

## Article 7.

### Issuance and Sale of Bonds.

#### **§ 159-120. Definitions.**

As used in this Article, unless the context clearly requires another meaning, the words "unit" or "issuing unit" mean "unit of local government" as defined in G.S. 159-44 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina, and the words "governing body," when used with respect to the State of North Carolina, mean the Council of State. (1973, c. 494, s. 30; 1981 (Reg. Sess., 1982), c. 1276, s. 3; 1983, c. 554, s. 17; 2003-403, s. 6.)

#### **§ 159-121. Coupon or registered bonds to be issued.**

Bonds may be issued as (i) coupon bonds payable to bearer, (ii) coupon bonds registrable as to principal only or as to both principal and interest, or (iii) bonds without coupons registered as to both principal and interest. Each issuing unit may appoint or designate a bond registrar who shall be charged with the duty of attending to the registration and the registration of transfer of bonds. (1917, c. 138, s. 29; 1919, c. 178, s. 3(29); C.S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 36; 1971, c. 780, s. 1; 1973, c. 494, s. 22.)

#### **§ 159-122. Maturities of bonds.**

(a) **(For effective date, see note)** Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission.

(a) **(For effective date, see note)** Except as provided in this subsection, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a refunding bond issue issued pursuant to G.S. 159-48(a)(4) or (5) shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, computed from the date of the bonds, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be refunded. The last installment of bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), (6), or (7) shall mature not later than 10 years after the date of the bonds, as determined by the Commission. The last installment of bonds issued pursuant to G.S. 159-48(c)(5) shall mature not later than eight years after the date of the bonds, as determined by the Commission. The last installment of project development financing debt instruments shall mature on the earlier of 30 years after the effective date of the development financing district for which the instruments are issued or the longest of the various

maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Commission pursuant to this section.

(b) The Commission shall by regulation establish the maximum period of usefulness of the capital projects for which units of local government may issue bonds, but no capital project may be assigned a period of usefulness in excess of 40 years.

(c) The determination of the Commission as to the classification of the capital projects for which a particular bond issue is authorized, and the Commission's determination of the maximum period of usefulness of the project, as evidenced by the secretary's certificate, shall be conclusive in any action or proceeding involving the validity of the bonds. (1917, c. 138, s. 18; 1919, c. 178, s. 3(18); C.S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 11; 1929, c. 170; c. 171, s. 2; 1931, c. 60, ss. 50, 56; cc. 188, 301; 1933, c. 259, ss. 1, 2; 1953, c. 1065, s. 1; 1957, c. 266, s. 2; 1967, c. 987, s. 3; c. 1001, s. 2; c. 1086, ss. 1, 2, 4, 5; 1969, cc. 475, 834; 1971, c. 780, s. 1; 1973, c. 494, s. 23; 1981 (Reg. Sess., 1982), c. 1276, s. 4; 2003-403, s. 7.)

### **§ 159-123. Sale of bonds by sealed bids; private sales.**

(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

- (1) Bonds that a State or federal agency has previously agreed to purchase.
- (2) Any bonds for which no legal bid is received within the time allowed for submission of bids.
- (3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Article 7A of this Chapter.
- (4) Refunding bonds issued pursuant to G.S. 159-78.
- (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- (6) Bonds the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- (7) Project development financing debt instruments.
- (8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection.
- (9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the

Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter to the contrary, general obligation bonds issued pursuant to Article 4 of this Chapter may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. This section also shall not apply to debt instruments that the State has previously agreed to purchase pursuant to Chapter 159G of the General Statutes.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 43; 2000-69, s. 2; 2003-403, s. 8; 2009-140, s. 5; 2010-125, s. 1; 2020-3, s. 4.30(f).)

#### **§ 159-124. Date of sale; notice of sale and blank proposal.**

The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders within or without this State or the United States of America, taking into consideration the size and nature of the issue.

The secretary shall maintain a mailing list for notices of sale and blank proposals, and shall place thereon any person, firm, or corporation so requesting. Failure to send copies of notices and blank proposals to persons, firms, or corporations on the mailing list shall in no way affect the legality of the bonds.

The secretary shall prepare a notice of sale and blank proposal for bids for each bond issue required to be sold by sealed bids. The notice and blank proposal may be combined with such fiscal information as the secretary deems appropriate, and shall contain:

- (1) A statement that the bonds are to be sold upon sealed bids without auction.
- (2) The aggregate principal amount of the issue.
- (3) The time and place of sale, the time within which bids must be received, the place to which bids must be delivered, and the time and place at which bids will be opened, which place or places may be within or without this State or the United States of America.
- (4) Instructions for entering bids.
- (5) Instructions as to the amount of bid deposit required, the form in which it is to be made, and the effect of failure of the bidder to comply with the terms of his bid. (1931, c. 60, s. 17; c. 296, s. 1; 1933, c. 256, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1987, c. 585, ss. 4, 5.)

**§ 159-125. Bid instructions; bid deposit.**

(a) Except for revenue bonds and project development financing debt instruments, no bid for less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different years, and different rates of interest may be bid for bonds maturing in the same year unless the Secretary of the Commission requires one interest rate per maturity in connection with the sale of the bonds. This subsection applies to public sale of bonds only.

(b) The Secretary of the Commission may require that bids be accompanied by a bid deposit in an amount prescribed by the Secretary of the Commission or may determine that no bid deposit is required. If required, the bid deposit shall be made in a form approved by the Secretary of the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of the bid.

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 6; 1987, c. 585, s. 6; 2003-403, s. 9; 2005-238, s. 7.)

**§ 159-126. Rejection of bids.**

No legal bid may be rejected unless all bids are rejected. All bids shall be rejected upon objection to award by an authorized representative of the issuing unit. If bids have been rejected, another notice of sale shall be given and further bids invited. (1931, ch. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1.)

**§ 159-127. Award of bonds.**

All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. Bonds sold at public sale shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost to the issuing unit calculated in the manner established by the Secretary of the Commission in the notice of sale. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1; 2005-238, s. 8.)

**§ 159-128. Makeup and formal execution of bonds; temporary bonds.**

The governing board of the issuing unit shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto. The board may also provide for the authentication of the bonds by a trustee or fiscal agent. The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each bond that is represented by an instrument. Delivery of bonds executed in accordance with the board's determination shall be valid notwithstanding any change in officers or in the seal of the issuing unit occurring after the original execution of the bonds.

Before definitive bonds are prepared, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when they have been executed and are available for delivery. (1917, c. 138, s. 28; 1919, c. 178, s. 3(28); C.S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 35; 1969, c. 29; 1971, c. 780, s. 1; 1983, c. 322, s. 4.)

**§ 159-129. Obligations of units certified by Commission.**

Each bond or bond anticipation note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by the secretary that the issuance of the bond or note has been approved under the provisions of The Local Government Bond Acts, the Local Government Revenue Bond Act, or the North Carolina Project Development Financing Act. This signature may be a manual or facsimile signature as the Commission may determine. Each bond or bond anticipation note that is not represented by an instrument shall be evidenced by a writing relating to such obligation, which writing shall identify such obligation or the issue of which it is part, bear this certificate, and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate or with respect to which a writing bearing this certificate has not been filed with the Commission shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 24; 1981 (Reg. Sess., 1982), c. 1276, s. 7; 1983, c. 322, s. 5; 2003-403, s. 10.)

**§ 159-130. Record of issues kept.**

The secretary shall make a record of all bonds and notes issued under this Subchapter, showing the name of the issuing unit, the amount, date, the time fixed for payment of principal and interest, the rate of interest, the place at which the principal and interest will be payable, the denominations, the purpose of issuance, the name of the board in which is vested the authority and power to levy taxes or raise other revenues for the payment of the principal and interest thereof, and a reference to the law under which the bonds or notes were issued. The clerk of the issuing unit shall file with the secretary copies of all proceedings of the board in authorizing the bonds or notes, his certificate that they are correctly recorded in a bound book of the minutes and proceedings of the board, and a notation of the pages or other identification of the exact portion of the book in which the records appear. (1931, c. 60, s. 23; 1971, c. 780, s. 1; 1973, c. 494, s. 25.)

**§ 159-131. Contract for services to be approved by Commission.**

Any contract or agreement made by any unit with any person, firm, or corporation for services to be rendered in drafting forms of proceedings for a proposed bond issue or a proposed issue of notes shall be void unless approved by the Commission. Before giving its certificate to bonds or notes, the Commission shall satisfy itself by such evidence as it may deem sufficient, that no

unapproved contract is in effect. This section shall not apply to contracts and agreements with attorneys-at-law licensed to practice before the courts of the State within which they have their residence or regular place of business so long as the contracts or agreements involve only legal services. (1931, c. 60, s. 24; 1971, c. 780, s. 1; 1973, c. 494, s. 26.)

**§ 159-132. State Treasurer to deliver bonds and remit proceeds.**

When the bonds are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then pay from the proceeds any notes issued in anticipation of the sale of the bonds, deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The proceeds of funding or refunding bonds may be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness. The proceeds of revenue bonds shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. Unless otherwise provided in the trust agreement or resolution securing the debt instruments, the proceeds of project development financing debt instruments shall be remitted in the manner provided by this section for the remission of the proceeds of general obligation bonds. (1931, c. 60, s. 25; 1935, c. 356, s. 2; 1971, c. 780, s. 1; 1981 (Reg. Sess., 1982), c. 1276, s. 8; 2003-403, s. 11.)

**§ 159-133. Suit to enforce contract of sale.**

The Commission may enforce in any court of competent jurisdiction any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26; 1971, c. 780, s. 1; 1973, c. 494, s. 27.)

**§ 159-134. Fiscal agents.**

An issuing unit may employ a bank or trust company either within or without this State as fiscal agent for the payment of installments of principal and interest on the bonds, and for the destruction of paid or cancelled bonds and coupons, and may pay reasonable fees for this service not in excess of maximum rates to be fixed by regulation of the Commission. If an issuing unit employs another person as such fiscal agent or any other person for other services pursuant to the Registered Public Obligations Act of North Carolina, then it may pay reasonable fees for such services not in excess of maximum rates to be fixed by regulation of the Commission. (1971, c. 780, s. 1; 1983, c. 322, s. 6.)

**§ 159-135. Application of proceeds.**

After payment of any notes issued in anticipation of the sale of the bonds and after payment of the cost of preparing, marketing, and issuing the bonds, the proceeds of the sale of a bond issue shall be applied only to the purposes for which the issue was authorized. Any excess amount which for any reason is not needed for any such purpose shall be applied either (i) toward the purchase and retirement of bonds of that issue at not more than their face value and accrued interest, or (ii) toward payment of the earliest maturing installments of that issue, or (iii) in accordance with any trust agreement or resolution securing the bonds. (1917, c. 138, s. 31; 1919, c. 178, s. 3(31); C.S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 38; 1971, c. 780, s. 1; 1973, c. 494, s. 28.)

**§ 159-136. Issuing unit to make and report debt service payments.**

The finance officer of each unit having outstanding bonds or notes shall remit the funds necessary for the payment of maturing installments of principal and interest on the bonds or notes to the fiscal agent or agreed upon place of payment in sufficient time for the payment thereof, together with the agreed upon fiscal agency fees, and shall at the same time report the payment to the secretary on forms to be provided by the Commission. (1931, c. 60, s. 27; 1971, c. 780, s. 1.)

**§ 159-137. Lost, stolen, defaced, or destroyed bonds or notes.**

(a) If lost, stolen, or completely destroyed, any bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the secretary and the issuing unit: (i) proof of ownership, (ii) proof of loss or destruction, (iii) a surety bond in twice the face amount of the bond or note and coupons, and (iv) payment of the cost of preparing and issuing the new bond, note, or coupons.

(b) If defaced or partially destroyed, any bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the Commission may prescribe. The Commission may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new bond, note, or coupon issued under this section shall be signed by the officers of the issuing unit who are in office at the time, or by the State Treasurer if the unit no longer exists, and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon. (1935, c. 292, ss. 1, 2; 1939, c. 259; 1971, c. 780, s. 1.)

**§ 159-138. Cancellation of bonds and notes.**

Each bond or note and coupon shall be cancelled when (i) it is paid, or (ii) it is acquired by the issuing unit in any manner other than purchase for investment. A full report of the cancellation of all bonds, notes, and coupons shall be made to the secretary on forms provided by the Commission. (1931, c. 60, s. 27; 1939, c. 356; 1971, c. 780, s. 1.)

**§ 159-139. Destruction of cancelled bonds, notes, and coupons.**

(a) All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

- (1) Method 1. – The finance officer shall make an entry in the official records of the unit, which may include the register for the bonds, notes, and coupons, showing:
  - a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.
  - b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed or marked cancelled in the manner determined by the finance officer, who shall make an entry of the destruction or cancellation in the official records

of the unit. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

- (2) Method 2. – The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

(b) The provisions of G.S. 121-5 and G.S. 132-3 do not apply to paid bonds, notes, and coupons. The information required to be recorded prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents. (1941, cc. 203, 293; 1961, c. 663, ss. 1, 2; 1963, c. 1173, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 29; 1983, c. 322, ss. 7, 8; 2005-238, s. 9.)

**§ 159-140. Bonds or notes eligible for investment.**

Subject to the provisions of G.S. 159-30, bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions and agencies and all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1977, c. 403.)

**§ 159-141. Terms and conditions of sale.**

Notwithstanding the foregoing, any bond of the State may be sold upon such terms and conditions, at such interest rate or rates, for such price and in such manner, either public or private, as the State Treasurer shall determine. (1983, c. 554, s. 18.)

**§ 159-142:** Reserved for future codification purposes.

**§ 159-143:** Reserved for future codification purposes.

**§ 159-144:** Reserved for future codification purposes.

**§ 159-145:** Reserved for future codification purposes.