

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1472

Short Title: Conduit Agency Financing.

(Public)

Sponsors: Senators Rand; and Reeves.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR TAX-EXEMPT FINANCING OF CERTAIN PRIVATE
PROJECTS AS AUTHORIZED UNDER FEDERAL LAW AND TO REORGANIZE
THE INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING
AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115E of the General Statutes is recodified as Article 2 of
Chapter 159D of the General Statutes.

Section 2. Chapter 159D of the General Statutes, as amended by this act, reads
as rewritten:

"CHAPTER 159D.

**"~~THE NORTH CAROLINA INDUSTRIAL AND POLLUTION~~
~~CONTROL-CAPITAL FACILITIES POOL PROGRAM FINANCING ACT.~~**

"ARTICLE 1.

"INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING.

"§ 159D-1. Short title.

This ~~chapter~~Article may be referred to as "The North Carolina Industrial and
Pollution Control Facilities ~~Pool Program~~-Financing Act."

"§ 159D-2. Legislative findings and purposes.

1 (a) The General Assembly finds and determines that there exists in the State a
2 critical condition of unemployment and a scarcity of employment opportunities; that the
3 economic insecurity which results from such unemployment and scarcity of employment
4 opportunities constitutes a serious menace to the safety, morals and general welfare of the
5 entire State; that such unemployment and scarcity of employment opportunities have
6 caused many workers and their families, including young adults upon whom future
7 economic prosperity is dependent, to migrate elsewhere to find employment and establish
8 homes; that such emigration has resulted in a reduced rate of growth in the tax base of the
9 counties and other local governmental units of the State which impairs the financial
10 ability of such counties and other local governmental units to support education and other
11 local governmental services; that such unemployment results in obligations to grant
12 public assistance and to pay unemployment compensation; that the aforesaid conditions
13 can best be remedied by the attraction, stimulation, expansion and rehabilitation and
14 revitalization of industrial and manufacturing facilities for industry in the State; and that
15 there is a need to stimulate a larger flow of private investment funds into industrial
16 building programs ~~into~~ ~~[in]~~ in the State.

17 (b) The General Assembly further finds and determines that the development and
18 expansion of industry within the State, which are essential to the economic growth of the
19 State, and to the full employment and prosperity of its people, are accompanied by the
20 increased production and discharge of gaseous, liquid, and solid pollution and wastes
21 which threaten and endanger the health, welfare and safety of the inhabitants of the State
22 by polluting the air, land and waters of the State; that in order to reduce, control, and
23 prevent such environmental pollution, it is imperative that action be taken at various
24 levels of government to require the provision of devices, equipment and facilities for the
25 collection, reduction, treatment, and disposal of such pollution and wastes; that the
26 assistance provided in this ~~Chapter, Article,~~ especially with respect to financing, is
27 therefore in the public interest and serves a public purpose of the State in promoting the
28 health, welfare and safety of the inhabitants of the State not only physically by collecting,
29 reducing, treating and preventing environmental pollution but also economically by
30 securing and retaining private industry thereby maintaining a higher level of employment
31 and economic activity and stability.

32 ~~(c) The General Assembly further finds that the federal government and its~~
33 ~~agencies have established, and may in the future establish, programs to promote gainful~~
34 ~~employment opportunity and the prevention and control of the pollution of air, land and~~
35 ~~waters of the United States through assistance in the financing of industrial and~~
36 ~~manufacturing facilities and pollution control facilities for industry and that the~~
37 ~~economical implementation of such programs in the State of North Carolina may require~~
38 ~~the financing of such facilities through a uniform statewide program.~~

39 ~~(c1) The General Assembly further finds that certain provisions of federal tax law,~~
40 ~~economies of scale and credit market conditions make it advantageous for counties in~~
41 ~~North Carolina to be authorized to create a single authority with the legal capacity to~~
42 ~~combine separate financings into one or more pools that may be offered for sale on more~~
43 ~~favorable terms than any single financing standing alone.~~

1 (d) ~~It is therefore declared to be the policy of the State to promote the right to~~
2 ~~gainful employment opportunity, private industry, the prevention and control of the~~
3 ~~pollution of the air, land and waters of the State, and the safety, morals and health of the~~
4 ~~people of the State, and thereby promote general welfare of the people of the State, by~~
5 ~~authorizing counties to create an authority which shall be a political subdivision and body~~
6 ~~corporate and politic of the State. This body is to be formed (i) to aid in the financing of~~
7 ~~industrial and manufacturing facilities for the purpose of alleviating unemployment or~~
8 ~~raising below average manufacturing wages by financing industrial and manufacturing~~
9 ~~facilities which provide job opportunities or pay better wages than those prevalent in the~~
10 ~~area and (ii) to aid in financing pollution control facilities for industry in connection with~~
11 ~~manufacturing and industrial facilities, in each case in connection with pool programs to~~
12 ~~effect such purposes; provided, however, that it is the policy of the State to finance only~~
13 ~~those facilities where there is a direct or indirect favorable impact on employment or an~~
14 ~~improvement in the degree of prevention or control of pollution commensurate with the~~
15 ~~size and cost of the facilities.~~

16 **"§ 159D-3. Definitions.**

17 The following terms, whenever used or referred to in this ~~Chapter, Article,~~ shall have
18 the following respective meanings, unless a different meaning clearly appears from the
19 context:

- 20 (1) ~~"Agency" shall include any agency, bureau, commission, department or~~
21 ~~instrumentality.~~
22 'Agency' means the North Carolina Capital Facilities Finance Agency,
23 an agency of the State created pursuant to G.S. 159D-38 of the North
24 Carolina Capital Facilities Finance Act, codified as Article 2 of this
25 Chapter.
26 (2) 'Air pollution control facility' shall mean any structure, equipment or
27 other facility for, including any increment in the cost of any structure,
28 equipment or facility attributable to, the purpose of treating, neutralizing
29 or reducing gaseous industrial waste and other air pollutants, including
30 recovery, treatment, neutralizing or stabilizing plants and equipment and
31 their appurtenances, which shall have been certified by the agency
32 having jurisdiction to be in furtherance of the purpose of abating or
33 controlling atmospheric pollutants or contaminants.
34 (3) 'Authority' shall mean The North Carolina Industrial and Pollution
35 Control Facilities Financing Authority, a political subdivision and body
36 politic of the State, ~~which may be created pursuant to the provisions of~~
37 ~~this Chapter and which shall have the powers and authority specified in~~
38 ~~and by this Chapter. Article.~~
39 (4) 'Bonds' shall mean revenue bonds ~~of an authority~~ issued under the
40 provisions of this ~~Chapter. Article.~~
41 (5) 'Cost' as applied to any project shall embrace all capital costs thereof,
42 including the cost of construction, the cost of acquisition of all property,
43 including rights in land and other property, both real and personal and

1 improved and unimproved, the cost of demolishing, removing or
2 relocating any buildings or structures on lands so acquired, including the
3 cost of acquiring any lands to which such buildings or structures may be
4 moved or relocated, the cost of all machinery and equipment,
5 installation, start-up expenses, financing charges, interest prior to,
6 during and for a period not exceeding one year after completion of
7 construction, the cost of engineering and architectural surveys, plans
8 and specifications, the cost of consultants' and legal services, other
9 expenses necessary or incident to determining the feasibility or
10 practicability of such project, administrative and other expenses
11 necessary or incident to the acquisition or construction of such project
12 and the financing of the acquisition and construction thereof, including a
13 reserve for debt services.

14 ~~(6) 'Pool program' shall mean a program of the authority whereby separate~~
15 ~~financings for obligors are combined into one or more pools for~~
16 ~~purposes of sale. The credit of such financings or the pool may be~~
17 ~~enhanced by participation in a federal program, by a guaranty such as a~~
18 ~~surety bond, insurance or a letter of credit, by additional collateral or by~~
19 ~~any other device, fund or guaranty by any person other than the~~
20 ~~authority, agency, under which payment of bonds or the obligations of~~
21 ~~an obligor under a financing agreement shall be guaranteed, in whole or~~
22 ~~in part, by such person or persons.~~

23 (7) 'Financing agreement' shall mean a written instrument establishing the
24 rights and responsibilities of the authority-agency and the operator with
25 respect to a project financed by the issue of bonds.

26 (8) 'Governing body' shall mean the board, commission, council or other
27 body in which the general legislative powers of any county or other
28 political subdivision are vested.

29 (9) 'Obligor' shall mean collectively the operator and any others (including,
30 but not by way of limitation, any other person, collateral device or fund
31 that shall be obligated to pay) who or which shall be obligated under a
32 financing agreement or guaranty agreement or other contract or
33 agreement to make payments to, or for the benefit of, the holders of
34 bonds of the authority-agency. Any requirement of an obligor may be
35 satisfied by any one or more persons who are defined collectively by
36 this ~~Chapter~~ Article as the obligor.

37 (10) 'Operator' shall mean the person entitled to the use or occupancy of a
38 project.

39 (11) 'Political subdivision' shall mean any county, city, town, other unit of
40 local government or any other governmental corporation, ~~agency, entity,~~
41 authority or instrumentality of the State now or hereafter existing.

42 (12) 'Pollution and pollutants' shall mean any noxious or deleterious
43 substances in any air or waters of or adjacent to the State of North

1 Carolina or affecting the physical, chemical or biological properties of
2 any air or waters of or adjacent to the State of North Carolina in a
3 manner and to an extent which renders or is likely to render such air or
4 waters harmful or inimical to the public health, safety or welfare, or to
5 animal, bird or aquatic life, or to the use of such air or waters for
6 domestic, industrial or agricultural purposes or recreation.

7 (13) 'Project' shall mean any land, equipment or any one or more buildings or
8 other structures, whether or not on the same site or sites, and any
9 rehabilitation, improvement, renovation or enlargement of, or any
10 addition to, any building or structure for use as or in connection with (i)
11 any industrial project for industry which project may be any industrial
12 or manufacturing factory, mill, assembly plant or fabricating plant, or
13 freight terminal, or industrial research, development or laboratory
14 facility or industrial processing facility for industrial or manufactured
15 products, or (ii) any pollution control project for industry which project
16 may be any air pollution control facility, water pollution control facility,
17 or solid waste disposal facility in connection with any factory, mill,
18 plant, terminal or facility described in clause (i) of this subdivision, or
19 (iii) any combination of projects mentioned in clauses (i) and (ii) of this
20 subdivision. Any project may include all appurtenances and incidental
21 facilities such as land, headquarters or office facilities, warehouses,
22 distribution centers, access roads, sidewalks, utilities, railway sidings,
23 trucking and similar facilities, parking facilities, landing strips and other
24 facilities for aircraft, waterways, docks, wharves and other
25 improvements necessary or convenient for the construction,
26 maintenance and operation of any building or structure, or addition
27 thereto.

28 (14) 'Revenues' shall mean, with respect to any project, the rents, fees,
29 charges, payments, proceeds and other income or profit derived
30 therefrom or from the financing agreement or security document in
31 connection therewith.

32 (15) 'Security document' shall mean a written instrument or instruments
33 establishing the rights and responsibilities of the ~~authority~~-agency and
34 the holders of bonds issued to finance a project, and may provide for, or
35 be in the form of an agreement with, a trustee for the benefit of such
36 bondholders. A security document may contain an assignment, pledge,
37 mortgage or other encumbrance of all or part of the ~~authority's~~-agency's
38 interest in, or right to receive revenues with respect to, a project and any
39 other property provided by the operator or other obligor under a
40 financing agreement and may bear any appropriate title. A financing
41 agreement and a security document may be combined as one instrument.

- 1 (16) 'Solid waste' shall mean solid waste materials resulting from any
2 industrial or manufacturing activities or from any pollution control
3 facility.
- 4 (17) 'Solid waste disposal facility' shall mean a facility for the purpose of
5 treating, burning, compacting, composting, storing or disposing of solid
6 waste.
- 7 (18) 'Water pollution control facility' shall mean any structure, equipment or
8 other facility for, including any increment in the cost of any structure,
9 equipment or facility attributable to, the purpose of treating, neutralizing
10 or reducing liquid industrial waste and other water pollution, including
11 collecting, treating, neutralizing, stabilizing, cooling, segregating,
12 holding, recycling, or disposing of liquid industrial waste and other
13 water pollution, including necessary collector, interceptor, and outfall
14 lines and pumping stations, which ~~shall have~~ has been certified by the
15 ~~agency~~ entity exercising jurisdiction to be in furtherance of the purpose
16 of abating or controlling water pollution.

17 ~~"§ 159D-4. Creation of the authority.~~

18 (a) ~~The governing bodies of two or more counties are hereby authorized to create~~
19 ~~by resolution a political subdivision and body corporate and politic of the State known as~~
20 ~~"The North Carolina Industrial Facilities and Pollution Control Financing Authority", in~~
21 ~~order to effectuate in the most economical manner the acquisition, construction and~~
22 ~~financing of projects through pool programs.~~

23 ~~If each governing body shall determine that it is in the best interest of the county to~~
24 ~~cause to be created and to become a member of the authority, each governing body shall~~
25 ~~adopt a resolution so finding and setting forth the names of the counties which are~~
26 ~~proposed to be initial members of the authority. The governing body of the county shall~~
27 ~~thereupon by ordinance or resolution appoint one commissioner of the authority.~~

28 ~~Any two or more commissioners so named may file with the Secretary of State an~~
29 ~~application signed by them setting forth (i) the names of all the proposed member~~
30 ~~counties; (ii) the name and official residence of each of the commissioners so far as~~
31 ~~known to them; (iii) a certified copy of the appointment evidencing their right to office;~~
32 ~~(iv) a statement that each governing body of each respective county appointing a~~
33 ~~commissioner has made the aforesaid determination; and (v) the desire that an authority~~
34 ~~be organized as a political subdivision and a body corporate and politic under this~~
35 ~~Chapter.~~

36 ~~The application shall be subscribed and sworn to by such commissioners before an~~
37 ~~officer or officers authorized by the laws of the State to administer and certify oaths.~~

38 ~~The Secretary of State shall examine the application and, if he finds that the name~~
39 ~~proposed for the authority is not identical with that of any other corporation of this State~~
40 ~~or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion~~
41 ~~and uncertainty, he shall receive and file it and shall record it in an appropriate book of~~
42 ~~record in his office.~~

1 ~~When the application has been made, filed and recorded as herein provided, the~~
2 ~~authority shall constitute a political subdivision and a body corporate and politic under~~
3 ~~the name proposed in the application. The Secretary of State shall make and issue to the~~
4 ~~commissioners executing the application a certificate of incorporation pursuant to this~~
5 ~~Chapter under the seal of the State, and shall record the same with the application. The~~
6 ~~certificate shall set forth the names of the member counties.~~

7 ~~In any suit, action or proceeding involving the validity or enforcement of, or relating~~
8 ~~to, any contract of the authority, the authority, in the absence of establishing fraud in the~~
9 ~~premises, shall be conclusively deemed to have been established in accordance with the~~
10 ~~provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the~~
11 ~~Secretary of State. A copy of such certificate, duly certified by the Secretary of State,~~
12 ~~shall be admissible in evidence in any such suit, action or proceeding, and shall be~~
13 ~~conclusive proof of the filing and contents thereof.~~

14 ~~Notice of the issuance of such certificate shall be given to all of the proposed member~~
15 ~~counties by the Secretary of State. If a commissioner of any such county has not signed~~
16 ~~the application to the Secretary of State and such county does not notify the Secretary of~~
17 ~~State of the appointment of a commissioner within 40 days after receipt of such notice,~~
18 ~~such county shall be deemed to have elected not to be a member of the authority. As soon~~
19 ~~as practicable after the expiration of such 40-day period, the Secretary of State shall issue~~
20 ~~a new certificate of incorporation, if necessary, setting forth the names of those counties~~
21 ~~which have elected to become members of the authority. The failure of any proposed~~
22 ~~member to become a member shall not affect the validity of the corporate existence of the~~
23 ~~authority.~~

24 ~~(b) After the creation of the authority, any county may become a member thereof~~
25 ~~upon application to the authority after adoption of a resolution or ordinance by the~~
26 ~~governing body of the county setting forth the determination and finding prescribed in~~
27 ~~paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county~~
28 ~~may withdraw from membership in the authority, provided, however, that all contractual~~
29 ~~rights acquired and obligations incurred while a county was a member shall remain in full~~
30 ~~force and effect.~~

31 ~~(c) The authority shall consist of a board of commissioners appointed by the~~
32 ~~respective governing bodies of the counties which are members of the authority. Each~~
33 ~~commissioner shall have one vote. Each commissioner shall serve at the pleasure of the~~
34 ~~governing body by which he was appointed. Each appointed commissioner before~~
35 ~~entering upon his duties shall take and subscribe to an oath before some person~~
36 ~~authorized by law to administer oaths to execute the duties of his office faithfully and~~
37 ~~impartially, and a record of such oath shall be filed with the governing body of the~~
38 ~~appointing municipality and spread upon its minutes.~~

39 ~~(d) The board of commissioners of the authority shall annually elect from its~~
40 ~~membership a chairman and a vice chairman and another person or persons, who may but~~
41 ~~need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The~~
42 ~~position of secretary and treasurer or assistant secretary and treasurer may be held by the~~
43 ~~same person. The secretary of the authority shall keep a record of the proceedings of the~~

1 authority and shall be the custodian of all books, documents and papers filed with the
2 authority, the minute book or journal of the authority and its official seal. Either the
3 secretary or the assistant secretary of the authority may cause copies to be made of all
4 minutes and other records and documents of the authority and may give certificates under
5 the official seal of the authority to the effect that such copies are true copies, and all
6 persons dealing with the authority may rely upon such certificates.

7 (e) A majority of the commissioners of the authority then in office shall constitute
8 a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote
9 of a majority of all the commissioners of the authority shall be necessary for any action of
10 the board. A vacancy in the board of commissioners of the authority shall not impair the
11 right of a quorum to exercise all the rights and perform all the duties of the authority. Any
12 action taken by the authority under the provisions of this Chapter may be authorized by
13 resolution at any regular or special meeting, and each resolution shall take effect
14 immediately and need not be published or posted. No bonds shall be issued under the
15 provisions of this Chapter unless the issuance thereof shall have been approved by the
16 governing body of the county in which the project with respect to which the bonds were
17 issued is located.

18 (f) If at any time there shall be more than seven counties which are members of
19 the authority, the board of commissioners of the authority may create an executive
20 committee of the board of commissioners. The board may provide for the composition of
21 the executive committee so as to afford, in its judgment, fair representation of the
22 member counties. Any power of the authority under the provisions of this Chapter may
23 be exercised by the executive committee of the authority between meetings of the
24 authority, except that the executive committee may not overrule, reverse or disregard any
25 action of the board of commissioners of the authority. The membership of the executive
26 committee, terms of office of members thereof and the method of filling vacancies
27 therein shall be fixed by the rules or bylaws of the board of commissioners.

28 (g) No commissioner of an authority shall receive any compensation for the
29 performance of his duties under this Chapter; provided, however, that each commissioner
30 shall be reimbursed for his necessary expenses incurred while engaged in the
31 performance of duties but only from moneys provided by obligors.

32 (h) Within 30 days of the date of creation of the authority, the authority shall
33 advise the Department of Commerce and the Local Government Commission that an
34 authority has been formed. The authority shall also furnish such Department and such
35 Commission with (i) a list of its commissioners and its officers and (ii) a description of
36 any projects that are under consideration by the authority. The authority shall, from time
37 to time, notify the Department of Commerce and the Local Government Commission of
38 changes in the commissioners and officers, of counties which have become members of
39 the authority and of new projects under consideration by the authority.

40 **"§ 159D-4.1. Jurisdiction of the agency.**

41 All actions taken by counties, local officials, the Secretary of State, the State
42 Treasurer, and other interested parties to create and organize The North Carolina
43 Industrial Facilities and Pollution Control Financing Authority are ratified and confirmed.

1 All duties, powers, jurisdiction, and responsibilities vested by statute or by contract in the
2 authority are transferred to and vested in the North Carolina Capital Facilities Finance
3 Agency, subject to the provisions of this Article. Upon this transfer, the agency is
4 responsible for all duties and obligations of the authority entered into or incurred, by
5 contract or otherwise, before the transfer. Particularly, the agency is responsible for all
6 matters relating to any outstanding bonds of the authority to the same extent that the
7 authority was responsible for them before the date of transfer. The agency for all
8 purposes assumes the role and is the legal successor of the authority. Upon this transfer,
9 the authority is dissolved.

10 **"§ 159D-5. General powers.**

11 The ~~authority~~-agency shall have all of the powers necessary or convenient to carry out
12 and effectuate the purposes and provisions of this ~~Chapter, Article, including, but without~~
13 ~~limiting the generality of the foregoing, the powers:~~ including all of the following:

- 14 (1) To adopt bylaws for the regulation of its affairs and the conduct of its
15 business and to prescribe rules, regulations and policies in connection
16 with the performance of its functions and duties;
- 17 (2) To adopt an official seal and alter the same at pleasure;
- 18 (3) To maintain an office at such place or places as it may determine;
- 19 (4) To sue and be sued in its own name, plead and be impleaded;
- 20 (5) To receive, administer and comply with the conditions and requirements
21 respecting any gift, grant or donation of any property or money;
- 22 (6) To make and execute financing agreements, security documents and
23 other contracts and instruments necessary or convenient in the exercise
24 of the powers and functions of the ~~authority~~-agency under this ~~Chapter;~~
25 Article;
- 26 (7) To acquire by purchase, lease, gift or otherwise, but not by eminent
27 domain, or to obtain options for the acquisition of any property, real or
28 personal, improved or unimproved, and interests in land less than the fee
29 thereof, for the construction, operation or maintenance of any project;
- 30 (8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant
31 options for any such purposes with respect to, any real or personal
32 property or interest therein;
- 33 (9) To pledge or assign revenues of the ~~authority~~-agency;
- 34 (10) To construct, acquire, own, repair, maintain, extend, improve,
35 rehabilitate, renovate, furnish and equip one or more projects and to pay
36 all or any part of the costs thereof from the proceeds of bonds of the
37 ~~authority~~-agency or from any contribution, gift or donation or other
38 funds made available to the ~~authority~~-agency for such purpose;
- 39 (11) To fix, charge and collect revenues with respect to any project;
- 40 (12) To employ consulting engineers, architects, attorneys, real estate
41 counselors, appraisers and such other consultants and employees as may
42 be required in the judgment of the ~~authority~~-agency and to fix and pay
43 their compensation from funds available to the ~~authority~~-agency therefor

1 and to select and retain subject to approval of the Local Government
2 Commission the financial consultants, underwriters and bond attorneys
3 to be associated with the issuance of any bonds and to pay for services
4 rendered by underwriters, financial consultants or bond attorneys out of
5 the proceeds of any such issue with regard to which the services were
6 performed; and

- 7 (13) To do all acts and things necessary, convenient or desirable to carry out
8 the purposes, and to exercise the powers ~~herein granted.~~ granted in this
9 Article.

10 **"§ 159D-6. Bonds.**

11 (a) The ~~authority-agency is hereby~~ authorized to provide for the issuance, at one
12 time or from time to time, of bonds of the ~~authority-agency~~ for the purpose of paying all
13 or any part of the cost of any project. The principal of, the interest on and any premium
14 payable under the redemption of such bonds shall be payable solely from the funds herein
15 authorized for such payment. The bonds of each issue shall bear interest as may be
16 determined by the Local Government Commission of North Carolina with the approval of
17 the ~~authority-agency~~ and the obligor irrespective of the limitations of G.S. 24-1.1, as
18 amended, and successor provisions. The bonds of each issue shall be dated, shall mature
19 at such time or times not exceeding 30 years from the date of their issuance, and may be
20 made redeemable before maturity at such price or prices and under such terms and
21 conditions, as may be fixed by the ~~authority-agency~~ prior to the issuance of the bonds.
22 The ~~authority-agency~~ shall determine the form and the manner of execution of the bonds,
23 including any interest coupons to be attached thereto, and shall fix the denomination or
24 denominations of the bonds and the place or places of payment of principal and interest.
25 In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears
26 on any bonds or coupons ~~shall cease~~ ceases to be ~~such-that~~ officer before the delivery of
27 ~~such-the~~ bonds, ~~such-the~~ signature or ~~such-the~~ facsimile shall nevertheless be valid and
28 sufficient for all purposes the same as if ~~he-the~~ officer had remained in office until such
29 delivery. The ~~authority-agency~~ may also provide for the authentication of the bonds by a
30 trustee or fiscal agent. ~~The bonds may be issued in coupon or in fully registered form, or~~
31 ~~both, as the authority may determine, and provision may be made for the registration of~~
32 ~~any coupon bonds as to principal alone and also as to both principal and interest, and for~~
33 ~~the reconversion into coupon bonds of any bonds registered as to both principal and~~
34 ~~interest, and for the interchange of registered and coupon bonds.~~

35 (b) The proceeds of the bonds of each issue shall be used solely for the payment of
36 the cost of the project or projects, or a portion thereof, for which ~~such-the~~ bonds ~~shall~~
37 ~~have been~~ were issued, and shall be disbursed in such manner and under such restrictions,
38 if any, as the ~~authority-agency~~ may provide in the financing agreement and the security
39 document. If the proceeds of the bonds of any issue, by reason of increased construction
40 costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds
41 may in like manner be issued to provide the amount of such deficiency.

1 (c) The proceeds of bonds issued pursuant to this Article shall not be used to
2 refinance the cost of a project. For the purposes of this section, a cost of a project is
3 considered refinanced if both of the following conditions are met:

4 (1) The cost is initially paid from sources other than bond proceeds, and the
5 original expenditure is to be reimbursed from bond proceeds.

6 (2) The original expenditure was paid more than 60 days before the agency
7 took some action indicating its intent that the expenditure would be
8 financed or reimbursed from bond proceeds.

9 (d) Notwithstanding subsection (c) of this section, preliminary expenditures that
10 are incurred prior to the commencement of the acquisition, construction, or rehabilitation
11 of a project, such as architectural costs, engineering costs, surveying costs, soil testing
12 costs, bond issuance costs, and other similar costs, may be reimbursed from bond
13 proceeds even if these costs are incurred or paid more than 60 days prior to the agency's
14 action. This exception that allows preliminary expenditures to be reimbursed from bond
15 proceeds, whether or not they are incurred or paid within 60 days of the agency's action,
16 does not include costs that are incurred incident to the commencement of the construction
17 of a project, such as expenditures for land acquisition and site preparation. In any event,
18 an expenditure originally paid before the agency took some action indicating its intent
19 that the expenditures would be financed or reimbursed from bond proceeds may be
20 reimbursed from bond proceeds only if the agency finds that reimbursing those costs
21 from bond proceeds will promote the purposes of this Article.

22 ~~The authority may issue interim receipts or temporary bonds, with or without coupons,~~
23 ~~exchangeable for definitive bonds when such bonds have been executed and are available~~
24 ~~for delivery. The authority may also provide for the replacement of any bonds which~~
25 ~~shall become mutilated or shall be destroyed or lost.~~

26 (e) Bonds may be issued under the provisions of this ~~Chapter~~ Article without
27 obtaining, except as otherwise expressly provided in this ~~Chapter~~ Article, the consent of
28 the ~~State or of any political subdivision or of any agency of either thereof,~~ State or of any
29 political subdivision and without any other proceedings or the happening of any
30 conditions or things other than those proceedings, conditions or things ~~which are~~
31 specifically required by this ~~Chapter~~ Article and the provisions of the financing
32 agreement and security document authorizing the issuance of such bonds and securing the
33 same.

34 **"§ 159D-7. Approval of ~~project.~~ project by Secretary of Commerce.**

35 (a) Approval Required. – No bonds may be issued by the ~~authority~~ agency
36 pursuant to this Article unless the project for which ~~the~~ their issuance ~~thereof~~ is proposed
37 is first approved by the Secretary of Commerce. The ~~authority~~ agency shall file an
38 application for approval of its proposed project with the Secretary of Commerce, and
39 shall notify the Local Government Commission of such filing.

40 (b) Findings. – The Secretary shall not approve any proposed project unless ~~he~~
41 shall ~~make~~ the Secretary makes all of the following, applicable findings:

42 (1) In the case of a proposed industrial project,

- 1 a. That the operator of the proposed project pays, or has agreed to
2 pay thereafter, an average weekly manufacturing wage that (i)
3 ~~which~~ is above the average weekly manufacturing wage paid in
4 the county in which the project is to be located or (ii) ~~which~~ is
5 not less than ten percent (10%) above the average weekly
6 manufacturing wage paid in the State; and
- 7 b. That the proposed project will not have a materially adverse
8 effect on the ~~environment~~; environment.
- 9 (2) In the case of a proposed pollution control project, that such project will
10 have a materially favorable impact on the environment or will prevent
11 or diminish materially the impact of pollution which would otherwise
12 ~~occur~~; and occur.
- 13 (2a) In the case of a hazardous waste facility or low-level radioactive waste
14 facility ~~which~~ that is used as a reduction, recovery or recycling facility,
15 that such project will further the waste management goals of North
16 Carolina and will not have an adverse effect upon public health or a
17 significant adverse effect on the ~~environment~~; and environment.
- 18 (3) In any case (whether the proposed project is an industrial or a pollution
19 control project),
- 20 a. That the jobs to be generated or saved, directly or indirectly, by
21 the proposed project will be large enough in number to have a
22 measurable impact on the area immediately surrounding the
23 proposed project and will be commensurate with the size and
24 cost of the proposed project,
- 25 b. That the proposed operator of the proposed project has
26 demonstrated or can demonstrate the capability to operate such
27 project, and
- 28 c. That the financing of such project by the ~~authority~~ agency will
29 not cause or result in the abandonment of an existing industrial or
30 manufacturing facility of the proposed operator or an affiliate
31 elsewhere within the State unless the facility is to be abandoned
32 because of obsolescence, lack of available labor in the area, or
33 site limitations.

34 (c) Initial Operator. – ~~In no case shall the Secretary of Commerce~~ If the initial
35 proposed operator of a project is not expected to be the operator for the term of the bonds
36 proposed to be issued, the Secretary may make the findings required pursuant to
37 subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The
38 initial operator shall be identified in the application for approval of the proposed project.

39 (d) Public Hearing. – The Secretary of Commerce shall not approve any proposed
40 project pursuant to this section unless the governing body of the county in which the
41 project is located has first conducted a public hearing and, at or after the public hearing,
42 approved in principle the issuance of bonds under this Article for the purpose of paying
43 all or part of the cost of the proposed project. Notice of the public hearing shall be

1 published at least once in at least one newspaper of general circulation in the county not
2 less than 14 days before the public hearing. The notice shall describe generally the bonds
3 proposed to be issued and the proposed project, including its general location, and any
4 other information the governing body considers appropriate or the Secretary of
5 Commerce prescribes for the purpose of providing the Secretary with the views of the
6 community. The notice shall also state that following the public hearing the agency
7 intends to file an application for approval of the proposed project with the Secretary of
8 Commerce.

9 (e) Certificate of Department of Environment and Natural Resources. – The
10 Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and
11 (2) of this section unless he shall have the Secretary has first received a certification from
12 the Department of Environment and Natural Resources that, in the case of a proposed
13 industrial project, the proposed project will not have a materially adverse effect on the
14 environment and that, in the case of a proposed pollution control project, the proposed
15 project will have a materially favorable impact on the environment or will prevent or
16 diminish materially the impact of pollution which would otherwise occur. In no case shall
17 the Secretary of Commerce shall not make the findings required by subdivision (b)
18 (2a) of this section unless he shall have the Secretary has first received a certification
19 from the Department of Environment and Natural Resources that the proposed project is
20 environmentally sound, will not have an adverse effect on public health and will further
21 the waste management goals of North Carolina. In any case where the Secretary shall
22 make—The Secretary of Commerce shall deliver a copy of the application to the
23 Department of Environment and Natural Resources. The Department of Environment and
24 Natural Resources shall provide each certification to the Secretary of Commerce within
25 seven days after the applicant satisfactorily demonstrates to it that all permits, including
26 environmental permits, necessary for the construction of the proposed project have been
27 obtained, unless the agency consents to a longer period of time.

28 (f) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of
29 the required findings respecting a proposed industrial project, except that prescribed in
30 subdivision (b)(1)a of this section, the Secretary may, in his—the Secretary's discretion,
31 approve the proposed project if he shall have the Secretary has received (i) a resolution of
32 the governing body of the county in which the proposed project is to be located
33 requesting that the proposed project be approved notwithstanding that the operator will
34 not pay an average weekly manufacturing wage above the average weekly manufacturing
35 wage in the county and (ii) a letter from an appropriate State official, selected by the
36 Secretary, to the effect that unemployment in the county is especially severe.

37 (g) Rules. – To facilitate his—the Secretary's review of each proposed project, the
38 Secretary may require the authority—agency to obtain and submit such data and
39 information about such project as the Secretary may prescribe. In addition, the Secretary
40 may, in his discretion, request the authority to hold a public hearing on the proposed
41 project for the purpose of providing the Secretary directly with the views of the
42 community to be affected.—The Secretary may also prescribe such forms and such rules

1 ~~and regulations as he shall deem~~ the Secretary considers reasonably necessary to
2 implement the provisions of this section.

3 (h) Certificate of Approval. – If the Secretary approves the proposed project, ~~he~~
4 the Secretary shall prepare a certificate of approval evidencing such approval and setting
5 forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be published in a
6 newspaper of general circulation within the county in which the proposed project is to be
7 located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B
8 of the General Statutes ~~of North Carolina~~ only by an action filed, within 30 days after
9 notice of such findings and approval shall have been so published, in the Superior Court
10 of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such
11 action, but if no such action is filed within the 30 days herein prescribed, the validity of
12 such approval shall be conclusively presumed, and no court shall have authority to
13 inquire into such approval. Copies of the certificate of approval of the proposed project
14 will be given to the ~~authority, agency,~~ the governing body of the county in which the
15 proposed project is to be located and the secretary of the Local Government Commission.

16 ~~Such~~ The certificate of approval shall become effective immediately following the
17 expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final
18 determination by any court of any action timely filed pursuant to this section. ~~Such~~ The
19 certificate shall expire one year after its date unless extended by the Secretary who shall
20 not extend ~~such~~ the certificate unless ~~he shall~~ the Secretary again ~~approve~~ approves the
21 proposed project as provided in this section. If bonds are issued within that year pursuant
22 to the authorization of this Article or Chapter 159C of the General Statutes to pay all or
23 part of the costs of the project, however, the certificate expires three years after the date
24 of the first issuance of the bonds.

25 (i) Certificate Issued Under Chapter 159C Effective. – Any certificate of approval with
26 respect to a project which has become effective pursuant to G.S. 159C-7 ~~shall be deemed~~
27 ~~to satisfy~~ satisfies the requirements of this section to the extent that the findings made by
28 the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be
29 made by the Secretary pursuant ~~hereto~~ to this section.

30 **"§ 159D-8. Approval of bonds.**

31 (a) No bonds may be issued by the ~~authority, agency~~ pursuant to this Article unless
32 the issuance ~~thereof~~ is first approved by the Local Government Commission.

33 The ~~authority, agency~~ shall file an application for approval of its proposed bond issue
34 with the secretary of the Local Government Commission, and shall notify the Secretary
35 of the Department of Commerce of such filing.

36 (b) In determining whether a proposed bond issue should be approved, the Local
37 Government Commission may consider, without limitation, the following:

- 38 (1) Whether the proposed operator and obligor have demonstrated or can
39 demonstrate the financial responsibility and capability to fulfill their
40 obligations with respect to the financing agreement. In making such
41 determination, the commission may consider the operator's experience
42 and the obligor's ratio of current assets to current liabilities, net worth,
43 earnings trends and coverage of fixed charges, the nature of the industry

1 or business involved and its stability and any additional security such as
2 insurance, guaranties or property to be pledged or secure such bonds.

3 (2) Whether the political subdivisions in or near which the proposed project
4 is to be located have the ability to cope satisfactorily with the impact of
5 such project and to provide, or cause to be provided, the public facilities
6 and services, including utilities, that will be necessary for such project
7 and on account of any increase in population which are expected to
8 result therefrom.

9 (3) Whether the proposed date and manner of sale will have an adverse
10 effect upon any scheduled or anticipated sale of obligations by the State
11 or any political subdivision or any agency of either of them.

12 (c) To facilitate the review of the proposed bond issue by the commission, the
13 Secretary may require the ~~authority-agency~~ to obtain and submit such financial data and
14 information about the proposed bond issue and the security therefor, including the
15 proposed prospectus or offering circular, the proposed financing agreement and security
16 document and annual and other financial reports and statements of the obligor, as the
17 Secretary may prescribe. The Secretary may also prescribe ~~such~~ forms and ~~such~~ rules and
18 ~~regulations as he shall deem that the Secretary considers~~ reasonably necessary to
19 implement the provisions of this section.

20 **"§ 159D-9. Sale of bonds.**

21 Bonds issued under this Article may be sold in such manner, either at public or private
22 sale, and for such price as the Local Government Commission ~~shall determine~~ determines
23 to be for the best interests of the ~~authority-agency~~ and effectuate best the purposes of this
24 ~~Chapter~~ Article irrespective of the interest limitations set forth in G.S. 24-1.1, as
25 amended, and successor ~~provisions provided that such sale shall be~~ provisions, as long as
26 the sale is approved by the authority-agency and the obligor.

27 **"§ 159D-10. Location of projects.**

28 ~~Except as provided in this section, any~~ Any project of the ~~authority-agency~~ shall be
29 located within the boundaries of a ~~county which is a member of the authority.~~ A portion
30 or portions of any project including, but not limited to, any real or personal property or
31 improvements necessary or convenient for the construction, maintenance, and operation
32 of the project, may be located in a county or counties other than the county in which the
33 principal part of the project is located so long as the additional portion or portions
34 constitute functionally appurtenant or incidental facilities and the governing body of each
35 other county in which the additional portion or portions of the project is or are located
36 approves the project. the State. Bonds may not be issued to finance any project or group
37 of projects in any county of the State unless the board of commissioners for the county in
38 which the project is located has consented to the location of the project within the county.

39 **"§ 159D-11. Financing agreements.**

40 (a) Every financing agreement shall provide that:

41 (1) Repealed by Session Laws 1987, c. 517, s. 7.

42 (2) The amounts payable under the financing agreement shall be sufficient
43 to pay all of the principal of and interest and redemption premium, if

- 1 any, and interest on the bonds ~~that shall be issued~~ by the ~~authority~~
2 agency to pay the cost of the project as ~~the same shall they~~ respectively
3 become due;
- 4 (3) The obligor shall pay all costs incurred by the ~~authority~~agency in
5 connection with the financing and administration of the project, except
6 as may be paid out of the proceeds of bonds or otherwise, including, but
7 without limitation, insurance costs, the cost of administering the
8 financing agreement and the security document and the fees and
9 expenses of the fiscal agent or trustee, paying agents, attorneys,
10 consultants and others;
- 11 (4) The obligor shall pay all the costs and expenses of operation,
12 maintenance and upkeep of the project; and
- 13 (5) The obligor's obligation to provide for the payment of the bonds in full
14 shall not be subject to cancellation, termination or abatement until ~~such~~
15 payment of the bonds or provision for payment has been ~~therefor shall~~
16 ~~be made~~.
- 17 (b) The financing agreement may be in the nature of:
- 18 (1) A sale and leaseback,
19 (2) A lease purchase,
20 (3) A conditional sale,
21 (4) An installment sale,
22 (5) A secured or unsecured loan,
23 (6) A loan and mortgage, or
24 (7) Another ~~Other~~ similar transaction.
- 25 (c) The financing agreement, if in the nature of a lease agreement, shall either
26 provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor
27 purchase, the project upon the expiration or termination of the financing agreement
28 subject to the condition that payment in full of the principal of, and the interest and any
29 redemption premium on, the bonds, or provision for payment has ~~therefor, shall have~~
30 ~~been made~~.
- 31 (d) The financing agreement may provide the ~~authority~~agency with rights and
32 remedies in the event of a default by the obligor thereunder including, without limitation,
33 any one or more of the following:
- 34 (1) Acceleration of all amounts payable under the financing agreement;
35 (2) Reentry and repossession of the project;
36 (3) Termination of the financing agreement;
37 (4) Leasing or sale or ~~fore-closure~~ ~~[sic]~~ foreclosure of the project to others;
38 and
39 (5) Taking whatever actions at law or in equity may appear necessary or
40 desirable to collect the amounts payable under, and to enforce covenants
41 made in, the financing agreement.
- 42 (e) The ~~authority's~~agency's interest in a project under a financing agreement may
43 be that of owner, lessor, lessee, conditional or installment vendor, mortgagee,

1 secured party or otherwise, but the ~~authority-agency~~ need not have any ownership or
2 possessory interest in the project.

3 (f) The ~~authority-agency~~ may assign all or any of its rights and remedies under the
4 financing agreement to the trustee or bondholders under the security document.

5 (g) ~~Any such~~ The financing agreement may contain ~~such any~~ additional provisions
6 ~~as in the determination of the authority-the agency considers~~ are necessary or convenient
7 to effectuate the purposes of this ~~Chapter- Article~~.

8 **"§ 159D-12. Security documents.**

9 (a) Bonds issued under the provisions of this ~~Chapter- Article~~ may be secured by a
10 security document which may be a trust instrument between the ~~authority-agency~~ and a
11 bank or trust company or individual within the State, or a bank or a trust company
12 without the State, as trustee. Such security document may pledge and assign the revenues
13 provided for the security of the bonds, including proceeds from the sale of any project, or
14 part thereof, insurance proceeds and condemnation awards, and may convey or mortgage
15 the project and other property to secure a bond issue.

16 The revenues and other funds derived from the project, except ~~such part thereof as~~
17 ~~may be necessary to provide reserves therefor, if any, any part necessary to provide~~
18 ~~reserves~~ shall be set aside at such regular intervals as may be provided in such security
19 document in a sinking fund which may be ~~thereby~~ pledged to, and charged with, the
20 payment of the principal of and the interest on such bonds as ~~the same shall they~~ become
21 due and the redemption price or the purchase price of bonds retired by call or purchase as
22 therein provided. Such pledge shall be valid and binding from the time when the pledge is
23 made. The revenues so pledged and thereafter received by the ~~authority-agency~~ shall
24 immediately be subject to the lien of such pledge without any physical delivery thereof
25 or further act, and the lien of any such pledge shall be valid and binding as against all
26 parties having claims of any kind in tort, contract or otherwise against the ~~authority-~~
27 ~~agency~~, irrespective of whether such parties have notice thereof. The use and disposition
28 of money to the credit of such sinking fund shall be subject to the provisions of the
29 security document. Such security document may contain such provisions for protecting
30 and enforcing the rights and remedies of the bondholders as may be reasonable and
31 proper and not in violation of law, including, without limitation, any one or more of the
32 following:

- 33 (1) Acceleration of all amounts payable under the security document;
- 34 (2) Appointment of a receiver to manage the project and any other property
35 mortgaged or assigned as security for the bonds;
- 36 (3) Foreclosure and sale of the project and any other property mortgaged or
37 assigned as security for the bonds; and
- 38 (4) Rights to bring and maintain such other actions at law or in equity as
39 may appear necessary or desirable to collect the amounts payable under,
40 or to enforce the covenants made in, the security document.

41 (b) It ~~shall be~~ is lawful for any bank or trust company incorporated under the laws
42 of this State which may act as depository of the proceeds of bonds, revenues or other
43 funds provided under this ~~Chapter- Article~~ to furnish such indemnifying bonds or to

1 pledge such securities as may be required by the ~~authority-agency~~. All expenses incurred
2 in carrying out the provisions of such security document may be treated as a part of the
3 cost of the project in connection with which bonds are issued or as an expense of
4 administration of such project.

5 The ~~authority-agency~~ may subordinate the bonds or its rights under the financing
6 agreement or otherwise to any prior, contemporaneous or future securities or obligations
7 or lien, mortgage or other security interest.

8 Any such security document may contain such additional provisions as in the
9 determination of the ~~authority-agency~~ are necessary or convenient or effectuate the
10 purposes of this ~~Chapter-Article~~.

11 **"§ 159D-13. Trust funds.**

12 Notwithstanding any other provisions of law to the contrary, all money received
13 pursuant to the authority of this ~~Chapter-Article~~, whether as proceeds from the sale of
14 bonds or as revenues, ~~shall be deemed to be~~ are trust funds to be held and applied solely
15 as provided in this ~~Chapter-Article~~. The security document may provide that any of ~~such~~
16 ~~moneys-the money~~ may be temporarily invested and reinvested pending ~~the-its~~
17 disbursement ~~thereof in such-any~~ securities and other investments as ~~shall be provided in~~
18 such security document, and shall provide that any officer with whom, or any bank or
19 trust company with which, ~~such moneys shall be~~ the money is deposited shall act as
20 trustee ~~of such moneys and shall hold and apply the same-it~~ for the purpose ~~hereof, of this~~
21 Article, subject to ~~such-any~~ regulations as ~~this Chapter-Article and such-the~~ security
22 document ~~may provide~~.

23 **"§ 159D-14. Tax exemption.**

24 The ~~authority-agency shall not be~~ is not required to pay any taxes on any project or on
25 any other property owned by the ~~authority-agency~~ under the provisions of this ~~Chapter~~
26 Article or upon the income ~~therefrom-from the property~~.

27 The interest on bonds issued by the ~~authority-agency shall be~~ is exempt from all
28 income taxes within the State.

29 All projects and all transactions ~~therefor shall be~~ for them are subject to taxation to
30 the extent ~~such projects and transactions they~~ would be subject to taxation if no public
31 body were involved ~~therewith-with them~~.

32 **"§ 159D-15. Construction contracts.**

33 The ~~authority-agency~~ may agree with the prospective operator that all contracts
34 relating to the acquisition, construction, installation and equipping of a project shall be
35 solicited, negotiated, awarded and executed by the prospective operator and its agents
36 subject only to such approval by the ~~authority-agency~~ as the ~~authority-agency~~ may require
37 in such agreement. Such agreement may provide that the ~~authority-agency~~ may, out of the
38 proceeds of bonds, make advances to or reimburse the operator for all or a portion of its
39 costs incurred in connection with such contracts.

40 **"§ 159D-16. Conflict of interest.**

41 If any officer, commissioner or employee of the ~~authority-agency shall be~~ is interested
42 either directly or indirectly in any contract with the ~~authority-agency~~, such interest shall
43 be disclosed to the ~~authority-agency~~ and shall be set forth in the minutes of the ~~authority~~,

1 ~~agency, and the officer, commissioner, employee or member having such interest therein~~
2 ~~shall not participate on behalf of the authority agency in the authorization of any such~~
3 ~~contract; provided, however, that this section shall the project. This section does not~~
4 ~~apply to the ownership of less than one per centum percent (1%) of the stock of any~~
5 ~~operator or obligor. Failure to take any or all actions necessary to carry out the purposes~~
6 ~~of this section shall does not affect the validity of bonds issued pursuant to the provisions~~
7 ~~of this Chapter. Article.~~

8 **"§ 159D-17. Credit of State not pledged.**

9 Bonds issued under the provisions of this ~~Chapter Article shall do not not be deemed~~
10 ~~to constitute a debt of the State or any political subdivision or any agency thereof or a~~
11 ~~pledge of the faith and credit of the State or any political subdivision or any such agency,~~
12 ~~subdivisions, but shall be payable solely from the revenues and other funds provided~~
13 ~~therefor for payment. Each bond issued under this Chapter shall contain on the face~~
14 ~~thereof its face a statement to the effect that the authority agency shall not be obligated to~~
15 ~~pay the same bonds or the interest thereon on it except from the revenues and other funds~~
16 ~~pledged therefor for payment and that neither the faith and credit nor the taxing power of~~
17 ~~the State or any political subdivision or any agency thereof is pledged to the payment of~~
18 ~~the principal of or the interest on such the bonds.~~

19 **"§ 159D-18. Bonds eligible for investment.**

20 Bonds issued by ~~an authority the agency~~ under the provisions of this ~~Chapter Article~~
21 ~~are hereby made securities in which all public officers and agencies of the State and all~~
22 ~~political subdivisions, and all insurance companies, trust companies, banking~~
23 ~~associations, investment companies, executors, administrators, trustees and other~~
24 ~~fiduciaries may properly and legally invest funds, including capital in their control or~~
25 ~~belonging to them.~~

26 **"§ 159D-19. Revenue refunding bonds.**

27 (a) The ~~authority agency is hereby authorized to provide by resolution for the~~
28 ~~issuance of refunding bonds of the authority agency for the purpose of refunding any~~
29 ~~bonds then outstanding which that shall have been issued under the provisions of this~~
30 ~~Chapter, Article, or under the provisions of Chapter 159C of the General Statutes,~~
31 ~~including the payment of any redemption premium thereon and any interest accrued or to~~
32 ~~accrue to the date of redemption of such bonds, and, if deemed considered advisable by~~
33 ~~the authority, agency, for either or both of the following additional purposes:~~

34 (1) Constructing improvements, additions, extensions or enlargements of
35 the project or projects in connection with which the bonds to be
36 refunded shall have been issued; and

37 (2) Paying all or any part of the cost of any additional project or projects.

38 (a1) The issuance of ~~such bonds, the maturities and other details thereof, the rights~~
39 ~~of the holders thereof, and the rights, duties and obligations of the authority agency in~~
40 ~~respect to the same shall be bonds are governed by the provisions of this Chapter which~~
41 ~~Article that relate to the issuance of bonds, insofar as such provisions may be appropriate~~
42 ~~therefor bonds.~~

1 The approvals required by G.S. 159D-7 and G.S. 159D-8 shall be obtained prior to the
2 issuance of any refunding ~~bonds; provided, however, bonds,~~ except that in the case where
3 the refunding bonds of all or a portion of an issue are to be issued solely for the purpose
4 of refunding outstanding bonds issued under this ~~Chapter, Article,~~ the approval required
5 by G.S. 159D-7 ~~shall not be~~ is not required as to the project financed with the bonds to be
6 refunded.

7 (b) Refunding bonds issued under this section may be sold or exchanged for
8 outstanding bonds issued under this ~~Chapter Article~~ and, if sold, the proceeds thereof
9 may be applied, in addition to any other authorized purposes, to the purchase, redemption
10 or payment of such outstanding bonds. Refunding bonds may be issued, in the
11 determination of the ~~authority, agency,~~ at any time not more than five years prior to the
12 date of maturity or maturities or the date selected for the redemption of the bonds being
13 refunded thereby. Pending the application of the proceeds of such refunding bonds, with
14 any other available funds, to the payment of the principal of and accrued interest and any
15 redemption premium on the bonds being refunded, and, if so provided or permitted in the
16 security document securing the ~~same, bonds~~ to the payment of any interest on such
17 refunding bonds, such proceeds may be invested in direct obligations of, or obligations
18 the principal of and the interest on which are unconditionally guaranteed by, the United
19 States of America ~~which shall if these obligations mature or which shall be~~ are subject to
20 redemption by the ~~holder thereof, at the option of such holder,~~ holder, at the holder's
21 option not later than the respective dates when the proceeds, together with the interest
22 accruing ~~thereon on them~~ will be required for the purposes intended.

23 **"§ 159D-20. No power of eminent domain.**

24 The ~~authority agency~~ shall not have any right or power to acquire any property
25 through the exercise of eminent domain or any proceedings in the nature of eminent
26 domain.

27 ~~"§ 159Dt Whenever the board of commissioners of the authority and the governing
28 bodies of two-thirds of the counties which are then members of the
29 authority shall by joint resolution determine that the purposes for which
30 the authority was formed have been substantially fulfilled and that all
31 bonds theretofore issued and all other obligations theretofore incurred by
32 the authority have been fully paid or satisfied, such board of
33 commissioners and governing bodies may declare the authority to be
34 dissolved. On the effective date of such joint resolution, the title to all
35 funds and other property owned by the authority at the time of such
36 dissolution shall vest as provided in said joint resolution, and possession of
37 such funds and other property shall forthwith be delivered as provided in
38 said joint resolution.~~

39 **"§ 159Dr III of Chapter 159.**

40 The authority shall, promptly following the close of each calendar year, submit an
41 annual report of its activities for the preceding year to the governing bodies of the
42 counties which are then members of the authority. Each such report shall set forth a

1 complete operating and financial statement covering the operations of the authority
2 during such year.

3 The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of
4 North Carolina entitled 'The Local Government Budget and Fiscal Control Act' shall have
5 no application to the authority.

6 **"§ 159D-23. Application of Article 9 of Chapter 25.**

7 The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary
8 notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial
9 Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] Code apply to
10 transactions under this ~~Chapter 159D Article~~ to the same extent ~~the provisions of such~~
11 ~~Article 9 would apply were as if~~ G.S. 25-9-104(e) and G.S. 25-9-302(6) hereby were
12 repealed.

13 **"§ 159D-24. Officers not liable.**

14 No ~~commissioner of any authority member of the Board of Directors of the agency~~
15 shall be subject to any personal liability or accountability by reason of ~~his the issuance or~~
16 execution of any bonds or the issuance thereof. bonds.

17 **"§ 159D-25. Additional method.**

18 The foregoing sections of this ~~Chapter Article~~ shall be deemed to provide an
19 additional and alternative method for the doing of the things authorized ~~thereby and shall~~
20 ~~be regarded as are~~ supplemental and additional to powers conferred by other laws, and
21 ~~shall not be regarded as in derogation of any powers now existing; provided, however,~~
22 that the laws. They do not derogate any other powers. The issuance of bonds or
23 refunding bonds under the provisions of this Chapter Article need not comply with the
24 requirements of any other law applicable to the issuance of bonds.

25 **"§ 159D-26. Liberal construction.**

26 This ~~Chapter, Article,~~ being necessary for the prosperity and welfare of the State and
27 its inhabitants, shall be liberally construed to effect ~~the purposes hereof. its purposes.~~

28 **"§ 159D-27. Inconsistent laws inapplicable.**

29 Insofar as the provisions of this ~~Chapter Article~~ are inconsistent with the provisions of
30 any general, special or local laws, or parts thereof, the provisions of this ~~Chapter Article~~
31 shall be controlling.

32 **"ARTICLE 2.**

33 **"PRIVATE EDUCATIONAL CAPITAL FACILITIES FINANCE ACT.**

34 **"§ 159D-35. Short title.**

35 This ~~Chapter Article~~ shall be known, and may be cited, as the 'Private ~~Educational~~
36 Capital Facilities Finance Act.'

37 **"§ 159D-36. Legislative findings.**

38 It is ~~hereby~~ declared that for the benefit of the people of the State of North Carolina,
39 the increase of their commerce, welfare and prosperity and the improvement of their
40 health and living conditions it is essential that they be given the fullest opportunity to
41 learn and to develop their intellectual capacities; that it is essential for institutions for
42 higher education and institutions for elementary and secondary education within the State
43 to be able to construct and renovate facilities to assist its citizens in achieving the fullest

1 development of their intellectual capacities; and that it is the purpose of this ~~Chapter~~
2 Article to provide a measure of assistance and an alternative method to enable private
3 institutions for higher education and institutions for elementary and secondary education
4 in the State to provide the facilities and the structures that are needed to accomplish the
5 purposes of this ~~Chapter, Article~~, all to the public benefit and good, to the extent and in
6 the manner provided herein, in this Article.

7 It is ~~hereby~~ further declared that this purpose will benefit the people as a way to
8 improve student learning, increase learning opportunities for all students, encourage the
9 use of different and innovative teaching methods, create new professional opportunities
10 for teachers, provide parents and students with expanded choices in the types of
11 educational opportunities that are available, and lower the overall cost of education to the
12 State and to parents and students.

13 The General Assembly also finds that the private sector often provides services and
14 opportunities to the people of the State of North Carolina in activities that constitute a
15 public purpose, and that these activities by the private sector are to be fostered and
16 encouraged. The people of the State of North Carolina will benefit from the enactment of
17 laws and creation of programs that assist the private sector in obtaining financing for
18 capital improvements of facilities that will be used in conducting these activities.

19 **"§ 159D-37. Definitions.**

20 As used or referred to in this ~~Chapter, Article~~, the following words and terms shall
21 have the following meanings, unless the context clearly indicates otherwise:

22 (1) 'Agency' means the North Carolina ~~Educational Capital Facilities~~
23 Finance Agency ~~created by this Chapter~~, or, should ~~said this agency~~ be
24 abolished or otherwise divested of its functions under this ~~Chapter~~,
25 Article, the public body succeeding it in its principal functions, or upon
26 which are conferred by law the rights, powers and duties given by this
27 ~~Chapter Article~~ to the agency.

28 (2a) 'Bonds' or 'notes' means the revenue bonds or bond anticipation notes,
29 respectively, authorized to be issued by the agency under this Article,
30 including revenue refunding bonds, notwithstanding that they may be
31 secured by a deed of trust or the full faith and credit of a participating
32 institution or any other lawfully pledged security of a participating
33 institution.

34 (2) 'Cost', as applied to any project or any portion ~~thereof~~ of a project
35 financed under the provisions of this ~~Chapter, Article~~, means all or any
36 part of the cost of construction, acquisition, alteration, enlargement,
37 reconstruction and remodeling of a project, including all lands,
38 structures, real or personal property, rights, rights-of-way, franchises,
39 easements and interests acquired or used for or in connection with a
40 project, the cost of demolishing or removing any buildings or structures
41 on land so acquired, including the cost of acquiring any lands to which
42 such buildings or structures may be moved, the cost of all machinery
43 and equipment, financing charges, interest prior to and during

1 construction and, if deemed advisable by the agency, for a period not
2 exceeding two years after the estimated date of completion of
3 construction, the cost of engineering and architectural surveys, plans
4 and specifications, the cost of consulting and legal services and other
5 expenses necessary or incident to determining the feasibility or
6 practicability of constructing or equipping a project, the cost of
7 administrative and other expenses necessary or incident to the
8 construction or acquisition of a project and the financing of the
9 construction or acquisition thereof, including reasonable provision for
10 working capital and a reserve for debt service, and the cost of
11 reimbursing any participating institution for any payments made for any
12 cost described above or the refinancing of any cost described above,
13 including any evidence of indebtedness incurred to finance such cost;
14 provided, however, that no payment shall be reimbursed or any cost or
15 indebtedness be refinanced if such payment was made or such cost or
16 indebtedness was incurred before November 25, 1981.

17 (3) ~~"Project" means any one or more buildings, structures, improvements,~~
18 ~~additions, extensions, enlargements or other facilities for use primarily~~
19 ~~as a dormitory or other housing facility, including housing facilities for~~
20 ~~student nurses, a dining hall and other food preparation and food service~~
21 ~~facilities, student union, administration building, academic building,~~
22 ~~library, laboratory, research facility, classroom, athletic facility, health~~
23 ~~care facility, laundry facility, and maintenance, storage or utility facility~~
24 ~~and other structures or facilities related thereto or required or useful for~~
25 ~~the instruction of students or the conducting of research or the operation~~
26 ~~of an institution for higher education or an institution for elementary and~~
27 ~~secondary education, including parking and other facilities or structures~~
28 ~~essential or convenient for the orderly conduct of such an institution, or~~
29 ~~any combination of the foregoing, and shall also include landscaping,~~
30 ~~site preparation, furniture, equipment and machinery and other similar~~
31 ~~items necessary or convenient for the operation of an institution for~~
32 ~~higher education or an institution for elementary and secondary~~
33 ~~education or a particular facility, building or structure thereof in the~~
34 ~~manner for which its use is intended but shall not include such items as~~
35 ~~books, fuel, supplies or other items the costs of which are customarily~~
36 ~~deemed to result in a current operating charge, and shall not include any~~
37 ~~facility used or to be used for sectarian instruction or as a place of~~
38 ~~religious worship nor any facility that is used or to be used primarily in~~
39 ~~connection with any part of the program of a school or department of~~
40 ~~divinity for any religious denomination.~~

41 (4) ~~'Bonds' or 'notes' means the revenue bonds or bond anticipation notes,~~
42 ~~respectively, authorized to be issued by the agency under this Chapter,~~
43 ~~including revenue refunding bonds, notwithstanding that the same may~~

1 be secured by a deed of trust or the full faith and credit of a participating
2 institution or any other lawfully pledged security of a participating
3 institution.

4 (4a) 'Institution for elementary and secondary education' means a nonprofit
5 institution within the State of North Carolina authorized by law and
6 engaged or to be engaged in the providing of kindergarten, elementary,
7 or secondary education, or any combination thereof. of these.

8 (5) 'Institution for higher education' means a nonprofit private educational
9 institution within the State of North Carolina authorized by law to
10 provide a program of education beyond the high school level.

11 (6) 'Participating institution' means an institution for higher ~~education or~~
12 education, an institution for elementary and secondary education
13 education, or a special purpose institution that, pursuant to the
14 provisions of this ~~Chapter, Article,~~ Article, undertakes the financing,
15 refinancing, acquiring, constructing, equipping, providing, owning,
16 repairing, maintaining, extending, improving, rehabilitating, ~~renovating~~
17 renovating, or furnishing of a project or undertakes the refunding or
18 refinancing of obligations or of a deed of trust or a mortgage or of
19 advances as provided in this ~~Chapter, Article.~~

20 (6a) 'Project' means any one or more buildings, structures, equipment,
21 improvements, additions, extensions, enlargements, or other facilities
22 comprising any of the following:

23 a. Educational facilities used by an institution for higher education
24 or an institution for elementary and secondary education,
25 including dormitories and other housing facilities, housing
26 facilities for student nurses, dining halls and other food
27 preparation and food service facilities, student unions,
28 administration buildings, academic buildings, libraries,
29 laboratories, research facilities, classrooms, athletic facilities,
30 health care facilities, laundry facilities, and other structures or
31 facilities related to these facilities or required or useful for the
32 instruction of students, the conducting of research, or the
33 operation of the institution.

34 b. Water systems or facilities, including all plants, works,
35 instrumentalities, and properties used or useful in obtaining,
36 conserving, treating, and distributing water for domestic or
37 industrial use, irrigation, sanitation, fire protection, or any other
38 public or private use.

39 c. Sewage disposal systems or facilities, including all plants, works,
40 instrumentalities, and properties used or useful in the collection,
41 treatment, purification, or disposal of sewage, other than facilities
42 constituting a water pollution control facility.

- 1 d. Public transportation systems, facilities, or equipment, including
2 bus, truck, ferry, and railroad terminals, depots, trackages,
3 vehicles, and ferries, and mass transit systems.
4 e. Public parking lots, areas, garages, and other public vehicular
5 parking structures and facilities.
6 f. Public auditoriums, gymnasiums, stadiums, and convention
7 centers.
8 g. Recreational facilities.
9 h. Student housing facilities to be owned or operated by an owner
10 or operator other than an institution for higher education or an
11 institution for elementary and secondary education.

12 The term 'project' also includes landscaping, site preparation, furniture,
13 equipment and machinery, and other similar items necessary or
14 convenient for operation of a particular facility, building, or structure in
15 the manner for which its use is intended, and maintenance, storage, or
16 utility facilities and other structures or facilities related to, required, or
17 useful for the operation of the facilities, including parking and other
18 facilities or structures essential or convenient for the orderly conduct of
19 the facility. The term 'project' does not include such items as books,
20 fuel, or supplies or other items the costs of which customarily result in a
21 current operating charge. The term does not include any facility used or
22 to be used for sectarian instruction or as a place of religious worship nor
23 any facility that is used or to be used primarily in connection with any
24 part of the program of a school or department of divinity for any
25 religious denomination.

- 26 (6b) 'Special purpose institution' means a for-profit or not-for-profit
27 corporation or similar entity that undertakes any of the activities set
28 forth in sub-subdivisions (6a)b. through (6a)h. of this section.

- 29 (7) 'State' means the State of North Carolina.

30 **"§ 159D-38. Educational-Capital facilities finance agency.**

31 (a) There is ~~hereby~~ created a body politic and corporate to be known as 'North
32 Carolina ~~Educational-Capital~~ Facilities Finance Agency' which shall be constituted a
33 public agency and an instrumentality of the State for the performance of essential public
34 functions. The agency shall be governed by a board of directors composed of seven
35 members. Two of the members of ~~said~~ the board shall be the State Treasurer and the State
36 Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall
37 be residents of the State and shall not hold other public office. The General Assembly
38 upon the recommendation of the President Pro Tempore of the Senate shall appoint one
39 director in accordance with G.S. 120-121, the General Assembly upon the
40 recommendation of the Speaker of the House of Representatives shall appoint one
41 director in accordance with G.S. 120-121, and the Governor shall appoint three ~~of the~~
42 directors of the agency. The five appointive directors of the agency shall be appointed for
43 staggered four-year terms, two being appointed initially for one year by the President of

1 the Senate and the Speaker of the House, respectively, and one for two years, one for
2 three years and one for four years, respectively, as designated by the Governor. ~~Each~~
3 ~~Governor, and each~~ director shall continue in office until ~~his~~ a successor shall be ~~is~~ duly
4 appointed and qualified, except that any person appointed to fill a vacancy shall serve
5 only for the unexpired term. Any vacancy in a position held by an appointive member
6 shall be filled by a new appointment made by the officer who originally made ~~such~~ the
7 appointment. Any member of the board of directors ~~shall be~~ is eligible for reappointment.
8 Each appointive member of the board of directors may be removed by the Governor for
9 misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing,
10 unless the ~~same~~ notice and hearing are in writing expressly waived. Each appointive
11 member of the board of directors ~~before entering upon his duties~~ shall take an oath of
12 office to administer the duties of ~~his~~ office faithfully and impartially and a record of ~~such~~
13 the oath shall be filed in the office of the Secretary of State. The Governor shall designate
14 from among the members of the board of directors a ~~chairman and a vice-chairman~~. The
15 ~~terms of the chairman and vice-chairman shall~~ chair and a vice-chair, whose terms extend
16 to the earlier of either two years or the date of expiration of their then current terms as
17 members of the board of directors of the agency. The board of directors shall elect and
18 appoint and prescribe the duties of a secretary-treasurer and ~~such~~ any other officers ~~as it~~
19 ~~shall deem it considers~~ necessary or advisable, which officers need not be members of the
20 board of directors.

21 (b) No part of the revenues or assets of the agency shall inure to the benefit of or
22 be distributable to its members or officers or other private persons. The members of the
23 agency shall receive no compensation for their services but shall be entitled to receive,
24 for attendance at meetings of the agency or any committee thereof and for other services
25 for the agency, reimbursement for such actual expenses as may be incurred for travel and
26 subsistence in the performance of official duties and such per diem as is allowed by law
27 for members of other State boards, commissions and committees.

28 (c) The secretary-treasurer of the agency shall keep a record of the proceedings of
29 the agency and shall be custodian of all books, documents and papers filed with the
30 agency, the minute book or journal of the agency and its official seal. ~~He~~ The secretary-
31 treasurer shall have authority to cause copies to be made of all minutes and other records
32 and documents of the agency and to give certificates under the official seal of the agency
33 to the effect that such copies are true copies, and all persons dealing with the agency may
34 rely upon such certificates.

35 (d) Four members of the board of directors of the agency shall constitute a quorum
36 and the affirmative vote of a majority of the members present at a meeting of the board of
37 directors duly called and held shall be necessary for any action taken by the board of
38 directors of the ~~agency; provided, however, that the~~ agency. ~~The board of directors may~~
39 may, however, appoint an executive committee to act on behalf of ~~said~~ the board during
40 the period between regular meetings of said board, and said committee shall have full
41 power to act upon the vote of a majority of its members. No vacancy in the membership
42 of the agency ~~shall impair~~ impairs the rights of a quorum to exercise all the rights and to
43 perform all the duties of the agency.

1 (e) The North Carolina ~~Educational~~ Capital Facilities Finance Agency shall be
2 contained within the Department of State Treasurer as if it had been transferred to that
3 department by a Type II transfer as defined in G.S. 143A-6(b).

4 **"§ 159D-39. General powers.**

5 The agency shall have all of the powers necessary or convenient to carry out and
6 effectuate the purposes and provisions of this ~~Chapter, Article, including, but without~~
7 ~~limiting the generality of the foregoing, the power:~~ including all of the following:

- 8 (1) To make and execute contracts and agreements necessary or incidental
9 to the exercise of its powers and duties under this ~~Chapter, Article,~~
10 including loan agreements and agreements of sale or leases with,
11 mortgages and deeds of trust and conveyances to participating
12 institutions, persons, firms, corporations, governmental agencies and
13 others and including credit enhancement ~~agreements;~~ agreements.
- 14 (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for
15 the acquisition of any property, real or personal, improved or
16 unimproved, including interests in land in fee or less than fee for any
17 project, upon such terms and at such cost as shall be agreed upon by the
18 owner and the ~~agency;~~ agency.
- 19 (3) To arrange or contract with any county, city, town or other political
20 subdivision or instrumentality of the State for the opening or closing of
21 streets or for the furnishing of utility or other services to any ~~project;~~
22 project.
- 23 (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a
24 deed of trust in, or otherwise dispose of, or to grant options for ~~any such~~
25 these purposes with respect to, any real or personal property or interest
26 ~~therein;~~ in property.
- 27 (5) To pledge or assign any money, purchase price payments, rents, loan
28 repayments, charges, fees or other revenues, including any federally
29 guaranteed securities and moneys received ~~therefrom~~ from them
30 whether ~~such~~ the securities are initially acquired by the agency or a
31 participating institution, and any proceeds derived by the agency from
32 sales of property, insurance, condemnation awards or other ~~sources;~~
33 sources.
- 34 (6) To pledge or assign the revenues and receipts from any project and from
35 any loan agreement, agreement of ~~sale~~ sale, or ~~lease of the lease,~~
36 including any loan repayments, purchase price payments, ~~rent and rent,~~
37 or other income received ~~thereunder;~~ under a loan agreement, agreement
38 of sale, or lease.
- 39 (7) To borrow money as ~~herein~~ provided in this Article to carry out and
40 effectuate its corporate purposes and to issue ~~in evidence thereof~~ bonds
41 and notes for the purpose of providing funds to pay all or any part of the
42 cost of any project, to lend money to any participating institution for the

- 1 acquisition of any federally guaranteed ~~securities~~ securities, and to issue
2 revenue refunding ~~bonds~~; bonds.
- 3 (8) To finance, refinance, acquire, construct, equip, provide, operate, own,
4 repair, maintain, extend, improve, rehabilitate, renovate and furnish any
5 project and to pay all or any part of the cost thereof from the proceeds of
6 bonds or notes or from any contribution, gift or donation or other funds
7 available to the agency for ~~such purpose~~; this purpose.
- 8 (9) To fix, revise, charge and collect or cause to be fixed, revised, charged
9 and collected purchase price payments, rents, loan repayments, fees,
10 rates and charges for the use of, or services rendered by, any ~~project~~;
11 project.
- 12 (10) To employ fiscal consultants, consulting engineers, architects, attorneys,
13 feasibility consultants, appraisers and ~~such any other~~ consultants and
14 employees as may be required in the judgment of the agency and to fix
15 and pay their compensation from funds available to the ~~agency therefor~~;
16 agency.
- 17 (11) To conduct studies and surveys respecting the need for projects and
18 their location, financing and ~~construction~~; construction.
- 19 (12) To apply for, accept, receive and agree to and comply with the terms
20 and conditions governing grants, loans, advances, contributions, interest
21 subsidies and other aid with respect to any project from federal and
22 State agencies or ~~instrumentalities~~; instrumentalities.
- 23 (13) To sue and be sued in its own name, plead and be ~~impleaded~~;
24 impleaded.
- 25 (14) To acquire and enter into commitments to acquire any federally
26 guaranteed security or federally insured mortgage note and to pledge or
27 otherwise use ~~any such the~~ federally guaranteed security or federally
28 insured mortgage note ~~in such manner as the agency deems as the~~
29 agency considers in its best interest to secure or otherwise provide a
30 source of repayment on any of its bonds or notes issued on behalf of any
31 participating institution to finance or refinance the cost of any ~~project~~;
32 project.
- 33 (15) To make loans to any participating institution for the cost of a project in
34 accordance with an agreement between the agency and the participating
35 ~~institution~~; institution.
- 36 (16) To make loans to a participating institution to refund outstanding loans,
37 obligations, deeds of trust or advances issued, made or given by ~~such~~
38 the participating institutions for the cost of a ~~project~~; project.
- 39 (17) To charge and to apportion among participating institutions its
40 administrative costs and expenses incurred in the exercise of its powers
41 and duties conferred by this ~~Chapter~~; Article.
- 42 (18) To adopt an official seal and alter ~~the same at pleasure~~; and it at
43 pleasure.

1 (19) To do all other things necessary or convenient to carry out the purposes
2 of this ~~Chapter~~ Article.

3 **"§ 159D-40. Criteria and requirements.**

4 In undertaking any project pursuant to this ~~Chapter~~ Article, the agency shall be
5 guided by and shall observe the following criteria and requirements; ~~provided that the~~
6 requirements listed below. The determination of the agency as to its compliance with
7 ~~such these~~ criteria and requirements shall be final and conclusive; is conclusive.

8 (1) No project shall be sold or leased nor any loan made to any participating
9 ~~institution for higher education or any institution for elementary and~~
10 ~~secondary education~~ that is not financially responsible and capable of
11 fulfilling its obligations, including its obligations under an agreement of
12 sale or lease or a loan agreement to make purchase price payments, to
13 pay rent, to make loan repayments, to operate, repair and maintain at its
14 own expense the project and to discharge ~~such any~~ other responsibilities
15 ~~as may be imposed under the agreement of sale or lease or loan~~
16 ~~agreement; agreement~~.

17 (2) Adequate provision shall be made for the payment of the principal of
18 and the interest on the bonds and any necessary reserves ~~therefor for~~
19 payment and for the operation, repair and maintenance of the project at
20 the expense of the participating ~~institution; institution~~.

21 (3) The public facilities, including utilities, and public services necessary
22 for the project will be made ~~available; and available~~.

23 (4) The projects shall be operated to serve and benefit the public and there
24 shall be no discrimination against any person based on race, creed, ~~color~~
25 color, or national origin.

26 **"§ 159D-41. Procedural requirements.**

27 Any participating ~~institution for higher education or any institution for elementary and~~
28 ~~secondary education~~ may submit to the agency, and the agency may consider, a proposal
29 for financing a project using ~~such~~ forms and following ~~such~~ instructions as ~~may be~~
30 prescribed by the agency. ~~Such~~ The proposal shall set forth the type and location of the
31 project and may include other information and data ~~available to the institution for higher~~
32 ~~education or the institution for elementary and secondary education~~ respecting the project
33 and the extent to which ~~such the~~ project conforms to the criteria and requirements set
34 forth in this ~~Chapter~~ Article. The agency may request the ~~institution for higher education~~
35 ~~or the institution for elementary and secondary education~~ applicant to provide additional
36 information and data respecting the project. The agency is authorized to make or cause to
37 be made ~~such any~~ investigation, surveys, studies, reports and reviews as in its judgment
38 are necessary and desirable to determine the feasibility and desirability of the project, the
39 extent to which the project will contribute to the health and welfare of the area in which it
40 will be located, the powers, experience, background, financial condition, record of
41 service and capability of the management of the ~~institution for higher education or the~~
42 ~~institution for elementary and secondary education~~, applicant, the extent to which the
43 project otherwise conforms to the criteria and requirements of this ~~Chapter~~ Article, and

1 ~~such any other factors as may be deemed the agency considers relevant or convenient in~~
2 ~~carrying out the purposes of this Chapter. Article.~~

3 **"§ 159D-42. Operations of projects; agreements of sale on leases; conveyance of**
4 **interest in projects.**

5 (a) The agency may sell or lease any project to a participating institution for
6 operation and maintenance or lend money to any participating institution ~~in such manner~~
7 ~~as shall to~~ effectuate the purposes of this ~~Chapter, Article,~~ under a loan agreement or an
8 agreement of sale or lease in form and substance not inconsistent ~~herewith. Any such~~
9 ~~with this Article. The loan agreement or agreement of sale or lease may include~~
10 provisions that:

11 (1) The participating institution shall, at its own expense, operate, repair
12 and maintain the project covered by ~~such agreement; the agreement.~~

13 (2) The purchase price payments to be made under the agreement of sale,
14 the rent payable under the agreement of lease or the loan repayments
15 under the loan agreement shall in the aggregate be not less than an
16 amount sufficient to pay all of the interest, principal and any redemption
17 premium on the bonds or notes issued by the agency to pay the cost of
18 the project sold or leased ~~thereunder~~ or with respect to which the loan
19 was ~~made; made.~~

20 (3) The participating institution shall pay all other costs incurred by the
21 agency in connection with the providing of the project covered by any
22 ~~such agreement, except such costs as may be paid out of the proceeds of~~
23 ~~bonds or notes or otherwise, including, but without limitation, including~~
24 insurance costs, the cost of administering the resolution authorizing the
25 issuance of, or any trust agreement securing, ~~such the~~ bonds or notes
26 and the fees and expenses of trustees, paying agents, attorneys,
27 ~~consultants and others; consultants, and others.~~

28 (4) The loan agreement or the agreement of sale or lease shall terminate not
29 earlier than the date on which all ~~such~~ bonds and all other obligations
30 incurred by the agency in connection with the project covered by ~~any~~
31 ~~such the~~ agreement are retired or provision for ~~such their~~ retirement is
32 ~~made; and made.~~

33 (5) The obligation of the participating institution to make loan repayments
34 or purchase price payments or to pay rent shall not be subject to
35 cancellation, termination or abatement by the participating institution
36 until the bonds have been retired or provision has been made for ~~such~~
37 ~~their~~ retirement.

38 (b) If the agency has acquired a possessory or ownership interest in any project it
39 has undertaken on behalf of a participating institution, it shall promptly convey, without
40 the payment of any consideration, all its right, title and interest in ~~such the~~ project to ~~such~~
41 ~~that~~ participating institution upon the retirement or provision for the retirement of all
42 bonds or notes issued and obligations incurred by the agency in connection with ~~such that~~
43 project.

1 **"§ 159D-43. Construction contracts.**

2 If the agency determines that the purposes of this ~~Chapter Article~~ will be more
3 effectively served, the agency in its discretion may award or cause to be awarded
4 contracts for the construction of any project on behalf of a participating institution upon a
5 negotiated basis as determined by the agency. The agency shall prescribe ~~such any~~ bid
6 security requirements and other procedures in connection with the award of ~~such the~~
7 contracts as in its judgment ~~shall will~~ protect the public interest. The agency may by
8 written contract engage the services of the participating institution in the construction of
9 ~~such the~~ project and may provide in ~~any such the~~ contract that ~~such the~~ participating
10 institution, subject to ~~such any~~ conditions and requirements consistent with the provisions
11 of this ~~Chapter Article~~ as ~~shall be~~ prescribed in ~~such the~~ contract, may act as an agent of,
12 or an independent contractor for, the agency for the performance of the functions
13 described ~~therein, in the contract~~ including the acquisition of the site and other real
14 property for ~~such the~~ project, the preparation of plans, specifications and contract
15 documents, the award of construction and other contracts upon a competitive or
16 negotiated basis, the construction of ~~such the~~ project directly by ~~such the~~ participating
17 institution, the inspection and supervision of construction, the employment of engineers,
18 architects, builders and other contractors and the provision of money to pay the cost
19 ~~thereof of these functions~~ pending reimbursement by the agency. ~~Any such The~~ contract
20 may provide that the agency may, out of proceeds of bonds or notes, make advances to or
21 reimburse the participating institution for its costs incurred in the performance of ~~such~~
22 ~~these~~ functions, and shall set forth the supporting documents required to be submitted to
23 the agency and the reviews, examinations and audits that ~~shall be are~~ required in
24 connection ~~therewith~~ to assure compliance with the provisions of this ~~Chapter Article~~ and
25 ~~such the~~ contract.

26 **"§ 159D-44. Credit of State not pledged.**

27 Bonds or notes issued under the provisions of this ~~Chapter Article~~ shall not be secured
28 by a pledge of the faith and credit of the State or of any political subdivision ~~thereof or be~~
29 ~~deemed to of the State, or~~ create an indebtedness of the State, or of any ~~such~~ political
30 subdivision ~~thereof, of the State~~ requiring any voter approval, but shall be payable solely
31 from the revenues and other funds provided ~~therefor, for payment~~. Each bond or note
32 issued under this ~~Chapter Article~~ shall contain on ~~the face thereof its face~~ a statement to
33 the effect that the agency ~~shall not be is not~~ obligated to pay ~~the same it~~ nor the interest
34 ~~thereon on it~~ except from the revenues and other funds pledged ~~therefor for its payment~~
35 and that neither the faith and credit nor the taxing power of the State or of any political
36 subdivision ~~thereof of the State~~ is pledged as security for the payment of the principal of
37 or the interest on ~~such the~~ bond or note.

38 Expenses incurred by the agency in carrying out the provisions of this ~~Chapter Article~~
39 may be made payable from funds provided pursuant to, or made available for use under,
40 this ~~Chapter Article~~ and no liability shall be incurred by the agency ~~hereunder under this~~
41 ~~Article~~ beyond the extent to which moneys ~~shall have~~ been so provided.

42 **"§ 159D-45. Bonds and notes.**

1 (a) The agency is hereby authorized to provide for the issuance, at one time or
2 from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the
3 agency to carry out and effectuate its corporate purposes. The principal of and the interest
4 on such bonds or notes shall be payable solely from funds provided under this ~~Chapter~~
5 Article for such payment. Any such notes may be made payable from the proceeds of
6 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,
7 such notes may be paid from any available revenues or other funds provided therefor.
8 The bonds or notes of each issue shall be dated and may be made redeemable before
9 maturity at the option of the agency at such price or prices and upon such terms and
10 conditions as may be determined by the agency. The bonds may also be made payable
11 from time to time on demand or tender for purchase by the owner upon such terms and
12 conditions as may be determined by the agency. Any such bonds or notes shall bear
13 interest at such rate or rates (including variable rates) as may be determined by the Local
14 Government Commission of North Carolina with the approval of the agency. Notes shall
15 mature at such time or times not exceeding 10 years from their date or dates and bonds
16 shall mature at such time or times not exceeding 40 years from their date or dates, as may
17 be determined by the agency. The agency shall determine the form and manner of
18 execution of the bonds or notes, including any interest coupons to be attached thereto,
19 and shall fix the denomination or denominations and the place or places of payment of
20 principal and interest, which may be any bank or trust company within or without the
21 State. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~
22 appears on any bonds or notes or coupons attached thereto ~~shall cease to be such to them~~
23 ceases to be that officer before the delivery thereof, such their delivery, the signature or
24 such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he
25 the officer had remained in office until such delivery. The agency may also provide for
26 the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes
27 may be issued in coupon or in registered form, or both, as the agency may determine, and
28 provision may be made for the registration of any coupon bonds or notes as to principal
29 alone and also as to both principal and interest, and for the reconversion into coupon
30 bonds or notes of any bonds or notes registered as to both principal and interest, and for
31 the interchange of registered and coupon bonds or notes. No bonds or notes may be
32 issued by the agency under this ~~Chapter Article~~ unless the issuance thereof is approved
33 by the Local Government ~~Commission of North Carolina~~ Commission.

34 (b) The agency shall file with the Secretary of the Local Government Commission
35 an application requesting approval of the issuance of ~~such the bonds or notes which shall~~
36 contain such notes. The application must include any information and ~~have attached to it~~
37 such documents concerning the proposed financing and prospective borrower, vendee or
38 lessee as the Secretary may require. ~~required by the Secretary.~~

39 In determining whether a proposed bond or note issue should be approved, the Local
40 Government Commission may consider, in addition to the criteria and requirements
41 ~~mentioned in this Chapter, Article,~~ the effect of the proposed financing upon any
42 scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies
43 or departments or by any unit of local government in the State.

1 The Local Government Commission shall approve the issuance of ~~such the~~ bonds or
2 notes if, upon the information and evidence it receives, it finds ~~and determines~~ that the
3 proposed financing will effectuate the purposes of this ~~Chapter Article~~.

4 Upon the filing with the Local Government Commission of a resolution of the agency
5 requesting that its bonds or notes be sold, ~~such the~~ bonds or notes may be sold in such
6 manner, either at public or private sale, and for such price as the Local Government
7 Commission ~~shall determine~~ determines to be for the best interests of the agency and to
8 effectuate best the purposes of this ~~Chapter Article~~, ~~provided that such sale shall be as~~
9 long as the sale is approved by the agency.

10 (c) The proceeds of any bonds or notes shall be used solely for the purposes for
11 which issued and shall be disbursed in such manner and under such restrictions, if any, as
12 the agency may provide in the resolution authorizing the issuance of, or any trust
13 agreement securing, ~~such the~~ bonds or notes.

14 (d) Prior to the preparation of definitive bonds, the agency may, under like
15 restrictions, issue interim receipts or temporary bonds, with or without coupons,
16 exchangeable for definitive bonds, when ~~such bonds shall the~~ bonds have been executed
17 and are available for delivery. The agency may also provide for the replacement of any
18 bonds or notes which ~~shall become~~ mutilated or ~~shall be are~~ destroyed or lost.

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

26 **"§ 159D-46. Trust agreement or resolution.**

27 In the discretion of the agency any bonds or notes issued under the provisions of this
28 ~~Chapter Article~~ may be secured by a trust agreement by and between the agency and a
29 corporate trustee, which may be any trust company or bank having the powers of a trust
30 company within or without the State. Such trust agreement or the resolution authorizing
31 the issuance of such bonds or notes may pledge or assign all or any part of the revenues
32 of the agency received pursuant to this ~~Chapter Article~~, including, without limitation,
33 fees, loan repayments, purchase price payments, rents, charges, insurance proceeds,
34 condemnation awards and any other revenues and funds received in connection with any
35 project and may grant a deed of trust or a mortgage on any project. Such trust agreement
36 or resolution may contain such provisions for protecting and enforcing the rights and
37 remedies of the holders of any such bonds or notes as may be reasonable and proper and
38 not in violation of law, including covenants setting forth the duties of the agency in
39 relation to the purposes to which bond or note proceeds may be applied, the disposition or
40 pledging of the revenues of the agency, including any payments in respect of any
41 federally guaranteed security or any federally insured mortgage note, the duties of the
42 agency with respect to the acquisition, construction, maintenance, repair and operation of
43 any project, the fees, loan repayments, purchase price payments, rents and charges to be

1 fixed and collected in connection therewith, the terms and conditions for the issuance of
2 additional bonds or notes, and the custody, safeguarding and application of all moneys.
3 All bonds issued under this ~~Chapter Article~~ shall be equally and ratably secured by a
4 pledge, charge, and lien upon revenues provided for in such trust agreement or resolution,
5 without priority by reason of number, or of dates of bonds, execution, or delivery, in
6 accordance with the provisions of this ~~Chapter Article~~ and of such trust agreement or
7 resolution; except that the agency may provide in such trust agreement or resolution that
8 bonds issued pursuant thereto shall to the extent and in the manner prescribed in such
9 trust agreement or resolution be subordinated and junior in standing, with respect to the
10 payment of principal and interest and the security thereof, to any other bonds. It shall be
11 lawful for any bank or trust company incorporated under the laws of the State which may
12 act as depository of the proceeds of bonds or notes, revenues or other money hereunder to
13 furnish such indemnifying bonds or to pledge such securities as may be required by the
14 agency. Any such trust agreement or resolution may set off the rights and remedies,
15 including foreclosure of any deed of trust or mortgage, of the holders of any bonds or
16 notes and of the trustee, and may restrict the individual right of action by any such
17 holders. In addition to the foregoing, any such trust agreement or resolution may contain
18 such other provisions as the agency ~~may deem~~ considers reasonable and proper for the
19 security of the holders of any bonds or notes. Expenses incurred in carrying out the
20 provisions of such trust agreement or resolution may be treated as a part of the cost of
21 any project or paid from the revenues pledged or assigned to the payment of the principal
22 of and the interest on bonds or notes or from any other funds available to the agency.

23 **"§ 159D-47. Revenues; pledges of revenues.**

24 (a) The agency is ~~hereby~~ authorized to fix and to collect fees, loan repayments,
25 purchase price payments, rents and charges for the use of any project, and any part or
26 section ~~thereof, of the project~~ and to contract with any participating institution for ~~the use~~
27 ~~thereof, its use.~~ The agency may require that the participating institution ~~shall~~ operate,
28 repair or maintain such project and ~~shall~~ bear the cost ~~thereof~~ and other costs of the
29 agency in connection ~~therewith, with the project~~ all as may be provided in the agreement
30 of sale or lease, loan agreement or other contract with the agency, in addition to other
31 obligations imposed under ~~such the~~ agreement or contract.

32 (b) The fees, loan repayments, purchase price payments, rents and charges shall be
33 fixed so as to provide a fund sufficient, with any other available funds, ~~such other funds~~
34 ~~as may be made available therefor,~~ (i) to pay the costs of operating, repairing and
35 maintaining the project to the extent that adequate provision for the payment of such
36 costs has not otherwise been provided for, (ii) to pay the principal of and the interest on
37 all bonds or notes as ~~the same shall~~ they become due and payable and (iii) to create and
38 maintain any reserves provided for in the resolution authorizing the issuance of, or any
39 trust agreement securing, ~~such bonds; and such the bonds.~~ The fees, loan repayments,
40 purchase price payments, rents and charges may be applied or pledged to the payment of
41 debt service on the bonds prior to the payment of the costs of operating, repairing and
42 maintaining the project.

1 (c) All pledges of fees, loan repayments, purchase price payments, rents, charges
2 and other revenues under the provisions of this ~~Chapter Article shall be~~ are valid and
3 binding from the time when ~~such pledges they~~ are made. All ~~such~~ revenues so pledged
4 and thereafter received by the agency ~~shall be~~ are immediately ~~be~~ subject to the lien of ~~such~~
5 the pledge without any physical delivery ~~thereof~~ or further act, and the lien of ~~any such~~
6 the pledge ~~shall be~~ is valid and binding as against all parties having claims of any kind in
7 tort, contract or otherwise against the agency, irrespective of whether ~~such the~~ parties
8 have notice ~~thereof~~ of it. The resolution or any trust agreement by which a pledge is
9 created or any loan agreement, agreement of sale or lease need not be filed or recorded
10 except in the records of the agency.

11 (d) The State of North Carolina ~~does pledge to and agree~~ pledges to and agrees
12 with the holders of any bonds or notes issued by the agency that so long as any of ~~such~~
13 the bonds or notes are outstanding and unpaid the State will not limit or alter the rights
14 vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge,
15 and collect or cause to be fixed, revised, charged and collected loan repayments, purchase
16 price payments, rents, fees and charges for the use of or services rendered by any project
17 in connection with which the bonds or notes were issued, so as to provide a fund
18 sufficient, with ~~such other funds as may be made available therefor~~, any other available
19 funds to pay the costs of operating, repairing and maintaining the project, to pay the
20 principal of and the interest on all bonds and notes as ~~the same shall they~~ become due and
21 payable and payable, to create and maintain any reserves provided ~~therefor~~ for their
22 payment, and to fulfill the terms of any agreements made with the bondholders or
23 ~~noteholders, nor will the State noteholders.~~ The State will not in any way impair the
24 rights and remedies of the bondholders or noteholders until the bonds or notes and all
25 costs and expenses in connection with any action or proceedings by or on behalf of the
26 bondholders or noteholders, are fully paid, met and discharged.

27 **"§ 159D-48. Trust funds.**

28 Notwithstanding any other provisions of law to the contrary, all moneys received
29 pursuant to the authority of this ~~Chapter Article, including, without limitation, including~~
30 fees, loan repayments, purchase price payments, rents, charges, insurance proceeds,
31 condemnation awards and any other revenues and funds received in connection with any
32 project, ~~shall be deemed to be~~ are trust funds to be held and applied solely as provided in
33 this ~~Chapter Article.~~ The resolution authorizing the issuance of, or any trust agreement
34 securing, any bonds or notes may provide that any of ~~such these~~ moneys may be
35 temporarily invested pending ~~the their~~ disbursement ~~thereof~~ and shall provide that any
36 officer with whom, or any bank or trust company with which, such moneys ~~shall be~~ are
37 deposited shall act as trustee of such moneys and shall hold and apply ~~the same them~~
38 for the purposes of this ~~Chapter Article,~~ subject to ~~such any~~ limitations as provided in this
39 ~~Chapter Article and such in the resolution or trust agreement may provide. Any such~~
40 agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time
41 to time be amended.

42 **"§ 159D-49. Remedies.**

1 Any holder of bonds or notes issued under the provisions of this ~~Chapter Article~~ or
2 any coupons appertaining thereto, and the trustee under any trust agreement or resolution
3 authorizing the issuance of such bonds or notes, except to the extent the rights herein
4 given may be restricted by such trust agreement or resolution, may, either at law or in
5 equity, by suit, action, mandamus or other proceeding, protect and enforce any and all
6 rights under the laws of the State or granted hereunder or under such trust agreement or
7 resolution, or under any other contract executed by the agency pursuant to this ~~Chapter,~~
8 Article, and may enforce and compel the performance of all duties required by this
9 ~~Chapter Article~~ or by such trust agreement or resolution to be performed by the agency or
10 by any officer ~~thereof~~ of the agency.

11 **"§ 159D-50. Investment securities.**

12 All bonds, notes and interest coupons ~~appertaining thereto~~ issued under this ~~Chapter~~
13 Article are ~~hereby made~~ investment securities within the meaning of and for all the
14 purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether
15 or not they are of such form and character as to be investment securities under ~~said~~
16 ~~Article 8, that Article~~, subject only to the provisions of the bonds and notes pertaining to
17 registration.

18 **"§ 159D-51. Bonds or notes eligible for investment.**

19 Bonds or notes issued under the provisions of this ~~Chapter Article~~ are ~~hereby made~~
20 securities in which all public officers and public bodies of the State and its political
21 subdivisions, and all insurance companies, trust companies, banking associations,
22 investment companies, executors, administrators, trustees and other fiduciaries may
23 properly and legally invest funds, including capital in their control or belonging to them.
24 ~~Such These~~ bonds or notes are ~~hereby made~~ securities which may properly and legally be
25 deposited with and received by any State or municipal officer or any agency or political
26 subdivision of the State for any purpose for which the deposit of bonds, notes or
27 obligations of this State is ~~now or may hereafter be~~ authorized by law.

28 **"§ 159D-52. Refunding bonds or notes.**

29 (a) The agency is ~~hereby~~ authorized to provide for the issuance of refunding bonds
30 or notes for the purpose of refunding any bonds or notes then outstanding which ~~shall~~
31 have been issued under the provisions of this ~~Chapter, Article~~, including the payment of
32 any redemption premium ~~thereon~~ and any interest accrued or to accrue to the date of
33 redemption of ~~such the~~ bonds or notes and, if ~~deemed considered~~ advisable by the
34 agency, for any corporate purpose of the agency, including, without limitation:

35 (1) Constructing improvements, additions, extensions or enlargements of
36 the project in connection with which the bonds or notes to be refunded
37 shall have been issued, and

38 (2) Paying all or any part of the cost of any additional project.

39 (b) The issuance of ~~such refunding~~ bonds or notes, ~~the their~~ maturities and other
40 ~~details thereof, details~~ the rights of ~~the holders thereof, their holders,~~ and the rights, duties
41 and obligations of the agency ~~in respect of the same shall be~~ are governed by the
42 provisions of this ~~Chapter Article~~ which relate to the issuance of bonds or notes, ~~insofar~~
43 ~~as such provisions may be appropriate therefor.~~ as appropriate.

1 Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes
2 issued under this ~~Chapter Article~~ and, if sold, the proceeds ~~thereof~~ may be applied, in
3 addition to any other authorized purposes, to the purchase, redemption or payment of
4 ~~such the~~ bonds or notes, with any other available funds, to the payment of the principal,
5 accrued interest and any redemption premium on the bonds or notes being refunded, and,
6 if so provided or permitted in the resolution authorizing the issuance of, or in the trust
7 agreement securing, ~~such the~~ bonds or notes, to the payment of any interest on ~~such the~~
8 refunding bonds or notes and any expenses in connection with ~~such the~~ refunding. ~~Such~~
9 These proceeds may be invested in direct obligations of, or obligations the principal of
10 and the interest on which are unconditionally guaranteed by, the United States of
11 America ~~which shall if the obligations mature or which shall be are~~ subject to redemption
12 by ~~the holders thereof, at the option of such holders, the holders, at their option~~ not later
13 than the respective dates when the proceeds, together with the interest accrued thereon,
14 will be required for the purposes intended.

15 **"§ 159D-53. Annual report.**

16 The agency shall, promptly following the close of each fiscal year, submit an annual
17 report of its activities under this ~~Chapter Article~~ for the preceding year to the Governor,
18 the State Auditor, the General Assembly, the Advisory Budget Commission and the
19 Local Government Commission. The agency shall cause an audit of its books and
20 accounts relating to its activities under this ~~Chapter Article~~ to be made at least once in
21 each year by an independent certified public accountant and the cost ~~thereof~~ of the audit
22 may be paid from any available moneys of the agency.

23 **"§ 159D-54. Officers not liable.**

24 No member or officer of the agency shall be subject to any personal liability or
25 accountability by reason of ~~his the~~ issuance or execution of any bonds or ~~notes or the~~
26 issuance thereof. ~~notes.~~

27 **"§ 159D-55. Tax exemption.**

28 The exercise of the powers granted by this ~~Chapter Article~~ will be in all respects for
29 the benefit of the people of the State and will promote their health and ~~welfare, and no tax~~
30 ~~or assessment shall be levied upon any project undertaken by the agency prior to the~~
31 ~~retirement or provision for the retirement of all bonds or notes issued and obligations~~
32 ~~incurred by the agency in connection with such project.~~ welfare.

33 Any bonds or notes issued by the agency under the provisions of this ~~Chapter Article~~
34 shall are at all times be free from taxation by the State or any local unit or political
35 subdivision or other instrumentality of the State, excepting inheritance or gift taxes,
36 income taxes on the gain from the transfer of the bonds and notes, and franchise taxes.
37 The interest on the bonds and notes is not subject to taxation as income.

38 **"§ 159D-56. Conflict of interest.**

39 If any member, officer or employee of the agency ~~shall be is~~ interested either directly
40 or indirectly, or ~~shall be is~~ an officer or employee of or ~~have has~~ an ownership interest in
41 any firm or corporation interested directly or indirectly, in any contract with the agency,
42 ~~such this~~ interest shall be disclosed to the agency and shall be set forth in the minutes of
43 the agency, and the member, officer or employee having ~~such an~~ interest ~~therein in a~~

1 contract shall not participate on behalf of the agency in the authorization of any such the
2 contract.

3 **"§ 159D-57. Additional method.**

4 The foregoing sections of this ~~Chapter Article~~ shall be deemed to provide an
5 additional and alternative method for the doing of the things authorized ~~thereby and shall~~
6 ~~be regarded as and are~~ supplemental and additional to powers conferred by other laws,
7 laws. and shall not be regarded as in derogation of any powers now existing; provided,
8 however, that the This Article does not derogate any existing powers. The issuance of
9 bonds or notes under the provisions of this ~~Chapter Article~~ need not comply with the
10 requirements of any other law applicable to the issuance of bonds or notes."

11 Section 3. G.S. 159C-3 reads as rewritten:

12 **"§ 159C-3. Definitions.**

13 The following ~~terms, whenever used or referred to in this Chapter, shall have the~~
14 ~~following respective meanings, unless a different meaning clearly appears from the~~
15 ~~context: definitions apply in this Chapter:~~

- 16 (1) "Agency" shall include any Agency. – Any agency, bureau, commission,
17 department department, or instrumentality.
- 18 (2) "Air pollution control facility" shall mean any Air pollution control
19 facility. – Any structure, equipment equipment, or other facility for,
20 including any increment in the cost of any structure, equipment
21 equipment, or facility attributable to, the purpose of treating,
22 neutralizing neutralizing, or reducing gaseous industrial waste and other
23 air pollutants, including recovery, treatment, neutralizing neutralizing,
24 or stabilizing plants and equipment and their appurtenances, which shall
25 have been certified by the agency government entity having jurisdiction
26 to be in furtherance of the purpose of abating or controlling atmospheric
27 pollutants or contaminants.
- 28 (3) "Bonds" shall mean revenue Bonds. – Revenue bonds of an authority
29 issued under the provisions of this Chapter.
- 30 (4) "Cost" Cost. – This term as applied to any project shall embrace
31 embraces all capital costs thereof, of the project, including the all of the
32 following:
- 33 a. The cost of construction, the construction.
- 34 b. The cost of acquisition of all property, including rights in land
35 and other property, both real and personal and improved and
36 unimproved, the unimproved.
- 37 c. The cost of demolishing, removing or relocating any buildings or
38 structures on lands so acquired, including the cost of acquiring
39 any lands to which such those buildings or structures may be
40 moved or relocated, the relocated.
- 41 d. The cost of all machinery and equipment, installation, start-up
42 expenses, financing charges, and interest prior to, during and for

- 1 a period not exceeding one year after completion of ~~construction,~~
2 ~~the construction.~~
- 3 e. The cost of engineering and architectural surveys, plans and
4 specifications, the specifications.
- 5 f. The cost of consultants' and legal services, other expenses
6 necessary or incident to determining the feasibility or
7 practicability of ~~such~~ the project, administrative and other
8 expenses necessary or incident to the acquisition or construction
9 of ~~such~~ the project and the financing of the acquisition and
10 construction thereof. ~~of the project.~~
- 11 (5) ~~"Governing body" shall mean the board, commission, council or other~~
12 ~~body in which the general legislative powers of any county or other~~
13 ~~political subdivision are vested.~~
- 14 (6) ~~"Financing agreement" shall mean a Financing agreement. – A written~~
15 ~~instrument establishing the rights and responsibilities of the authority,~~
16 ~~operator, and obligor with respect to a project financed by the issuance~~
17 ~~of bonds. A financing agreement may be in the nature of a lease, a lease~~
18 ~~and leaseback, a sale and leaseback, a lease purchase, an installment~~
19 ~~sale and purchase agreement, a conditional sales agreement, a secured~~
20 ~~or unsecured loan agreement or other similar contract and may involve~~
21 ~~property in addition to the property financed with the bonds.~~
- 22 (6a) Governing body. – The board, commission, council, or other body in
23 which the general legislative powers of any county or other political
24 subdivision are vested.
- 25 (6b) Industrial project. – Any industrial or manufacturing factory, mill,
26 assembly plant, or fabricating plant; freight terminal; industrial research,
27 development, or laboratory facility; industrial processing facility; or
28 distribution facility for industrial or manufactured products.
- 29 (7) ~~"Obligor" shall mean any person or persons, Obligor. – Any person,~~
30 ~~which may include the operator, who shall be is obligated under a~~
31 ~~financing agreement or guaranty agreement or other contract or~~
32 ~~agreement to make payments to, or for the benefit of, the holders of~~
33 ~~bonds of the authority. Any requirement of an obligor may be satisfied~~
34 ~~by any one or more persons who are defined collectively by this Chapter~~
35 ~~as the obligor.~~
- 36 (8) ~~"Operator" shall mean the Operator. – The person entitled to the use or~~
37 ~~occupancy of a project.~~
- 38 (9) ~~"Political subdivision" shall mean any Political subdivision. – Any~~
39 ~~county, city, town, other unit of local government or any other~~
40 ~~governmental corporation, agency, authority authority, or~~
41 ~~instrumentality of the State now or hereafter existing.~~
- 42 (10) ~~"Pollution" and "pollutants" shall mean any Pollution or pollutants. –~~
43 ~~Any noxious or deleterious substances in any air or waters of or~~

1 adjacent to the State of North Carolina or affecting the physical,
2 chemical or biological properties of any air or waters of or adjacent to
3 the State of North Carolina in a manner and to an extent which renders
4 or is likely to render ~~such~~ the air or waters harmful or inimical to the
5 public health, safety or welfare, or to animal, bird or aquatic life, or to
6 the use of such air or waters for domestic, industrial or agricultural
7 purposes or recreation.

8 (10a) Pollution control project. – Any air pollution control facility, water
9 pollution control facility, or solid waste disposal facility if the facility is
10 in connection with either an industrial project or a public utility plant.

11 (11) "Project" shall mean any land, equipment or any ~~Project. – Any land or~~
12 ~~equipment or one or more buildings or other structures, whether or not~~
13 ~~on the same site or sites, and any rehabilitation, improvement,~~
14 ~~renovation or enlargement of, or any addition to, any building or~~
15 ~~structure for use as or in connection with (i) any industrial project for~~
16 ~~industry which project may be any industrial or manufacturing factory,~~
17 ~~mill, assembly plant or fabricating plant, or freight terminal, or~~
18 ~~industrial research, development or laboratory facility, or industrial~~
19 ~~processing facility or distribution facility for industrial or manufactured~~
20 ~~products, or project, (ii) any pollution control project for industry or for~~
21 ~~public utilities which project may be any air pollution control facility,~~
22 ~~water pollution control facility, or solid waste disposal facility in~~
23 ~~connection with any factory, mill or plant described in clause (i) of this~~
24 ~~subdivision or in connection with a public utility plant, or (iii) utilities,~~
25 (iii) any special purpose project, or (iv) any combination of projects
26 mentioned in clauses (i) and (ii) through (iii) of this subdivision. Any
27 project may include all appurtenances and incidental facilities such as
28 land, headquarters or office facilities, warehouses, distribution centers,
29 access roads, sidewalks, utilities, railway sidings, trucking and similar
30 facilities, parking facilities, landing strips and other facilities for
31 aircraft, waterways, docks, wharves and other improvements necessary
32 or convenient for the construction, maintenance and operation of any
33 building or structure, or addition thereto to it.

34 (12) "Revenues" shall mean, with Revenues. – With respect to any project,
35 the rents, fees, charges, payments, proceeds and other income or profit
36 derived therefrom from the project or from the financing agreement or
37 security document in connection therewith with the project.

38 (13) "Security document" shall mean a Security document. – A written
39 instrument or instruments establishing the rights and responsibilities of
40 the authority and the holders of bonds issued to finance a project, and
41 which may provide for, or be in the form of an agreement with, a trustee
42 for the benefit of such the bondholders. A security document may
43 contain an assignment, pledge, mortgage or other encumbrance of all or

1 part of the authority's interest in, or right to receive revenues with
2 respect to, a project and any other property provided by the operator or
3 other obligor under a financing agreement and may bear any appropriate
4 title. A financing agreement and a security document may be combined
5 as one instrument.

6 (14) ~~"Solid waste" shall mean solid~~ Solid waste. – Solid waste materials
7 resulting from any industrial or manufacturing activities or from any
8 pollution control facility.

9 (15) ~~"Solid waste disposal facility" shall mean a~~ Solid waste disposal facility.
10 – A facility for the purpose of treating, burning, compacting,
11 composting, storing or disposing of solid waste.

12 (15a) Special purpose project. – Any structure, equipment, or other facility for
13 any one or more of the following purposes:

14 a. Water systems or facilities, including all plants, works,
15 instrumentalities, and properties used or useful in obtaining,
16 conserving, treating, and distributing water for domestic or
17 industrial use, irrigation, sanitation, fire protection, or any other
18 public or private use.

19 b. Sewage disposal systems or facilities, including all plants, works,
20 instrumentalities, and properties used or useful in the collection,
21 treatment, purification, or disposal of sewage, other than facilities
22 constituting a water pollution control facility.

23 c. Public transportation systems, facilities, or equipment, including
24 bus, truck, ferry, and railroad terminals, depots, trackage,
25 vehicles, and ferries, and mass transit systems.

26 d. Public parking lots, areas, garages, and other public vehicular
27 parking structures and facilities.

28 e. Public auditoriums, gymnasiums, stadiums, and convention
29 centers.

30 f. Recreational facilities.

31 (16) ~~"Water pollution control facility" shall mean any~~ Water pollution control
32 facility. – Any structure, equipment or other facility for, including any
33 increment in the cost of any structure, equipment or facility attributable
34 to, the purpose of treating, neutralizing or reducing liquid industrial
35 waste and other water pollution, including collecting, treating,
36 neutralizing, stabilizing, cooling, segregating, holding, recycling, or
37 disposing of liquid industrial waste and other water pollution, including
38 necessary collector, interceptor, and outfall lines and pumping stations,
39 which shall have been certified by the agency exercising jurisdiction to
40 be in furtherance of the purpose of abating or controlling water
41 pollution."

42 Section 4. G.S. 159C-7 reads as rewritten:

1 **"§ 159C-7. Approval of ~~project~~ industrial projects and pollution control projects by**
2 **Secretary of Commerce.**

3 (a) Approval Required. – No bonds may be issued by an authority to finance an
4 industrial project or a pollution control project unless the project for which their issuance
5 is proposed is first approved by the Secretary of Commerce. The authority shall file an
6 application for approval of its proposed industrial project or pollution control project with
7 the Secretary of Commerce, and shall notify the Local Government Commission of ~~such~~
8 the filing.

9 (b) Findings. – The Secretary shall not approve any proposed industrial project or
10 pollution control project unless the Secretary makes all of the following, applicable
11 findings:

- 12 (1) In the case of a proposed industrial project,
13 a. That the operator of the proposed project pays, or has agreed to
14 pay thereafter, an average weekly manufacturing wage that (i) is
15 above the average weekly manufacturing wage paid in the
16 county, or (ii) is not less than ten percent (10%) above the
17 average weekly manufacturing wage paid in the State, and
18 b. That the proposed project will not have a materially adverse
19 effect on the environment.
- 20 (2) In the case of a proposed pollution control project, that ~~such~~the project
21 will have a materially favorable impact on the environment or will
22 prevent or diminish materially the impact of pollution which would
23 otherwise occur.
- 24 (2a) In the case of a hazardous waste facility or low-level radioactive waste
25 facility that is used as a reduction, recovery or recycling facility, that
26 such project will further the waste management goals of North Carolina
27 and will not have an adverse effect upon public health or a significant
28 adverse effect on the environment.
- 29 (3) In ~~any case (whether the proposed project is the case of an industrial~~
30 project or a pollution control project), project, except a pollution control
31 project for a public utility,
32 a. That the jobs to be generated or saved, directly or indirectly, by
33 the proposed project will be large enough in number to have a
34 measurable impact on the area immediately surrounding the
35 proposed project and will be commensurate with the size and
36 cost of the proposed project,
37 b. That the proposed operator of the proposed project has
38 demonstrated or can demonstrate the capability to operate ~~such~~
39 the project, and
40 c. That the financing of ~~such~~the project by the authority will not
41 cause or result in the abandonment of an existing industrial or
42 manufacturing facility of the proposed operator or an affiliate
43 elsewhere within the State unless the facility is to be abandoned

1 because of obsolescence, lack of available labor in the area, or
2 site limitations.

3 (b1) Initial Operator. – If the initial proposed operator of a an industrial project or a
4 pollution control project is not expected to be the operator for the term of the bonds
5 proposed to be issued, the Secretary may make the findings required pursuant to
6 subdivisions ~~(1)a.~~(b)(1)a. and (3)b. of this section only with respect to the initial
7 operator. The initial operator shall be identified in the application for approval of the
8 proposed project.

9 (c) Public Hearing. – The Secretary of Commerce shall not approve any proposed
10 industrial project or pollution control project pursuant to this section unless the governing
11 body of the county in which the project is located has first conducted a public hearing
12 and, at or after the public hearing, approved in principle the issuance of bonds under this
13 Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of
14 the public hearing shall be published at least once in at least one newspaper of general
15 circulation in the county not less than 14 days before the public hearing. The notice shall
16 describe generally the bonds proposed to be issued and the proposed project, including its
17 general location, and any other information the governing body considers appropriate or
18 the Secretary of Commerce prescribes for the purpose of providing the Secretary with the
19 views of the community. The notice shall also state that following the public hearing the
20 authority intends to file an application for approval of the proposed project with the
21 Secretary of Commerce.

22 (d) Certificate of Department of Environment and Natural Resources. – The
23 Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and
24 (2) of this section unless the Secretary has first received a certification from the
25 Department of Environment and Natural Resources that, in the case of a proposed
26 industrial project, the proposed project will not have a materially adverse effect on the
27 environment and that, in the case of a proposed pollution control project, the proposed
28 project will have a materially favorable impact on the environment or will prevent or
29 diminish materially the impact of pollution which would otherwise occur. The Secretary
30 of Commerce shall not make the findings required by subdivision (2a) unless the
31 Secretary has first received a certification from the Department of Environment and
32 Natural Resources that the proposed project is environmentally sound, will not have an
33 adverse effect on public health and will further the waste management goals of North
34 Carolina. The Secretary of Commerce shall deliver a copy of the application to the
35 Department of Environment and Natural Resources. The Department of Environment and
36 Natural Resources shall provide each certification to the Secretary of Commerce within
37 seven days after the applicant satisfactorily demonstrates to it that all permits, including
38 environmental permits, necessary for the construction of the proposed project have been
39 obtained, unless the authority consents to a longer period of time.

40 (e) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of
41 the required findings respecting a proposed industrial project except that prescribed in
42 ~~subparagraph~~ subdivision (b)(1)a of this section, the Secretary may, in the Secretary's
43 discretion, approve the proposed industrial project if the Secretary has received (i) a

1 resolution of the governing body of the county requesting that the proposed industrial
2 project be approved notwithstanding that the operator will not pay an average weekly
3 manufacturing wage above the average weekly manufacturing wage in the county and (ii)
4 a letter from an appropriate State official, selected by the Secretary, to the effect that
5 unemployment in the county is especially severe.

6 (f) Rules. – To facilitate review of each proposed industrial project or pollution
7 control project, the Secretary may require the authority to obtain and submit ~~such~~ any
8 data and information about ~~such~~ the project as the Secretary may prescribe. The Secretary
9 may also prescribe ~~such~~ forms and ~~such~~ rules as the Secretary considers reasonably
10 necessary to implement the provisions of this section.

11 (g) Certificate of Approval. – If the Secretary approves the proposed industrial
12 project or pollution control project, the Secretary shall prepare a certificate of approval
13 evidencing ~~such~~ the approval and setting forth the findings and shall cause the certificate
14 of approval to be published in a newspaper of general circulation within the county. ~~Any~~
15 ~~such~~ This approval shall be reviewable as provided in Article 4 of Chapter 150B of the
16 General Statutes of North Carolina only by an action filed, within 30 days after notice of
17 ~~such~~ the findings and approval ~~shall~~ have been so published, in the Superior Court of
18 Wake County. The superior court is ~~hereby~~ vested with jurisdiction to hear ~~such~~ the
19 action, but if no ~~such~~ action is filed within the 30 days ~~herein~~ prescribed, the validity of
20 ~~such~~ the approval ~~shall be~~ is conclusively presumed, and no court ~~shall have~~ has authority
21 to inquire into ~~such~~ the approval. Copies of the certificate of approval of the proposed
22 industrial project or pollution control project will be given to the authority, the ~~governing~~
23 ~~body of the county board of county commissioners,~~ and the Secretary of the Local
24 Government Commission.

25 The certificate of approval ~~shall become~~ becomes effective immediately following the
26 expiration of the 30-day period or the expiration of any appeal period after a final
27 determination by any court of any action timely filed pursuant to this section. The
28 certificate ~~shall expire~~ expires one year after its date unless extended by the Secretary
29 who shall not extend the certificate unless the Secretary again approves the proposed
30 industrial project or pollution control project as provided in this section. If bonds are
31 issued within that year pursuant to the authorization of this Chapter to pay all or part of
32 the costs of the industrial project or pollution control project, however, the certificate
33 ~~shall expire~~ expires three years after the date of the first issuance of the bonds."

34 Section 5. G.S. 159C-8 reads as rewritten:

35 "**§ 159C-8. Approval of bonds.**

36 (a) No bonds may be issued by an authority unless the issuance ~~thereof~~ of the
37 bonds is first approved by the Local Government Commission.

38 The authority shall file an application for approval of its proposed bond issue with the
39 Secretary of the Local Government Commission, and shall notify the Secretary of ~~the~~
40 ~~Department of Commerce of such filing.~~ the filing if the project is an industrial project or
41 pollution control project.

1 (b) In determining whether a proposed bond issue should be approved, the Local
2 Government Commission may ~~consider, without limitation,~~ consider any of the
3 following:

4 (1) Whether the proposed operator and obligor have demonstrated or can
5 demonstrate the financial responsibility and capability to fulfill their
6 obligations with respect to the financing agreement. In making such
7 determination, the Commission may consider the operator's experience
8 and the obligor's ratio of current assets to current liabilities, net worth,
9 earnings trends and coverage of fixed charges, the nature of the industry
10 or business involved and its stability and any additional security such as
11 credit enhancement, insurance, guaranties or property to be pledged to
12 secure such bonds.

13 (2) Whether the political subdivisions in or near which the proposed project
14 is to be located have the ability to cope satisfactorily with the impact of
15 ~~such the~~ the project and to provide, or cause to be provided, the public
16 facilities and services, including utilities, that will be necessary for ~~such~~
17 the project and on account of any increase in population which are
18 expected to result ~~therefrom.~~ from the project.

19 (3) Whether the proposed date and manner of sale will have an adverse
20 effect upon any scheduled or anticipated sale of obligations by the State
21 or any political subdivision or any agency of either of them.

22 (4) Any other factors the Commission considers relevant.

23 (c) The Local Government Commission shall not approve the issuance of bonds
24 for a special purpose project unless the governing body of the county in which the special
25 purpose project is located has conducted a public hearing and, at or after the public
26 hearing, approved in principle the issuance of bonds under this Chapter for the purposes
27 of paying all or a part of the proposed special purpose project. Notice of the public
28 hearing must be published at least once in at least one newspaper of general circulation in
29 the county not less than 14 days before the public hearing. The notice must describe
30 generally the bonds proposed to be issued and the proposed special purpose project,
31 including its general location, and any other information the governing body considers
32 appropriate.

33 (d) If the initial proposed operator of the project is not expected to be the operator
34 for the term of the bonds proposed to be issued, the Local Government Commission may
35 consider the matters required under subdivision ~~(1)~~ (b)(1) of this section only with
36 respect to the initial operator. The obligor shall be obligated to perform all of the duties
37 of the obligor required hereunder during the term the bonds are outstanding. The Local
38 Government Commission shall evaluate the obligor's ability to perform these duties
39 without regard to whether the initial proposed operator of the project is expected to be the
40 operator for the term of the bonds proposed to be issued. To facilitate the review of the
41 proposed bond issue by the Commission, the Secretary may require the authority to
42 obtain and submit ~~such any~~ any financial data and information about the proposed bond issue
43 and the security ~~therefor,~~ for it, including the proposed prospectus or offering circular, the

1 proposed financing agreement and security document and annual and other financial
2 reports and statements of the obligor, as the Secretary may prescribe. The Secretary may
3 also prescribe ~~such forms and such rules and regulations as he shall deem any forms and~~
4 rules the Secretary considers reasonably necessary to implement the provisions of this
5 section. "

6 Section 6. G.S. 159C-11 reads as rewritten:

7 "**§ 159C-11. Financing agreements.**

8 (a) Every financing agreement shall provide that:

9 (1) The amounts payable under the financing agreement shall be sufficient
10 to pay all of the principal of and redemption premium, if any, and
11 interest on the bonds ~~that shall be~~ issued by the authority to pay the cost
12 of the project as ~~the same shall~~ they respectively become ~~due; due.~~

13 (2) The obligor shall pay all costs incurred by the authority in connection
14 with the financing and administration of the project, except as may be
15 paid out of the proceeds of bonds or otherwise, ~~including, but without~~
16 ~~limitation, including~~ insurance costs, the cost of administering the
17 financing agreement and the security document and the fees and
18 expenses of the fiscal agent or trustee, paying agents, attorneys,
19 consultants and ~~others; others.~~

20 (3) The obligor shall pay all the costs and expenses of operation,
21 maintenance and upkeep of the ~~project; and project.~~

22 (4) The obligor's obligation to provide for the payment of the bonds in full
23 ~~shall not be~~ is not subject to cancellation, termination or abatement until
24 ~~such~~ payment of the bonds or provision for their payment has been
25 ~~therefor shall be made.~~

26 (5) If the proposed initial operator of the project is not expected to be the
27 operator for the term of the bonds proposed to be issued, the financing
28 agreement shall require that the obligor attempt to arrange for a new
29 operator when the current operator discontinues serving as operator. The
30 new operator is subject to the approval of the Secretary under
31 subdivisions (b) (1)a. and (3)b. of G.S. 159C-7 ~~and if the project is an~~
32 industrial project or a pollution control project, and is subject in any
33 event to the approval of the Local Government Commission under G.S.
34 159C-8.

35 (b) The financing agreement, if in the nature of a lease agreement, shall either
36 provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor
37 purchase, the project upon the expiration or termination of the financing agreement
38 subject to the condition that payment in full of the principal of, and the interest and any
39 redemption premium on, the bonds, or provision ~~therefor, shall have for payment, has~~
40 been made.

41 The financing agreement may provide the authority with rights and remedies in the
42 event of a default by the obligor ~~thereunder including, without limitation, under the~~
43 agreement, including any one or more of the following:

- 1 (1) Acceleration of all amounts payable under the financing agreement;
- 2 (2) Reentry and repossession of the project;
- 3 (3) Termination of the financing agreement;
- 4 (4) Leasing or sale or foreclosure of the project to others; and
- 5 (5) Taking whatever actions at law or in equity may appear necessary or
- 6 desirable to collect the amounts payable under, and to enforce covenants
- 7 made in, the financing agreement.

8 (c) The authority's interest in a project under a financing agreement may be that of
9 owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured
10 party or otherwise, but the authority need not have any ownership or possessory interest
11 in the project.

12 The authority may assign all or any of its rights and remedies under the financing
13 agreement to the trustee or the bondholders under a security document.

14 ~~Any such~~ The financing agreement may contain ~~such any~~ additional provisions as in
15 ~~the determination of the authority are~~ considers necessary or convenient to effectuate the
16 purposes of this Chapter."

17 Section 7. The amendments to G.S. 159D-55, as recodified by this act, become
18 effective with respect to obligations issued on or after October 1, 2000. The remainder of
19 this act becomes effective July 1, 2000.