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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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