

## **Chapter 142.**

### **State Debt.**

#### Article 1.

##### General Provisions.

#### **§ 142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par.**

All bonds or certificates of debt of the State shall be signed by the Governor, and countersigned by the State Treasurer, and sealed with the great seal of the State, and shall be made payable to bearer unless registered as hereinafter provided. The principal shall be made payable by the State at a day named in the bonds or certificates. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable at such banks or trust companies within or without the State as shall be designated by the State Treasurer, or at the office of the State Treasurer in Raleigh. Any bank or trust company serving as a paying agent may be paid such reasonable fees and charges for such services as shall be agreed upon by and between such bank or trust company and the State Treasurer. No original bond or certificate of debt of the State shall be sold for a sum less than the par value thereof, nor shall any such bond or certificate, issued in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the State treasury. (1848, c. 89, s. 22; 1852, c. 9; c. 10, s. 10; R.C., c. 90, s. 3; Code, s. 3563; Rev., s. 5020; C.S., s. 7401; Ex. Sess. 1921, c. 66, ss. 1, 2; 1977, c. 405.)

#### **§ 142-2. Title of act and year of enactment recited in bonds.**

In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the Chapter, and the year of the legislative session. (1850, c. 90, s. 6; R.C., c. 90, s. 6; Code, s. 3566; Rev., s. 5023; C.S., s. 7402.)

#### **§ 142-3. Record of bonds kept by State Treasurer.**

The State Treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the State, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (1852, c. 10, s. 2; R.C., c. 90, s. 4; Code, s. 3564; Rev., s. 5021; C.S., s. 7403.)

#### **§ 142-4. Books for registration and transfer.**

The State Treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the State heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the State Treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (1848, c. 37, s.

5; 1850, c. 58, s. 4; 1852, c. 11; R.C., c. 90, s. 2; Code, s. 3562; Rev., s. 5019; C.S., s. 7404; Ex. Sess. 1921, c. 66, s. 3.)

**§ 142-5. Registration as to principal.**

Upon the presentation at the office of the State Treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the State, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the State Treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation of the State Treasurer with a written assignment acknowledged or approved in a form satisfactory to the Treasurer. The name of the registered assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (1883, c. 25; Code, s. 3568; 1887, c. 287; Rev., s. 5025; C.S., s. 7405; Ex. Sess. 1921, c. 66, s. 4.)

**§ 142-6. Registration as to principal and interest.**

(a) If, upon the registration of any such bond or certificate dated prior to January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the Treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the time provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in the said register.

(b) If, upon the registration of any such bond or certificate dated on or after January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be detached and retained in the custody of the State Treasurer, and the State Treasurer shall endorse upon such bond or certificate the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in said register. Thereafter the interest evidenced by such detached coupons shall be paid at the times provided therein to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in said register. Any such bond or certificate, if converted into a bond or certificate registered as to both principal and interest, may be reconverted at the expense of the registered owner into a coupon bond or certificate upon presentation thereof to the State Treasurer, accompanied by an instrument duly executed by the registered owner or his legal representatives in such form as shall be satisfactory to the State Treasurer; upon any such reconversion the State Treasurer shall reattach thereto the coupons representing the interest to become due thereafter on such bond or certificate to the date of maturity and shall make notation upon such bond or certificate whether such bond or certificate is registered as to principal alone or is payable to bearer, and shall make like entry in said register and he shall cancel any detached coupons retained by him

representing interest that has been paid. (1856, c. 16; 1883, c. 25, s. 2; Code, s. 3569; 1887, c. 287, s. 2; Rev., s. 5026; C.S., s. 7406; Ex. Sess. 1921, c. 66, s. 5; 1965, c. 181, s. 1.)

**§ 142-7. No charge for registration.**

There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (1887, c. 287, ss. 4, 5; Rev., s. 5027; C.S., s. 7407; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49.)

**§ 142-8. Application of §§ 142-1 to 142-9.**

General Statutes 142-1 to 142-9, both inclusive, as amended, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. However, any provisions of G.S. 142-1 to G.S. 142-9 in conflict with the "Registered Public Obligations Act", Chapter 159E of the General Statutes, shall not apply. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C.S., s. 7408; Ex. Sess. 1921, c. 66, s. 7; 1965, c. 181, s. 2; 1983, c. 322, s. 2.)

**§ 142-9. Duties performed by other officers.**

If the Council of State shall at any time find that either the Governor or the State Treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the Lieutenant-Governor may sign the same in lieu of the Governor, and they may be signed in lieu of the Treasurer by any member of the Council of State designated by it. (1864-5, c. 24; Code, s. 3567; Rev., s. 5024; C.S., s. 7409; Ex. Sess. 1921, c. 66, s. 8.)

**§ 142-10. Chief clerk may issue when Treasurer unable to act.**

Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notice of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notice shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

**§ 142-11. When bonds deemed duly executed.**

State bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

**§ 142-12. State bonds exempt from taxation.**

Bonds and other evidences of indebtedness issued by the State are exempt from State taxation to the extent provided in the act authorizing their issuance. If the act authorizing the issuance of the instruments does not address exemption from taxation, then they are exempt from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain

from the transfer of the instruments, and franchise taxes. Unless the act authorizing the issuance of the instruments provides otherwise, the interest on the instruments is not subject to taxation as income. (1852, c. 10, s. 4; R.C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C.S., s. 7410; 1995, c. 46, s. 14.)

**§ 142-12.1. Effect of federal taxation of interest income on state or local bonds on issuance thereof; continuation of state tax exemptions.**

(a) It is hereby found, determined and declared that:

- (1) From time to time bills have been introduced in the United States Congress providing that the interest on all or certain state and municipal bonds or debt obligations, whether issued by or on behalf of states or local governmental units, be subject to federal income taxation; and
- (2) The Tax Reform Act of 1986 requires, in certain circumstances, the inclusion in the gross income of the recipient thereof of interest on bonds or obligations issued by or on behalf of certain state or local governmental units for purposes of federal income tax which heretofore would have been exempt from federal income taxation.

(b) Nothing in any act, general, special or private, shall be deemed to limit or restrict the right of the State or any agency or instrumentality thereof, or The University of North Carolina or any agency or instrumentality thereof, or any county, city, town, special district, authority or other political subdivision or local governmental unit or any agency or instrumentality thereof, to issue, or have issued on its behalf, bonds or obligations the interest income on which is or may be subject to federal income taxation.

(c) The interest on any of these bonds or obligations shall maintain its existing exemption from State income taxation, or other taxation, if any, notwithstanding that the interest may be or become subject to federal income taxation as a result of legislative action by the federal government.

(d) If the provisions of this section are inconsistent with the provisions of any other laws, the provisions of this section shall be controlling. (1987, c. 587, ss. 1-4; 1995, c. 41, s. 10.)

**§ 142-13. Destruction of canceled bonds, notes and coupons.**

All canceled bonds, notes and interest coupons of the State may be destroyed in one of the following ways, in the discretion of the Treasurer:

- (1) Method 1. The Treasurer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes and coupons, showing
  - a. With respect to bonds and notes, the designation, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.
  - b. With respect to coupons, the designation and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity and total amount of coupons.

After this entry has been made, the paid bonds, notes or coupons shall be destroyed, by either burning or shredding, in the presence of the Council of State. Each member of the Council of State in attendance shall certify under his hand in the book kept by the Treasurer that he saw the

bonds, notes or coupons destroyed. Canceled bonds, notes or coupons shall not be destroyed until after one year from the date of payment.

- (2) Method 2. The Treasurer may contract with the bank or trust company acting as paying agent for a bond issue for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the Treasurer a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the Treasurer. Canceled bonds or coupons shall not be destroyed until one year from the date of payment.

The provisions of G.S. 121-5 and 132-3 shall not apply to any such paid bonds, notes or coupons.

Notwithstanding the foregoing, in lieu of destroying all canceled bonds, notes and interest coupons, the Treasurer is authorized, with the approval of the Council of State, to distribute the bonds, notes, and coupons to the public schools of North Carolina and to the Department of Natural and Cultural Resources to be used for educational and historical purposes. The Department of Public Instruction and the Department of Natural and Cultural Resources may cooperate and assist in implementing such purposes. (1879, c. 98, s. 8; Code, s. 3578; Rev., s. 5035; C.S., s. 7415; 1941, c. 28; 1975, c. 527; 1987, c. 522, s. 1; 2015-241, s. 14.30(s).)

#### **§ 142-14. Issuance of temporary bonds.**

Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars (\$1,000), and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the Treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and execution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the Treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the Treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the

Treasurer of such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

**§ 142-15. Reimbursement of Treasurer for interest.**

Whenever it shall become necessary for the State Treasurer to borrow money to provide the maintenance fund for any State institution, the said Treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the Treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any State institution, unless said laws shall specifically state otherwise. (1923, c. 210; C.S., s. 7466(a).)

**§ 142-15.1. Lost, stolen, defaced, or destroyed State bonds.**

(a) If lost, stolen, or completely destroyed, any State bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the State Treasurer:

- (1) Proof of ownership,
- (2) Proof of loss or destruction,
- (3) A surety bond in twice the face amount of bond or note and coupon, and
- (4) Payment of the cost of preparing and issuing the new bond, note, or coupon.

(b) If defaced or partially destroyed, any State bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the State Treasurer may prescribe. The State Treasurer may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new State bond, note, or coupon issued under this section shall be signed by the State Treasurer and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon.

(d) Before taking action under this section to replace, exchange, or authenticate a State bond, note, or coupon, the State Treasurer shall obtain the advice and consent of the Council of State. (1971, c. 780, s. 36.)

**§ 142-15.3. Capital appreciation bonds.**

(a) Cross-Reference. – The provisions of G.S. 159-99 govern capital appreciation bonds.

(b) Authorization. – The State is authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act. The State is authorized to issue capital appreciation bonds pursuant to the provisions of applicable law and pursuant to the provisions of any law enacted in the future. (1987-650, ss. 2, 4 and 5; 2004-170, s. 41(a), (b).)

**§ 142-15.4. Savings from refinancing of general obligation bonds to be placed in the Savings Reserve.**

(a) Whenever general obligation bonds issued or incurred by the State are refinanced:

- (1) The General Assembly shall not reduce the funds appropriated for servicing the refinanced debt during the fiscal biennium in which the refinancing occurs.

- (2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Savings Reserve established pursuant to G.S. 143C-4-2 during the fiscal biennium in which the refinancing occurs.
- (3) The Director of the Budget shall, in the fiscal biennium immediately following the refinancing, adjust the amount of debt service funded in the base budget so that it aligns with actual debt service needs.

(b) Subsection (a) of this section applies only if, and to the extent that, the balance of the Savings Reserve remains below the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f).

(c) This section does not apply to general obligation bond indebtedness of the State serviced by the Highway Fund or Highway Trust Fund or other transportation-related debt financing arrangements.

(d) If, and to the extent that, the balance of the Savings Reserve is at or above the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f), whenever general obligation bonds issued or incurred by the State are refinanced, the following shall apply:

- (1) The General Assembly shall not reduce the funds appropriated for serving the refinanced debt during the fiscal biennium in which the refinancing occurs.
- (2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Unfunded Liability Solvency Reserve, established under G.S. 143C-4-10, during the fiscal biennium in which the refinancing occurs.
- (3) In the fiscal biennium immediately following the refinancing, the Director of the Budget shall adjust the amount of debt service funded in the base budget so that it aligns with the actual debt service needs. (2015-241, s. 6.23(a); 2017-5, s. 3; 2018-30, s. 2(a).)

§ 142-15.5: Reserved for future codification purposes.

§ 142-15.6: Reserved for future codification purposes.

§ 142-15.7: Reserved for future codification purposes.

§ 142-15.8: Reserved for future codification purposes.

§ 142-15.9: Reserved for future codification purposes.

## **Chapter 142.**

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§ 142-15.10: Reserved for future codification purposes.

§ 142-15.11: Reserved for future codification purposes.

§ 142-15.12: Reserved for future codification purposes.

§ 142-15.13: Reserved for future codification purposes.

§ 142-15.14: Reserved for future codification purposes.

Article 1A.

Issuance Accountability.

**§ 142-15.15. Findings.**

The General Assembly hereby finds as follows:

- (1) From time to time, the General Assembly has authorized the State and State entities to acquire or lease assets and has structured the acquisition or leasing of those assets in ways that obligate the State to make payments similar to the obligation of the State to make payments for borrowed money.
- (2) Some of these arrangements have been made pursuant to specific legislative authorization of the General Assembly, such as the financing of assets pursuant to the State Capital Facilities Finance Act, the State Energy Conservation Act, and the State and Local Government Revenue Bond Act, while other arrangements have been entered into pursuant to broader and more general legislative authorization, such as general powers to lease property.
- (3) Depending upon the terms, some arrangements may be treated as similar to obligating the State to make payments for borrowed money and, therefore, have an impact on the State's credit ratings, the future debt affordability, the ability to address budgetary shortfalls, the ability to enforce its contract rights regarding the quality, the durability and performance of the assets acquired, the management of federal income tax compliance requirements, the management of federal securities law compliance, and on the other matters of State finances.
- (4) Due to these consequences, the General Assembly enacts this Article to set forth limitations on the ability of State entities to enter into financing arrangements that constitute State-supported financing arrangements in order to assure that the General Assembly is involved in reviewing and authorizing these transactions and that the transactions are properly managed by State departments and officials. (2016-94, s. 37.8(a).)



**§ 142-15.16. Definitions.**

The following definitions apply in this Article:

- (1) Financing arrangement. – An installment financing arrangement, lease-purchase arrangement, arrangement under which funds are to be paid in the future based upon the availability of an asset, or any similar arrangement in the nature of a financing having a term (including renewal options) of greater than one year, in which a State entity agrees to make payments to acquire or obtain a capital asset for a State entity. Any arrangement that results in the identification of a portion of a lease payment, installment payment, or similar scheduled payment as "interest" for purposes of federal income taxation is a financing arrangement for purposes of this Article; provided, however, that (i) a contractual provision that requires interest charges for late or overdue payments shall not by themselves convert a construction or procurement contract into a financing arrangement and (ii) a contractual provision in a construction or purchase contract in which a State entity will withhold or retain from amounts otherwise payable under the contract a retainage until completion of construction, the resolution or adjudication of disputes under the contract, the satisfaction of contract provisions requiring that the property constructed or acquired meets specified performance or quality standards, or similar contractual provisions designed to protect the interests of the State under the contract do not convert an arrangement that otherwise does not constitute a financing arrangement into a financing arrangement. The term does not include any of the following:
  - a. A true operating lease.
  - b. Provisions in a construction or purchase contract in which payments are to be made over an extended period of time in accordance with the terms of the contract as construction is completed or assets are delivered.
  - c. A public-private partnership entered into pursuant to G.S. 143-128.1C.
  - d. Agreements entered into pursuant to G.S. 136-18(39a).
- (2) State entity. – The State of North Carolina and every agency, authority, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include counties, municipal corporations, political subdivisions, local boards of education, or other local public bodies.
- (3) State-supported financing arrangement. – Any financing arrangement that requires payments that are payable, whether directly or indirectly, and whether or not subject to the appropriation of funds for payment, by payments from the General Fund, the Highway Fund, the Highway Trust Fund, or other funds and accounts of the State that are funded from the general revenues and other taxes and fees of the State or State entities. A State-supported financing arrangement does not include a financing

arrangement where bonds or other obligations are issued or incurred to carry out a financing program authorized by the General Assembly under which the bonds or other obligations are payable from moneys derived from specified, limited, nontax sources, such as (i) loan payments made by a non-State entity receiving the benefit of financing by a State entity (including an "obligor" or "participating institution" within the meaning of Chapter 159D of the General Statutes, a "public agency" or a "nonprofit agency" within the meaning of Chapter 131A of the General Statutes, and similar entities); (ii) revenues of a revenue-producing enterprise or activity (such as "revenues" within the meaning of Part 4 of Article 1 of Chapter 116 of the General Statutes and "obligated resources" within the meaning of Article 3 of Chapter 116D of the General Statutes); and (iii) loan payments received, loans owned, and other assets of a State entity that are pledged to secure bonds under programs to finance that type of assets and the associated activities (such as mortgage loans under Chapter 122A of the General Statutes and student loans under Article 23 of Chapter 116 of the General Statutes). (2016-94, s. 37.8(a).)

**§ 142-15.17. No State-supported financing of certain assets without approval of the General Assembly.**

No State entity shall enter into any State-supported financing arrangement with respect to the acquisition of a capital asset having a value of five million dollars (\$5,000,000) or more, unless the General Assembly has enacted legislation expressly approving (i) the acquisition, project, or undertaking to be financed and (ii) the use of the State-supported financing arrangement. The legislation required by this section may be in the form of either an act that refers to the specific asset or project and the manner of financing or an act that identifies a type of asset or project and a maximum amount that may be financed or incurred for that type of asset or project. Examples of references to a specific asset or project include guaranteed energy savings contracts or energy conservation measures of a type described in Article 3B of Chapter 143 of the General Statutes or repairs and renovations of State-owned buildings. (2016-94, s. 37.8(a); 2016-123, s. 10.1(a).)

Article 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

**§ 142-16. Governor and Council of State may borrow on note.**

The Governor and Council of State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

**§ 142-17. Recital of facts entered on minutes; directions to Treasurer; limit of amount.**

The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand dollars (\$500,000) in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in 1929 and not exceeding five hundred thousand dollars (\$500,000) in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five percent (5%) per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

**§ 142-18. Report to General Assembly.**

At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the Governor and Council of State in borrowing money under this Article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

**§ 142-19. Power given to Director of Budget to authorize State Treasurer to borrow money.**

The Director of the Budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

Article 3.

Refunding Bonds.

**§§ 142-20 through 142-29. Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 823, s. 1.**

Article 3A.

Refunding Bonds.

**§ 142-29.1. Title of Article.**

This Article may be known and cited as the "State Refunding Bond Act." (1935, c. 445, s. 1; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

**§ 142-29.2. Definitions.**

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (1) "Authorized investments" means
  - a. Direct obligations of the United States government,
  - b. Obligations the principal of and the interest on which are guaranteed by the United States government,
  - c. Evidences of ownership of proportionate interests in future interest and principal payments on specified obligations described in a. and b. above, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian,
  - d. Obligations of state or local government municipal bond issuers, provision for the payment of the principal of and interest on which shall have been made by deposit with a trustee or escrow agent of obligations described in a., b. or c. above, the maturing principal of and interest on which, when due and payable, shall provide sufficient money with any other money held in trust for such purpose to pay the principal of, premium, if any, and interest on such obligations of state or local government municipal bond issuers, and which are rated in the highest rating by Standard & Poor's Corporation and Moody's Investors Service, Inc.,
  - e. Obligations of state or local government municipal bond issuers, the principal of and interest on which, when due and payable, have been insured by a bond insurance company which is rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, Inc.,
  - f. Full faith and credit obligations of state or local government bond issuers which are rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, Inc., and
  - g. Any obligations or investments in which the State Treasurer is authorized, at the time of such investment, to invest funds of the State.
- (2) "Bond documentation" means any resolution, order, trust agreement, trust indenture or other document authorizing the issuance of and securing any outstanding obligations.
- (3) "Bonds" means any bonds issued under the provisions of this Article.
- (4) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment for purchase, redemption or acceleration), redemption premium, if any, and interest on any refunding obligations payable on demand or tender by the owner issued in accordance with this Article, in consideration of the State agreeing to repay the provider of such credit facility in accordance with terms and provisions of

- such agreement, provided, that any such agreement shall provide that the obligation of the State thereunder shall have only such sources of payment as are permitted for the payment of refunding obligations issued under this Article.
- (5) "Notes" means any bond anticipation notes or notes issued under the provisions of this Article.
  - (6) "Outstanding obligations" means any outstanding bonds, bond anticipation notes or notes of the State, whether now outstanding or hereafter issued, the payment of the principal of and the interest on which are secured by a pledge of the full faith, credit and taxing power of the State and which may also be secured, as and to the extent provided in applicable bond documentation, by additional security.
  - (7) "Par formula" shall mean any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any refunding obligations so that the purchase price of such refunding obligations in the open market would be as close to par as possible.
  - (8) "Refunding obligations" means any notes or bonds issued under the provisions of this Article. (1935, c. 445, s. 2; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

**§ 142-29.3. Purpose.**

The purpose of this Article is to provide statutory procedures or to supplement existing procedures for the issuance of refunding obligations. (1935, c. 445, s. 3; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

**§ 142-29.4. Powers.**

In addition to the powers it may now or hereafter have, the State shall have the following powers, subject to the provisions of this Article and applicable bond documentation:

- (1) to borrow money and issue one or more series of refunding obligations for the purpose of refunding all or any part of any series or combination of series of outstanding obligations including, without limitation, the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity or maturities of such outstanding obligations;
- (2) to apply the proceeds of refunding obligations
  - a. to the payment and retirement of outstanding obligations by direct application to such payment and retirement,
  - b. to the payment and retirement of outstanding obligations, whether by redemption or in accordance with their terms, by the deposit in trust of such proceeds,
  - c. to the payment of any expenses incurred in connection with such refunding, including the expense of any credit facility employed in connection with such refunding obligations, including, without limitation, bond insurance policies, letters of credit and lines of credit, and
  - d. for such other uses not inconsistent with any such refunding,
- (3) to issue refunding obligations in combination with any other bonds, bond anticipation notes, notes or financial obligations issued by the State;

- (4) to issue refunding obligations bearing interest at rates lower, the same as or higher than and having maturities shorter, the same as or longer than the outstanding obligations being refunded;
- (5) to issue one series of refunding obligations to refund one or more series of outstanding obligations;
- (6) to issue refunding obligations in exchange for outstanding obligations;
- (7) to apply to any purpose consistent with any refunding, including the funding of an escrow fund or account to be used for the payment or redemption of any outstanding obligations, moneys made available as a consequence of such refunding, including, without limitation, any moneys then on deposit in debt service reserve funds, principal accounts, interest accounts and sinking fund accounts in respect of the outstanding obligations being refunded and, subject to the approval of the Council of State, any moneys appropriated by the General Assembly for the payment of principal of or interest on the outstanding obligations being refunded; and
- (8) to invest any moneys, including any moneys held in trust, in authorized investments. (1935, c. 445, s. 4; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

**§ 142-29.5. Authorization of refunding obligations.**

By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell, from time to time, refunding obligations for the purpose of refunding outstanding obligations as and to the extent authorized by this Article. The principal amount of any such refunding obligations shall not exceed the principal amount of outstanding obligations to be refunded unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements.

Refunding obligations issued pursuant to the provisions of this Article shall not be subject to limitations imposed by any other law including, without limitation, the other Articles of this Chapter. (1935, c. 445, s. 5; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1993, c. 542, s. 13.)

**§ 142-29.6. Sale of refunding obligations and provisions thereof.**

(a) The bonds shall bear such date or dates, shall be serial or term bonds, shall mature in such amounts and at such times, not exceeding 40 years from their date or dates, and shall bear interest at such rate or rates, which may vary from time to time as hereinafter authorized, and which may be represented, in part, by evidences of additional interest, and the bonds may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices and under such terms and conditions, all as may be fixed by the State Treasurer with the consent of the Council of State.

(b) The bonds shall be signed on behalf of the State by the Governor or shall bear his facsimile signature; shall be signed by the State Treasurer or shall bear his facsimile signature; and shall bear the Great Seal of the State or a facsimile thereof impressed or imprinted thereon; and interest coupons, if any, shall bear a facsimile of the signature of the State Treasurer. If the bonds shall bear the facsimile signatures of the Governor and the State Treasurer, the bonds shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any

officer whose signature or facsimile signature appears on any bonds or coupons (if any) cease to be such officer before the delivery of the bonds, such signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and any bond or coupon may bear the facsimile signatures of such persons who at the actual time of the execution of such bond or coupon shall be the proper officers to sign any bond or coupon although at the date of such bond or coupon such persons may not have been such officers. The form and denomination of the bonds and any coupons, including the provisions with respect to registration of the bonds, shall be as the State Treasurer may determine in conformity with this Article; provided, however, that nothing in this Article shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds, under the provisions of the Registered Public Obligations Act as well as this Article.

(c) Subject to determination by the Council of State as to the manner in which the bonds shall be offered for sale, whether at public or private sale and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell the bonds, at one time or from time to time, at a price equal to, greater than or less than the face amount of the bonds as the State Treasurer may determine to be in the best interests of the State.

All expenses incurred in the preparation, sale and issuance of the refunding obligations shall be paid by the State Treasurer from the proceeds of any such refunding obligations or any other available moneys.

(d) (1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money at such rate or rates of interest as the State Treasurer may determine to be in the best interests of the State, which may vary from time to time as hereinafter authorized, and to execute and issue bond anticipation notes or notes of the State for the same, but only in the following circumstances and under the following conditions:

- a. For anticipating the sale of any bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds;
- b. For the payment of interest upon or any installment of principal of any of the bonds then outstanding, if there shall not be sufficient funds in the State Treasury with which to pay the interest or installment of principal as they respectively become due; or
- c. For the renewal of any loan evidenced by bond anticipation notes or notes herein authorized.

(2) Funds derived from the sale of bonds may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of such bonds.

Nothing in this Article shall be construed as a limitation on the duration of any deposit in trust for the retirement of outstanding obligations which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption.

(e) Coupons (if any) and any evidences of additional interest appertaining to bonds and notes shall, after the maturity of such coupons or evidences of additional indebtedness, be receivable in payment of all taxes, debts, dues, licenses, fines and demands of any kind whatever due the State.

(f) All refunding obligations shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the refunding obligations is not subject to taxation as income.

(g) Refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on refunding obligations, coupons (if any) and any evidences of additional indebtedness to the same extent as pledged to the outstanding obligations being refunded. To the extent additional security has been pledged to outstanding obligations, such additional security may, at the discretion of the State, be continued and similarly pledged to the appropriate refunding obligations, coupons (if any) and any evidences of additional indebtedness. (1935, c. 445, s. 6; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1995, c. 46, s. 15; 2015-264, s. 16(f).)

#### **§ 142-29.7. Additional refunding obligation provisions.**

In fixing the details of refunding obligations, the State Treasurer may provide that any of the refunding obligations:

- (1) May be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such refunding obligations, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the refunding obligations at a reasonable interest cost to the State;



- (2) May be additionally supported by a credit facility;
- (3) May be made subject to redemption prior to maturity with such variations as may be permitted in connection with a par formula;
- (4) May bear interest at a rate or rates that may vary as permitted pursuant to a par formula and for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such refunding obligations; and
- (5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the refunding obligations to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under an agreement is in excess of the aggregate principal amount of refunding obligations secured by the related credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued refunding obligations during the term of such agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer. (1935, c. 445, s. 7; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

#### Article 4.

##### Sinking Fund Commission.

**§§ 142-30 through 142-43: Repealed by Session Laws 1983, c. 913, s. 30.**

#### Article 5.

##### Sinking Funds for Highway Bonds.

**§§ 142-44 through 142-46: Repealed by Session Laws 1983, c. 913, s. 30.**

#### Article 5A.

##### Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

**§§ 142-47 through 142-49: Repealed by Session Laws 1983, c. 913, s. 30.**

#### Article 7.

##### General Fund Bond Sinking Fund.

**§§ 142-50 through 142-54: Repealed by Session Laws 1983, c. 913, s. 30.**

**§§ 142-55 through 142-59. Reserved for future codification purposes.**

#### Article 8.

##### State Energy Conservation Finance Act.

**§ 142-60. Short title.**

This Article is the State Energy Conservation Finance Act. (2002-161, s. 9.)

**§ 142-61. Definitions.**

The following definitions apply in this Article:

- (1) Certificates of participation. – Certificates or other instruments delivered by a special corporation as provided in this Article evidencing the assignment of proportionate and undivided interests in the rights to receive payments to be made by the State pursuant to one or more financing contracts.
- (2) Cost. – The term includes:
  - a. The cost of construction, modification, rehabilitation, renovation, improvement, acquisition, or installation in connection with an energy conservation measure.
  - b. The cost of engineering, architectural, and other consulting services as may be required, including the cost of performing the technical analysis in accordance with G.S. 143-64.17A and inspection and certification in accordance with G.S. 143-64.17K.
  - c. Finance charges, reserves for debt service and other types of reserves required pursuant to a financing contract or any other related documentation, and interest prior to and during construction, and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.
  - d. Administrative expenses and charges.
  - e. The cost of bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of the financing contract to the extent and as determined by the State Treasurer.
  - f. The cost of reimbursing the State for payments made for any costs described in this subdivision.
  - g. Any other costs and expenses necessary or incidental to implementing the purposes of this Article.
- (3) Credit facility. – An agreement that:
  - a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and
  - b. Provides for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest with respect to any financing contract payable on demand or tender by the owner in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

- (4) Energy conservation measure. – Defined in G.S. 143-64.17.
- (5) Energy conservation property. – Buildings, equipment, or other property with respect to which an energy conservation measure is undertaken.
- (6) Financing contract. – An installment financing contract entered into pursuant to the provisions of this Article to finance the cost of an energy conservation measure.
- (7) Person. – An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.
- (8) Special corporation. – A nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of facilitating the incurrence of certificates of participation indebtedness by the State under this Article.
- (9) State governmental unit. – Defined in G.S. 143-64.17.
- (10) State Treasurer. – The incumbent Treasurer, from time to time, of the State. (2002-161, s. 9.)

§ 142-62: Reserved for future codification purposes.

**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, (i) a State governmental unit that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, (ii) a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars (\$500,000,000) at any one time. (2002-161, s. 9; 2006-190, s. 6; 2009-375, s. 1; 2011-145, s. 9.6D(f); 2013-396, s. 4(b).)

**§ 142-64. Procedure for incurrence or issuance of financing contract.**

(a) When a State governmental unit (i) is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article or (ii) has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures.

(b) A financing contract may be entered into pursuant to this Article only after all of the following conditions are met:

- (1) The Office of State Budget and Management has certified that resources are expected to be available to the State to pay the payments to fall due under the financing contract as they become due and payable.
- (2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:
  - a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than 20 years from the date of acceptance of the project.
  - b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.
  - c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it.
- (3) The State Treasurer has approved the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement or any credit facility.

The resolution of the Council of State shall include any other matters the Council of State considers appropriate.

(c) In determining whether to approve a financing contract under subdivision (b)(3) of this section, the State Treasurer may consider the factors the State Treasurer considers relevant in order to find and determine all of the following:

- (1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the energy conservation measure.
- (2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract are not excessive.
- (3) The financing contract can be entered into on terms desirable to the State.
- (4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency.

(d) The Office of State Budget and Management is authorized to certify that funds are expected to be available to the State to make the payments due under a financing contract entered into under the provisions of this section as the payments become due and payable. In so certifying, the Office of State Budget and Management may take into account expected decreases in appropriations to the State governmental unit that will offset payments expected to be made under the financing contract. (2002-161, s. 9; 2006-190, s. 7; 2011-145, s. 9.6D(g).)

**§ 142-65. Security; other requirements.**

(a) In order to secure the performance by the State of its obligations under a financing contract or any other related documentation, the State may grant a lien on, or security interest in, all or any part of the energy conservation property or the land upon which the energy conservation property is or will be located.

(b) No deficiency judgment may be rendered against the State or any State governmental unit in any action for breach of any obligation contained in a financing contract or any other related documentation, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract or any other related documentation. In the event that the General Assembly does not appropriate funds sufficient to make payments required under a financing contract or any other related documentation, the net proceeds received from the sale, lease, or other disposition of the property subject to the lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy these payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are hereby appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under the financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

(c) Neither a financing contract nor any other related documentation shall contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any State property that is the subject of an energy conservation measure.

(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the financing contract.

(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the person advancing moneys or providing funds under the financing contract that are reasonable and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under a financing contract may be applied, and the duties of the State with respect to the property subject to the lien or security interest created pursuant to subsection (a) of this section, including, without limitation, provisions relating to insuring and maintaining any property and the custody, safeguarding, investment, and application of moneys.

(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the payments due under a financing contract or to secure payment of the purchase price of any certificates of participation delivered as provided in this Article. (2002-161, s. 9.)

#### **§ 142-66. Payment provisions.**

The payment of amounts payable by the State under a financing contract and any other related documentation during any fiscal biennium or fiscal year shall be limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this Article and no financing contract or any other related documentation shall be construed or interpreted as creating a pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation. (2002-161, s. 9.)

#### **§ 142-67. Certificates of participation.**

(a) If the State Treasurer determines that the State would realize debt service savings under one or more financing contracts if certificates of participation are issued with respect to the rights to receive payments under the financing contract, then the State Treasurer is authorized to take actions, with the consent of the Council of State, that will effectuate the delivery of certificates of participation for that purpose.

(b) Terms; Interest. – Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this Article, except that the terms of the sale must also be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

(c) Trust Agreement. – Certificates of participation may be delivered pursuant to a trust agreement or similar instrument with a corporate trustee approved by the State Treasurer. (2002-161, s. 9.)

#### **§ 142-68. Tax exemption.**

Any financing contract entered pursuant to this Article, and any certificates of participation relating to it, shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting income taxes on the gain from the transfer of the financing contract or certificates of participation; and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income. (2002-161, s. 9; 2015-264, s. 16(g).)

#### **§ 142-69. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, credit enhancement facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with entering into financing contracts and issuing certificates of participation pursuant to this Article. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, fiduciaries, and bond attorneys to be associated with any financing contracts or certificates of participation under this Article as the State Treasurer considers appropriate. (2002-161, s. 9.)

#### **§ 142-70. Investment eligibility.**

Financing contracts entered into pursuant to this Article, and any certificates of participation relating to them, are securities or obligations in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions; insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, and other financial institutions engaged in business in the State; and executors, administrators, trustees, and other fiduciaries. Financing contracts entered pursuant to this Article, and any certificates of participation relating to them, are securities or obligations that may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may later be authorized by law. (2002-161, s. 9.)

§ 142-71: Reserved for future codification purposes.

§ 142-72: Reserved for future codification purposes.

§ 142-73: Reserved for future codification purposes.

§ 142-74: Reserved for future codification purposes.

§ 142-75: Reserved for future codification purposes.

§ 142-76: Reserved for future codification purposes.

§ 142-77: Reserved for future codification purposes.

§ 142-78: Reserved for future codification purposes.

§ 142-79: Reserved for future codification purposes.

#### Article 9.

#### State Capital Facilities Finance Act.

**§ 142-80. Short title.**

This Article may be cited as the State Capital Facilities Finance Act. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-81. Findings and purpose.**

The General Assembly finds as follows:

- (1) There is a continuing need for capital facilities for the State, many of which will continue to be provided on a "pay-as-you-go" basis by direct appropriations.
- (2) The State will also continue to provide capital facilities through the issuance of general obligation bonds.
- (3) There is a need, however, for the use of alternative financing methods, such as authorized in this Article, to facilitate the providing of capital facilities when circumstances and conditions warrant the providing of capital facilities through financing methods in addition to direct appropriations and the issuance of general obligation bonds.
- (4) The use of these alternative financing methods as authorized in this Article will provide financing flexibility to the State and permit the State to take advantage of changing financial and economic environments. (2003-284, s. 46.2; 2004-203, s. 79.)

**§ 142-82. Definitions.**

The following definitions apply in this Article:

- (1) Bonded indebtedness. – Limited obligation bonds and bond anticipation notes, including refunding bonds and notes, authorized to be issued under this Article.
- (2) Bonds or notes. – Limited obligation bonds and notes authorized to be issued under this Article.
- (2a) **(Expires December 31, 2028 – see note)** Build NC Bonds. – Special indebtedness issued to finance Build NC Projects, with the Build NC Net Proceeds of such special indebtedness used in accordance with both of the following requirements, measured in the aggregate for all issues:
  - a. Within two percent (2%) of fifty percent (50%) of the Build NC Net Proceeds during such period used for Division Need Projects in accordance with the requirements of Article 14B of Chapter 136 of the General Statutes.
  - b. The remainder of the Build NC Net Proceeds during such period used for Regional Impact Projects in accordance with the requirements of Article 14B of Chapter 136 of the General Statutes.
- (2b) **(Expires December 31, 2028 – see note)** Build NC Net Proceeds. – The proceeds of an issue of Build NC Bonds net of deposits for the costs described in sub-subdivisions d., e., and f. of subdivision (6) of this section.
- (2c) **(Expires December 31, 2028 – see note)** Build NC Project. – A capital facility identified and selected for financing with Build NC Bonds under this Article by the process set forth in Article 14B of Chapter 136 of the General Statutes.
- (3) Capital facility. – Any one or more of the following:
  - a. Any one or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment, machinery, and furnishings in connection with these items.
  - b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.
  - c. Land or an interest in land.
  - d. Other infrastructure.
  - e. Furniture, fixtures, equipment, vehicles, machinery, and similar items.
- (4) Certificates of participation. – Certificates or other instruments delivered by a special corporation evidencing the assignment of proportionate undivided interests in rights to receive payments pursuant to a financing contract.
- (5) Certificates of participation indebtedness. – Financing contract indebtedness incurred by the State under a plan of finance in which a special corporation obtains funds to pay the cost of a capital facility to be financed through the delivery by the special corporation of certificates of participation.



- (6) Cost. – Any of the following in financing the cost of capital facilities as authorized by this Article:
- a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving capital facilities, including the acquisition of land, rights-of-way, easements, franchises, equipment, machinery, furnishings, and other interests in real or personal property acquired or used in connection with a capital facility.
  - b. The cost of engineering, architectural, and other consulting services.
  - c. The cost of providing personnel to ensure effective management of capital facilities.
  - d. Finance charges, reserves for debt service, and other types of reserves required pursuant to the terms of any special indebtedness or related documents, interest before and during construction or acquisition of a capital facility and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction or acquisition.
  - e. Administrative expenses and charges.
  - f. The cost of bond insurance, investment contracts, credit enhancement facilities and liquidity facilities, interest rate swap agreements or other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of special indebtedness.
  - g. The cost of reimbursing the State, a State agency, or a special corporation for any payments made for any cost described in this subdivision.
  - h. Any other costs and expenses necessary or incidental to the purposes of this Article.
- (7) Credit facility. – An agreement that:
- a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and
  - b. Provides for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest with respect to any special indebtedness payable on demand or tender by the owner in consideration of the State's agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.
- (8) Department of Administration. – The North Carolina Department of Administration, created by Article 36 of Chapter 143 of the General Statutes or, if the Department is abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal

- functions or upon which are conferred by law the rights, powers, and duties given by this Article to the Department.
- (9) Financing contract. – A contract entered into pursuant to this Article to finance capital facilities and constituting a lease-purchase contract, installment-purchase contract, or other similar type installment financing contract. The term does not include, however, a contract that meets any one of the following conditions:
- a. It constitutes an operating lease under generally accepted accounting principles.
  - b. It provides for the payment under the contract over its full term, including periods that may be added to the original term through the exercise of options to renew or extend, of an aggregate principal amount of not in excess of five thousand dollars (\$5,000) or any greater amount that may be established by the Council of State if the Council of State determines (i) the aggregate amount to be paid under these contracts will not have a significant impact on the State budgetary process or the economy of the State and (ii) the change will lessen the administrative burden on the State.
  - c. It is executed and provides for the making of all payments under the contract, including payment to be made during any period that may be added to the original term through the exercise of options to renew or extend, in the same fiscal year.
- (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a financing contract, including certificates of participation indebtedness.
- (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal biennium.
- (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one calendar year and ending on June 30 of the next calendar year.
- (13) Limited obligation bond. – A limited obligation bond issued pursuant to G.S. 142-88 and payable and secured as provided in G.S. 142-89.
- (14) Par formula. – A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any special indebtedness, including any of the following:
- a. A provision providing for an adjustment so that the purchase price of special indebtedness in the open market would be as close to par as possible.
  - b. A provision providing for an adjustment based upon a percentage or percentages of a prime rate or base rate, which percentages may vary or be applied for different periods of time.
  - c. Any provision that the State Treasurer determines is consistent with this Article and will not materially and adversely affect the financial position of the State and the marketing of special indebtedness at a reasonable interest cost to the State.
- (15) Person. – An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.

- (16) Special corporation. – Either of the following:
  - a. A nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of facilitating the incurrence of certificates of participation indebtedness by the State under this Article.
  - b. A private corporation or other entity issuing certificates of participation pursuant to this Article.
- (17) Special indebtedness. – Financing contract indebtedness and bonded indebtedness issued or incurred pursuant to this Article.
- (18) State. – The State of North Carolina, including any State agency.
- (19) State agency. – Any agency, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include counties, municipal corporations, political subdivisions, local boards of education, or other local public bodies.
- (20) State Treasurer. – The incumbent Treasurer, from time to time, of the State. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2018-16, s. 3.)

**§ 142-83. Authorization of special indebtedness; General Assembly approval.**

(a) General Assembly Approval. – The State may incur or issue special indebtedness subject to the terms and conditions provided in this Article for the purpose of financing the cost of capital facilities that meet one of the following conditions:

- (1) The General Assembly has enacted legislation describing the capital facility and authorizing its financing by the incurrence or issuance of special indebtedness up to a specific maximum amount.
- (2) The General Assembly has enacted legislation authorizing the incurrence or issuance of special indebtedness up to a specific maximum amount for a specific category of capital facilities and the capital facility meets all of the conditions set in that legislation.

(b) Limitation. – The General Assembly may enact legislation to incur or issue special indebtedness under subsection (a) of this section only if it determines at the time the legislation is enacted that the amount of special indebtedness authorized by the legislation does not exceed the limitation in this subsection. The determination of the General Assembly must be based upon reasonable estimations and once made may be relied upon as conclusive.

The sum of the special indebtedness authorized by the legislation and all other special indebtedness authorized by legislation enacted after January 1, 2013, may not exceed twenty-five percent (25%) of the bond indebtedness of the State supported by the General Fund that was authorized pursuant to legislation enacted after January 1, 2013. For purposes of this section, bond indebtedness supported by the General Fund includes both special indebtedness and general obligation bond indebtedness of the State that is supported by the General Fund. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2013-78, s. 1.)

**§ 142-84. Procedure for incurrence or issuance of special indebtedness.**

(a) Notice and Certificate. – Whenever the State or a State agency determines that special indebtedness is appropriate to finance capital facilities, it shall notify the Department of

Administration. If the Department of Administration concurs, it shall provide written notice to the State Treasurer advising the State Treasurer of this determination.

After the filing of the notice and after any preliminary conference, the State Treasurer shall consult with the Office of State Budget and Management as to the revenues expected by that Office to be available to pay all sums to come due on the special indebtedness during its term. If, after consulting with the Office of State Budget and Management, the State Treasurer determines by written certificate that it may be desirable to use special indebtedness to finance the capital facilities, the Department of Administration shall request the Council of State to give its preliminary approval of the use of special indebtedness to finance the capital facilities. The Department of Administration must promptly file copies of the notice and certificate required by this subsection with the Governor and the Council of State.

(b) Preliminary Approval. – The Council of State, upon receipt of the notice and certificate required by subsection (a) of this section, shall adopt a resolution granting or denying preliminary approval of the financing. A resolution granting preliminary approval may include any other terms, conditions, and restrictions the Council of State considers appropriate and not inconsistent with the provisions of this Article.

(c) Final Approval. – Before any special indebtedness may be incurred or issued pursuant to this Article, the Council of State must authorize the indebtedness by resolution, either as part of or separate from the resolution required by subsection (b) of this section. The resolution must do all of the following:

- (1) Authorize the providing of a particular capital facility or, in general terms, the types or classifications of capital facilities to be provided.
- (2) Set the aggregate principal amount or maximum principal amount of the special indebtedness authorized.
- (3) Set the maturity or maximum maturity of the special indebtedness authorized.
- (4) Set the rate, rates, or maximum rate of interest, which may be fixed or vary over a period of time, of the special indebtedness authorized.
- (5) Include any other conditions or matters not inconsistent with the provisions of this Article in the discretion of the Council of State, which may include the adoption or approvals as may be authorized in G.S. 142-88 and G.S. 142-89.

(d) Financing Terms. – No special indebtedness shall be incurred or issued without the prior written approval of the State Treasurer as provided in this subsection, which is in addition to the certificate given by the State Treasurer pursuant to subsection (a) of this section. In determining whether to approve the proposed financing, the State Treasurer may consider any factors the State Treasurer considers relevant in order to find and determine all of the following:

- (1) The amounts to become due under the special indebtedness, including the interest component or rate, are adequate and not excessive for the purpose proposed.
- (2) The increase, if any, in State revenues, including taxes, necessary to pay the sums to become due under the special indebtedness is not excessive.
- (3) The special indebtedness can be incurred or issued on terms desirable to the State.

(e) Designation of Facilities. – If the Council of State has authorized in general terms the types or classifications of capital facilities to be financed, then the particular capital facilities and the principal amount of special indebtedness to be incurred or issued for each particular capital facility shall be determined by the Department of Administration after considering any factors it

considers relevant in order to determine that the particular capital facility to be provided is desirable for the efficient operation of the State and its agencies and is in the best interests of the State.

(f) **Type of Debt and Security.** – In the absence of a determination by the Council of State, the State Treasurer, after consultation with the Department of Administration, shall determine the specific security offered and whether the special indebtedness to be issued or incurred shall be financing contract indebtedness, certificates of participation indebtedness, bonded indebtedness, or some combination of these.

(g) **Administration.** – The State Treasurer, after consultation with the Department of Administration, shall develop appropriate documents for use under this Article. The State Treasurer shall employ and designate the financial consultants, fiduciaries and other agents, underwriters, and bond attorneys to be associated with the incurrence or issuance of special indebtedness pursuant to this Article.

(h) **Oversight by Joint Legislative Commission.** – After all the requirements for approval and oversight provided in this section have been met, and at least five days before the issuance or incurrence of the special indebtedness, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations. This report must include the details of the proposed special indebtedness, including the capital facilities to be financed by the indebtedness, the amount of the proposed indebtedness, the type of indebtedness to be issued or incurred, and any other information required by the Commission. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-85. Security; other requirements.**

(a) **Security.** – In order to secure (i) lease or installment payments to be made to the lessor, seller, or other person advancing moneys or providing financing under a financing contract, (ii) payment of the principal of and interest on bonded indebtedness, or (iii) payment obligations of the State to the provider of bond insurance, a credit facility, a liquidity facility, or a derivative agreement, special indebtedness may create any combination of the following:

- (1) A lien on or security interest in one or more, all, or any part of the capital facilities to be financed by the special indebtedness.
- (2) If the special indebtedness is to finance construction of improvements on real property, a lien on or security interest in all or any part of the land on which the improvements are to be located.
- (3) If the special indebtedness is to finance renovations or improvements to existing facilities or the installation of fixtures in existing facilities, a lien on or security interest in one or more, all, or any part of the facilities.

(b) **Value of Security; Multiple Liens.** – The estimated value of the property subject to the lien or security interest need not bear any particular relationship to the principal amount of the special indebtedness or other obligation it secures. This Article does not limit the right of the State to grant multiple liens or security interests in a capital facility or other property to the extent not otherwise limited by the terms of any special indebtedness.

(c) **Governor's Budget.** – Documentation relating to any special indebtedness may include provisions requesting the Governor to submit in the Governor's budget proposal or any amendments or supplements to the budget proposed appropriations necessary to make the payments required by the special indebtedness.

(d) Source of Repayment. – The payment of amounts payable by the State under special indebtedness or any related documents during any fiscal period shall be limited to funds appropriated for that purpose by the General Assembly in its discretion.

(e) No Deficiency Judgment or Pledge. – No deficiency judgment may be rendered against the State in any action for breach of any obligation under special indebtedness or any related documents. The taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under special indebtedness or any related documents. In the event that the General Assembly does not appropriate sums sufficient to make payments required under any special indebtedness or any related documents, the net proceeds received from the sale or other disposition of the property subject to the lien or security interest shall be applied to satisfy these payment obligations in accordance with the deed of trust, security agreement, or other documentation relating to the lien or security interest. These net proceeds are appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under any special indebtedness or any related documents shall be paid to the State Treasurer for deposit to the General Fund.

(f) Nonsubstitution Clause. – A financing contract, issue of bonded indebtedness, or other related document shall not contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any capital facility.

(g) Protection of Lender. – Special indebtedness may contain any provisions for protecting and enforcing the rights and remedies of the person advancing moneys or providing financing under a financing contract, the owners of bonded indebtedness, or others to whom the State is obligated under special indebtedness or any related documents as may be reasonable and proper and not in violation of law. These provisions may include covenants setting forth the duties of the State in respect of any of the following:

- (1) The purposes to which the proceeds of special indebtedness may be applied.
- (2) The disposition and application of the revenues of the State, including taxes.
- (3) Insuring, maintaining, and other duties with respect to the capital facilities financed.
- (4) The disposition of any charges and collection of any revenues and administrative charges.
- (5) The terms and conditions of the issuance of additional special indebtedness.
- (6) The custody, safeguarding, investment, and application of all moneys.

(h) State Property Law Exception. – Chapter 146 of the General Statutes does not apply to any transfer of the State's interest in property authorized by this Article, whether to a deed of trust trustee or other secured party as security for special indebtedness, or to a purchaser of property in connection with a foreclosure or similar conveyance of property to realize upon the security for special indebtedness following the State's default on its obligations under the special indebtedness. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-86. Financing contract indebtedness.**

(a) Documentation. – Financing contract indebtedness shall not be incurred until all documentation providing for its incurrence has been approved by the State Treasurer after the State Treasurer has consulted with the Department of Administration.

(b) Interest Component. – A financing contract may provide for payments under the contract to represent principal and interest components of the cost of the capital facility to be financed, as determined by the State Treasurer.

(c) Bidding. – Financing contracts may be entered into pursuant to any applicable public or competitive bidding process or any private or negotiated process, to the extent required by applicable law and, if not so required, as may be determined by the Department of Administration after consulting with the State Treasurer.

(d) Party. – All financing contracts shall be executed on behalf of the State by the State Treasurer or, upon delegation by the State Treasurer after the State Treasurer's having approved the financing contract, by the Department of Administration.

(e) Credit Facility. – If the State Treasurer determines that it is in the best interest of the State, the State Treasurer may arrange for the delivery of a credit facility to secure payment under any financing contract. The State Treasurer may also provide that payments by the State representing the interest component of the payments to be made under a financing contract may be calculated based upon a fixed or a variable rate of interest.

(f) Terms and Conditions. – All other conditions set forth elsewhere in this Article with respect to financing contract indebtedness shall also be satisfied prior to incurring any financing contract indebtedness. To the extent applicable as conclusively determined by the State Treasurer, the provisions of G.S. 142-89, 142-90, and 142-91 apply to financing contract indebtedness. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-87. Additional requirements for certificates of participation indebtedness.**

(a) Documentation. – A financing contract shall not be used in connection with the delivery of certificates of participation by a special corporation until all documentation providing for its use has been approved by the State Treasurer after the State Treasurer has consulted with the Department of Administration. All documentation providing for the delivery and sale of certificates of participation must be approved by the State Treasurer.

(b) Procedure. – The special corporation, if used, shall request the approval of the State Treasurer in writing and shall furnish any information and documentation relating to the delivery and sale of the certificates of participation requested by the State Treasurer. In determining whether to approve the financing in the documentation, the State Treasurer shall consider the factors set forth in G.S. 142-84(d), as well as the effect of the proposed financing upon any scheduled or proposed sale of debt obligations by the State or a unit of local government in the State.

(c) Terms; Interest. – Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this Article, except that the terms of the sale must also be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

(d) Trust Agreement. – Certificates of participation may be delivered pursuant to a trust agreement or similar instrument with a corporate trustee approved by the State Treasurer, and the provisions of G.S. 142-89(h) apply to the trust agreement or similar instrument to the extent applicable.

(e) Other Conditions. – All other conditions set forth elsewhere in this Article with respect to certificates of participation indebtedness, including the conditions set forth in G.S. 142-86, must

be satisfied before any certificates of participation indebtedness is incurred. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-88. Bonded indebtedness.**

The State Treasurer is authorized, by and with the consent of the Council of State as provided in this Article, to issue and sell at one time or from time to time bonds of the State to be designated "State of North Carolina Limited Obligation Bonds, Series\_\_\_\_ " or notes of the State as provided in this Article, for the purpose of providing funds, with any other available funds, for the uses authorized in this Article. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-89. Issuance of limited obligation bonds and notes.**

(a) **(Effective January 1, 2019, and expires December 31, 2028)** Terms and Conditions. – Bonds or notes may bear any dates; may be serial or term bonds or notes, or any combination of these; may mature in any amounts and at any times, not exceeding 15 years from their dates for Build NC Bonds and 40 years from their dates for all other bonds and notes; may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts; may bear interest at any rates, which may vary from time to time; and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(a) **(Effective January 1, 2029)** Terms and Conditions. – Bonds or notes may bear any dates; may be serial or term bonds or notes, or any combination of these; may mature in any amounts and at any times, not exceeding 40 years from their dates; may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts; may bear interest at any rates, which may vary from time to time; and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. – Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or bear the Governor's facsimile signature, shall be signed by the State Treasurer or bear the State Treasurer's facsimile signature, and shall bear the great seal of the State or a facsimile of the seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. If any officer whose signature or facsimile signature appears on bonds or notes issued under this Article ceases to be that officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the bonds or notes. Bonds or notes issued



under this Article may bear the facsimile signatures of persons who, at the actual time of the execution of the bonds or notes, were the proper officers to sign any bond or note although at the date of the bond or note those persons may not have been officers.

The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as prescribed by the State Treasurer in conformity with this Article.

(c) Manner of Sale; Expenses. – Subject to the approval by the Council of State as to the manner in which bonds or notes will be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase, or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. – The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys that may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. – By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in any of the following circumstances and under the following conditions:

- (1) For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.
- (2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due.
- (3) For the renewal of any loan evidenced by notes authorized in this Article.
- (4) For the purposes authorized in this Article.
- (5) For refunding bonds or notes or financing contract indebtedness as authorized in this Article.

Funds derived from the sale of limited obligation bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in

paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. – By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding special indebtedness and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes issued pursuant to this Article. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the obligations being refunded or, if not required for the immediate payment of the obligations being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) to the extent then permitted by law, obligations of any agency or instrumentality of the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of obligations being refunded but that have not matured and are not presently redeemable or, if presently redeemable, have not been called for redemption.

(g) Security. – Payment of the principal of and the interest on bonds and notes shall be secured as provided in G.S. 142-85.

(h) Trust Agreement. – In the discretion of the State Treasurer, any bonds and notes issued under this Article may be secured by a trust agreement or similar instrument between the State and a corporate trustee or by a resolution of the Council of State providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank that has the powers of a trust company within or without the State. The trust agreement or similar instrument or resolution, hereinafter referred to as "the trust", may provide for security and pledges and assignments that are permitted under this Article and may provide for the granting of a lien or security interest as authorized by G.S. 142-85. The trust may contain any provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued under the trust that are reasonable and not in violation of law, including covenants setting forth the duties of the State with respect to the purposes for which bond or note proceeds may be applied, the disposition and application of the revenues or assets of the State, the duties of the State with respect to the capital facilities financed, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Article pursuant to the same trust shall be equally and ratably secured as provided in the trust, without priority by reasons of number, dates of bonds or

notes, execution, or delivery, in accordance with the provisions of this Article and of the trust. The trust may, however, provide that bonds or notes issued pursuant to the trust shall, to the extent and in the manner prescribed in the trust, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security of the payment, to any other bonds or notes issued pursuant to the trust. It is lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money under this Article to furnish any indemnifying bonds or to pledge any securities that may be required by the State Treasurer. The trust may set out the rights and remedies of the owners of any bonds or notes and of any trustee and may restrict the individual rights of action by the owners. In addition to the foregoing, the trust may contain any other provisions the State Treasurer considers appropriate for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of the trust may be treated as a part of the cost of any capital facility or as an administrative charge and may be paid from the proceeds of the bonds or notes or from any other available funds. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2018-16, s. 5.)

**§ 142-90. Variable rate demand bonds and notes and financing contract indebtedness.**

(a) In fixing the details of special indebtedness, the State Treasurer may make the special indebtedness subject to any of the following conditions:

- (1) It is payable from time to time on demand or tender for purchase by the owner thereof if a credit facility supports the special indebtedness, unless the State Treasurer specifically determines that a credit facility is not required upon a determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State or the marketing of the bonds or notes or financing contract indebtedness at a reasonable interest cost to the State.
- (2) It is additionally supported by a credit facility.
- (3) It is subject to redemption or mandatory tender for purchase prior to maturity.
- (4) It bears interest at a rate or rates that may be fixed or may vary over any period of time, as may be provided in the proceedings providing for the issuance or incurrence of the special indebtedness, including any variations that may be permitted pursuant to a par formula.
- (5) It is the subject of a remarketing agreement under which an attempt is made to remarket special indebtedness to new purchasers before its presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of special indebtedness secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes and financing contract indebtedness during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-91. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, credit enhancement facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of special indebtedness. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, fiduciaries, and bond attorneys to be associated with any incurrence or issuance of special indebtedness under this Article as the State Treasurer considers appropriate. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-92. Tax exemption.**

Special indebtedness shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting income taxes on the gain from the transfer of the indebtedness; and franchise taxes. The interest component of any payments made by the State under special indebtedness, including the interest component of any certificates of participation, is not subject to taxation as to income. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2015-264, s. 16(h).)

#### **§ 142-93. Investment eligibility.**

Special indebtedness are securities or obligations in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions; insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, and other financial institutions engaged in business in the State; and executors, administrators, trustees, and other fiduciaries. Special indebtedness are securities or obligations that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is now or may later be authorized by law. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-94. Procurement of capital facilities.**

The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General Statutes and any other laws or rules of the State that relate to the acquisition and construction of State property apply to the financing of capital facilities through the use of special indebtedness pursuant to this Article. This section does not apply to the construction and lease-purchase, including leases with an option to purchase at the end of the lease term for a nominal sum, of State office buildings pursuant to proposals submitted before the effective date of this Article in response to requests for proposals, to the extent any of those proposals, as they may be supplemented or amended, are approved by the Department of Administration and any of these leases or lease-purchase agreements are approved by the Council of State in accordance with G.S. 143-341(4)d2. With the exception of Article 8 of Chapter 143 of the General Statutes, this section does not apply to any special indebtedness issued pursuant to this Article for the purchase, construction, or operation of capital facilities by Gateway University Research Park, Inc., a joint Millennial Campus in Greensboro. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2008-204, s. 3.)

**§ 142-95:** Repealed by Session Laws 2007-527, s. 39, effective August 31, 2007.

**§ 142-96. Savings from refinancing of special indebtedness to be placed in the Savings Reserve Account.**

(a) Whenever special indebtedness issued or incurred pursuant to this Article is refinanced:

- (1) The General Assembly shall not reduce the funds appropriated for servicing the refinanced debt during the fiscal biennium in which the refinancing occurs.
- (2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Savings Reserve established pursuant to G.S. 143C-4-2 during the fiscal biennium in which the refinancing occurs.
- (3) The Director of the Budget shall, in the fiscal biennium immediately following the refinancing, adjust the amount of debt service funded in the base budget so that it aligns with actual debt service needs.

(b) Subsection (a) of this section applies only if, and to the extent that, the balance of the Savings Reserve remains below the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f).

(c) This section does not apply to special indebtedness of the State serviced by the Highway Fund or Highway Trust Fund or other transportation-related debt financing arrangements.

(d) If, and to the extent that, the balance of the Savings Reserve is at or above the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f), whenever special indebtedness issued or incurred by the State is refinanced, the following shall apply:

- (1) The General Assembly shall not reduce the funds appropriated for serving the refinanced debt during the fiscal biennium in which the refinancing occurs.
- (2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Unfunded Liability Solvency Reserve, established under G.S. 143C-4-10, during the fiscal biennium in which the refinancing occurs.
- (3) In the fiscal biennium immediately following the refinancing, the Director of the Budget shall adjust the amount of debt service funded in the base budget so that it aligns with the actual debt service needs. (2015-241, s. 6.23(b); 2017-5, s. 4; 2018-30, s. 2(b).)

**§ 142-97. (Expires December 31, 2028 – see note) Additional provisions with respect to Build NC Bonds.**

The following requirements and limitations apply to the issuance and sale of Build NC Bonds:

- (1) Subject to appropriation by the General Assembly, funds from the Highway Trust Fund shall be the source for repayment of special indebtedness resulting from the sale of Build NC Bonds.

- (2) The State Treasurer shall not issue any Build NC Bonds unless (i) the State Treasurer recommends the issuance of the Build NC Bonds and (ii) the State Treasurer has made a determination that all of the following requirements have been or shall be met:
  - a. The Department of Transportation's average month-end cash balance for the first three months in the calendar year prior to the date of determination is equal to or less than one billion dollars (\$1,000,000,000).
  - b. The total amount of Build NC Bonds outstanding after such issuance will not cause the recommended transportation debt target established by the Debt Affordability Advisory Committee in accordance with G.S. 142-101 to be exceeded.
  - c. At least six months prior to the expected date of the Build NC Bond issuance, the Department of Transportation:
    1. Consulted with the State Treasurer about the proposed Build NC Bond issuance.
    2. Consulted with the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations to provide details of the proposed issuance, including (i) the total amount of the Build NC Bonds that will be issued, (ii) the estimated amount of the debt service payments, and (iii) the estimated amount of debt capacity that would be remaining after the issuance.
- (3) Except as otherwise provided in subdivision (7) of this section, the total amount of special indebtedness from the issuance of Build NC Bonds shall not exceed three billion dollars (\$3,000,000,000).
- (4) Except as otherwise provided in subdivision (7) of this section, each individual issuance of Build NC Bonds is limited to no more than three hundred million dollars (\$300,000,000) in each fiscal year.
- (5) The Department of Transportation may not use the proceeds realized from the sale of Build NC Bonds for a nonhighway project or a project utilizing tolling pursuant to the authority set forth in subdivision (39) or (39a) of G.S. 136-18.
- (6) For purposes of satisfying the requirements of G.S. 142-15.17, Build NC Projects constitute projects as to which the General Assembly has enacted legislation expressly approving the use of a State-supported financing arrangement.
- (7) The restrictions set forth in sub-subdivision a. of subdivision (2) of this section and subdivisions (3) and (4) of this section do not apply to Build NC Bonds that are refunding bonds meeting the requirements set forth in G.S. 142-29.5.
- (8) The provisions of G.S. 142-83 do not apply to Build NC Bonds, nor shall Build NC Bonds be counted for the purposes of that section in limiting the issuance of other debt.

- (9) The provisions of subsection (e) of G.S. 142-84 do not apply to Build NC Bonds. (2018-16, s. 4.)

§ 142-98: Reserved for future codification purposes.

§ 142-99: Reserved for future codification purposes.

## Article 10.

### Managing Debt Capacity.

#### § 142-100. Purpose.

The purpose of this Article is to provide tools for sound debt management by providing an annual debt affordability study to establish guidelines for maintaining prudent debt levels and by establishing a system for prioritizing State capital needs when the needs exceed the State's capacity for new debt. (2004-179, s. 5.1.)

#### § 142-101. Debt Affordability Advisory Committee.

(a) Membership. – The Debt Affordability Advisory Committee is created in the Department of State Treasurer. The Committee shall consist of five ex officio members or their designees and four appointed members, as follows:

- (1) The State Treasurer.
- (2) The Secretary of Revenue.
- (3) The State Budget Officer.
- (4) The State Auditor.
- (5) The State Controller.
- (6) Two members of the public appointed by the President Pro Tempore of the Senate.
- (7) Two members of the public appointed by the Speaker of the House of Representatives.

(b) Officers and Staff. – The State Treasurer shall serve as the chair of the Committee. The Committee shall meet at the call of the chair. The Department of State Treasurer shall provide space for the Committee to meet. The Department shall also provide the Committee with necessary staff and supplies to enable it to carry out its duties in an effective manner.

(c) Compensation. – Members of the Committee shall serve without pay but shall receive per diem and allowances provided by G.S. 138-5 and G.S. 138-6.

(d) Duties. – The Debt Affordability Advisory Committee shall annually advise the Governor and the General Assembly on the estimated debt capacity of the State for the upcoming 10 fiscal years. The Committee shall oversee the undertaking of an annual debt affordability study and the establishment of guidelines for evaluating the State's debt burden. The guidelines should include target and ceiling ratios of net tax-supported debt to personal income and debt service to revenues, target and floor percentages for the 10-year payout ratio, and target and floor percentages for the unreserved General Fund balance. The Committee's recommendations shall include recommendations on debt capacities for debt supported by the General Fund, the Highway Fund, and the Highway Trust Fund. The Committee shall also recommend any other debt management policies it considers desirable and consistent with sound management of the State's debt.

(e) Reports. – The Committee shall report its findings and recommendations to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division by February 1 of each year. (2004-179, s. 5.1; 2007-551, s. 1.)

§ 142-102: Reserved for future codification purposes.

§ 142-103: Reserved for future codification purposes.

§ 142-104: Reserved for future codification purposes.

§ 142-105: Reserved for future codification purposes.

§ 142-106: Reserved for future codification purposes.