

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 279*

Short Title: State Energy Policy.

(Public)

Sponsors: Representatives Brawley, Bowen, and McLaughlin.

Referred to: State Government, if favorable, Appropriations.

February 23, 1995

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH THE STATE FACILITIES ENERGY CONSERVATION
3 PROGRAM; TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO
4 ENTER INTO ALTERNATIVE FINANCING AGREEMENTS FOR THE
5 PURCHASE OF ENERGY CONSERVATION PROJECTS; AND TO AUTHORIZE
6 THE ISSUANCE OF BONDS THAT ARE SECURED BY AN INTEREST IN THE
7 PROPERTY PURCHASED.

Whereas, energy conservation projects that substantially reduce energy use provide an opportunity to save large sums of money by reducing utility bills; and

Whereas, energy conservation projects that substantially reduce energy use benefit the environment by slowing the depletion of nonrenewable energy sources, by lessening the need to construct more power plants, and reducing harmful emissions and other negative side effects of energy use that harm the environment and the health of the public; and

Whereas, the State should take a leadership role in energy conservation; and

Whereas, the positive impact on the State's budget and the positive impact on the environment compel the State to implement energy conservation projects in State facilities; Now, therefore,

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 143-341(4) reads as rewritten:

10 "(4) Real Property Control:

- 1 a. To prepare and keep current a complete and accurate inventory
2 of all land owned or leased by the State or by any State agency.
3 This inventory shall show the location, acreage, description,
4 source of title and current use of all land (including swamplands
5 or marshlands) owned by the State or by any State agency, and
6 the agency to which each tract is currently allocated. Surveys
7 may be made where necessary to obtain information for the
8 purposes of this inventory. Accurate plats or maps of all such
9 land may be prepared, or copies obtained where such maps or
10 plats are available.
- 11 b. To prepare and keep current a complete and accurate inventory
12 of all buildings owned or leased (in whole or in part) by the State
13 or by any State agency. This inventory shall show the location,
14 amount of floor space and floor plans of every building owned or
15 leased by the State or by any State agency, and the agency to
16 which each building, or space therein, is currently allocated.
17 Floor plans of every such building shall be prepared or copies
18 obtained where such floor plans are available, where needed for
19 use in the allocation of space therein.
- 20 c. To obtain and deposit with the Secretary of State the originals of
21 all deeds and other conveyances of real property to the State or to
22 any State agency, copies of all leases wherein the State or any
23 State agency is lessor or lessee, and certified copies of wills,
24 judgments, and other instruments whereby the State or any State
25 agency has acquired title to real property. Where an original of a
26 deed, lease, or other instrument cannot be found, but has been
27 recorded in the registry of office of the clerk of superior court of
28 any county, a certified copy of such deed, conveyance, or
29 instrument shall be obtained and deposited with the Secretary of
30 State.
- 31 d. To acquire, whether by purchase, exercise of the power of
32 eminent domain, lease, or rental, all land, buildings, and space in
33 buildings for all State agencies, subject to the approval of the
34 Governor and Council of State in each instance. The Governor,
35 acting with the approval of the Council of State, may adopt rules
36 (i) exempting from any or all of the requirements of this
37 paragraph such classes of lease, rental, easement, and right-of-
38 way transactions as he deems advisable; and (ii) authorizing any
39 State agency to enter into and/or approve the classes of
40 transactions thus exempted from the requirements of this
41 paragraph; and (iii) delegating to any other State agency the
42 authority to approve the severance of buildings and standing
43 timber from State lands; upon such approval of severance, the

1 buildings and timber so affected shall be treated, for the purposes
2 of this Chapter, as personal property. Any contract entered into
3 or any proceeding instituted contrary to the provisions of this
4 paragraph is voidable in the discretion of the Governor and
5 Council of State.

- 6 d1. To require all State departments, institutions, and agencies to use
7 State-owned office space instead of negotiating or renegotiating
8 leases for rental of office space. Any lease entered into contrary
9 to the provisions of this paragraph is voidable in the discretion of
10 the Governor and the Council of State.

11 The Department of Administration shall report to the Joint
12 Legislative Commission on Governmental Operations and to the
13 Fiscal Research Division no later than May 1 of each year on
14 leased office space.

- 15 d2. To finance the cost of modification, rehabilitation, renovation, or
16 improvement of existing buildings or facilities, or the acquisition
17 and installation of fixtures or equipment in existing buildings or
18 facilities, or any combination of the foregoing pursuant to an
19 energy conservation project under Part 3 of Article 3B of Chapter
20 143 of the General Statutes, through installment purchase, lease
21 purchase, or other similar installment financing agreements or the
22 issuance of bonds of the State in the manner and to the extent set
23 forth in Article 8 of Chapter 142 of the General Statutes.

- 24 e. To make all sales of real property (including marshlands or
25 swamplands) owned by the State or by any State agency, with the
26 approval of the Governor and Council of State in each instance.
27 All conveyances in fee by the State shall be executed in
28 accordance with the provisions of G.S. 146-74 through 146-78.
29 Any conveyance of land made or contract to convey land entered
30 into without the approval of the Governor and Council of State is
31 voidable in the discretion of the Governor and Council of State.
32 The proceeds of all sales of swamplands or marshlands shall be
33 dealt with in the manner required by the Constitution and
34 statutes.

- 35 f. With the approval of the Governor and Council of State, to make
36 all leases and rentals of land or buildings owned by the State or
37 by any State agency, and to sublease land or buildings leased by
38 the State or by any State agency from another owner, where such
39 land or building owned or leased by the State or by any State
40 agency is not needed for current use. The Governor, acting with
41 the approval of the Council of State, may adopt rules (i)
42 exempting from any or all of the requirements of this paragraph
43 such classes of lease or rental transactions as he deems advisable;

1 and (ii) authorizing any State agency to enter into and/or approve
2 the classes of transactions thus exempted from the requirements
3 of this paragraph; and (iii) delegating to any other State agency
4 the authority to approve the severance of buildings and standing
5 timber from State lands; upon such approval of severance, the
6 buildings and timber so affected shall be treated, for the purposes
7 of this Chapter, as personal property. Any lease or rental
8 agreement entered into contrary to the provisions of this
9 paragraph is voidable in the discretion of the Governor and
10 Council of State.

- 11 g. To allocate and reallocate land, buildings, and space in buildings
12 to the several State agencies, in accordance with rules adopted by
13 the Governor with the approval of the Council of State; provided
14 that if the proposed reallocation is of land with an appraised
15 value of at least twenty-five thousand dollars (\$25,000), the
16 reallocation may only be made after consultation with the Joint
17 Legislative Commission on Governmental Operations. The
18 authority granted in this paragraph shall not apply to the State
19 Legislative Building and grounds or to the Legislative Office
20 Building and grounds.
- 21 h. To require any State agency to make reports regarding the land
22 and buildings owned by it or allocated to it at such times and in
23 such form as the Department may deem necessary.
- 24 i. To determine whether all deeds, judgments, and other
25 instruments whereby title to real estate has been or may be
26 acquired by the State or by any State agency have been properly
27 recorded in the county wherein the real property is situated, and
28 to make or cause to be made proper recordation of such
29 instruments. The Department may have previously recorded
30 instruments which conveyed title to or from the State or any State
31 agency or officer reindexed, where necessary, to show the State
32 of North Carolina or grantor or grantee, as the case may be, and
33 the cost of such reindexing shall be paid from the State Land
34 Fund.
- 35 j. To call upon the Attorney General for advice and assistance in
36 the performance of any of the foregoing duties.
- 37 k. None of the provisions of this subdivision apply to highway or
38 railroad rights-of-way or other interests or estates in land held for
39 the same or similar purposes, or to the acquisition or disposition
40 of such rights-of-way, interests, or estates in land.
- 41 l. To manage and control the vacant and unappropriated lands,
42 swamplands, lands acquired by the State by virtue of being sold

1 for taxes, and submerged lands of the State, pursuant to Chapter
2 146 of the General Statutes.

3 m. To contract for or approve all contracts for all appraisals and
4 surveys of real property for all State agencies; provided,
5 however, this provision shall not apply to appraisals and surveys
6 obtained in connection with the acquisition of highway rights-of-
7 way, borrow pits, or other interests or estates in land acquired for
8 the same or similar purposes, or to the disposition thereof, by the
9 Board of Transportation.

10 n. To petition for the annexation of state-owned lands into any
11 municipality."

12 Sec. 2. Article 3B of Chapter 143 of the General Statutes is amended by
13 adding a new Part to read:

14 **"PART 3. STATE FACILITIES ENERGY CONSERVATION PROGRAM.**

15 **"§ 143-64.18. Definitions.**

16 As used in this Part:

17 (1) 'Energy Division' means the Energy Division of the Department of
18 Commerce.

19 (2) 'Energy conservation project' has the same meaning as set forth in G.S.
20 142-62.

21 (3) 'Implementation cost' means cost as defined in G.S. 142-62(6) plus the
22 interest on special indebtedness incurred pursuant to Article 8 of
23 Chapter 142 of the General Statutes to finance the project.

24 (4) 'State facility' means a building owned by the State or a group of
25 buildings owned by the State which are served by a central energy
26 distribution system or by components of a central energy distribution
27 system.

28 (5) 'Technical analysis' means a specialized engineering study conducted
29 within a State facility to identify specific energy conservation projects,
30 the implementation costs of these projects, and the expected energy and
31 energy savings and energy cost savings after implementation.

32 **"§ 143-64.18A. State Facilities Energy Conservation Program.**

33 (a) The General Assembly finds that:

34 (1) State government should take a leadership role in aggressively
35 undertaking energy conservation in North Carolina.

36 (2) After the implementation cost of the energy conservation project is paid,
37 the State will save substantial sums of money in reduced utility bills.

38 (3) The actual energy savings that result from an energy conservation
39 project should offset, in whole or in part, the implementation cost of the
40 energy conservation project.

41 (4) The State should undertake only those energy conservation projects that
42 are projected to require less than an aggregate of six years for the
43 recoupment of the implementation cost based on the projected energy

1 cost savings from implementing the energy conservation project, and
2 the term of the financing should not exceed the expected economic life
3 of the energy conservation project being financed.

4 (5) The State should give highest priority to those energy conservation
5 projects that are projected to require less than an aggregate of two years
6 for the recoument of the implementation cost of the energy
7 conservation project based on the projected energy cost savings of the
8 improvement.

9 (6) It is in the best interest of the State to authorize financing of energy
10 conservation projects pursuant to Article 8 of Chapter 142 of the
11 General Statutes.

12 (b) The State Facilities Energy Conservation Program is established to more
13 efficiently use energy resources in State facilities and to reduce the utility costs of the
14 State. The Energy Division shall develop, administer, and coordinate the State Facilities
15 Energy Conservation Program.

16 (c) The State Facilities Energy Conservation Program shall assist State agencies as
17 follows:

18 (1) Serve as a source of technical support for energy conservation
19 management.

20 (2) Identify sources of moneys for conducting technical analyses pursuant
21 to G.S. 143-64.18C.

22 (d) The Energy Division shall:

23 (1) When necessary to carry out its duties under this Part, enter into
24 contracts with State agencies and other qualified contractors.

25 (2) Promulgate rules necessary to carry out the provisions of this Article.

26 (3) Provide criteria for the selection of State projects or facilities to
27 participate in this Program and develop a format that comports with
28 these criteria.

29 (4) Develop procedures for the technical analyses required under G.S. 143-
30 64.18C and procedures for implementing energy conservation projects.

31 (5) Select, in order of priority and in consultation with the Department of
32 Administration, State projects or facilities to participate in this Program.

33 (6) Assess energy conservation program savings.

34 (7) Be responsible for considering the costs of the constituent fixtures or
35 improvements over their economic life during the selection of projects
36 or facilities to participate in this Program.

37 **"§ 143-64.18B. Energy Technical Analysis Loan Fund.**

38 (a) The Energy Technical Analysis Loan Fund is created. This Fund shall be a
39 nonreverting revolving loan fund to be administered by the Energy Division. This Fund
40 shall consist of moneys appropriated or allocated to it by the General Assembly and any
41 grants, fees, or other moneys paid to it. The interest accruing to the Fund shall be
42 credited to the Fund.

1 (b) The Energy Technical Analysis Loan Fund may be used for State departments,
2 institutions, or agencies for the cost of conducting a technical analysis under G.S. 143-
3 64.18C. The State department, institution, or agency for which the technical analysis was
4 conducted shall repay the Fund within 60 days of receiving financing to implement an
5 energy conservation project or within 180 days of determining that no energy
6 conservation project will be implemented under this Part.

7 **"§ 143-64.18C. Identification and implementation of energy conservation projects.**

8 (a) Each State project or facility that is selected shall undergo a technical analysis
9 conducted by an engineer qualified to conduct such analysis. When the Energy Division
10 enters into a contract with a State agency whereby the State agency is to select and
11 contract with an engineer to conduct the technical analysis of the agency's facilities, the
12 State agency shall select the engineer within 60 days of entering into the contract with the
13 Energy Division. The Energy Division, in consultation with the Department of
14 Administration, shall review all completed technical analyses. If the Energy Division
15 does not approve a technical analysis, the energy conservation project shall not be
16 implemented.

17 (b) Only those energy conservation projects identified by the technical analysis
18 that are economically practical and that are projected not to require more than an
19 aggregate of six years for the recoupment through energy cost savings of the estimated
20 implementation cost of the improvements may be implemented. Those energy
21 conservation projects identified by the technical analysis that are projected to not require
22 more than an aggregate of two years for the recoupment of the estimated implementation
23 cost of the improvements shall be given priority.

24 (c) Selected energy conservation projects may be financed pursuant to Article 8 of
25 Chapter 142 of the General Statutes only with the prior written consent of the State
26 agency receiving the benefit of the energy conservation project to be financed.

27 (d) The Energy Division shall notify the Joint Legislative Commission on
28 Governmental Operations of any energy conservation project having a construction cost
29 greater than five thousand dollars (\$5,000) prior to executing the financing documents.

30 (e) Selection of a designer for an energy conservation project shall occur within 60
31 days of the Office of State Budget and Management certifying the availability of funds
32 for the project.

33 **"§ 143-64.18D. Grants; appropriations.**

34 Moneys appropriated by the General Assembly and any grants, fees, or other moneys
35 provided for the purpose of funding the cost of an energy conservation project shall be
36 applied to pay the cost of implementing such project, including the technical analysis
37 conducted in accordance with G.S. 143-64.18C, in a manner consistent with the
38 provisions of Article 8 of Chapter 142 of the General Statutes.

39 **"§ 143-64.18E. Additional reporting requirements.**

40 The Energy Division shall report on a quarterly basis to the Joint Legislative
41 Commission on Governmental Operations. This report shall include:

- 1 (1) The technical analyses conducted in the previous quarter, including the
2 location of the State facilities subject to the analyses and the results of
3 the analyses.
- 4 (2) The estimated implementation cost of each proposed project, the
5 projected energy savings, and the projected payback period for each
6 energy conservation project.
- 7 (3) The energy conservation projects that were initiated during the previous
8 quarter, the terms of the financing, and the progress to date.
- 9 (4) The energy conservation projects that were completed during the
10 previous quarter, including the actual cost of constructing each energy
11 conservation project.
- 12 (5) The financings that were fully paid during the previous quarter,
13 including the amount of time required for the implementation cost of
14 each energy conservation project to be recouped, based on the energy
15 savings of the project.
- 16 (6) Any other information requested by the Commission.

17 **"§ 143-64.18F. Scope of this Part.**

18 The provisions of this Part apply to all State facilities, including facilities in The
19 University of North Carolina System and State hospitals."

20 Sec. 3. Article 8 is added to Chapter 142 of the General Statutes to read as
21 follows:

22 **"ARTICLE 8.**

23 **"ENERGY CONSERVATION PROJECTS FINANCE ACT.**

24 **"§ 142-60. Short title.**

25 This Article may be cited as the State Energy Conservation Projects Finance Act.

26 **"§ 142-61. Findings and purpose.**

27 The General Assembly hereby finds as follows:

- 28 (1) Energy conservation projects that substantially reduce energy use
29 provide an opportunity to save large sums of money by reducing utility
30 bills.
- 31 (2) Energy conservation projects that substantially reduce energy use
32 benefit the environment by slowing the depletion of nonrenewable
33 energy sources, by lessening the need to construct more power plants,
34 and by reducing harmful emissions and other negative side effects of
35 energy use that harm the environment and the health of the public.
- 36 (3) The State should take a leadership role in energy conservation.
- 37 (4) The positive impact on the State's budget and the positive impact on the
38 environment compel the State to implement energy conservation
39 projects in State facilities.

40 **"§ 142-62. Definitions.**

41 Unless a different meaning is required by the context, the following definitions shall
42 apply throughout this Article:

- 1 (1) 'Alternative financing agreement' means an agreement entered into
2 pursuant to the provisions of this Article to finance an energy
3 conservation project, including a lease-purchase agreement, an
4 installment-purchase agreement, or any other similar installment-
5 financing agreements, but does not include a contract:
6 a. Constituting an operating lease under generally accepted
7 accounting principles;
8 b. Providing for the payment thereunder over its full term, including
9 periods that may be added to the original term through the
10 exercise of options to renew or extend, of an aggregate principal
11 amount not in excess of five thousand dollars (\$5,000) or such
12 greater amount as may be established by the Council of State, in
13 the event that the Council of State determines (i) the aggregate
14 amount to be paid under such contracts will not have a significant
15 impact on the State budgetary process or the economy of the
16 State and (ii) such change will lessen the administrative burden
17 on the State; or
18 c. That is executed and provides for the making of all payments
19 thereunder, including payment to be made during any period that
20 may be added to the original term through the exercise of options
21 to renew or extend, in the same fiscal year
22 that does not create a security interest in real property owned by the
23 State.
24 (2) 'Alternative financing agreement indebtedness' means indebtedness
25 incurred under an alternative financing agreement, including certificates
26 of participation indebtedness.
27 (3) 'Bonded indebtedness' means bonds and bond anticipation notes,
28 including refunding bonds and notes, authorized to be issued under this
29 Article.
30 (4) 'Certificates of participation' means certificates or other instruments
31 delivered by a special corporation evidencing the assignment of
32 proportionate undivided interests in rights to receive payments pursuant
33 to an alternative financing agreement.
34 (5) 'Certificates of participation indebtedness' means alternative financing
35 agreement indebtedness incurred by the State under a plan of finance in
36 which a special corporation obtains funds to pay the cost of an energy
37 conservation project to be financed through the delivery by such special
38 corporation of certificates of participation.
39 (6) 'Cost' includes, but is not limited to:
40 a. The cost of construction, modification, rehabilitation, renovation,
41 improvement, acquisition, or installation in connection with an
42 energy conservation project;

- 1 b. The cost of engineering, architectural, and other consulting
2 services as may be required, including the cost of performing the
3 technical analysis in accordance with G.S. 143-64.18C;
4 c. Finance charges, reserves for debt service, and interest prior to
5 and during construction, and, if deemed advisable by the State
6 Treasurer, for a period not exceeding two years after the
7 estimated date of completion of construction;
8 d. Administrative expenses and charges;
9 e. The cost of bond insurance, investment contracts, credit and
10 liquidity facilities, interest rate swap agreements, and other
11 derivative products, financial and legal consultants, and related
12 costs of the incurrence or issuance of special indebtedness, to the
13 extent and as determined by the State Treasurer;
14 f. The cost of reimbursing the State for payments made for any
15 costs described in this subdivision; and
16 g. Any other costs and expenses necessary or incidental to
17 implementing the purposes of this Article.
18 (7) 'Credit facility' means an agreement entered into by the State Treasurer
19 or a special corporation on behalf of the State with a bank, savings and
20 loan association, or other banking institution; an insurance company,
21 reinsurance company, surety company, or other insurance institution; a
22 corporation, investment banking firm, or other investment institution; or
23 any financial institution or other similar provider of a credit facility,
24 which provider may be located within or without the United States of
25 America; such agreement providing for prompt payment of all or any
26 part of the principal or purchase price (whether at maturity, presentment
27 or tender for purchase, redemption, or acceleration), redemption
28 premium, if any, and interest on any special indebtedness payable on
29 demand or tender by the owner in consideration of the State's agreeing
30 to repay the provider of the credit facility in accordance with the terms
31 and provisions of such agreement.
32 (8) 'Department of Administration' means the North Carolina Department of
33 Administration, or should the Department be abolished or otherwise
34 divested of its functions under this Article, the public body succeeding it
35 in its principal functions, or upon which are conferred by law the rights,
36 powers, and duties given by this Article to the Department.
37 (9) 'Energy conservation project' includes:
38 a. Any modification, rehabilitation, renovation, or improvement of
39 existing State facilities;
40 b. Any acquisition and installation of fixtures or equipment in
41 existing State facilities; or
42 c. Any combination of the foregoing

1 that is intended to reduce energy costs or consumption or to allow the
2 use of an alternative energy source and that may include integral control
3 and measurement devices.

4 (10) 'Fiscal year' means the fiscal year of the State beginning on July 1 of
5 each calendar year and ending on June 30 of the next calendar year.

6 (11) 'Par formula' means any provision or formula adopted by the State to
7 provide for the adjustment, from time to time, of the interest rate or rates
8 borne or provided for by any special indebtedness, including:

9 a. A provision providing for such adjustment so that the special
10 indebtedness in the open market would be as close to par as
11 possible;

12 b. A provision providing for such adjustment based upon a
13 percentage or percentages of a prime rate or base rate, which
14 percentage or percentages may vary or be applied for different
15 periods of time; or

16 c. Such other provision as the State Treasurer may determine to be
17 consistent with this Article and will not materially and adversely
18 affect the financial position of the State and the marketing of
19 special indebtedness at a reasonable interest cost to the State.

20 (12) 'Special corporation' means a nonprofit corporation created under
21 Chapter 55A of the General Statutes for the purpose of facilitating the
22 incurrence of certificates of participation indebtedness by the State
23 under this Article or any private corporation or other entity issuing
24 certificates of participation pursuant to this Article.

25 (13) 'Special indebtedness' means alternative financing agreement
26 indebtedness and bonded indebtedness.

27 (14) 'State' means the State of North Carolina.

28 (15) 'State agency' means every agency, institution, board, commission,
29 bureau, council, department, division, officer, and employee of the
30 State, but does not mean counties, municipal corporations, political
31 subdivisions, county and city boards of education, and other local public
32 bodies.

33 (16) 'State facility' means State facility as defined in G.S. 143-64.18.

34 (17) 'State Treasurer' means the incumbent Treasurer, from time to time, of
35 the State.

36 **"§ 142-63. Authorization of special indebtedness.**

37 The State may enter into, incur, or issue special indebtedness subject to the terms and
38 conditions set forth in this Article for the purpose of financing the cost of energy
39 conservation projects in a principal amount not to exceed thirty million dollars
40 (\$30,000,000) at any one time.

41 **"§ 142-64. Procedure for incurrence or issuance of special indebtedness.**

42 (a) Any State agency or the Energy Division, with the prior written consent of the
43 State agency, shall contact the Department of Administration whenever such State agency

1 intends to use special indebtedness to finance an energy conservation project. If the
2 Department of Administration intends to use special indebtedness to finance such capital
3 facilities, it shall provide written notice to the State Treasurer advising the State Treasurer
4 of its proposed intent. The State Treasurer may require a preliminary conference with the
5 Department of Administration to consider the proposed financing.

6 After the filing of such notice and after such preliminary conference if one is required,
7 the State Treasurer shall consult with the Office of State Budget and Management as to
8 the revenues expected by said Office to be available to pay all sums to come due on such
9 special indebtedness during the term thereof. If, after consulting with the Office of State
10 Budget and Management, the State Treasurer determines by written certificate that it may
11 be desirable to use special indebtedness to finance such capital facilities, the Department
12 of Administration shall request the Council of State to give its preliminary approval of
13 the use of special indebtedness to finance such capital facilities. Copies of the notice and
14 certificate required by this subsection shall be filed promptly with the Council of State.

15 (b) The Council of State, upon receipt of the items required by subsection (a) of
16 this section, shall adopt a resolution granting or denying preliminary approval of such
17 financing. A resolution granting preliminary approval may include such other terms,
18 conditions, and restrictions as the Council of State may deem necessary or desirable.

19 (c) Council of State approval.

20 (1) Before any special indebtedness shall be incurred or issued pursuant to
21 this Article, the Council of State shall authorize by resolution:

22 a. The providing of a particular energy conservation project or, in
23 general terms, the types or classifications of energy conservation
24 projects to be provided, and

25 b. The aggregate principal amount of such special indebtedness or
26 maximum principal amount thereof, the maturity or maximum
27 maturity thereof and the interest rate or rates (or the equivalent
28 thereof) or maximum rate thereof of the special indebtedness to
29 be incurred or issued therefor.

30 Such resolution shall include such other matters as the Council of State
31 may determine including, without limitation, the adoption or approval
32 of documentation providing for the incurrence or issuance and sale of
33 special indebtedness and the making of such determinations or the
34 granting of such consents or approvals as may be authorized in G.S.
35 142-68 and G.S. 142-69.

36 (2) If the Council of State authorizes in general terms the types or
37 classifications of energy conservation projects to be financed, then the
38 particular energy conservation projects and the principal amount of
39 special indebtedness to be incurred or issued for each particular energy
40 conservation project shall be determined by the Department of
41 Administration after considering such factors as the Department shall
42 deem relevant in order to determine that the particular energy
43 conservation project to be provided is desirable for the efficient

1 operation of the State and its agencies and is in the best interest of the
2 State.

3 (3) In the discretion of the Council of State, the resolution required by
4 subsection (b) of this section and the resolution required by subdivision
5 (1) of this subsection may be adopted at the same time as one resolution.

6 (d) No special indebtedness shall be incurred or issued without the prior written
7 approval of the State Treasurer. In determining whether such proposed financing shall be
8 approved, the State Treasurer may consider such factors as the State Treasurer shall deem
9 relevant in order to find and determine that:

10 (1) The amounts to become due under the special indebtedness, including
11 the interest component, are not excessive for the purpose proposed;

12 (2) The increase, if any, in State revenues, including taxes, necessary to pay
13 the sums to become due under the special indebtedness are not
14 excessive; and

15 (3) The special indebtedness can be incurred or issued on terms desirable to
16 the State.

17 This approval shall be in addition to any preliminary approval given pursuant to
18 subsection (a) of this section.

19 (e) In the absence of a determination by the Council of State, the State Treasurer,
20 after consultation with the Department of Administration, shall determine whether the
21 financing shall be effected by alternative financing agreement indebtedness, certificates
22 of participation indebtedness, bonded indebtedness, or some combination thereof.

23 (f) The State Treasurer, after consultation with the Department of Administration,
24 shall develop appropriate documents for use under this Article, and the State Treasurer
25 shall employ and designate the financial consultants, underwriters, and bond attorneys to
26 be associated with the incurrence or issuance of special indebtedness.

27 **"§ 142-65. Security; other requirements.**

28 (a) Special indebtedness shall create a security interest in all or any part of the
29 energy conservation projects financed by such special indebtedness, and in the case of the
30 modification, rehabilitation, renovation, or improvement of existing facilities, in all or
31 some portion of such facilities, to secure:

32 (1) Lease or installment payments to be made to the lessor, seller, or other
33 individual or entity advancing moneys or providing financing under an
34 alternative financing agreement; or

35 (2) Payment of the principal of and interest on bonded indebtedness.

36 (b) Documentation relating to any special indebtedness may include provisions
37 requiring the Governor to submit in the Governor's budget proposal or any amendments
38 or supplements thereto appropriations necessary to make the payments required by any
39 special indebtedness.

40 (c) Amounts payable by the State under an alternative financing agreement or
41 issue of bonded indebtedness during any biennium or fiscal year, each being called a
42 fiscal period for purposes of this subsection, shall be limited to funds appropriated for
43 such fiscal period by the General Assembly in its discretion. During any interim period

1 after the adoption by the General Assembly of appropriation legislation for a fiscal period
2 and prior to the adoption by the General Assembly of appropriation legislation for the
3 next fiscal period, an alternative financing agreement or issue of bonded indebtedness,
4 the payment of which during such interim period has not been provided for by
5 appropriation legislation, may be incurred or issued only if, in addition to compliance
6 with the other provisions of this Article, the Director of the Budget shall have filed with
7 the State Treasurer a certificate stating that sufficient unencumbered money is available
8 to make the required payments during such interim period on such alternative financing
9 agreement or issue of bonded indebtedness. Such unencumbered money shall become
10 appropriated and reserved for making such payments upon execution of the alternative
11 financing agreement or issuance of bonded indebtedness, subject to the right of the
12 General Assembly to modify or rescind such appropriations.

13 (d) No deficiency judgment shall be rendered against the State in any action for
14 breach of any obligation contained in an alternative financing agreement or issue of
15 bonded indebtedness, and the taxing power of the State shall not be pledged directly or
16 indirectly to secure any moneys due under an alternative financing agreement or issue of
17 bonded indebtedness. In the event that the General Assembly does not appropriate sums
18 sufficient to make payments required under an alternative financing agreement or issue of
19 bonded indebtedness, the net proceeds received from the sale or other disposition of the
20 property subject to the lien or security interest shall be applied to satisfy such payment
21 obligations in accordance with the deed of trust, security agreement, or other
22 documentation relating to such lien or security interest, and such net proceeds are hereby
23 deemed appropriated for the purpose of making such payments. Any net proceeds in
24 excess of the amount required to satisfy the obligations of the State under an alternative
25 financing agreement or issue of bonded indebtedness shall be paid to the State Treasurer
26 for deposit to the General Fund.

27 (e) No alternative financing agreement or issue of bonded indebtedness may
28 contain a nonsubstitution clause that restricts the right of the State to:

- 29 (1) Continue to provide a service or activity; or
30 (2) Replace or provide a substitute for any energy conservation project
31 financed or purchased thereby.

32 (f) An alternative financing agreement or issue of bonded indebtedness may create
33 a lien or security interest in any one or more or all of the energy conservation projects
34 being financed, and the estimated value of the energy conservation projects subject to the
35 lien or security interest need not bear any particular relationship to the principal amount
36 of the agreement or issue.

37 (g) Nothing in this Article shall limit the right of the Council of State to grant
38 multiple liens or security interests in an energy conservation project to the extent not
39 otherwise limited by the terms of other special indebtedness.

40 (h) Special indebtedness may contain such provisions for protecting and enforcing
41 the rights and remedies of the lessor, seller, or other individual or entity advancing
42 moneys or providing financing under an alternative financing agreement or the owners of
43 bonded indebtedness as may be reasonable and proper and not in violation of law,

1 including covenants setting forth the duties of the State in respect of the purposes to
2 which the proceeds of special indebtedness may be applied, the disposition and
3 application of the revenues of the State, including taxes, the duties of the State with
4 respect to the capital facilities financed, including, without limitation, the payment of the
5 costs of insurance and maintenance of the capital facilities, the disposition of any charges
6 and collection of any revenues and administrative charges, the terms and conditions of
7 the issuance of additional special indebtedness, and the custody, safeguarding,
8 investment, and application of all moneys.

9 **"§ 142-66. Alternative financing agreement indebtedness.**

10 (a) The State Treasurer, after consultation with the Department of Administration,
11 shall approve all documentation providing for the incurrence of alternative financing
12 agreement indebtedness.

13 (b) Any alternative financing agreement may provide for payments thereunder to
14 represent principal and interest components of the cost of the energy conservation project
15 to be leased or acquired, such determination to be made by the State Treasurer.

16 (c) Alternative financing agreements may be entered into pursuant to any
17 applicable public or competitive bidding process or any private or negotiated process, to
18 the extent required by applicable law, and if not so required, as may be determined by the
19 Department of Administration after consulting with the State Treasurer.

20 (d) All alternative financing agreements shall be executed on behalf of the State by
21 the Department of Administration after having been approved by the State Treasurer.

22 (e) If the State Treasurer determines that it is in the best interest of the State, the
23 State Treasurer may arrange for the delivery of a credit facility to secure payment under
24 any alternative financing agreement. The State Treasurer may also provide that payments
25 by the State representing the interest component of the payments to be made under an
26 alternative financing agreement may be calculated based upon a variable interest rate.

27 (f) All other conditions set forth elsewhere in this Article with respect to
28 alternative financing agreement indebtedness shall also be satisfied prior to incurring any
29 alternative financing agreement indebtedness.

30 (g) To the extent applicable as may be conclusively determined by the State
31 Treasurer, the provisions of G.S. 142-69, 142-70, and 142-71 shall apply to alternative
32 financing agreement indebtedness.

33 **"§ 142-67. Additional requirements for certificates of participation indebtedness.**

34 (a) The State Treasurer, after consultation with the Department of Administration,
35 shall approve the use of an alternative financing agreement in connection with the
36 delivery of certificates of participation by a special corporation.

37 (b) The documentation providing for the delivery and sale of certificates of
38 participation shall be approved by the State Treasurer. The special corporation, if used,
39 shall request the approval of the State Treasurer in writing and shall furnish such
40 information and documentation relating to the delivery and sale of the certificates of
41 participation as the State Treasurer may request. In determining whether such approval
42 shall be granted, the State Treasurer shall consider the factors provided for in G.S. 142-
43 64(d), as well as the effect of the proposed financing upon any scheduled or proposed

1 sale of debt obligations by the State or any State agency or by any unit of local
2 government in the State.

3 (c) Upon the filing with the State Treasurer of a written request of a special
4 corporation to sell the certificates of participation, the certificates of participation may be
5 sold by the State Treasurer in such manner, either at public or private sale, and for such
6 price or prices as the State Treasurer shall determine to be in the best interest of the State
7 and to effect the purposes of this Article, provided that the sale shall be approved by the
8 special corporation. The certificates of participation shall bear interest at such rate or
9 rates as may be determined by the State Treasurer with the approval of the special
10 corporation.

11 (d) Certificates of participation may be delivered pursuant to a trust agreement
12 with a corporate trustee approved by the State Treasurer, and the provisions of G.S. 142-
13 69(h) shall apply to such trust agreement to the extent applicable.

14 (e) All other conditions set forth elsewhere in this Article with respect to
15 certificates of participation indebtedness, including the conditions set forth in G.S. 142-
16 66, shall also be satisfied prior to incurring any certificates of participation indebtedness.

17 **"§ 142-68. Bonded indebtedness.**

18 The State Treasurer may, by and with the consent of the Council of State as provided
19 in this Article, issue and sell at one time or from time to time bonds of the State to be
20 designated 'State of North Carolina Limited Obligation Bonds, Series _____' or notes of
21 the State as provided in G.S. 142-69, for the purpose of providing funds, with any other
22 available funds, for the uses authorized in this Article.

23 **"§ 142-69. Issuance of bonds and notes.**

24 (a) Terms and Conditions. – Bonds or notes may bear the date or dates, may be
25 serial or term bonds or notes, or any combination thereof, may mature in the amounts and
26 at the time or times, not exceeding 10 years from their date or dates, may be payable at
27 the place or places, either within or without the United States of America, in the coin or
28 currency of the United States of America as at the time of payment is legal tender for
29 payment of public and private debts, may bear interest at the rate or rates, which may
30 vary from time to time, and may be made redeemable before maturity, at the option of the
31 State or otherwise as may be provided by the State, at the price or prices, including a
32 price greater than the face amount of the bonds or notes, and under the terms and
33 conditions, all as may be determined by the State Treasurer, by and with the consent of
34 the Council of State.

35 (b) Signatures; Form and Denomination; Registration. – Bonds or notes may be
36 issued in certificated or uncertificated form. If issued in certificated form, bonds or notes
37 shall be signed on behalf of the State by the Governor or shall bear the Governor's
38 facsimile signature, shall be signed by the State Treasurer or shall bear the State
39 Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of
40 the Great Seal shall be impressed or imprinted on the bonds or notes. If bonds or notes
41 bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes
42 shall also bear a manual signature which may be that of a bond registrar, trustee, paying
43 agent, or designated assistant of the State Treasurer. Should any officer whose signature

1 or facsimile signature appears on bonds or notes cease to be the officer before the
2 delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have
3 the same validity for all purposes as if the officer had remained in office until delivery of
4 the bonds and notes, and bonds or notes may bear the facsimile signatures of persons who
5 at the actual time of the execution of the bonds or notes shall be the proper officers to
6 sign any bond or note although at the date of the bond or note those persons may not have
7 been the officers. The form and denomination of bonds or notes, including the provisions
8 with respect to registration of the bonds or notes and any system for their registration,
9 shall be as the State Treasurer may determine in conformity with this Article; provided,
10 however, that nothing in this Article shall prohibit the State Treasurer from proceeding,
11 with respect to the issuance and form of the bonds or notes, under the provisions of
12 Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as
13 under this Article.

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

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

29 Any additional moneys which may be received by means of a grant or grants from the
30 United States of America or any agency or department thereof or from any other source
31 to aid in financing the cost of an energy conservation project may be disbursed, to the
32 extent permitted by the terms of such grant or grants, without regard to any limitations
33 imposed by this Article.

34 (e) Notes; Repayment. – By and with the consent of the Council of State, the State
35 Treasurer may borrow money, and execute and issue notes of the State for the borrowed
36 money, but only in the following circumstances and under the following conditions:

37 (1) For anticipating the sale of bonds the issuance of which the Council of
38 State shall have approved, if the State Treasurer shall deem it advisable
39 to postpone the issuance of the bonds;

40 (2) For the payment of interest on or any installment of principal of any
41 bonds then outstanding, if there shall not be sufficient funds in the State
42 treasury with which to pay the interest or installment or principal as they
43 respectively become due;

- 1 (3) For the renewal of any loan evidenced by notes herein authorized;
2 (4) For the purposes authorized in this Article; and
3 (5) For refunding bonds or notes or alternative financing agreement
4 indebtedness as authorized by this Article.

5 Funds derived from the sale of bonds or notes may be used in the payment of any
6 bond anticipation notes issued under this Article. Funds provided by the General
7 Assembly for the payment of interest on or principal of bonds shall be used in paying the
8 interest on or principal of any notes and any renewals of any notes, the proceeds of which
9 shall have been used in paying interest on or principal of the bonds.

10 (f) Refunding Bonds and Notes. – By and with the consent of the Council of State,
11 the State Treasurer may issue and sell refunding bonds and notes for the purpose of
12 refunding bonds or notes or alternative financing agreement indebtedness issued pursuant
13 to this Article. The refunding bonds and notes may be combined with any other issues of
14 State bonds and notes similarly secured. Refunding bonds or notes may be issued at any
15 time prior to the final maturity of the debt or obligation to be refunded. The proceeds
16 from the sale of any refunding bonds or notes shall be applied only as follows:

- 17 (1) To the immediate payment and retirement of the obligations being
18 refunded; or
19 (2) If not required for the immediate payment of the obligations being
20 refunded, the proceeds shall be deposited in trust to provide for the
21 payment and retirement of the obligations being refunded and to pay
22 any expenses incurred in connection with the refunding.

23 Money in any trust fund may be invested in:

- 24 (1) Direct obligations of the United States government;
25 (2) Obligations the principal of and interest on which are guaranteed by the
26 United States government;
27 (3) To the extent then permitted by law, in obligations of any agency or
28 instrumentality of the United States government; or
29 (4) Certificates of deposit issued by a bank or trust company located in the
30 State, if such certificates shall be secured by a pledge of any of said
31 obligations described in subdivision (1), (2), or (3) of subsection (e) of
32 this section having any aggregate market value, exclusive of accrued
33 interest, equal at least to the principal amount of the certificates so
34 secured.

35 Nothing in this section shall be construed as a limitation on the duration of any deposit in
36 trust for the retirement of obligations being refunded but which shall not have matured
37 and which shall not be presently redeemable, or if presently redeemable, shall not have
38 been called for redemption.

39 (g) Security. – Payment of the principal of and the interest on bonds and notes
40 shall be secured as provided in G.S. 142-65.

41 (h) Trust Agreement. – In the discretion of the State Treasurer, any bonds and
42 notes issued under the provisions of this Article may be secured by a trust agreement by
43 and between the State and a corporate trustee or by a resolution of the Council of State

1 providing for the appointment of a corporate trustee. The corporate trustee may be, in
2 either case, any trust company or bank having the powers of a trust company within or
3 without the State. A trust agreement or resolution may provide for security, pledges, and
4 assignments with respect to a trust agreement or resolution as may be permitted under
5 this Article and further provide for the granting of a lien or security interest in the
6 collateral authorized by G.S. 142-65. The trust agreement or resolution may contain
7 those provisions for protecting and enforcing the rights and remedies of the owners of
8 any bonds or notes issued thereunder as may be reasonable and proper and not in
9 violation of law, including covenants setting forth the duties of the State in respect of the
10 purposes to which bond or note proceeds may be applied, the disposition and application
11 of the revenues or assets of the State, the duties of the State with respect to the energy
12 conservation projects financed, the disposition of any charges and collection of any
13 revenues and administrative charges, the terms and conditions of the issuance of
14 additional bonds and notes, and the custody, safeguarding, investment, and application of
15 all moneys. All bonds and notes issued under this Article shall be equally and ratably
16 secured as provided in such trust agreement or resolution, without priority by reasons of
17 number, or dates of bonds or notes, execution, or delivery, in accordance with the
18 provisions of this Article and of such trust agreement or resolution; provided, however,
19 that such trust agreement or resolution may provide that bonds or notes issued pursuant to
20 this Article shall, to the extent and in the manner prescribed in such trust agreement or
21 resolution, be subordinated and junior in standing, with respect to the payment of
22 principal and interest and to the security of the bonds or notes, to any other bonds or
23 notes. It shall be lawful for any bank or trust company that may act as depositary of the
24 proceeds of bonds or notes, revenues, or any other money loaned under this Article to
25 furnish any indemnifying bonds or to pledge such securities as may be required by the
26 State Treasurer. Any trust agreement or resolution may set out the rights and remedies of
27 the owners of any bonds or notes and of any trustee, and may restrict the individual rights
28 of action by the owners. In addition, any trust agreement or resolution may contain any
29 other provisions as the State Treasurer may deem reasonable and proper for the security
30 of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of
31 any trust agreement or resolution may be treated as a part of the cost of any energy
32 conservation project or as an administrative charge and may be paid from the proceeds of
33 the bonds or notes or from any other available funds.

34 **"§ 142-70. Variable rate demand bonds and notes.**

35 (a) In fixing the details of bonds and notes, the State Treasurer may provide that
36 these bonds and notes may:

- 37 (1) Be made payable from time to time on demand or tender for purchase
38 by the owner of the bonds or notes provided a credit facility supports the
39 bonds or notes, unless the State Treasurer specifically determines that a
40 credit facility is not required upon a finding and determination by the
41 State Treasurer that the absence of a credit facility will not materially
42 and adversely affect the financial position of the State and the marketing
43 of the bonds or notes at a reasonable interest cost to the State;

- 1 (2) Be additionally supported by a credit facility;
2 (3) Be made subject to redemption or a mandatory tender for purchase prior
3 to maturity;
4 (4) Bear interest at a rate or rates that may vary from such period or periods
5 of time, all as may be provided in the proceedings providing for the
6 issuance of the bonds or notes, including, but not limited to, such
7 variations as may be permitted pursuant to a par formula; and
8 (5) Be made the subject of a remarketing agreement whereby an attempt is
9 made to remarket bonds or notes to new purchasers prior to their
10 presentation for payment to the provider of the credit facility or to the
11 State.

12 (b) If the aggregate principal amount payable by the State under a credit facility is
13 in excess of the aggregate principal amount of bonds or notes secured by the credit
14 facility, whether as a result of the inclusion in the credit facility of a provision for the
15 payment of interest for a limited period of time or the payment of a redemption premium
16 or for any other reason, then the amount of authorized but unissued bonds or notes during
17 the term of such credit facility shall not be less than the amount of such excess, unless the
18 payment of such excess is otherwise provided for by agreement of the State executed by
19 the State Treasurer.

20 **"§ 142-71. Other agreements.**

21 The State Treasurer may authorize, execute, obtain, or otherwise provide for bond
22 insurance, investment contracts, credit and liquidity facilities, interest rate swap
23 agreements and other derivative products, and any other related instruments and matters
24 as the State Treasurer shall determine desirable in connection with the incurrence or
25 issuance of special indebtedness.

26 **"§ 142-72. Tax exemption.**

27 Bonds and notes and alternative financing agreement indebtedness shall be exempt
28 from all State, county, and municipal taxation or assessment, direct or indirect, general or
29 special, whether imposed for the purpose of general revenue or otherwise, excluding
30 inheritance and gift taxes and income taxation on gain from the transfer thereof. The
31 interest on bonds and notes and the interest component of payments made under
32 alternative financing agreements, including the interest component of certificates of
33 participation, shall not be subject to taxation as to income.

34 **"§ 142-73. Investment eligibility.**

35 Bonds and notes and alternative financing agreement indebtedness are hereby made
36 securities or obligations in which all public officers, agencies, and public bodies of the
37 State and its political subdivisions, all insurance companies, trust companies, investment
38 companies, banks, savings banks, savings and loan associations, credit unions, pension or
39 retirement funds, other financial institutions engaged in business in the State, executors,
40 administrators, trustees, and other fiduciaries may properly and legally invest funds,
41 including capital in their control or belonging to them. Bonds and notes and alternative
42 financing agreement indebtedness are hereby made securities or obligations that may
43 properly and legally be deposited with and received by any officer or agency of the State

1 or political subdivision of the State for any purpose for which the deposit of bonds, notes,
2 or obligations of the State or any political subdivision is now or may hereafter be
3 authorized by law.

4 **"§ 142-74. Procurement of energy conservation projects.**

5 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General Statutes
6 and any other laws or rules of the State that relate to the acquisition and construction of
7 State property shall apply to the financing of energy conservation projects through the
8 use of special indebtedness."

9 Sec. 4. Interpretation of act. (a) Additional method. The foregoing sections of
10 this act shall be deemed to provide an additional and alternative method for the doing of
11 the things authorized thereby and shall be regarded as supplemental and additional to
12 powers conferred by other laws, and shall not be regarded as in derogation of any powers
13 now existing.

14 (b) Liberal construction. This act, being necessary for the health and welfare of
15 the people of the State, shall be liberally construed to effect the purposes thereof.

16 (c) Inconsistent provisions. Insofar as the provisions of this act are inconsistent
17 with the provisions of any general laws, or parts thereof, the provisions of this act shall be
18 controlling.

19 (d) Severability. If any provision of this act or the application thereof to any
20 person or circumstance is held invalid, such invalidity shall not affect other provisions or
21 applications of the act which can be given effect without the invalid provision or
22 application, and to this end the provisions of this act are declared to be severable.

23 Sec. 5. The one million one hundred nineteen thousand six hundred fifty-two
24 dollars (\$1,119,652) that was received from the United States Department of Energy's
25 Stripper Well Litigation (MDL378), appropriated from the Special Reserve for Oil
26 Overcharge Funds to the Department of Commerce for the 1992-93 fiscal year, and
27 allocated for energy conservation programs for hospitals and schools shall be reallocated
28 to the Department of Commerce for the 1995-96 fiscal year for energy conservation
29 programs for hospitals and schools and for energy conservation projects for State
30 facilities pursuant to Part 3 of Article 3B of Chapter 143 of the General Statutes, as
31 enacted by Section 2 of this act.

32 Sec. 6. This act becomes effective July 1, 1995.