

New Jersey. County and Municipal Law Revision  
Commission.

Transmittal letter to the Senate and General  
Assembly: and bill on proposed Title 40A,  
Municipalities and counties.

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Transmittal letter

To the Senate and General Assembly: <sup>and bill on proposed Title 40A, Municipalities and Counties.</sup>  
<sup>New Jersey.</sup>  
The County and Municipal Law Revision Commission, herewith submits Chapter 1, General Provisions; Chapter 2, Local Bond Law; Chapter 4, Local Budget Law, and Chapter 5, Local Fiscal Affairs Law of a proposed Title 40A, Municipalities and Counties.

The bill annexed hereto had been submitted heretofore to the Senate and General Assembly. It is being resubmitted without substantive change, except as hereinafter stated. The resubmission is occasioned by the request of the Director of the Division of Local Government that the effective date of the bill be January 1, 1962, rather than January 1, 1961 as contained in the original bill submitted. Director Skillman has stated that it is necessary that his department have a longer period to prepare the municipalities and counties of the State of New Jersey for operation under a revised local bond law and local budget law.

In addition to the change of effective date, this resubmitted bill has made certain technical corrections in the bill initially submitted. These corrections do not relate to substance, but merely relate to printing errors and to limited clarification of language.

The only change of substance is in section 40A:2-22, Periods of usefulness. An additional class of 5-year road has been added as a result of requests made by bond counsel and municipal engineers.

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In all other respects, the bill annexed hereto is the same as the bill originally submitted. The County and Municipal Law Revision Commission therefore respectfully recommends its enactment into law.

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November, 1960.

An act concerning counties and municipalities to be known as Chapter 1, General Provisions; Chapter 2, Local Bond Law; Chapter 4, Local Budget Law, and Chapter 5, Local Fiscal Affairs Law, Title 40A, Municipalities and Counties, and repealing certain sections of Title 40 of the Revised Statutes as amended and supplemented.

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

Section 1.

TITLE 40A

MUNICIPALITIES AND COUNTIES

CHAPTER 1. GENERAL PROVISIONS.

40A:1-1. Definitions.

The following words, as used in this title, shall have the following meanings unless the context clearly indicates a different meaning:

"budget" means the budget of a local unit;

"cash basis budget" means a budget prepared in accordance with the "Local Budget Law";

"clerk" means the clerk of a municipality or of a board of chosen freeholders;

"director" means the Director of the Division of Local Government in the Department of the Treasury;

"fiscal year" means the calendar year beginning on January 1 and ending on December 31;

"full membership of a governing body" means the number of

members of the body when all the seats are filled;

"local government board" means the Local Government Board in the Division of Local Government in the Department of the Treasury;

"local unit" means a county or municipality;

"municipal public utility" means any water, sewer, electric power or gas system, or any combination thereof, or any public parking system, or any other utility, enterprise or purpose authorized to be undertaken by a local unit from which it may receive fees, rents or other charges, or a project undertaken pursuant to the urban redevelopment law.

40A:1-2. Citation of revision.

This revision shall be deemed to be a part of the general and permanent statutes of this State. In any citation, the abbreviation "N.J.S.", meaning New Jersey Statutes, shall be equivalent to a reference to the said revision; and sections of such revision and of any subsequent revision may be cited by section number only, preceded by such abbreviation.

40A:1-3. Effective repealers.

The repeal herein of any sections of Title 40 of the Revised Statutes or any other law shall not affect any right now vested in any person pursuant to the provisions of said title, nor any remedy where an action or proceeding thereunder has heretofore been instituted and is pending on the effective date of said repeal.

40A:1-4. Revision of common law.

The said repeal of said sections of Title 40 of the Revised Statutes, as amended and supplemented, shall not of itself be deemed to revive any common law, right or remedy abolished by any provision of the said title.

40A:1-5. Construction with prior law.

The provisions of Title 40A not inconsistent with those of prior laws shall be construed as a continuation of such laws.

40A:1-6. Classification and arrangement.

The classification and arrangement of the several sections of the chapters of Title 40A have been made for the purpose of convenient reference and orderly arrangement and, therefore, no implication or presumption of a legislative construction is to be drawn therefrom.

40A:1-7. Construction of outline and analysis.

In the construction of Title 40A, or any part thereof, no outline or analysis of the contents of said title or any part thereof, no reference or cross-reference note and no head note or source note to any section of said chapters of Title 40A shall be deemed to be a part of the said chapter.

40A:1-8. Invalidity of sections.

If any chapters of Title 40A, or any section or provision thereof, shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section or provision shall, to the extent

that it is not held to be unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the said chapter or section of said title.

40A:1-9. Applicability of R.S. 1:1 et seq.

The provisions of R.S. 1:1-8 and sections R.S. 1:1-11 to R.S. 1:1-21, both inclusive, shall be applicable to the enactment and operation of the chapters of Title 40A.

CHAPTER 2. LOCAL BOND LAW.

40A:2-1. Short title.

This chapter may be cited as the "Local Bond Law".

40A:2-2. Definitions.

The following words as used in this chapter shall have the following meanings, unless the context clearly indicates a different meaning:

"assessed valuation basis" of a local unit means the average of the assessed valuations of the taxable real estate, together with the improvements for the last 3 preceding fiscal years as set forth on the annual debt statement last filed;

"bond ordinance" means an ordinance adopted as herein provided by the governing body of a local unit authorizing obligations;

"governing body" means the board of chosen freeholders of a county, or the commission, council, board or body having control of the finances of a municipality;

"local improvement" means an improvement or property, part or all of the cost of which has been, or is to be specially assessed on property;

"obligations" means bonds or notes of a local unit;

"refunding bond ordinance" means an ordinance adopted by the governing body of the local unit authorizing refunding bonds.

40A:2-3. Power to borrow money and issue obligations.

Any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing:

a. any capital improvement or property which it may lawfully make or acquire, or

b. any purpose for which it is authorized or required by law to make an appropriation, except current expenses and payment of obligations (other than those for temporary financing).

No local unit shall borrow money or issue its obligations for purposes authorized under this chapter except as provided in this chapter.

40A:2-4. Payment of obligations.

The power and obligation of a local unit to pay any and all bonds and notes issued by it pursuant to this chapter, or any act of which this chapter is a revision, shall be unlimited, and the local unit shall levy ad valorem taxes upon all the taxable property within the local unit for the payment of the principal of and interest on such bonds and notes without limitation as to rate or amount.

40A:2-5. Authorization as appropriation.

An authorization of obligations shall constitute an appropriation of the proceeds thereof for the purposes stated in the bond ordinance.

**40A:2-6. Debt limitation**

No bond ordinance shall be finally adopted if it appears from the supplemental debt statement required by this chapter that the percentage of net debt as stated therein pursuant to 40A:2-42 exceeds 4%, in the case of a county, or 7%, in the case of a municipality.

**40A:2-7. Exceptions to debt limitation**

A bond ordinance may be finally adopted notwithstanding section 40A:2-6 if such ordinance authorizes obligations solely for one of the following:

a. to meet an expenditure which is the result of fire, flood or other disaster and if the local government board shall have determined that the expenditure is of such character, and shall have caused such determination to have been endorsed on a certified copy of the bond ordinance as passed on first reading; or

b. to fund, renew, extend or retire notes issued or authorized pursuant to this chapter or any act of which this chapter is a revision; or

c. purposes permitted by this chapter if (1) it has been found by order of the State Department of Health, which is hereby authorized to make such order in a proper case, that the expenditure and every part thereof is necessary to protect the public health and to prevent or suppress a present menace to the public health of sufficient gravity to justify the incurrence of debt in excess of statutory limitations, and that no less expensive method of preventing or suppressing such menace exists; and (2) the principal amount of such obligations is not in excess of the amount determined by the local government board to be necessary ~~therefore~~ and the local government board shall have caused such determination to be endorsed on a certified copy of the bond ordinance as passed on first reading; or

d. purposes permitted by this chapter, if the local government board shall have caused its consent to be endorsed upon a certified copy of the bond ordinance as passed upon first reading, which consent said local government board shall cause to be so endorsed thereon, if it shall be satisfied and shall have determined that each of the purposes or improvements for which such obligations are authorized are in the public interest and are for the health, welfare, convenience or betterment of the inhabitants of such local unit, and that the amounts to be expended for each of the purposes or improvements to be financed pursuant to such bond ordinance are not unreasonable or exorbitant and that the issuance of such obligations will not materially impair the credit of such local unit or substantially reduce its ability to pay punctually the principal of and interest on its debts and to supply other essential public improvements and services; or

e. purposes permitted by this chapter when the expenditure is to be made for constructing or reconstructing dikes, bulkheads, jetties or similar devices to prevent the encroachment of the sea, and if the local government board shall have determined that an emergency exists or is threatened which makes necessary the construction or reconstruction of such dikes, bulkheads, jetties or other devices for the preservation of life or property;

f. purposes permitted by this chapter if the amount of such obligations does not exceed in the aggregate (1) the amount available, if any, for the issuance of obligations by the local unit upon the effective date of this chapter pursuant to section 40:1-16(d) of the Revised Statutes, less (2) the amount of other obligations authorized prior to the adoption of such bond ordinance pursuant to paragraphs d, f and g of this section; or

g. purposes permitted by this chapter if the amount of such obligations and all other obligations authorized pursuant to this subsection during the same fiscal year does not exceed an amount equal to  $\frac{2}{3}$  of the amount of obligations for which no deduction was included in the annual debt statement of the local unit for the preceding fiscal year and for the payment of which an appropriation was made in the budget of the local unit for such year, plus the amount raised in such year by the local unit for the payment of bonds or notes of any school district.

h. purposes which are self-liquidating, if such obligations are deductible from gross debt.

e. purposes permitted by this chapter when the expenditure is to be made for constructing or reconstructing dikes, bulkheads, jetties or similar devices to prevent the encroachment of the sea, and if the local government board shall have determined that an emergency exists or is threatened which makes necessary the construction or reconstruction of such dikes, bulkheads, jetties or other devices for the preservation of life or property;

f. purposes permitted by this chapter if the amount of such obligations does not exceed in the aggregate (1) the amount available, if any, for the issuance of obligations by the local unit upon the effective date of this chapter pursuant to section 40:1-16(d) of the Revised Statutes, less (2) the amount of other obligations authorized prior to the adoption of such bond ordinance pursuant to paragraphs d, f and g of this section; or

g. purposes permitted by this chapter if the amount of such obligations and all other obligations authorized pursuant to this subsection during the same fiscal year does not exceed an amount equal to  $\frac{2}{3}$  of the amount of obligations for which no deduction was included in the annual debt statement of the local unit for the preceding fiscal year and for the payment of which an appropriation was made in the budget of the local unit for such year, plus the amount raised in such year by the local unit for the payment of bonds or notes of any school district.

h. purposes which are self-liquidating, if such obligations are deductible from gross debt.

**40A:2-8. Short term financing**

a. A local unit, in anticipation of the issuance of bonds, may borrow money and issue negotiable notes if the bond ordinance or subsequent resolution so provides. Any such note shall be designated "bond anticipation note" and shall contain a recital that it is issued in anticipation of the issuance of bonds. Such notes may be issued for a period of not exceeding one year and may be renewed from time to time for periods of not exceeding one year, but all such notes, including renewals, shall mature and be paid not later than the second anniversary of the date of the original notes, except that:

1. such notes shall mature and be paid not later than the first day of the fifth month of the second fiscal year next following the date of the original notes, provided that an amount of such notes equal to not less than the first legally payable installment of the bonds in anticipation of which such notes are issued has been paid and retired not later than the end of said second fiscal year from funds other than the proceeds of obligations; and

2. notes issued to finance local improvements and in an amount not exceeding the special assessments then confirmed and unpaid and not delinquent shall mature and be paid not later than the fifth anniversary of the date of the original notes.

b. A local unit may finance any improvement which it has power to finance by obligations issued under this chapter by the issuance of "capital notes". The aggregate amount of all such notes outstanding at any one time shall not exceed the lesser of \$20,000 or 1% of the assessed valuation basis. Such notes shall be authorized in the same manner as bond anticipation notes and shall be payable from funds other than the proceeds of obligations within 5 years from the date of the issuance of the first of said notes and not less than 20% thereof shall be paid in each succeeding year. The local unit shall provide for the payment of the principal of, and interest on such notes falling due in each year.

**40A:2-9. Interim obligations**

After the sale of obligations, and pending the preparation of the definitive obligations, a local unit may issue interim obligations to the purchasers of such obligations. The definitive obligations, when prepared, may be delivered to the holders of such interim obligations in exchange therefor.

**40A:2-10. Filing of supplemental debt statement required**

Prior to the passage on first reading of any bond ordinance, or ordinance amending a bond ordinance, except one amending only matters which are not required to be contained in a bond ordinance or which does not increase the total amount of the obligations authorized by such bond 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.

**40A:2-11. Down payment**

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 proceeds of 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 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.

**40A:2-12. Contents of bond ordinance**

A bond ordinance shall contain in substance the following:

a. an authorization for the issuance of obligations, stating in brief and general terms sufficient for reasonable identification the purpose or purposes for which the obligations are to be issued, a statement of the estimated maximum amount of bonds or notes to be issued, and the estimated cost of such purpose or purposes, but related improvements or properties may be treated as one improvement or property;

b. a determination of the period of usefulness of the purpose within the limitations of this chapter or, if issued for several purposes, a determination of the average period of usefulness, taking into consideration the respective amounts of obligations authorized for the said several purposes;

c. a determination that (1) the supplemental debt statement has been filed in the office of the clerk, (2) such statement shows that the gross debt as defined in this chapter is increased by \$..... or is not increased, and (3) the obligations authorized by the bond ordinance will be within debt limitations prescribed by this chapter, or the issuance thereof is permitted by an exception to said limitations naming the particular section, paragraph or law providing such exception;

d. a statement of the aggregate amount for items of expense permitted under 40A:2-20.

40A:2-13. Multi-purpose bond ordinances.

Any two or more purposes for which this chapter authorizes obligations may be provided for in a single bond ordinance and may be combined in a single issue of obligations.

40A:2-14. Local improvement obligations.

a. Any bond ordinance to finance any local improvement, in addition to other required provisions, shall contain:

1. a determination of the amount or the percentage of the cost which the local unit will contribute to the payment of the cost of the local improvement;

2. a statement of the number of annual installments in which the special assessments may be paid, not exceeding 10, or the average thereof if more than one local improvement is being financed; and

3. a statement of the estimated maximum amount of the special assessments.

b. Before or after confirmation of special assessments, a local unit may authorize and issue obligations to finance a local improvement, except that

1. a local unit may not issue bonds to finance its share of the cost of a local improvement in excess of the amount or percentage of contribution;

2. bonds to finance the cost of such local improvement to be assessed against properties may not be issued in excess of the stated estimated maximum amount of special assessments, or the amount of special assessments then confirmed, unpaid and not delinquent.

c. Bonds to finance that part of the cost of a local improvement which is to be assessed on property shall not be issued to finance any other additional purpose and shall include in the title thereof the word "assessment".

40A:2-15. Power to make special covenants in bond.

Any bond ordinance to finance any cost or expense of a municipal public utility, or any ordinance amendatory thereof or supplemental thereto adopted prior to the issuance of obligations, may contain the following covenants with the holders of such obligations which shall be observed and performed by the local unit, notwithstanding the provisions of this or any other law:

a. As to the use and disposition of revenues derived or to be derived from the operation of the whole or any part of any

municipal public utility, including any improvements thereto or extensions thereof thereafter constructed or acquired, whether said obligations are authorized to finance construction, improvement, enlargement, reconstruction, extension or acquisition of such or any other municipal public utility;

b. Pledging to the punctual payment of the principal of and interest on such obligations, all or any part of such revenues;

c. As to the setting aside out of such revenues of one or more reserve funds, and the regulation and disposition thereof;

d. As to the fixing and collection of such rates, rentals and other charges for connection with or the use of any such municipal public utility, including any improvements thereto or extensions thereof thereafter constructed or acquired as will annually produce revenues sufficient to provide for all or any lesser part described in said ordinance of the following:

1. expenses of operation, maintenance and repair of such utility and any other such utilities,

2. payment of the principal of and interest on said obligations,

3. such reserve funds as may have been provided for in said ordinance,

4. payment of any mortgage or mortgages subject to which such utility or any other such utilities, or any part thereof may have been acquired, and

5. payment of any obligations having a lien on the revenues of such utility or any other such utilities, or any part thereof prior to or on a parity with the lien of such obligations;

e. As to the procedure, if any, by which the terms of any covenant with the holders of such obligations may be amended or abrogated, the amount of obligations the holders of which must consent thereto and the manner in which such consent may be given.

Such obligations may contain such recitals of or reference to any such covenants as any resolution determining their form may provide.

40A:2-16. Matters not in bond ordinance.

All matters not required to be contained in the bond ordinance may be determined by subsequent resolutions passed by the recorded affirmative votes of a majority of the full membership of the governing body.

40A:2-17. Procedures for adoption of bond ordinance.

a. Introduction.

A bond ordinance shall be introduced in writing at a meeting of the governing body and shall be passed upon first reading, which may be by title.

**b. Publication, hearing and adoption.**

The bond ordinance shall be published after first reading, together with notice of the introduction thereof and of the date, which shall be at least 10 days after introduction and first reading, and the time and place of further consideration for final passage, which may be at an adjournment of such meeting or another meeting.

Such publication shall be at least one week prior to the date for further consideration. At the time and place so advertised, or at any time and place to which such meeting or further consideration shall from time to time be adjourned, such bond ordinance shall be read in full and all persons interested shall be given an opportunity to be heard.

After the duplicate of the supplemental debt statement has been filed in the office of the director, and after such hearing, the governing body may proceed to amend the bond ordinance and thereupon finally adopt or reject it, with or without amendments.

If any amendment is adopted substantially altering matters required by this chapter to be contained in the bond ordinance, such amended bond ordinance shall not be finally adopted until at least one week thereafter and until it shall have been published at least 2 days prior to the date for further consideration, together with notice of the date, time and place at which it will be further considered for final adoption. At the time and place so advertised, or at any time and place to which such meeting or further consideration shall from time to time be adjourned, such amended bond ordinance shall be read in full. All persons interested shall again be given an opportunity to be heard. After such hearing, the governing body may proceed to reject, finally adopt or further amend such bond ordinance.

A bond ordinance shall be finally adopted by the recorded affirmative votes of at least  $\frac{2}{3}$  of the full membership of the governing body. In a local unit in which the approval of any officer is required to make an ordinance or resolution effective, such bond ordinance shall be so approved, or passed over veto before it shall be published after final adoption.

**c. Final publication with statement.**

Every bond ordinance shall be published in full after final adoption, together with a statement in substantially the following form:

STATEMENT

The bond ordinance published herewith has been finally adopted and the 29-day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law has begun to run from the date of the first publication of this statement.

.....  
Clerk

**40A:2-18. Effective date of bond ordinance**

A bond ordinance shall take effect 20 days after the first publication thereof after final adoption. A bond ordinance which authorizes obligations to fund, refund, renew, extend or retire obligations issued or authorized pursuant to this chapter, or notes or bonds issued or authorized pursuant to any act of which this chapter is a revision shall not be subject to referendum.

**40A:2-19. Publications**

Publications required by this chapter shall, in the case of a municipality, be in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper published in the county and circulating in the municipality. In the case of a county, publications shall be in a newspaper published at the county seat, if there be one, and if not, in a newspaper published in the county and having a substantial circulation therein.

**40A:2-20. Expenses included in cost**

The cost of an improvement or property may include interest on obligations until the end of the fiscal year in which the obligations are issued or until 6 months after the completion of construction or acquisition, and architect's fees, accounting, engineering and inspection costs, legal expenses, costs of authorizing, selling and issuing obligations, preliminary planning, test and survey expenses, and a reasonable proportion of the compensation and expenses of employees of a local unit in connection with such improvement or property.

**40A:2-21. Minimum period of usefulness**

No local unit shall authorize obligations for any improvement or purpose having a period of usefulness of less than 5 years.

**40A:2-22. Periods of usefulness**

The governing body of the local unit shall determine the period of usefulness of any purpose according to its reasonable life computed from the date of the bonds, which period shall not be greater than the following:

- a. Buildings and structures.
  1. Bridges, including retaining walls and approaches, or permanent structures of brick, stone, concrete or metal, or similar durable construction, 30 years.

2. Buildings, including the original furnishings and equipment therefor:

Class A: A building, of which all walls, floor, partitions, stairs and roof are wholly of incombustible material, except the window frames, doors, top flooring and wooden handrails on the stairs, 40 years;

Class B: A building, the outer walls of which are wholly of incombustible material, except the window frames and doors, 30 years;

Class C: A building which does not meet the requirements of Class A or Class B, 20 years.

3. Building or structures acquired, substantially reconstructed or additions thereto, one-half the period fixed in this subsection for such buildings or structures.

4. Additional furnishings, 5 years.

b. Marine improvements.

1. Harbor improvements, docks or marine terminals, 40 years.

2. Dikes, bulkheads, jetties or similar devices of stone, concrete or metal, 15 years; of wood or partly of wood, 10 years.

c. Additional equipment and machinery.

1. Additional or replacement equipment and machinery, 15 years.

2. Voting machines, 15 years.

d. Real property.

1. Acquisition for any public purpose of lands or riparian rights, or both, and the original dredging, grading, draining or planting thereof, 40 years.

2. Improvement of airport, cemetery, golf course, park, playground, 15 years.

3. Stadia of concrete or other incombustible materials, 20 years.

e. Streets and thoroughfares.

1. Elimination of grade crossings, 35 years.

2. Streets or roads.

Class A:

Rigid pavement. A pavement of not less than 8 inches of cement concrete or a 6-inch cement concrete base with not less than 3-inch bituminous concrete surface course, or equivalent wearing surface, 20 years.

Flexible pavement. A pavement not less than 10 inches in depth consisting of 5-inch macadam base, 3-inch modified penetration macadam and 3-inch of bituminous concrete surface course or other pavements of equivalent strength, 20 years.

Class B:

Mixed surface-treated road. An 8-inch surface of gravel, stone or other selected material under partial control mixed with cement or lime and fly ash, 6 inches in compacted thickness with bituminous surface treatment and cover, 10 years.

Bituminous penetration road. A 5-inch gravel or stone base course and a 3-inch stone course bound with a bituminous or equivalent binder, 10 years.

Class C:

Mixed bituminous road. An 8-inch surface of gravel, stone, or other selected material under partial control mixed with bituminous material one inch or more in compacted thickness, 5 years.

Penetration macadam road. A road of sand, gravel or water bound macadem, or surfacing with penetration macadam, 5 years.

3. Sidewalks, curbs and gutters of stone, concrete or brick, 10 years.

f. Utilities and municipal systems.

1. Sewer system, whether sanitary or storm water, water supply or distribution system, 40 years.
2. Electric light, power or gas systems, garbage, refuse or ashes incinerator or disposal plant, 25 years.
3. Communication and signal systems, 10 years.
4. House connections to publicly owned gas, water or sewer systems from the service main in the street to the curb or property lines where not part of original installation, 5 years.

g. Vehicles and apparatus.

1. Fire engines, apparatus and equipment, when purchased new, but not fire equipment purchased separately, 10 years.
2. Automotive vehicles, including original apparatus and equipment (other than passenger cars and stationwagons), when purchased new, 5 years.

h. Any purpose, except vehicles, not included in the foregoing, for which obligations may be issued, 15 years.

40A:2-23. Interest and place of payment of obligations.

All obligations may bear interest at a rate not exceeding 6% per annum, payable as therein provided and within or without the State.

**40A:2-24. Form of obligations**

Notes may be issued payable to bearer, with interest payable to bearer or on presentation for endorsement or may be in registered form. Notes payable to bearer may be made subject to registration and the principal of and interest on notes so registered shall be payable to the registered owner.

Bonds may be issued either in coupon or registered form. Bonds in coupon form may contain provision for registration as to principal only and as to both principal and interest. Bonds issued in fully registered form or in coupon form with provision for registration as to both principal and interest may contain provision for conversion into bonds in coupon form at the request and expense of the registered owner or his duly authorized attorney or legal representative.

Any obligations may be issued subject to redemption prior to maturity with or without premium, or at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the governing body.

**40A:2-25. Execution and delivery of obligations**

Obligations shall be executed in the name of the local unit by the manual or facsimile signatures of such officials, including a financial officer, as may be designated by resolution, or if none be designated, of the director of the board of chosen freeholders of a county or the mayor, or other executive officer of the municipality and of a financial officer of the local unit, and shall be under the seal of the local unit affixed, imprinted or reproduced thereon and attested by the manual signature of the clerk. Coupons attached to any obligation shall be authenticated by the facsimile or manual signature of the financial officer whose manual or facsimile signature appears upon the obligation.

Delivery of obligations fully executed by the officers holding office at the time of such execution shall be valid, notwithstanding any change in such officers or in the seal occurring after such execution.

40A:2-26. Maturities of bonds.

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 2 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 2 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. If bonds for financing a purpose for which no deduction may be taken shall be combined with bonds for financing a purpose for which a deduction may be taken in an annual or supplemental debt statement, no deduction shall be taken for any of such bonds in computing net debt.

**40A:2-27. Sale of bonds**

All bonds shall be sold at public sale upon sealed proposals, except that bonds may be sold at private sale:

- a. without any previous public offering
  1. if constituting all or part of an authorized issue of \$20,000 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; or

b. if no legally acceptable bid is received at advertised public offering, such bonds or any of them may be sold within 30 days after the advertised date for public bidding, provided, however, that no bonds shall bear interest at any rate of interest which is higher than the rate or maximum rate specified in the notice of sale, nor contain substantially different provisions from those specified in said notice.

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.

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

**40A:2-28. Sale of bond anticipation notes or capital notes**

All bond anticipation notes or capital notes may be sold at private sale pursuant to resolution of the governing body, or by a financial officer of the local unit expressly designated by resolution to sell such notes. The financial 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 notes sold, the price obtained and the name of the purchaser.

**40A:2-29. Minimum price for obligations**

No obligations shall be sold for less than par value and interest accrued to date of delivery.

**40A:2-30. Publication of notice of sale of bonds**

A public sale of bonds shall be advertised at least once at least 7 days prior thereto in a newspaper qualified for publication of a bond ordinance of the local unit and in a publication carrying municipal bond notices and devoted primarily to financial news or the subject of State and municipal bonds and published in the City of New York or in New Jersey.

**40A:2-31. Contents of notice of sale of bonds**

A notice of public sale of bonds shall set forth:

- a. the principal amount, date, denomination and maturities of the bonds offered for sale;
- b. the rate or rates of interest or maximum rate or rates of interest to be borne by the bonds;
- c. the terms and conditions of such public sale;
- d. such other provisions as may be determined by the governing body.

40A:2-32. Sale of bonds.

a. 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.

b. All bids for bonds shall be publicly opened and announced at the advertised time and place of sale. 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 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 or less.

e. 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 which offers to pay an amount less than the principal amount of bonds offered for sale or under which the total loan is made at an interest cost higher than the lowest net interest cost to the local unit under any legally acceptable proposal. Such net interest cost shall be computed in each instance 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.

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

40A:2-33. Sale of bonds at one time or in installments.

Any issue of bonds may be sold at one time or in installments at different times. The maturities of an installment of bonds offered for sale when combined with all maturities of the issue previously sold, shall be such as to comply with requirements as to maturities of a single issue of bonds. Any unsold part of an issue or installment may be sold notwithstanding that the maturities thereof, when considered alone, do not comply with such requirements.

**40A:2-34. Power of financial officer to sell bonds**

The governing body, by resolution, may designate a financial officer of the local unit to sell and award bonds in accordance with the advertised terms of public sale. The financial 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, the price obtained and the name of the purchaser.

**40A:2-35. Conversion, reconversion and reissuance of bonds**

Unmatured bonds heretofore or hereafter issued by a local unit under this chapter or any other law, and containing provisions for registration, conversion or reconversion, or issued as bonds in registered form or coupon form without any of such provisions, shall be registered, converted, reconverted or replaced as herein provided at the written request and expense of the holder of bonds in bearer form or of the registered owner or his authorized attorney or legal representative.

Coupon bonds shall be registered as to both principal and interest by removing and cancelling all unmatured coupons and by executing conversion certificates written or stamped on the bonds. Coupon bonds converted into bonds registered as to both principal and interest shall be reconverted into bonds in coupon form by the registration of such bonds to bearer, or the preparation and substitution of new bonds bearing the same rate of interest and of the same tenor as the original bonds, and by attaching to such bonds new coupons for the unmatured interest of the same form and tenor as those originally authorized. Any such bonds may be again converted or reconverted from time to time.

Fully registered bonds shall be converted into bonds in coupon form of the same or different denominations by preparation and substitution of new bonds with all privileges of registration, conversion and reconversion, and bearing the same rate of interest and being otherwise of the same tenor as the original bonds.

Any conversion or reconversion of fully registered bonds shall be pursuant to resolution of the governing body, which shall set forth the written request of the registered owner or his authorized attorney or legal representative, and the date, maturities, interest rate, denomination and numbers of the old and the new bonds. Any new bonds issued hereunder shall be signed by such officers in office at the time of such conversion or reconversion, or the authorization thereof, and any new coupons shall be authenticated by the facsimile signature of such present or former financial officer as the governing body may designate.

The governing body, by resolution, may authorize a new coupon bond to replace any outstanding bond prior to its maturity. The new bond shall be of substantially the same form and tenor as the outstanding bond, except that (1) the new bond may be a bond payable to bearer with 2 or more coupons attached for the payment to the several bearers thereof of a portion of each installment of the interest to become due thereon at or prior to the maturity thereof, (2) the rate or rates of interest on the

new bond and the aggregate amount of any installment of interest to become due thereon at or prior to maturity thereof may be less than such rate and aggregate amount, respectively, with regard to the outstanding bond, and (3) the new bond shall be signed by such officers in office at the time such new bond is issued or is authorized to be issued, and the new coupons shall bear the facsimile signature of such present or former financial officer as the governing body may designate, and (4) the new bond may be made registerable as to principal only, or as to both principal and all interest payable thereon, or as to both principal and interest represented by any particular coupon or coupons. There shall be endorsed on the new bond substantially the following statement: "This bond has been revised as to form and reissued as of the \_\_\_\_\_ day of \_\_\_\_\_, 19—", in which statement shall be inserted the date of issuance of the new bond or any earlier date not previous to the last preceding date of payment of interest on the outstanding bond. A new bond shall not be issued unless the outstanding bond shall be presented and surrendered with a written request for its re-issuance. Upon effecting the issuance of any new bond, the officer effecting the same shall execute and file a certificate identifying the bond in the office of the clerk.

**40A:2-36. Lost, destroyed or defaced obligations**

Lost, destroyed or defaced obligations shall be reissued in the form and tenor of the original obligations upon supplying to the satisfaction of the governing body (a) proof of ownership, (b) proof of loss or destruction, (c) adequate surety bond, (d) payment of cost of preparation of new obligations, and (e) the defaced or partially destroyed obligations. The new obligations shall be issued pursuant to resolution of the governing body setting forth the written request of the holder or owner or his authorized attorney or legal representative, of the lost, destroyed or defaced obligations and the date, maturity, interest rate, denomination and numbers of such obligations. The new obligations shall be signed by such officers in office at the time of the issuance or the authorization thereof, and the new coupons, if any, shall be authenticated by the facsimile signature of such present or former financial officer as the governing body may designate.

**40A:2-37. Contracts to be financed by obligations**

The governing body shall not make any contract under which payments are to be financed pursuant to a bond ordinance until such bond ordinance shall be effective.

**40A:2-38. Prohibited agreements**

In the issuance or sale of obligations, it shall be unlawful for the governing body or any member thereof or any official:

a. to pay or agree to pay, directly or indirectly, any bonus, commission, fee, or other compensation or consideration for the issuance or for the sale of obligations, and any amount so paid may be recovered for the local unit;

b. to make any agreement with any purchaser or bidder, or his representative, regarding the deposit or disposition of any moneys received or to be received from such sale and every such agreement shall be void;

c. to make any agreement pertaining to the sale of obligations which contains provisions as to any other matter, and such sale and any such agreement shall be void;

d. to make any agreement or "service contract" with respect to publication of notice of sale and printing of bonds or notes, the providing of a legal opinion or for any of such services, whether or not accompanied by an offer to bid for or purchase obligations. Any such agreement or contract shall be void, and any amount so paid may be recovered for the local unit except, however, agreements made directly with a newspaper, bond printer or an attorney licensed to practice law in the state in which he has his office.

A municipal bond dealer, banker, or financial expert may be engaged or employed as a financial advisor to provide financial services in connection with the sale of obligations, including the preparation of a bidding circular or prospectus, but no such financial advisor shall purchase any such obligations at any public or private sale, but any such purchase shall not affect the validity of the obligations and the local unit shall recover any compensation and profit resulting therefrom to such financial advisor.

**40A:2-39. Application of proceeds**

The proceeds of the sale of obligations shall be applied only to the purposes for which such obligations are authorized. If, for any reason, any part of such proceeds are not necessary for such purposes, such part shall be used to pay such outstanding obligations, or if in the opinion of the governing body it is in the best interest of the local unit such part may be appropriated to and used to finance the cost of any other purpose or purposes for which bonds may be issued.

**40A:2-40. Annual debt statement**

The chief financial officer of each local unit shall, before the end of the first month of each fiscal year, make and file in the office of the clerk and of the director an annual debt statement, under oath, as of the last day of the preceding fiscal year, and such statement shall be a public record open to inspection.

**40A:2-41. Contents of annual debt statement**

The annual debt statement shall be in form prescribed by the director and shall set forth as to the local unit:

- a. Gross debt;
- b. Deductions;
- c. Net debt;
- d. The assessed valuations of the taxable real estate, together with improvements, for the last 3 preceding fiscal years, and the average thereof;
- e. Net debt expressed as a percentage of such average of assessed valuations; and
- f. Any other information or detail required by law or by the director. The amount of any item which is indefinite or unascertainable may be estimated.

**40A:2-42. Supplemental debt statement**

A supplemental debt statement shall be in form prescribed by the director and shall set forth as to the local unit:

- a. The net debt as stated in the annual debt statement or revision thereof last filed; the amount by which such net debt has been increased by the authorization of additional debt or decreased by payment of outstanding debt or reduction of the authorization to incur debt;
- b. The amounts and purposes separately itemized of obligations about to be authorized, together with any deductions which may be made on account of any such item;
- c. The net debt of the local unit as determined by addition of the amounts stated in subsections a and b;

d. The assessed valuations of the taxable real estate, together with improvements for the last 3 preceding years, and the average thereof as stated in the annual debt statement or revision thereof last filed;

e. Net debt expressed as a percentage of said average of assessed valuations.

**40A:2-43. Gross debt**

Gross debt shall include all bonds and notes issued and authorized but not issued pursuant to this or any other law by the local unit, or guaranteed by the local unit, except tax anticipation notes, emergency notes, special emergency notes and utility revenue notes. Gross debt of a municipality shall also include that amount of the total of all the bonds and notes issued and authorized but not issued by any school district, including the area of the municipality, which results from the application to such total of the ratio which its assessed valuation basis bears to the sum of the assessed valuation basis of each municipality in any such school district.

**40A:2-44. Deductions from gross debt**

There shall be deducted from the gross debt of the local unit, to the extent included therein, the amount of bonds or notes issued and authorized but not issued:

a. for school purposes by a municipality or by a school district with boundaries co-extensive with such municipality or of which such municipality is a part (other than a regional school district) to the extent of 6% of the assessed valuation basis of such municipality, and in addition thereto, if such municipality includes or is within a school district (other than a regional school district) which has title to an approved high school to the extent of an additional 2% of said assessed valuation basis, or if such a school district does not have title to such approved high school, to the extent of obligations authorized to provide such high school but not more than said 2% ;

b. for school purposes by a regional school district;

c. for purposes which are self-liquidating as provided in this chapter, but only to the extent permitted by this chapter;

d. by a public body other than the local unit the principal and interest of which is guaranteed by the local unit but only to the extent permitted by this chapter or any other law;

e. US bond anticipation notes in anticipation of bonds then authorized or issued;

f. for which there are funds on hand or sinking funds applicable only to the payment of any part of the gross debt not otherwise deductible, including the proceeds of any bonds or notes held for that purpose and any accounts receivable or amounts which may be payable from the Federal government, this State or any public instrumentality thereof, which funds are applicable only to the payment of any part of the gross debt not otherwise deductible;

g. and for any other purpose for which a deduction is authorized by law.

No deduction shall be allowed for any obligations authorized or issued to finance a purpose for which a deduction is allowed combined with a purpose for which a deduction may not be taken or for any obligation issued to fund or refund bonds or notes if any of the outstanding bonds or notes paid, funded or refunded shall have been issued for or combined with a purpose or indebtedness for which no deduction can be taken under this chapter.

#### **40A:2-45. Self-liquidating purposes**

Any municipal public utility shall be deemed to be a self-liquidating purpose if the cash receipts from fees, rents or other charges in a fiscal year are sufficient to meet operating and maintenance costs (exclusive of depreciation and obsolescence) and interest and debt redemption charges payable or accruing in such year without recourse to general taxation or special assessments on property specially benefited. There may be included in such cash receipts any fees, rents and other charges collected from other departments or utilities of the local unit at a rate not in excess of the fees, rents or other charges to other consumers, customers or users; if there be no other consumers, customers or users properly comparable, then not in excess of the comparable fees, rents and other charges of privately owned or operated utilities or enterprises.

#### **40A:2-46. Self-liquidating purposes during construction**

Any municipal public utility shall be deemed to be self-liquidating during the period of construction or acquisition and until it shall have been in operation for at least one fiscal year if the local government board or, in the case of a project undertaken pursuant to the urban redevelopment law, the Division of Planning and Development in the Department of Conservation and Economic Development shall have determined by order on the basis of a project report that the said municipal public utility will have an income sufficient to make it a self-liquidating purpose.

**40A:2-47. Self-liquidating improvements and extensions**

Obligations to finance an improvement or extension of a municipal public utility shall be deemed to be for a self-liquidating purpose in the fiscal year in which the obligations to finance the same shall have been authorized or issued:

a. if such utility would have been self-liquidating during the last fiscal year had there been included in the interest and debt redemption charges for such year an amount equal to interest for one year at the rate of  $4\frac{1}{2}\%$  per annum on such obligations, and the amount of the first installment of serial bonds legally issuable to finance such improvement or extension plus an amount for charges as aforesaid with respect to all bonds and notes authorized but not issued for such utility;

b. if the local government board or, in the case of a project undertaken pursuant to the urban redevelopment law, the Division of Planning and Development in the Department of Conservation and Economic Development, shall determine by order on the basis of a project report that said utility would have been self-liquidating during the last preceding fiscal year if there had been included interest and debt redemption charges for said obligations and prospective income from said improvement or extension, or that said utility would have been self-liquidating if charges had been collected in said last preceding fiscal year as prescribed in said report.

The local government board or, in the case of a project undertaken pursuant to the urban redevelopment law, the Division of Planning and Development in the Department of Conservation and Economic Development are hereby authorized and empowered to make any determination required by this chapter.

**40A:2-48. Self-liquidating utility deficits**

The amount of the deficit in the income of a self-liquidating municipal public utility applicable to interest and debt redemption, or the prospective amount of such deficit as determined by the local government board or, in the case of a project undertaken pursuant to the urban redevelopment law, the Division of Planning and Development in the Department of Conservation and Economic Development, shall be capitalized at 5% and the capital sum so determined shall not be deductible from the gross debt.

**40A:2-49. Conclusiveness of authorization of obligations**

After 20 days after publication after final passage of a bond ordinance, the following shall be conclusively presumed:

a. the accuracy, correctness and sufficiency of any annual or supplemental debt statement filed in connection therewith;

b. any recitals or statements of fact contained in such ordinance or preamble or recital thereof;

c. determinations in said ordinance as to purposes for which said obligations are authorized, the period or average period of usefulness, the maturities of any obligations, and the validity of the purpose or purposes for which authorized;

d. the due and regular introduction, publication and final passage and adoption of such ordinance;

e. the compliance with the provisions of this chapter and every other law of such ordinance and all matters in connection therewith, and the issuance of obligations authorized thereby or pursuant thereto by the local unit.

The local unit and all other persons interested shall forever be estopped from denying that such ordinance or its final adoption or issuance of obligations thereunder do not comply with the provisions of this and every other law, or from questioning in any manner the validity of such ordinance or any obligations issued thereunder in any action or proceeding commenced after 20 days shall have elapsed from publication of such ordinance after final passage.

**40A:2-50. Conclusiveness of validity of obligations**

After issuance, all obligations shall be conclusively presumed to be fully authorized and issued by all the laws of this State, and any person shall be estopped from questioning their sale, execution or delivery by the local unit.

**40A:2-51. Issuance of refunding bonds**

Any local unit may incur indebtedness, borrow money, authorize and issue negotiable refunding bonds, notwithstanding any provision or limitation contained in this chapter or in any other law, for the purpose of:

a. paying, funding or refunding outstanding bonds or notes or any other indebtedness or liability whatsoever of the local unit, including also emergency appropriations and amounts owing to others for taxes levied in the local unit, or any renewals or extensions thereof, or any bonds or notes issued to fund or refund the same, and

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

**40A:2-52. Authorization of refunding bonds**

Refunding bonds shall be authorized by a refunding bond ordinance which shall be adopted in the manner prescribed for adoption of a bond ordinance. No supplemental debt statement need be made or filed with respect to such ordinance or sum appropriated thereby as a down payment.

**40A:2-53. Contents of refunding bond ordinance**

A refunding bond ordinance shall contain in substance the following:

- a. an authorization of the issuance of the refunding bonds, stating in brief and general terms sufficient for reasonable identification the purpose or purposes for which said bonds are to be issued and the bonds, notes, indebtedness or liability to be paid, funded or refunded, and the amount of the cost of issuing such bonds which is included in the authorized principal amount thereof;
- b. the principal amount of refunding bonds thereby authorized;
- c. the maturity date or dates of such refunding bonds; and
- d. such further provisions as the local government board may require or approve as to deposit, securing, regulation, investment, reinvestment, disposition or application of the proceeds of such refunding bonds, and matters in connection therewith, including the officer or officers of the local unit to be responsible therefor, and amortization or other provision for premiums or other losses incurred.

The refunding bond ordinance may contain provisions, which shall be a part of the contract with the holders of such refunding bonds, as to the establishment of, and the making of appropriations for, reserves or sinking funds and the amount, source, securing, regulation and disposition thereof. Any matter relating to refunding bonds and not required to be contained in the refunding bond ordinance may be performed or determined by subsequent resolution of the governing body, or the performance or determination thereof delegated by resolution to a financial officer of the local unit.

**40A:2-54. Special refunding program**

If the local government board shall find that a special refunding program is in the public interest and is based upon a sound financial plan for equalizing or reducing the debt service of a local unit, a refunding bond ordinance may authorize refunding bonds for

refunding some or all of any bonds of the local unit which will become due over a period of not exceeding 5 years. Such refunding bond ordinance shall provide for the sale annually during such period, or at such other time or times as the local government board may approve, of blocks or series of refunding bonds to provide funds to pay the bonds and interest to be refunded and such ordinance may also provide for the investment and application of the proceeds of such refunding bonds, pending the maturity or maturities of the bonds to be refunded and for reinvestment or other application of income and realizations upon such investments.

Such investment and reinvestment shall be restricted to (a) purchase and holding of unlimited bonds or notes or other obligations (whether or not interest-bearing) issued or unconditionally guaranteed as to both principal and interest by the United States of America and which mature or which the United States of America is on demand obligated to pay, not later than the end of the respective calendar years of the maturities of the several bonds to be refunded, or (b) purchase and cancellation of any of the bonds to be refunded in the manner or mode of procedure prescribed by the Fiscal Affairs Law.

**40A:2-55. Filing and effective date of refunding bond ordinance**

A certified copy of any refunding bond ordinance shall be filed with the director before final passage, together with a complete statement in form prescribed by the director and signed by the chief financial officer of the local unit as to the outstanding bonds or notes or indebtedness or liability to be paid, funded or refunded by issuance of the refunding bonds. No refunding bond ordinance or any resolution performing, determining or authorizing matters or acts in connection with refunding bonds shall take effect until the consent of the local government board shall have been endorsed upon a certified copy thereof as adopted.

Any certification or endorsement of consent made by the local government board or by a majority of the members thereof or by the secretary thereof pursuant to its direction as to any issue of refunding bonds shall, after the issuance of such refunding bonds in reliance thereon, be conclusive as to its validity or regularity and shall not be contested in any action or proceeding relating to such refunding bonds instituted after the issuance of such bonds.

**40A:2-56. Powers of local government board**

The local government board may examine into any estimates, computations or calculations made in connection with any issue of

refunding bonds, may require the production of any papers, documents, witnesses or information, may make or cause to be made any audit or investigation and may take any other action which it may deem advisable in connection with any issue of refunding bonds. All powers and duties of the funding commission pursuant to any other law as heretofore exercised and performed by such commission shall be vested in and exercised and performed by the local government board as if such board constituted such commission.

**40A:2-57. Standards for action by local government board**

In considering any refunding bond ordinance presented to it for its consent, the local government board shall have regard to the probable capacity of the local unit to pay at maturity the refunding bonds proposed to be issued, and all notes and bonds and other indebtedness of the local unit then outstanding, taking into consideration the assessed and true valuation of taxable property in the local unit, the equitable distribution of the burden of interest and debt redemption charges in connection with such refunding bonds, and the bonds and notes and other indebtedness and liabilities theretofore outstanding or which may necessarily thereafter be incurred. If the local government board shall refuse to endorse its consent upon any such refunding bond ordinance, it shall certify to the local unit a statement of its reasons for such refusal.

**40A:2-58. Recitals in refunding bonds**

Refunding bonds may be issued in one or more series and shall recite the word "refunding" in their title and shall recite that they are issued pursuant to this chapter and shall bear such date or dates, mature at such time or times not exceeding 40 years from their date, bear interest at such rate or rates, payable at such time or times, be in such denomination and in such form, either coupon or registered, carry such registration privileges, be executed in such manner consistent with the provisions of this chapter for bonds of a local unit, be payable at such place or places, and be subject to such terms of redemption, with or without premium, as may be determined by the refunding bond ordinance or by subsequent resolution or resolutions of the governing body.

**40A:2-59. Sale of refunding bonds**

Refunding bonds may be sold at public or private sale, or may be exchanged for any outstanding bonds or notes to be funded or refunded, pursuant to resolution adopted by not less than  $\frac{2}{3}$  of the full membership of the governing body, at such price or price-

es, computed according to standard tables of bond values, as will yield to the purchasers or to the holders of the bonds or notes surrendered in exchange, an income at a rate not to exceed 6% per annum to the maturity dates of the bonds sold or exchanged, on the money paid or the principal amount of the bonds or notes surrendered therefor to the local unit. Refunding bonds of any authorized issue or of any authorized maturity may be sold or exchanged as hereinabove provided from time to time and in such blocks as may be deemed advisable. The officer of the local unit delivering any refunding bonds in exchange for outstanding bonds or notes shall report in writing to the governing body at the next meeting thereof as to the principal amounts, maturities and numbers of the refunding bonds so delivered and as to the outstanding bonds or notes received in exchange, which report shall be entered in the minutes of the governing body, and a copy of such report shall be filed within 5 days thereafter with the director.

**40A:2-60. Disposition of sinking funds or reserve funds**

Moneys or investments in any sinking fund or reserve fund of the local unit established or held for any bonds, notes, indebtedness or liability to be paid, funded or refunded by issuance of refunding bonds shall, unless the refunding bond ordinance provides otherwise, be applied to the payment or retirement of any such bonds, notes, indebtedness or liability. In the event that there shall be in any such fund any bonds or notes which are being paid, funded or refunded, said bonds or notes shall be removed from such fund and cancelled, and any moneys or investment remaining in such fund in excess of outstanding obligations shall be held for and applied to the payment of the principal of and interest on the refunding bonds.

**40A:2-61. Validity of refunding bonds**

The power to authorize and issue refunding bonds pursuant to this chapter and the validity of such bonds so issued shall not be affected by or be dependent in any way upon the requirements of any other law or the validity or regularity of any proceedings pursuant to or under which any bonds or notes or indebtedness or liability to be paid, funded or refunded or renewed or extended by the issuance of refunding bonds, were authorized and issued, and shall be independent of the power to make improvements or acquire property and shall not be dependent upon or affected by the validity or regularity of any improvement or the acquisition of any property or the authorization therefor, for the financing of which such refunding bonds are issued or are to be issued.

**40A:2-62. Debt service reserve fund**

The governing body, by bond ordinance or resolution, may establish a reserve fund to provide for payment of principal of and interest on any obligations and appropriate thereto any unappropriated funds arising from other than tax sources, or any other moneys made or to be made available by budget or otherwise. A certified copy of such ordinance or resolution shall be filed in the office of the director. The establishment of such fund shall be irrevocable so long as the obligations with respect to which it was created are outstanding or unpaid. Such fund may be invested in the same manner as other moneys of the local unit unless otherwise provided.

40A:2-63. Application of chapter.

a. All bonds or notes authorized or issued pursuant to the provisions of the local bond law, R.S. 40:1-1 et seq., of which this chapter is a revision, may be issued or sold pursuant to the provisions of that law.

b. This chapter shall not invalidate any contracts of sale of bonds or notes lawfully made prior to the effective date of this chapter, and bonds or notes may be issued in pursuance of such contracts without authorization by bond ordinance, as provided in this chapter.

c. This chapter shall not affect or apply to the incurring of indebtedness or the issuance of bonds or notes for school purposes except as other laws may provide for the issuance of such bonds or notes pursuant to this chapter.

CHAPTER 4. LOCAL BUDGET LAW.

40A:4-1. Short title.

This chapter may be cited as the "Local Budget Law".

40A:4-2. Definitions.

The following words, as used in this chapter, shall have the following meanings unless the context clearly indicates a different meaning:

"budget" means the budget of a local unit.

"cash basis budget" means a budget prepared in accordance with this chapter, and in such form that based on the limitations, percentages and estimates hereinafter provided there will be sufficient cash collected to meet all debt service requirements, necessary operations of the local unit for the fiscal year and, in addition, provide for any mandatory payments required to be met during the fiscal year.

"county board" means the county board of taxation.

"debt service" means the payment by the local unit of the principal and interest on the obligations issued by it, whether permanent or temporary.

"governing body" means the board of chosen freeholders of a county, or the commission, council, board or body having control of the finances of a municipality.

40A:4-3. Annual budget.

The governing body of each local unit shall adopt a budget for each fiscal year. The budget of each local unit shall be prepared on a cash basis unless otherwise permitted by law.

40A:4-4. Procedures for adoption of budget.

All budgets shall be introduced, approved, amended and adopted by resolution passed by not less than a majority of the full membership of the governing body.

The procedure shall be as follows:

- a. Introduction and approval.
- b. Public advertising.
- c. Public hearing.
- d. Amendments and public hearings, if required.
- e. Adoption.

40A:4-5. Introduction and approval.

The governing body shall introduce and approve the annual budget:

- a. In the case of a county, not later than the 26th day of January of the fiscal year.
- b. In the case of a municipality, not later than the 10th day of February of the fiscal year.
- c. Upon the approval of the budget by the governing body, it shall fix the time and place for the holding of a public hearing upon the budget.

Approval thereof shall constitute a first reading. Two certified copies of the approved budget shall be transmitted to the director within 3 days after approval.

40A:4-6. Public advertisement.

Every budget shall be advertised after approval. The advertisement shall contain a copy of the budget and shall set forth the date,

the time and the place of the hearing. It shall be published at least 10 days prior to the date fixed therefor; in the case of a municipality, in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper published in the county and circulating in the municipality; in the case of a county, in a newspaper published in the county seat, if there be one, and if not, in a newspaper published in the county and having a substantial circulation therein.

40A:4-7. Time of public hearing.

No budget shall be adopted until a public hearing has been held thereon and taxpayers and all persons having an interest therein shall have been given an opportunity to present objections.

Such hearing shall be held not less than 18 days in the case of a county, and not less than 28 days in the case of a municipality, after the approval of the budget.

40A:4-8. Public hearing.

The public hearing shall be held at the time and place specified in the advertisement thereof, but may be adjourned from time to time until the hearing is closed. After closing the hearing, the governing body may adopt the budget, with or without amendments.

40A:4-9. Amendments.

a. Amendments to budgets required by the director may be made prior to the time of holding the public hearing on the budget, without public advertisement.

b. The governing body may amend the budget during or after

the public hearing. All amendments so made shall be forthwith submitted to the director.

c. No amendment by the governing body shall be effective until taxpayers and all persons having an interest therein shall have been granted a public hearing thereon, if such amendment shall:

1. add a new item of appropriation in an amount in excess of 1% of the total amount of appropriations as stated in the approved budget, or

2. increase or decrease any item of appropriation by more than 10%, or

3. increase the amount to be raised by taxes by more than 5%,

unless the same is made to include an emergency temporary appropriation only.

Notice of hearing on any amendment shall be advertised at least 3 days before the date set therefor. Any such amendment must be published in full in the same manner as an original publication.

40A:4-10. Adoption.

No budget or amendment thereof shall be adopted unless the director shall have previously certified his approval therefor.

The budget shall be adopted in the case of a county not later than the 25th day of February, and in the case of a municipality not later than the 20th day of March of the fiscal year, except that the governing body may adopt the budget at any time within 10 days after the director shall have certified his approval thereof and returned the same.

Two certified copies of the budget, as adopted, shall be transmitted to the director within 3 days after adoption.

Upon adoption, the budget shall constitute an appropriation for the purposes stated therein and an authorization of the amount to be raised by taxation for the purposes of the local unit.

40A:4-11. Budget to be transmitted to county board.

The clerk of the local unit shall transmit a certified copy of the budget, as adopted, to the county board not later than March 31 of the fiscal year.

40A:4-12. Amount to be raised by taxation for local purposes.

The amount to be raised by taxation, as stated in the county budget, shall be the amount to be raised by taxation for county purposes. The amount to be raised by taxation, as stated in the municipal budget, shall be the amount to be raised by taxation for municipal purposes and for school purposes where school district costs are required to be included in the municipal budget. These taxes shall be assessed, levied and collected within the respective taxing districts in the manner prescribed by law.

40A:4-13. Inclusion of amount required for school purposes.

The amount to be raised by taxes for school purposes, required to be certified to the governing body of a municipality for inclusion in its budget, shall be set forth in a separate section of the budget upon adoption and shall be added to the amount to be raised by taxes for school purposes, if any, which were included in the approved budget upon the final adoption of the budget, or it may be omitted from

the budget as approved and may be added to the budget, by resolution, on final adoption without public advertisement.

40A:4-14. School items; separate certification.

In making the certifications of the budget for transmission to the county board, the amount to be raised by taxes for school purposes by a municipality shall be separately stated and

a. In municipalities in which the amount to be raised by taxes for school purposes is required to be certified to the governing body for inclusion in its budget, there shall be deducted from the "municipal tax levy"

1. the amount appropriated for debt service after first deducting therefrom the amount of the State school building aid, if any, and

2. the amount of any emergency appropriation for school purposes certified to the municipality and approved by the governing body thereof;

3. The amount appropriated for school capital improvements for land, buildings and equipment.

b. In all other municipalities, there shall be deducted from the municipal tax levy any appropriations for school purposes required.

Said items shall be added by the county board to the amounts to be raised by taxation for school purposes.

40A:4-15. Late approval of budget.

The director may certify any budget not filed with him within the time prescribed. Such budget must be accompanied by a statement of reasons, satisfactory to the director, for such delay.

All actions subsequently taken by the director and the local unit with respect to certification and adoption of the budget are to be taken forthwith and as if the introduction, approval, hearing or filing had occurred on time.

40A:4-16. County board to advise director of failure to receive budget.

Where the county board has not received a copy of the budget resolution or other evidence showing the amount to be raised by taxation for the purposes of a taxing district not later than the 31st day of March of the fiscal year, the said board shall immediately notify the director of such failure.

40A:4-17. Director's certificate to the county board.

The director shall forthwith, after receipt of notice that the county board has not received a copy of the budget resolution or other evidence showing the amount to be raised by taxation for the purposes of a taxing district, transmit to the county board a certificate setting forth the amount required for the operation of the local unit for the fiscal year. The operating budget of the preceding year shall constitute and limit the appropriations of the current year with suitable adjustments for debt service, other

director, but no such substitutions shall be made after April 10 of the fiscal year.

40A:4-19. Temporary appropriations.

The governing body may and, if any contracts, commitments or payments are to be made prior to the adoption of the budget, shall, by resolution adopted prior to January 31 of the fiscal year, make appropriations to provide for the period between the beginning of the fiscal year and the adoption of the budget.

The total of the appropriations so made shall not exceed 25% of the total of the appropriations made for all purposes in the budget for the preceding fiscal year excluding, in both instances, appropriations made for interest and debt redemption charges, capital improvement fund and public assistance.

Nothing herein contained shall prevent or relieve the governing body from making appropriations for all interest and debt redemption charges maturing during the fiscal year at any time between the 20th day of December of the year preceding the beginning of the fiscal year and the date of the adoption of the budget.

40A:4-20. Emergency temporary appropriations.

In addition to temporary appropriations necessary for the period prior to the adoption of the budget and regular appropriations, the governing body may, by resolution adopted by a 2/3 vote of the full membership thereof, make emergency temporary appropriations for any purposes for which appropriations may

lawfully be made for the period between the beginning of the current fiscal year and the date of the adoption of the budget for said year. The amount of such emergency temporary appropriations shall be included under the correct headings in the budget as adopted. If they are adopted after the introduction and approval of the budget and were not included in the budget as approved, they shall be included by amendment in the budget as adopted, except that no public advertisement or public hearings shall be required as to their adoption as amendments.

A copy of each resolution making such emergency temporary appropriations shall be filed forthwith with the director.

40A:4-21. Separate sections required.

The budget shall provide separate sections for:

- a. Operation of local unit (current fund).
- b. Operation of any municipal public utility.
- c. Dedicated assessment budget.
- d. Dedicated by rider.

40A:4-22. Form and content of current budget.

Every budget shall be prefaced by an explanatory statement of its contents and shall be itemized according to the respective objects and purposes for which appropriations are made. Itemization shall be in the form, classification and detail prescribed by regulations of the local government board.

The itemization, form and arrangement of the budget shall be

such as to facilitate the exercise of the comptroller function.

The budget shall consist of a tabulated statement of:

- a. all anticipated revenues applicable to the expenditures for which appropriations are made in the budget, and
- b. the appropriations to be made for all purposes for which such revenues are to be expended.

The total of anticipated revenues must equal the total of appropriations.

40A:4-23. Arrangement of revenues; current fund.

The anticipated revenues shall be classified as "surplus anticipated", "miscellaneous revenues", "receipts from delinquent taxes", and "amount to be raised by taxes to support municipal budget appropriations".

In parallel columns to the right of the several items of anticipated revenues, the following shall be stated:

- a. The amounts estimated to be realized from the several items of revenue in the current fiscal year.
- b. The amounts anticipated from the same source in the preceding year.
- c. The amounts actually received in cash or realized in accordance with regulations of the local government board during such preceding year.

40A:4-24. Surplus.

"Surplus" in the current section of accounts shall consist of the excess of quick assets such as cash, investments, State or other public aid receivable, and deferred charges over legal and demand liabilities.

Unless the director shall give his prior written consent there-to, the amount of any item of "surplus anticipated" included in any budget shall not exceed the amount of surplus held in cash or quick assets at the beginning of the fiscal year.

40A:4-25. Miscellaneous revenues.

"Miscellaneous revenues" shall include such amounts as may reasonably be expected to be realized in cash during the fiscal year from known and regular sources, or from sources reasonably capable of anticipation, and lawfully applicable to the appropriations made in the budget, other than dedicated revenues, revenues from taxes to be levied to support the budget, receipts from delinquent taxes, and surplus. Miscellaneous revenues stated in the budget shall be classified according to their respective sources.

40A:4-26. Miscellaneous revenues limited to cash receipts; exemption.

No miscellaneous revenues from any source shall be included as an anticipated revenue in the budget in an amount in excess of the amount actually realized in cash from the same source during the next preceding fiscal year, unless the director shall determine

upon application by the governing body that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the fiscal year and shall certify such determination, in writing, to the local unit.

40A:4-27. Miscellaneous revenues; sale of property.

A local unit may anticipate as a miscellaneous revenue the total amount of all payments due and payable to the local unit during the fiscal year, directly or indirectly as a result of the sale of property by the local unit, when the obligation to make such payment is entered into prior to February 10 of the fiscal year.

40A:4-28. Miscellaneous revenues; sinking fund surplus.

Whenever the sinking funds to the credit of the several issues of term bonds of a local unit equal the principal of such issues and there is a cash surplus in the sinking fund, such surplus may, upon written application by the sinking fund commission and the approval of the director, be used, in whole or in part, as an anticipated miscellaneous revenue in the budget of such local unit.

40A:4-29. Receipts from delinquent taxes.

Delinquent taxes shall consist of taxes levied for prior fiscal years unpaid and owing to the local unit, and in the case of a municipality, also the lien value of tax titles to real estate standing in the name of the municipality.

The maximum amount which may be anticipated as "Receipts from Delinquent Taxes" shall be computed in the manner set forth in the following paragraph.

A determination of the percentage of collection of delinquent taxes for the year immediately preceding the fiscal year. This percentage shall be determined by dividing the amount of prior year's delinquent taxes collected by the amount of delinquent taxes unpaid and owing on the first day of the year, after adjusting such amount by the addition of prior year's taxes added during such fiscal year, less any prior year's delinquent taxes abated, remitted or cancelled during such year. The maximum which may be anticipated is the sum produced by the multiplication of the amount of delinquent taxes unpaid and owing to the local unit on the first day of the current fiscal year by the percentage of collection of delinquent taxes for the year immediately preceding the current fiscal year.

40A:4-30. Amount to be raised by taxes to support municipal budget.

The amount to be raised by taxes shall be the amount required to be levied by taxation for the support of the municipal budget. It is the difference between the total of all general municipal budget appropriations, including Chapter 6 school debt service (R.S. 18:6 et seq.), and such deferred charges and statutory expenditures for Chapter 6 schools as

are required to be raised in the municipal budget, less the total of anticipated revenues. It shall include the amount required to be appropriated for the "reserve for uncollected taxes" in accordance with, and subject to, the limitations of 40A:4-41 and 40A:4-42.

40A:4-31. Arrangement of appropriations.

The several items of appropriations shall have set forth in parallel columns to the right thereof the following:

- a. Amount of appropriations for current year.
- b. Amount of appropriations for preceding year.
- c. Amount of appropriations by emergency resolution.
- d. Amount of total appropriations for preceding year as modified by all transfers.
- e. Amounts expended (paid or charged).
- f. Amounts expended (reserved).

40A:4-32. Separate items of appropriations.

Separate items shall be included for at least:

- a. Administration, operation and maintenance of each office, department, institution or other agency of the local unit.
- b. Contingent expenses in an amount not more than 3% of the total amount stated pursuant to subdivision a of this section.

- c. Interest and debt redemption charges.
- d. Deferred charges and statutory expenditures.
- e. The payment of all judgments not for capital purposes and for which notes or bonds cannot be lawfully issued.
- f. Such reserves as may be required by this chapter, or deemed advisable by the governing body.
- g. Cash deficit of preceding year.

40A:4-33. Operation of utility or enterprise.

The anticipated revenues from the operation of any utility or enterprise owned or operated by a local unit and the appropriations to be made therefor shall be set forth in a separate section of the budget.

Dedicated revenues, derived from publicly owned or operated utilities or enterprises, shall not be stated in the budget in an amount which is in excess of the appropriation therein to the purposes to which the same are applicable, or in excess of the amount actually realized in cash from the same source during the preceding fiscal year, unless the director shall, upon application of the governing body, determine that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the fiscal year and shall certify such determination in writing to the local unit.

40A:4-34. Appropriations for utility or enterprise.

Appropriations for any utility or enterprise owned or operated by the local unit shall be in the form and detail prescribed by the regulations of the local governing board and shall include, at least

- a. Operations.
- b. Interest and debt retirement.
- c. Deferred charges and statutory expenditures.

40A:4-35. Utility operations; surplus; deficit.

If, in any year as a result of the operation of such utility or enterprise under the system of accounting thus directed, there shall be a surplus, or such surplus can be reasonably anticipated, then such surplus, when authorized by the board or body controlling the utility or enterprise, may be included in the budget as an item of miscellaneous revenue, under the caption of "Surplus from . . . . .  
. . . . . (designation of the utility fund)".

If, in any year as a result of such operation, there shall be a deficit or an anticipated deficit, then an appropriation for such deficit shall be included in the budget under the caption of "Deficit in . . . . . (designation of the utility fund)". If any anticipated deficit shall exceed the appropriation therefor, the excess shall be provided for in the budget of the following year. This section shall not, however, supersede the specific dedication of receipts from a utility or enterprise as

provided in any law which authorized the establishment or creation of such utility or enterprise unless so directed by the board or body controlling the same.

40A:4-36. Dedicated revenues; general definition.

"Dedicated revenues" shall include all amounts reasonably expected to be realized in cash during the fiscal year from any source other than the issuance of bonds or notes and required by law to be applied to a specific purpose.

Dedicated revenues stated in the budget shall be classified according to their respective sources and shall be stated in a separate section of the budget, together with the appropriations to the purposes to which such dedicated revenues are applicable. The total of anticipated revenues must equal the total of appropriations.

In the event such appropriations include payments to be made for the principal of or interest on bonds or notes, the amount required for such purposes shall be separately stated.

Any anticipated deficit in expenditures to which dedicated revenues are applicable shall be provided for by an appropriation in the budget.

40A:4-37. Dedicated assessment budget.

Every dedicated assessment budget shall include revenues derived from the collection of special assessments on property specially benefited. No amount shall be stated in the budget in

excess of the required appropriation to which such revenues are applicable or in excess of the amount of the revenues so derived, held in cash at the beginning of the fiscal year. Nothing herein contained shall prevent a local unit from paying in full, or on account at maturity, any note or notes to which such revenues are applicable, even though such note or notes may not have been included in such dedicated budget.

40A:4-38. Appropriation in dedicated assessment budget.

Every dedicated assessment budget shall contain an appropriation for the payment of principal of bond anticipation notes or bonds maturing during the fiscal year.

40A:4-39. Dedication by rider.

a. In the budget of any local unit, dedicated revenues anticipated during the fiscal year from any dog tax, dog license, solid fuel license, sinking fund for term bonds, bequest, escheat, Federal grant, motor vehicle fine dedicated to road repairs and, subject to the prior written consent of the director, other items of like character when the revenue is not subject to reasonably accurate estimate in advance, may be included in said budget by annexing to said budget a statement in substantially the following form:

"The dedicated revenues anticipated during the year \_\_\_\_\_  
from \_\_\_\_\_  
(here insert 1 or more of the sources above, as the case may be).  
are hereby anticipated as revenue and are hereby appropriated  
for the purposes to which said revenue is dedicated by statute  
or other legal requirement."

b. Dedicated revenues included in accordance with this section shall be available for expenditure by the local unit as and when received in cash during the fiscal year. The inclusion of such dedicated revenues shall be subject to the approval of the director, who may require such explanatory statements or data in connection therewith as he deems advisable for the information and protection of the public.

40A:4-40. Reserve for uncollected taxes; appropriation.

There shall be included in each budget an appropriation for "reserve for uncollected taxes" sufficient in amount so that the anticipated cash receipts for the fiscal year shall at least equal the sum of the following items, each of which is hereinafter referred to as a "lawful yearly expenditure";

a. The total of all current budget appropriations (except for reserve for uncollected taxes);

b. The amounts due or to become due for school, county, State, local and special district taxes prior to the end of the fiscal year, and

c. The amounts of any other anticipated current expenditures for the fiscal year.

In the event that the exact amount of any such lawful yearly expenditure shall not be known at the time of the adoption of the budget, the amount thereof shall be estimated, but no such estimate shall be less than the amount of such lawful yearly expenditure for the next preceding fiscal year.

40A:4-41. Anticipated cash receipts for purpose of computing reserve for uncollected taxes.

For the purpose of determining the amount of the appropriation for "reserve for uncollected taxes" required to be included in each annual budget where less than 100% of current tax collections may be and are anticipated, anticipated cash receipts shall be as set forth in the budget of the current year, and in accordance with the limitations of statute for anticipated revenue from, surplus appropriated, miscellaneous revenues and receipts from delinquent taxes.

Receipts from the collection of taxes levied or to be levied in the municipality, or in the case of a county for general county purposes and payable in the fiscal year, shall be anticipated in an amount which is not in excess of the percentage of taxes levied and payable during the next preceding fiscal year which was received in cash by December 31 of such preceding fiscal year.

40A:4-42. Required appropriation for cash deficit.

An appropriation for "cash deficit of preceding year" shall appear in each annual budget in the amount by which the liabilities and cash disbursements of the local unit for expenditures in the fiscal year next preceding exceed the cash receipts and other realized revenues in such next preceding fiscal year, except to the extent that such lawful yearly expenditures have been provided for by surplus anticipated in the budget of such years.

40A:4-43. Capital budgets; definition.

The governing body may and shall, when directed by the local government board, prepare, approve and adopt a budget for the expenditure of public funds for capital purposes to give effect to general improvement programs.

A capital budget shall be a plan for the expenditure of public funds for capital purposes, showing as income the revenues, special

assessments, free surplus, and down payment appropriations to be applied to the cost of a capital project or projects, expenses of issuance of obligations, engineering supervision, contracts and any other related expenditures.

40A:4-44 Form, arrangement and detail of capital budgets.

The local government board shall adopt, and may from time to time amend, reasonable rules and regulations for capital budgets. Regulations may classify the type of budget required, according to the size of the local unit, the nature of the capital projects or any other reasonable basis of distinction, and shall require a statement of capital undertakings underway or projected for a period not greater than over the next ensuing 6 years as a general improvement program.

After promulgation of regulations by the local government board, the governing body shall expend or incur obligations for capital purposes only after the adoption of a capital budget and in accordance with such budget except for the preliminary expense of plans, specifications and estimates.

40A:4-45. Separate capital budgets.

The board may require separate capital budgets to give effect to a general improvement program as follows:

- a. A special capital budget for the expenditure of funds realized from the sale of obligations and adopted at the time such sale is authorized.
- b. A separate capital budget adopted at the same time and as part of the annual budget.
- c. A consolidated capital budget providing for the consolidation of capital projects, with the annual budget treating borrowed funds and other receipts as special revenue and capital projects as separately itemized appropriations under the proper office, department, institutions or other agency of the local unit.
- d. Any other type or form of budget adapted to planning and guiding expenditures for capital improvement programs.

40A:4-46. Emergency appropriations.

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

40A:4-47. Emergency appropriations provided for in next budget.

The total amount of all emergency appropriations shall be provided in full by the governing body as a deferred charge in the budget of the next succeeding fiscal year, except to the extent, if any, that provision for paying, funding or refunding any such emergency appropriation or for financing the purpose of the expenditures pursuant thereto shall previously have been made by authorization of bonds pursuant to 40A:2-3.

40A:4-48. Emergency appropriations not exceeding, with other appropriations, 3% of the operating appropriations.

An emergency appropriation which, together with all prior emergency appropriations made during the same year, does not exceed 3% of the total of current and utility operating appropriations made in the budget adopted for that year shall be made as follows:

a. The governing body shall, by resolution adopted by not less than 2/3 vote of its full membership, declare that an emergency exists requiring a supplementary appropriation.

b. The resolution shall be in the form and content prescribed by the local government board and shall set out the nature of the emergency in full.

c. A copy of the resolution shall be filed forthwith with the director.

40A:4-49. Emergency appropriations exceeding, with other appropriations, 3% of the operating appropriations.

An emergency appropriation which together with all prior emergency appropriations made during the same year exceeds 3% of the total current and utility operating appropriations in the budget for that year shall be made as follows:

a. The governing body shall, by resolution adopted by not less than  $\frac{2}{3}$  vote of its full membership, petition the director for permission to exceed the limitation of 3%.

b. The resolution shall be in the form and content prescribed by the local government board, and shall set out the nature of the emergency in full.

c. The director shall consider the resolution and, if requested by local taxpayers or by the governing body, hold a hearing thereon.

d. The director shall, within 5 days after receipt of the resolution, or if a hearing is held, after the hearing, determine whether an emergency exists which requires such appropriation.

e. If the director determines that such appropriation is necessary, he shall fix the maximum amount and the governing body shall not exceed that amount.

40A:4-50. Emergencies financed from surplus.

A local unit may finance any emergency appropriation from surplus funds available, or may borrow money and issue its "emergency notes" as provided for in this chapter to finance any such appropriation.

40A:4-51. Emergency notes authorized.

Any local unit may borrow money and issue its negotiable notes to meet an emergency appropriation. Each such note shall be authorized by resolution of the governing body, shall be designated an "emergency note", and may be renewed from time to time. All such notes, and any renewals thereof, shall mature not later than the last day of the fiscal year next succeeding the fiscal year in which such notes were issued and the emergency appropriation authorized. The provisions of this chapter relating to tax anticipation notes shall apply to emergency notes except for limitations as to maturity and renewals.

40A:4-52. Conclusiveness of emergency appropriations upon affidavit of finance officer.

An affidavit of a financial officer of the local unit shall be a conclusive determination of the total amount of any such emergency appropriations made in any fiscal year and of the amount of all budget appropriations for such year.

If any resolution providing for the issuance of notes to meet any such emergency appropriation shall recite or determine that such appropriation was required to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide for temporary housing or public assistance, such recital or determination shall be deemed to be true for the purpose of determining the validity of such notes, and the local unit issuing such notes and all others interested shall forever thereafter be estopped from denying the same.

40A:4-53. Special emergency appropriations.

A local unit may adopt an ordinance authorizing special emergency appropriations for the carrying out of any of the following purposes:

- a. Preparation of an approved tax map.
- b. Preparation and execution of a complete program of revaluation of real property for the use of the local assessor.
- c. Engagement of special consultants for the preparation, and the preparation of a master plan or plans, when required to conform to the planning laws of the State.

A copy of all ordinances or resolutions as adopted relating to special emergency appropriations shall be filed with the director.

40A:4-54. Special emergency appropriations; extraordinary expense.

A local unit may adopt a resolution authorizing special emergency appropriations to cover the cost of extraordinary expense for the repair, reconstruction of streets, roads or bridges, or other public property damaged by flood or hurricane where such expense was not foreseen at the time of the adoption of the budget.

40A:4-55. Special emergency notes.

After the adoption of an ordinance or resolution for special emergency appropriations, the local unit shall by 2/3 vote of the full governing body adopt a resolution setting forth:

- a. The amount appropriated.
- b. Provision for the borrowing of money and the issuance of

"Special Emergency Notes" which may be renewed from time to time, but at least  $1/5$  of all such notes, and the renewals thereof, shall mature and be paid in each year, so that all notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of the emergency resolution. The provisions of this chapter relating to tax anticipation notes shall apply to special emergency notes.

c. A local unit may finance such appropriation from surplus funds available or borrow money in the manner prescribed above. Where any appropriation is financed from surplus funds available, at least  $1/5$  of the amount thereof shall be included in each annual budget until the appropriation has been fully provided for.

40A:4-56. Contracts of special or technical nature.

A local unit may, if it so elects, enter into a contract for the purposes set forth in 40A:4-53 without advertising, provided the governing body shall, by resolution duly adopted by not less than  $2/3$  vote of the full membership thereof, determine that the services to be rendered are of a special technical nature and thus will not permit of special advertising. In the case of the purpose set forth in 40A:4-54, the provisions of general laws relating to contracts and public bidding shall control.

40A:4-57. Expenditures void without appropriations.

No officer, board, body or commission shall, during any fiscal year, expend any money (except to pay notes, bonds or interest thereon), incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose for which no appropriation is provided, or in excess of the amount appropriated for such purpose.

Any contract made in violation hereof shall be null and void, and no moneys shall be paid thereon.

Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for

a. Capital projects to be financed in whole or in part by the issuance of notes or bonds;

b. For the making of contracts of lease, or for services, or for fuel to be used for heating purposes, or for snow or garbage removal for a period exceeding the fiscal year in which such contract is made, when otherwise provided by law.

Provided, further, that nothing in this section, nor in section R.S. 40:50-6 of this title, shall prevent a municipality from making a contract for the spending of money for the purchase of the right, title and interest in the right-of-way of any street railway company in the municipality, when said right-of-way extends in, over and along any public street or highway in this State and the improving or paving of said right-of-way after the same has been acquired.

40A:4-58. Appropriation transfers during last 2 months of fiscal year.

a. Should it become necessary, during the last 2 months of the fiscal year, to expend for any of the purposes specified in the budget an amount in excess of the respective sums appropriated therefor and there shall be an excess in any appropriations over and above the amount deemed to be necessary to fulfill the purpose of such appropriation, the governing body may, by resolution setting forth the facts, adopted by not less than 2/3 vote of the full membership thereof, transfer the amount of such excess to those appropriations deemed to be insufficient; no transfers may be made to appropriations for contingent expenses or deferred charges.

b. No transfers may be made under this section from appropriations for

1. contingent expenses,
2. deferred charges,
3. cash deficit of preceding year,
4. reserve for uncollected taxes,
5. down payments,
6. capital improvement fund,
7. interest and redemption charges.

40A:4-59. Appropriation transfers during first 3 months of succeeding year.

a. If, during the first 3 months of any fiscal year, the amount of any appropriation reserve for the immediately preceding fiscal year is insufficient to pay the claims authorized or incurred during said preceding year which were chargeable to said appropriation, and there shall be an excess in any appropriation reserves over and above the amount deemed to be necessary to fulfill its purpose, the governing body may, by resolution adopted by not less than a 2/3 vote of the full membership thereof, transfer the amount of such excess to an appropriation reserve or an appropriation in the prior budget deemed to be insufficient to fulfill its purpose or for which no reserve was provided. No transfers may be made to appropriation reserve for contingent expenses or deferred charges.

b. No transfers may be made under this section from appropriation reserves for

1. contingent expenses,
2. down payments,
3. capital improvement fund.

40A:4-60. Unexpended balances cancelled by resolution.

Any unexpended balances of appropriations may, by resolution of the governing body, be cancelled prior to the end of the fiscal year. Said resolution shall set forth the titles of the appropriations and the amounts to be cancelled therefrom.

At the end of the next succeeding fiscal year, all remaining

unexpended balances shall forthwith lapse, and no disbursement shall thereafter be made therefrom, except to cover specific contracts or agreements in existence at the close of such succeeding fiscal year.

40A:4-61. Assessment revenue fund.

All receipts derived from special assessments on property specially benefited by any local improvements shall be segregated by the municipality and kept in a separate fund to be known as an "assessment revenue fund". They shall be applied only to the payment of that part of the cost of any such improvements which has been specially assessed on property specially benefited or of any bonds or notes issued to finance such part of the cost of any such improvements until all such bonds or notes shall have been paid.

40A:4-62. Public utility funds.

All moneys derived from the operation of publicly owned or operated utility or enterprise and any other moneys applicable to its support, shall be segregated by the local unit and kept in a separate fund which shall be known as "utility fund" and shall bear a further designation identifying the utility or enterprise and, except as provided in section 40A:4-35 , shall be applied only to the payment of the operating and upkeep costs, and the interest and debt redemption charges upon the indebtedness incurred for the creation of such utility or enterprise.

40A:4-63. Money in separate funds treated as trust funds.

Moneys held in any separate fund shall be treated by the officers of the local unit as moneys held in trust for the purpose for which such separate fund was created, and no banking institution accepting any such fund as provided for in this chapter shall divert the moneys to any other purpose.

40A:4-64. Tax anticipation notes.

In any fiscal year, in anticipation of the collection of taxes for such year, whether levied or to be levied in such year, or in anticipation of other revenues for such year, any local unit may, by resolution, borrow money and issue its negotiable notes, each of which shall be designated "tax anticipation note of 19\_\_\_\_" (stating the fiscal year).

40A:4-65. Application of proceeds.

The proceeds of the sale of tax anticipation notes, unless used to pay outstanding notes issued in anticipation of the collection of taxes of the same fiscal year, shall be applied only to purposes provided for in the budget or for which taxes are levied or to be levied for such year, and shall not be applied to any other purpose.

40A:4-66. Limitation of amount.

The amount of tax anticipation notes of any fiscal year outstanding at any one time shall not exceed an amount certified as the

gross borrowing power, and no such notes shall be authorized in excess of an amount certified as the net borrowing power, each computed and certified as follows:

a. The gross borrowing power in respect to tax anticipation notes of such fiscal year, being 30% of the tax levy of the next preceding fiscal year, for all purposes in the case of a municipality and for county purposes in the case of a county, plus 30% of the amount of miscellaneous revenues realized in cash during the next preceding fiscal year, is \$\_\_\_\_\_.

b. The amount of notes outstanding in anticipation of the collection of taxes of such fiscal year, except such notes as will be renewed by or paid from the proceeds of the notes to be issued, is \$\_\_\_\_\_.

c. The net borrowing power, being the excess of the first over the second of the two above amounts, is \$\_\_\_\_\_.

Such certificate shall be made by the financial officer who is designated to sign such notes, filed in the office of the clerk, and quoted in full in the resolution authorizing such notes.

40A:4-67. Limitation of maturity and renewals.

Tax anticipation notes may be renewed from time to time, but all such notes and any renewals thereof shall mature, in the case of municipalities not later than March 31 of the succeeding fiscal year, and in the case of counties not later than June 30 of the succeeding fiscal year.

40A:4-68. Interest rate.

Tax anticipation notes shall bear interest at a rate not exceeding 6% per annum.

40A:4-69. Form, registration and redemption.

All tax anticipation notes may be in registered form or in coupon form with or without privileges of registration, and may be made redeemable prior to maturity at the option of the local unit at not exceeding par and accrued interest.

40A:4-70. Recital of borrowing power; authorization.

In the text of each tax anticipation note there shall appear in substance the following recital:

"This note is issued pursuant to the local budget law and in anticipation of the collection of taxes of the budget year 19\_\_\_\_ (stating the budget year); the gross borrowing power in respect of such notes, as determined in accordance with said act, is \$\_\_\_\_\_ (stating the gross borrowing power as shown on the certificate quoted in the resolution authorizing such note); the amount of such notes outstanding, including all notes delivered simultaneously with this note, is \$\_\_\_\_\_."

Such recital shall be deemed to be made by any financial officer who signs the note, and his signature to the note shall constitute a declaration to the other officers who sign such note

that the recital is correct. Such recital shall constitute conclusive evidence to the holder or holders of such note that the same was fully authorized under and within the powers, limitations and provisions of this chapter.

40A:4-71. Execution of notes or coupons.

All tax anticipation notes shall be executed in the name of the local unit by such financial officer and by such other officer as may be designated by resolution, and shall be under the seal of the local unit and attested by the clerk. Coupons, if any, attached to a note shall be authenticated by the facsimile or manual signature of the financial officer who signs the note.

40A:4-72. Sale and report of sale.

All tax anticipation notes may be sold at not less than par and accrued interest at private sale without previous public offering, either by resolution of the governing body or by a financial officer authorized to sell such notes by resolution of the governing body.

The financial officer making any such sale shall report in writing to the governing body at the next meeting the amount, description, interest rate and maturities of the notes sold, the price obtained and the name of the purchaser, and such report shall be entered in full on the minutes of such meeting.

40A:4-73. Conclusive presumption of validity of proceedings and notes.

Unless a suit, action or proceeding questioning the authorization, sale or execution or otherwise questioning the validity of tax anticipation notes be begun prior to the delivery of such notes, any such notes reciting that they are issued pursuant to this chapter shall, after delivery thereof, be conclusively presumed to be fully authorized by all the laws of this State and to have been sold, executed and delivered by the local unit in conformity therewith. The validity of such notes shall not be questioned by either a party plaintiff or a party defendant, or by the local unit, or any taxpayer thereof, or any other interested party in any court, anything herein or in other statutes to the contrary notwithstanding.

40A:4-74. Utility anticipation notes.

Any local unit which operates or owns a municipal public utility may, pursuant to resolution of the governing body passed by a majority of the full membership thereof, borrow money and issue its negotiable notes to provide funds necessary to operate the utility or enterprise and meet the necessary payments for debt service. Such notes shall be designated as "Utility Revenue Notes of 19\_\_\_\_ (stating the year)". The amount of notes which may be issued in any fiscal year shall not exceed 50% of the revenue from Utility Rents and Miscellaneous Utility Revenues Anticipated in the

annual utility budget.

Notes may be renewed from time to time but shall mature not later than March 31 after the close of the fiscal year in which the notes were originally issued.

Borrowing power provided in this section shall be exclusive of and in addition to the borrowing power provided for tax anticipation notes permitted by this chapter.

40A:4-75. Liability on notes.

The power and obligation of a local unit to pay any note or obligation issued pursuant to this chapter shall be unlimited and the local unit shall have power and be obligated to levy ad valorem taxes upon all the taxable property within the local unit for the payment of such notes or obligations and interest thereon, without limitation of rate or amount.

40A:4-76. Examination of budget.

The director shall examine the budget filed in his office with reference to all estimates of revenue and to the following appropriations:

- a. Payment of interest and debt redemption charges.
- b. Deferred charges and statutory expenditures.
- c. Cash deficit of preceding year.
- d. Reserve for uncollected taxes.
- e. Other reserves and nondisbursement items.

The director shall also examine the budget for detail and accuracy of itemization and for compliance as to form, arrangement and content with the provisions of this chapter and the regulations of the local government board.

40A:4-77. Scope of examination.

The director shall determine upon the basis of information and data available whether:

- a. all estimates of revenue are reasonable, accurate and correctly stated;
- b. items of appropriation are properly set forth;
- c. in itemization, form, arrangement and content, the budget will permit the exercise of the comptroller function within the local unit;
- d. the budget complies with the requirements of law and the regulations of the local government board.

40A:4-78. Approval or disapproval by director.

If the director finds that all requirements of law and of the regulations of the local government board have been met, he shall approve the budget, otherwise he shall refuse to approve it.

The director, in refusing to approve a budget, shall not substitute his discretion with respect to the amount of an appropriation when such amount is not made mandatory because of the requirements of law.

40A:4-79. Certification of director.

Immediately after the making of his examination of the budget, the director shall certify the results of his determination to the governing body. A governing body shall not finally adopt a budget until a certification of approval by the director has been received.

40A:4-80. Action on disapproved budget.

If the budget is disapproved, a full statement of reasons with instructions for corrections of the budget shall be transmitted to the local unit with notice of the refusal by the director to approve the same. The certification of disapproval of the director shall be published at least once in a newspaper of general circulation within the local unit. Cost of such publication shall be borne by the local unit.

40A:4-81 Amendment of disapproved budget.

A governing body shall amend a disapproved budget in accordance with the instructions of the director except that the governing body may petition the local government board for a hearing upon the budget. If a petition for hearing is filed with the local government board, the director shall postpone the time required for final adoption to permit a reasonable opportunity for such hearing and redetermination.

40A:4-82. Judicial review of local government board's determination.

If an aggrieved party applies for judicial review of a final determination made by the local government board, the governing body shall, nevertheless, adopt a budget in accordance with the local government board's determination, subject to such subsequent adjustment as may be consonant with the court's decision.

If the final decision of the court is adverse to the board's determination, the director shall forthwith, in writing, order the immediate amendment of the budget in accordance with the court's decision.

40A:4-83. Regulations by the local government board and director.

The local government board and the director may make such rules and regulations as may be necessary to carry out the provisions of this chapter. The director may hold hearings and make such investigations as may be appropriate to the exercise of his powers in accordance with law.

40A:4-84. Orders of director binding.

A final order of the director shall be binding upon the governing body and shall be complied with. The Superior Court may enforce the order in an action instituted by the director.

If a governing body fails or refuses to comply with a final order of the director, the members of a governing body who wilfully fail or refuse to comply shall each be subject to a personal penalty of \$25.00 for each day after the date fixed for final action that failure or refusal to comply continues. The amount of the penalty may be recovered by the director in the name of the State as a personal debt of the member of the governing body, and shall be paid, upon receipt, into the State Treasury.

40A:4-85. Power to change title or text of appropriation.

The director may, at the request of the governing body, make such correction of the title, text or amount of any item of appropriation appearing in the adopted budget only as shall be necessary to make said item of appropriation available for the specific purpose or purposes required by the local unit. To this end, the director may limit or approve adjustment of items of appropriations, but no item of appropriation required for debt service, contingent expenses, deferred charges, statutory expenditures, judgments or reserves shall be so reduced or limited.

40A:4-86. Correction of revenue item.

The director may correct an item of revenue appearing in any adopted budget if any law requires such correction or makes such correction advisable. If such correction shall require that the local purpose levy of the local unit shall be adjusted, the director shall order the correction or adjustment of the local tax levy accordingly, unless the tax rate for the year shall have been struck and shall certify such adjustment to the county board of taxation.

40A:4-87. Special items of revenue and appropriations.

The director may approve the insertion of any special item of revenue in the budget of any local unit when such item shall have been made available by law and the amount thereof shall not have been determined at the time of the adoption of the budget, and may approve the insertion of an appropriation item of equal amount for the purpose of carrying out the purposes of the law making such item of revenue available for expenditure.

A local unit may borrow money and issue its negotiable notes to meet such purpose. Such notes shall be authorized by resolution adopted by the governing body of the local unit and shall be designated as "Special (here insert purpose) Aid Notes".

Such notes shall mature not later than 3 months from their date and may be renewed from time to time until the end of the third month after the purpose for which the appropriation was made shall have been

completed, or until the end of 31 days after the receipt in full by such local unit of all moneys anticipated from grants-in-aid or other sources for such purpose, whichever shall be later.

Any such notes that shall remain unpaid at the close of the first full fiscal year after the purpose shall have been completed shall be included in the budget of the then next succeeding fiscal year as an item of appropriation for the payment thereof. The provisions of this chapter relating to tax anticipation notes shall apply to such notes.

## CHAPTER 5. LOCAL FISCAL AFFAIRS LAW

### 40A:5-1. Short title

This chapter shall be known and may be cited as the "Local Fiscal Affairs Law".

### 40A:5-2. Definitions

As used in this chapter and any act amendatory to and supplementary thereto unless the context indicates otherwise:

"governing body" means the board of chosen freeholders of a county or the commission, council, board or body having control of the finances of a municipality;

"chief financial officer" means the director of revenue and finance, comptroller, treasurer, collector or other financial officer of a municipality or the treasurer of a county;

"chief executive officer" means the mayor, commissioner or director of a local unit;

"warrant" means the draft or check of any local unit used in warranting disbursement of moneys and shall, in every instance, be evidenced by the issuance of a check of the local unit. In no instance shall it be necessary for the local unit to refer to, or issue, a check separate and distinct from the warrant;

"check" means the instrument by which moneys of any local unit are disbursed.

### 40A:5-3. Fiscal year

The fiscal year of every local unit shall begin on January 1 of each year and shall terminate on December 31 of the same year.

### 40A:5-4. Annual audit required

The governing body of every local unit shall cause an annual audit of its books, accounts and financial transactions to be made and completed within 5 months after the close of its fiscal year and for that purpose shall employ a registered municipal accountant of New Jersey. Nothing in this chapter shall prohibit the making of such audit by the director upon the request of the governing body.

### 40A:5-5. Scope of audit

Each audit shall embrace the books, accounts and transactions of the local unit and every board, body, officer or commission supported and maintained wholly or in part by funds appropriated by the local unit, unless otherwise provided by statute or regulations of the board. Each audit shall cover a complete fiscal year and, in addition, shall include a verification of all cash and bank balances as of the date of the audit thereof and an audit of the accounts to such date.

**40A:5-6. Report of audit**

Every such registered municipal accountant shall file the original report of his audit and recommendations with the clerk and shall, within 5 days thereafter, file a certified duplicate copy thereof, over his signature, in the office of the director.

**40A:5-7. Publication of report and recommendations**

A synopsis of all audits, together with the recommendations made by the registered municipal accountant, shall be prepared and published by the clerk of the local unit at least once in the official newspaper of the local unit, if there be one, or if there be none, in a newspaper published in the local unit. If there is no newspaper published within the local unit, it shall be published in a newspaper having a general circulation in the local unit.

If the clerk fails to have such publication made within 30 days after receipt of the report of audit and recommendations, he shall be subject to a fine of \$10.00 payable to the local unit for each day after the expiration of the 30 days that such publication fails to appear.

**40A:5-8. Audit by director**

If any local unit does not carry out the provisions of this chapter by reason of the failure of the governing body thereof to institute and complete such audit within the time provided herein, the director may, by his employees and agents or by auditors employed for that purpose, conduct an audit of the books of such local unit and such audit shall be taken to be the statutory audit of the local unit and shall be paid for by the local unit on bill rendered therefor.

For the services of the said director, or his employees or agents, or the pay of the auditors employed by him, whether permanent employees of the division or not, there shall be paid to him by the local unit for deposit in the State treasury, a per diem allowance not to exceed \$50.00 for each person for work done in connection with the audit or examination of the accounts. Said amount, if not paid when billed, shall be recoverable in an action at law.

**40A:5-9. Audit by registered municipal accountant**

Every audit required under this chapter shall be completed by an accountant or auditor who holds an uncanceled license as a registered municipal accountant of New Jersey. Such license shall be issued annually by the New Jersey State Board of Public Accountants, shall be dated September 1 and run until August 31 of the following year, unless sooner cancelled or revoked by the said State Board of Public Accountants.

Every report of audit shall be signed by the registered municipal accountant making the audit, or in charge thereof, who shall be the person authorized by the local unit to make the audit. In case any license shall be revoked, such revocation shall not be construed to affect any agreement which may be made by any local unit with any other registered municipal accountant, even though such accountant shall have been associated with the person whose license has been revoked.

**40A:5-10. Revocation or cancellation of license**

Upon proof that any registered municipal accountant shall have knowingly omitted to report any error, omission, irregularity, violation of law or discrepancy found in the books or accounts, or shall have issued false reports of the audit of any local unit, or of such a nature as not to comply with the requirements of the director, or if such registered municipal accountant shall fail to file such report and recommendations as herein directed, or neglect or refuse to carry out any agreement for audit, his registration license may be cancelled by the State Board of Public Accountants. It shall be the duty of the director to notify the State Board of Public Accountants of any matters coming to his attention relative to any of the foregoing. Upon cancellation or refusal of a license, a person aggrieved thereby shall have the right to a review by the Superior Court in a proceeding in lieu of prerogative writ.

**40A:5-11. Advertising for bids unnecessary**

No local unit shall be required to advertise for bids for any of the work performed pursuant to 40A:5-4.

**40A:5-12. Annual financial statement of local unit**

The financial officer of each local unit shall file annually with the director a verified statement of the financial condition of the local unit as of the close of the fiscal year. Such statement shall be filed, upon forms furnished and prescribed by the director, not later than the first day of March after the close of the fiscal year.

If the official charged with the responsibility of filing shall fail to file such statement within 5 days after the time fixed for filing the same, he shall be subject to a penalty of \$5.00 for each day of neglect to file the same, to be recovered in a summary proceeding against such official instituted and prosecuted under the Penalty Enforcement Law.

**40A:5-13. Annual financial statements by boards, committees and commissions of a local unit**

Every board, committee or commission of a local unit which by law is vested with power to expend public moneys, other than by warrant upon its financial officer, shall, not later than the tenth day of January, file with the said financial officer a statement showing in detail the items of moneys received and disbursed by it during the preceding fiscal year, and also the balance of unexpended funds at the end of the fiscal year.

**40A:5-14. Legal depositories for public moneys**

The governing body shall, by resolution passed by a majority vote of the full membership thereof, designate as a depository for its moneys a bank or trust company having its place of business in this State and organized under the laws of the United States or of this State.

The official charged with the custody of such moneys shall deposit them in the depository or depositories designated by the governing body and shall thereafter be relieved of any liability or loss of such moneys due to the insolvency or closing of the depository or depositories.

**40A:5-15. Deposit of funds paid to the local unit**

All moneys, including moneys collected by taxation, received from any source by or on behalf of any local unit or any board or department thereof shall, within 48 hours after the receipt thereof, either

a. be paid to the officer charged with the custody of the general funds of the local unit, who shall deposit all such funds within 48 hours after the receipt thereof to the credit of the local unit in its designated legal depository, or

b. be deposited to the credit of the local unit in its designated legal depository.

**40A:5-16. Payment of moneys of local unit**

The governing body of any local unit shall not pay out any of its moneys

a. unless the person claiming or receiving the same shall first present a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct. The governing body may, by resolution, require an affidavit in lieu of the said certification, and the clerk or disbursing officer of the local unit may take such affidavit without cost, and

b. unless it carries a certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit.

**40A:5-17. Approval and payment of claims**

a. The governing body shall approve or disapprove all claims and shall, by ordinance, prescribe the manner in which claims shall be approved or disapproved.

b. The method of disbursing moneys for payment of claims approved shall be as follows:

1. In the case of a county, by check issued on the order of the clerk to the board, signed by the county treasurer and countersigned by such other officers as may be designated by the governing body.

2. In the case of a municipality, by check drawn on the treasurer, or other custodian of funds of the municipality, and after being signed by the mayor or other chief executive officer shall be countersigned by the treasurer or other custodian of funds.

**40A:5-18. Public recording of approved claims**

All claims approved for payment by the local unit shall be recorded by the local unit, either in its minutes or in a manner prescribed by the director. The record of approval shall be open to the public.

**40A:5-19. Payment of salaries and wages**

The governing body of any local unit may provide by ordinance for the manner in which and the time at which salaries, wages or other compensation for services shall be paid, and prescribe the form and manner in which checks upon the treasury shall be drawn and signed for that purpose.

The local unit may, by resolution, provide for the bi-weekly payment of the salaries, wages and compensation of officers and employees, both elective and appointive.

**40A:5-20. Officers to deliver funds and records when term expires**

Whenever any official ceases to hold office in any local unit, on the day of the expiration of his term of office, he shall forthwith deliver to the clerk of the local unit, or other person who may be designated by the governing body to receive the same, all moneys, papers, books, memoranda, accounts and any data of any nature whatever pertaining to his office.

On failure or refusal to carry out the provisions of this section within 5 days after the expiration of his term, he shall, on notice in writing of such delinquency from the chief executive officer of the local unit, be subject to a penalty of \$50.00 for each day of refusal or neglect to comply therewith. The penalty shall be collected by the local unit in an action at law.

**40A:5-21. Petty cash fund of local unit**

A local unit may establish a petty cash fund upon written application to and after approval by the director. All matters relating to the establishment, accounting, repayment and discontinuance of such fund shall be in the discretion of the director, who shall promulgate reasonable rules and regulations in respect thereto.

**40A:5-22. Investigation of expenditures of local unit**

A judge of the Superior Court may, in his discretion, make a summary investigation into the affairs of any local unit and appoint an expert or experts to prosecute such investigation whenever

a. a petition for such investigation shall be presented to him, signed by 25 freeholders, who have paid taxes on real estate located within the local unit within one year, and such petition sworn to and subscribed by them sets forth that they have cause to believe that the moneys of such local unit are being, or have been, unlawfully or corruptly expended, in which case, at least 10 days' notice of the hearing thereon shall be given to the disbursing officer and the governing body of the local unit; or

b. a resolution of the governing body requesting such investigation shall be presented to him.

**40A:5-23. Costs, taxation and payment bond**

The judge, if he deems it advisable, may require the applicants to furnish a bond to be filed with the county clerk for the payment of the costs and expenditures of the investigation.

The costs, including witness fees and mileage, shall, by his order, be taxed to and paid by the local unit whose expenditures have been investigated.

**40A:5-24. Filing and publication of report of investigation**

The results or report of the investigation shall be filed in the office of the Clerk of the Superior Court within 10 days after the completion thereof. The judge shall cause the results of the investigation to be published thereafter in such manner as he may deem proper.

**40A:5-25. Attorney of local unit may appear on its behalf**

Whenever an investigation shall have been ordered to be made pursuant to this chapter, and the governing body of the local unit shall pass a resolution directing its attorney, counsel or other legal representative, as it may choose, to appear and act on its behalf or on the behalf of any of its officials, such attorney may appear at the investigation and on behalf of the local unit or any of its officials, present evidence, examine witnesses and take part in the investigation.

**40A:5-26. Subpoenas and testimony of witnesses**

A judge of the Superior Court during the conduct of an investigation pursuant to this chapter may

a. upon his own motion or upon application of the expert designated to conduct such investigation, exercise the subpoena powers of the Superior Court and enforce such subpoena in similar manner as in civil actions in the Superior Court;

b. take or order the obtaining of evidence and the taking of testimony, by deposition or otherwise, in similar manner as in civil actions in the Superior Court.

Any person who shall willfully and corruptly testify falsely to any material matter upon oath administered by the judge or the expert designated to conduct the investigation shall be guilty of perjury.

**40A:5-27. Witness fees and mileage taxed as costs**

Witnesses subpoenaed by virtue of this chapter shall be entitled to receive the same fees and mileage as witnesses in civil actions.

**40A:5-28. Duty of officers and employees of local unit**

Every officer and employee of a local unit, which is the subject of a summary investigation as provided in this chapter, shall obey all orders of the judge and shall facilitate the conduct of the said investigation. A refusal or failure to obey such orders or an intentional failure to facilitate the conduct of the investigation may be punished by the judge as for contempt.

**40A:5-29. Acceptance of bequests, legacies, gifts**

Any local unit is authorized and empowered to accept bequests, legacies and gifts made to it and is empowered to utilize such bequests, legacies and gifts in the manner set forth in the conditions of the bequest, legacy or gift, provided, however, that such bequest, legacy or gift shall not be put to any use which is inconsistent with the laws of this State and of the United States.

**40A:5-30. Acceptance of Federal grants**

Any local unit shall have power to accept any advance or grant of money made by the Federal government to aid in financing the cost of preparing plans for any public project which the local unit has lawful authority to undertake, and shall have power to agree to repay any such advance or grant if, and when, the local unit shall undertake such public project. Notwithstanding the provisions of any other law, any local unit may make such an

agreement although the funds necessary to make the repayment required by the agreement shall not have been previously made available by an appropriation or by the authorization of bonds.

**40A:5-31. Award programs for local units**

Any local unit may establish and maintain plans for award programs for employees, designed to promote efficiency and economy in government functions, to reward individual employees for meritorious performances and suggestions. Award programs may include any or all of the following:

- A suggestion award program;
- Awards for heroism;
- An efficiency and incentive award program;
- Awards for professional accomplishments;
- Awards for service.

Any local unit shall have power and authority to make appropriations of money therefor, establish and make awards in the form of cash, medals, citation certificates, insignia or other appropriate devices to employees selected as recipients of awards by it or its committee appointed in accordance with programs established pursuant to this act. Such committee shall be known as the "Public Employees' Awards Committee" and shall consist of 5 persons who shall be officers or employees of the local unit, or members of the governing body, and no 2 of such officers or employees shall be employed in the same department of the local unit. Of the members first appointed to the committee, 2 shall be appointed for terms of 3 years, 2 for 2 years and 1 for 1 year, and thereafter appointments shall be made for terms of 3 years. Members shall serve for the terms for which they are appointed and until their successors have been appointed and qualified; a vacancy occurring by reason other than expiration of term shall be filled for the unexpired term. Members of the committee shall serve without compensation. The committee shall meet and organize as soon as practicable after the first appointment of members and annually, thereafter, on the call of the chief executive officer, and select a chairman from among its members. The committee shall hold regular meetings at least once each month during the year, except during July and August, at the call of the chairman or the chief executive officer of the local unit.

The committee is authorized to request, and shall receive, such assistance as it may require from any department, official or agency.

The committee shall be responsible for the formulation of programs and shall have the power to adopt and promulgate rules and regulations for the conduct and operation of awards programs.

The committee shall make an annual report to the governing body concerning the operation of awards programs established pursuant to this act.

**40A:5-32. Reimbursement**

Whenever any work shall be done or money expended by any local unit, whether by agreement or by the terms of any insurance policy, for which an individual or corporation is liable, the local unit shall be authorized to collect from such individual or corporation such sum or sums as shall be necessary to reimburse the local unit, and such sum or sums, when received, shall be placed to the credit of the appropriation from which the cost of doing such work shall have been expended.

**40A:5-33. Oath taken before assuming office**

In addition to any oath that may be specially prescribed, every person elected or appointed to any office in any local unit shall, before assuming such office, take and subscribe to the oaths required by Chapter 1 of the Title "Oaths and Affidavits" (R.S. 41:1-1 et seq.). The oaths shall be filed with the county clerk in the case of a county, and with the municipal clerk in the case of a municipality, and shall be preserved by these officials as public records.

**40A:5-34. Bonds of officials and employees**

Every officer or employee, by virtue of his office or position, or of any law, entrusted or charged with the receipt, custody or expenditure of money or funds of the local unit, and any other officer or employee required so to do by the governing body thereof, shall, before entering upon the duties of his office or position, execute and deliver his bond, or shall be otherwise bonded to the local unit in its corporate name, conditioned for the true and faithful performance of his duties. All bonds shall be in such form, for such sum and with such surety as the governing body of the local unit shall, by resolution, direct. The governing body may, in any instance, require corporate surety. All such bonds, in the case of a county, shall be filed with the clerk of the board of chosen freeholders, except that the bond of the clerk, if there be any, shall be filed with the county treasurer. In the case of municipalities, all bonds shall be filed with

the municipal clerk, except the bond of the clerk, which shall be filed with the treasurer. The bonds shall be preserved for and be the property of the local unit.

**40A:5-35. Recording of bonds**

The local unit may require such bonds, or any of them, to be recorded in the office of the clerk of the county and a copy of any bond so recorded, certified by the county clerk, shall be received in evidence in all the courts of this State and be as good and available in law as if the original bond were produced and proved.

**40A:5-36. Protection to be afforded by bond**

Every such bond shall be for the protection of the State, the county and the municipality or, in the case of an intermunicipal court, the municipalities, and also for the protection of defendants, litigants, bondsmen and all other persons in interest.

**40A:5-37. Condition of bond broken**

Upon application to the county court of a county by a citizen and taxpayer thereof, alleging that the condition of the bond of any officer, member of committee or employee of the local unit has been broken, the court shall make such investigation regarding the truth of the allegations as it shall deem proper, and in its discretion may order an action to be brought upon the bond in the name of the local unit, or otherwise, for the benefit of the local unit or any officer, board or department thereof.

**40A:5-38. Rules and regulations**

The local government board may prescribe rules and regulations to effectuate the purposes of this act, but such rules and regulations shall not be inconsistent with the rules of administration applicable to the municipal courts.

**40A:5-39. Fixing of bond in excess of minimum amount**

Nothing contained in this act shall be deemed to preclude the fixing of the amount of any such bond in excess of the said minimum amount, by the governing body of any municipality, when authorized by law to fix the amount of any such bond.

**40A:5-40. Bond of magistrate or clerk; fixing of minimum amount**

Whenever any municipal court magistrate or any clerk of a municipal court is required to give an official bond, the minimum

amount of such bond, notwithstanding any other provision of law, shall be the amount determined and fixed by the local government board according to a classification system which shall be established by said board.

**40A:5-41. Classification system for purpose of determining amount of bond; minimum amount**

In establishing the said classification system, the board shall utilize audits made by it or under its supervision and also the reports of the municipal magistrates, on file in the administrative office of the courts. The board shall confer with the administrative director of said office and, if it shall so desire, with municipal officials. The board shall take into consideration the probable amounts of money which will be received from fines, penalties and costs, and which will be handled for bail, security, fees and other purposes. After the establishment of the said classification system, no such official bond shall be given or accepted below the minimum amount prescribed by the said classification system and in no case shall any such official bond be in an amount less than \$1,000.

**40A:5-42. Purchase and retirement of outstanding bonds; procedure; duties of local government board**

Any local unit, by resolution adopted by vote of at least  $\frac{2}{3}$  of the full membership of the governing body, may at any time appropriate and apply any unappropriated funds to the purchase and retirement of any of its then outstanding bonds, notes or other obligations. The purchase price may be the face value, or may be below or above the face value of such bonds, notes or other obligations. Any such proposed purchase shall be subject to the following provisions:

a. Before adoption of the resolution, the governing body shall cause satisfactory proof to be filed with the director that such funds then are, or within a reasonable time will be, available.

b. Before contracting to purchase any bonds, notes or other obligations at a price above their face value, the governing body shall submit such resolution to the said director for approval by the local government board. Before taking definite action, the said local government board may require the submission of additional information and may require that the governing body of the local unit shall call for public tenders of bonds, notes or other obligations on such notice and subject to such rules as the board may prescribe. On receipt of such tenders, the gov-

erning body shall report them to the said local government board together with a further proposed resolution for approval by that board.

In approving or disapproving any proposed purchase of bonds, notes or other obligations, the said local government board shall find and determine that such appropriation of available funds is in the interest of the local unit, having regard for (1) the prospective need of funds for other purposes, (2) reasonableness of the price proposed to be paid, (3) any saving of interest to result from retirement of the bonds, notes or other obligations at the price proposed to be paid, (4) the equality and reasonableness of the debt service on obligations which will remain outstanding, and (5) fairness to the holders of other obligations.

After purchase of any bonds, notes or other obligations, satisfactory proof of cancellation of the bonds, notes or other obligations and of any coupons thereto annexed shall forthwith be filed with the director by the chief financial officer of the local unit.

Any local unit, by resolution adopted by vote of at least  $\frac{2}{3}$  of the full membership of the governing body may at any time appropriate to and pay into any sinking fund maintained by such local unit any unappropriated funds; provided, a certified copy of such resolution shall be submitted to the local government board and the local government board, by resolution, shall determine that it is satisfied by proof submitted to it that such funds then are, or within a reasonable time will be, available, and shall consent to such appropriation.

**SECTION 2.** The following sections, chapters and acts, together with all amendments and supplements thereto, are hereby repealed:

Chapter 1 of Title 40 of the Revised Statutes;

Chapter 2 of Title 40 of the Revised Statutes;

Sections 40:4-1 to 40:4-5, inclusive; 40:4-8; 40:4-9; 40:4-13; 40:4-14; 40:4-16; 40:5-1; 40:5-3 to 40:5-5, inclusive; 40:5-7 to 40:5-16, inclusive; 40:6-1 to 40:6-6, inclusive; 40:21-8 to 40:21-12, inclusive; 40:21-14; 40:23-10; 40:46-2; 40:46-19 to 40:46-22, inclusive; 40:46-31; 40:48-17; 40:125-13 of the Revised Statutes;

Laws of 1933, Chapter 194;

Laws of 1938, Chapter 25;

Laws of 1938, Chapter 236;

Laws of 1939, Chapter 32;

Laws of 1939, Chapter 33, section 2;

Laws of 1939, Chapter 332;

Laws of 1939, Chapter 373;

Laws of 1940, Chapter 51;

Laws of 1940, Chapter 240;

Laws of 1940, Chapter 245;

Laws of 1940, Chapter 262, section 2;

Laws of 1941, Chapter 8;

Laws of 1941, Chapter 330;

Laws of 1942, Chapter 5;

Laws of 1942, Chapter 187;

Laws of 1943, Chapter 138;

Laws of 1945, Chapter 14;

Laws of 1945, Chapter 220;

Laws of 1946, Chapter 53;

Laws of 1946, Chapter 101, section 1;

Laws of 1947, Chapter 195;

Laws of 1947, Chapter 341;

Laws of 1948, Chapter 159;

Laws of 1949, Chapter 121;

Laws of 1949, Chapter 140;

Laws of 1951, Chapter 96;  
Laws of 1952, Chapter 312;  
Laws of 1952, Chapter 345;  
Laws of 1953, Chapter 376;  
Laws of 1956, Chapter 198;  
Laws of 1957, Chapter 24.

Section 3. This act shall take effect  
January 1, 1962.

Section 4. The said revision, constituting Title 40A,  
supplemental to the Revised Statutes, shall not be printed  
in the pamphlet laws of this session.