

## CHAPTER 15

**AN ACT** concerning local unit bonds, amending and supplementing chapter 2 of Title 40A of the New Jersey Statutes and repealing N.J.S.40A:2-8.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.40A:2-10 is amended to read as follows:

Filing of supplemental debt statement required.

40A:2-10. Prior to the passage on first reading of any bond ordinance, refunding bond ordinance or ordinance amending such ordinance, except amending as to matters which are not required to be contained in such ordinance or which does not increase the total amount of the obligations authorized by such ordinance, a financial officer of the local unit shall execute and swear to a supplemental debt statement which shall be filed in the office of the clerk. Prior to the final passage of such ordinance, an executed duplicate of such statement shall be filed in the office of the director.

2. N.J.S.40A:2-11 is amended to read as follows:

Down payment.

40A:2-11. a. No bond ordinance shall be finally adopted unless it appropriates to the purpose, or ratably to the respective purposes to be financed, in addition to the obligations thereby authorized, a sum as a down payment which is not less than 5% of the amount of the obligations authorized.

b. Said sum so appropriated as a down payment must have been made available prior to final adoption of the bond ordinance from any one or more of the following:

1. by provision in a previously adopted budget or budgets of the local unit for down payment or for capital improvement purposes;
2. from moneys then actually held by the local unit and previously contributed for such purpose other than by the local unit; or
3. by emergency appropriation.

c. The provisions of this section shall not apply to a bond ordinance which authorizes obligations solely for any purpose referred to in paragraphs a, b, c, d, e and h of section 40A:2-7 or for those bond ordinances which involve projects funded by State grants such as Green Acres, Environmental Trust Fund, Transportation Trust Fund, and other similar programs.

3. N.J.S.40A:2-26 is amended to read as follows:

Maturity of bonds.

40A:2-26. Maturities of all bonds shall be as determined by bond ordinance or by subsequent resolution and within the following limitations:

a. All bonds shall mature within the period or average period of usefulness determined in the bond ordinance.

b. All bonds shall mature in annual installments, the first of which shall be payable not more than one year from the date of the bonds. No annual installment shall exceed by more than 100% the amount of the smallest prior installment.

c. The first installment of bonds to finance a municipal public utility may be made payable not later than the end of the second year's operation, computed from the estimated date of completion, as fixed in the project report submitted pursuant to this chapter.

d. Bonds to finance that part of the cost of a local improvement which is to be assessed on property shall mature in annual installments not exceeding in number the number of annual installments or average thereof fixed in the bond ordinance for the payment of special assessments. The first annual installment of such bonds shall be payable not more than two years from the date of the bonds, and no annual installment shall exceed the amount of the smallest prior installment.

e. A governing body which has concluded that the limitations as to maturities or amounts of annual installments will adversely affect the financial position of the local unit, may make written application to the local government board setting forth its conclusion and the reasons

therefor and the desired maturities or the amounts of annual installments for bonds about to be issued. If the local government board finds such conclusion to be well founded, it may, by order, fix the maturities or amounts of annual installments of such bonds as desired by the local unit, or fix any such other maturities or amounts of annual installments which the circumstances warrant.

f. The governing body, by resolution, may provide for a single and combined issue of bonds not exceeding the aggregate amount of bonds authorized by two or more bond ordinances. The bonds of such issue shall mature within the average period of usefulness which shall be determined in said resolution, taking into consideration the respective amount of bonds authorized by each of the bond ordinances and the period or average period of usefulness therein determined. The provisions of this chapter applicable to the sale and issuance of a single issue of bonds shall apply to the sale and issuance of such combined issue of bonds.

g. The governing body, by resolution, may allow the adjustment of, or otherwise delegate to a finance officer the authority to adjust, the maturity schedule of the bonds, up to 24 hours prior to the time advertised for the receipt of bids and within 24 hours after the award of bids; provided that no maturity schedule adjustment shall exceed 10% of the principal for any maturity with the aggregate adjustment to maturity not to exceed 10% of the principal for the overall issue. When an adjustment has been made to a maturity schedule previously approved by the local finance board, a copy of the final maturity schedule which meets or complies with the limitations in this subsection shall be filed with the board within 30 days of the sale and shall be conclusively deemed to have been approved by the board.

4. N.J.S.40A:2-27 is amended to read as follows:

Sale of bonds, methods.

40A:2-27. a. All bonds shall be sold at public sale upon the submission of sealed bids or through the submission of electronic proposals, except that bonds may be sold at private sale without any previous public offering:

- (1) if constituting all or part of an authorized issue of \$1,000,000 or less, or
- (2) if sold to any board, body, agency, commission, instrumentality, district, authority or political subdivision of any local unit, or of the State, or of the Federal Government.

b. (1) If no legally acceptable bid is received at advertised public offering pursuant to subsection a. of this section, such bonds or any of them may be sold at private sale within 30 days after the advertised date for public bidding, provided, however, that no bonds shall contain substantially different provisions from those specified in said notice.

(2) Any purchaser of bonds at private sale, other than a public body, shall deposit a certified or cashier's or treasurer's check drawn upon a bank or trust company in an amount equal to 5% of the amount of bonds purchased and such amount shall be applied as in the case of a deposit made at public sale.

(3) Any private sale of bonds shall be made or confirmed by resolution of the governing body adopted by not less than a 2/3 vote of the full membership thereof, setting forth the date, maturities, interest rate and price of the bonds and the name of the purchaser.

c. If the governing body determines to conduct the public sale through the submission of electronic proposals, such electronic proposals shall be submitted in the form of open or closed auctions conducted through a nationally recognized electronic securities bidding service and in accordance with such rules as may be promulgated by the board. The local finance board may adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the terms and conditions of the submission of electronic proposals.

5. N.J.S.40A:2-29 is amended to read as follows:

Minimum price for obligations.

40A:2-29. Obligations sold pursuant to subsection d. of N.J.S.40A:2-32 shall be sold at not less than par value plus any interest accrued to the date of delivery. No other obligations shall

be sold for less than 99% of par value and interest accrued to date of delivery unless the local unit has obtained the approval of the director, which approval may be subject to such conditions as the director deems necessary and appropriate.

6. N.J.S.40A:2-30 is amended to read as follows:

Advertisement of public sale of bonds.

40A:2-30. a. A notice of public sale of bonds containing the provisions described in subsection a. of N.J.S.40A:2-31 shall be advertised at least once at least seven days prior thereto in a newspaper qualified for publication of a bond ordinance of the local unit. A summary of the notice of public sale of bonds as provided for in subsection b. of N.J.S.40A:2-31 shall be advertised at least once at least seven days prior thereto in a nationally recognized local government bond marketing publication or electronic information service carrying municipal bond notices and devoted primarily to financial news or the subject of state and municipal bonds.

b. The governing body, may, by resolution, allow or otherwise delegate to a finance officer the authority to postpone a public sale without readvertisement provided that the notice pursuant to subsection a. of this section contained precise information concerning the postponement and rescheduling procedure. The postponement and rescheduling procedure shall provide that a public sale may be postponed upon not less than 24 hours' notice, and that if the public sale is postponed, it may be recommenced upon not less than 48 hours' notice without further notice of sale. A public sale may not be postponed for more than 60 days without readvertisement.

7. N.J.S.40A:2-31 is amended to read as follows:

Contents of notice.

40A:2-31. a. A notice of public sale of bonds required to be advertised pursuant to N.J.S.40A:2-30 shall set forth:

(1) the principal amount, date, denomination and maturities, and authorization for any adjustments to the maturities pursuant to subsection g. of N.J.S.40A:2-26 of the bonds offered for sale;

(2) the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds and the method of calculation of interest cost pursuant to subsection e. of N.J.S.40A:2-32;

(3) postponement provisions and other terms and conditions of such public sale;

(4) the type of sale to be conducted, through the submission of either sealed or electronic proposals; and

(5) such other provisions as may be determined by the governing body.

b. A summary of the notice of public sale of bonds required to be advertised pursuant to N.J.S.40A:2-30 shall set forth:

(1) the principal amount, date, denomination and maturities of the bonds offered for sale;

(2) the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds;

(3) a reference to where additional terms and conditions of the public sale may be obtained;

and

(4) the type of sale to be conducted, through the submission of either sealed or electronic proposals.

8. N.J.S.40A:2-32 is amended to read as follows:

Sale of bonds; bidding requirements.

40A:2-32. a. (1) All bidders shall be required to deposit a certified or cashier's or treasurer's check, drawn upon a bank or trust company, equal to not less than 2% of the bonds to secure the local unit in part from any loss resulting from the failure of the bidder to comply with the terms of his bid, or as liquidated damages for such failure.

(2) The local finance board may adopt rules to permit local units to accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as required in paragraph (1) of this subsection.

b. All sealed bids for bonds shall be publicly opened and announced, and all bids received electronically shall be received and announced, at the advertised time and place of sale, except upon a postponement and recommencement of the public sale made in accordance with the provisions of subsection b. of N.J.S.40A:2-30 in which case such bids or proposals shall be publicly opened, received and announced, as appropriate, at the postponed and recommenced date. Such bids as comply with the terms of the notice of sale shall be considered, and any bid not complying with the terms of such notice may be rejected. All bids received may be rejected.

c. Bonds of two or more issues may be sold on the basis of combined maturities, or the maturities of each issue offered for sale.

d. Bonds may be offered for sale at a single rate of interest, or bidders may be requested to name a single rate of interest, but no proposal shall be considered which offers to pay less than the principal amount of bonds offered for sale or which names a rate of interest higher than the lowest rate of interest stated in any legally acceptable proposal. As between proposals naming the same lowest rate of interest, the proposal offering to accept the least amount of bonds shall be accepted, the bonds to be accepted shall be those first maturing, and as between such proposals, the proposal offering to pay the greatest premium shall be accepted. The amount of premium bid for the bonds shall in no event exceed \$1,000.00 for the principal amount of bonds offered for sale. In order to effect the foregoing, a sufficient number of the last maturing bonds shall be of the denomination of \$1,000.00 or less.

e. (1) Bonds may be offered for sale at different rates of interest for the same issue or different rates of interest for different issues, or parts thereof, or bidders may be requested to name any such rates of interest. No proposal shall be considered under which the total loan is made at an interest cost higher than the lowest net interest cost or the true interest cost to the local unit under any legally acceptable proposal. The governing body shall specify in its notice of public sale advertised pursuant to N.J.S.40A:2-30 whether the award shall be based on net interest cost or true interest cost.

(2) The net interest cost shall be computed by adding to the total principal amount of bonds bid for, the total interest cost to maturity in accordance with such bid and by deduction therefrom of the amount of premium, if any, bid or the addition thereto of the amount of discount, if any, bid.

(3) The true interest cost shall be computed in each instance by determining the interest rate, compounded semi-annually, necessary to discount the debt service payments to the date of the bonds and to the price bid, excluding interest accrued to the delivery date.

f. The governing body may establish additional terms or conditions of sale.

g. The governing body may, by resolution, allow or otherwise delegate to a finance officer the authority to permit bidders to aggregate consecutive principal maturities for which such bidder bid the same interest rate into term bonds, provided that mandatory sinking funds for which redemptions in lieu of the principal maturities are provided. For the purposes of this subsection "term bond" means a bond that is due in a certain year but has mandatory retirement provisions for portions of the term bond on specified dates prior to the maturity date of the term bond itself.

9. N.J.S.40A:2-51 is amended to read as follows:

Issuance of refunding bonds.

40A:2-51. Any local unit may incur indebtedness, borrow money, authorize and issue refunding bonds, notwithstanding any provision or limitation contained in this chapter or in any other law, and in any amount determined to be necessary by the governing body of the local unit and approved by the Local Finance Board, except as provided in subsection c. of this section, to effect the refunding for the purpose of:

a. Paying, funding or refunding outstanding bonds of the local unit, including emergency appropriations, temporary emergency appropriations, advance funding of pension obligations as part of an early retirement program offered by the State, and amounts owing to others for taxes levied in the local unit, or any renewals or extensions thereof, or any bonds issued to fund or refund the same and whether or not prior to the maturity or earliest redemption date of the bonds

to be refunded.

b. Paying the cost of the issuance of such refunding bonds, including printing, advertising, accounting and financial and legal expenses.

c. Issuance of refunding bonds to realize debt service savings on outstanding obligations without the approval of the local finance board when authorized by conditions set forth in rules and regulations of the local finance board and upon a resolution adopted by 2/3 vote of the full membership of the governing body.

d. The sale and award of bonds by a finance officer who has been delegated that responsibility by resolution of the governing body in accordance with the advertised terms of public sale. The finance officer making any such sale shall report in writing to the governing body at the next meeting thereof as to the principal amount, interest rate and maturities of the bonds sold, along with the price obtained and the name of the purchaser.

10. N.J.S.40A:2-52 is amended to read as follows:

Authorization of refunding bonds.

40A:2-52. Refunding bonds shall be authorized by a refunding bond ordinance which shall be adopted in the manner prescribed for adoption of a bond ordinance, except that no down payment shall be required. Bonds to be paid, funded or refunded with respect to which a refunding bond ordinance has been adopted pursuant to the provisions of this chapter and not otherwise deductible shall be deducted from the gross debt of the local unit. To the extent such refunding bonds are authorized for purposes other than the refunding of outstanding bonds, such refunding bonds shall be deductible from gross debt.

C.40A:2-8.1 Issuance of bond anticipation note; rules, regulations.

11. On and after the effective date of P.L.2003, c.15, a local unit may, in anticipation of the issuance of bonds, borrow money and issue notes if the bond ordinance or subsequent resolution so provides. Any such note shall be designated as a "bond anticipation note" and shall contain a recital that it is issued for a period not exceeding one year and may be renewed from time to time for additional periods, none of which shall exceed one year, but all such notes, including renewals, shall mature and be paid not later than the first day of the fifth month following the close of the tenth fiscal year next following the date of the original notes; provided, however, that no such notes shall be renewed beyond the third anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which those notes are issued, is paid and retired on or before each subsequent anniversary date beyond which such notes are renewed from funds other than the proceeds of obligations.

The local finance board shall, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such rules and regulations as are necessary to implement the provisions of this act.

Repealer.

12. N.J.S.40A:2-8 is repealed.

13. This act shall take effect immediately.

Approved February 3, 2003.