STAFF REPORT ON
PRELIMINARY DRAFT OF
NEW JERSEY LOCAL BOND LAW.

As submitted to the

County and Municipal Law Revision Commission

This report has been prepared for the County and Municipal Law Revision Commission by its Staff. The report has not been considered or approved by the Commission and is distributed for purposes of explanation and discussion only.

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To the County and Municipal Law Revision Commission:

I file herewith the staff report on the preliminary draft of the local bond law.

This report contains a general appraisal of the draft which has been submitted heretofore to the commission, a section by section analysis of what has been done in the draft and a full report of suggested improvements.

Special commendation should be given to Charles DeF. Besore', Esq., Chief Counsel and Executive Director, Law Revision and Legislative Services, and George C. Skillman, Director, Division of Local Government, for their very substantial efforts in compiling the draft. Commendation should also be given to John T. Trimble, Esq., member of the firm of Caldwell, Marshall, Trimble & Mitchell, and Henry E. Russell, Esq., member of the firm of Hawkins, Delafield & Wood, for their recommendations.

A. General Comments.

1. The preliminary draft is composed of a combination of substantive changes suggested by Messrs. Skillman, Russell and Trimble which were articulated into meaningful statutory language and incorporated in the draft

by Mr. Besore'. In addition to these substantive changes, many sections have been re-edited and simplified. The structure of the act has been re-arranged so that the sections are now set up to follow along more functional lines.

2. One glaring weakness in the old act was the absence of standard definitions of terms commonly used throughout the act. This weakness has been remedied by the introduction of an entirely new section, 40A:1-2, containing standard definitions.

3. The main body of the report contains a section by section analysis of what has been done on the draft and recommendations as to what should be done before the bond law will be in a form satisfactory for submission to the Legislature.

4. A reading of the report will reveal quickly that there have been recommendations for substantial changes made by Messrs. Trimble and Russell which have not been incorporated in the draft. These suggestions have not been incorporated in the draft because they were considered matters of policy and are decisions for the commission.

5. Four completely new sections have been incorporated into the draft. These new sections appear in the draft with the source denoted as "New". Twenty-three sections have been carried over directly without change of any kind, substantive or editorial. These sections are described in the analysis of

the report with the denotation "No change". Forty-one sections have been changed editorially but not substantively. These sections are denoted "No substantive change". Sixteen sections have been changed substantively. The changes which have been made are succinctly described in the report and are denoted "Substantive change". Seven sections have been carried over without change of any kind whatsoever, and there have been no recommendations made to change these seven sections. Accordingly, they are denoted "No change made or recommended". They differ from the twenty-three sections described above and denoted "No change" in that recommendations for change have been made regarding those twenty-three sections, but those recommendations have not been adopted in the draft for they relate to matters of policy. Seventeen sections of the existing legislation are omitted in the draft, as they are considered obsolete.

B. General Recommendations.

1. A re-examination of the preliminary draft reveals certain mechanical errors which will be rectified in the second draft. In certain instances, the word "act" is used rather than "chapter". In 40A:1-4, the catch line should read "Obligations issued in anticipation of issuance of bonds". The catch line for 40A:1-7 should read "Supplemental debt statement; execution; filing". Within a few of

the sections, there is some variation in the internal numbering.

2. Every effort must be made to simplify the language and shorten the sentence structure. Many of the sections still remain extremely complicated and overworded. Unfortunately, this will always be a problem with a bond law because of its highly technical and complex nature. However, we must recognize that untrained municipal officials deal with these laws and considerable effort must be made, if possible, to construct the statute so that it is understandable to laymen as well as lawyers.

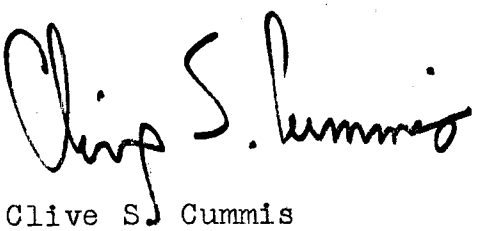
3. The recommendations of Mr. Trimble and Mr. Russell, and Mr. Skillman's comments on those recommendations, should be viewed very closely. A number of very substantial policy questions are posed on these recommendations, including those that Chapter 6, School Bonds, should be incorporated under the local bond law of Title 40, and Mr. Trimble's recommendation relating to the liberalization of the down-payment requirements.

4. Almost two hundred copies of the preliminary draft of the bond law have been distributed to interested persons and groups throughout the State. The response to date has shown an awareness of the importance of the revision work in which the commission is engaged. It is anticipated that a substantial number of recommendations will be received by the commission

staff from persons who have had time to review the preliminary draft of the bond law. These suggestions are being, and will be, compiled by the commission's staff and will be submitted to the commission and the advisory subcommittee on the local bond law when it is appointed by the Governor.

5. An alternative method of classification is appended hereto. It is recommended that this be given consideration before the final draft is completed.

Respectfully submitted,



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PROPOSED STRUCTURE OF LOCAL BOND LAW

Chapter 1. Local Bond Law.

Article 1. Short Title and Definitions.

Article 2. Power to Issue Obligations.

A. In General.

Article 3. Bond Authorizations.

A. Contents.

B. Limitations on County and Municipal Debt.

C. Proceedings Precedent to Adoption of Bond Authorization.

D. Adoption of Bond Authorization.

E. Special Covenants in Obligations.

F. Appropriations Required.

G. Costs Included in Bond Authorizations.

H. Adoption of Provisions not Included in Bond Authorizations.

Article 4. Obligations.

A. Types of Obligations.

(1) Bond Anticipation Notes.

(2) Interim Obligations.

(3) Short Term Notes.

(4) Local Improvement Obligations.

(5) Combined Issues.

Section Analysis and Comments.

40A:1-1. Short Title. Source. R.S. 40:1-1.

40A:1-2. Definitions. Source. R.S. 40:1-37.

40A:1-3. Power to borrow money and issue obligations; exceptions. Source. R.S. 40:1-7. Substantive change. There has been a substantive change in this section incorporating Mr. Trimble's suggestion extending the period for issuance of emergency appropriations to include the preceding fiscal year.

(1) Trimble: R.S. 40:1-7. (40A:1-3).

This section should be liberalized with reference to the issuance of bonds for purposes of emergency appropriations. The section now provides for issuance of bonds for improvements "xx for the financing of which emergency appropriation or appropriations may in the same fiscal year have previously been made xxx."

In many cases municipalities or counties will not have sufficient down payment or borrowing power to authorize bonds in the same fiscal year the emergency appropriation or appropriations are made. If the period for issuance of such bonds could be extended to anytime prior to adoption of the budget in the next fiscal year, these difficulties could be overcome as down payment funds could be provided in the next fiscal year, and often increased valuations or payment of obligations late in the year increases borrowing power.

It is therefore suggested that the quoted language be changed to read substantially as follows:

"xx, including any such improvement or property for the financing of which emergency appropriation or appropriations may in the same or the immediately preceding fiscal year have previously been made pursuant to section 40:2-31 of the Revised Statutes and such obligations are authorized and issued prior to the final adoption of the budget of the municipality or county for the year immediately succeeding the making of such emergency appropriation or appropriations, xxx."

(2) Russell: R.S. 40:1-7. (40A:1-3)

Continue the provision for annual funding of capital emergency appropriations. Cf. §40:2-31. If things like "engineering plans"or "revaluation programs" made bondable, revise to include any purpose mentioned in R.S. 40:1-34 (40A:1-26).

Skillman:

Comment (1) has been given effect in the Revision. Regarding (2) the bonding for "engineering plans" is debatable when divorced from the project or purpose. The need for the engineering exists as it is impossible to competently plan any capital project without preliminary plans - but the capitalization of these costs where a project is subsequently abandoned could be criticized.

An alternate suggestion - require the expense of preliminary plans to be charged against the Capital improvement funds (This is now permitted

by ruling of Board). If the project is completed, the 5% down payment would be waived to the extent of the preliminary charges. The preliminary charges would not be too far from the 5% figure.

The passage of Chapter 48, Laws of 1956 (C. 40:50-9 et seq.) makes it unnecessary to consider capitalization of "revaluation programs."

40A:1-4. Obligations issued in anticipation of issuance of notes. Source. R.S. 40:1-8; 40:1-42. No substantive change.

(1) Trimble: R.S. 40:1-8; 40:1-42. (40A:1-4)

It is advisable to extend the period for temporary financing by bond anticipation notes to at least three years. In periods of low interest rates, this matter is not too material, but in abnormal markets such as in the past year or 18 months it is a hardship on many municipalities or counties to be required to issue permanent bonds at the end of the two year period in an extremely weak municipal bond market. New York State has found a somewhat similar provision so burdensome that the 1957 session of the New York Legislature extended the period for temporary financing in effect to a period of five years with a requirement that at least part of the bond anticipation notes be paid in each year after the first year from proceeds other than proceeds of the bonds. A three year period would be advisable as it is not too long and coincides with the period for temporary financing now permitted to school districts in New Jersey under both Chapter 6 and Chapter 7 of Title 18.

This section was amended by Chapter 145, Laws of 1954, to increase the provision that assessment notes could not be renewed in a total amount in excess of one-fifth of one per

centum of the average assessed valuations to one per centum of the average assessed valuations. I see no reason why there should be any limitation or renewal assessment notes for the full five year period as long as the assessment obligations were properly authorized within debt limitations and the renewals do not exceed the special assessments then confirmed, unpaid and not delinquent. If, however, for matters of policy it is felt desirable to continue the one per cent limitation on the total amount of all assessment notes renewed then the Section should be clarified to at least permit renewal of assessment notes for a two year period without reference to the limitation. As the section now reads it is open to the interpretation that the two year period provided for in 40:1-8 for bond anticipation notes for general improvements does not apply to assessment notes and that after the first year the total amount of renewed assessment notes cannot exceed the one per cent limitation of assessed valuations. This can work a hardship, under this interpretation, because in many cases special assessments are not even confirmed in a one year period in the case of large improvements and accordingly at least a two year period of renewal should be permitted without reference to the one per cent limitation. This could be accomplished if it is desirable to retain the one per cent limitation by changing the language of the section to read substantially as follows:

"Local improvements may be financed temporarily only under the provisions of section 40:1-8 of this title, except that bond anticipation notes to finance local im-

provements may be renewed from year to year for a total period of not over five years from date of the original notes, but such renewals, after a period of two years from the date of the original notes, may not exceed an amount equal to the special assessments then confirmed, unpaid and not delinquent, and in a total amount, however, not exceeding one per centum of the average of the assessed valuations as called for in subsection 2 of section 40:1-80 of this title."

In this connection it is suggested that the period for renewal of bond anticipation assessment notes might well be extended for full the period in which the special assessments are payable. This would permit the complete financing of assessable improvements by notes and avoid the expenses and services involved in public sale of bonds. Since favorable rates of interest are usually obtained on short term notes from local banks, substantial interest savings should result.

An illustration of the above is readily found in the case of public housing obligations under the federal subsidy program. There is, generally speaking, no limitation on the period during which obligations of public housing authorities can be financed with notes instead of serial bonds. During the recent period of exceedingly high interest rates public housing authorities issued

practially no serial bonds but continued financing with short term notes, and at least a minimum saving of one per centum in interest rates occurred during such period.

Of course some provision would have to be made to prevent the possibility of an undue accumulation of bond anticipation assessment notes through failure to collect special assessments or misapplication of special assessments collected. This could be accomplished by the present provision preventing renewals in excess of special assessments then unpaid and not delinquent, or by provisions requiring retirement of a specified per centage of the notes in each year, beginning in one or two years after levy and confirmation of the special assessments.

(2) Russell: R.S. 40:1-8; 40:1-9; 40:1-10; 40:1-42. (40A:1-4; 40A:1-21; 40A:1-9; 40A:1-4)

Much as presently provided for school temporary financing in Title 18, require bond authorization in every case, with automatic power (when bonds authorized) to issue bond anticipation notes in anticipation thereof and, if desired, retire them (and reduce the bond authorization) from budget, State aid, etc.

Omit required reference to "purpose" of notes, in view of question of interpretation on combined purposes.

Skillman:

Comment (1) has many supporters insofar as the 3 year term is concerned - but it must be kept in mind that a good part of our financial difficulties in the 30's was due to the issuance of 5 year temporary paper. I would concur in the 3 year plan if the statute required a 5% reduction of these notes before the end of the 2nd year and a like reduction in the 3rd year. This would call for some capital planning and would in effect mean that bonds would be issued for 85% of the cost of a project (5% down payment, 5% retirement 2nd year and 5% 3rd year). The appropriations would be mandatory and would tend to prevent rushing into a project without counting the cost.

The suggestion with respect to bond anticipation notes running 5 years to finance local improvements is not unreasonable, but there must be some pressure to promptly confirm these assessments. The further suggestion that these notes "might well be extended for the full period" could mean that they might run for 10 years. This could lead to confusion, although it is agreed that financing costs would be reduced.

Comment (2) brings up a point which should be explored by the Commission. This might be done by adding a section to 1A-9 by adding a section to the effect that the bond authorization shall provide for the issuance of bond anticipation notes where no permanent bonds are to be issued, but where permanent bonds are to be issued, the bond authorization shall provide for the issuance of bonds, with the proviso that the authorization may be temporarily financed as permitted by this act.

40A:1-5. Interim obligations authorized.

Source. R.S. 40:1-56. No change.

40A:1-6. Short term notes authorized. Source (New). Suggested by Fred Stickel, III.

40A:1-7. Supplemental debt statement required.

Source. R.S. 40:1-13. No change.

(1) Trimble: R.S. 40:1-13. (40A:1-7)

It would be advisable to amend this section to provide that for an amendatory ordinance which does not increase the gross debt a new supplemental debt statement or an amended supplemental debt statement is not required to be filed. The section now eliminates the requirement of filing of a supplemental debt statement for "an amending resolution or ordinance affecting matters which are not required to be contained in the original county bond resolution or municipal bond ordinance." There are many amendments however which do affect the other material matters but which do not increase the amount of obligations authorized. Since taxpayers will have all the other statutory and constitutional provisions as to hearing and publications for any amendment it is wholly unnecessary to require the filing of supplemental debt statements where the amendment of the ordinance affects entirely other matters and does not increase the amount of bonds or notes authorized to be issued.

The provision requiring filing of the supplemental debt statement in the Division of Local Government prior to final adoption of the ordinance should be changed to require such mandatory filing for a specified period prior to the sale of any notes or bonds under the bond ordinance or county bond resolution.

The advisability and wisdom of the filing in the Division of Local Government is not questioned, but it is not logical or sound to make validity of the bond ordinance or county bond resolution dependent on such filing. The Division of Local Government has no duties or obligations with respect to supplemental debt statements as far as validity of the bond ordinance or county bond resolution is concerned, and any of the functions of the Division of Local Government relating to supplemental debt statements could be performed fully as well at any time prior to the sale of obligations as prior to the final passage of the bond ordinance or county bond resolution.

The fundamental and only purpose, as far as validity of the bond ordinance or county bond resolution is concerned, is to determine whether the obligations can be issued within debt limitations, and apprise taxpayers of the municipality or county affected of the debt situation so that they may appear at the public hearing on the bond ordinance or county bond resolution and protest against passage, or, together with other taxpayers, file a petition for a referendum on the bond ordinance or county bond resolution. A period of approximately five weeks, including estoppel 20 day notice is required to make a bond ordinance or county bond resolution effective, and substantial

amounts of public funds are expended in services and publications and even perhaps for referenda. Under the present section all such services or funds are wasted if by error, omission or even failure of mails, the supplemental debt statement is not received in Trenton prior to final passage of the bond ordinance or county bond resolution.

Since the same intended result can be obtained by requiring filing of the supplemental debt statement in the Division of Local Government prior to sale of obligations, such change should be made.

(2) Russell: R.S. 40:1-13. (40A:1-7)

Consider permitting amendment of purposes of a prior bond authorization even if after the municipality has subsequently gone over its debt limit.

Skillman:

Comment (1) should be considered. It might be well to add after "Local unit." at end of 1st sentence, a new sentence "In any instance where an amending resolution or ordinance makes any material change but does not increase the amount of authorization authorized, or where any resolution or ordinance is to be adopted pursuant to the provisions of R.S. 40:1A 56 of this Chapter, a new supplemental debt statement prepared in accordance with the form prescribed by the Board shall be filed."

The comment relative to the filing or non-filing with the Director

can be dismissed at this time. Violations are not numerous and the filing of these statements prior to passage of resolution or ordinance is, I believe, important in the overall financial picture of the State.

Comment (2) may need a further supplement to the amendment suggested above, and is an appropriate recommendation. Suggested addition -"Such supplemental debt statement may be filed and any resolution or ordinance adopted even though the local unit may be over the debt limit at the time of filing such statement." (Should be checked to see if any other sections need amendment).

40A:1-8. Limitations on county and municipal indebtedness. Source. R.S. 40:1-14; 40:1-15. No substantive change.

(1) Trimble: R.S. 40:1-14; 40:1-15. (40A:1-8)

It will obviously be advisable to change the limitations on the permitted debt limitations of both municipalities and counties. However the legislative action on evaluation pursuant to the Middletown Township decision of the Supreme Court will probably have to be determined before an intelligent determination can be made of the proper limitations of indebtedness for counties and municipalities. The present limitation really would be too high if and when reevaluation is made upon a true value basis in many counties and municipalities.

(2) Russell: R.S. 40:1-14; 40:1-15; 40:1-80. (40A:1-8; 40A:1-59)

The debt limit generally, in view of equalization of assessed values. Consider shifting base immediately to "full value" on Tax Department equalization factors for 1954, 1955 and 1956 and later years. If so or when equalization to full value comes about, the 7% and 4% limits may be high. More importantly the 6% and 8% figures for schools (§18:5-84) may be high. If to be revised downwards, consider temporary relief provision for municipalities (see 16 (i) below), also relieving municipal debt limit from charge for excess school debts (like New York).

Further on general debt limit, consider repeal of special debt limits within the limit (except where imposed by referendum), such as $300,000 limit on county mosquito extermination, limits on some hospital financing, fire departments, etc.

[R.S. 40:1-16 (i) (40A:1-10)]

Skillman: R.S. 40:1-14; 40:1-15; 40:1-80.
(40A:1-8; 40A:1-59)

Shifting from assessed values to equalized values is one of the bothersome subjects coming up as we have more and more municipalities completing revaluation programs. There has been great pressure to use equalized values for borrowing purposes and I fully concur in Mr. Russell's comment that the 7% and 4% limits are too high; also the 6% and 8% figures for schools. My present feeling is that a 4% overall limit is about the best that can be arrived at with 2% for municipal and 2% for schools. I further concur in the suggestion that these limits be separate - that is, the excess borrowing for schools shall not impair the municipal borrowing power.

The comments are pertinent. If ACR 36 is finally passed, it will be the duty of the Division to make studies and recommendations to the 1959 Session of the Legislature.

It would be in order to make a tabulation or study of Sections requiring change if equalized figures are written into the statute.

40A:1-9. Bond authorizations; statements, etc. requisite. Source. R.S. 40:1-10. No change.

(1) Trimble: R.S. 40:1-10 (40A:1-9)

Uncertainty exists under subsection (a) of this section as to whether separate statements of estimated maximum amounts to be raised from all sources, and estimated maximum amounts of bonds to be issued, must be separately stated for each improvement for which a separate period of usefulness is provided in Section 40:1-34. Often street improvements consist of paving, curbs, sidewalks and storm sewers and one overall contract is let for the improvement. In such cases engineers find it difficult to break down the estimate of costs, and it is not practicable to state an estimated cost for each, and then have to amend the bond ordinance or resolution to reallocate funds. Sufficient flexibility should be permitted to comply with actual conditions encountered.

It is therefore suggested that at the end of subsection (a) an additional sentence be added reading substantially as follows:

"xx. Related improvements or properties may, in the discretion of the governing body of the municipality or county, be considered as one improvement or property for the purposes of this subsection (a)."

[40:1-34 (40A:1-26)]

(2) Russell: R.S. 40:1-10. (40A:1-9).

(a) Omit required showings of "estimated maximum amounts" of "bonds" and "money to be raised from all sources". See R.S. 40:1-11 (40A:1-18) and R.S. 40:1-34 (40A:1-26) below.

(b) Consider letting law, R.S. 40:1-26 (40A:1-29), and public sale provisions substitute for this clause.

(c) Consider omitting provision of second sentence for "average" assessment-installment life. Is it ever practicable or used? Substitute the shortest installment period.

(d) Clarify if possible. Is there ever a case where "gross debt" is not increased (except possibly on simultaneous repeals)?

40A:1-10. Bond authorizations; additional statements requisite. Source. R.S. 40:1-16. No change.

(1) Trimble: R.S. 40:1-16; 40:1-16.1. (40A:1-10; 40A:1-11)

The procedure for the emergency borrowing power contained in subsection (d) of Section 40:1-16 under the formula contained in subsection 40:1-16.1 is entirely too cumbersome and too complicated for use by public officials. There are inequities and inconsistencies in its operation and although it has been amended several times to correct some of such inequities and inconsistencies, it seems that a much clearer and concise method of permitting the issuance of obligations in excess of the debt limitations could be included in the statute. It is suggested that such a provision should be substantially as provided in the following paragraph:

A provision permitting any county or municipality to issue in any year obligations in the amount of a specified percentage, for example two thirds which is used in some States, of the amount of obligations paid and retired during the preceding year. Such emergency borrowing power could become available to any municipality in any current year in which its percentage of debt exceeds the debt limitation. The amount of the emergency borrowing power which would come into being at such time is readily computable and would not require the time consumed in study and working out the complicated computations which are now required for the present provisions.

The approval of the Local Government Board for incurring of indebtedness in excess of debt limitations can, of course, be obtained under the 1957 statute now contained in subsection (i) of this section. This is a highly desirable provision and should be retained, but provision for a limited amount of emergency borrowing power should also be included. A substantial amount of time and expense is necessary for applications to a state agency, and it is therefore desirable for municipalities and counties to have some emergency borrowing margin in reasonable amounts, and to require approval of the Local Government Board for incurring of indebtedness in larger amounts. This would eliminate much of the time and expense of making applications for exceeding the debt limitations in small amounts and would afford a further protection by requiring approval of the Local Government Board for any larger borrowing in excess of debt limitations.

(2) Russell: R.S. 40:1-16; 40:1-16.1. (40A:1-10; 40A:1-11)

Debt limit exceptions or exemptions.

(a) Is exception for judgments either wise or actually used?

(b) and (c) If note authorization becomes automatic result of a required bond authorization, these become unnecessary except for transit and provision for bonds for purposes covered by notes previously issued or authorized under Prior Local Bond Law. In any event, correct (c) as to funding of notes previously "authorized", not just those "issued".

(d) See comments below on R.S. 40:1-16.1 (40A:1-11).

(e) **Repeal as probably dead letter, especially on "full values". Dangerous as allowing this, chronologically: 1% school + 8% municipal = 9% existing; + 2% new municipal = 11%; plus 7% high school, gets to a high 18% debt.**

(f) See comments below on R.S. 40:1-78,79 (40A:1-62 to 40A:1-67).

(g) **On State Health Board orders to exceed debt limit, add Local Government Board review of at least the financing plan for the excess amount. Also, consider whether, on an order, municipality can proceed with only part of the project, not "every part thereof"**

(i) **In view of loss of municipal borrowing margin to the schools and especially if special 16 (d) borrowing power be eliminated or frozen (and unless school debt be no longer charged on the municipal debt limit), insert new emergency clause authorizing Local Government Board (at least for a temporary period) to permit excess municipal debt in proper and defined cases.** R.S. 40:1-16 (40A:1-10).

Has become very complicated, with its accumulation of figures back to 1938. In any general simplification of debt limit, consider (a) repeal thereof if emergency municipal borrowing margin is given under proposed §16 (i) or if school load is taken off the municipal debt limit or (b) upon transition, an interim statement (like in 1935) preserving figure down to the effective date and stopping further accumulation. In any event, revised to prevent deficits in the account by reason of year-end losing of special borrowing power properly used during the year. R.S. 40:1-16 (40A:1-10).

Skillman: R.S. 40:1-16 (40A:1-10).

(g). The Local Government Board for several years has recommended that State Board of Health orders be subject to Board review, not with the idea of attempting to tell the State Board of Health what to do, but to provide for a review which might make it possible to break an order up into parts, thus not unduly impairing the finances of the municipality.

Comments (1) relative to a modest emergency borrowing running directly to municipalities should be considered. 40:1-16 (d) (40A:1-10) has become so complicated that the Commission should call a conference of a number of bonding attorneys, local attorneys and others and seek a workable and less complex Section 10. Sections 10 and 11 need further attention.

40A:1-11. Computation of borrowing power.

Source. R.S. 40:1-16.1. No change.

See 40A:1-10.

40A:1-12. Issuance of permanent obligations prior to confirmation of assessments. Source. R.S. 40:1-38. No substantive change.

Russell: R.S. 40:1-38 to 40:1-42. (40A:1-12 to 40A:1-15; 40A:1-4)

Restudy these provisions as to bonds or notes for local improvements (either the assessed or municipal shares) carefully, still promoting prompt (and not delayed) bond authorization or sale therefor but straightening out

(1) Provision for cases where municipal share is to be percentage or other share of final costs, not a dollars contribution stated in advance which may (if costs underrun estimates) reduce amount expected to be assessed. Allow (in §38) statement of municipal share as either dollars or formula or combination of both and limit bond life to the assessment-installment life except as to (a) stated dollars contribution or (b) formula (and any unassessed added) share when ascertained by confirmation of assessments. R.S. 40:1-38 (40A:1-12).

(2) Provisions as to financing when confirmed assessments go delinquent. §39 seems to prevent bond issuance against delinquent assessments. Offhand, this seems just backward, preventing financing just when it is most necessary to start regular budget amortization of the debt and give time to enforce collection of the assessment. The limitation of §42 on carrying notes (which are unamortized) forward against delinquent assessments would be continued however, perhaps with some short grace period permitted to give time to fund or pay off by budget. R.S. 40:1-39 (40A:1-13). R.S. 40:1-42 (40A:1-4).

(3) Whether §40 is necessary, since all bonds are general obligations. R.S. 40:1-40 (40A:1-14).

(4) Provisions here (and in §34 and in §40:56-1 and §40:65-1 et seq.) as to sidewalk authorization and financing. Restore act (omitted apparently inadvertently in the 1937 Revision) allowing option to build sidewalks as (or as part of) a general or local (benefit basis) improvement. R.S. 40:1-34 (40A:1-26).

Skillman: R.S. 40:1-38 to 40:1-42. (40A:1-12 to 40A:1-15; 40A:1-4).

The local improvement section should be restudied with the idea of having a more reasonable procedure. All bonds, whether assessment or otherwise, are general obligations, and I am wondering if the procedures could not be simplified.

40A:1-13. Issuance of permanent obligations after confirmation of assessments. Source. R.S. 40:1-39. No substantive change.

See 40A:1-12.

40A:1-14. "Assessment" to be used in local improvement obligations. Source. R.S. 40:1-40. No substantive change.

See 40A:1-12.

40A:1-15. Local improvement bonds not to finance assessed cost. Source. R.S. 40:1-41. No change.

See 40A:1-12.

Skillman: The following comment applies to preceding sections 40A:1-12 to 40A:1-15, inc.

These sections need review, not so much as to need of revision, but rather as to whether they are used to an extent warranting retention.

40A:1-16. Special covenants authorized in bond authorizations for certain purposes. Source. R.S. 40:1-90. Substantive change made to include electrical systems and parking systems.

(1) Trimble: R.S. 40:1-90. (40A:1-16)

The provisions of this section have enhanced the marketability of general obligations issued for sewer and water purposes with the additional pledge of revenues. It should also be extended to electric systems as well as sewer and water systems. There are a number of municipalities in the state with profitable municipality owned electric systems. Under present statutes I know of no way for such municipalities to receive the market benefit from a pledge of their electric revenues. This section is permissive and not mandatory and there is no reason it should be limited to water or sewer utilities. In fact I think it would be advisable to change the language to read: "The construction of a sewer, water, or electric system or systems or any other revenue producing enterprise or undertaking, the improvement, enlargement, reconstruction or extension of any sewer, water or electric system, or any other revenue producing enterprise or facility, or for the acquisition or improvement, enlargement, reconstruction or extension of a privately owned sewer, water or electric system, or any other revenue producing enterprise or facility, or any two or more of such purposes, xxx"

(2) Russell: R.S. 40:1-90 (40A:1-16).

Include or improve this special-covenant provision (as successfully used by Camden, Englewood, Clinton and some others) in the Local Bond Law, possibly expanding it beyond water and sewer systems to parking systems (see No. 78-79 above) or other self-supporting projects. R.S. 40:1-78, 79 (40A:1-62 to 40A:1-67).

Skillman:

Both comments (1) and (2) have been considered in the revision. It may be in order to add "or any other self-liquidating enterprise or project."

40A:1-17. Combined issues of obligations authorized. Source. C. 40:1-25.2. There has been a substantive change made. The revised section omits requiring the approval of the Director of the Divison of Local Government for the combining of issues.

(1) Trimble: 40:1-25.2. (40A:1-17).

The last provision of this section would appear to be illogical in that it provides that if two bond issues are combined into one issue for purposes of sale no deduction may be taken if any purpose of the combined issue is for a purpose for which no deduction is to be made. This provision is contained in Section 40:1-11 and is entirely proper at the time of the initial authorization of bonds by a county bond resolution or ordinance. In a combining resolution under Section 40:1-25.2, however, the exact amount of bonds for each separate purpose authorized by separate county bond resolutions or municipal bond ordinances are set out in full and it is merely a matter of computation as to the purposes for which the combined issue was made. There would therefore seem to be no logical reason for denying to any municipality the deduction for a self-liquidating or other deductible purpose if it should desire to combine such an issue with a non-deductible purpose.

In this connection provision requiring approval of the Director of the Division of Local Government for combining one or more issues is unnecessary, as his only responsibility under the present section is to certify as to the correctness of the computation

of the average period of usefulness. Since the periods of usefulness or average periods of usefulness will be set out in each of the county bond resolutions or municipal bond ordinances which are being combined, it is a simple matter of computation and the requirement of approval by the Director of Local Government would appear to be an unnecessary burden both upon the Director and the county or municipal officials.

(2) Russell: 40:1-25.2. (40A:1-17)

Consider and provide for case where less than all of the bonds are needed for a purpose "melded" into a combined issue. What happens to the "average life". This also arises on a single issue authorized for plural purposes.

Skillman:

The suggestion in Comment (1) has been written into the Revision.

Comment (2) needs further study. Suggestions of bonding attorneys should be sought. Consider whether there is a need of change in law to meet comment, or whether improved capital planning on the part of municipalities might achieve the desired result.

40A:1-18. Deductions allowable in combined issues. Source. R.S. 40:1-11. Substantive change omitting reference to poor relief bonds.

Russell: R.S. 40:1-11. (40A:1-18).

Add reference to poor relief deductible bonds (40:1-77 (d) (40A:1-61) unless poor relief bonds paid and authorization thereof (40:1-99 et seq. (omitted) repealed. Clarify separate showing of amounts for each purpose, probably in 40:1-10 (a) (40A:1-9).

Skillman:

Reference to poor relief bonds has been dropped. If need therefor arises at some future date amendments can be provided, based on need at that time.

40A:1-19. Bond authorization constituting appropriation. Source. R.S. 40:1-60. No substantive change made or recommended.

40A:1-20. Appropriations required in bond authorizations. Source. R.S. 40:1-12. No substantive change.

(1) Trimble: R.S. 40:1-12. (40A:1-20)

The requirement for down payment should be liberalized in the following particulars:

(1) The requirement of subsection (a) that the down payment be contained in a previously adopted budget under the caption "Down Payment Fund" or "Capital Improvement Fund" is not necessary and a county or municipality should be permitted, if it has available funds from any source which are subject to appropriation for the down payment, to appropriate such funds and pass a bond ordinance or county bond resolution. The present provision is unduly restrictive as the underlying purpose is simply to have a down payment of 5% of the amount of obligations issued and as long as the county or municipality has available funds regardless of whether they have been contained in the previous budget under a particular title does not affect the purpose to be accomplished as long as the moneys available can be appropriated at the time of adoption of the ordinance. The present provisions of subsection (a) permit the use of moneys available and previously contributed in aid of the financing by persons or corporations other than the municipality or county or a federal or state agency. There is no logical reason to prohibit a municipality or county to use any surplus or other available funds as a down payment.

(2) This section is also unduly restrictive in that it does not provide for any relief in the case of capital improvements which for various reasons are authorized after the budget is adopted and for which no down payment has been included. Present subsection (b) takes care of the situation where federal or state funds are received to aid any financing and there is no reason the same principle should not be applied to situations where for some reason the municipality does not have the down payment available in a previously adopted budget. The provision in the present subsection (b), in the case of federal and state grants, permits the adoption of the ordinance nevertheless but such ordinance must provide that there shall be included in the next adopted budget of the municipality the down payment of 5%. This would appear to accomplish the underlying result desired and would prevent the down payment from being an obstacle to the undertaking of capital improvements. In other words there is no particular logic in freezing entirely the right of a municipality for the remainder of the year to adopt a bond ordinance at all simply because the 5% down payment has not been previously appropriated.

(2) Russell: R.S. 40:1-12. (40A:1-20)

Consider repeal of this down payment requirement, coincident with new Budget Law provisions regularizing and governing capital improvement fund operations and (perhaps) making it partially a replacement fund and requiring some annual appropriation thereto and establishing capital budget or planning procedures. Has it (except in a few cases) actually produced capital planning or caused a growing proportion of capital costs to be met on a "pay-as-you-go basis?

Skillman: R.S. 40:1-12. (40A:1-20)

I concur in the statement that the down payment provision has actually produced little capital planning but I would be very reluctant to see this requirement repealed. I personally agree with the suggestion that the capital improvement fund might be a replacement fund and some annual appropriation required therefor. I am not sure, however, how this could be done without violating our commonly accepted home rule principles. Basically, I think capital planning must receive more attention, and it may be that the Local Government Board could establish certain regulations with respect to the capital budget section of the Local Budget Law and coordinate section 12 and the Local Budget Law.

This section should be rewritten to permit a down-payment to be financed by an emergency appropriation. While the down payment provision has produced little capital planning, it has made municipalities aware of the fact that a bondable project entails certain costs and has produced a limited amount of "pay-as-you-go" financing.

40A:1-21. Vote for adoption required. Source. R.S. 40:1-9. No substantive change.

Russell: R.S. 40:1-9. (40A:1-21)

Should two-thirds vote requirement be kept?

Skillman:

Reference to 2/3 vote is pertinent, but this requirement should be retained. A governing body should be substantially unanimous in an undertaking which may burden the tax levy for future years.

40A:1-22. Bond authorizations; approval or passage over veto. Source. R.S. 40:1-21. No substantive change.

40A:1-23. Bond authorization; introduction; first reading; hearing; passage, etc. Source. R.S. 40:1-18. No substantive change.

40A:1-24. Items included in costs. Source. R.S. 40:1-55. There has been a substantive change made in the last paragraph of this section along the lines suggested by Mr. Trimble. This permits the statement of only one total amount for all of the items provided for in subsections "a", "b" and "c". There has been no substantive change in paragraph "a". As to paragraphs "b" and "c" of this section, no change was made or recommended.

(1) Trimble: R.S. 40:1-55 (40A:1-24)

The first paragraph of this section should be revised to clearly permit the statement of only one total amount for all of the items provided for in subsections (a), (b) and (c). It is very difficult to estimate with finality the various items to be capitalized and one lump sum should be permitted so that

the necessity would not exist for amending the amounts for each of the purposes where they are separately stated. While the view is held by many attorneys that such a procedure is now authorized a contrary view has been expressed and many municipalities state the dollar amount of each of the purposes under (a), (b) and (c). If the amounts stated should be over or under the actual amounts necessary there is no way of using a surplus in one of the other purposes for a deficit in the other purposes if separate statements are made for each purpose, except by amendment of the ordinance or county bond resolution, which requires approximately five weeks.

To eliminate any doubt in the matter it is suggested that the first paragraph read substantially as follows:

> "In determining the cost of an improvement or property to be financed under this article, the following items may be charged as a part of the cost and be financed under this article by the issuance of obligations, but no obligations shall be issued to finance such items unless the total aggregate amount included under this section for clauses (a), (b) and(c) be separately stated in the county bond resolution or municipal bond ordinance."

It is also suggested under subsection (a) that the period for which interest may be capitalized should be extended to one year from the date of completion of improvements. It is often difficult in large improvements to estimate the exact date of completion

and in the case of large water or sewer improvements, particularly where rentals or revenues are to be charged, it is often advisable to capitalize interest on such improvements for a period of one year after completion. This is a rather universal standard under modern public financing and in fact in the case of many revenue projects interest is capitalized for a period of two years after completion.

(2) Russell: R.S. 40:1-55 (40A:1-24)

In interest of simplification, is this really necessary for showing in ordinance? Isn't it a question of application of proceeds and audit rather than ordinance provision. And, in any event, clarify as to whether:

(a) Each of the three items should or should not be shown separately.

(b) In plural-purpose ordinances, amount for each purpose (especially as to engineering under (b)) should be shown, also as to interest (under (a)) beyond year of issuance of "obligations".

Skillman: R.S. 40:1-55. (40A:1-24)

It is important that this section be clarified. It is undoubtedly necessary to retain a separate statement of the amounts made available for issuing expenses, etc., but the language should be cleared up materially.

Both comments (1) and (2) need further study.

In the case of "interest during construction period" referred to in comment (1) sub-section (a) might have a proviso to the effect that "in the case of any self-liquidating project interest for an additional 12 months from the close of the fiscal year or the 6 months period previously referred to may be included in the cost provided the engineer shall certify that the project will in his opinion, based on

the best estimates available, be fully self-liquidating in the first full calendar year of operation. Such statement shall be attached to the supplemental debt statement and shall be in the form prescribed by the Board.

The reference to "plural purposes" under comment (2) needs study. Question as to extent to which plural purposes ordinances are used or needed.

40A:1-25. Minimum period requisite. Source. R.S. 40:1-35. No change made or recommended.

40A:1-26. Periods of usefulness of purposes. Source. 40:1-34. No substantive change.

(1) Trimble: R.S. 40:1-34. (40A:1-26)

This Section does not need any substantial changes but the following suggestions are made in connection with the periods of usefulness.

(a) Airport improvements should have a longer period of usefulness than ten years. Many of such improvements are substantial and at least a twenty year period is suggested.

(b) Ambulances should have at least a ten year period.

(d) (2 and 3) It is suggested that the periods of usefulness for non-fireproof and frame construction are too low and should be thirty and twenty years respectively.

(d) (5) This provides for a period of usefulness in the case of acquisition of existing structures not greater than one-half of the period defined above for the type of construction of the buildings to be acquired but does not contain any date from which the computation is to be made. It is expressly provided that in the case of new construction of buildings the period of usefulness shall be computed from the date of the bonds. Either in the first paragraph

of (d) the words "or acquisition of existing structures" after the words "new construction", or in (5) of (d) the words "to be computed from the date of the bonds", should be inserted as the matter is now subject to serious doubt as to whether the computation should be made from the date of the original construction of the existing structure or from the time of acquisition of the existing structure or from the date of the bonds issued to acquire the existing structure.

It is also suggested that an additional period of usefulness be added to this section for the financing of preliminary engineering plans and other preliminary expenses for a capital project, such as water and sewer projects. Such a provision is contained in the statutes of other states. Since the New Jersey statute provides that no bonds shall be issued having a period of usefulness of less than five years such minimum period of usefulness could be provided for such purpose.

In many instances in the past municipalities and counties in New Jersey desired to explore the feasibility of a capital project and considerable expense was necessary for the preliminary engineering and preparation of plans. Such expense was in many cases too large to be placed in the current budget. It may be that after a full engineering survey the county or municipality will decide not to proceed with the improvement. Under the present laws the only way to finance preliminary engineering and other expenses is to

authorize the complete project at a time when the actual cost of the project has not been established with any reasonable degree of accuracy. This is not a very satisfactory method of procedure for the estimate required to be recited by the Local Bond Law is then merely a guess and not based on any competent data.

Such a provision would also aid in some Federal programs where the possibility of obtaining Federal aid has not been determined at the inception and cannot be intelligently determined by the governing body until it has a proper cost estimate based upon engineering and other technical data.

Such a provision could be very helpful and I see no practicable or reasonable objection to it.

(2) Russell: R.S. 40:1-34. (40A:1-26)

As to these periods of usefulness for improvements, restudy very carefully (especially with engineering advice) and try particularly to clarify or simplify as to:

(1) What is the "purpose" involved? Generally, §34 seems to refer to a physical thing or betterment which the municipality will build or acquire and own and operate. But what about cases where appropriation is to assist another body - as in certain State or county projects or, even more difficult, urban renewal or slum-clearance projects of housing or development agencies where no final public ownership results at all. Perhaps give simplified set of lives for such projects or carry them over to the catch-all clauses of (aa) and (bb). Maybe poor relief should also go in - but see §7 in general.
R.S. 40:1-34 (40A:1-26); R.S. 40:1-7 (40A:1-3).

(2) Whether and how land provided for a given short-life improvement in a single authorization can take the 40-year factor for figuring the single bond issue life.

(3) Whether inclusion of some equipment in an authorization for a long-life purpose like a water (y) or sewer (z) system cuts down the 40-year life given for the system, and whether extensive additional equipment for such a system (like an additional treatment plant unit) takes the 40-year life of the system or only the 15-year life (i) of "additional equipment or machinery" or the life of the (new) building housing it. Similarly, what is the situation when a sewer or water system authorization (40 years) includes provision for house connections (5 years under (o))?

(4) Possible bonding of plans for an improvement, separately from and before final authorization of the improvement itself. Presumably a rather short life would be stated, but power to pick up the item in a final (longer-lifed) authorization for the improvement itself should probably be reserved. Cf. §55 and note this relates to §8 and No. 34 (1) above. R.S. 40:1-55 (40A:1-24); 40:1-8 (40A:1-4); 40:1-34 (40A:1-26).

(5) Possible bonding of tax map, and property revaluation and equalization costs in excess of some stated percentage minimum, perhaps also land-use planning costs. This also relates to No. 34 (1) above.

(6) A separate life prescribed for a vehicle parking system, as mentioned under §40:1-78 et seq. (40A:1-62) below.

(7) Bonding of vehicles generally, with the present peculiar provisions of (b) for ambulances 5 years, (i) equipment and machinery 15 years, (j) fire engines 10 years, (v) street cleaning or snow removal machines or trucks 5 years, and (x) other vehicles, even heavy trucks or garbage removal trucks or extensive police-car fleets, no life. Consider fixing a flat 10 years for any or all vehicles, with resulting perpetual budget requirement of annual appropriation of 10% of all bonds so issued toward a dedicated "vehicle replacement reserve".

(8) The lives prescribed for streets or roads under (w). The amendment made in the 1950s to this clause are very confusing, seem to stop all bonding for any unpaved or lightly treated road, and seem unnecessarily detailed. With aid of State Highway Department, consider simplification to three classes - of 5, 10 and 20 years applicable perhaps to "pavements" rather than "streets" so as to pick up parking lots, municipal driveways, etc.

(9) **Whether (z) has become a dead letter? In this connection see comment in §78 et seq. below regarding water improvements.** R.S. 40:1-78 (40A:1-62).

Skillman: R.S. 40:1-34. (40A:1-26).

This needs a very careful study, both as to the life of the bonds and the language used in the section.

(5). Based on Chapter 48, P. L. 1956, I see no reason for considering the bonding of tax map or revaluation costs. Experience to date has indicated that a five year life permitted by the 1956 law is adequate.

(7). I concur that this needs review as certain items which it would seem could properly be capitalized now have "no life."

This section needs careful review. Engineering advice should be available in connection with the life of certain projects. Comment (1) should be further studied, particularly the reference to preliminary expense. Comment (2) also indicates the need of conference and study.

40A:1-27. Conclusiveness of determinations of periods of usefulness. Source. R.S. 40:1-36. No substantive change.

Russell: R.S. 40:1-36. (40A:1-27)

Clarify language as to what the voted determination is "conclusive" of.

Skillman:

Concur in comment relative to "conclusive of." Question to be answered is what might happen if the local unit decided that an improper purpose was bondable and supported their decision by appropriate resolutions, etc.

40A:1-28. Determination of maturities and maturities required. Source. R.S. 40:1-25; C. 40:1-25.1. These two source sections have been combined into one section. Subsection "d" has been omitted but no other substantive change has been made.

(1) Trimble: R.S. 40:1-25; 40:1-25.1. (40A:1-28).

The limitation on maturities of most bonds issued under the Local Bond Law as contained in subsection (b) of section 40:1-25 is too restrictive. This provides that no subsequent annual maturity can exceed by more than 50% the amount of any earlier maturity. This is too stringent and often prevents municipal financial officials from scheduling maturities of new issues to conform to an orderly retirement schedule with presently outstanding debt. Many municipalities still have a large number of funding or refunding bonds maturing during the next few years and many have heavy maturities in the next ten or fifteen years. It is not economically sound to vest so little discretion in financial officers in fitting the maturities of a new issue into the entire debt retirement schedule. A municipality with heavy maturities for outstanding debt for the next ten or fifteen or even twenty years should be permitted, at least in the case of improvements with a long period of usefulness, to schedule heavier maturities in the later years than the present provisions of the law allow for purposes

of the orderly overall debt schedule. This is an important matter, as one of the contributing factors to the temporary defaults and need for refunding in the 1930's in New Jersey was the piling up of heavy maturities in earlier years.

It is true that the Local Government Board can, under Section 40:1-25.1 approve maturities not conforming to the provisions of Section 40:1-25. However, I think the burden of work on the Local Government Board and also on the county and municipal officials and expense and time consumed in making applications for variations which are not too material should be avoided. It is suggested that subsection (b) be changed to provide that no annual installment shall exceed more than twice the amount of the smallest prior installment. This, in most cases, would give ample room for reasonable discretion in local financial officials and the scheduling of a proper overall debt picture at the time of the sale of new issues, without the necessity of making application to the Local Government Board for changes. The present provisions of Section 40:1-25.1 are still important and would reserve for the Local Government Board's consideration any unusual maturities required which would exceed the 200% rule. In other words, the suggestion is to liberalize the present 150% rule to a 200% rule.

[40:1-25, 40:1-25.1 (40A:1-28)]

(2) Russell: R.S. 40:1-25; 40:1-25.1 (40A:1-28).

As to maturity limitations, consider whether one authorized issue can be broken up into several separate series for sale and issuance purposes. (see 40:1-34 (40A:1-26) and 40:1-43 to 40:1-53 (40A:1-39 to 40A:1-49) below) and also

(b) Is the exception for self-liquidating projects necessary except for entirely new projects?

(d) Has this become a dead letter?

Consider simplifying and making clearer standards for this maturity relief provision. Perhaps prohibit extension of average bond life.

Skillman:

Sub-section (d) of original 25 omitted. Increase referred to in Comment 1 (double the amount) should be considered by Commission. If last part of Comment 2 (prohibit extension of average bond life) based on existing life and maturities is used as a basis of adjusting maturities the 100% increase might be reasonable--without Board approval--but not without study.

Note that revision inserted provision that "in no case shall average life exceed average life as fixed in sub-section "a". This is a substantial change and is a protective feature. The section should be reviewed before further revision.

40A:1-29. Interest rates; statement in notice of sale. Source. R.S. 40:1-26. No change.

(1) Trimble: R.S. 40:1-26. (40A:1-29)

This Section permits bonds of different maturities to bear different rates of interest but provides that if offered at public sale the notice of sale shall state the definite rates of interest which the respective maturities shall bear. This is not a workable provision as the customary practice in the sale of New Jersey bonds, and nearly all other municipal bonds, is to require bidders to specify the rate or rates of interest. It is almost impossible for counties or municipalities to guess or estimate the definite rates of interest which respective maturities would or should bear. It is in many cases highly advantageous for tax purposes and other reasons to permit bidders to name more than one rate of interest for an issue of bonds, with usually the requirement that all the bonds of any one maturity have the same rate of interest. The language of the section to accomplish such purpose could be changed to read substantially as follows: "but if offered at public sale the notice of sale shall state the definite rates of interest, or require bidders to specify the definite rates of interest, which the respective maturities shall bear." If this change is not made then the last sentence of Section 40:1-26 in its present form is meaningless.

[40:1-26 (40A:1-29)]

(2) Russell: R.S. 40:1-26. (40A:1-29).

See comment on bond sale and interest rates under 40:1-46 (40A:1-42) below.

40A:1-30. Obligations; where payable. Source R.S. 40:1-28. No substantive change made or recommended.

40A:1-31. Obligations; form; registration; redemption, etc. Source. R.S. 40:1-29. No substantive change in first paragraph. In the third paragraph, language of Chapter 10, Laws of 1957, is added upon recommendation of Russell.

Russell: R.S. 40:1-29. (40A:1-31).

Law (except as to refunding bonds under 40:1-65 (40A:1-79) is silent on redeemability of bonds. Consider authorizing redemption privilege at premiums.

Skillman: The following comment applies to preceding sections 40A:1-29 to 40A:1-31, inc.

Sections need restudy as to language and Comment 1. Callable feature in Comment 2 taken care of in present statute--carried into revision.

40A:1-32. Publication of bond authorization; form. Source. R.S. 40:1-19. No substantive change made or recommended.

Skillman:

The draft should be changed to 20 days as referred to in Section 40A:1-35. The 10-day provision referred to in Comment 2 (Chapter 49) refers to a 10-day period, but this 10-day period is not inconsistent with the 20-day effective period in Section 40A:1-34.

To change Section 40A:1-32 to a 10-day period would give little chance for protest.

40A:1-33. Publication; how made. Source. R.S. 40:1-20. No change made or recommended.

40A:1-34. Taking effect of bond authorization. Source. R.S. 40:1-22; 40:1-23. No substantive change. Sections 40:1-22 and 40:1-23 have been combined.

(1) Trimble: R.S. 40:1-22. (40A:1-34)

This section should be changed to read substantially as follows:

"Ordinances authorizing bonds to fund notes or temporary bonds, or bonds to be issued pursuant to a lawful order of the Department of Health of the State of New Jersey, shall not be subject to referendum under the provisions of this article or any other law or laws whatsoever."

Often municipalities are required to make improvements affecting the public health and welfare by order of the State Department of Health pursuant to statutory authority. It is inconsistent with such orders and the statutes which authorize them to have such ordinances subject to any referendum.

The present statutes are not clear on this point, and a contention has been made in litigation that a municipal bond ordinance authorizing sewer bonds pursuant to an order of the State Department of Health was subject to the permissive referendum on petition provided for in section 40:49-7 of the Revised Statutes. Such contention was overruled by the trial court, but such ruling was not appealed, and it is not believed that there is any decision of the Supreme Court of New Jersey on such question. The change suggested above in this section would eliminate any doubt in the matter.

Trimble: R.S. 40:1-23. (40A:1-34)

This Section provides that all county bond resolutions or municipal bond ordinances shall take effect twenty days after the first publication thereof after final passage. The section does not take into account the fact that under Section 40:49-7 a permissive referendum can be called by the requisite number of voters on the adoption or rejection of the resolution or ordinance as was expressly held in the case of French vs Ocean City 54 Atl 2d 196. There should be added after the present language a provision to be worded substantially as follows:

"xx, unless a petition shall have been legally filed for a referendum on such resolution or ordinance in which event such bond resolution or bond ordinance shall take effect only upon approval thereof at such referendum or the dismissal or withdrawal of the petition for such permissive referendum."

Russell: R.S. 40:1-22; 40:1-23. (40A:1-34)

Omit as dead letter, especially if bond authorization becomes prerequisite to note issuance.

Consider whether this should be made 10 days to fit with chapter 49 provisions, especially as to ordinances which so frequently also authorize the improvement.

Skillman:

Commission and Legislature should consider Comment 1 re referendum. Question as to whether legal voters should be denied the right to protest. If referendum rejects proposal the State has recourse to the courts.

40A:1-35. Presumption as to bond authorizations after publication after final passage. Source. R.S. 40:1-87. No substantive change.

Russell: R.S. 40:1-86 to 40:1-88 (40A:1-86; 40A:1-35; 40A:1-87)

Restudy these estoppel and validation sections as against (say) the Model Bond Law and New York provisions.

40A:1-36. Minimum price for obligations. Source. R.S. 40:1-27. There has been a substantive change to provide for an exception in the case of provisions of R.S. 40:1-72.

(1) Trimble: R.S. 40:1-27. (40A:1-36)

This section is inconsistent with the provisions of Section 40:1-72. It is also to be noted that many states permit the sale of obligations below par and this is actually the most advantageous method for the sale of municipal bonds as the permitting of a small discount enables bond dealers to offer the bonds at par and take their profit from the discount rather than being required to pay par and obtain their profit from a premium which increases sales resistance. This, of course, is a matter of policy. There would not appear to be much logic or reason for permitting discount sales of some types of bonds and not of others. [40:1-72 (40A:1-85)]

Skillman:

Comment 1 re sale of discount bonds should be the subject of further study. It is a very important change and reverses a policy of long standing in the case of general (but not refunding) obligations.

40A:1-37. Bonds; private sales of small issues. Source. R.S. 40:1-31. There has been a substantive change in this section which raises the limit on private sales from $10,000 to $20,000. This was a change recommended by Mr. Skillman who indicates that at present day costs the cost situation on a $10,000 public sale would be excessive.

40A:1-38. Notes; private sales; when authorized; reports of. Source. R.S. 40:1-32. No change.

Russell: R.S. 40:1-32. (40A:1-38)

Clarify what is meant by the "specific notes" which an officer may be given power to sell. Probably should mean the notes of a specific authorization, not notes described by reference to all of their terms.

40A:1-39. Bonds; public sales; when requisite; advertisement, etc. Source. R.S. 40:1-43. Substantive change on the limit from $10,000 to $20,000.

(1) Trimble: R.S. 40:1-43. (40A:1-39)

It is suggested that the provision for publication of notice of sale should be permissive and not mandatory in the case of the local publication. Practically all public sales of bonds are advertised in The Bond Buyer and actually the local publication has very little effect on the sale of the obligations. While there is no objection to such publication it should not be mandatory particularly since so many small municipalities have weekly publications.

The amount of bonds which may be sold at private sale should be increased from the present permissible amount of authorized issue of $10,000 or less. Considerable expense is involved in a public sale of securities and in view of the larger amounts of bond issues at the present time due to the general increase in costs since 1937, it is suggested that the amount of $10,000 be increased to at least $20,000 or perhaps $25,000.

(2) Russell: R.S. 40:1-43 to 40:1-53. (40A:1-39 to 40A:1-49).

Restudy these bond sale provisions as to

(1) Allowing optionally sale (at least of issues or combined issues of substantial size) on basis of different interest rates (per maturity) named by the bidder and lowest interest cost (substantially as per

Section 40:1-46 (40A:1-42) (b) and New York method). In such case, 40:1-47 (40A:1-43) cannot apply, and see and revise second sentence of 40:1-26 (40A:1-29) (as above).

(2) Regarding Section 40:1-51 (40A:1-47), possibility of different dates for various series of one issue, and consequent moving backward of the unsold maturities. See Section 40:1-25 (40A:1-28) above.

Skillman:

The change from $10,000 to $20,000 is believed to be a reasonable change. The special class of notes referred to in Section 40A:1-6 will also meet some of Comment 1 re expense of public sale, etc.

40A:1-40. Bonds; notices of sale; description of issues. Source. R.S. 40:1-44. No change.

See 40A:1-39. (Russell)

40A:1-41. Bonds; notices of sale; statement as to bidders. Source. R.S. 40:1-45. No change.

See 40A:1-39. (Russell)

40A:1-42. Bonds; notices of sale; statements as to multiple issues. Source. R.S. 40:1-46. Substantive change made. This change incorporates Mr. Trimble's suggestion as to the method of computation of net interest costs.

(1) Trimble: R.S. 40:1-46. (40A:1-42).

This section should be changed as to the method of computation of net interest cost in subsection (b). This subsection has seldom been used in sales of New Jersey bonds because of the difficulty of making the interest cost computation required. A simple method would simply be to leave the first complete sentence of the section as is and by changing the last sentence to provide substantially as follows:

> "Such net interest cost shall be computed, as to each bid, by adding to the total amount of interest to be paid by the issuer to the maturity of such bonds, and deducting therefrom the amount of the premium bid."

Under this method of bidding there would be no necessity for any

limitation of premium and the interest cost computation would be a simple one to make. Since the lowest aggregate amount of interest to maturity after deduction of premium, if any, would control the award, the most favorable interest rate in nearly all cases would have to be accepted, and the danger of an unusually large cash premium would be negligible.

See 40A:1-39. (Russell)

Skillman:

The substance of Comment 1 has been incorporated in the revision. The premium bid of not more than $1,000 has been accepted for so long that any change would not be well received.

40A:1-43. Bonds, bids; price and denominations. Source. R.S. 40:1-47. No change.

See 40A:1-39. (Russell)

40A:1-44. Bonds; notice of sale; deposit required. Source. R.S. 40:1-48. No change.

See 40A:1-39. (Russell)

40A:1-45. Bonds; proposals; opening and announcement of bids. Source. R.S. 40:1-49. No change.

See 40A:1-39. (Russell)

40A:1-46. Bonds; rejection of bids. Source. R.S. 40:1-50. No change.

See 40A:1-39. (Russell)

40A:1-47. Bonds; sale at one time or in installments. Source. R.S. 40:1-51. No change.

See 40A:1-39. (Russell)

40A:1-48. Bonds; private sale authorized when no bids received; conditions. Source. R.S. 40:1-52. No change.

(1) Trimble: R.S. 40:1-52. (40A:1-48)

It would be advisable to also permit private sales of bonds after an advertised sale in which all bids are rejected. The present provision only permits private sales if no legally acceptable bid is received. In view of the expense and time involved in a public sale, it would seem illogical to permit a private sale up to the maximum rate of interest (which is often six per centum per annum) where no bids are received at all, but to deny the right to make a private sale at a more advantageous price than the best price received at a publically advertised sale at which all bids are rejected. This could be accomplished by changing clause (a) to read substantially as follows:

"xx (a) said bonds shall not bear interest at a rate 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, in case no legally accepted bid is received, or shall be on terms more advantageous to the issuer than the best bid received at the advertised sale where all bids were rejected, xx".

See 40A:1-39. (Russell)

Skillman:

Comment 1 needs further study. Clause (A) if amended as referred to in Comment 1 would be reasonable--but reaction of financial houses should be sought.

40A:1-49. Obligations; private sale to certain funds authorized. Source. R.S. 40:1-53. No substantive change.

(1) Trimble: R.S. 40:1-53. (40A:1-49)

This provision should be revised to permit purchase without advertisement by a coterminus school district or municipality, as the case may be, of obligations of the other if either has surplus or other funds subject to investment and desires to purchase obligations of the other at private sale.

See 40A:1-39. (Russell)

Skillman:

Question wisdom of Comment 1 -- should municipality or school district have blanket authority to use surplus funds to buy bonds. If surplus funds available, use same to reduce issue.

40A:1-50. Execution of obligations; coupons.

Source. R.S. 40:1-30. There has been a substantive change made to permit execution by one manual signature with provisions for an imprinted seal, if desired.

(1) Trimble: R.S. 40:1-30. (40A:1-50)

It would appear advisable to amend this section to permit execution with facsimile signatures of county and municipal obligations with the requirement that at least one signature on the face of the bonds be a manual signature. This is the increasing tendency for the execution of public obligations, as it saves valuable time of public officials, and eliminates delay and expense in delivery of obligations after sale, Many of the recent statutes also provide that the seal may be reproduced or imprinted on the bonds as well as affixed and this also is a time and expense saving method. The practice has been used extensively recently in the case of larger issues and it would seem desirable to provide discretionary authority to execute obligations and coupons in such manner.

(2) Russell: R.S. 40:1-30. (40A:1-50)

Permit use of facsimile signatures in executing bonds by all but the clerk attesting the bonds and affixing seal.

40A:1-51. Delivery; change of officers or seals.

Source. R.S. 40:1-54. There has been a substantive change in the language of this section to provide for the situation of the death of the signing officer before the final signature or seal is affixed to the instrument.

Russell: R.S. 40:1-54. (40A:1-51)

Consider case of execution by some of the named officers, followed by death or term expiration regarding one of them before addition of final signatures or seal.

40A:1-52. Details of conversions prescribed.

Source. R.S. 40:1-57. No substantive change made or recommended.

40A:1-53. Power and obligation for payment in general. Source. R.S. 40:1-33. No substantive change.

Russell: R.S. 40:1-33. (40A:1-53)

Continue this general-obligation security clause for bonds, avoiding contractual provisions for special tax for each issue with resulting questions (perhaps constitutional) as to security position of State, county or school district bonds, functioning of cash basis budget laws, also of security provided by Municipal Finance Commission laws.

40A:1-54. Contracts to be financed by obligations; when to be made. Source. R.S. 40:1-59. There has been a substantive change in the language of this section to delete that part of the section limiting the making of the contract until 20 days after the filing of the supplemental debt statement with the director.

Russell: R.S. 40:1-59. (40A:1-54)

Query whether this is necessary, in view of prohibitions on expenditures without appropriation. In any event, reference to supplemental debt statement seems unnecessary; see 40:1-13 (40A:1-7).

40A:1-55. Prohibited contracts. Source. R.S. 40:1-58. No change.

Trimble: R.S. 40:1-58. (40A:1-55)

This section needs clarification as to the power of a county or municipality to obtain qualified financial services in the preparation of a bidding brochure, as it can be interpreted to prevent contracts for such services.

The preparation of a properly prepared brochure or bidding prospectus, which not only includes the notice of sale and the bidding form but also financial data as to tax collections, assessed valuations and general economic information concerning the issuer is of incalculable value in the sale of public obligations. Such brochure is also exceedingly helpful to rating agencies such as Moody's Investors Service, Standard and Poor Co., and other rating services; in fact it is universally recognized that the one most important price factor in public obligations is the rating they receive from recognized rating agencies. Consequently it is always greatly to the advantage of the issuing body to obtain the best qualified expert services in the preparation of such brochure or bidding circular particularly in the case of large issues. With the great volume of bonds being offered for sale today, and which will probably continue to be offered for a number of years, buyers

have so much selection that they are not inclined as in past days to spend time in investigating the economic conditions and other factors affecting the financial rating or value of a particular security and the best prices in the market are obtained by those public issuers who do go to the expense and trouble of preparing a very complete brochure or bidding circular, with all available information which will affect the financial standing of the issuer and the value of its securities.

Under these conditions it is well recognized that an issuer should be entitled to retain competent experts to prepare or assist in preparing such circular. In many cases the registered municipal auditor or financial officials are fully competent to prepare the brochure. In many cases, however, the services of a municipal bond dealer or municipal consultant are desirable and necessary. There is doubt, however, under subsections (a) and (d) as to whether any agreements can be legally entered into for such financial services, and there is also doubt, if the issuer desires to employ a municipal bond dealer to perform such services as to whether such dealer can then legally bid at a public sale of such securities. There cannot be the slightest legal or moral objection to permitting a dealer, if the issuer desires to retain a competent municipal dealer to assist in the preparation of the bidding circular, to bid for such obligations as long as the sale is a properly advertised public sale at which any other firm or person can purchase the obligations.

The highest court of one state has already held that a county may employ a municipal bond dealer as a fiscal agent to assist it in the sale of its obligations for a reasonable fee, and still bid for the obligations at a properly advertised public sale, although the same court in a previous case held that a fiscal agent so employed could not purchase such obligations at private sale without advertisement.

It is submitted that the court decision referred to above is sound and should be adopted in the best interests of the counties and municipalities of New Jersey. The underlying and paramount purpose of all statutes requiring public bidding is to obtain the best possible price and interest rate for the securities to be sold by the public issuer. If the employment of financial expert services are advisable, and if a municipal dealer is employed either as a fiscal agent or on a contract basis to perform such services, and is still willing to offer a better price and interest rate for the obligations than any other firm or person at a properly advertised public sale, then only the public issuer of the obligations is penalized if such municipal dealer, either as fiscal agent or in performing financial services under contract, is not permitted to bid at the public sale of such obligations.

The policy of the statutes should not be framed so as to hinder public bodies in obtaining the best price and interest rate, but should on the contrary, assist in the fulfillment of such

purpose. It is therefore suggested that the provisions of this section be revised to accomplish such a result, or if the retention of the present provisions is considered desirable, then a new provision should be added at the end of the present section reading substantially as follows:

> "The provisions of this section shall not be deemed to prohibit a county or municipality from employing for reasonable compensation, either as a fiscal agent or under a contract for financial services, a municipal bond dealer, municipal auditor or other financial expert in connection with the sale of bonds or notes, including the preparation of a bidding brochure or prospectus; and any municipal bond dealer, municipal consultant or other financial expert so employed by any county or municipality, either as a fiscal agent or under a contract for financial services for the sale of any bonds or notes shall be authorized to purchase such bonds or notes at a properly advertised public sale thereof."

Skillman:

Mr. Trimble's comment is important. There have been cases where the statistical staff of a bond firm has prepared a prospectus and then found that their firm could not bid on the bonds, either as principal or part of a syndicate.

I would suggest that the last clause of Mr.Trimble's suggested proviso be changed to read as follows:

> "and any municipal bond dealer, municipal consultant or other financial expert so employed by any county or municipality, either as a fiscal agent or under a contract for financial services for the sale of any bonds or notes shall not be barred from bidding on such bonds or notes at a properly advertised public sale thereof."

The following comment applies to preceding sections 40A:1-50 to 40A:1-55, inc.

The changes here have met the suggestions received and are reasonable and proper.

40A:1-56. Application of proceeds regulated.

Source. R.S. 40:1-85. There has been a substantive change in this section to include Mr. Trimble's suggestion that surplus be used for any purpose under the act regardless of the period of usefulness of the initial bond so long as the use of the surplus is approved by the board.

(1) Trimble: R.S. 40:1-85. (40A:1-56).

This section should be broadened by eliminating the provision that surplus funds from one bond ordinance can only be appropriated for a purpose or purposes with the same or a longer period of usefulness. While this might be a proper provision from a theoretical standpoint, as a practicable matter it has worked a hardship. Surpluses do often occur in relatively small amounts, and are often needed for other capital improvements. There can be no serious harm in permitting the appropriation of small surpluses for any capital improvement regardless of period of usefulness. There have been cases where municipalities or counties because of this provision were unable to use an unexpended surplus from a previous bond ordinance or county bond resolution, but were required to authorize new bonds in a small amount. For instance under the present statute if a small surplus existed which was for an authorized period of usefulness of twenty years and the municipality needed

a small amount for an improvement with a period of usefulness of fifteen years, it would be required to transfer the money to a sinking fund for the retirement of debt and would be precluded from using the surplus for the purpose with a fifteen year period. The only way the matter could be of any harmful use would be in the case of a deliberate overestimate of cost for one bond ordinance and this is a very unlikely occurrence. If it is felt, however, that the matter might be abused, such as using a surplus of bond proceeds from a forty year period for a five year period, then this possibility could be eliminated by requiring approval of the Local Government Board to the use of surplus proceeds for any period with a shorter period of use than the period for which the obligations were authorized. Such a provision would in many cases save substantial amounts which would be required for the passage of another bond ordinance or county bond resolution, and sale of obligations for small amounts.

(2) Russell: R.S. 40:1-85. (40A:1-56).

Restudy this proceeds application section as to

(1) Point raised under 40:1-55 (40A:1-24) above.

(2) Possible simplification or relaxation, in view of probable actual practice of losing many balances in a common and unseparated "capital surplus" or "trust surplus".

(3) Situation when desire is to apply to a 20-year purpose extra bond proceeds saved against a 30-year improvement financed under a 15-year-average-life plural purpose ordinance (or combined issue under 40:1-25.2 (40A:1-17).

(4) Possible need for some automatic lapsing of unsold authorizations.

(5) Use of sale premiums, especially if $1,000 limitation of 40:1-47 (40A:1-43) is affected.

Skillman:

The comments relative to this section are pertinent and the revision made will, it is believed, cover the very practical problem of approving the use of surplus proceeds for items which might in some instances have a shorter period of usefulness.

40A:1-57. Method of adoption. Source. R.S. 40:1-24. No change made or recommended.

40A:1-58. Annual debt statements; when required; where filed; form and contents. Source. R.S. 40:1-75. No substantive change made or recommended.

40A:1-59. Contents of annual debt statement. R.S. 40:1-80. Substantive change made to clarify form of annual debt statement by the inclusion of subsection 1. The form of annual debt statement in use for many years requires a definite reporting of gross debt, but the language of the original section was not too clear; hence, the language change in the draft.

Russell: R.S. 40:1-80 and 40:1-82. (40A:1-59; 40A:1-71).

As to approaching use of "full value" or equalized valuations, see 40:1-14, 40:1-15 (40A:1-8); 40:1-80 (40A:1-59) above.

40A:1-60. Gross debt defined. Source. R.S. 40:1-76.

No substantive change. Substantial editorial change made.

Russell: R.S. 40:1-76. (40A:1-60).

Consider dropping of gross debt exclusion for poor relief notes. See 40:1-11 (40A:1-18), 40:1-34 (40A:1-26) (1), 40:1-77 (40A:1-61), and 40:1-99 (omitted).

Skillman: R.S. 40:1-76; 40:1-77. (40A:1-60; 40A:1-61).

There seems no good reason for carrying any further exclusio for poor relief obligations. If recourse is necessary for this type of capital financing in the future, the Legislature should set up the procedure at that time.

40A:1-61. Deductions from gross debt described.

Source. R.S. 40:1-77. No substantive change.

(1) Trimble: R.S. 40:1-77 (40A:1-61)

It is suggested that an additional subsection be added to provide a deduction on annual or supplemental debt statements of any amounts to be received from the Federal or State governments for a project which is being or has been financed by the authorization of bonds or notes. In many cases agreements are entered into with the Federal government or with the State government, particularly in the case of road improvements, under which the payments to be received for which bonds are being authorized does not strictly come within the language under subsection (a) - "and any accounts receivable from other public authorities applicable only to the payment of any part of the gross debt not otherwise deductible". In many of these programs it has been considered necessary in the past for the issuer to authorize the full amount of the cost of the project and later be reimbursed either by the Federal or State government. This has worked a hardship in some cases where the debt incurring power was sufficient for the share of the county or municipality but not to authorize the full amount of the cost of the project including the share to be paid by the Federal or State government. There could be no objection to permitting such deduction as long as it is limited to amounts to be received under agreements entered into between the county or municipality and the Federal or State government.

(2) Russell: R.S. 40:1-77. (40A:1-61).

Consider dropping poor relief deductions. See 40:1-11 (40A:1-18), 40:1-34 (i) (40A:1-26), 40:1-76 (40A:1-60), 40:1-99 (omitted).

Skillman:

The suggestion appearing in comment No. 1 is pertinent. Bonding counsel's advice should be sought as to whether the present section is broad enough to cover the whole subject matter appearing in comment No. 1.

40A:1-62. Self-liquidating purposes in general.

Source. R.S. 40:1-78. No substantive change.

Russell: R.S. 40:1-78; 40:1-79. (40A:1-62; 40A:1-63 to 40A:1-67).

Provisions governing self-liquidating projects and bonds and deductions therefor (including 40:1-16 (f) 40A:1-10) should be restudied as to

(1) Permitting new projects other than water and sewer systems (particularly parking systems) to qualify for deduction as self-liquidating at original authorization on basis of engineer's report and L.G.B. or P.U.C. approval.

(2) In event of anticipated partial deficit, authorization of part of the bond issue as deductible, rest as non-deductible.

(3) Clarifying situation, as to charges (against an apparent cash surplus under §78) for utility bonds (or notes) theretofore authorized but not yet issued, also just after issuance of such bonds when none or only 6 months of the interest thereon or none of their principal is payable during the "fiscal year" mentioned in 40:1-78 (40A:1-62).

(4) Substantial water-supply projects where need exists to acquire and finance capacity which in fact is presently excessive but cannot otherwise be made available for growing future needs. Suggest deduction (as in 1956, A-222) for bonds for water-supply costing over certain amount, to continue only for a limited time until estimated completion and full utilization thereof.

(5) Permitting engineer and P.U.C. to use interest rate lower than 4 1/2% in their estimates when so limited by the authorizing ordinance.

(6) Reality of the statutory 4 1/2% interest charge rate, and any substitute therefor; also perhaps use of level debt service charge (at some rate for maximum life of bonds) to compute principal and interest charge for bonds authorized but not issued, taking note debt service out of computation under 40:1-78 (40A:1-62).

40A:1-63. Publicly owned utilities or enterprises; when self-liquidating. Source. R.S. 40:1-79. This section contains part of the substance of the introductory language of section 40:1-79. What has been done here is a complete re-editing of section 40:1-79 so that the substance of that section is now distributed among five sections of the new draft.

See 40A:1-62.

40A:1-64. Projects self-liquidating during construction. Source. R.S. 40:1-79. This section contains the middle portion of section 40:1-79.

See 40A:1-62.

40A:1-65. Improvements and extensions of projects when self-liquidating. Source. R.S. 40:1-79. This section contains subsections 1, 2 and 3 of section 40:1-79.

See 40A:1-62.

40A:1-66. Self-liquidating projects; powers of Board of Public Utility Commissioners. Source. R.S. 40:1-79. This section contains the last major portion of subsection 3 of section 40:1-79.

See 40A:1-62.

40A:1-67. Self-liquidating projects; disposition of deficits. Source. R.S. 40:1-79. This completes the inclusion of the substance of section 40:1-79 in the new draft and contains that part of the section requiring the 5% capitalization provision.

See 40A:1-62.

Skillman: R.S. 40:1-78; 40:1-79. (40A:1-62; 40A:1-63 to 40A:1-67)

Comment with respect to authorization and L.G.B. or P.U.C. approval is subject to clarification. The question of jurisdiction will arise and clarification is in order.

These sections need careful review based on the comments of Mr. Russell. Likewise, the question of whether a municipality shall go to the Public Utilities Commission for an Order of whether it is optional. The Local Government Board under present subsection 16(i) has the power to approve debt but cannot make a determination as to whether the debt is self-liquidating. Thus, the question of whether a municipality must go to the Utilities Commission in all self-liquidating projects, or whether it may come to the Board if it elects to treat the debt as non-deductible, should be spelled out.

40A:1-68. Redevelopment housing projects; when self-liquidating. Source. Supp. L. 1946, c. 53 (C. 40:1-77.1).

40A:1-69. Redevelopment housing projects; when self-liquidating prior to completion. Source. Supp. L. 1946, c. 53 (C.40:1-77.1).

40A:1-70. Redevelopment housing projects; disposition of deficits. Source. Supp. L. 1946, c. 53 (C. 40:1-77.1).

These three sections contain the substantive language of section 40:1-77.1 with minor editorial changes. However, the original section 40:1-77.1 has been divided into three separate parts and each of the new sections in the draft contains one of those parts.

Russell: 40:1-77.1. (40A:1-68 to 40A:1-70).

Consider covering deductions for housing or other land developments as suggested for parking systems in 40:1-78 (1) (40A:1-62) above, dropping this section as superseded or deadwood.

40A:1-71. Form and contents. Source. R.S. 40:1-82; 40:1-83. No substantive change. This new section combines sections 40:1-82 and 40:1-83.

Skillman:

This section is not materially changed. Some thought should be given as to whether reference should be made to Federal or State Aid as a deduction in any supplemental debt statement although the reference to this in the annual debt statement may cover the situation.

40A:1-72. Refunding obligations; when to be included in debt statement. Source. R.S. 40:1-81. No substantive change.

Skillman:

The sections from new section 40A:1-70 on, need careful review, particularly in view of the fact that they are technical, and do include sections dealing with the refunding of obligations with the approval of the Board. It is believed that the refunding article which was originally considered as an emergency provision should be retained, particularly in view of the fact that callable bonds are now permitted.

40A:1-73. Conclusiveness of debt statements.

Source. R.S. 40:1-84. No substantive change.

40A:1-74. Definitions. Source. R.S. 40:1-61. No substantive change in subsections "a" and "b" of the source section. However, subsection "c" is omitted.

Russell: R.S. 40:1-61 to 40:1-74. (40A:1-74 to 40A:1-85).

Query whether these refunding provisions, originally enacted as a temporary emergency measure, should not lapse. In any event

40:1-61 (40A:1-74). Definitions could probably be included with other general definitions.

40:1-70 (40A:1-84), 40:1-71, 40:1-73 (omitted). These are probably dead letters.

40:1-74 (omitted). Is it necessary, as a security and credit matter, to retain these contractual cash-basis-budget provisions, when the Budget Law already prescribes cash-basis budgets as a matter of general law. Incidentally, can't the non-cash-basis provisions of the Budget Law now be dropped?

Skillman: R.S. 40:1-61 to 40:1-74. (40A:1-74 to 40A:1-85).

These sections can be materially reduced in volume, but I am of the opinion that they should be retained in any revision, particularly in view of the fact that they are used in certain emergent instances and may be used if any great reliance is placed upon callable bonds.

The definitions have not been included in 40A:1-2 because they are peculiar to the subject matter of this Article.

40A:1-75. Purposes for which refunding obligations may be issued. Source. R.S. 40:1-62. No substantive change.

See 40A:1-74.

40A:1-76. Refunding bond authorizations; when authorized. Source. Supp. L. 1939, c. 373 (C.40:1-62.1). No substantive change.

See 40A:1-74.

40A:1-77. Refunding bonds; method of authorization. Source. R.S. 40:1-63. No substantive change.

See 40A:1-74.

40A:1-78. Refunding bond authorization; contents. Source. R.S. 40:1-64. No substantive change.

See 40A:1-74.

40A:1-79. Refunding bonds; term and contents. Source. R.S. 40:1-65. No substantive change.

See 40A:1-74.

Trimble: R.S. 40:1-65. (40A:1-79).

It is suggested that provision be made for the execution by facsimile signatures of refunding bonds unless a previous section applying to all bonds is broad enough to cover the same. This could be accomplished in this section by adding at

the end of the word "manner" in the seventh line substantially the following "either manually or by facsimile signatures provided that at least one signature on each bond shall be a manual signature."

This has already been discussed under a prior section and the modern practice is to eliminate as far as possible the necessity of busy officials signing large issues of bonds since the market readily accepts facsimile signatures as long as one signature on each bond is a manual signature.

40A:1-80. Refunding bond authorizations; consent of board requisite to effectiveness. Source. R.S. 40:1-66.

There has been no fundamental substantive change in this section. However, the new section does eliminate the board funding commission and carries over its powers and job to the local government board in the Division of Local Government, Department of Treasury.

See 40A:1-74.

40A:1-81. Refunding bond authorizations; examinations; audits; certifications, etc. by board; conclusive effect. Source. R.S. 40:1-67. There has been a substantive change in this section which eliminates the funding commission and there has been a substantial editorial change. However, the powers of investigation, regulation and certification are the same as before.

See 40A:1-74.

40A:1-82. Refunding bond authorizations; standards for action by board; certification of refusals. Source. R.S. 40:1-68. No substantive change.

See 40A:1-74.

40A:1-83. Refunding bond authorization; certified copies; filing. Source. R.S. 40:1-69. No substantive change.

See 40A:1-74.

40A:1-84. Refunding bond authorizations; special terms as to payment, etc. Source. R.S. 40:1-70. No change.

See 40A:1-74.

40A:1-85. Refunding bonds; sale. Source. R.S. 40:1-72. No change.

See 40A:1-74.

40A:1-86. Refunding bonds; validity not to be affected by purposes, etc. of original obligations. Source. R.S. 40:1-86. No substantive change.

See 40A:1-35 (Russell).

40A:1-87. Validity of obligations; when presumed. Source. R.S. 40:1-88. No change.

See 40A:1-35 (Russell).

40A:1-88. Classification; outlines; analyses; head notes, etc.; effect on construction. Source. (New).

40A:1-89. Chapter to be construed as revision. Source. R.S. 40:1-2; 40:1-3. No substantive change.

Trimble: R.S. 40:1-3. (40A:1-89)

Most of the exceptions to the application of the Local Bond Law, constituting Article 1 of Chapter 1 of Title 40, as contained in this section are now obsolete. Subdivisions a, b, c, d and f are entirely outmoded and are no longer required in the statute. I think the section could well read: "This article shall apply to all obligations issued after the effective date of the revision of this article for purposes for which obligations may be issued hereunder, except that this article shall not affect or apply to the incurring of indebtedness or the issuance of notes or bonds for school purposes, except as other laws may provide for the issuance of such notes or bonds pursuant to this article."

Russell: R.S. 40:1-3. (40A:1-89).

Retain in general, but referring to "Prior Local Bond Law", and also

(a) Set new effective date far enough in future to permit preparation for changeover.

(b) Omit second sentence of (d)

(c) Omit (f)

(e) Consider whether time has come to put Article 6 School Bonds under this law. Would relieve Title 18, chapter 6, but consider §18:5-84 et seq. and necessary revisions of debt limits.

Skillman: R.S. 40:1-3. (40A:1-89).

(e). The suggestion that consideration be given to incorporating Chapter 6 school bond procedures in the Local Bond Law is debatable. It is realized that the municipality actually issues the bonds and the local board of education disburses the proceeds. I am inclined to believe that the Department of Education would not take kindly to another State Agency taking over certain powers and prerogatives. Furthermore, there would have to be many changes in Title 18 to effectuate this suggestion. In any event, the change should not be made without consultation with the Commissioner of Education and the Department of Education. The relationship of the Division of Local Government and the Department of Education has been harmonious and I would be reluctant to assent to any change which was not mutually agreeable.

40A:1-90. References to statutes revised or superseded hereby; effect. Source. (New).

40A:1-91. Municipal finance commission saved. Source. R.S. 40:1-5. No change.

40A:1-92. Separability of provisions. Source. R.S. 40:1-6. No change.

40A:1-93. Effective date.