

NORTH CAROLINA PROJECT DEVELOPMENT FINANCING

PREPARED BY

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NORTH CAROLINA
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I. INTRODUCTION

A. OVERVIEW

The referendum on new Section 14 to Article V of the North Carolina Constitution passed on November 2, 2004. With certification of that result, North Carolina became the forty-ninth state to permit tax increment financing to be used to fund development and redevelopment projects. Being late to the game does provide some advantages, however, because North Carolina avoided many of the problems that plagued earlier efforts, including problems that required substantial revisions to initial enactments in other states.

Among the benefits are that North Carolina's version permits tax increment financing to be used by counties, which was an evolution in other states. As tax increment financing has matured, people started using the tool to deal with problems other than urban blight. In some cases, the evolution has involved increasingly strange and strained interpretations of what constitutes blight and in others, the change has had to wait legislative and, in some cases, constitutional change. North Carolina, however, permits the tool to be used by cities and counties and explicitly recognizes economic development of the community as one of the purposes for which tax increment financing can be used.

Another plus is that North Carolina addressed some of the tension involved in overlapping taxing entities by requiring consent for use of incremental revenues. In many states, forced contributions or cram-down provisions increased tensions among cities, counties, school districts and other taxing entities.

In what may be the most creative addition, North Carolina's version specifically permits the pledge of any sources of revenue, including special assessments, as additional security for the financing. The only limit is that the pledge cannot constitute a pledge of the local government unit's taxing power without a referendum. In other states, some of these financings have relied on

moral obligation commitments to replenish reserve funds, pledges of non-tax revenues where there's a sufficient nexus between the source of the revenues and the projects and other less direct credit support devices.

North Carolina's Constitutional provision is very liberal in its terms. Section 14 gives the General Assembly great latitude in providing enabling legislation to capture incremental revenues from development. The enabling legislation, contained in new Article 6 of Chapter 159 and related amendments to other provisions of the General Statutes, is more conservative. It contains provisions, consistent with North Carolina's public finance practices, that are designed to avoid unwanted surprises about credit quality and, in the local government area, are designed to limit the diversion of potential revenues away from the general fund to these project financings.

Finally, consistent with other local government provisions, the North Carolina Local Government Commission is given a role in approving both the creation of the districts affected and the financing plan. The criteria for approval include evaluations of the necessity for using this tool in order to promote private development, the local government's debt management policies and procedures, feasibility of the plan and the financing and reasonableness of the interest cost to the unit.

As of early fall in 2007, two project development financings either have or soon will close and another is likely to close by early 2008. The progress of these projects has revealed areas where changes have been desirable in North Carolina's statutes. We will discuss some of those changes and the organization of the content of this version of the booklet has changed to reflect experience to date.

The following material includes a discussion of the kinds of projects that can be undertaken, the mechanics of creating a development financing district and approval by the LGC, a discussion of some of the notable features of North Carolina's version of tax increment financing, and a few examples of projects that have been undertaken in South Carolina. Perhaps the most useful feature of the booklet is the appendices which contain current versions of the statutes and a compilation of the authorized projects. But, first, what is tax increment financing?

B. WHAT'S A TIF?

Tax increment financing creates a stream of revenues without imposing additional charges or taxes *if* there are increases in assessed value of property within the area covered by the plan. It does that by taking variability out of one part of the *ad valorem* property tax process.

Property tax rates are set to raise the revenues for a budget from the value of property subject to the tax. The revenue requirements are satisfied by dividing the assessed value of the property by the required revenues to set the rate. So, if the revenue requirement remains constant and the assessed value increases, the rate of taxation declines. Or if the assessed value declines, it takes a higher rate of taxation to provide the same amount of revenues.

Assessed values increase for a variety of reasons. New investment will increase the assessed value of property in a taxing district. General inflation ordinarily has the effect of increasing values throughout the district. An area that has become a more desirable location, whether by luck, public investment or other factors, will generally increase in value more rapidly than general inflation. Likewise an area that has become less desirable may sustain a loss in assessed value or a lower increase than general inflation would otherwise indicate.

Tax increment financing assumes that if there is public investment in a defined area (the improvement district), then the assessed value of property in that area will increase as a result of new investment and as a result of the area becoming more desirable. The public investment may be the provision of better infrastructure, slum clearance, assembling land into parcels that are more desirable for development than the balkanized pattern of older urban schemes, the provision of parking or transportation facilities or any number of other things. The result may be new commercial and residential development or new manufacturing development.

When a development district is created, the existing assessed value is frozen for purposes of determining rates of taxation and is described as the base valuation. Only the base valuation is used when tax rates are being set and the increase, or incremental value, resulting from the public investment is invisible. However, the property doesn't go off the tax rolls and the resulting tax rate is

applied to its entire value. The taxes collected from the base valuation are distributed to the taxing entities to satisfy their budgets. The collections from the incremental value are set aside in a separate fund, the incremental revenue fund in North Carolina. Incremental revenues can be used to pay bonds or other financing incurred to provide the money to build the public projects or pay other expenses directly related to the costs in the development district.

The result is that there is no increase in taxes to pay for the development projects. The incremental revenues resulting from the development are used to pay those costs. Existing taxpayers are not burdened with these costs and taxpayers within the development district do not pay higher taxes than they otherwise would pay. The incremental value that the private investment has provided is used to pay the costs associated with enabling that investment to be made. In North Carolina, to ensure that taxpayers outside the development district are treated consistently, the base valuation is increased to account for general inflation in the year of general property reassessment.

C. NORTH CAROLINA IMPLEMENTATION

North Carolina amended its Constitution to specifically provide for project development financing. The debt instruments authorized may be secured by the incremental revenues and other revenues. So long as the debt instruments are not secured by the issuing unit's exercise of its taxing power, a referendum is not required. The language of the Constitution avoids the recent problem encountered in Florida with tax increment financing and certificates of participation. In Florida, the state's Supreme Court invalidated a bond issue and reversed prior precedent.

The statutes implementing this authorization are divided. The Project Development Financing Act (See Exhibit B) provides the authorization and details of project development financing debt instruments for development districts created under the other two statutes. The Project Development Financing Act specifies the purposes for which the debt may be issued and prescribes the method for approval and details of issuance. The Project Development Financing Act refers to the Development District Acts (see Exhibits C and D) for the mechanics of creating a development district. One of these may only be used by a city for a redevelopment project. The other may be used by a municipal corporation or county for development projects.

II. PROJECTS ELIGIBLE FOR PROJECT DEVELOPMENT FINANCING

Cities and counties are interested in project development financing primarily because its use enables the city or the county to finance a project it wants to finance. In this section we will cover the kinds of projects can be financed, whether the projects must be in the development district and provide guidance to interpretation of the material in Exhibit E.

A. GENERAL TEST AND SPECIFIC TEST FOR OFF-SITE PROJECTS

The Project Development Financing Act states that the “proceeds may be used only for projects that enable, facilitate or benefit private development within the development financing district.” Even if a project is on the list of things that could be financed, the local government unit issuing the debt must find that the project enables, facilitates or benefits private development in the development district.

When an issuing unit defines a development district, it may find that a project related to the private development in the district is outside the district. A common example is water and sewer improvements, such as capacity charges or main transportation lines. Roadway improvements may also be needed to facilitate access to the development district. The Project Development Financing Act permits proceeds to be used outside the development district only “if the use directly benefits private development forecast by the development financing plan...” The directly benefits test is more restrictive than the test of enables, facilitates or benefits for projects inside the development district.

B. SPECIFIC PROJECTS

The Project Development Financing Act allows proceeds of the bonds to be used only for some of the projects that can be financed under general obligation bond acts and for projects permitted in a municipal service district. As originally enacted, a city or county could only finance projects for which the city or the county could issue general obligation bonds and it was unclear whether the municipal service district authorization required such a district to

be created. In view of the fact that most projects involve participation by cities and counties, the law was amended in 2007 to eliminate the issuer specific limitation on projects. Also, because the process for creating a municipal service district is substantially the same as the process for creating a development district, the law was amended in 2007 to make it plain that it would not be necessary to create a municipal service district in order to finance those projects.

As amended, the Project Development Financing Act permits project development financing debt to be issued for a broad range of purposes; however there are limits. In Exhibit E, you will find copies of the list of projects allowed under the general obligation bond statutes and in municipal service districts. We have set in bold type the projects that can be financed under the Project Development Financing Act. We provide the complete list, however, because the decision to cherry-pick authorization from these provisions results in limitations on interpretation. If a proposed project is specifically identified in one of the sections that is not included, then that project will not qualify. In one or two instances, a project deliberately excluded from the approved list under one section is available in another. If a project is authorized in any section then the exclusion in another list is irrelevant.

The following paragraphs describe generally some of the purposes for which proceeds of project development financing debt instruments may be used. For convenience, these purposes have been broken down into several categories: (1) Utilities; (2) Water Resources, Drainage and Control; (3) Streets, Streetscapes and Sidewalks; (4) Transportation and Parking; (5) Health Care; (6) Civic, Cultural and Entertainment; (7) Low and Moderate Income Housing; (8) Industrial Development; (9) Historic Preservation; and (10) General Redevelopment and Revitalization. Of course, the text of the statutes, included in Exhibit E, should be consulted for any particular financing.

Utilities projects may include sewage collection, treatment and disposal systems; facilities for the supply, storage, treatment and distribution of water; facilities for the generation, transmission and distribution of electric light and power; facilities for the production, storage, transmission and distribution of natural gas; and improving existing systems or facilities for the transmission or distribution of telephone services.

Water resources, drainage and control projects may include storm sewers and flood control facilities, including levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage; other drainage projects; beach erosion control and flood and hurricane protection works; and watershed improvement projects, including such projects as specifically defined in G.S. Chapters 139 and 156 and water resources development projects provided for by G.S. Chapter 143, Article 21.

Street, streetscape and sidewalk projects may include improvements to subdivision and residential streets pursuant to G.S. 153A-205, and other projects, including paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals and markers; lighting, including lighting at interstate highway interchange ramps; and bridges, viaducts, causeways, overpasses, underpasses and alleys.

Transportation and parking projects may include airport facilities; public transportation facilities; providing property to preserve a railroad corridor; and on- and off-street parking facilities available to the public, including meters, buildings, garages, driveways and approaches.

Health care projects may include hospitals and related facilities; facilities for the provision of public health services; facilities for the treatment and care of the mentally retarded; nursing homes; and various types of facilities related and ancillary to the provision of health care services.

Civic, cultural and entertainment projects may include auditoriums, coliseums, arenas, stadiums, civic and convention centers, and facilities for athletic and cultural events, shows and public gatherings, as well as art galleries, museums and art centers, and providing for historic properties.

Low and moderate income housing projects may include the construction or acquisition of projects to be owned by a city, county, redevelopment commission or housing authority and the provision of loans, grants and other programs of financial assistance to persons of low income, moderate income or low and moderate income. The housing projects must set aside a portion of the units for exclusive use by such persons.

Industrial development projects may include industrial parks, land suitable for industrial or commercial purposes, or shell buildings in order to provide employment opportunities for citizens of the county or city.

Historic preservation projects include any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district. Only certain counties and cities are eligible to finance these projects, based on certain minimum population numbers set forth in the statute.

General redevelopment and revitalization projects may include redevelopment through the acquisition and improvement of land for assisting local redevelopment commissions; downtown revitalization projects; urban area revitalization projects; and transit-oriented development projects. “Downtown revitalization projects” include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience.

Urban area revitalization projects include the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project. “Urban area” means an area that (i) is located

within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Budget Officer and (ii) meets one or more of the following conditions: (1) It is the central business district of the city; (2) it consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses; (3) it is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way; or (4) it has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

Transit-oriented development includes the provision within a public transit area of any service or facility listed below. A “public transit area” is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A “mass transit line” is a rail line along which a public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week. The following services and facilities are included in the definition of “transit-oriented development” if they are provided within a transit area: (1) Any service or facility that may be provided in a downtown area as a downtown revitalization project; (2) passenger stops and stations on a mass transit line; (3) parking facilities and structures associated with passenger stops and stations on a mass transit line; and (4) any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial.

This summary is not a definitive listing of the items that can be financed under the Act, but it does reflect the broad range of facilities that are eligible for financing and highlights the attractiveness and utility of project development financing to units of local government seeking to stimulate economic development.

III. CREATING A DEVELOPMENT FINANCING DISTRICT

The Act provides for two different kinds of development financing districts. One is a district created pursuant to 160A-515.1 and may only be used by a city. The other is under 158-7.3 and may be used by counties, cities or incorporated villages. In both cases, the approval of the creation of the district is subject to the LGC. Other than who can use the provisions, the differences include the kinds of property that can be included, a minor difference on notice requirements and some differences as to the kinds of projects that may be undertaken. What follows is a very brief summary of the requirements. Copies of the statutory provisions are included as an appendix to this section.

A. DEVELOPMENT FINANCING DISTRICTS UNDER SECTION 160A-515.1

1. *Creating the District.* 160A-515.1 is part of Article 22 of Chapter 160A, known as the Urban Redevelopment Law (the “Redevelopment Act”). Section 515.1 allows a city’s governing body to define a development financing district which is defined as all or part of one or more redevelopment areas defined in accordance with Article 22. Article 22 defines a redevelopment area as:

Any area which a planning commission may find to be

- a. A blighted area because of the conditions enumerated in subdivision (2) of this section;
- b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;
- c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;
- d. Any combination thereof, so as to require redevelopment under the provisions of this Article.

The planning commission is established by ordinance of the city or town affected. The definitions of blighted area, nonresidential redevelopment area,

rehabilitation, conservation and reconditioning area are such that it should be possible in most urban areas for the planning commission to make the required findings.

Put another way, a city (and only a city) must first have a redevelopment area. Within a redevelopment area, a city can create a development financing district by action of its governing body. While the process isn't difficult, it can be complicated if a city does not already have a redevelopment area defined which includes the site of the proposed development financing district. The Redevelopment Act is fairly complicated, because it permits the creation of redevelopment commissions as separate entities. As in other statutes, the Redevelopment Act contemplates and condones joint city and county efforts.

2. *Financing Requirements*

a. *Adoption of a Development Financing Plan.* In order to use Section 515.1 to finance a project, a city must adopt a development financing plan for the development financing district. The requirements for the plan are set forth in paragraph (c) of the Section. The procedural requirements include: (i) a public hearing after notice (a) by mail to all property owners in the district not later than 30 days prior to the hearing and (b) by publication not more than 30 nor less than 14 days prior to the hearing and (ii) notice of the proposed plan to the county commissioners, who can, by resolution adopted within 28 days of the mailing of the notice, disapprove the plan. If the plan involves a new manufacturing facility in the district, then the plan must be submitted to the Secretary of Environment and Natural Resources for approval. No time period is given for the Secretary's action. Also, if the plan involves a new manufacturing facility, the city may not adopt the plan until the Secretary of Commerce certifies compliance with the wage requirements. The wage requirement is that the initial user of the new manufacturing facility must pay its employees an average weekly wage which is either above the average manufacturing wage in the county where the district is located or not less than 10% higher than the average manufacturing wage paid in North Carolina. The Secretary can grant an exemption in cases of severe unemployment.

b. *Approval by LGC.* Sections 104, 105 and 106 of Chapter 159 provide the requirements for an application to the LGC for approval of the project development financing debt instruments. The application and approval

process are the same for cities and counties. Upon approval by the LGC, the development financing district is created locking in the assessed value as of the preceding January 1.

B. DEVELOPMENT FINANCING DISTRICTS UNDER SECTION 158-7.3

Section 158-7.3 is part of Article 1 of Chapter 158 which is the Local Development Law of 1925. Unlike 160A-515.1, however, 158-7.3 is complete in and of itself as to the creation of the district. A unit of local government may define a development financing district, but a few rules apply.

Nature of Property in District. The development financing district must be comprised of property that is one or more of the following:

- (1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.
- (2) Appropriate for rehabilitation or conservation activities.
- (3) Appropriate for the economic development of the community.

Section 158-7.3 does not provide definitions for any of these terms, so a local government unit has some leeway in making determinations. It is difficult to see how any proposed project would not at least be in an area appropriate for the economic development of the community.

Maximum Area. The aggregate of all development districts may not exceed 5% of the total land area of the unit of local government. Cities do not have to count as part of their 5% property that is annexed which is part of a county district, unless there was an agreement between the city and the county had entered into a joint agreement for the district.

County Restriction. A county may not include in a development district any land that is inside the limits of a city, town or incorporated village. However, under 159-103(c) interlocal agreements may be used to allow a multi-unit undertaking.

City Restriction. If the district proposed by a city is outside the city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then a maximum of 20%

of the plan’s estimated square footage of floor space of private development forecast may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space.

The procedural requirements for the creation of the district are similar to those under 160A-515.1. Before adopting the plan, the unit of local government must hold a public hearing after notice. The notice must be given not less than 14 days and not more than 30 days prior to the date set for the public hearing by (1) mail to all property owners in the district and to the governing body of any special district within the development district and (2) by publication. Additionally, if the development district is not being created by a county, notice must be mailed to the board of county commissioners. The plan is subject to the same wage and environmental requirements if the district includes a new manufacturing facility. When all these conditions are met, the public hearing is held, the county does not object within 28 days of the mailing of any notice to it, then the governing body of the unit may approve the plan. The plan, however, does not become effective until approval by the LGC.

Approval by LGC. Sections 104, 105 and 106 of Chapter 159 provide the requirements for an application to the LGC for approval of the project development financing debt instruments. The application and approval process are the same for cities and counties. Upon approval by the LGC, the development financing district is created locking in the assessed value as of the preceding January 1.

IV. SOME NORTH CAROLINA NICETIES

North Carolina’s statutes contain a few twists to the general tax increment financing scheme you may be familiar with in other states. Some of these are boons to the financing and projects, while some present surprising issues to deal with. The surprises include a consent requirement for increments for all units and the elimination of some taxes from the incremental revenues. On the positive side is the express provision for agreed upon assessed values and the non-appropriations coverage. Below are brief discussions of these features.

Consent. Most property is subject to taxation by more than one taxing entity. In many states, the incremental revenue fund includes increments resulting from taxing entities that are not part of the plan. Sometimes the inclusion is limited to a fixed time period and if the plan is longer, then consent is required. In North Carolina, consent is required from all taxing entities.

Exclusions. The proceeds of levies for some purposes are excluded. Collections from levies to pay general obligation bonds, levies authorized by a vote and levies for certain taxing districts are excluded from the increment revenue fund.

Note: The result of these exclusions will complicate the process for setting tax rates. The assessed value to be used in setting rates for levies of the excluded purposes or non-consenting entities will be based on the base value plus the incremental value. The rates for others will be set on the basis of the base value alone.

Voluntary Minimum Assessed Value. Property owners may agree to a minimum assessed value. Such an agreement assures that there will be incremental value and, accordingly, incremental revenues. Such an agreement can eliminate construction risk or the risk that forecasts will not be met. The agreement, while entered into initially with the owner, is recorded and becomes binding on the property.

When we looked at this provision initially, we noted a concern about setting a minimum value for assessment that would result in increased revenues for a taxing unit whose increments were not pledged fully to the project development financing debt instruments. Upon closer reading, however, we realized that the minimum assessment only applies to the issuing unit. Article V, Section 14 of the N.C. Constitution gave the General Assembly the power to authorize “a county, city or town that has defined a territorial area pursuant to [Article V, Section 14] to assess property within the territorial area at a minimum value if agreed to by the owner of the property....” Further, that power is prefaced by a statement that this power is “[n]otwithstanding the provisions of Section 2” of Article 14. Section 2, among other things, contains the requirement for uniformity of assessments. Accordingly, the Constitution permits non-uniformity of assessments for this purpose but only for the city, county or town that defines a development district. So, the minimum assessed

value for the issuing unit can be determined by the agreement with the property owner, but other entities taxing the property do so on the true assessed value.

The minimum value may vary from year to year. That authorization allows the agreement with the property owner to adjust the value as needed to provide for payment of the project development financing debt instruments. The voluntary minimum assessment may be an effective substitute for special assessment district financing available in other states.

Additional Security for Credit Support. Section 159-111(b) provides that a unit of local government may pledge or grant a security interest in available sources of revenue to provide additional security so long as the agreement to use the sources to make payment does not constitute a pledge of the unit's taxing power. By amendment in 2005, a restriction against pledging sales tax revenues was eliminated so that sales taxes may be pledged. A unit may also covenant to take steps to generate the revenues. This security should result in credit quality at least as good as or better than that which applies to certificates of participation financing. If a unit uses this provision, and makes payment from this source, it may reimburse itself from the incremental revenue fund.

On balance, the North Carolina differences provide effective resolutions to credit quality issues. The negative issues indicated may be positive in that they tend to avoid conflicts between units of local government over the use of tax increment financing.

Real TIF versus Synthetic TIF

The initial euphoria when project development financing was authorized has been tempered by a reluctance on the part of some communities and professionals to consider the uses of this tool. Before project development financing became available in North Carolina, cities and counties had devised an alternative method for supporting some economic development projects, referred to as a "Synthetic TIF." The Synthetic TIF device uses installment or lease-purchase financing through the issuance of certificates of participation ("COPS") to fund infrastructure costs. The issuing unit examines the tax revenues likely to be generated and fits the COPS financing to those revenues. In some cases, these financings have included revenues from cities and counties in a cooperative mode.

Some projects are suitable for either form of financing; however, some projects are difficult to do using the Synthetic TIF structure. The main difference is that the Synthetic TIF, like any other COPS financing is a claim on the general fund of the issuing unit. Because of that, the interest costs on a Synthetic TIF will be based on the credit rating of the issuing unit. That can be good, but, if the financing is large the result can be to undermine the credit rating of the issuing unit to the detriment of the Synthetic TIF and the unit's general credit. Project development financing can make use of the same credit structure (nonappropriations back-up) if desired, or it can be done as a stand-alone financing without impact on the issuing unit's general credit.

Further, project development financing can take advantage of other credit support devices that are not available to the Synthetic TIF as described above. The minimum assessed value agreement, for instance, is only available for project development financing. There are other credit support devices specifically provided for in the Project Development Financing Act.

The principal difference, however, relates to the scope of the project. In a development district focused on one or a few new building projects to be constructed fairly quickly, there may be little practical difference between a Synthetic TIF and project development financing. However, where the project is more complicated and requires a longer period to complete, project development financing is a much more suitable means of funding. As more projects get completed in North Carolina, it is likely that the project development financing tool will be more appreciated and used.

V. EXPERIENCE

Only a few transactions have been completed in North Carolina. The first transaction to close was for an entertainment district in Roanoke Rapids. This financing was completed with a letter of credit from a bank and may not be representative of other project development financing debt issues. Several other financings are underway including one for a large project in Kannapolis, North Carolina, for the North Carolina Research Campus. As a substitute for experience in North Carolina, this section will continue to describe projects from our neighbor, South Carolina, where tax increment financing has been in use for over twenty years.

The revision of the South Carolina Constitution’s financing provisions in 1976 provided for tax increment financing. Statutory implementation of the authorization did not occur until 1984; and, even then, the uncertainty surrounding the process resulted in a test case that was not decided until November of 1985. A decade passed between constitutional authorization and the first financing which was done in 1986. Not much followed for a few years. Because of the experience in neighboring states, however, North Carolina has a cleaner Constitutional provision and more flexible statutory implementation. North Carolina has learned from the experience of others and need not have such a long gestation period between the time of authorization and the use by local governments. What we’d like to do here is provide some examples of how this tool has been used in South Carolina. We’ve selected three situations: a large city, a small city and a county.

City of Columbia. Columbia is South Carolina’s capital city. The relocation of consumers to suburban developments and their shopping to suburban malls in the last half of the 20th century, however left the City with, at best, an urban center without the urban commerce and, at worst, an urban office ghetto. Not pretty, not fun, not lively. In addition, Columbia had a manufacturing and warehousing area between its center city and the Congaree River, complete with railway crossings of major traffic arteries and abandoned and rusting buildings. Add to that an absence of residential areas appealing to middle-class burghers and a southern heritage of a *de facto* ghetto for the African-American community and the entire package just wasn’t what you’d want to call home.

Shortly after the TIF Act test case, the City developed its first tax increment financing district for the revitalization of the center city. In drawing the map of the district, the City took advantage of a new office building being built to provide an immediate increment and proceeded to use that increment to issue bonds to provide funds for some slum clearance, the construction of a sizable urban park in what had been a late 19th century version of an industrial park and a series of roadway improvements and street-scaping projects. This TIF has evolved over time as the increment has increased and is being used to fund parking facilities and part of the cost of a new children’s museum. Some of the parking has been used as part of a package to attract additional office facilities to the redevelopment district.

The City faced a substantial credit quality issue at the outset. The TIF revenues were not adequate for debt service or coverage. South Carolina’s TIF permitted a pledge of water and sewer revenues in some instances. The City granted a junior lien on its utility system revenues, which resulted in qualifying for bond insurance.

Note: all facilities are traditional municipal facilities. Parking garages are municipally owned and operated and provide public parking.

The results: One of the streets in the plan has turned into the upscale entertainment and dining district for the area. Columbia is a college town and there’s another area for that set, but the Gervais Street corridor has good restaurants, nightclubs and cafes, and a few venues for performance. In addition, it’s close to major performing arts and athletic facilities, allowing the City to capture hospitality tax revenue from people who come to town for these events. There are increasingly attractive housing opportunities for urbanites and some sophisticated shopping—antiques, art, high-end kitchen ware, wine and clothing. Old buildings with interesting brickwork have been turned into places of some charm. The TIF is nearly 20 years old and will probably end in a few more years with its mission accomplished. This area of Columbia is hip, urbane, lively and somewhat charming.

City of Cayce. Cayce is a small town and what passed for a suburb of Columbia just after WWII. You know the kind of place; close enough to be served by the urban bus line, but with enough vacant land to provide modestly priced housing for the blue and pink collar workers in the city nearby. Times have changed. By the late 90’s, Cayce’s principal assets were proximity to Columbia, an undeveloped riverfront and a school system that remained better than average because the original community had used education as a way to get ahead in the world. But, the children of the original settlers had left and the people in Cayce were becoming older, poorer, and more of the population was transient. One of the main traffic arteries into the City of Columbia continues to be busy, but the nature of the traffic is more commercial than commuter. The limited commercial life Cayce had once enjoyed with a very early version of a shopping center and lots of fast or quick food restaurants were all dying, closed and boarded up, razed and not replaced, or replaced by things most city fathers (and mothers) would prefer not to see.

But, it had a riverfront and vacant land. The City created a redevelopment district in 1998 with no new development known, but the need to fund the creation of a riverfront park. As luck would have it, somebody decided to build a student housing complex inside the district and there was a property tax revaluation. The combination of these two things gave enough of incremental revenues by 2002 support a \$5 million tax increment financing that, along with some grants, provided the funds to construct a delightful riverfront park and walkway. The project has been a home-run, attracting new, younger, up-scale residents to new housing, reviving the shopping center and providing funds to begin work on beautification of the roads. These things happened just in time to take advantage of the quality of the schools, for which the people had passed two referendums to enhance the school district's facilities. With the beautification, the new schools and the revival of the commercial areas, the City is able to attract new residents.

Note: Revenues provide adequate projected coverage. The coverage might have been sufficient to complete a financing but not adequate credit for the public debt market. The bonds were placed with a local bank. All improvements are traditional municipal, including utility system improvements.

Beaufort County. South Carolina's Constitution was amended in 2000 to permit counties to use tax increment financing. Beaufort County, which includes Hilton Head Island, has two tax increment financing districts—one of which is a relatively traditional development plan for roadway and related infrastructure improvements as well as a library and the other of which is a novel use to provide facilities for a new campus of the University of South Carolina—Beaufort located near Hilton Head.

The Developer TIF. The first TIF, which was the second to be permanently funded, was proposed by a developer primarily interested in providing a new road to access property on US 278, the principal route to Hilton Head. US 278 is heavily traveled and the number of access points is very restricted. The new road, parallel to US 278, provides more direct access than would be available from US 278, takes local traffic off of US 278 and provides road frontage to what would otherwise have been back parcels, increasing the potential intensity of development. This TIF was based on incremental revenues expected from commercial development that was announced but contingent on a resolution to the roadway problems. Plan was initiated in 2001 and completed in 2003.

Permanent financing could not be done until late in 2003. Interim financing was provided by notes of the County. Some of the development was delayed, partly as a result of 9/11, but the entire district is developing nicely at this point. This TIF involved a joint agreement between the County and the Town of Bluffton, where part of the property in the District is located. Ultimate financing was enhanced by a non-appropriations moral obligation of the County, which enabled the bonds to be insured.

The USCB TIF. Beaufort County believes that its long-term stability is dependent upon providing something other than a retirement haven and resort destination. Adding higher education facilities is part of that overall goal. USC-Beaufort was the beneficiary of a donation of land on US 278, but had difficulty raising funds to pay for buildings at a new campus. In the early 21st Century, State funding for such projects is not readily forthcoming. As a result, the County, seeing new development along the US 278 corridor, decided to capture the incremental tax revenues from that development to create a fund to aid USC-Beaufort. Along the way, the local technical college was also finding it difficult to provide new facilities in the high-growth part of the County and requested to be included. The result was a \$40 million issue of TIF bonds in late 2002. The new campus of USC Beaufort opened in the fall of 2004 and the new technical college facilities were completed in 2006.

This TIF was based on projected continued growth on the US 278 corridor. The actual growth has substantially exceeded projections. The nature of the development is changing as well to reflect the post-secondary education focus of the district. The result appears to be that the County will have achieved its goal of providing improvements to the local economy in the range of opportunities available to new residents as well as a changing demographic profile.

Note: this TIF has projections, but the credit quality is provided by a nonappropriation moral obligation of the County. With the County's support, bond insurance was provided by MBIA. The projections alone would not have supported a sale.

EXHIBIT A

North Carolina Constitution, Article V, Sec. 14: Project development financing

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance, public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit. This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect.

EXHIBIT B

Chapter 159, Article 6.

Project Development Financing Act.

§ 159-101. Short title.

This Article may be cited as the "North Carolina Project Development Financing Act." (2003-403, s. 2.)

§ 159-102. Unit of local government defined.

For the purposes of this Article, the term "unit of local government" means a county or a municipal corporation. (2003-403, s. 2.)

§ 159-103. Authorization of project development financing debt instruments; purposes.

(a) Each unit of local government may issue project development financing debt instruments pursuant to this Article and use the proceeds for one or more of the purposes for which any unit may issue general obligation bonds pursuant to the following subdivisions of G.S. 159-48: (b)(1), (3), (7), (11), (12), (16), (17), (19), (21), (23), (24), or (25), (c)(1), (4), (4a) or (6), or (d)(3), (4), (5), (6) or (7) or (b)(13) excluding stadiums, arenas, golf courses, swimming pools, wading pools, or marinas. In addition, the proceeds may be used for any service or facility authorized by G.S. 160A-536 to be provided in a municipal service district but no such district need be created.

For the purpose of this Article, the term "capital costs" as defined in G.S. 159-48(h) also includes (i) interest on the debt instruments being issued or on notes issued in anticipation of the instruments during construction and for a period not exceeding seven years after the estimated date of completion of construction and (ii) the establishment of debt service reserves and any other reserves reasonably required by the financing documents. The proceeds of the debt instruments may be used either in a development financing district established pursuant to G.S. 160A-515.1 or G.S. 158-7.3 or, if the use directly benefits private development forecast by the development financing plan for the district, outside the development financing district. The proceeds may be used only for projects that enable, facilitate, or benefit private development within the development financing district, the revenue increment of which is pledged as security for the debt instruments. This subsection does not prohibit the use of proceeds to defray the cost of providing water and sewer utilities to a private development in a project development financing district.

(b) Subject to agreement with the holders of its project development financing debt instruments and the limitation on duration of development financing districts set out in this Article, each unit of local government may issue additional project development financing debt instruments and may issue debt instruments to refund any outstanding project development financing debt instruments at any time before the final maturity of the instruments to be refunded. General obligation bonds issued to refund outstanding project development financing debt instruments shall be issued under the Local Government Bond Act, Article 4 of this Chapter. Revenue bonds issued to refund outstanding project development financing debt instruments shall be issued under the State and Local Government Revenue Bond Act, Article 5 of this Chapter.

Project development financing debt instruments may be issued partly for the purpose of refunding outstanding project development financing debt instruments and partly for any other purpose under this Article. Project development financing debt instruments issued to refund outstanding project development financing debt instruments shall be issued under this Article and not under Article 4 of this Chapter.

(c) If the private development project to be benefited by proposed project development financing debt instruments affects tax revenues in more than one unit of local government and more than one affected unit of local government wishes to provide assistance to the private development project by issuing project development financing debt instruments, then those units may enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes for the purpose of issuing the instruments. The agreement may include a provision that a unit may pledge all or any part of the taxes received or to be received on the incremental valuation accruing to the development financing district to the repayment of instruments issued by another unit that is a party to the interlocal agreement. (2003-403, s. 2, 2007-395, s. 1)

§ 159-104. Application to Commission for approval of project development financing debt instrument issue; preliminary conference; acceptance of application.

A unit of local government may not issue project development financing debt instruments under this Article unless the issue is approved by the Local Government Commission. The governing body of the issuing unit shall file with the secretary of the Commission an application for Commission approval of the issue. At the time of application, the governing body shall publish a public notice of the application in a newspaper of general circulation in the

unit of local government. The application shall include any statements of facts and documents concerning the proposed debt instruments, development financing district, and development financing plan, and the financial condition of the unit, required by the secretary. The Commission may prescribe the form of the application.

Before accepting the application, the secretary may require the governing body or its representatives to attend a preliminary conference in order to discuss informally the proposed issue, district, and plan and the timing of the steps to be taken in issuing the debt instruments. The development financing plan need not be adopted by the governing body at the time it files the application with the secretary. However, before the Commission may enter its order approving the debt instruments, the governing body must adopt the plan and make the findings described in G.S. 159-105(b)(1) and (5).

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement is conclusive evidence that the unit has complied with this section. (2003-403, s. 2.)

§ 159-105. Approval of application by Commission.

(a) In determining whether to approve a proposed project development financing debt instrument issue, the Commission may inquire into and consider any matters that it considers relevant to whether the issue should be approved, including:

- (1) Whether the projects to be financed from the proceeds of the project development financing debt instrument issue are necessary to secure significant new project development for a development financing district.
- (2) Whether the proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.
- (3) The unit of local government's debt management procedures and policies.
- (4) Whether the unit is in default in any of its debt service obligations.
- (5) Whether the private development forecast in the development financing plan would likely occur without the public project or projects to be financed by the project development financing debt instruments.

- (6) Whether taxes on the incremental valuation accruing to the development financing district, together with any other revenues available under G.S. 159-110, will be sufficient to service the proposed project development financing debt instruments.
 - (7) The ability of the Commission to market the proposed project development financing debt instruments at reasonable rates of interest.
- (b) The Commission shall approve the application if, upon the information and evidence it receives, it finds all of the following:
- (1) The proposed project development financing debt instrument issue is necessary to secure significant new economic development for a development financing district.
 - (2) The amount of the proposed project development financing debt is adequate and not excessive for the proposed purpose of the issue.
 - (3) The proposed projects are feasible. In making this determination, the Commission may consider any additional security such as credit enhancement, insurance, or guaranties.
 - (4) The unit of local government's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
 - (5) The private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the project development financing debt instruments.
 - (6) The proposed project development financing debt instruments can be marketed at reasonable interest cost to the issuing unit.
 - (7) The issuing unit has, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, adopted a development financing plan for the development financing district for which the instruments are to be issued. (2003-403, s. 2.)

§ 159-106. Order approving or denying the application.

(a) After considering an application, the Commission shall enter its order either approving or denying the application. An order approving an issue is not an approval of the legality of the debt instruments in any respect.

(b) Unless the debt instruments are to be issued for a development financing district for which a project development financing debt instrument issue has already been approved, the day the Commission enters its order approving an application for project development financing debt instruments is also the effective date of the development financing district for which the instruments are to be issued.

(c) If the Commission enters an order denying the application, the proceedings under this Article are at an end. (2003-403, s. 2.)

§ 159-107. Determination of incremental valuation; use of taxes levied on incremental valuation; duration of the district.

(a) Base Valuation in the Development Financing District. – After the Local Government Commission has entered its order approving a unit of local government's application for project development financing debt instruments, the unit shall immediately notify the tax assessor of the county in which the development financing district is located of the existence of the development financing district. Upon receiving this notice, the tax assessor shall determine the base valuation of the district, which is the assessed value of all taxable property located in the district on the January 1 immediately preceding the effective date of the district. If the unit or an agency of the unit acquired property within the district within one year before the effective date of the district, the tax assessor shall presume, subject to rebuttal, that the property was acquired in contemplation of the district, and the tax assessor shall include the value of the property so acquired in determining the base valuation of the district. The unit may rebut this presumption by showing that the property was acquired primarily for a purpose other than to reduce the incremental tax base. After determining the base valuation of the development financing district, the tax assessor shall certify the valuation to: (i) the issuing unit; (ii) the county in which the district is located if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(b) Adjustments to the Base Valuation. – During the lifetime of the development financing district, the base valuation shall be adjusted as follows:

- (1) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, to remove

property from the development financing district, on the succeeding January 1, that property shall be removed from the district and the base valuation reduced accordingly.

- (2) If the unit amends its development financing plan, pursuant to G.S. 160A-515.1 or G.S. 158-7.3, to expand the district, the new property shall be added to the district immediately. The base valuation of the district shall be increased by the assessed value of the taxable property situated in the added territory on the January 1 immediately preceding the effective date of the district.

Each time the base valuation is adjusted, the tax assessor shall immediately certify the new base valuation to: (i) the issuing unit; (ii) the county if the issuing unit is not the county; and (iii) any special district, as defined in G.S. 159-7, within which the development financing district is located.

(c) Revenue Increment Fund. – When a unit of local government has established a development financing district, and the project development financing debt instruments for that district have been approved by the Commission, the unit shall establish a separate fund to account for the proceeds paid to the unit from taxes levied on the incremental valuation of the district. The unit shall also place in this fund any moneys received pursuant to an agreement entered into under G.S. 159-108.

(d) Levy of Property Taxes Within the District. – Each year the development financing district is in existence, the tax assessor shall determine the current assessed value of taxable property located in the district. The assessor shall also compute the difference between this current value and the base valuation of the district. If the current value exceeds the base value, the difference is the incremental valuation of the district. In each year the district is in existence, the county, and if the district is within a city or a special district as defined by G.S. 159-7, the city or the special district shall levy taxes against property in the district in the same manner as taxes are levied against other property in the county, city, or special district. The proceeds from ad valorem taxes levied on property in the development financing district shall be distributed as follows:

- (1) In any year in which there is no incremental valuation of the district, all the proceeds of the taxes shall be retained by the county, city, or special district, as if there were no development financing district in existence.

(2) In any year in which there is an incremental valuation of the district, the amount of tax due from each taxpayer on property in the district shall be distributed as provided in this subdivision. The net proceeds of the following taxes shall be paid to the government levying the tax: (i) taxes separately stated and levied solely to service and repay debt secured by a pledge of the faith and credit of the unit; (ii) nonschool taxes levied pursuant to a vote of the people; (iii) taxes levied for a municipal or county service district; and (iv) taxes levied by a taxing unit in a development financing district established by a different taxing unit and for which there is no increment agreement between the two units. All remaining taxes on property in the district shall be multiplied by a fraction, the numerator of which is the base valuation for the district and the denominator of which is the current valuation for the district. The amount shown as the product of this multiplication shall, when paid by the taxpayer, be retained by the county, city, or special district, as if there were no development financing district in existence. The net proceeds of the remaining amount shall, when paid by the taxpayer, be turned over to the finance officer of each issuing unit, who shall place this amount in the special revenue increment fund required by subsection (c) of this section. As used in this section, "net proceeds" means gross proceeds less refunds, releases, and any collection fee paid by the levying government to the collecting government.

(e) Increment Agreements. – Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be

entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties.

(f) Use of Moneys in the Revenue Increment Fund. – If the development financing district includes property conveyed or leased by the unit of local government to a private party in consideration of increased tax revenue expected to be generated by improvements constructed on the property pursuant to G.S. 158-7.1, an amount equal to the tax revenue taken into account in arriving at the consideration, less the increased tax revenue realized since the construction of the improvement, shall be transferred from the Revenue Increment Fund to the county, city, or special district as if there were no development financing district in existence. Any money in excess of this amount in the Fund may be used for any of the following purposes, without priority other than priorities imposed by the order authorizing the project development financing debt instruments:

- (1) To finance capital expenditures (including the funding of capital reserves) by the issuing unit in the development financing district pursuant to the development financing plan.
- (2) To meet principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.
- (3) To repay the appropriate fund of the issuing unit for any moneys actually expended on debt service on project development financing debt instruments pursuant to a pledge made pursuant to G.S. 159-111(b).
- (4) To establish and maintain debt service reserves for future principal and interest requirements on project development financing debt instruments and debt instrument anticipation notes issued for the district.
- (5) To meet any other requirements imposed by the order authorizing the project development financing debt instruments.

If in any year there is any money remaining in the Revenue Increment Fund after these purposes have been satisfied, it shall be paid to the general fund of the county and, if applicable, of the city and any special district as defined by G.S. 159-7, in proportion to their rates of ad valorem tax on taxable property located in the development financing district.

(g) Duration of District. – A development financing district shall terminate at the earlier of (i) the end of the thirtieth year after the effective

date of the district or (ii) the date all project development financing debt instruments issued for the district have been fully retired or sufficient funds have been set aside, pursuant to the order authorizing the debt instruments, to meet all future principal and interest requirements on the instruments. (2003-403, s. 2; 2005-238, s. 5 2007-395, s. 2.)

§ 159-108. Agreements with property owners.

(a) Authorization. – A unit of local government that issues project development financing debt instruments may enter into agreements with the owners of real property in the development financing district for which the instruments were issued under which the owners agree to a minimum value at which their property will be assessed for taxation. Such an agreement may extend for the life of the development financing district or for a shorter period agreed to by the parties. The agreement may vary the agreed-upon minimum assessed value from year to year.

(b) Filing and Recording Agreement. – The unit shall file a copy of any agreement entered into pursuant to this section with the tax assessor for the county in which the development financing district is located. In addition, the unit shall cause the agreement to be recorded in the office of the register of deeds of that county, and the register of deeds shall index the agreement in the grantor's index under the name of the property owner. Once the agreement has been recorded in the office of the register of deeds, as required by this subsection, it is binding, according to its terms and for its duration, on any subsequent owner of the property.

(c) Minimum Assessment of Property. – An agreement entered into pursuant to this section establishes a minimum assessment of the real property subject to the agreement. If the county tax assessor determines that the real property has a true value less than the minimum established by the agreement, the assessor shall nevertheless assess the property at the minimum set out in the agreement. If the assessor, however, determines that the real property has a true value greater than the minimum established by the agreement, the assessor shall assess the property at the true value.

(d) Effect of Reappraisal. – If an agreement entered into pursuant to this section continues in effect after a reappraisal of property conducted pursuant to G.S. 105-286, the minimum assessment established in the agreement shall be adjusted as provided in this subsection. After the issuing unit of local government has adopted its budget ordinance and levied taxes for the fiscal year that begins next after the effective date of the reappraisal, it shall certify to the county tax assessor the total rate of ad valorem taxes levied by the unit and applicable to the property subject to the agreement. It shall

also certify to the assessor the total rate of ad valorem taxes levied by the unit and applicable to the property in the immediately preceding fiscal year. The assessor shall determine the total amount of ad valorem taxes levied by the unit on the property in the immediately preceding fiscal year, based on the tax rate certified by the issuing unit. The assessor shall then determine a value of the property that would provide the same total amount of ad valorem taxes based on the tax rate certified for the fiscal year beginning next after the effective date of the reappraisal. The value so determined is the new minimum assessment for the property subject to the agreement.

(e) Agreement Effective Regardless of Improvements. – An agreement entered into pursuant to this section remains in effect according to its terms regardless of whether the improvements anticipated in the development financing plan are completed or whether those improvements continue to exist during the duration of the agreement. However, if any part of the property subject to the agreement is acquired by a public agency, the agreement is automatically modified by removing the acquired property from the agreement and reducing the minimum assessment accordingly. (2003-403, s. 2.)

§ 159-109. Special covenants.

A project development financing debt instrument order or a trust agreement securing project development financing debt instruments may contain covenants regarding:

- (1) The pledge of all or any part of the taxes received or to be received on the incremental valuation in the development financing district during the life of the debt instruments.
- (2) Rates, fees, rentals, tolls, or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received.
- (3) The setting aside of debt service reserves and the regulation and disposition of these reserves.
- (4) The custody, collection, securing, investment, and payment of any moneys held for the payment of project development financing debt instruments.
- (5) Limitations or restrictions on the purposes to which the proceeds of sale of project development financing debt instruments may be applied.
- (6) Limitations or restrictions on the issuance of additional project development financing debt instruments or notes

for the same development financing district, the terms upon which additional project development financing debt instruments or notes may be issued or secured, or the refunding of outstanding project development financing debt instruments or notes.

- (7) The acquisition and disposal of property for project development financing debt instrument projects.
- (8) Provision for insurance and for accounting reports, and the inspection and audit of accounting reports.
- (9) The continuing operation and maintenance of projects financed with the proceeds of the project development financing debt instruments. (2003-403, s. 2.)

§ 159-110. Security of project development financing debt instruments.

Project development financing debt instruments are special obligations of the issuing unit. Moneys in the Revenue Increment Fund required by G.S. 159-107(c) are pledged to the payment of the instruments, in accordance with G.S. 159-107(f). Except as provided in G.S. 159-111, the unit may pledge the following additional sources of funds to the payment of the debt instruments, and no other sources: the proceeds from the sale of property in the development financing district; net revenues from any public facilities, other than portions of public utility systems, in the development financing district financed with the proceeds of the project development financing debt instruments; and, subject to G.S. 159-47, net revenues from any other public facilities, other than portions of public utility systems, in the development financing district constructed or improved pursuant to the development financing plan.

Except as provided in G.S. 159-111, the principal and interest on project development financing debt instruments do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the unit's property or upon any of its income, receipts, or revenues, except as may be provided pursuant to this section. Except as provided in G.S. 159-107 and G.S. 159-111, neither the credit nor the taxing power of the unit is pledged for the payment of the principal or interest of project development financing debt instruments, and no holder of project development financing debt instruments has the right to compel the exercise of the taxing power by the unit or the forfeiture of any of its property in connection with any default on the instruments. Unless the unit's taxing power has been pledged pursuant to G.S. 159-111, every project development financing debt instrument shall contain recitals sufficient to

show the limited nature of the security for the instrument's payment and that it is not secured by the full faith and credit of the unit. (2003-403, s. 2.)

§ 159-111. Additional security for project development financing debt instruments.

(a) In order to provide additional security for debt instruments issued pursuant to this Article, the issuing unit of local government may pledge its faith and credit for the payment of the principal of and interest on the debt instruments. Before such a pledge may be given, the unit shall follow the procedures and meet the requirements for approval of general obligation bonds under Article 4 of this Chapter. The unit shall also follow the procedures and meet the requirements of this Article. If debt instruments are issued pursuant to this Article and are also secured by a pledge of the issuing unit's faith and credit, the debt instruments are subject to G.S. 159-112 rather than G.S. 159-65.

(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as doing so does not constitute a pledge of the unit's taxing power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.

(c) No agreement or covenant may contain a nonsubstitution clause that restricts the right of the issuing unit of local government to replace or provide a substitute for any project financed pursuant to this subsection.

(d) The obligation of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the debt instruments. The sources

of payment so specifically identified and then held or thereafter received by the unit or any fiduciary of the unit are immediately subject to the lien of the proceedings without any physical delivery of the sources or further act. The lien is valid and binding as against all parties having claims of any kind against a unit without regard to whether the parties have notice of the lien. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Article. (2003-403, s. 2; 2005-238, s. 6.)

§ 159-112. Limitations on details of debt instruments.

In fixing the details of project development financing debt instruments, the governing body of the issuing unit of local government is subject to these restrictions and directions:

- (1) The maturity date shall not exceed the shorter of (i) the longest of the various maximum periods of usefulness for the projects to be financed with debt instrument proceeds, as prescribed by the Local Government Commission pursuant to G.S. 159-122, or (ii) the end of the thirtieth year after the effective date of the development financing district.
- (2) The first payment of principal shall be payable not more than seven years after the date of the debt instruments.
- (3) Any debt instrument may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any debt instrument may be made subject to redemption prior to maturity, with or without premium, on such notice, at such times, and with such redemption provisions as may be stated. Interest on the debt instruments shall cease when the instruments have been validly called for redemption and provision has been made for the payment of the principal of the instruments, any redemption, any premium, and the interest on the instruments accrued to the date of redemption.
- (4) The debt instruments may bear interest at such rates payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without this State as the issuing unit may determine. (2003-403, s. 2.)

§ 159-113. Annual report.

In July of each year, each unit of local government with outstanding project development financing debt instruments shall make a report to any other unit, and to any special district as defined in G.S. 159-7, in which the development financing district for which the instruments were issued is located. This report shall set out the base valuation for the development financing district, the current valuation for the district, the amount of remaining project development financing debt for the district, and the unit's estimate of when the debt will be retired. The unit of local government may meet this requirement by reporting this information in its annual financial statements required by G.S. 159-34. (2003-403, s. 2.)

§ 159-114: Reserved for future codification purposes.

§§ 159-115 through 159-119: Reserved for future codification purposes.

EXHIBIT C

§ 160A-515.1. Project development financing.

(a) Authorization. – A city may finance a redevelopment project and any related public improvements with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the city. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the city's governing body must define a development financing district and adopt a development financing plan for the district. The city may act jointly with a county to finance a project, define a development financing district, and adopt a development financing plan for the district.

(b) Development Financing District. – A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e).

(c) Development Financing Plan. – The development financing plan must be compatible with the redevelopment plan or plans for the redevelopment area or areas included within the district. The development financing plan must include all of the following:

- (1) A description of the boundaries of the development financing district.
- (2) A description of the proposed development of the district, both public and private.
- (3) The costs of the proposed public activities.
- (4) The sources and amounts of funds to pay for the proposed public activities.
- (5) The base valuation of the development financing district.
- (6) The projected incremental valuation of the development financing district.
- (7) The estimated duration of the development financing district.
- (8) A description of how the proposed development of the district, both public and private, will benefit the residents

and business owners of the district in terms of jobs, affordable housing, or services.

- (9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.
- (10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements in subsection (d) of this section.

(d) Wage Requirements. – A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection

shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(e) County Review. – Before adopting a plan for a development financing district, the city council shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the city council, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the city council may proceed to adopt the plan.

(f) Environmental Review. – Before adopting a plan for development financing districts, the city council shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(g) Plan Adoption. – Before adopting a plan for a development financing district, the city council shall hold a public hearing on the plan. The council shall, no less than 30 days before the day of hearing, cause notice of the hearing to be mailed by first-class mail to all property owners and mailing addresses within the proposed development financing district. The council shall also, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once in a newspaper of general circulation in the city. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the city clerk. At the public hearing, the council shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county

commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (e) or (f) of this section, the council may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the city's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(h) Plan Modification. – Subject to the limitations of this subsection, a city council may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the city council shall follow the procedures and meet the requirements of subsections (d) through (g) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the city may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(i) Plan Implementation. – In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 18; 2005-238, s. 12, 2005-S1436).

EXHIBIT D

§ 158-7.3. Development financing.

(a) Definitions. – The following definitions apply in this section:

- (1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in an enterprise tier one area, as defined in G.S. 105-129.3, and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

- (2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.
- (3) Unit or unit of local government. – A county, city, town, or incorporated village.

(b) Authorization. – A unit of local government may finance public improvements that are part of a development project with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the unit. Before it receives the approval of the Local

Government Commission for issuance of project development financing debt instruments, the unit's governing body must define a development financing district and adopt a development financing plan for the district. The county may act jointly with a city to finance a project, define a development financing district that is within the city, and adopt a development financing plan for the district.

(c) Development Financing District. – A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

- (1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.
- (2) Appropriate for rehabilitation or conservation activities.
- (3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village.

(d) Development Financing Plan. – The development financing plan must include all of the following:

- (1) A description of the boundaries of the development financing district.
- (2) A description of the proposed development of the district, both public and private.
- (3) The costs of the proposed public activities.
- (4) The sources and amounts of funds to pay for the proposed public activities.
- (5) The base valuation of the development financing district.
- (6) The projected incremental valuation of the development financing district.
- (7) The estimated duration of the development financing district.

- (8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.
- (9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.
- (10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements referred to in subsection (e) of this section.

(e) Wage Requirements. – A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the

existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(f) County Review. – If the unit creating a development financing district and adopting a development financing plan is a city, town, or incorporated village, before adopting the plan the unit's governing body shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the governing body, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the governing body may proceed to adopt the plan.

(g) Environmental Review. – Before adopting a plan for development financing districts, the issuing unit's governing body shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(h) Plan Adoption. – Before adopting a plan for a development financing district, the issuing unit's governing body shall hold a public hearing on the plan. The governing body shall, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once and shall cause notice of the hearing to be mailed, by first-class mail, to all property owners and mailing addresses of the

development financing district and to the governing body of any special district, as defined by G.S. 159-7, within which the development financing district is located. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the unit's clerk. At the public hearing, the governing body shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (f) or (g) of this section, the governing body may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the unit's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(i) Plan Modification. – Subject to the limitations of this subsection, a governing body may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the governing body shall follow the procedures and meet the requirements of subsections (e) through (h) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the unit may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(j) Plan Implementation. – In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract.(2003-403, s. 19; 2005-238, s. 1; 2005-407, s. 1, 2005-S1436).

EXHIBIT E

Purposes Authorized Under 159-103

The first item below is an extract from the Project Development Financing Act. Following that are copies of the statutes referenced

Extract from GS § 159-48: Each unit of local government may issue project development financing debt instruments pursuant to this Article and use the proceeds for one or more of the purposes for which any unit may issue general obligation bonds pursuant to the following subdivisions of G.S. 159-48: (b)(1), (3), (7), (11), (12), (16), (17), (19), (21), (23), (24), or (25), (c)(1), (4), (4a) or (6), or (d)(3), (4), (5), (6) (7), or (b)(13) excluding stadiums, arenas, golf courses, swimming pools, wading pools or marinas. In addition, the proceeds may be used for a service or facility authorized by G.S. 160A-536 to be provided in a municipal service district, but no such district need be created.

Note: Permitted purposes are set in bold. Italicized provisions indicate trouble spots or things to be noted.

§ 159-48. For what purposes bonds may be issued.

(a) **Each unit of local government is authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:**

- (1) To suppress riots, insurrections, or any extraordinary breach of law and order.
- (2) To supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance within the limits prescribed in G.S. 159-13.
- (3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.
- (4) To refund outstanding revenue bonds or revenue bond anticipation notes.
- (5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.

- (6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.
- (7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

- (1) **Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.**
- (2) Providing armories for the North Carolina national guard.
- (3) **Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.**
- (4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.
- (5) Providing cemeteries.
- (6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.
- (7) **Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered**

workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

- (8) Providing land for corporate purposes.
- (9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.
- (10) Providing library facilities, including without limitation fixed and mobile libraries.
- (11) **Providing art galleries, museums, and art centers, and providing for historic properties.**
- (12) **Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.**
- (13) **Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, *stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.* (*italicized items excluded*)**
- (14) *Providing public buildings, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.*
- (15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention,

sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

- (16) **Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.**
- (17) **Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.**
- (18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.
- (19) **Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.**
- (20) Providing voting machines.
- (21) **Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.**
- (22) *Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.*
- (23) **Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.**
- (24) **Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.**
- (25) **Providing property to preserve a railroad corridor.**
- (26) (For effective date, see note) Undertaking public activities in or for the benefit of a development financing district pursuant to a development financing plan.

(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of

subdivisions (1) through (4b) of this subsection, paying any capital costs of any one or more of the purposes and, in the case of subdivisions (5) and (6) of this subsection, to finance the cost of the purpose:

- (1) **Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.**
- (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
- (3) Providing county homes for the indigent and infirm.
- (4) **Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.**
- (4a) **Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.**
- (4b) Providing land for present or future county corporate, open space, community college, and public school purposes.
- (5) Providing for the octennial revaluation of real property for taxation.
- (6) **Providing housing projects for persons of low or moderate income, including construction or acquisition of projects to be owned by a county, redevelopment commission, or housing authority and the provision of loans, grants, interest supplements, and other programs of financial assistance to such persons. A housing project may provide housing for persons of other than low or moderate income if at least forty percent (40%) of the units in the project**

are exclusively reserved for persons of low or moderate income. No rent subsidy may be paid from bond proceeds.

(d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

- (1) Repealed by Session Laws 1977, c. 402, s. 2.
- (2) Providing cable television systems.
- (3) **Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.**
- (4) **Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.**
- (5) **Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.**
- (6) **Improving existing systems or facilities for the transmission or distribution of telephone services.**
- (7) **Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other than low or moderate**

income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy may be paid from bond proceeds.

(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

- (1) Acquire, construct, erect, provide, develop, install, furnish, and equip; and**
- (2) Reconstruct, remodel, alter, renovate, replace, refurnish, and reequip; and**
- (3) Enlarge, expand, and extend; and**
- (4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.**

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing herein may be deemed to prohibit the combining of purposes from any of such paragraphs and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, the following:

- (1) The costs of doing any or all of the things mentioned in subsection (f) of this section; and**
- (2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water**

- rights, franchises, and licenses used or useful in connection with the purpose authorized; and**
- (3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures are to be moved; and**
- (4) Financing charges, including estimated interest during construction and for six months thereafter; and**
- (5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues; and**
- (6) The costs of bond printing and insurance; and**
- (7) Administrative and legal expenses; and**
- (8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.**

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out herein to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters.

In addition, the proceeds may be used for any service or facility authorized by G.S. 160A-536 to be provided in a municipal service district, but no such district need be created.

§ 160A-536. Purposes for which districts may be established.

(a) Purposes. – The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

- (1) Beach erosion control and flood and hurricane protection works.**
- (1a) (For applicability see note) Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and**

sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter.

- (2) Downtown revitalization projects.
- (2a) Urban area revitalization projects.
- (2b) Transit-oriented development projects.
- (3) Drainage projects.
- (3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
- (3b) **(For applicability see note)** Lighting at interstate highway interchange ramps.
- (4) Off-street parking facilities.
- (5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

(b) Downtown Revitalization Defined. – As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the

entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Budget Officer and (ii) meets one or more of the following conditions:

- (1) It is the central business district of the city.
- (2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
- (3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
- (4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(c1) Transit-Oriented Development Defined. – As used in this section, the term "transit-oriented development" includes the provision within a public transit area of any service or facility listed in this subsection. A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A mass transit line is a rail line along which a

public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week.

The following services and facilities are included in the definition of "transit-oriented development" if they are provided within a transit area:

- (1) Any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section.
- (2) Passenger stops and stations on a mass transit line.
- (3) Parking facilities and structures associated with passenger stops and stations on a mass transit line.
- (4) Any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial facilities.

(d) Contracts. – A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period.

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Brief biographies of Mr. Jeffcoat and Mr. Lucas are below. In addition, McGuireWoods LLP lawyers in Richmond, Tysons Corner, Baltimore and Chicago have substantial experience with tax increment financing and related local government development and redevelopment tools.



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Mr. Jeffcoat has served as bond counsel to the states of South Carolina and North Carolina, and a number of their agencies and political subdivisions, for traditional governmental general obligation and revenue bond issues. Mr. Jeffcoat assisted in drafting legislation in South Carolina to permit tax increment financing by cities and counties. He has also served as bond counsel, underwriter's counsel and issuer's counsel for TIF financings. In addition, he has counseled school districts and counties in connection with the creation and operation of tax increment financing districts by other local governments.



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Mr. Lucas concentrates his practice in the areas of public finance and banking. He serves as bond counsel and counsel to underwriters, credit providers and liquidity providers in many types of tax-exempt and taxable financings including health care and education facilities financings, general obligation and revenue financings, industrial development financings, and certificates of participation financings. He also represents lenders and borrowers in connection with structuring secured and unsecured lending transactions.

Mr. Lucas has been involved with public finance in North Carolina throughout his career in various capacities. He is familiar with financing procedures in North Carolina and with the operations and practices of local government issuers.