

CHAPTER 40-27

FUNDING AND REFUNDING SPECIAL ASSESSMENT WARRANTS

40-27-01. Municipality may issue bonds to purchase special assessment warrants.

A municipality may issue bonds for the purchase of outstanding special assessment warrants of the municipality before or after their maturity, at the best price obtainable, but not exceeding sixty percent of the par value thereof and the interest accrued to the date of purchase. The rate of interest on the bonds shall not exceed the rate of interest on the special assessment warrants for the purchase of which the bonds are issued, and such bonds shall not be sold for less than the par value thereof plus the interest accrued thereon.

40-27-02. Issuance of funding bonds - Question need not be submitted to electors nor to board of budget review. The bonds provided for in section 40-27-01 may be issued pursuant to a resolution or ordinance of the governing body of the municipality without submitting the question to the electors of the municipality. The question of the issuance of such bonds need not be submitted to the board of budget review in the manner provided for other bond issues.

40-27-03. Funding bonds to mature serially - When installments fall due. Bonds issued for the purchase of special assessment warrants shall mature serially. The first installment shall fall due not more than three years from the date of issuance of the bonds, and the last installment shall fall due not more than twenty years from the date of the bonds.

40-27-04. Bonds to be general obligations of municipality. Bonds issued pursuant to section 40-27-01 shall be the general obligations of the issuing municipality, and the full faith and credit and the unlimited taxing power of such municipality shall be pledged to their payment.

40-27-05. Special fund for payment of bonds issued for purchase of special assessment warrants - Tax levy. The governing body of a municipality which issues bonds for the purchase of special assessment warrants shall create a special fund for the payment of the principal and interest of such bonds as they become due and shall credit to such fund all special assessments collected for the payment of the special assessment warrants purchased. The governing body shall make a general tax levy annually on all the property in the municipality which, together with the special assessments collected, shall be sufficient to pay the principal and interest of the bonds when they become due. The levy imposed shall not be subject to any of the tax levy limitations imposed by section 57-15-08 or acts amendatory thereof. If any money remains in the special fund after the payment of the principal of all the bonds and the interest thereon, such balance may be transferred to the general fund.

40-27-06. Refunding special assessment warrants or bonds - Purpose for which issuable. Any municipality having valid outstanding special assessment warrants or bonds issued pursuant to this title which are due, or to become due within one year, in whole or in part as to principal or interest or both or which are redeemable either at the option of the municipality or with the consent of the warrant holders or bondholders may issue refunding special assessment warrants or bonds if there is not sufficient money in the special improvement fund against which such warrants or bonds are drawn to pay the principal or interest or both or if a deficiency is likely to occur in the fund within one year for payment of principal or interest thereon. Such refunding special assessment warrants or bonds may be issued for any of the following purposes:

1. To extend the maturities of the special assessment warrants or bonds.
2. To reduce the rate of interest on the special assessment warrants or bonds.
3. To equalize the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund against which the special assessment warrants or bonds are drawn.
4. To consolidate two or more outstanding issues of warrants or bonds.

40-27-07. Refunding warrants or bonds authorized by resolution - Contents of resolution. The issuance of refunding warrants or bonds may be authorized by the governing body of the municipality by resolution. Such resolution shall describe the warrants or bonds to be refunded and the amount, maturity, and other details of the refunding warrants or bonds.

40-27-08. Contents of refunding warrants and bonds - Redemption - Negotiability - Eligibility as investments. The refunding warrants or bonds shall bear such date, be in such denominations, and mature at such time or times, not exceeding thirty years from date of issue, as the governing body shall determine. Such warrants or bonds may be made subject to redemption at any specified time or times if it is so provided in the initial resolution. Refunding warrants or bonds issued pursuant to this chapter may be designated as "refunding improvement warrants" or "refunding improvement bonds" as the governing body shall determine; provided, that nothing herein shall be deemed to subject such warrants or bonds to chapter 21-03 with reference to general obligation bonds of the municipality. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41 and shall be valid investments for fiduciary, corporate, and public funds to the same extent as improvement warrants or bonds.

40-27-09. Sale or exchange of refunding warrants or bonds - Issuance - Agreement by governing body to exchange. Refunding warrants or bonds may be sold for cash in such manner as the governing body may direct, and the proceeds used to pay the warrants or bonds described in the initial resolution, or may be exchanged for such warrants or bonds, but no exchange shall be made at less than par plus accrued interest, and no sale shall be made at less than ninety-eight percent of par plus accrued interest on the refunding warrants or bonds. Refunding warrants or bonds may be issued from time to time as the original warrants or bonds mature or are called for payment and redemption or may be sold to pay, or, by agreement with the holders thereof, may be exchanged for, warrants or bonds which are not due. The governing body may enter into an agreement with the holders of outstanding warrants or bonds relating to an exchange of such warrants or bonds for refunding warrants or bonds and may provide, in its discretion, that the agreement shall be effective only when the holders of not less than seventy-five percent of the warrants or bonds shall have entered into the agreement.

40-27-10. Expense of issuing refunding special assessment warrants or bonds chargeable to special improvement fund. Any municipality that issues refunding special assessment warrants or bonds may incur and pay the reasonable incidental expenses, including the cost of printing and legal fees. All such expenses shall be payable solely out of moneys in the special improvement fund or funds from which the refunded warrants or bonds are payable or out of money derived from the sale of warrants or bonds drawn on the fund from which the refunding warrants or bonds are payable.

40-27-11. Special fund created for payment of refunding special assessment warrants or bonds - Procedure on paying refunded warrants or bonds. A special fund or special funds shall be created in accordance with this section for the payment of refunding special assessment warrants or bonds. Such special fund may be created as a single consolidated fund for warrants or bonds issued to refund special assessment warrants or bonds of more than one district, or a separate special fund may be created for warrants or bonds issued to refund special assessment warrants or bonds of each district. In either case, the refunded warrants or bonds shall not be canceled but shall be retained by the municipality as an asset of the fund from which the refunding warrants or bonds are payable. The special fund or funds from which the refunded warrants or bonds are payable shall be continued, and payments therefrom shall be made on the warrants or bonds drawn thereon, in the same manner as though none of such warrants or bonds had been refunded. All payments made on the principal and on the interest of refunded warrants or bonds shall be credited to the fund from which the appropriate refunding warrants or bonds are payable and shall be applied in payment of the principal and on the interest on the refunding warrants or bonds in the manner prescribed by the resolution authorizing the issuance of such refunding warrants or bonds. To the extent refunding warrants or bonds are issued to refund the principal or interest, or both, of warrants or bonds, due or to become due within one year, for which a deficiency exists or is likely to exist in the fund or funds against which such outstanding warrants or bonds are drawn due to nonpayment or anticipated

nonpayment of special assessments, any payments of such delinquent special assessments and such amounts of accrued interest and penalty thereon as necessary shall be set aside for the payment or redemption of the refunding warrants or bonds issued to fund such delinquencies.

40-27-12. Rights of warrantholders or bondholders to be preserved - Tax levy for deficiency - When levied. A municipality issuing refunding special assessment warrants or bonds shall preserve and enforce, for the security of the refunding warrants or bonds, all of the rights and duties which constituted security for the refunded warrants or bonds. At the date of the maturity of the last maturing warrant or bond of the original issue, the governing body shall levy a tax for the payment of any deficiency in the special improvement fund against which the refunded special assessment warrants or bonds were drawn. Such tax may be made payable in the years and in the amounts required to pay the principal of and interest on the refunding warrants or bonds as the same becomes due.

40-27-13. Refunding callable funding bonds or refunding warrants - Terms and conditions. Any municipality may refund, according to the procedure set forth in this chapter, any funding bonds issued under this chapter which are callable prior to maturity or which shall be surrendered voluntarily for refunding, by the issuance of bonds upon the same terms and conditions except as to interest, whenever by so doing a saving in interest can be effected. Any municipality having valid outstanding refunding special improvement warrants or bonds issued pursuant to this chapter, which are due, or to become due within one year, in whole or in part as to principal or interest or both or which are redeemable either at the option of the municipality or with the consent of the warrantholders or bondholders, may issue new refunding special improvement bonds to refund such outstanding warrants or bonds, if there is not sufficient money in the fund or funds against which such outstanding refunding warrants or bonds are drawn to pay the principal or interest or both or if a deficiency is likely to occur in the fund or funds within one year for payment of principal or interest thereon. Such new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the debt service thereon, or equalizing the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund or funds against which they are drawn. Such new bonds shall be issued according to the procedure set forth in this chapter for the issuance of the original refunding special improvement warrants or bonds. If refunding improvement bonds are issued and sold six months or more before the earliest date on which all outstanding refunding improvement warrants or bonds of the issue to be refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the new bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each warrant or bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such warrant or bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and any premium required for redemption on such date, or in the case of a crossover refunding, must be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding improvement bonds until the date the proceeds are applied to the payment or redemption of the bonds or warrants to be refunded. The governing body's resolution authorizing the new bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the new bonds. Moneys on hand in the refunding improvement bond fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new

bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.