

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

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

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

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

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

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

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

"Shall the (order or agreement) binding the (taxing county or city) to levy annually a tax on property not in excess of _____ cents on the one hundred dollars (\$100.00) value of property subject to taxation for the

purpose of supplementing the revenues of (revenue bond project) in instances where the gross revenues of the project are estimated to be less than the estimated total costs of the (i) current operating expenses of the project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the project and (iii) debt service on all outstanding bonds issued in connection with the project, all as defined in such (order or agreement), the proceeds of such tax to be used for the payment of the current operating expenses of the project so long as any revenue bonds issued therefor remain outstanding and unpaid, be approved?

- Yes
- No"

Debt Service Reserve Supplement Requirement:

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

- Yes
- No"

and

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

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

(title of governing board)."

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

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

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

(g) For the purposes of this section,

- (1) A "revenue bond project" is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, (ii) hospitals and other health-related facilities, and

- (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste within the meaning of said G.S. 159-81;
- (2) An "operating supplement requirement" occurs when, as set forth in the budget prepared by the issuing municipality in respect of the revenue bond project, the estimated cost in the next succeeding fiscal year of the (i) current operating expenses of the revenue bond project, (ii) amount required to maintain the debt service reserve by repaying any withdrawals therefrom in respect of all outstanding bonds issued in connection with the revenue bond project, and (iii) debt service on all outstanding bonds issued in connection with the revenue bond project, are in excess of the pledged revenues of the revenue bond project for such fiscal year as estimated by the issuing municipality, excluding taxes levied pursuant to this section; provided, however, that the amount of the operating supplement requirement shall not exceed the total amount of the current operating expenses of the revenue bond project mentioned in clause (i) above, and
- (3) A "debt service reserve supplement requirement" occurs when there have been withdrawn from the debt service reserve any moneys for the purpose of paying debt service on the bonds in respect of which the supplemental tax has been authorized by the voters; provided, however, that the amount of the debt service reserve supplement requirement shall not exceed the amount so withdrawn.

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

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