

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 1011
HOUSE BILL 2116

AN ACT TO ASSIST IN FINANCING OF AGRICULTURE.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 122D.

"North Carolina Agricultural Finance Act.

"§ 122D-1. **Short Title.** –This Chapter shall be known and may be cited as the 'North Carolina Agricultural Finance Act.'

"§ 122D-2. **Legislative findings and purposes.** –(a) The General Assembly hereby finds and declares that there exists in the State of North Carolina a serious shortage of capital and credit available for investment in agriculture, for domestic and export purposes, at interest rates within the financial means of persons engaged in agricultural production and agricultural exports. This shortage of available capital and credit is severe throughout the State, has persisted for a number of years, and constitutes a grave threat to the agricultural industry and to the health, welfare, safety and prosperity of all residents of the State.

(b) The General Assembly hereby finds and declares further that private enterprise and existing federal and state governmental programs have not adequately alleviated the severe shortage of capital and credit available at affordable interest rates for investment in agriculture.

(c) The General Assembly hereby finds and declares that it is a matter of grave public necessity that the North Carolina Agricultural Finance Authority be created and empowered to alleviate the severe shortage of capital and credit available at affordable interest rates for investment in agriculture and for the export of agricultural products, commodities and services by providing such capital and credit at interest rates within the financial means of persons and businesses engaged in agriculture and agricultural exports.

"§ 122D-3. **Definitions.** – As used in this Chapter, the following terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) 'Agricultural Loan' means a loan made by a lending institution or by the Authority to any person for the purpose of financing land acquisition or improvement; soil conservation; irrigation; construction, renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other

products employed in the production, cultivation, harvesting, storage, marketing, distribution or export of agricultural products.

(2) 'Agriculture' means the commercial production, storage, processing, marketing, distribution or export of any agronomic, floricultural, horticultural, vitacultural, silvicultural or aquacultural crop including, but not limited to, farm products, livestock and livestock products, poultry and poultry products, milk and dairy products, fruit and other horticultural products, and seafood and aquacultural products.

(3) 'Authority' means the North Carolina Agricultural Finance Authority created by this Chapter.

(4) 'Bonds' or 'notes' mean the bonds, notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or evidences of indebtedness authorized to be issued by the Authority pursuant to the provisions of this Chapter.

(5) 'Commissioner' means the North Carolina Commissioner of Agriculture.

(6) 'Department' means the North Carolina Department of Agriculture.

(7) 'Federal government' means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

(8) 'Lending institution' means any bank, bank or trust company, federal land bank, production credit association, bank for cooperatives, building and loan association, homestead, insurance company, investment banker, mortgage banker or company, pension or retirement fund, savings bank or savings and loan association, small business investment company, credit union, the federal government or any other financial institution authorized to do business in North Carolina or operating under the supervision of any federal agency or any corporation organized or operating pursuant to Section 25 of the Federal Reserve Act.

(9) 'Persons' means any individual, partnership, firm, corporation, company, cooperative, association, society, trust or any other business unit or entity, including any state or federal agency.

(10) 'State' means the State of North Carolina or any agency or instrumentality thereof.

"§ 122D-4. North Carolina Agricultural Finance Authority. – (a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of ten members. The Commissioner shall serve ex officio, with the same rights and privileges, including voting rights, as other members. The other nine members shall be appointed in the following manner:

(1) three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;

(2) three members appointed by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121; and

(3) three members appointed by the Governor.

(c) Members shall serve for three-year terms. Initial terms shall commence July 1, 1986. Appointed members shall serve until their successors are appointed and qualify.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S.120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may be reimbursed for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper.

"§ 122D-5. Officers and employees; administration of Chapter. –(a) The Authority shall annually elect a chairman and vice-chairman from its members.

(b) The Authority may appoint an Executive Director. The salary of the Executive Director shall be set by the General Assembly in the Current Operations Appropriation Act.

(c) The Executive Director shall administer and enforce this Chapter in accordance with rules promulgated by the Authority. The Executive Director may employ such personnel as may be necessary to administer and enforce the provisions of this Chapter, subject to the approval of the Authority. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. All employees shall be under the supervision of the Executive Director.

(d) The Authority may employ legal, financial and technical experts and consultants as it deems necessary on a contractual basis.

"§ 122D-6. General powers of Authority. –The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

(1) sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to paragraph (19) of this Section;

(2) have a seal and alter the same at its pleasure;

(3) adopt bylaws for the internal organization and government of the Authority;

(4) adopt, promulgate and amend rules for the administration of the Chapter;

"(4a) limit the definition of agricultural loan under G.S. 122D-3(1);

(5) make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this Chapter with any federal or State governmental agency, public or private corporation, lending institution or other entity or person, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the agency to facilitate the purposes of this Chapter;

(6) accept, administer and expend donations of movable or immovable property from any source, and receive, administer and expend appropriations from the legislature and financial assistance, guarantees, insurance or subsidies from the federal or State government;

(7) subject to the rights of holders of bonds of the Authority, to renegotiate, refinance or foreclose on any mortgage, security interest or lien; or commence any action to protect or enforce any right or benefit conferred upon the Authority by any law, mortgage, security interest, lien, contract or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the Authority may complete, administer, pay the principal of and interest on any obligation incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the Authority or of holders of its bonds therein;

(8) procure or provide for the procurement of insurance or reinsurance against any loss in connection with its property or operations, including but not limited to insurance, reinsurance or other guarantees from any federal or State governmental agency or private insurance company for the payment of any bonds issued by the Authority, or bond, notes or any other obligations or evidences of indebtedness issued or made by any subsidiary corporation or entity created pursuant to subdivision (19) of this section or by any lending institution or other entity or person, or insurance or reinsurance against loss with respect to agricultural loans, mortgages or mortgage loans, or any other type of loans, including the power to pay premiums on such insurance or reinsurance;

(9) make, insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans or mortgages, or any other type of loans and pay or receive premiums on such insurance, coinsurance or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or State government or any private insurance company;

(10) undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the State and needs relating to the promotion of agricultural exports and ways of meeting such needs, and make such studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;

(11) accept federal, State or private financial or technical assistance and comply with any conditions for such assistance, provided such conditions are not in conflict with the intent of this Chapter;

(12) establish, pay and collect fees and charge in connection with its loans, deposits, insurance commitments and services, including but not limited to, reimbursement of costs of issuing bonds, origination and servicing fees, and insurance premiums;

(13) make loans to or deposits with lending institutions and purchase or sell agricultural loans;

(14) acquire or contract to acquire from any person, firm, corporation, municipality, federal or State agency, by grant, purchase or otherwise, movable or immovable property or any interest therein; own, hold, clear, improve, lease, construct or rehabilitate, and sell, invest, assign, exchange, transfer, convey, lease, mortgage or otherwise dispose of or encumber the same, subject to the rights of holders of the bonds of the Authority, at public or private sale, with or without public bidding;

(15) borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and other evidence of indebtedness;

(16) subject to the rights of holders of the bonds of the Authority, consent to any modification with respect to the rate of interest, time, payment of any installment of principal or interest, security or any other term or condition of any loan, contract, mortgage, mortgage loan or commitment therefor or agreement of any kind to which the Authority is a party or beneficiary;

(17) maintain an office at such place or places as the Authority shall determine;

(18) serve as the beneficiary of any public trust;

(19) after reporting to the agriculture committees of the House of Representatives and the Senate, to create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds in the international financial market; and

(20) purchase or participate in the purchase and enter into commitments by itself or together with others for the purchase of federally issued securities; provided that the proceeds of such securities will be utilized in accordance with the provisions of this Chapter.

"§ 122D-7. Purchases and sales of agricultural loans. – The Authority may purchase or contract to purchase and sell or contract to sell agricultural loans made by lending institutions. All lending institutions are hereby authorized to purchase and sell agricultural loans to the Authority in accordance with the provisions of this Chapter and the rules and regulations of the Authority. To the extent that any provisions of this section may be inconsistent with any provision of law governing lending institutions, the provisions of this section shall control.

"§ 122D-8. Loans to and deposits with lending institutions. – The Authority may make, or contract to make, loans to and deposits with lending institutions. All lending institutions may borrow funds and accept deposits from the Authority in accordance with the provisions of this Chapter and the rules and regulations of the Authority. The Authority shall require that all proceeds of its loans to or deposits with lending institutions, or an equivalent amount, shall be used by such lending institutions to make

agricultural loans, subject to such terms and conditions as the Authority may prescribe. To the extent that any provisions of this section may be inconsistent with any provision of the law governing lending institutions, the provisions of this section shall control.

"§ 122D-9. Insurance of agricultural loans. –(a) The Authority may insure and reinsure agricultural loans made by lending institutions, subject to the terms, conditions, limitations, collateral and security provisions, and reserve requirements as shall be determined by the Authority in accordance with the rules adopted by the Authority.

(b) Unless otherwise determined by the Authority, insurance of agricultural loans shall be in the amount of one hundred percent (100%) of the unpaid principal and interest on each loan.

(c) An insured agricultural loan shall be in default when the holder of such loan makes application to the Authority for payment of insurance on such loan stating that such loan is in default in accordance with the terms of any agreement with respect to such insurance executed pursuant to this section.

(d) The Authority may enter into agreements with any person, lending institution or holder of an insured agricultural loan upon such terms as may be agreed upon between the Authority and such person, lending institution, or holder, to provide for the administration, applications therefor, repayment thereof, and to establish the conditions for payment of insurance by the Authority, and the servicing, suit upon, or foreclosure of insured agricultural loans.

(e) The aggregate value of all agricultural loans insured by the Authority and outstanding at any one time shall not exceed 20 times the total value of funds, investments, properties and other assets of the Authority except that this insurance may be further expanded by use of federal, state or private loan insurance, reinsurance, or guarantees of which the Authority is or shall become the beneficiary.

"§ 122D-10. Bonds of the Authority. –(a) The Authority may issue from time to time bonds, notes, bond anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper or other obligations or evidences of indebtedness, hereinafter collectively referred to as 'bonds', to provide funds for and to fulfill and achieve its authorized public functions or corporate purposes, as set forth in this Chapter, including, but not limited to, the purchase of agricultural loans from lending institutions, the making of loans to or deposits with lending institutions, the payment of interest on bonds of the Authority, the establishment of reserves to secure such bonds, the establishment of reserves with respect to the insurance of agricultural loans, and all other purposes and expenditures of the Authority incident to and necessary or convenient to carry out its public functions or corporate purposes.

(b) Except as may otherwise be provided by the Authority, all bonds issued by the Authority shall be negotiable instruments and may be general obligations of the Authority, secured by the full faith and credit of the Authority and payable out of any money, assets or revenues of the Authority or from any other sources whatsoever that may be available to the Authority. Obligations issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any

such political subdivision, but shall be payable solely from the revenues or assets of the Authority. Each obligation issued under this Chapter shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

(c) Bonds shall be authorized, issued and sold by a resolution or resolutions of the Authority adopted as provided in this Chapter. Such bonds may be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates including variable, adjustable or zero interest rates, be payable at such time or times, be in such denominations, be sold at such price or prices, at public or private negotiated sale, be in such form, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption, and be entitled to such priorities on the income, revenue and receipts of, or available to, the Authority as may be provided by the Authority in the resolution or resolutions providing for the issuance and sale of the bonds of the Authority.

(d) The bonds of the Authority shall be signed by such members or officers of the Authority, by either manual or facsimile signatures, as shall be determined by resolution or resolutions of the Authority, and shall have impressed or imprinted thereon the seal of the Authority, or a facsimile thereof. The coupons attached to coupon bonds of the Authority shall bear the facsimile signature of such member or officer of the Authority as shall be determined by resolution or resolutions of the Authority. The Authority may also provide for the authentication of the bonds, notes or coupons by a trustee or fiscal agent.

(e) Any bonds of the Authority may be validly issued, sold and delivered, notwithstanding that one or more of the members or officers of the Authority signing such bonds, or whose facsimile signature or signatures may be on the bonds or on coupons, shall have ceased to be such member or officer of the Authority at the time such bonds shall actually have been delivered.

(f) Bonds of the Authority may be sold for such price in such manner and from time to time as may be determined by the Authority to be most beneficial, and the Authority may pay all expenses, premiums, fees or commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof, subject to the provisions of this Chapter.

(g) The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes.

(h) Prior to the preparation of definitive bonds, the Authority 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 Authority may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(i) Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same.

"§ 122D-11. Statutory pledge. –Any pledge made by the Authority shall be valid and binding from time to time when the pledge is made. The money, assets or revenues of the Authority so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed in order to establish and perfect a lien or security interest in the property so pledged by the Authority. Nothing herein shall be construed to prohibit the Authority from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations.

"§ 122D-12. Refunding bonds. –Subject to the rights of the holders of the bonds of the Authority, the Authority may issue from time to time its bonds for the purpose of refunding any bonds of the Authority then outstanding, together with the payment of any redemption premiums thereon and interest accrued or to accrue to the date of redemption of such outstanding bonds. All such refunding bonds of the Authority shall be issued, sold or exchanged, and delivered, shall be secured, and shall be subject to the provisions of this Chapter in the same manner and to the same extent as any other bonds issued by the Authority pursuant to this Chapter, unless otherwise determined by resolution of the Authority. Refunding bonds issued by the Authority as herein provided may be sold or exchanged for outstanding bonds of the Authority and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds.

Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

"§ 122D-13. Purchase of bonds by Authority. –Subject to the rights of holders of bonds, the Authority shall have the power out of any funds available therefor, to purchase bonds of the Authority, which shall thereupon be cancelled, at a price not exceeding:

(1) If the bonds are then subject to optional redemption, the optional redemption price then applicable plus accrued interest to the next interest payment date thereon; or

(2) If the bonds are not then subject to optional redemption, the optional redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to optional redemption plus accrued interest to such date.

"§ 122D-14. Exemption from taxes. –The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any tax or assessment on any property owned by the Authority under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Authority under the provisions of this Chapter, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes.

"§ 122D-15. Covenant of State. –In consideration of the acceptance of and payment for the bonds of the Authority by the holders thereof, the State does hereby pledge to and agree with the holders of any bonds of the Authority issued pursuant to the provisions of this Chapter, that the State will not impair, limit or alter the rights hereby vested in the Authority to fulfill the terms of any agreements made with the holders of the bonds of the Authority, or in any way impair the rights or remedies of such holders thereof, until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The Authority is authorized to include this pledge and agreement of the State in any agreement with the holders of bonds of the Authority.

"§ 122D-16. Trust funds. –Notwithstanding any other provisions of law to the contrary, 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 any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-28.1.

"§ 122D-17. Bonds as legal investment and security for public deposits.–Obligations issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies,

executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

"§ 122D-18. Account and audits. –(a) Subject to the provisions of any contract with the holders of its bonds, the Authority shall establish a system of accounts.

(b) The Authority may cause an independent audit of its books and accounts to be prepared annually and the cost thereof may be paid from any available moneys of the Authority.

(c) Within six months after the end of each fiscal year, the Authority shall submit to the Governor and to the General Assembly an annual report on the operations of the Authority. Within 60 days after receipt thereof, the Authority shall submit to the Governor and to the General Assembly a copy of the report of every audit of the books and accounts of the Authority.

"§ 122D-19. Cooperation of State agencies. –All State officers and agencies may render such services to the Authority within their respective functions as may be requested by the Authority.

"§ 122D-20. Construction of Chapter. –This Chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purposes thereof.

"§ 122D-21. Termination of the Authority. –In the event of the termination of the Authority, all of its rights, money, assets and revenues in excess of its obligations shall be deposited in the General Fund.

"§ 122D-22. Severability. The provisions of this Chapter are severable, and if any provision of this Chapter is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Chapter which can be given effect without the invalid provision."

Sec 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4".

Sec. 2.1. (a) Chapter 122B of the General Statutes is repealed.

(b) Funds appropriated to the Department of Agriculture for administration of Chapter 122B of the General Statutes may be used for the administration of Chapter 122D of the General Statutes.

(c) G.S. 120-123(41) is repealed.

Sec. 3. Funds appropriated in Section 2 of House Bill 2055 of the 1985 Session Laws to the Department of Agriculture, Reserve for Farm Loans shall be used for the purposes set out in this act, other than the administration of Chapter 122D of the General Statutes.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1986.