

Article 3.

Contracts.

**§ 160A-16. Contracts to be in writing; exception.**

All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council. (1917, c. 136, subch. 13, s. 8; C.S., s. 2831; 1971, c. 698, s. 1.)

**§ 160A-17. Continuing contracts.**

A city is authorized to enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. Sufficient funds shall be appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made, and in each ensuing fiscal year, the council shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1971, c. 698, s. 1.)

**§ 160A-17.1. Grants from other governments.**

(a) Federal and State. – The governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

In order to exercise the authority granted by this section, the governing body of any city or county may:

- (1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the city or county;
  - (2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;
  - (3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;
  - (3a) Agree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies in projects financed by federal grants-in-aid or loans, by including such minimum requirements in the specifications for contracts to perform all or part of such projects and awarding bids pursuant to G.S. 143-129 and 143-131, if applicable, to the lowest responsible bidder or bidders meeting these and any other specifications.
  - (4) Make expenditures from any funds so granted.
- (b) Expired effective December 31, 2010. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5; 1973, c. 426, s. 8; 1981, c. 827; 2007-91, s. 1.)

**§ 160A-17.2. Security interests in United States Department of Agriculture loans.**

(a) A county or municipality may pledge a security interest in an escrow account funded with loan proceeds, or a certificate of deposit, to secure repayment of the loan, only if the loan is an interest-free loan agreement entered into with the United States Department of Agriculture or an authorized intermediary acting on behalf of the United States Department of Agriculture. Any such escrow account must be substantiated by a written escrow agreement, and the funds must be

deposited in accordance with G.S. 159-30 and G.S. 159-31. Any certificate of deposit shall comply with the requirements of G.S. 159-30.

(b) An interest-free loan agreement entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes, unless exempted in G.S. 159-148(b).

(c) No deficiency judgment may be rendered against any county or municipality in any action for breach of a contractual obligation authorized by this section. The taxing power of a county or municipality is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (2015-207, s. 3.)

#### **§ 160A-18. Certain deeds validated.**

(a) All deeds made, executed, and delivered by any city before July 1, 1970, for a good and valuable consideration are hereby in all respects validated, ratified, and confirmed notwithstanding any lack of authority to make the deed or any irregularities in the procedures by which conveyance of the land or premises described therein was authorized by the city council.

(b) All conveyances and sales of any interest in real property by private sale, including conveyances in fee and releases of vested or contingent future interests, made by the governing body of any city, school district, or school administrative unit before July 1, 1970, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances or releases were made by private sale and not after notice and public outcry.

(b1) All conveyances of any interest in real property by private sale, including conveyance in fee, made by the governing body of any county before January 1, 1977, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances were made by private sale, without advertisement, and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1977. (Ex. Sess. 1924, c. 95; 1951, c. 44; 1959, c. 487; 1971, c. 698, s. 1; 1977, c. 1103.)

#### **§ 160A-19. Leases.**

A city is authorized to lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Article 8 of Chapter 143 of the General Statutes. (1973, c. 426, s. 9.)

#### **§ 160A-20. Security interests.**

(a) Purchase. – A unit of local government may purchase, or finance or refinance the purchase of, real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Improvements. – A unit of local government may finance or refinance the construction or repair of fixtures or improvements on real property by contracts that create in some or all of the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for the construction or repair.

(c) Accounts. – A unit of local government may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of the advance funding are invested pending disbursement. A unit of local government may also use other accounts, such as debt service payment accounts and debt service reserve accounts, to facilitate

transactions authorized by this section. To secure transactions authorized by this section, a unit of local government may also create security interests in these accounts.

(d) Nonsubstitution. – No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any fixture, improvement, project, or property financed, refinanced, or purchased pursuant to the contract.

(e) Oversight. – A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

- (1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
- (2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) Public Hospitals. – A nonprofit entity operating or leasing a public hospital may enter into a contract pursuant to this section only if the nonprofit entity will have an ownership interest in the property being financed or refinanced, including a leasehold interest. The security interest granted in the property shall be only to the extent of the nonprofit entity's property interest. In addition, any contract entered into by a nonprofit entity operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority that owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by the nonprofit entity.
- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank-eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a material, adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or would otherwise materially interfere with an anticipated financing by the nonprofit entity.

(f) Limit of Security. – No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section. The taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Public Hearing. – Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) Local Government Defined. – As used in this section, the term "unit of local government" means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

- (3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
- (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
- (3c) A county water and sewer district created under Article 6 of Chapter 162A of the General Statutes.
- (3d) A metropolitan water district created under Article 4 of Chapter 162A of the General Statutes.
- (3e) A metropolitan water and sewerage district created under Article 5A of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
- (5b) A local airport authority that was created pursuant to a local act of the General Assembly.
- (6) A local school administrative unit whose board of education is authorized to levy a school tax.
- (6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
- (6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- (9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.
- (10) A regional natural gas district, as defined by Article 28 of this Chapter.
- (11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.
- (12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39.
- (13) A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.
- (14) A special district created under Article 43 of Chapter 105 of the General Statutes.

- (15) A Ferry Transportation Authority created pursuant to Article 29 of this Chapter. (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1; 1998-70, s. 1; 1998-117, s. 1; 1999-386, ss. 1, 2; 2001-414, s. 52; 2002-161, s. 10; 2003-259, s. 1; 2003-388, s. 3; 2007-226, s. 1; 2007-229, s. 3; 2009-527, s. 2(g); 2015-207, s. 5(a); 2017-120, s. 4.)

**§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.**

(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

(b) Repealed by Session Laws 2015-294, s. 1(b), effective October 1, 2015, and applicable to contracts entered into on or after that date. (1985, c. 271, s. 1; 2013-413, s. 5(d); 2013-418, s. 2(b); 2014-119, s. 13(a); 2015-294, s. 1(b); 2016-3, 2nd Ex. Sess., s. 2.3; 2017-4, s. 1.)