by municipal accountant. — Accounts shall be kept by the municipal accountant for each appropriation made in the budget ordinance or amendment thereto, which appropriations shall be classified under the various funds maintained as required in G.S. 160-409, and every warrant or order upon the municipal treasury shall state specifically against which of such funds the warrant or order is drawn; information shall be kept for each such account so as to show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1955, c. 698.)

§ 160.411.4. Daily deposits by collecting or receiving officers.—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any municipality or subdivision thereof shall deposit the same

daily or if the governing body grants its approval he shall be required to deposit the same only when he has as much as two hundred fifty dollars (\$250.00) in his possession, with the municipal treasurer or in a bank, banks, or trust company designated by the governing body in an account approved by the municipal accountant and secured as provided in G.S. 159-28, and he shall report the same immediately following such deposit to the municipal accountant by means of a treasurer's receipt or duplicate deposit ticket signed by the depository: Provided, that a deposit shall in any event be made on the last business day of each month. He shall settle with the municipal accountant monthly, or oftener if the governing body so directs, reporting to the municipal accountant at such time the amount of money collected or received from each of the various sources of revenue. If such officer or employee collects or receives such public moneys for a taxing district for which he is not an officer or an employee, he shall pay over periodically, as directed by the governing body, to the proper officer of such district the amount so collected or received and take receipt therefor.

The governing body is hereby authorized and empowered to select and designate, by recorded ordinance, some bank or banks or trust company in this State as official depository or depositories of the funds of the municipality, which funds shall be secured in accordance with G.S. 159-28.

It shall be unlawful for any public moneys to be deposited by any officer or employee in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting such violation shall be guilty of a misdemeanor and punished by fine or imprisonment or both, in the discretion of the court. (1955, c. 698.)

§ 160-411.5. Investment of funds.—The cash balances, or parts thereof, of municipal funds may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 864, s. 1; 1967, c. 798, s. 2.)

Editor's Note. — Section 2 of the act inserting substitution for existing powers granted by this section, effective July 1, 1957, provides that general laws or special acts to cities and towns. the powers granted are in addition to and not in The 1967 amendment rewrote this section.

§ 160-412. Conduct by municipal accountant constituting misdemeanor.—If a municipal accountant shall knowingly approve any fraudulent, erroneous or otherwise invalid claim or bill, or make any statement required by this Article, knowing the same to be false, or shall willfully fail to perform any duties imposed upon him by this Article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars (\$50.00) or imprisonment for not less than 20 days, or both fine and imprisonment, in the discretion of the court and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ 160-412.1. Liability for damages for violation by officer or person.—If any municipal officer or head of any office, department, institution, or agency, or other official or person of whom duties are required by this Article shall willfully violate any part of this Article, or shall willfully fail to perform any of such duties, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars (\$50.00) or imprisonment for not less than 20 days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ 160-412.2. Recovery of damages.—The recovery of all damages allowed by this Article may be made in the court having jurisdiction of the suit of the municipality, any subdivision thereof, or any taxpayer or other person aggrieved. (1955, c. 698.)

§ 160-412.3. **Mayor to report to solicitor.**—It shall be the duty of the mayor of the municipality to report to the solicitor of the district within which the municipality lies all facts and circumstances showing the commission of any offenses defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the governing body is authorized within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct for violation of a public trust within said municipality and pay the cost of same out of the general fund of the municipality. (1955, c. 698.)

§ 160-412.4. **Purpose of Article.**—It is the purpose of this Article to provide a uniform procedure for the preparation and administration of budgets to the end that every municipality in the State may balance its budget on the basis of actual cash receipts within the budget period and carry out its functions without incurring deficits. Its provisions are intended to enable governing bodies to make financial plans to meet expenditures, to insure that municipal officials administer their respective offices, departments, institutions, and agencies in accordance with these plans, and to permit taxpayers and bondholders to form intelligent opinions based on sufficient information as to the financial policies and administration of the municipalities in which they are interested. (1955, c. 698.)

§ 160-412.5. **Application of Article.**—Sections 160-275 and 160-276 and all other laws and parts of laws heretofore or hereafter enacted, whether general, local, or special, which are in conflict with this Article are hereby repealed, except a law hereafter enacted expressly repealing or amending this Article: Provided, this Article shall be construed with G.S. 160-399 as amended and nothing herein shall be deemed to repeal any of the provisions of that section. Nothing herein contained, however, shall require any municipality to comply with this Article which operates under a budget system provided by charter or by any local or special act, but any such municipality may, in the discretion of its governing body, elect to conduct its procedure under any one or more sections of this Article as that body may deem best. All such municipalities shall nevertheless be subject to the requirements of certain provisions of this Article, which are

- (1) The annual publication of financial information substantially as required by G.S. 160-410.7,
- (2) The adoption of a budget ordinance which shall appropriate the full amount of all deficits not funded and the full amount required for debt service, and which shall levy sufficient taxes to meet all appropriations, all as required by G.S. 160-410.3,
- (3) Endorsement by some one municipal officer, who shall either be the municipal accountant or an officer designated for that purpose by the governing body, of all contracts, agreements, requisitions, warrants, and orders, substantially as provided by G.S. 160-411 and 160-411.1,
- (4) The maintenance of the funds required by subdivision (5), G.S. 160-409, and
- (5) Compliance with all the provisions of G.S. 160-411.4; and all the provisions of G.S. 160-411.2, 160-412, 160-412.1, 160-412.2, and 160-412.3, as to penalties, liability for damage, and requirements for reporting offenses to the district solicitor, shall apply in all such municipalities so far as such municipalities are herein required to comply with this Article. (1955, c. 698.)

Local Modification. — Town of Whitakers:
1965, c. 996, s. 1.

ARTICLE 34.

Revenue Bond Act of 1938.

§ 160-413. **Title of Article.**—This Article may be cited as the “Revenue Bond Act of 1938.” (Ex. Sess. 1938, c. 2, s. 1.)

Repeal of Article.—This Article is repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973. See the note catchlined “Revision of Chapter Effective July 1, 1973,” following the analysis to Chapter 159.

Editor's Note. — Session Laws 1949, c. 1081, which amended §§ 160-417 and 160-421 and struck out § 160-423, reenacted this Article in its entirety as so changed.

For comment on this Article, see 17 N.C.L. Rev. 370.

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

The very purpose of the Revenue Bond Act is to permit municipalities to engage in nongovernmental activities of a public nature by pledging the revenue derived from such undertakings to the payment of bonds issued in

connection therewith. Thus, it avoids pledging the credit of the municipality to the payment of a debt, for by such arrangements no debt is incurred within the meaning of the Constitution. *Britt v. City of Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952); *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

Activity Must Be Adjudicated to Be for Public Purpose. — A municipality may not issue bonds to construct off-street parking lots until there has been an adjudication in a manner provided by law that the construction of such parking lots is for a public purpose in that particular municipality. *Horton v. Redevelopment Comm'n*, 262 N.C. 306, 137 S.E.2d 115 (1964).

Cited in *Horton v. Redevelopment Comm'n*, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-414. **Definitions.**—Wherever used in this Article, unless a different meaning clearly appears from the context:

- (1) The word “airport” shall mean and shall include lands, runways, lighting and signal systems, terminals, hangars, offices, shops, parking spaces, and each and every structure, improvement, device or facility desirable or useful in connection therewith.
- (2) The term “governing body” shall mean the board or body, or boards or bodies, in which the general legislative powers of the municipality are vested.
- (3) The term “municipality” as used in this Article shall mean any county, city, town, incorporated village, sanitary district, or other political subdivision or public corporation of this State now or hereafter incorporated.
- (4) The term “parking facilities” shall mean any area or place for the off-street parking or storing of motor and other vehicles, open to public use for a fee, and shall include, without limiting the foregoing, all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles. The term “cost” as applied to parking facilities or to extensions thereto shall include the cost of acquisition, construction, reconstruction, improvement, betterment, or extension, the cost of all labor, materials, machinery and equipment, the cost of all lands, easements, rights in lands and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and may include, in addition to the items of cost specified in G.S. 160-416, financing charges, cost of plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, improvement, betterment

or extension, the financing thereof and the placing of the parking facilities in operation.

- (5) The word "revenue" or "revenues" shall mean all moneys received by a municipality from, in connection with or as a result of its ownership or operation of an undertaking, including, without limitation and if deemed advisable by the municipality, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the municipality pertaining to the undertaking.
- (6) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:
- a. Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold-storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, clubhouses and golf courses, and parking facilities.
 - b. Systems, plants, works, instrumentalities, and properties:
 1. Used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses,
 2. Used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water,
 3. Used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment. (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.)

Local Modification. — Cabarrus: 1939, c. 288; city of Thomasville, as to subdivision (6)b: 1969, c. 420.

Editor's Note. — The 1939 amendment added to paragraph a of subdivision (6) the words "teacherages or homes for teachers of public schools." And the 1941 amendment added after the words quoted the words "school dormitories and teacherages, clubhouses and golf courses." The 1951 amendment added "parking facilities."

The first 1953 amendment (Chapter 901, ratified April 22) inserted "or boards or bodies" in subdivision (2), and also directed that the words "or any group or combination of such counties, cities or towns" be added at the end of subdivision (3). The second 1953 amendment (Chapter 922, ratified April 23), which added

subdivision (1), also struck out all of subdivision (3) and rewrote the subdivision, omitting the words added by the first amendment and inserting the words "or other political subdivision or public corporation." Only the second 1953 amendment is reflected in subdivision (3) set out above.

The 1965 amendment rewrote the first sentence in subdivision (4).

The 1969 amendment again rewrote the first sentence of subdivision (4), inserted present subdivision (5) and renumbered former subdivision (5) as (6).

Applied in *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

Cited in *Horton v. Redevelopment Comm'n*, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-415. Additional powers.—In addition to the powers which it may now have, any municipality shall have power under this Article:

- (1) To acquire by gift, purchase, or the exercise of the right of eminent domain, to construct, to improve, to better, and to extend any undertaking wholly within or wholly without the municipality, or partially within and partially without the municipality; and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith;
- (2) To operate and maintain any undertaking for its own use, for the use of public and private consumers, and when operated primarily for its own use and users within the territorial boundaries of the municipality, such undertaking may be operated incidentally for users outside of the territorial boundaries of the municipality;
- (3) To prescribe, revise, and collect (such collection, in the case of parking facilities, to be made by the use of parking meters therein, if deemed desirable by the governing body) rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;
- (4) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of such undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of such undertaking;
- (5) To make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payment of its bonds; provided, no encumbrance, mortgage, or other pledge of property of the municipality is created thereby; and provided, no property of the municipality is liable to be forfeited or taken in payment of said bonds; and provided, no debt on the credit of the municipality is thereby incurred in any manner for any purpose;
- (6) To lease all or any part of any undertaking upon such terms and conditions and for such term of years as the governing body may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof;
- (7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of
 - a. The cost of operating, maintaining and improving parking facilities and
 - b. The principal of and the interest on any revenue bonds issued for parking facilities.
- (8) To sell, and to grant an option or options to purchase (either as a part of any lease or otherwise) all or any part of any undertaking; provided, however, that the powers granted by this subdivision (8) shall be subject to any limitations or restrictions on the disposal of the undertaking or any part thereof contained in any resolution or resolutions authorizing the issuance of bonds therefor under the provisions of this Article; and provided, however, that any sale of any undertaking or part thereof shall not impair the obligation of any revenue bonds issued hereunder or any pledge of revenues for the payment of such bonds or the interest thereof. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2.)

Editor's Note. — The 1951 amendment inserted the parenthetical clause immediately following the word "collect" in subdivision (3) and added subdivisions (6) and (7).

The 1953 amendment added the words "and to provide in such lease for the extension or renewal thereof" at the end of subdivision (6). It also added subdivision (8).

The 1969 amendment rewrote subdivision (7).

Section Is Integral Part of Local Bond Issue. — See *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

Municipalities May Purchase Hydroelectric

Systems by Sale of Revenue Bonds. — It is clear that the General Assembly has by general enactment of the Revenue Bond Act of 1938 authorized municipalities to acquire by purchase revenue-producing properties of various kinds, including hydroelectric plants or systems or works or properties, and to finance such purchase with funds derived from the sale of revenue bonds, payable solely out of the revenues from the undertaking. *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-416. Procedure for authorization of undertaking and revenue bonds; obtaining funds in advance of delivery of bonds sold to United States or agency thereof.—The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this Article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for 18 months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this Article.

At any time or from time to time prior to actual delivery of bonds sold to the United States of America, or to an agency thereof, the governing body may, by resolution adopted as hereinabove provided, authorize the borrowing of money from the United States of America, or from such agency, by execution of a request for advance of funds repayable from the sale proceeds of such bonds. The governing body shall cause a certified copy of each such resolution and a statement as to amount of advance made pursuant thereto, its date and interest rate, if any, to be filed with the Local Government Commission before said delivery, and the State Treasury is hereby authorized to apply, at the time of delivery, proceeds from sale of the bonds to payment of the aggregate principal amount of all such advances and interest accrued thereon, if any. (Ex. Sess. 1938, c. 2, s. 4; 1967, c. 711, s. 1; 1969, c. 1118, s. 3.)

Editor's Note. — The 1967 amendment added the second paragraph.

The 1969 amendment substituted "18 months" for "six months" in the last sentence of the first paragraph.

Cited in *Horton v. Redevelopment Comm'n*, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-417. Bond provisions.—Revenue bonds may be issued under this Article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding 40 years from their respective dates, or, in the case of a single registered bond, may be payable in installments; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or

resolutions authorizing the issuance of such bonds may provide. All bonds issued under this Article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this Article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s.1.)

Editor's Note.—The 1949 amendment rewrote this section.

The first 1967 amendment substituted “40 years” for “thirty-five years” near the beginning of the section.

The second 1967 amendment inserted “or, in

the case of a single registered bond, may be payable in installments” near the beginning of the section.

The 1969 amendment deleted “not exceeding six per centum (6%) per annum” following “rate or rates” near the middle of the first sentence.

§ 160-418. Covenants in resolutions.—Any resolution or resolutions authorizing the issuance of bonds under this Article to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants (notwithstanding that such covenants may limit the exercise of powers conferred by this Article) as to:

- (1) The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of such undertaking;
- (2) The use and disposition of the revenue of said undertaking;
- (3) The creation and maintenance of reserves or sinking funds; the regulation, use and disposition thereof;
- (4) The purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;
- (5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which 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;
- (6) A fair and reasonable payment by the municipality to the account of said undertaking for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking;
- (7) The issuance of other or additional bonds or instruments payable from or a charge against the revenue of such undertaking;
- (8) The insurance to be carried thereon, and the use and disposition of insurance moneys;
- (9) Books of account and the inspection and audit thereof;
- (10) Limitations or restrictions as to the leasing or otherwise disposing of the undertaking while any of the bonds or interest thereon remain outstanding and unpaid; and
- (11) The continuous operation and maintenance of the undertaking.

The provisions of this Article and of any such resolution or resolutions shall be a contract with every holder of said bonds; and the duties of the municipality and the governing body and the officers of the municipality under this Article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding at law or in equity. (Ex. Sess. 1938, c. 2, s. 6.)

§ 160-419. No municipal liability on bonds.—Revenue bonds issued under this Article shall not be payable from or charged upon any funds other than the

revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon; provided, however, that if there shall be a sale of the undertaking for which bonds were issued while any of the bonds issued for the said undertaking or interest thereon is unpaid, so much of the purchase price as shall be required to pay all of said bonds and interest remaining unpaid together with all the costs and expenses of sale and other costs and expenses in connection with the payment of said bonds and interest shall be applied to the payment of said bonds and interest, and such costs and expenses, or said amount shall be paid into a sinking fund for the payment of said bonds and interest in such manner and with such requirements as shall be prescribed by the resolution or resolutions authorizing the issuance of the bonds. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon; nor to enforce payment thereof against any property of the municipality; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality. Every bond issued under this Article shall contain a statement on its face that "this bond is not a debt of, but is payable solely from the revenues of the undertaking for which it is issued, as provided by law and the proceedings in accordance therewith, and the holder hereof has no right to compel the levy of any tax for the payment of this bond or the interest to accrue hereon and has no charge, lien or encumbrance legal or equitable upon any property of said" (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3.)

Editor's Note. — The 1953 amendment added the proviso to the first sentence.

Indirect Invocation of Taxing Power. — Defendant municipality proposed to issue bonds to obtain funds for the construction of a municipal hydroelectric generating plant. The city owned and operated its own electric distributing system, and the proposed generating system was to be operated separate and apart therefrom. The resolution of the city authorizing the issuance of the bonds provided that they should be payable solely out of the revenues of the system and the bonds themselves are to contain like provision. It was

held that the bonds are not a general indebtedness of the municipality and its taxing power may not be invoked to provide for their payment, and the provision that the city, if it should voluntarily elect to take energy from its generating system for its own uses, should pay the cost of furnishing the energy so taken, which in no event should exceed a fair and reasonable charge therefor, does not indirectly provide for the invoking of the taxing power for the payment of the bonds. *McGuinn v. City of High Point*, 217 N.C. 449, 8 S.E.2d 462, 128 A.L.R. 608 (1940).

§ 160-420. Right to receivership upon default.—(a) In the event that the municipality shall default in the payment of the principal or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or in the event that the municipality or the governing body, or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this Article or shall default in any agreement made with the holders of the bonds, any holders of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the municipality is located or any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such bonds. Upon such application the superior court or any other court of competent jurisdiction may appoint, and if the application is made by the holders of twenty-five per centum (25%) in principal amount of such bonds then outstanding, or any trustee for holders of such bonds in such principal amount, shall appoint a receiver of the undertaking.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the undertaking and each

and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the undertaking, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the undertaking as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds and interest thereon, and upon any other notes, or other obligations, and interest thereon, having a charge, lien, or other encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of bonds shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the undertaking to the municipality, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. (Ex. Sess. 1938, c. 2, s. 8.)

Cross Reference. — As to authority for municipality to avail itself of provisions of bankruptcy law, see § 23-48.

Section Is Integral Part of Local Bond Issue.
— See *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-421. Approval of State agencies and sale of bonds by Local Government Commission.—All revenue bonds issued pursuant to this Article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this Article to the United States of America, or any agency thereof, at private sale and without advertisement, and except, further, that upon the filing with said Commission of a resolution of the governing body of a municipality requesting that its revenue bonds issued pursuant to this Article be sold at private sale and without advertisement and upon the approval of such request by said Commission, such bonds may be sold by said Commission at private sale and without advertisement to any purchaser or purchasers thereof, such sale to be for such price as said Commission shall determine to be for the best interests of the municipality and as shall be approved by the governing body of the municipality. It shall not be necessary for any municipality proceeding under this Article to obtain any other approval, consent, or authorization of any bureau, board, commission, or like instrumentality of the State for the construction of an undertaking; provided, however, that existing powers and duties of the State Board of Health shall continue in full force and effect; and provided, further, that no municipality shall construct any systems, plants, works, instrumentalities, and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural,

artificial, or mixed) or electric energy for lighting, heating, and power for public and private usage without having first obtained a certificate of convenience and necessity from the North Carolina Utilities Commission, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized or the bonds for which have been authorized by any general, special, or local law enacted prior to April 21, 1949. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2.)

Editor's Note. — The 1949 amendment rewrote this section.

The 1967 amendment added to the first sentence the provisions as to sale of bonds at private sale upon the filing of a resolution of the governing body of a municipality requesting such sale.

The 1969 amendment deleted, at the end of the first sentence, a provision to the effect that no such sale should be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum per annum, and providing the manner of computation of such interest.

Necessity of Certificate of Convenience. — It is necessary for a city to obtain a certificate of convenience from the Public Utilities Commissioner in order to construct a hydroelectric generating system under this section and the contention of defendant municipality that it came within the proviso of this section since its resolution for the issuance of bonds for this purpose was passed prior to this Article under authorization of Chapter 473, Public Laws of 1935, is untenable when it appears that the resolution was amended and supplemented by a resolution passed subsequent to this Article which made substantial changes, and supplied essential requirements lacking in the original resolution. *McGuinn v. City of High Point*, 217 N.C. 449, 8 S.E.2d 462, 128 A.L.R. 608 (1940).

Defendant municipality, by resolution of its council, proposed to construct a hydroelectric plant and finance same by issuing bonds under the Revenue Bond Act of 1935 (Ch. 473, Public Laws of 1935). Thereafter the council amended the prior resolution by resolution making substantial changes in the original plans so that the bonds contemplated would be issued under the Revenue Bond Act of 1938 (Ch. 2, Public Laws, Extra Session of 1938). The General Assembly, by private act, then created a board of power commissioners for the city and gave said board all the powers and duties of the city with respect to the plant proposed by the original resolution of the council and the amendments thereto. It was held that the board of power commissioners was created and authorized to prosecute the project as then constituted, which contemplated the issuance of bonds under the Revenue Bond Act of 1938, and the board is without power to change the fundamental character of the project by resolution rescinding the amendatory resolution of the council and reenacting the original resolution of the council, so as to bring the project within the purview of the Revenue Bond Act of 1935, and thus obviate the necessity of a certificate of convenience from the Utilities Commissioner. *McGuinn v. City of High Point*, 219 N.C. 56, 13 S.E.2d 48 (1941).

Stated in *Keeter v. Town of Lake Lure*, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-421.1. Revenue refunding bonds.—A municipality is hereby authorized to provide for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under the provisions of this Article and any revenue bonds then outstanding issued by such municipality under other than the provisions of this Article for an undertaking the revenues of which are pledged to the payment of such bonds, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the municipality, for the combined purpose of refunding any such bonds and to finance in whole or in part the reconstruction, improvement, betterment or extension of the undertaking for which the bonds to be refunded shall have been issued, or the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking combined or to be combined with the undertaking for which the bonds to be refunded shall have been issued.

The issuance of such bonds, the maturities and other details thereof, and the rights, duties and obligations of the municipality in respect of the same, shall be

governed by the provisions of this Article insofar as the same may be applicable. (1953, c. 692; 1969, c. 1118, s. 4.)

Editor's Note. — The 1969 amendment rewrote the first paragraph.

§ 160-422. Construction of Article.—The powers conferred by this Article shall be in addition and supplemental to, and not in substitution for; and the limitations imposed by this Article shall not affect the powers conferred by any other general, special, or local law. Bonds or interim receipts may be issued under this Article without regard to the provisions of any other general, special, or local law. The General Assembly hereby declares its intention that the limitations of the amount or percentage of, and the restrictions relating to indebtedness of a municipality and the incurring thereof contained in the Constitution of the State and in any general, special or local law shall not apply to bonds or interim receipts and the issuance thereof under this Article. (Ex. Sess. 1938, c. 2, s. 10.)

§ 160-424. Article applicable to school dormitories and teacherages.—All the terms, conditions and provisions of this Article are hereby made applicable to the acquisition, construction, reconstruction, improvement, betterment, or extension of school dormitories and teacherages within this State. (Ex. Sess. 1938, c. 5.)

ARTICLE 34A.

Bonds to Finance Sewage Disposal System.

§ 160-424.1. Issuance of bonds by municipality.—Subject to the provisions of the Municipal Finance Act, 1921, as amended, but notwithstanding any limitation on indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of acquiring, constructing, extending, enlarging or improving a system for the collection, treatment and disposal of sewage (hereinafter sometimes called the "sewage disposal system"), either within or without or partly within and partly without the municipality, and may pledge to the payment of such bonds the revenues of the sewage disposal system as hereinafter provided. Notwithstanding the provisions of G.S. 160-391, such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium as the governing body may provide, with the approval of the Local Government Commission. (1949, c. 1213, s. 1; 1951, c. 941, s. 1.)

Cross Reference. — As to water and sewer authorities, see § 162A-1 et seq.

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 15, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Editor's Note. — The 1951 amendment inserted "may" in lieu of "to" formerly appearing before "pledge" near the middle of the section and added the last sentence.

Stated in *McCombs v. City of Asheboro*, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

§ 160-424.2. Additional powers of municipality.—In addition to any powers which it may now have under the provisions of any law, a municipality shall have the following powers:

- (1) To acquire, construct, extend, enlarge or improve and operate a sewage disposal system, either within or without or partly within and partly without a municipality;
- (2) To fix and collect rates, fees and charges for the services and facilities furnished by a sewage disposal system and to fix and collect charges for making connections with the sewer system of such municipality;

- (3) To acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, extension, enlargement, improvement or operation of a sewage disposal system;
- (4) To construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipelines in, along or under any streets, alleys, highways or other public ways;
- (5) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any other municipality, sanitary district, private corporation, copartnership, association or individual providing for or relating to the treatment or disposal of sewage;
- (6) To accept from any federal agency loans or grants for the planning, acquisition, extension, enlargement, improvement or lease of a sewage disposal system and to enter into agreements with such agency respecting such loans and grants. (1949, c. 1213, s. 2; 1951, c. 941, s. 2.)

Editor's Note. — The 1951 amendment subdivided (1) and renumbered the inserted "sewage disposal system" in lieu of subdivisions of the section. "sewer system" in subdivision (6), inserted

§ 160-424.3. Fixing or revising schedule of rates, etc., for services and facilities.—Before any municipality may issue bonds under the authority of this Article, it shall fix the initial schedule of rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the sewage disposal system, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or use the sewer system of such municipality, and revise such schedule of rates, fees and charges from time to time, so that such rates, fees and charges, with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system and to pay the principal of and the interest on the bonds issued under the provisions of this Article as the same shall become due and to provide reserves therefor. (1949, c. 1213, s. 3; 1951, c. 941, s. 3.)

Editor's Note. — The 1951 amendment inserted "with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system."

§ 160-424.4. Authority to charge and collect rates, fees, etc.; basis of computation; additional charge for cause.—The municipality shall charge and collect the rates, fees and charges fixed or revised pursuant to the authority of this Article, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the State or of any sanitary district or other political subdivision of the State.

Such rates, fees and charges shall be just and equitable, and may be used or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources

other than the municipality's water system may be determined by gauging or metering or in any other manner approved by the municipality.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewer system, an additional charge may be made therefor, or the municipality may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the municipality before discharging such sewage into any sewer lines owned or maintained by the municipality. (1949, c. 1213, s. 4.)

§ 160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.—The municipality may provide in the ordinance or resolution authorizing the issuance of bonds under the provisions of this Article, that the charges for the services and facilities furnished by any sewage disposal system constructed by the municipality under the provisions of this Article shall be included in bills rendered for water consumed on the premises (but such charges shall be stated separately from the water charges) and that if the amount of such charges so included shall not be paid within 30 days from the rendition of any such bills, the municipality may discontinue furnishing water to such premises and may disconnect the same from the waterworks system of the municipality. (1949, c. 1213, s. 5; 1951, c. 941, s. 4.)

Local Modification. — Town of Rutherfordton: 1961, c. 785, s. 2 $\frac{1}{2}$; town of Spindale: 1961, c. 785, s. 2.

Editor's Note. — The 1951 amendment inserted "sewage disposal system" in lieu of "sewer system or sewer improvements."

§ 160-424.6. Revenues may be pledged to bond retirement.—Any revenues derived from a sewage disposal system for which bonds shall be issued under the provisions of this Article may be pledged to the payment of the principal of and the interest on such bonds and to provide reserves therefor. (1949, c. 1213, s. 6; 1951, c. 941, s. 5.)

Editor's Note. — The 1951 amendment rewrote this section. Prior to the amendment

the section was mandatory in requiring that revenue be pledged to bond retirement.

§ 160-424.7. Powers herein granted are supplemental.—The powers granted by this Article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing. (1949, c. 1213, s. 7.)

§ 160-424.8. Refunding bonds; approval and sale of bonds issued under Article.—Any municipality may issue its negotiable bonds for the purpose of refunding any bonds then outstanding and issued under the provisions of this Article, or for the combined purposes of (i) paying the cost of any extension, enlargement or improvement of a sewage disposal system and (ii) refunding bonds of the municipality which shall theretofore have been issued under the provisions of this Article and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement, and may pledge to the payment of such bonds revenues of the sewage disposal system as above provided. The issuance of such bonds shall be governed by The Municipal Finance Act, 1921, as amended, and the foregoing provisions of this Article, insofar as the same may be applicable, and shall not be subject to any limitation on indebtedness contained in The Municipal Finance Act, 1921, as amended, or in any other law. All bonds issued pursuant to this Article shall be subject to approval and sale by the Local Government Commission and to delivery by the State Treasurer as provided in the Local Government Act. (1951, c. 941, s. 6.)

Cross Reference. — As to municipal parking authorities, see §§ 160-475 through 160-496.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

ARTICLE 35.

Capital Reserve Funds.

§ 160-425. **Short title.** — This Article shall be known and may be cited as “The Municipal Capital Reserve Act.” (1957, c. 863, s. 1.)

Repeal of Article. — This Article is repealed by Session Laws 1971, c. 780, s. 16, effective July 1, 1973. See the note catchlined “Revision of Chapter Effective July 1, 1973,” following the analysis to Chapter 159.

Editor’s Note. — Session Laws 1957, c. 863, effective July 1, 1957, repealed the former article, consisting of §§ 160-425 through 160-444, and substituted in lieu thereof the present article, consisting of §§ 160-425 through 160-434. The former article was codified from Session Laws 1943, c. 467 as amended by Session Laws 1945, c. 464.

Powers Supplementary; Capital Reserve Act

§ 160-426. **Meaning of terms.**—In this Article the following terms shall have the following meanings:

- (1) “Municipality” means and includes any city and town in this State, now or hereafter incorporated;
- (2) “Governing body” means the board or body in which the general legislative powers of the municipality are vested;
- (3) “Necessary expenses” means the necessary expenses referred to in Sec. 7 of Article VII of the Constitution of North Carolina. (1957, c. 863, s. 1.)

Editor’s Note. — The provisions of Art. VII, § 7, Const., 1868, referred to in subdivision (3) of this section, are now contained in N.C. Const., Art. V, § 4(2).

§ 160-427. **Powers conferred.**—In addition to all other funds now authorized by law, a municipality is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1957, c. 863, s. 1.)

§ 160-428. **Establishment of fund.**—When the governing body of any municipality elects to establish a capital reserve fund, it shall adopt an ordinance creating the fund. In such ordinance, the governing body may provide that all or a part of the fund shall be used specifically for any one or more of the purposes enumerated in G.S. 160-432, or it may provide that all or a part of the fund shall be used for any of such enumerated purposes as may later be determined necessary by the governing body. (1957, c. 863, s. 1.)

§ 160-429. **Appropriations.**—Upon the adoption of an ordinance establishing a capital reserve fund, the governing body may, pursuant to the provisions of the Municipal Fiscal Control Act, make appropriations from the general fund of the municipality for payment to the capital reserve fund. Thereafter, appropriations may be made in the same manner at any time or from time to time in the discretion of the governing body. (1957, c. 863, s. 1.)

§ 160-430. **Depository; security.** — In the ordinance creating the capital reserve fund, the governing body shall designate some bank, banks or trust

company in this State as depository in which moneys of the fund shall be deposited. All such deposits shall be secured as provided by G.S. 159-28 of the Local Government Act. (1957, c. 863, s. 1.)

§ 160-431. Investments. — The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 863, s. 1; 1967, c. 798, s. 2.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 160-432. Purposes of expenditure. — Subject to the provisions of the ordinance establishing the capital reserve fund, expenditure of moneys in the fund may be made at any time, or from time to time, in the manner hereinafter provided, for all or part of the cost of the following purposes:

- (1) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the obtaining of a water supply and the collection, treatment, and disposal of water for public and private uses;
- (2) Constructing, reconstruction, or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the collection, treatment, and disposal of sewage, waste and storm water;
- (3) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial or mixed) or electric energy for lighting, heating, and power for public and private uses;
- (4) Construction, reconstruction or enlargement of plants used or useful in connection with the collection or disposal of ashes, garbage, or refuse other than sewage;
- (5) Construction or reconstructing roads, streets, highways, bridges or culverts, which may include contemporaneous construction or reconstruction of sidewalks, curbs and gutters and necessary grading and drainage;
- (6) The elimination of any grade crossing or crossings and improvements incident thereto;
- (7) Fire-fighting equipment and apparatus and fire and police alarm systems;
- (8) Cemeteries;
- (9) Buildings used in housing departments of the municipal government.

All of the foregoing purposes are hereby declared to be necessary expenses and the cost thereof shall be deemed to include land, easements, rights in land, water rights, contract rights, franchises, and equipment used or useful in connection with said purposes. (1957, c. 863, s. 1.)

§ 160-433. Withdrawals.—The governing body shall by resolution authorize withdrawal of moneys in the capital reserve fund. The resolution shall specify the amount of each withdrawal and the purpose or purposes for which such amount shall be expended. In the event that changed conditions make it necessary to use all or part of such fund for some purpose authorized by G.S. 160-432, but not specified in the ordinance establishing the fund the governing body may amend the ordinance to include such other purpose. Such amendment shall declare that changed conditions make it necessary to use all or part of the fund for such other purpose and shall set forth facts which, in the judgment of the governing body, are necessary to show that changed conditions do exist. (1957, c. 863, s. 1.)

§ 160-434. **Limitation.** — It shall be unlawful to withdraw or expend or to cause to be withdrawn and expended, all or any part of a capital reserve fund for any purpose other than the purposes authorized by this Article. (1957, c. 863, s. 1.)

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

ARTICLE 38.

Parking Authorities.

§ 160-481. **Purpose and powers of the authority.** — An authority incorporated under this Article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
- (4) To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
- (5) To make bylaws for the management and regulation of its affairs, and subject to agreements with bondholders, for the regulation of parking projects;
- (6) To make contracts and leases, and to execute all instruments necessary or convenient;
- (7) To construct such buildings, structures and facilities as may be necessary or convenient;
- (8) To construct, reconstruct, improve, maintain and operate parking projects;
- (9) To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;
- (10) To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;
- (11) To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this Article. (1951, c. 779, s. 7; 1965, c. 998, s. 2.)

Editor's Note. — The 1965 amendment deleted "off-street" preceding "parking facilities" near the middle of the second sentence.

Amendment Effective July 1, 1973. — Session Laws 1971, c. 780, s. 18, effective July 1, 1973, amends this section by adding a new subdivision (12), to read as follows:

"(12) To issue revenue bonds under the Local Government Revenue Bond Act."

See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-485. **Bonds of the authority.** — (a) The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any

purpose mentioned in G.S. 160-481, including the acquisition, construction, reconstruction and repair of personal and real property of all kinds deemed by the authority to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the authority necessary or desirable to the financing thereof and placing the project or projects in operation, in the aggregate principal amount of not exceeding three million dollars (\$3,000,000). The authority shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. In computing the total amount of bonds of the authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchanging for new bonds shall be excluded. Except as may otherwise be expressly provided by the authority, the bonds of every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the negotiable instruments law (constituting Chapter 25 of the General Statutes) the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the negotiable instruments law, subject only to the provisions of the bonds for registration.

(b) The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable annually or semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption prior to maturity, at par value, as such resolution or resolutions may provide.

(c) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized as to:

- (1) Pledging all or any part of the revenues of a parking project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;
- (2) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;
- (3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;
- (4) Limitations on the right of the authority to restrict and regulate the use of a project;
- (5) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;
- (6) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;
- (7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto; and the manner in which such consent may be given;
- (8) Limitations on the amount of moneys derived from a parking project

to be expended for operating, administrative or other expenses of the authority;

- (9) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to G.S. 160-493, and limiting or abrogating the right of the bondholders to appoint a trustee under said section or limiting the rights, duties and powers of such trustee;
- (10) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

(d) It is the intention hereof that any pledge of revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Statutory provisions relating to the recording or registering of instruments creating liens shall not apply to the lien of any such pledge.

(e) Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority shall have power out of any funds available therefor to purchase bonds. The authority shall cancel such bonds.

(g) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in the State of North Carolina. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the construction, maintenance, operation, repair and insurance of the parking project or projects, and the custody, safeguarding and application of all moneys, and may provide that the parking project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of G.S. 160-484, the authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the project or projects to the trustee under such indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the parking project or projects. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by G.S. 160-493 upon a trustee appointed by bondholders. (1951, c. 779, s. 11.)

Editor's Note. — Former Chapter 25 of the General Statutes, referred to in subsection (a) of this section, was repealed by Session Laws 1965, c. 700, which enacted the Uniform Commercial Code. As to commercial paper, see now §§ 25-3-101 to 25-3-805.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 19, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-486. Notes of the authority. — The authority shall have power from time to time to issue notes and from time to time to issue renewal notes (herein

referred to as notes) maturing not later than five years from their respective original dates in an amount not exceeding at any time fifty thousand dollars (\$50,000), over and above the amount of bonds authorized by subsection (a) of G.S. 160-485, whenever the authority shall determine that payment thereof can be made in full from any moneys or revenues which the authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans or other matters relating to any proposed project. The authority may pledge such moneys or revenues (subject to any other pledge thereof) for the payment of the notes and may in addition secure the notes in the same manner and with the same effect as herein provided for bonds. Interest on the notes shall not exceed the rate of six per centum (6%) per annum. The authority shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes, or violation of any of the obligations of the authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. (1951, c. 779, s. 12.)

Local Modification. — City of Kinston: 1957, c. 860, s. 2.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 19, effective July

1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-487. Approval of Local Government Commission; application of Local Government Act. — The issuance of all bonds and notes authorized pursuant to this Article shall be subject to approval by the Local Government Commission and such bonds and notes shall be sold by said Commission in the same manner as bonds and notes of municipalities are approved and sold under the provisions of the Local Government Act. Such bonds and notes shall be delivered in the same manner as bonds and notes of municipalities are delivered under the provisions of the Local Government Act. (1951, c. 779, s. 12 1/2.)

Local Modification. — City of Kinston: 1957, c. 860, s. 3.

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 19, effective July

1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-488. Agreements of the State. — The State of North Carolina does pledge to and agree with the holders of the bonds that the State will not limit or impair the rights hereby vested in the authority to acquire, construct, maintain, reconstruct and operate the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. (1951, c. 779, s. 13.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 19, effective July 1, 1973. See the note catchlined "Revision of

Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-489. State and city not liable on bonds. — The bonds and other obligations of the authority shall not be a debt of the State of North Carolina or of the city, and neither the State nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority. (1951, c. 779, s. 14.)

Repeal of Section. — This section is repealed by Session Laws 1971, c. 780, s. 19, effective July 1, 1973. See the note catchlined "Revision of

Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 160-493. Remedies of bondholders. — (a) In the event that the authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with the provisions of this Article, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the register of deeds of the county in which the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of twenty-five per centum (25%) in principal amount of such bonds then outstanding shall, in his or its own name:

- (1) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this Article;
- (2) Bring suit upon such bonds;
- (3) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;
- (4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;
- (5) Declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum (25%) of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

(c) The superior court of the county in which the authority is situated shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders.

(d) Before declaring the principal of all such bonds due and payable, the trustee shall first give 30 days' notice in writing to the authority.

(e) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders, shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with any construction thereon which the authority is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(f) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights. (1951, c. 779, s. 18.)

Repeal of Section. — This section is repealed Chapter Effective July 1, 1973," following the by Session Laws 1971, c. 780, s. 19, effective July analysis to Chapter 159.
1, 1973. See the note catchlined "Revision of

ARTICLE 39.

Financing Parking Facilities.

§ 160-497. **Declaration of public necessity.** — It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the municipalities in the State is necessary to the health, safety and general welfare of the public, whether residing in such municipalities or traveling to, through or from such municipalities in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of such municipalities; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through and from such municipalities, impedes the rapid and effective fighting of fires and disposition of police forces, threatens irreparable loss in values of urban property which can no longer be readily reached by vehicular traffic, and endangers the health, safety and welfare of the general public; that the regulation of traffic on the streets by the installation of parking meters and the imposition of charges in connection with such on-street parking facilities has not relieved this congestion except to a limited extent; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been provided and parking spaces now existing must be forthwith supplemented by off-street parking facilities provided by public undertaking; and that the enactment of the provisions of this Article is hereby declared to be a public necessity. (1951, c. 704, s. 1.)

Repeal of Article. — This Article is repealed Chapter Effective July 1, 1973," following the by Session Laws 1971, c. 780, s. 17, effective July analysis to Chapter 159.
1, 1973. See the note catchlined "Revision of

§ 160-498. **Definitions.**—As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of acquisition, construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interest acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction and, if deemed advisable by the governing body, for one year after completion of construction, cost of engineering and legal services, plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, the financing thereof and the placing of the parking facilities in operation.

- (2) The term "governing body" shall mean the board or body in which the general legislative powers of a municipality are vested.
- (3) The word "municipality" shall mean any city or town in the State, whether incorporated by special act of the General Assembly or under the general laws of the State, which may desire to finance parking facilities under the provisions of this Article.
- (4) The term "parking facilities" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles open to public use for a fee, and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles, including on-street parking meters if so provided by the governing authority.
- (5) The word "revenues" when applied to revenues of the parking facilities shall mean the net revenues derived in any fiscal year from the operation of the parking facilities after paying all expenses of operating, managing and repairing such parking facilities. (1951, c. 704, s. 2; 1965, c. 998, s. 4.)

Editor's Note. — The 1965 amendment rewrote subdivision (4).

§ 160-499. General grant of powers.—The governing body of any municipality in the State is hereby authorized and empowered:

- (1) To acquire, construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of such municipality;
- (2) To issue bonds of the municipality as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, equipment, improvement, extension or enlargement;
- (3) To establish and revise from time to time and to collect (such collection to be made by the use of parking meters, if deemed desirable by the governing body) rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of such parking facilities or part thereof;
- (4) To accept from any authorized agency of the federal government loans or grants for the planning, construction or acquisition of any parking facilities and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants or contributions may be made;
- (5) Subject to any provisions or restrictions which may be set forth in the ordinance authorizing bonds, to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities;
- (6) To lease all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this Article;
- (7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, and to employ such engineers, attorneys,

accountants, construction and financial experts, superintendents, managers and other employees and agents as it may deem necessary, and to fix their compensation; and

- (8) To do all acts and things necessary or convenient to carry out the powers expressly granted in this Article. (1951, c. 704, s. 3.)

Cross Reference. — As to authority of city to use revenue from on-street parking meters to finance off-street parking facilities, see § 160A-301 and the note thereto.

Maintenance of Off-Street Parking Facilities Is a Commercial Undertaking. — See *Britt v. City of Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952).

City Has No Authority to Rent On-Street Parking Space for a Fee. — Streets of a municipality are provided for public use. A city board has no valid authority to rent, lease or let a parking space on the streets to an individual motorist for a fee, or to charge a rate or toll therefor. Much less may it lease or let the whole system of on-street parking meters for operation by a private corporation or individual. *Britt v. City of Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952).

A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. *Britt v. City of Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952). See, contra, *Graham v. Karpark Corp.*, 194 F.2d 616 (4th Cir. 1952).

Regulations for Off-Street Meters May Not Be Enforced by Criminal Prosecutions. — The regulations of a municipality for off-street parking meters maintained by it in its proprietary capacity may not be enforced by criminal prosecutions. *Britt v. City of Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952).

§ 160-500. Issuance of bonds.—Subject to the provisions of The Municipal Finance Act of 1921, as amended, Subchapter III, Chapter 160 of the General Statutes, but notwithstanding any limitation or indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of parking facilities, for the payment of which bonds, there shall be pledged, in addition to the full faith, credit and taxing power of the municipality,

- (1) The revenues of such parking facilities,
- (2) All the revenues of on-street parking meters collected in each fiscal year following the issuance of all or any part of such bonds (after paying any operating deficit of such parking facilities therewith) until a reserve has been established and is maintained at the close of each fiscal year which shall equal in amount at least ten per centum (10%) of the principal amount of such bonds then outstanding or at least the total amount of principal of and interest on such bonds falling due in the next ensuing fiscal year, whichever is greater, and
- (3) The proceeds of special assessments levied as hereinafter provided upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but the amount of such bonds authorized shall be reduced by the amount of such payments.

Such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium, as the governing body may provide, with the approval of the Local Government Commission. The governing body may authorize the purchase and retirement of any such bonds with funds pledged to their payment at market prices not in excess of the redemption value of the bonds so purchased.

Money may be borrowed in anticipation of the receipt of the proceeds of sale of such bonds under the provisions of G.S. 160-375, and notes may be issued therefor as provided in G.S. 160-376.

Bonds and notes issued under the provisions of this Article shall be subject to the provisions of the Local Government Act. (1951, c. 704, s. 4.)

Cross Reference. — See note to § 160-499.

Editor's Note. — The word "or" in the phrase "limitation or indebtedness" near the beginning

of the section was probably intended to be "of," although "or" is the language of the enactment.

§ 160-501. Parking meters.—The governing body of any municipality in the State is hereby authorized to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any parking meters heretofore or hereafter installed as it may deem advisable. The governing body is further authorized to combine into a single project for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by bonds issued under the provisions of this Article and to pledge to the payment of such bonds, as provided in G.S. 160-500, the revenues derived from such parking meters. (1951, c. 704, s. 5.)

Cross Reference. — See note to § 160-499.

Cited in *State v. Scoggin*, 236 N.C. 1, 72 S.E.2d 97 (1952).

§ 160-502. Pledge of revenues.—The revenues derived from any parking facilities for which bonds shall be issued under the provisions of this Article shall be pledged to the payment of the principal of and the interest on such bonds. Subject to the provisions of G.S. 160-500, the governing body shall also pledge to the payment of such principal and interest the revenues derived from on-street parking meters, and all or any part of the special assessments levied as hereinafter provided upon benefited property. (1951, c. 704, s. 6.)

Cross Reference. — See note to § 160-499.

§ 160-503. Authorizing ordinance.—Any ordinance authorizing the issuance of bonds under the provisions of this Article shall contain the following matters, in addition to all other matters required to be stated therein by The Municipal Finance Act:

- (1) A statement that the revenues of on-street parking meters shall be pledged to the payment of such bonds as provided in this Article; and
- (2) A statement that special assessments shall be levied on benefited property, giving a description of the property which is to be specially benefited and is to be assessed, the basis of assessment, the proportion of the cost to be specially assessed, and the number of equal annual installments in which assessments may be paid. Such installments shall be not less than five nor more than 20. (1951, c. 704, s. 7.)

Cross Reference. — See note to § 160-499.

§ 160-504. Special assessments.—Any municipality in the State shall have power, through its governing body, upon petition made as herein provided, to provide for the levy of special assessments on benefited property.

- (1) The Petition.—A petition shall be submitted to the governing body of any municipality in the State requesting such governing body to issue bonds for the purpose of paying the cost of parking facilities. Such petition shall
 - a. Designate by a brief description the parking facilities proposed;
 - b. Request that the same be provided as authorized by this Article;
 - c. Set forth a description of the property which is to be specifically benefited and is to be assessed;
 - d. Request that such proportion of the cost of such parking facilities as may be specified in the petition be specially assessed against the property in the benefited area;

- e. Set forth the basis on which such assessments shall be assessed, whether by lineal feet of frontage on streets in the benefited area, by square feet of floor space on property fronting on streets in the benefited area, or by some other fair basis as determined upon the petitioners.

The petition shall be signed by at least a majority in number of the owners of property in the benefited area, who must represent at least a majority of the lineal feet of frontage, square feet of floor space, or other basis on which the assessments shall be assessed. For the purpose of the petition, all the owners of undivided interests in any land shall be deemed and treated as one person and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interests: Provided, that for the purpose of this section the word "owners" shall be considered to mean the owners of any life estate, of an estate by entirety, or of the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders, or persons having inchoate rights of curtesy or dower. Upon the filing of such petition with the municipality, the clerk, or other person designated by the governing body thereof, shall investigate the sufficiency of the petition, and if it is found to be sufficient, he shall certify the same to the governing body.

- (2) The Preliminary Resolution.—Upon the finding by the governing body that the petition provided for in the preceding subdivision is sufficient, the governing body shall adopt a resolution which shall contain substantially the following:
 - a. That a sufficient petition has been filed requesting the issuance of bonds for the purpose of paying the cost of parking facilities;
 - b. A brief description of the proposed parking facilities;
 - c. A description of the property to be specially benefited and assessed, the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid;
 - d. A notice of the time and place, when and where a public hearing will be held to hear the objections of all interested persons to (i) the proposed parking facilities, (ii) the property which is to be specially benefited and assessed, (iii) the proportion of the cost of the parking facilities to be specially assessed, (iv) the basis of assessment, and (v) the number of equal annual installments in which the assessments may be paid, which notice shall state that a petition has been filed requesting the issuance of bonds for the purpose of paying the costs of the parking facilities, shall contain a brief description of the proposed parking facilities and a description of the property to be specially benefited and assessed, shall show the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid, and such notice shall also state that all objections shall be made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time of such hearing, and that any such objections not so made will be waived.

Said notice shall be published one time in a newspaper published in the municipality, or if there be no such newspaper, such notice shall be posted in three public places in the municipality for at least five

days, the date of publication or posting of the notice to be not less than 10 days prior to the date fixed for the hearing.

- (3) Public Hearing on Preliminary Resolution.—At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the governing body shall consider such objections as have been made in compliance with subdivision (2) d above. Any objection not made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time or adjourned time of such hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the governing body, the adoption of the ordinance as provided in the next following subdivision, shall be the final adjudication of the issues presented, unless an action or proceeding is commenced to set aside the ordinance or to obtain other relief upon the ground that the ordinance is invalid as provided by G.S. 160-385.
- (4) Authorizing Ordinance.—The governing body shall thereafter determine in its discretion whether or not to proceed with the acquisition or construction of such parking facilities, and if it decides to proceed, it shall then adopt a bond ordinance in accordance with the provisions of G.S. 160-503.
- (5) Amount of Assessment Ascertained.—Upon the completion of the proposed parking facilities the governing body shall compute and ascertain the total cost thereof. The governing body must thereupon make an assessment in accordance with the terms of the bond ordinance, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed.
- (6) Filing of Assessment Roll; Publication of Notice of Hearing Thereon.—After such assessment roll has been completed, the governing body of the municipality shall cause it to be filed in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published one time, in some newspaper published in the municipality, or if there be no such newspaper the governing body shall cause to be posted in three public places in the municipality, a notice of the completion of the assessment roll, setting forth a description in general terms of the parking facilities, and stating the time fixed for the meeting of the governing body for the hearing of objections to the special assessments, such meeting to be not earlier than 10 days after the first publication or from the date of posting of said notice. The governing body shall publish in said notice the amount of each assessment.
- (7) Hearing, Revision; Confirmation; Lien.—At the time appointed for that purpose or at some other time to which it may adjourn, the governing body of the municipality shall hear the objections to the assessment roll of all persons interested, who may appear and offer proof in relation thereto. Then or thereafter, the governing body shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which said governing body decides each of said lots or parcels has received or will receive on account of such parking facilities. If any property which may be chargeable under this Article shall have been omitted from said roll or if the prima facie assessment has not been

- made against it, the governing body may place on said roll an apportionment to said property. The governing body may thereupon confirm said roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the governing body shall confirm an assessment for parking facilities, the clerk of the municipality shall enter on the minutes of the governing body and on the assessment roll, the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the property against which the same are assessed of the same nature and to the same extent as county and city or town taxes and superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the tax collector of the municipality.
- (8) Appeal to Superior Court.—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of such assessment he may, within 10 days after the confirmation of the assessment roll, give written notice to the mayor or clerk of the municipality that he takes an appeal to the superior court of the county wherein such municipality is situated, in which case he shall within 20 days after the confirmation of the assessment roll serve on said mayor or clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner or in which he is interested shall be exclusive.
- (9) Power to Adjust Assessments.—The governing body may correct, cancel or remit any assessment for parking facilities, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. The proceeding shall be in all respects as in the case of original assessment, and the reassessment shall have the same force as if it had originally been properly made.
- (10) Payment of Assessment in Cash or by Installments.—The property owner against whom an assessment is made shall have the option and privilege of paying the assessment in cash, or if he should so elect and give notice of the fact in writing to the municipality within 30 days after the confirmation of the assessment roll, he shall have the option and privilege of paying the assessments in installments as may have been determined by the governing body in the bond ordinance. Such installments shall bear interest at the rate of six percent (6%) per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.
- (11) Payment of Assessment Enforced.—After the expiration of 20 days

from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of 30 days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six percent (6%) per annum from the date of confirmation of the assessment roll. The assessment shall be due and payable on the date on which taxes are payable; provided; that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose.

- (12) Sale or Foreclosure for Unpaid Assessments Barred in 10 Years; No Penalties.—No statute of limitation, whether fixed by law especially referred to in this Article or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from default in the payment thereof, or if payable in installments, 10 years from the default in the payment of any installment. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six percent (6%) per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five percent (5%) of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff.
- (13) Assessments in Case of Tenant for Life or Years.—Whenever any real estate or portion thereof is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property, the amount so assessed for such purposes, or a portion of the amount so assessed in case only a portion of the real estate is so possessed, shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate.

The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13 of the General Statutes.

If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the municipality to a lien on such property for the same.

Any one of several tenants in common, or joint tenants, or copartners,

shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his cotenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien provided for in this paragraph shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office.

- (14) Apportionment of Assessments.—When any special assessment has been made against any property as authorized by this Article, and it is desirable that said assessment be apportioned among subdivisions of said property, the governing body of the municipality shall have authority, upon petition of the owner of said property, to apportion said assessment fairly among said subdivisions. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment except the part thereof apportioned to said subdivision; and the part of said original assessment apportioned to any such subdivision shall be of the same force and effect as the original assessment.
- (15) No Change of Ownership Affects Proceedings.—No change of ownership of any property or interest therein after the passage of the bond ordinance authorized by this Article shall in any manner affect subsequent proceedings, and the parking facilities may be completed and assessments made therefor as if there had been no change in such ownership.
- (16) Lands Subject to Assessment.—No lands in the municipality shall be exempt from special assessment as provided in this Article except lands belonging to the United States and except as provided in G.S. 160-505; and the governing bodies of municipalities and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any parking facilities authorized by this Article.
- (17) Proceedings in Rem.—All proceedings for special assessment under the provisions of this Article shall be regarded as proceedings in rem, and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission. (1951, c. 704, s. 8.)

§ 160-504.1. Issuance of bonds under Revenue Bond Act of 1938 with additional financing by special assessments.—Notwithstanding any other provision of law a municipal corporation for the purpose of financing and paying the cost of off-street parking facilities may issue its revenue bonds as provided by the Revenue Bond Act of 1938, the same being Article 34 of Chapter 160 of the General Statutes, and in addition to pledging the revenues of such off-street parking facilities for the payment of said revenue bonds may also pledge the proceeds of special assessments, as hereinafter provided, upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but in such event the amount of such bonds authorized shall be reduced by the amount of such payments. The special assessments herein referred to

shall be assessed and collected in accordance with the procedure set forth in G.S. 160-504. (1965, c. 769, s. 1.)

Local Modification. — Craven: 1965, c. 769, s. 1 $\frac{1}{2}$.

§ 160-505. Exemption of property from taxation.—As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this Article to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this Article constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provision of this Article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1951, c. 704, s. 9.)

§ 160-506. Alternative method.—This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1951, c. 704, s. 10.)

§ 160-507. Liberal construction.—The provisions of this Article, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 704, s. 11.)

Chapter 162A.**Water and Sewer Systems.****Article 1.****Water and Sewer Authorities.**

Sec.

162A-8. Revenue bonds generally.

162A-10. Trust agreements securing bonds;
pledges of revenues.**ARTICLE 1.***Water and Sewer Authorities.*

§ 162A-8. **Revenue bonds generally.**—Each authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any water system or sewer system or any part or any combination thereof. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates not exceeding seven per centum (7%) per annum, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Such bonds shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this Article at private sale and without advertisement, and for such price, with the consent of the authority, as it may determine to be for the best interests of the authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than seven per centum (7%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. The limitation set forth above on the interest rate or rates which bonds issued hereunder shall bear shall not apply to any issue of bonds with respect to which any federal, State or other public agency shall have agreed to make annual interest grants to

an authority, and in calculating the amount of interest required to be paid on the money received for such bonds within the limitation stated in the next preceding sentence the total of such annual interest grants shall be deducted from the total amount of interest on such bonds.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by said Commission under the provisions of this Article. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this Article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds may be issued under the provisions of this Article without obtaining the consent of any other commission, board, bureau or agency of the State or of any political subdivision, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State or of any political subdivision or a pledge of the faith and credit of the State or of any political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1955, c. 1195, s. 7; 1969, c. 850; 1971, c. 892, s. 1.)

Editor's Note. — The 1969 amendment substituted "seven per centum (7%)" for "five per centum (5%)" in the second and seventh sentences of the first paragraph and added the last sentence of the first paragraph.

Session Laws 1971, c. 892, s. 1, substituted "Article" for "chapter" throughout this section.

Amendment Effective July 1, 1973. — Session Laws 1971, c. 780, s. 32, effective July 1, 1973, amends this section to read as follows:

§ 162A-8. Revenue bonds. — A water and sewer authority shall have power from time to time to issue revenue bonds under the Local Government Revenue Bond Act."

See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

§ 162A-10. Trust agreements securing bonds; pledges of revenues.—In the discretion of the authority, each or any issue of revenue bonds may be secured

by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received, but shall not convey or mortgage any water system or sewer system or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition, construction, reconstruction, improvement, maintenance, repair, operation and insurance of any such system or systems, the fixing and revising of rates, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such acquisition, construction, reconstruction or operation. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the authority may deem reasonable and proper for the security of the bondholders. Except as in this Article otherwise provided, the authority may provide for the payment of the proceeds of the sale of the bonds and the revenues of any water system or sewer system or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this Article shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. (1955, c. 1195, s. 9; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in two places.

Repeal of Section. — This section is repealed

by Session Laws 1971, c. 780, s. 33, effective July 1, 1973. See the note catchlined "Revision of Chapter Effective July 1, 1973," following the analysis to Chapter 159.

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

Sec.

163-1. Time of regular elections and primaries.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

163-231. Voting absentee ballots and transmitting them to chairman of county board of elections.

Sec.

- 163-240. Temporary applicability to civilians.
- 163-240.1. Second primary application.
- 163-240.2. Form of application.
- 163-240.3. State Board of Elections to have additional authority.
- 163-240.4. Violation a felony.
- 163-240.5. Other law applicable; State Board authority regarding dates.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(b) On the first Saturday in May preceding each general election to be held in November for the offices referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

Editor's Note. — Subsection (b) of this section is set out above as it appeared prior to its amendment by Session Laws 1971, c. 170, effective July 1, 1973.

As the other subsections were not affected by the amendment, they are not set out.

Amendment Effective July 1, 1973. — Session

Laws 1971, c. 170, will substitute "On Tuesday next after the first Monday in May" for "On the first Saturday in May" at the beginning of subsection (b). Session Laws 1971, c. 1241, s. 1, provides that Session Laws 1971, c. 170, will be effective July 1, 1973.

SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 3.

State Board of Elections.

§ 163-20. Meetings of Board; quorum; minutes.

Editor's Note. —

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the

county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

ARTICLE 4.

*County Boards of Elections.***§ 163-30. County boards of elections; appointments; term of office; qualifications; vacancies; oath of office.****Editor's Note.** —

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the

county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

§ 163-31. Meetings of county boards of elections; quorum; minutes.

Cross Reference. — See Editor's note under § 163-30.

ARTICLE 5.

*Precinct Election Officials.***§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.****Editor's Note.** —

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the

county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

*Primary Elections.***§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.****Editor's Note.** —

Sections 2 and 3, c. 1241, Session Laws 1971, provide:

"Sec. 2. The filing deadline for candidates seeking party primary nomination in the 1972 State primary election for those offices enumerated in G.S. 163-106(c) shall be at 12 o'clock noon on Monday, February 21, 1972, notwithstanding the provisions contained in G.S. 163-106(c) to the contrary. The provisions of this section shall not be applicable after June 1, 1972.

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 20.

Absentee Ballot.

§ 163-231. **Voting absentee ballots and transmitting them to chairman of county board of elections.**—(a) Procedure for Voting Absentee Ballots.—In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

- (1) Mark his ballots, or cause them to be marked in his presence according to his instructions.
- (2) Fold each ballot separately, or cause each of them to be folded in his presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.
- (4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in G.S. 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this Article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows:

- (1) If the ballots were issued under the provisions of either subdivision (1) or subdivision (2) of G.S. 163-227, the sealed envelope shall be transmitted by the voter in person or by mail (at the voter's expense) in sufficient time for the executed ballots to reach the chairman of the county board of elections by 12:00 noon, on the Saturday immediately preceding the statewide general election or by U.S. mail by 12:00 noon on the Wednesday immediately preceding the statewide primary election. If such ballots are received later than that hour they shall not be accepted for voting.
- (2) If the ballots were issued under the provisions of subdivision (3) of G.S. 163-227, the sealed envelope may be transmitted by the voter in person, or by mail (at the voter's expense), or it may be delivered to the chairman by the voter's husband, wife, brother, sister, parent, or child, in sufficient time for the executed ballots to reach the chairman of the county board of elections by 3:00 P.M., on the day of the statewide general election. If such ballots are received later than that hour they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3.)

Editor's Note. — Session Laws 1971, c. 1247, s. 3, amended this section by adding "or by U.S. mail by 12:00 noon on the Wednesday

immediately preceding the statewide primary election" at the end of the first sentence of subdivision (1) of subsection (b). Section 4 of the

1971 amendatory act provides that "This act and shall cease to be in effect on and after July 1, 1972."

§ 163-240. Temporary applicability to civilians.—Any civilian who is registered to vote no later than 21 days, excluding Saturdays and Sundays, prior to the date of the statewide primary election to be conducted in 1972 shall be authorized to make application for and vote on absentee ballot in the primary in the county of such voter's legal residence under the following conditions:

- (1) Applicant must be a registered voter in the county in which application is made.
- (2) Applicant must be affiliated with a political party at the time application is made.
- (3) Applicant shall make a written request for an application form for absentee ballots not earlier than 35 days nor later than 6:00 P.M. on Tuesday before the primary election.
- (4) No one shall be allowed to vote by absentee ballot in any statewide bond election held during the time for which this act is effective.
- (5) Ballots shall be issued by U.S. mail only. Applicants shall not be permitted to pick up applications or return ballots in person but shall deposit same in the U.S. mail, addressed to the chairman of the county board of elections in the envelope provided for such purpose. (1971, c. 1247, s. 1.)

Editor's Note. — Session Laws 1971, c. 1247, and effect upon ratification and cease to be in s. 4, provides that "This act shall be in full force effect on and after July 1, 1972."

§ 163-240.1. Second primary application.—A voter falling in the category defined in G.S. 163-240 and 163-240.2, may apply for absentee ballots for the second primary not earlier than the day a second primary is called and not later than 6:00 P.M. on Tuesday, immediately preceding the second primary election date; applications for ballots, issuance and return of same, must be in the same manner as provided in G.S. 163-240(3) and 163-240(5). (1971, c. 1247, s. 1.)

Cross Reference. — See Editor's note to § 163-240.

§ 163-240.2. Form of application.—The form of application for persons applying under the provisions of this section shall be the same as the application now required under provisions of G.S. 163-227 for persons applying to vote in the general election. Provided, however, the chairman or executive secretary of each county board of elections shall cause to be printed or stamped on the margin of such application the phrase "I certify that I am now registered as an affiliate of the party." A line or space for signature of the voter shall be provided. No voter shall be mailed ballots under this section other than ballots for candidates for nomination in the primary election of the political party with which such voter is affiliated. The official voter registration record in the county shall be the final determination. (1971, c. 1247, s. 1.)

Cross Reference. — See Editor's note to § 163-240.

§ 163-240.3. State Board of Elections to have additional authority.—The State Board of Elections shall have authority to promulgate rules and regulations for the detailed administration of such requirements contained in this act, including the amendment of application forms. (1971, c. 1247, s. 1.)

Cross Reference. — See Editor's note to § 163- section is Session Laws 1971, c. 1247, effective 240. until July 1, 1972, which enacted §§ 163-240 to 163-240.5 and amended § 163-231(b)(1).

Editor's Note. — The act referred to in this

§ 163-240.4. **Violation a felony.**—Any person who shall, in connection with the primary election in 1972, make fraudulent application under the provisions of this act or any person who encourages another to make false application, or any person who pays or rewards any other person to make false application for absentee ballots shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than six months or fined not less than two thousand dollars (\$2,000), or both, in the discretion of the court. (1971, c. 1247, s. 1.)

Cross Reference. — See Editor's note to § 163-240.

Editor's Note. — The act referred to in this

section is Session Laws 1971, c. 1247, effective until July 1, 1972, which enacted §§ 163-240 to 163-240.5 and amended § 163-231(b)(1).

§ 163-240.5. **Other law applicable; State Board authority regarding dates.**—Except as otherwise provided herein, all provisions set out in Article 8 and Article 20 of Chapter 163 applicable in statewide general elections shall be applicable to statewide primary elections, except the State Board of Elections is authorized and shall set all dates for meetings and all deadlines for county boards of elections to the end that the administration of this temporary act shall be orderly and efficient. All such dates shall be publicly announced no later than February 21, 1972. (1971, c. 1247, s. 1.)

Cross Reference. — See Editor's note to § 163-240.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

February 15, 1972

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1972 Interim Supplement to Replacement Volume 3D of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN

Attorney General of North Carolina

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