

Article 8.

Financing Agreements and Other Financing Arrangements; Arrangements for Nongovernmental Control of Public Enterprises.

**§ 159-148. Contracts subject to Article; exceptions.**

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Article 7A of this Chapter, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as authorized in G.S. 159-146), relating to the lease, acquisition, or construction of capital assets, which contract does all of the following:

- (1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, this subdivision applies to transactions that extend for three or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend.
- (2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract.
- (3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend:
  - a. For baseball park districts, to at least five hundred thousand dollars (\$500,000).
  - b. For housing authorities, to at least five hundred thousand dollars (\$500,000) or a sum equal to two thousand dollars (\$2,000) per housing unit owned and under active management by the housing authority, whichever is less.
  - c. For units included on the most recently published Unit Assistance List issued by the Department of State Treasurer, to at least fifty thousand dollars (\$50,000).
  - d. For other units, to at least five hundred thousand dollars (\$500,000) or a sum equal to one-tenth of one percent ( $\frac{1}{10}$  of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less.
- (4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group. No contract agreement shall be divided for the purpose of, or that results in, evading the requirements of this Article.

(b) This Article shall not apply to:

- (1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.
- (2) Contracts for the purchase, lease, or lease with option to purchase of voting machines.
- (3) Repealed by Session Laws 2020-3, s. 4.30(g), effective retroactively to July 1, 2019.
- (4) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles. This exemption shall not apply to units included on the most recently published Unit Assistance List issued by the Department of State Treasurer where the contract amount equals or exceeds fifty thousand dollars (\$50,000). (1971, c. 780, s. 1; 1973, c. 494, s. 31; 1989, c. 756, s. 6; 1991, c. 11, s. 4; 1997-380, s. 4; 1998-222, s. 1; 2001-206, s. 2; 2001-414, s. 52; 2020-3, s. 4.30(g); 2022-53, s. 6; 2023-138, s. 5(a).)

**§ 159-149. Application to Local Government Commission for approval of contract.**

A unit of local government may not enter into any contract subject to this Article unless it is approved by the Local Government Commission as evidenced by the secretary's certificate thereon. Any contract subject to this Article that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to make any payments of money thereunder. Before executing a contract subject to this Article, the governing board of the contracting unit shall file an application for Commission approval of the contract with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed contract and the financial condition of the contracting unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed contract.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1971, c. 780, s. 1.)

**§ 159-150. Sworn statement of debt; debt limitation.**

After or at the time an application is filed under G.S. 159-149, the finance officer, or some other officer designated by the board, shall prepare, swear to, and file with the secretary and for public inspection in the office of the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for statements of debt filed in connection with general obligation bond issues. The sums to be included in gross debt and the deductions therefrom to arrive at net debt shall be the same as prescribed in G.S. 159-55, except that sums to fall due under contracts subject to this Article shall be treated as if they were evidenced by general obligation bonds of the unit.

No contract subject to this Article may be executed if the net debt of the contracting unit, after execution of the contract, would exceed eight percent (8%) of the assessed value of property subject to taxation by the contracting unit. (1971, c. 780, s. 1; 1991, c. 11, s. 5.)

**§ 159-151. Approval of application by Commission.**

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

- (1) Whether the undertaking is necessary or expedient.
- (2) The nature and amount of the outstanding debt of the contracting unit.
- (3) The unit's debt management procedures and policies.
- (4) The unit's tax and special assessments collection record.
- (5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
- (6) Whether the unit is in default in any of its debt service obligations.
- (7) The unit's present tax rates, and the increase in tax rate, if any, necessary to raise the sums to fall due under the proposed contract.
- (8) The unit's appraised and assessed value of property subject to taxation.
- (9) The ability of the unit to sustain the additional taxes necessary to perform the contract.
- (10) If the proposed contract is for utility or public service enterprise, the probable net revenues of the undertaking to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the undertaking to be financed, will be sufficient to meet the sums to fall due under the proposed contract.
- (11) Whether the undertaking could be financed by a bond issue, and the reasons and justifications offered by the contracting unit for choosing this method of financing rather than a bond issue.

The Commission shall have authority to inquire into and to give consideration to any other matters that it may believe to have bearing on whether the contract should be approved.

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

- (1) That the proposed contract is necessary or expedient.
- (2) That the contract, under the circumstances, is preferable to a bond issue for the same purpose.
- (3) That the sums to fall due under the contract are adequate and not excessive for its proposed purpose.
- (4) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
- (5) That the increase in taxes, if any, necessary to meet the sums to fall due under the contract will not be excessive.
- (6) That the unit is not in default in any of its debt service obligations.

The Commission need not find all of these facts and conclusions if it concludes that (i) the proposed project is necessary and expedient, (ii) the proposed undertaking cannot be economically financed by a bond issue and (iii) the contract will not require an excessive increase in taxes.

If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit filing the information. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and his recommendation for the Commission's

consideration. Notwithstanding the provisions of this subsection, the Commission may deny the application of any local school administrative unit or community college that fails to comply with G.S. 143-64.17A(a1). (1971, c. 780, s. 1; 1973, c. 494, s. 32; 2022-14, s. 7.1.)

**§ 159-152. Order approving or denying the application.**

(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-151, the Commission shall enter its order either approving or denying the application. An order approving an application shall not be regarded as an approval of the legality of the contract in any respect.

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

**§ 159-153. Approval of other financing arrangements.**

(a) Commission Approval Required. – Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

- (1) Incur indebtedness.
- (2) Enter into any similar type of financing arrangement.
- (3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(a1) Nonprofit Water Corporation. – A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(a2) Investor-Owned Drinking Water Corporation. – A loan from the DWSRF, an account within the Water Infrastructure Fund, to an investor-owned drinking water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section.

(b) Exceptions. – Approval by the Commission in accordance with this section is not required in any of the following cases:

- (1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.
- (2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).
- (3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. – No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. – The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

- (1) Whether the undertaking is necessary or expedient.

- (2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.
- (3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.
- (4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.
- (5) The local government unit's debt management procedures and policies.
- (6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.
- (7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. – To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. – If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

- (1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.
- (2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.
- (3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them. (1998-222, s. 2; 1999-213, s. 11; 2005-454, s. 10; 2011-145, s. 13.11A(e).)

**§ 159-154. Nongovernmental control of public enterprises.**

- (a) For purposes of this section, the following definitions apply:

- (1) Adjusted revenues. – Gross revenue of a public enterprise minus the cost of commodity purchases and wholesale electricity purchases for the public enterprise.
- (2) Consolidated nongovernmental entity. – Collectively, all affiliated nongovernmental entities, which includes each entity's parents, subsidiaries, and each other entity that owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights of the entity, and each other entity in which the entity owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights.
- (3) Control. – Any one or more of the following, except that a contractual arrangement by a unit of local government with a nongovernmental entity to provide specified maintenance services for a fixed fee or fee per service basis alone does not create control of the public enterprise for purposes of this section:
  - a. The authority to expend or otherwise manage during any fiscal year more than fifty percent (50%) of a public enterprise's adjusted revenues.
  - b. Responsibility for provision to the public of the services previously provided by the public enterprise.
  - c. Responsibility for operation and maintenance of a material portion of the assets and facilities of the public enterprise.
  - d. The authority to manage a material portion of the staff responsible for operation and maintenance of the assets and facilities of the public enterprise.
- (4) Nongovernmental entity. – Any person or entity other than (i) the State, (ii) a unit of local government, or (iii) a public body created pursuant to Chapter 159B of the General Statutes.
- (5) Public enterprise. – All or a material portion of one or more of the systems set forth in G.S. 160A-311, G.S. 153A-274, and Chapter 162A of the General Statutes.
- (6) Unit of local government. – A "unit of local government" as defined in G.S. 159-7 and a "public authority" as defined in G.S. 159-7.

(b) No unit of local government may concede or transfer control of any public enterprise that the unit of local government owns or operates to any nongovernmental entity or consolidated nongovernmental entity or enter into an agreement to do so unless the concession or transfer of control and the agreement thereunder have been approved by the Commission pursuant to this section as evidenced by the secretary's certificate thereon. Any agreement subject to Commission approval under this section that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to take any actions thereunder.

(c) Before executing an agreement subject to this section, the governing board of the unit of local government shall file an application for Commission approval of the agreement with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed agreement and the arrangements proposed to be carried out thereunder as the secretary may require. The Commission may prescribe the form of the application. Before the secretary accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and

deputies may informally discuss the proposed agreement and arrangements proposed to be carried out thereunder.

(d) Prior to the Commission's consideration of whether to approve an agreement subject to this section and the arrangements thereunder, the governing body of the unit of local government shall conduct a public hearing on whether the proposed arrangement is in the public interest and following the public hearing the governing body shall adopt a resolution or take a similar action stating that it determines that the proposed arrangement is in the public interest. The public hearing shall be held by the governing body of the unit of local government proposing the arrangement following publication of notice of the public hearing at least 10 days prior to the public hearing. The notice of public hearing shall describe the proposed arrangement in general terms. In determining that the arrangement is in the public interest, the governing body of the unit of local government shall consider, at a minimum, all of the following:

- (1) The physical condition of the public enterprise.
- (2) The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards.
- (3) The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise.
- (4) The willingness and the ability of the nongovernmental entity to make system upgrades and repairs and provide high-quality and cost-effective service.
- (5) The reasonableness of the amount to be paid to the unit of local government to enter into the arrangement.
- (6) The reasonableness of any amounts to be paid by the unit of local government to exit the arrangement.
- (7) The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees.
- (8) The most recent income and expense statement and asset and liabilities balance sheet of the nongovernmental entity and any consolidated nongovernmental entity.
- (9) The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates.
- (10) The experience of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (11) The alternatives to entering into the arrangement and the potential impact on utility customers if the arrangement is not entered.

(e) The Commission may approve an agreement for a unit of local government to concede or transfer control of a public enterprise and the arrangement to do so if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge on the unit of local government or its customers upon termination of the arrangement. In determining whether a proposed agreement and the arrangements thereunder shall be approved, the Commission shall have authority to inquire into and to give consideration to such matters that it may believe to have bearing on whether the

proposed agreement and the arrangement thereunder should be approved. Such matters may include any of the following:

- (1) The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed, and its effect on the quality of services to be provided by the public enterprise under the arrangement.
- (2) The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.
- (3) If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
- (4) If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.
- (5) The financial condition of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity and its ability to carry out the undertakings required of the nongovernmental entity in the arrangement.
- (6) The experience of the nongovernmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (7) The nongovernmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.
- (8) The obligations of the nongovernmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.
- (9) The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.
- (10) Any ongoing financial and other commitments of the unit of local government under the arrangement during its term.
- (11) Any financial payments the unit of local government is expected to be required to pay to the nongovernmental entity or any other person or entity at the end of the arrangement.
- (12) The effect, if any, of the arrangement on the tax status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.



(f) The Commission may require that any projection or other analysis provided to the Commission in connection with its consideration of the arrangement be prepared by a qualified independent expert approved by the Commission.

(g) If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit of local government filing the application. If the Commission approves or denies the application, the Commission shall enter its order setting forth such approval or denial of the application. If the Commission enters an order denying the application, the proceedings under this section shall be concluded. An order approving an application shall not be construed as an approval of the legality of the agreement in any respect.

(h) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to terminate the agreement voluntarily prior to the expiration of its stated term, the unit of local government shall not enter into any such termination arrangement unless the termination is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement and arrangement required by this section. This section shall not prohibit the termination of an agreement in the exercise of legal remedies following a breach of the agreement in accordance with its terms.

(i) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to amend the agreement in a material respect, the unit of local government shall not enter into any such amendment unless the amendment is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement.

(j) Nothing in this section shall be construed to apply to the sale of a public enterprise to a utility regulated by the North Carolina Utilities Commission. (2023-138, s. 5(a).)

**§ 159-155. Reserved for future codification purposes.**

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