

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

One Hundred and Third Legislature

OF THE

STATE OF MAINE

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PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
One Hundred and Third Legislature
1967

Chapter 429

AN ACT Relating to Issuing of Parking System Revenue Bonds and Water and Sewer System Revenue Bonds by Municipalities.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 30, § 1901, sub-§ 5, repealed and replaced. Subsection 5 of section 1901 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

5. Improvements. "Improvements" means such repairs, replacements, additions, extensions and betterments of and to a revenue producing municipal facility as are deemed necessary by the municipal officers to place or maintain such revenue producing municipal facility in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the municipality and for which no existing service is being rendered.

Sec. 2. R. S., T. 30, § 1901, sub-§§ 8-A and 8-B, additional. Section 1901 of Title 30 of the Revised Statutes, as amended by section 60 of chapter 513 of the public laws of 1965, is further amended by adding 2 new subsections 8-A, and 8-B, to read as follows:

8-A. Parking facility. "Parking facility" means any land or any interest therein, structure or portions thereof, and improvements thereon intended for the off-street parking of motor vehicles, either single or multi-level and either at, above or below the surface, by the public for a fee, and facilities incident to the operation of such properties for the parking of motor vehicles including without limitation ancillary waiting rooms, lockers, space for concessions, stores and offices, terminal facilities for trucks and buses, facilities for servicing motor vehicles and for sale of gasoline, oil and other accessories, and all facilities appurtenant thereto and all property, rights, easements and interests relating thereto deemed necessary for the construction or operation thereof.

8-B. Parking system. "Parking system" means any parking facility, together with any public way or public parking area designated by the municipal officers as constituting part of such system on which parking meters have been or may be installed or from which fees or charges have been or may be collected for the parking of vehicles.

Sec. 3. R. S., T. 30, § 1901, sub-§ 11, repealed and replaced. Subsection 11 of section 1901 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

11. Revenue producing municipal facility. "Revenue producing municipal facility" means a parking facility or a water system or a sewage disposal system.

Sec. 4. R. S., T. 30, § 1901-A, additional. Title 30 of the Revised Statutes is amended by adding a new section 1901-A, to read as follows:

§ 1901-A. Declaration of public necessity

It is determined and declared that maintenance and improvement of safe and pure water supplies and control of water pollution are necessary to the health,

safety and general welfare of the public, and that the people of this State require new and improved water and sewer systems in order to avoid the menace to health of the public and damage to the economy created by impure water and untreated sewage; that the free circulation of traffic of all kinds through the streets of the municipalities of this State is necessary for the rapid and effective fighting of fires and disposition of police forces in said municipalities to the health, safety and general welfare of the public, whether residing in said municipalities or traveling to, through or from said municipalities in the course of lawful pursuits; that in recent years the parking of motor vehicles of all kinds has so substantially impeded such free circulation of traffic as to constitute at the present time a public nuisance endangering the health, safety and welfare of the general public, as well as endangering the economic life of said municipalities; and that such traffic congestion cannot be adequately abated except by provisions for sufficient off-street parking facilities; and that the enactment of laws to carry out the intent and purpose of this section is therefore a public necessity.

Sec. 5. R. S., T. 30, c. 235, repealed and replaced. Chapter 235 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

CHAPTER 235

REVENUE PRODUCING MUNICIPAL FACILITIES ACT

§ 4251. General grant of powers

A municipality is authorized and empowered:

1. Revenue producing facilities. To acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue producing municipal facility consisting of a water system or part thereof or a sewer system or part thereof within or without or partly within and partly without the corporate limits of the municipality or of a parking facility within the corporate limits of the municipality;

2. Bonds. To issue revenue bonds of the municipality as provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

3. Refunding bonds. To issue revenue refunding bonds of the municipality as provided to refund any revenue bonds then outstanding which shall have been issued under this chapter;

4. Rates and fees. To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any revenue producing municipal facility;

5. Pledge of revenues. To pledge the revenues derived from any water or sewer system or part thereof to the payment of such revenue or revenue refunding bonds issued with respect to such water or sewer system or part thereof and, notwithstanding section 2151, subsection 2, paragraph D, subparagraph (1), to pledge the revenues derived from any parking facility or system to the payment of revenue or revenue refunding bonds issued with respect to any parking facility included within such system;

6. Acquisition of land or personalty. To acquire in the name of the municipality either by gift, purchase, lease, or the exercise of the right of eminent domain land, rights in land or water or air rights in connection with the construction, reconstruction, improvement, extension, enlargement or operation of revenue producing municipal facilities, and to acquire such personal property, as it may deem necessary in connection therewith, and to hold and dispose of all real and personal property under its control;

7. Contracts; employment of specialists. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as deemed necessary, and to fix their compensation; provided all such expenses shall be payable solely from funds made available under this chapter;

8. Jurisdiction and control. To exercise jurisdiction, control and supervision over any revenue producing municipal facility owned, operated or maintained by the municipality and to make and enforce such rules and regulations for the maintenance and operation of any such system as may, in the judgment of the municipal officers, be necessary or desirable for the efficient operation of any such system and for accomplishing the purposes of this chapter;

9. Right of entry; surveys. To enter on any lands, water or premises located within or without the municipality to make surveys, borings, soundings or examinations for the purposes of this chapter;

10. Use of streets and highways. To enter upon, use, occupy and dig up any street, alley, road, highway or other public places necessary to be entered upon, used or occupied in connection with the acquisition, construction, reconstruction, improvement, maintenance or operation of any parking facility or system, water system or sewer system; when highways maintained by the State are affected, the municipality shall be subject to the same statutory provisions applicable to those corporations authorized to lay their pipes and conduits in the public ways;

11. Federal contracts. To enter into contracts with the Government of the United States or any agency or instrumentality thereof, with the State or any agency or instrumentality thereof, or with any other municipality, district, private corporation, copartnership, association or individual providing for or relating to the revenue producing municipal facility;

12. Federal aid. To accept from any authorized agency of the Federal Government or the State loans or grants for the planning, construction or acquisition of any revenue producing municipal facility or part thereof and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants and contributions may be made; and

13. General powers. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

§ 4252. Issuance of revenue bonds

1. Balloting for bonds. The municipal officers of any municipality with a population of 2,500 or more according to the most recent Federal Census is authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the municipality for the purpose of paying the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any revenue producing municipal facility, provided no revenue bonds of a town, as distinguished from a city, shall be issued until the general purpose for which the bonds are to be issued and the maximum principal amount of such bonds to be authorized have been approved by ballot by a majority of the votes cast on the question and the number of votes cast is at least 20% of the total vote for all candidates for Governor cast in the municipality at the last gubernatorial election. The ballot submitted to the voters of a town to authorize the issuance of revenue bonds shall state the general purpose for which the proposed bonds are to be issued and the maximum principal amount of the proposed bonds authorized to be issued. The voting at meetings held in towns shall be held and conducted in accordance with sections 2061 to 2064, even though the town has not accepted the provisions of said section 2061.

2. Maturity; interest; form; use of proceeds; temporary bonds. The bonds of each issue of revenue bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the municipal officers, and may be made redeemable before maturity, at the option of the municipality, at such price or prices and under such terms and conditions as may be fixed by the municipal officers prior to the issuance of the bonds. The municipal officers shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. Revenue bonds shall be executed in the name of the municipality by the manual or facsimile signature of such official or officials as may be authorized in said resolution to execute such bonds but at least one signature on each bond shall be a manual signature. Coupons, if any attached to such bonds, shall be executed with the facsimile signature of the officer or officers of the municipality designated in said resolution. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be negotiable instruments issued under the laws of this State. The bonds may be issued in coupon or registered form or both, as the municipal officers may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The municipal officers may sell such bonds in such manner, either at public or private sale, and for such price, as they may determine to be for the best interests of the municipality. The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the municipal officers may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like

manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose, provided the aggregate principal amount of revenue bonds of a town may not exceed the amount approved by the voters as provided. The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may contain such limitations upon the issuance of additional revenue bonds as the municipal officers may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. Prior to the preparation of definitive bonds, the municipal officers may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipal officers may provide for the replacement of any bonds which shall become mutilated or be destroyed or lost. Bonds, except bonds for water system purposes, may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of the municipality, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter. Revenue bonds issued under this chapter shall not be deemed to constitute a debt or liability of the municipality or a pledge of the faith and credit of the municipality, but such bonds shall be payable solely from the funds provided therefor, and a statement to that effect shall be recited on the face of the bonds.

§ 4253. Revenues

1. General. The municipal officers shall fix the schedule of rates, fees and other charges for the use of, and for the services furnished or to be furnished by any revenue producing municipal facility and the municipal officers may revise such schedule of rates, fees and charges from time to time. Such rates, fees and charges, except rates, fees and charges for water system purposes, shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the State and the municipality shall charge and collect the rates, fees and charges so fixed or revised. Except as otherwise provided, such rates, fees and charges, including in the case of a parking facility rates, fees and charges for parking on the public ways or in the public parking areas included in the parking system designated by the municipal officers of which such parking facility is a part, shall be so fixed and revised as to provide funds which, together with all other funds available for the purpose, will be sufficient at all times to pay the cost of maintaining, repairing and operating such revenue producing municipal facility and parking system, including reserves for such purposes, and to pay the principal of and interest on the revenue bonds, as the same shall become due and payable, and reserves therefor. Such rates, fees and charges shall be reasonable, just and equitable.

2. Water and sewer system rates. In the case of a water system or a sewer system, rates, fees and charges may be based or computed either upon the quantity of water used or upon the number and size of water or sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors. Any charges for sewer services, including services to manufacturing and industrial plants, obtain-

ing all or a part of their water supply from sources other than the water system of the municipality may be determined by gauging or metering or in any other manner approved by the municipal officers. In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon the sewer system, an additional charge may be made therefor, or the municipal officers may, if they deem it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the municipal officers before discharging such sewage into any sewers owned or maintained by the municipality. In the event it is determined to compute such charges on the basis of the quantity of water used, any water district or water company subject to supervision or regulation by the Public Utilities Commission shall provide to the municipality any and all information or data requested of it by the municipality for such purpose. Such water district or water company shall have no liability to any person, firm or corporation for releasing to the municipality any information or data requested of it by the municipality.

3. Parking system rates. In case of a parking facility and a public way or parking area, whether or not included within the parking system designated by the municipal officers, the rates, fees or charges fixed or revised by the municipal officers need not be uniform throughout the system or in all parts of the municipality, but shall take into account the primary purpose of relieving traffic congestion and encouraging free circulation throughout the municipality. In fixing or revising reasonable, just and equitable rates, fees and charges under subsection 1 or under section 2151, subsection 2, paragraph D, when adequate parking facilities for the accommodation of traffic have been provided and paid for, such rates, fees and charges shall be adjusted to provide funds for maintenance and operation only.

§ 4254. Collection of water or sewer charges

Any resolution providing for the issuance of revenue bonds for a water system or sewer system under this chapter, or the trust agreement securing such bonds may include any or all of the following provisions, and may require the municipal officers to adopt such resolutions or take such other lawful action as shall be necessary to effectuate such provisions and the municipal officers are hereby authorized to adopt such resolutions and to take such other action:

1. Deposits. That the municipality may require the owner, tenant or occupant of each lot or parcel of land who is obligated to pay rates, fees or charges for the use of or for the services furnished by any water system or sewer system owned or operated by the municipality to make a reasonable deposit with the municipality in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent.

2. Procedure for collection. That if the rates, fees or charges for the use of or for the services furnished by any sewer system owned or operated by the municipality by or in connection with any premises not served by a water system owned or operated by the municipality shall not be paid, such rates, fees and charges shall be collected in accordance with sections 4453 to 4455.

§ 4255. Application of revenues

The resolution authorizing the issuance of revenue bonds under this chapter, or any trust agreement securing such bonds, may provide that all or a

sufficient amount of the revenues derived from the water system, sewer system, water and sewer system or parking facility or system, including the revenue producing municipal facility financed with revenue bonds issued under this chapter, after providing for the payment of the cost of repair, maintenance and operation and reserves therefor as may be provided in such resolution or trust agreement, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement and deposited to the credit of a sinking fund for the payment of the interest on and the principal of revenue bonds issued under this chapter as the same shall become due, and the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing such bonds and, except as may otherwise be provided in such resolution or trust agreement, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another. The municipality shall cause to be made at least once each year a comprehensive report of the operations of the revenue producing municipal facility, including all matters relating to rates, revenues, expense of repair, maintenance and operation and of renewals and replacements, principal and interest requirements and the status of all funds. Copies of such annual reports shall be filed with the clerk of the municipality and shall be open to the inspection of all interested persons.

§ 4256. Pledges and covenants; trust agreement

In the discretion of the municipal officers of any municipality, each or any issue of revenue bonds may be secured by a trust agreement by and between the municipality and a corporate trustee, which may be any trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received from the water system, sewer system, water and sewer system or parking facility or system including the revenue producing municipal facility financed with revenue bonds issued under this chapter, but shall not convey or mortgage any revenue producing municipal facility or system including a revenue producing municipal facility. Such resolution may also contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipality and the municipal officers in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of any such revenue producing municipal facility or related system or systems, the fixing and revising of rates, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such acquisition, construction, reconstruction or operation. Such resolution or trust agreement may set forth the rights and remedies of the bondholder and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the municipal officers may deem reasonable and proper for the security of the bondholders. Except as in this chapter otherwise provided, the municipal officers may provide for the payment of the proceeds of the sale of the bonds and the revenues of any revenue producing municipal facility or part thereof to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such resolution or trust agreement may be treated as a part of the cost of operation. All pledges of revenue under this chapter shall be valid

and binding from the time when such pledge is made; all such revenues so pledged and thereafter received by the municipality shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action under the Uniform Commercial Code or otherwise, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality, irrespective of whether such parties have notice thereof.

§ 4257. Sewer connections

On or after the placing in operation of a sewage disposal system the owner, tenant or occupant of each lot or parcel of land within the municipality which abuts upon a street or other public way containing a sewer which is connected with such sewage disposal system and upon which lot or parcel a building shall have been constructed for residential, commercial or industrial use, shall, as may be so required by the rules and regulations of the municipal officers or by resolution, connect such building with such sewer, and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the municipal officers, which rules and regulations may provide for a charge for making any such connection in such reasonable amount as the municipal officers may fix and establish.

§ 4258. Trust funds

Notwithstanding any other law, all moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or other fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as may be provided in such resolution or trust agreement or as may be required by this chapter.

§ 4259. Remedies

Any holder of revenue bonds issued under this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the municipality, the municipal officers, or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the revenue producing municipal facility.

§ 4260. Revenue refunding bonds

The municipal officers are authorized to provide by resolution for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under

this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the municipal officers, for the additional purpose of constructing improvements, extensions or enlargements of the revenue producing municipal facility in connection with which the bonds to be refunded shall have been issued. The municipal officers are authorized to provide by resolution for the issuance of revenue bonds of the municipality for the combined purpose of refunding any revenue bonds or revenue refunding bonds then outstanding which shall have been issued under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and paying all or any part of the cost of acquiring or constructing any additional revenue producing municipal facility or part thereof, or any improvements, extensions or enlargements of any revenue producing municipal facility. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the municipality and the municipal officers with respect to the same, shall be governed by the foregoing provisions of sections 4251 to 4259 insofar as the same may be applicable.

§ 4261. Authorizing resolution

Notwithstanding any other law, either general, special or local, or any charter or charter amendment theretofore adopted by such municipality, or any ordinance, resolution, bylaw, rule or regulation of such municipality, it shall not be necessary to publish any resolution adopted under this chapter, either before or after its final passage.

§ 4262. Exemption from taxation

As proper revenue producing municipal facilities as defined are essential for the health and safety of the inhabitants of the municipalities, and as the exercise of the powers conferred to effect such purposes constitute the performance of essential governmental functions, and as municipal facilities acquired or constructed under this chapter constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any parking facility or system or water or sewer system revenue producing municipal facility, or any part thereof, whether located within or without the corporate limits of the municipality, or upon the income therefrom, and any bonds issued under this chapter, and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State, provided that nothing contained in this section shall exempt any lessee or person in possession of a parking facility or part thereof or the property so leased or possessed from taxes or assessments payable under Title 36, section 551.

§ 4263. Alternative method

Sections 4251 to 4262 shall be deemed to provide an additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided the issuance of revenue bonds or revenue refunding bonds under said sections need not comply with the requirements of any other general or special law applicable to the issuance of bonds.

§ 4264. Liberal construction

This chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof.

Effective October 7, 1967

Chapter 430

AN ACT Adopting the Uniform Arbitration Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 14, c. 706, additional. Title 14 of the Revised Statutes is amended by adding a new chapter 706, to read as follows:

CHAPTER 706

UNIFORM ARBITRATION ACT

§ 5927. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, unless otherwise provided in the agreement.

§ 5928. Proceedings to compel or stay arbitration

1. Application. On application of a party showing an agreement described in section 5927 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

2. Stay of proceedings. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

3. Arbitration where action pending. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application shall be made therein. Otherwise and subject to section 5944, the application may be made in the Superior Court.