

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

4

HOUSE BILL 1430
Committee Substitute Favorable 6/25/01
Committee Substitute #2 Favorable 7/4/01
Senate Finance Committee Substitute Adopted 9/24/02

Short Title: State Capital Facilities Financing Act.

(Public)

Sponsors:

Referred to:

May 9, 2001

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE FINANCING OF CAPITAL FACILITIES FOR THE STATE, AUTHORIZING THE ISSUANCE OF SPECIAL INDEBTEDNESS FOR REPAIR AND RENOVATIONS, TO REFINANCE TWO PRISONS, AND TO FINANCE THE CONSTRUCTION OF A NEW PSYCHIATRIC HOSPITAL, AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION BONDS FOR THE CONSTRUCTION OF A NEW PSYCHIATRIC HOSPITAL, AND EXPANDING THE PURPOSES FOR WHICH COUNTIES AND MUNICIPALITIES MAY USE SPECIAL OBLIGATION BONDS, AND AMENDING RELATED GENERAL LAWS.

TABLE OF CONTENTS

PART I. SPECIAL INDEBTEDNESS

PART II. REPAIR AND RENOVATIONS

PART III. CORRECTIONAL FACILITIES ACQUISITION

PART IV. PSYCHIATRIC HOSPITAL CONSTRUCTION

PART V. SPECIAL OBLIGATION HOSPITAL BONDS

PART VI. GENERAL PROVISIONS FOR PSYCHIATRIC HOSPITAL

PART VII. LOCAL GOVERNMENT SPECIAL OBLIGATION BONDS

PART VIII. GENERAL PROVISIONS

PART I. SPECIAL INDEBTEDNESS

SECTION 1.1. Chapter 142 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"State Capital Facilities Finance Act.

"§ 142-60. Short title.

This Article may be cited as the State Capital Facilities Finance Act.

"§ 142-61. Findings and purpose.

The General Assembly finds as follows:

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

"§ 142-62. Definitions.

The following definitions apply in this Article:

- (1) Bonded indebtedness. – Limited obligation bonds and bond anticipation notes, including refunding bonds and notes, authorized to be issued under this Article.
- (2) Bonds or notes. – Limited obligation bonds and notes authorized to be issued under this Article.
- (3) Capital facility. – Any one or more of the following:
 - a. Any one or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment, machinery, and furnishings in connection with these items.
 - b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.
 - c. Land or an interest in land.
 - d. Other infrastructure.
 - e. Furniture, fixtures, equipment, vehicles, machinery, and similar items.
- (4) Certificates of participation. – Certificates or other instruments delivered by a special corporation evidencing the assignment of proportionate undivided interests in rights to receive payments pursuant to a financing contract.
- (5) Certificates of participation indebtedness. – Financing contract indebtedness incurred by the State under a plan of finance in which a special corporation obtains funds to pay the cost of a capital facility to

- 1 be financed through the delivery by the special corporation of
2 certificates of participation.
- 3 (6) Cost. – Any of the following in financing the cost of capital facilities
4 as authorized by this Article:
- 5 a. The cost of constructing, reconstructing, renovating, repairing,
6 enlarging, acquiring, and improving capital facilities, including
7 the acquisition of land, rights-of-way, easements, franchises,
8 equipment, machinery, furnishings, and other interests in real or
9 personal property acquired or used in connection with a capital
10 facility.
- 11 b. The cost of engineering, architectural, and other consulting
12 services.
- 13 c. The cost of providing personnel to ensure effective
14 management of capital facilities.
- 15 d. Finance charges, reserves for debt service, and other types of
16 reserves required pursuant to the terms of any special
17 indebtedness or related documents, interest before and during
18 construction or acquisition of a capital facility and, if
19 considered advisable by the State Treasurer, for a period not
20 exceeding two years after the estimated date of completion of
21 construction or acquisition.
- 22 e. Administrative expenses and charges.
- 23 f. The cost of bond insurance, investment contracts, credit
24 enhancement facilities and liquidity facilities, interest rate swap
25 agreements or other derivative products, financial and legal
26 consultants, and related costs of the incurrence or issuance of
27 special indebtedness.
- 28 g. The cost of reimbursing the State, a State agency, or a special
29 corporation for any payments made for any cost described in
30 this subdivision.
- 31 h. Any other costs and expenses necessary or incidental to the
32 purposes of this Article.
- 33 (7) Credit facility. – An agreement that:
- 34 a. Is entered into by the State with a bank, savings and loan
35 association, or other banking institution, an insurance company,
36 reinsurance company, surety company or other insurance
37 institution, a corporation, investment banking firm or other
38 investment institution, or any financial institution or other
39 similar provider of a credit facility, which provider may be
40 located within or without the United States of America; and
- 41 b. Provides for prompt payment of all or any part of the principal
42 or purchase price (whether at maturity, presentment or tender
43 for purchase, redemption, or acceleration), redemption
44 premium, if any, and interest with respect to any special

1 indebtedness payable on demand or tender by the owner in
2 consideration of the State agreeing to repay the provider of the
3 credit facility in accordance with the terms and provisions of
4 the agreement.

5 (8) Department of Administration. – The North Carolina Department of
6 Administration created by Article 36 of Chapter 143 of the General
7 Statutes, or if the Department is abolished or otherwise divested of its
8 functions under this Article, the public body succeeding it in its
9 principal functions or upon which are conferred by law the rights,
10 powers, and duties given by this Article to the Department.

11 (9) Financing contract. – A contract entered into pursuant to this Article to
12 finance capital facilities and constituting a lease-purchase contract,
13 installment purchase contract, or other similar type installment
14 financing contract. The term does not include, however, a contract that
15 meets any one of the following conditions:

16 a. It constitutes an operating lease under generally accepted
17 accounting principles.

18 b. It provides for the payment under the contract over its full term,
19 including periods that may be added to the original term
20 through the exercise of options to renew or extend, of an
21 aggregate principal amount of not in excess of five thousand
22 dollars (\$5,000) or any greater amount that may be established
23 by the Council of State, if the Council of State determines (i)
24 the aggregate amount to be paid under these contracts will not
25 have a significant impact on the State budgetary process or the
26 economy of the State and (ii) the change will lessen the
27 administrative burden on the State.

28 c. It is executed and provides for the making of all payments
29 under the contract, including payment to be made during any
30 period that may be added to the original term through the
31 exercise of options to renew or extend, in the same fiscal year.

32 (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a
33 financing contract, including certificates of participation indebtedness.

34 (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal
35 biennium.

36 (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one
37 calendar year and ending on June 30 of the next calendar year.

38 (13) Limited obligation bond. – A limited obligation bond issued pursuant
39 to G.S. 142-68 and payable and secured as provided in G.S. 142-69.

40 (14) Par formula. – A provision or formula adopted by the State to provide
41 for the adjustment, from time to time, of the interest rate or rates borne
42 or provided for by any special indebtedness, including any of the
43 following:

- 1 a. A provision providing for an adjustment so that the purchase
2 price of special indebtedness in the open market would be as
3 close to par as possible.
- 4 b. A provision providing for an adjustment based upon a
5 percentage or percentages of a prime rate or base rate, which
6 percentages may vary or be applied for different periods of
7 time.
- 8 c. Any provision that the State Treasurer determines is consistent
9 with this Article and will not materially and adversely affect the
10 financial position of the State and the marketing of special
11 indebtedness at a reasonable interest cost to the State.
- 12 (15) Person. – An individual, a firm, a partnership, an association, a
13 corporation, a limited liability company, or any other organization or
14 group acting as a unit.
- 15 (16) Special corporation. – Either of the following:
- 16 a. A nonprofit corporation created under Chapter 55A of the
17 General Statutes for the purpose of facilitating the incurrence of
18 certificates of participation indebtedness by the State under this
19 Article.
- 20 b. A private corporation or other entity issuing certificates of
21 participation pursuant to this Article.
- 22 (17) Special indebtedness. – Financing contract indebtedness and bonded
23 indebtedness issued or incurred pursuant to this Article.
- 24 (18) State. – The State of North Carolina, including any State agency.
- 25 (19) State agency. – Any agency, institution, board, commission, bureau,
26 council, department, division, officer, or employee of the State. The
27 term does not include counties, municipal corporations, political
28 subdivisions, local boards of education, or other local public bodies.
- 29 (20) State Treasurer. – The incumbent Treasurer, from time to time, of the
30 State.

31 **§ 142-63. Authorization of special indebtedness; General Assembly approval.**

32 The State may incur or issue special indebtedness subject to the terms and conditions
33 provided in this Article for the purpose of financing the cost of capital facilities that
34 meet one of the following conditions:

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

42 **§ 142-64. Procedure for incurrence or issuance of special indebtedness.**

43 (a) Notice and Certificate. – Whenever the State or a State agency intends to use
44 special indebtedness to finance capital facilities, it shall notify the Department of

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

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

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

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

- 24 (1) Authorize the providing of a particular capital facility or, in general
25 terms, the types or classifications of capital facilities to be provided.
- 26 (2) Set the aggregate principal amount or maximum principal amount of
27 the special indebtedness authorized.
- 28 (3) Set the maturity or maximum maturity of the special indebtedness
29 authorized.
- 30 (4) Set the rate, rates, or maximum rate of interest, which may be fixed or
31 vary over a period of time, of the special indebtedness authorized.
- 32 (5) Include any other conditions or matters not inconsistent with the
33 provisions of this Article in the discretion of the Council of State,
34 which may include the adoption or approvals as may be authorized in
35 G.S. 142-68 and G.S. 142-69.

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

- 42 (1) The amounts to become due under the special indebtedness, including
43 the interest component or rate, are adequate and not excessive for the
44 purpose proposed.

1 (2) The increase, if any, in State revenues, including taxes, necessary to
2 pay the sums to become due under the special indebtedness, is not
3 excessive.

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

6 (e) Designation of Facilities. – If the Council of State authorized in general terms
7 the types or classifications of capital facilities to be financed, then the particular capital
8 facilities and the principal amount of special indebtedness to be incurred or issued for
9 each particular capital facility shall be determined by the Department of Administration
10 after considering any factors it considers relevant in order to determine that the
11 particular capital facility to be provided is desirable for the efficient operation of the
12 State and its agencies and is in the best interests of the State.

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

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

24 (h) Report to Joint Legislative Commission. – After all the requirements for
25 approval and oversight provided in this section have been met, and at least five days
26 before the issuance or incurrence of the special indebtedness, the State Treasurer must
27 report to the Joint Legislative Commission on Governmental Operations. This report
28 must include the details of the proposed special indebtedness, including the capital
29 facilities to be financed by the indebtedness, the amount of the proposed indebtedness,
30 the type of indebtedness to be issued or incurred, and any other information required by
31 the Commission.

32 **"§ 142-65. Security; other requirements.**

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

39 (1) A lien on or security interest in one or more, all, or any part of the
40 capital facilities to be financed by the special indebtedness.

41 (2) If the special indebtedness is to finance construction of improvements
42 on real property, a lien on or security interest in all or any part of the
43 land on which the improvements are to be located.

1 (3) If the special indebtedness is to finance renovations or improvements
2 to existing facilities or the installation of fixtures in existing facilities,
3 a lien on or security interest in one or more, all, or any part of the
4 facilities.

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

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

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

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

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

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

43 (1) The purposes to which the proceeds of special indebtedness may be
44 applied.

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

10 (h) State Property Law Exception. – Chapter 146 of the General Statutes does not
11 apply to any transfer of the State's interest in property authorized by this Article,
12 whether to a deed of trust trustee or other secured party as security for special
13 indebtedness, or to a purchaser of property in connection with a foreclosure or similar
14 conveyance of property to realize upon the security for special indebtedness following
15 the State's default on its obligations under the special indebtedness.

16 **"§ 142-66. Financing contract indebtedness.**

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

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

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

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

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

37 (f) Terms and Conditions. – All other conditions set forth elsewhere in this
38 Article with respect to financing contract indebtedness shall also be satisfied prior to
39 incurring any financing contract indebtedness. To the extent applicable as conclusively
40 determined by the State Treasurer, the provisions of G.S. 142-69, 142-70, and 142-71
41 apply to financing contract indebtedness.

42 **"§ 142-67. Additional requirements for certificates of participation indebtedness.**

43 (a) Treasurer Oversight. – A financing contract shall not be used in connection
44 with the delivery of certificates of participation by a special corporation until all

1 documentation providing for its use has been approved by the State Treasurer, after the
2 State Treasurer has consulted with the Department of Administration. All
3 documentation providing for the delivery and sale of certificates of participation must
4 be approved by the State Treasurer.

5 (b) Procedure. – The special corporation, if used, shall request the approval of the
6 State Treasurer in writing and shall furnish any information and documentation relating
7 to the delivery and sale of the certificates of participation requested by the State
8 Treasurer. In determining whether to approve the financing in the documentation, the
9 State Treasurer shall consider the factors set forth in G.S. 142-64(d), as well as the
10 effect of the proposed financing upon any scheduled or proposed sale of debt
11 obligations by the State or a unit of local government in the State.

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

19 (d) Trust Agreement. – Certificates of participation may be delivered pursuant to
20 a trust agreement or similar instrument with a corporate trustee approved by the State
21 Treasurer, and the provisions of G.S. 142-69(h) apply to the trust agreement or similar
22 instrument to the extent applicable.

23 (e) Other Conditions. – All other conditions set forth elsewhere in this Article
24 with respect to certificates of participation indebtedness, including the conditions set
25 forth in G.S. 142-66, must be satisfied before any certificates of participation
26 indebtedness is incurred.

27 **§ 142-68. Bonded indebtedness.**

28 The State Treasurer is authorized, by and with the consent of the Council of State as
29 provided in this Article, to issue and sell at one time, or from time to time, bonds of the
30 State to be designated "State of North Carolina Limited Obligation Bonds, Series ____"
31 or notes of the State as provided in this Article, for the purpose of providing funds, with
32 any other available funds, for the uses authorized in this Article.

33 **§ 142-69. Issuance of limited obligation bonds and notes.**

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

1 **(b) Signatures; Form and Denomination; Registration.** – Bonds or notes may be
2 issued in certificated or uncertificated form. If issued in certificated form, bonds or
3 notes shall be signed on behalf of the State by the Governor or shall bear the Governor's
4 facsimile signature, shall be signed by the State Treasurer or shall bear the State
5 Treasurer's facsimile signature, and shall bear the great seal of the State or a facsimile of
6 the seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures
7 of the Governor and the State Treasurer, the bonds or notes shall also bear a manual
8 signature which may be that of a bond registrar, trustee, paying agent, or designated
9 assistant of the State Treasurer. If any officer whose signature or facsimile signature
10 appears on bonds or notes issued under this Article ceases to be that officer before the
11 delivery of the bonds or notes, the signature or facsimile signature shall nevertheless
12 have the same validity for all purposes as if the officer had remained in office until
13 delivery of the bonds or notes. Bonds or notes issued under this Article may bear the
14 facsimile signatures of persons, who at the actual time of the execution of the bonds or
15 notes were the proper officers to sign any bond or note although at the date of the bond
16 or note those persons may not have been officers.

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

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

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

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

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

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

13 Funds derived from the sale of limited obligation bonds or notes may be used in the
14 payment of any bond anticipation notes issued under this Article. Funds provided by the
15 General Assembly for the payment of interest on or principal of bonds shall be used in
16 paying the interest on or principal of any notes and any renewals thereof, the proceeds
17 of which have been used in paying interest on or principal of the bonds.

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

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

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

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

31 **§ 142-70. Variable rate demand bonds and notes and financing contract**
32 **indebtedness.**

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

35 (1) It is payable from time to time on demand or tender for purchase by
36 the owner thereof, if a credit facility supports the special indebtedness,
37 unless the State Treasurer specifically determines that a credit facility
38 is not required upon a determination by the State Treasurer that the
39 absence of a credit facility will not materially and adversely affect the
40 financial position of the State or the marketing of the bonds or notes or
41 financing contract indebtedness at a reasonable interest cost to the
42 State.

43 (2) It is additionally supported by a credit facility.

- 1 (3) It is subject to redemption or mandatory tender for purchase prior to
2 maturity.
- 3 (4) It bears interest at a rate or rates that may be fixed or may vary over
4 any period of time, as may be provided in the proceedings providing
5 for the issuance or incurrence of the special indebtedness, including
6 any variations that may be permitted pursuant to a par formula.
- 7 (5) It is the subject of a remarketing agreement under which an attempt is
8 made to remarket special indebtedness to new purchasers before its
9 presentment for payment to the provider of the credit facility or to the
10 State.

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

19 **"§ 142-71. Other agreements.**

20 The State Treasurer may authorize, execute, obtain or otherwise provide for bond
21 insurance, investment contracts, credit and liquidity facilities, credit enhancement
22 facilities, interest rate swap agreements, and other derivative products, and any other
23 related instruments and matters the State Treasurer determines are desirable in
24 connection with the issuance of special indebtedness. The State Treasurer is authorized
25 to employ and designate any financial consultants, underwriters, fiduciaries, and bond
26 attorneys to be associated with any incurrence or issuance of special indebtedness under
27 this Article as the State Treasurer considers appropriate.

28 **"§ 142-72. Tax exemption.**

29 Special indebtedness shall at all times be free from taxation by the State or any
30 political subdivision or any of their agencies, excepting estate, inheritance, and gift
31 taxes; income taxes on the gain from the transfer of the indebtedness; and franchise
32 taxes. The interest component of any payments made by the State under special
33 indebtedness, including the interest component of any certificates of participation, is not
34 subject to taxation as to income.

35 **"§ 142-73. Investment eligibility.**

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

1 obligations of the State or any political subdivision is now or may later be authorized by
2 law.

3 **"§ 142-74. Procurement of capital facilities.**

4 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
5 Statutes and any other laws or rules of the State that relate to the acquisition and
6 construction of State property apply to the financing of capital facilities through the use
7 of special indebtedness pursuant to this Article. This section does not apply to the
8 construction and lease-purchase, including leases with an option to purchase at the end
9 of the lease term for a nominal sum, of State office buildings pursuant to proposals
10 submitted before the effective date of this Article in response to requests for proposals,
11 to the extent any of those proposals, as they may be supplemented or amended, are
12 approved by the Department of Administration and any of these leases or lease-purchase
13 agreements are approved by the Council of State in accordance with G.S.
14 143-341(4)d2."

15 **SECTION 1.2.** G.S. 143-341(4) is amended by adding a new
16 sub-subdivision to read:

17 "d2. To purchase or finance the purchase of buildings, utilities,
18 structures, or other facilities or property developments,
19 including streets and landscaping, the acquisition of land,
20 equipment, machinery and furnishings in connection therewith;
21 additions, extensions, enlargements, renovations and
22 improvements to existing buildings, utilities, structures, or other
23 facilities or property developments, including streets and
24 landscaping; land or any interest in land; other infrastructure;
25 furniture, fixtures, equipment, vehicles, machinery and similar
26 items; or any combination of the forgoing, through installment
27 purchase, lease purchase, or other similar type installment
28 financing agreements in the manner and to the extent provided
29 in Article 8 of Chapter 142 of the General Statutes. Any
30 contract entered into or any proceeding instituted contrary to the
31 provisions of this paragraph is voidable in the discretion of the
32 Council of State."

33 **PART II. REPAIR AND RENOVATIONS**

34 **SECTION 2.1.** Repairs and Renovation. – In accordance with G.S. 142-63,
35 as enacted by this act, this section authorizes the issuance or incurrence of special
36 indebtedness in a maximum aggregate principal amount of one hundred fifty million
37 dollars (\$150,000,000) to be used only in accordance with this section for the repair and
38 renovation of State facilities and related infrastructure that are supported from the
39 General Fund. Proceeds of the Repair and Renovation special indebtedness shall be
40 used only for the following types of projects:

- 41 (1) Roof repairs and replacements.
- 42 (2) Structural repairs.
- 43 (3) Repairs and renovations to meet federal and State standards.

- 1 (4) Repairs to electrical, plumbing, and heating, ventilating, and
- 2 air-conditioning systems.
- 3 (5) Improvements to meet the requirements of the Americans with
- 4 Disabilities Act, 42 U.S.C. § 12101, et seq., as amended.
- 5 (6) Improvements to meet fire safety needs.
- 6 (7) Improvements to existing facilities for energy efficiency.
- 7 (8) Improvements to remove asbestos, lead paint, and other contaminants,
- 8 including the removal and replacement of underground storage tanks.
- 9 (9) Improvements and renovations to improve use of existing space.
- 10 (10) Historical restoration.
- 11 (11) Improvements to roads, walks, drives, and utilities infrastructure.
- 12 (12) Drainage and landscape improvements.

13 Proceeds of the Repair and Renovation special indebtedness shall not be used for new
14 construction or the expansion of the footprint of an existing facility unless required in
15 order to comply with federal or State codes or standards.

16 Proceeds of the Repair and Renovation special indebtedness shall not be used
17 unless the specific use has been approved by an act of the General Assembly or, if the
18 General Assembly is not in session, the State Treasurer has first consulted with the Joint
19 Legislative Commission on Governmental Operations on the specific uses for which the
20 proceeds shall be used.

21 In addition, the provisions of this section may be changed from time to time
22 by act of the General Assembly.

23 Notwithstanding this section, whenever an expenditure is required because of
24 an emergency that poses an imminent threat to public health or public safety, and is
25 either the result of a natural disaster, such as a hurricane or a flood, or the result of an
26 accident or an intentional act, such as an explosion or a wreck, the State Treasurer, with
27 the approval of the Governor, may take action under this section without first consulting
28 with the Joint Legislative Commission on Governmental Operations if the action is
29 determined by the Governor to be related to the emergency. The State Treasurer and the
30 Governor shall report to the Commission on any action taken under this paragraph no
31 later than 30 days after taking the action, and shall identify in the report the emergency,
32 the type of action taken, and how it was related to the emergency.

33 **PART III. CORRECTIONAL FACILITIES ACQUISITION**

34 **SECTION 3.1.** Acquisition of Correctional Facilities. – In accordance with
35 G.S. 142-63, as enacted by this act, this section authorizes the issuance or incurrence of
36 financing contract indebtedness to be used to acquire two correctional facilities located
37 in Pamlico County and Avery County that the State currently leases.

38 **SECTION 3.2.** Pamlico County Correctional Facility. – The State is
39 authorized to acquire the correctional facility located in Pamlico County that the State
40 currently leases from U.S. Corrections Corporation pursuant to the purchase option
41 provision in the lease. Title to these facilities shall be held in the name of the State. The
42 cost of acquiring the Pamlico County correctional facility shall be financed as provided
43 in Article 8 of Chapter 142 of the General Statutes.

1 **SECTION 3.3.** Mountain View Correctional Facility. – The State is
2 authorized to acquire the Mountain View Correctional Facility located in Avery County
3 that the State currently leases from Correctional Properties Trust pursuant to the
4 purchase option provision in the lease. Title to these facilities shall be held in the name
5 of the State. The cost of acquiring the Mountain View Correctional Facility shall be
6 financed as provided in Article 8 of Chapter 142 of the General Statutes.

7 **SECTION 3.4.** Authorization of Financing Contracts. – The State, with the
8 prior approval of the State Treasurer and Council of State as provided in Article 8 of
9 Chapter 142 of the General Statutes, is authorized to execute and deliver one or more
10 financing contracts in order to provide funds to the State to be used, together with any
11 other available funds, to pay the cost of acquiring either or both of the Pamlico County
12 correctional facility and the Mountain View Correctional Facility described in this Part.
13 Notwithstanding the provisions of G.S. 142-63, no maximum principal amount is
14 required to be stated in this Part authorizing the issuance or incurrence of financing
15 contract indebtedness for these purposes.

16 **PART IV. PSYCHIATRIC HOSPITAL CONSTRUCTION**

17 **SECTION 4.1.** Construction of Psychiatric Hospital. – In accordance with
18 G.S. 142-63, as enacted by this act, this section authorizes the issuance or incurrence of
19 financing contract indebtedness in a maximum principal amount of one hundred million
20 dollars (\$100,000,000), which amount shall be reduced by the amount of any special
21 obligation bonds issued to finance the project under Part V of this act, to finance the
22 cost of the project described in Section 4.2 of this Part, subject to the limitations
23 described herein. The financing contract indebtedness shall not be incurred prior to July
24 1, 2004.

25 **SECTION 4.2.** The Project. – The project shall consist of the acquisition,
26 construction, and equipping of an approximately 451,800 square foot, 432-bed new
27 psychiatric hospital.

28 **SECTION 4.3.** Authorization of Financing Contracts. – The State, with the
29 prior approval of the State Treasurer and Council of State, as provided in Article 8 of
30 Chapter 142 of the General Statutes, is authorized to execute and deliver one or more
31 financing contracts in order to provide funds to the State to be used, together with other
32 available funds, to pay the cost of the project, provided that the aggregate principal
33 amount shall not exceed one hundred million dollars (\$100,000,000), which amount
34 shall be reduced by the amount of any special obligation bonds issued to finance the
35 project under Part V of this act. The State Treasurer may, in his sole discretion, require
36 one or more reports satisfactory to the State Treasurer evidencing the savings expected
37 to be realized from the closure of existing psychiatric hospitals that are to be replaced
38 by the project and the feasibility of the financing of the project.

39 **PART V. SPECIAL OBLIGATION HOSPITAL BONDS**

40 **SECTION 5.1.** Title. – This Part shall be known and may be cited as the
41 "Special Obligation Hospital Bonds Act of 2002." References in this Part to "this act"
42 mean this Part.

43 **SECTION 5.2.** Definitions. – The following definitions apply in this act:

- 1 (1) Bonds. – Special obligation bonds issued by the State pursuant to this
2 act.
- 3 (2) Cost. – Any of the following, without limiting or restricting any proper
4 definition of this term in financing the cost of the project as authorized
5 by this act:
- 6 a. The cost of acquiring, constructing, and equipping the project,
7 including the acquisition of rights-of-way, easements,
8 equipment, furnishings, land, and other interests in real or
9 personal property acquired or used in connection with the
10 project.
- 11 b. The cost of engineering, architectural, and other consulting
12 services in connection with the project as may be required.
- 13 c. Finance charges, reserves for debt service, and other types of
14 reserves required pursuant to the terms of the trust agreement or
15 resolution or related documents, interest before and during
16 construction or acquisition of the project and, if considered
17 advisable by the State Treasurer, for a period not exceeding two
18 years after the estimated date of completion of construction or
19 acquisition.
- 20 d. Administrative expenses and charges.
- 21 e. The cost of bond insurance, investment contracts, credit and
22 liquidity facilities, interest rate swap agreements or other
23 derivative products, financial and legal consultants, and related
24 costs of the incurrence or issuance of the bonds.
- 25 f. The cost of reimbursing the State for any payments made for
26 any cost described above.
- 27 g. Any other costs and expenses necessary or incidental to the
28 purposes of this act.
- 29 (3) Credit facility. – An agreement that:
- 30 a. Is entered into by the State with a bank, savings and loan
31 association, or other banking institution, an insurance company,
32 reinsurance company, surety company or other insurance
33 institution, a corporation, investment banking firm or other
34 investment institution, or any financial institution or other
35 similar provider of a credit facility, which provider may be
36 located within or without the United States of America; and
- 37 b. Provides for prompt payment of all or any part of the principal
38 or purchase price (whether at maturity, presentment or tender
39 for purchase, redemption, or acceleration), redemption
40 premium, if any, and interest with respect to the bonds payable
41 on demand or tender by the owner in consideration of the State
42 agreeing to repay the provider of the credit facility in
43 accordance with the terms and provisions of the agreement.

- 1 (4) Fiscal year. – The fiscal year of the State beginning on July 1 of one
2 calendar year and ending on June 30 of the next calendar year.
- 3 (5) Par formula. – A provision or formula adopted by the State to provide
4 for the adjustment, from time to time, of the interest rate or rates borne
5 or provided for by any bonds including any of the following:
- 6 a. A provision providing for an adjustment so that the purchase
7 price of the bonds in the open market would be as close to par
8 as possible.
- 9 b. A provision providing for an adjustment based upon a
10 percentage or percentages of a prime rate or base rate, which
11 percentages may vary or be applied for different periods of
12 time.
- 13 c. Any provision that the State Treasurer determines is consistent
14 with this act and will not materially and adversely affect the
15 financial position of the State and the marketing of the bonds at
16 a reasonable interest cost to the State.
- 17 (6) Pledged revenues. – Pledged revenues shall consist of any or all of the
18 following:
- 19 a. The Medicaid and Medicare reimbursements received by the
20 State and allocated for depreciation expense of the project, plus
21 the Medicaid and Medicare reimbursements received by the
22 State and allocated for interest on the debt used to finance the
23 project.
- 24 b. The funds deposited with the Department of State Treasurer as
25 nontax revenue associated with Disproportionate Share
26 Payments from State institutions for mental disease that are
27 collected pursuant to Title XIX of the Social Security Act, 42
28 U.S.C. 1396r-4, as amended.
- 29 c. The revenues generated by the project.
- 30 (7) Project. – The acquisition, construction, and equipping of an
31 approximately 451,800 square foot, 432-bed new psychiatric hospital.
- 32 (8) State. – The State of North Carolina, including any State agency.
- 33 (9) State agency. – Any State agency, institution, board, commission,
34 bureau, council, department, division, officer, or employee of the
35 State. The term does not include counties, municipal corporations,
36 political subdivisions, local boards of education, or other local public
37 bodies.
- 38 (10) State Treasurer or Treasurer. – The incumbent Treasurer, from time to
39 time, of the State.
- 40 (11) Trust agreement. – Any trust agreement or similar instrument or
41 agreement authorizing and securing bonds issued under this act.

42 **SECTION 5.3.** Authorization. – The State Treasurer may, by and with the
43 consent of the Council of State, issue and sell special obligation bonds of the State to
44 pay the cost of the project, in a total principal amount not to exceed one hundred million

1 dollars (\$100,000,000), which maximum principal amount shall be reduced by the
2 amount of any special indebtedness incurred for the project under Part IV of this act.
3 The principal of, premium, if any, and interest on the bonds shall be payable solely from
4 the pledged revenues in accordance with the terms of the resolution or trust agreement
5 authorizing and securing the bonds. The State Treasurer may, in his sole discretion,
6 require one or more reports satisfactory to the State Treasurer evidencing the savings
7 expected to be realized from the closure of existing psychiatric hospitals that are to be
8 replaced by the project and the feasibility of the financing of the project.

9 **SECTION 5.4.** Terms and Conditions. – The bonds may be issued, from
10 time to time, in one or more series, but in no event prior to July 1, 2004. The bonds shall
11 be dated, and may be made redeemable before maturity at the option of the State at any
12 price or prices and upon any terms and conditions, as may be determined by the State
13 Treasurer at the time of the sale of the bonds. The bonds also may be made payable,
14 from time to time, on demand or tender for purchase by the owner upon any terms and
15 conditions as may be determined by the State Treasurer. The bonds shall bear interest at
16 any rate or rates (whether fixed or variable, or any combination thereof, and including,
17 without limitation, any variations as may be permitted pursuant to a par formula) as may
18 be determined by the State Treasurer. Bonds shall mature at any time or times not
19 exceeding 40 years from their date or dates, as may be determined by the Council of
20 State, subject to the limitations provided in this act. The Council of State shall
21 determine the form and manner of execution of the bond, and shall fix the
22 denominations and the places of payment of principal and interest, which may be any
23 bank or trust company within or without the State. If an officer whose signature or
24 facsimile of whose signature appears on any bond ceases to be that officer before the
25 delivery of the bonds, the signature or facsimile is nevertheless valid for all purposes as
26 if the officer had remained in office until the delivery. The Council of State may also
27 provide for the authentication of the bonds by a trustee or fiscal agent. The Council of
28 State may also provide for any other terms, conditions, or matters not inconsistent with
29 the provisions of this act.

30 Bonds may be sold in any manner, either at public or private sale, and for any
31 price as the State Treasurer determines to be for the best interests of the State and to
32 effectuate best the purposes of this act, as long as the sale has been approved by the
33 Council of State. The State Treasurer may authorize, execute, obtain, or otherwise
34 provide for bond insurance, investment agreements, credit and liquidity facilities,
35 interest rate swap agreements, and other derivative products, and any other related
36 instruments as the State Treasurer determines are desirable in connection with the
37 issuance of bonds under this act. The State Treasurer is authorized to employ and
38 designate any financial consultants, underwriters, and bond attorneys to be associated
39 with any bond issue under this act. The proceeds of any bonds shall be used solely for
40 the purposes for which they are issued and shall be disbursed in any manner and under
41 any restrictions the Council of State may provide in the resolution authorizing the
42 issuance of, or any trust agreement securing, the bonds.

43 Except as otherwise expressly provided in this act, bonds may be issued
44 under this act without obtaining the consent of any department, division, commission,

1 board, body, bureau, or agency of the State, and without any other proceedings or the
2 happening of any conditions or things other than those proceedings, conditions, or
3 things that are specifically required by this act and the provisions of the resolution
4 authorizing the issuance of, or any trust agreement securing, the bonds.

5 **SECTION 5.5.** Trust Agreement or Resolution. – Any bonds issued under
6 the provisions of this act may be secured by a trust agreement by and between the State
7 and a corporate trustee, which may be any trust company or bank having the powers of
8 a trust company within or without the State. The resolution or trust agreement
9 authorizing and securing the bonds shall, subject to the limitations set forth in this act,
10 specify the pledged revenues and shall pledge or assign the pledged revenues to pay the
11 principal of, premium, if any, or interest on the bonds in the manner provided by this
12 act. The resolution or trust agreement may contain any provisions for protecting and
13 enforcing the rights and remedies of the holders of any bonds as may be reasonable and
14 proper and not in violation of law, including covenants setting forth the duties of the
15 State in relation to the purposes to which bond proceeds may be applied, the disposition
16 or pledging of the pledged revenues, the terms and conditions for the issuance of
17 additional bonds, and the custody, safeguarding, and application of all moneys.

18 Any resolution or trust agreement may restrict the individual right of action
19 by an individual owner of bonds. In addition to the foregoing, any resolution or trust
20 agreement may contain any other provisions as the Council of State considers
21 reasonable and proper for the security of the holders of any bonds. Expenses incurred by
22 the State in carrying out the provisions of the resolution or trust agreement may be paid
23 from the pledged revenues as provided for in the resolution or trust agreement.

24 **SECTION 5.6.** Pledge of Revenues; Limited Obligations. – The State is
25 authorized to pledge the pledged revenues to the payment of the principal of, premium,
26 if any, and interest on bonds issued under this act as they become due and payable, and
27 to create and maintain any reserves therefor, and to fulfill the terms of any agreements
28 made with the holders of bonds issued under this act. Notwithstanding the foregoing,
29 any pledged revenues not required to pay the principal of, premium, if any, and interest
30 on the bonds secured by the pledged revenues as they become due and payable, or to
31 create and maintain any reserves for them, or to fulfill the terms of any agreements
32 made with the holders of the bond issued under this act, shall be available to the State
33 for expenditure for any lawful purpose, subject to the terms and provisions of any
34 resolution or trust agreement authorizing and securing the bonds.

35 Any pledge of the pledged revenues made by the State under the provisions
36 of this act shall be set forth in the resolution or trust agreement authorizing the issuance
37 of the bonds. The pledge of these pledged revenues made by the State shall be valid and
38 binding from the time when the pledge is made. All pledged revenues so pledged and
39 thereafter received by the State are immediately subject to the lien of the pledge without
40 any physical delivery or further act, and the lien of the pledge is valid and binding as
41 against all parties having claims of any kind in tort, contract, or otherwise against the
42 State, irrespective of whether the parties have notice of the lien. The resolution or trust
43 agreement by which a pledge is created need not be filed or recorded except in the
44 records of the Council of State.

1 All bonds issued under this act shall be equally and ratably secured by a
2 pledge, charge, and lien upon the pledged revenues pledged to the payment of those
3 bonds, without priority by reason of number, or of dates of bonds, execution, or
4 delivery, in accordance with the provisions of this act and of the resolution or trust
5 agreement authorizing and securing the bonds; except that the State may provide in the
6 resolution or trust agreement that the bonds shall, to the extent and in the manner
7 prescribed in the resolution or trust agreement, be subordinated and junior in standing
8 with respect to the payment of principal of, premium, if any, and interest on any other
9 bonds.

10 All bonds issued under this act shall be special obligations of the State. The
11 principal of, premium, if any, and interest on the bonds shall not be payable from the
12 general funds of the State, nor shall they constitute a legal or equitable pledge, charge,
13 lien or encumbrance upon any of its property or upon any of its income, receipts, or
14 revenues, except the pledged revenues. Neither the credit nor the taxing power of the
15 State is pledged for the payment of the principal of, premium, if any, or interest on the
16 bonds, and no holder of bonds has the right to compel the exercise of the taxing power
17 by the State or the forfeiture of any of its property in connection with any default on the
18 bonds, except for the pledged revenues. Every bond issued under this act shall recite in
19 substance that the principal of, premium, if any, and interest on the bond is payable
20 solely from the pledged revenues and that the State is not obligated to pay the principal,
21 premium, or interest, except from these pledged revenues so pledged.

22 **SECTION 5.7.** Agreement of the State. – The State pledges to and agrees
23 with the holders of any bonds by the State pursuant to this act that as long as any of the
24 bonds are outstanding and unpaid, the State will not limit or alter the rights vested in the
25 State at the time of issuance of the bonds to collect and apply the pledged revenues in
26 the manner provided in the resolution or trust agreement authorizing and securing the
27 bonds to pay the principal of, premium, if any, and interest on the bonds as they become
28 due and payable, and to create and maintain any reserves for payment, and to fulfill the
29 terms of any agreements made with the holders of the bonds. The State will not in any
30 way impair the rights and remedies of the holders of the bonds until the bonds and all
31 costs and expenses in connection with any action or proceedings by or on behalf of the
32 holders of the bonds, are fully paid, met, and discharged.

33 **SECTION 5.8.** Trust Funds. – Notwithstanding any other provisions of law
34 to the contrary, all moneys received pursuant to the authority of this act, including
35 proceeds of the bonds and the pledged revenues, are trust funds to be held and applied
36 solely as provided in this act. The resolution authorizing the issuance of, or any trust
37 agreement securing any bonds issued under this act may provide that any of these
38 moneys may be temporarily invested pending their disbursement and shall provide that
39 any officer with whom, or any bank or trust company with which, the moneys are
40 deposited shall act as trustee of the moneys and shall hold and apply them for the
41 purposes of this act, subject to any limitations this act and the resolution or trust
42 agreement provide. These moneys may be invested in any investment authorized by law
43 for investment of trust funds held by the State Treasurer.

1 **SECTION 5.9.** Remedies. – Any holder of bonds issued under the
2 provisions of this act, and the trustee under any resolution or trust agreement
3 authorizing and securing the bonds, except to the extent the rights given in this act may
4 be restricted by the resolution or trust agreement, may, either at law or in equity, by suit,
5 action, mandamus, or other proceeding, protect and enforce any and all rights under the
6 laws of the State or granted under this act or under the resolution or trust agreement, or
7 under any other contract executed by the Council of State or the State Treasurer
8 pursuant to this act, and may enforce and compel the performance of all duties required
9 by this act or by the resolution or trust agreement to be performed by the State or by any
10 officer of the State.

11 **SECTION 5.10.** Investment Securities. – All bonds and interest coupons
12 appertaining to them issued under this act are investment securities within the meaning
13 of and for all the purposes of Article 8 of Chapter 25 of the General Statutes, whether or
14 not they are of the form and character as to be investment securities under that act,
15 subject only to the provisions of the bonds pertaining to registration.

16 **SECTION 5.11.** Bonds Eligible for Investment. – Bonds issued under the
17 provisions of this act are securities or obligations in which all of the following may
18 invest, including capital in their control or belonging to them: public officers, agencies,
19 and public bodies of the State and its political subdivisions; insurance companies, trust
20 companies, investment companies, banks, savings banks, savings and loan associations,
21 credit unions, pension or retirement funds, and other financial institutions engaged in
22 business in the State; and executors, administrators, trustees, and other fiduciaries.
23 Bonds issued under the provisions of this act are securities or obligations that may
24 properly and legally be deposited with and received by any officer or agency of the
25 State or political subdivision of the State for any purpose for which the deposit of
26 bonds, notes, or obligations of the State or any political subdivision is now or may later
27 be authorized by law.

28 **SECTION 5.12.** Refunding Bonds. – By and with the consent of the Council
29 of State, the State Treasurer is authorized to issue and sell refunding bonds for the
30 purpose of refunding any bonds issued under this act and then outstanding, including
31 payment of any redemption premium on them and any interest accrued or to accrue to
32 the date of redemption of the refunded bonds. Refunding bonds may be issued at any
33 time prior to the final maturity of the debt or obligation to be refunded. The principal of,
34 premium, if any, and interest on the refunding bonds shall be payable solely from funds
35 provided under this act for payment of bonds.

36 The proceeds from the sale of any refunding bonds shall be applied to the
37 immediate payment and retirement of the obligations being refunded or, if not required
38 for the immediate payment of the obligations being refunded, the proceeds shall be
39 deposited in trust to provide for the payment and retirement of the obligations being
40 refunded and to pay any expenses incurred in connection with the refunding. Money in
41 a trust fund may be invested in (i) direct obligations of the United States government,
42 (ii) obligations the principal of and interest on which are guaranteed by the United
43 States government, (iii) to the extent then permitted by law, obligations of any agency
44 or instrumentality of the United States government, or (iv) certificates of deposit issued

1 by a bank or trust company located in the State if the certificates are secured by a pledge
2 of the obligations described in (i), (ii), or (iii) above having an aggregate market value,
3 exclusive of accrued interest, equal at least to the principal amount of the certificates so
4 secured. This section does not limit the duration of any deposit in trust for the retirement
5 of obligations being refunded but that have not matured and are not presently
6 redeemable, or if presently redeemable, have not been called for redemption.

7 The issuance of refunding bonds, their maturities and other details, the rights
8 of their holders, and the rights, duties, and obligations of the State in respect of them
9 shall be governed by the provisions of this act that relate to the issuance of bonds,
10 insofar as those provisions are appropriate.

11 **SECTION 5.13.** Officers and Employees Not Liable. – No member of the
12 Council of State or officer or employee of the State shall be subject to any personal
13 liability or accountability by reason of the execution or issuance of any bonds under this
14 act.

15 **SECTION 5.14.** Tax exemption. – Any bonds issued by the State under the
16 provisions of this act shall at all times be free from taxation by the State or any political
17 subdivision or any of their agencies, excepting estate, inheritance, and gift taxes;
18 income taxes on the gain from the transfer of the bonds; and franchise taxes. Interest on
19 the bonds is not subject to taxation as income.

20 **PART VI. GENERAL PROVISIONS FOR PSYCHIATRIC HOSPITAL**

21 **SECTION 6.1.** The Secretary of Health and Human Services shall maintain
22 all existing educational and research programs in psychiatry and psychology conducted
23 by the University of North Carolina School of Medicine at Dorothea Dix Hospital,
24 unless the programs are otherwise modified by the University of North Carolina School
25 of Medicine. The University of North Carolina School of Medicine shall retain
26 authority over all educational and research programs in psychiatry and psychology
27 conducted at the new psychiatric hospital authorized under this act. The Secretary shall
28 consult with the University of North Carolina School of Medicine in programmatic,
29 operational, and facility planning of the new psychiatric hospital to ensure appropriate
30 patient treatment and continuation of educational and research programs conducted by
31 the University of North Carolina School of Medicine.

32 **SECTION 6.2.** Part 3 of Article 8 of Chapter 153A of the General Statutes is
33 amended by adding the following new section to read:

34 **"§ 153A-178. Disposition of county property for a State psychiatric hospital.**

35 When the Secretary of Health and Human Services selects a county for the location
36 of the new State psychiatric hospital as authorized by law, the county selected for the
37 location of the new State psychiatric hospital shall have the power under the general law
38 to acquire real and personal property and convey it to the State under G.S. 160A-24 or
39 other applicable law for use as a psychiatric hospital. The county may acquire the
40 property by eminent domain, and such power under this section is supplementary to any
41 other power the county may have to take property by eminent domain.'

42 **SECTION 6.3.** G.S. 143-15.3D is amended by adding the following new
43 subsection to read:

1 "(c) Notwithstanding G.S. 143-18, any nonrecurring savings in State
2 appropriations realized from the closure of Dorothea Dix Hospital and John Umstead
3 Hospital that are in excess of the cost of operating and maintaining the new State
4 psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust
5 Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S.
6 143-18, recurring savings realized from the closure of Dorothea Dix Hospital and John
7 Umstead Hospital shall not revert to the General Fund but shall be retained by the
8 Department of Health and Human Services and used for the purposes of subsections
9 (b)(2) and (b)(3) of this section."

10 **PART VII. LOCAL GOVERNMENT SPECIAL OBLIGATION BONDS**

11 **SECTION 7.1.** G.S. 159I-30(a) reads as rewritten:

12 "(a) Authorization. – Any unit of local government may borrow money for the
13 purpose of financing or refinancing its cost of the acquisition or construction of a
14 project and may issue special obligation bonds and notes, including bond anticipation
15 notes and renewal notes, pursuant to the provisions of this section and the applicable
16 provisions of this Chapter for this purpose. ~~As used in this section, the term 'project' has~~
17 ~~the meaning provided in G.S. 159I-3 and also includes any of the following as defined~~
18 ~~in S.L. 1998-132: water supply systems, water conservation projects, water reuse~~
19 ~~projects, wastewater collection systems, and wastewater treatment works."~~

20 **SECTION 7.2.** G.S. 159I-30(g) reads as rewritten:

21 "(g) Definitions. – ~~As used~~ The following definitions apply in this section:

22 (1) ~~"Credit facility" means an~~Credit facility. – An agreement entered into
23 by the unit with a bank, ~~a savings and loan association or other~~
24 ~~banking institution,~~association, or another banking institution; an
25 insurance company, ~~a reinsurance company, a surety company or~~
26 ~~other company, or another~~ insurance institution, institution; a
27 corporation, ~~an investment banking firm or other firm, or another~~
28 ~~investment institution,~~ institution; or any financial institution
29 ~~institution,~~ providing for prompt payment of all or any part of the
30 principal, or purchase price (whether at maturity, presentment, or
31 tender for purchase, redemption, or acceleration), redemption
32 premium, if any, and interest on any bonds or notes payable on
33 demand or tender by the owner, in consideration of the unit agreeing to
34 repay the provider of the credit facility in accordance with the terms
35 and provisions of the agreement; the provider of any credit facility
36 may be located either within or without the United States of America.

37 (2) ~~"Par formula" means any~~ Par formula. – Any provision or formula
38 adopted by the unit to provide for the adjustment, from time to time of
39 the interest rate or rates borne by any bonds or notes including:

- 40 a. A provision providing for such adjustment so that the purchase
41 price of such bonds or notes in the open market would be as
42 close to par as possible;
- 43 b. A provision providing for such adjustment based upon a
44 percentage or percentages of a prime rate or base rate, which

1 percentage or percentages may vary or be applied for different
2 periods of time; or

- 3 c. Any other provision as the unit may determine to be consistent
4 with this section and the applicable provisions of this Chapter
5 and does not materially and adversely affect the financial
6 position of the unit and the marketing of the bonds or notes at a
7 reasonable interest cost to the unit.

8 (3) Project. – Any of the following:

9 a. A project as defined in G.S. 159I-3.

10 b. Any of the following as defined in S.L. 1998-132: water supply
11 systems, water conservation projects, water reuse projects,
12 wastewater collection systems, and wastewater treatment
13 works.

14 c. With respect to a county, any project or purpose authorized or
15 described in G.S. 159-48(b) or (c).

16 d. With respect to a city, any project or purpose authorized or
17 described in G.S. 159-48(b) or (d).

18 (g1) Credit Facility. – The obligation of a unit of local government under a credit
19 facility to repay any drawing thereunder may be made payable and otherwise secured, to
20 the extent applicable, as provided in this section."

21 **SECTION 7.3.** G.S. 160A-543 reads as rewritten:

22 **"§ 160A-543. Bonds authorized.**

23 A city may ~~issue its general obligation bonds under the Local Government Bond Act~~
24 incur debt under general law to finance services, facilities or functions provided within a
25 service district. If a proposed general obligation bond issue is required by law to be
26 submitted to and approved by the voters of the city, and if the proceeds of the proposed
27 bond issue are to be used in connection with a service that is or, if the bond issue is
28 approved, will be provided only for one or more service districts or at a higher level in
29 service districts than city wide, the proposed bond issue must be approved concurrently
30 by a majority of those voting throughout the entire city and by a majority of the total of
31 those voting in all of the affected or to be affected service districts."

32 **PART VIII. GENERAL PROVISIONS**

33 **SECTION 8.1.** Interpretation of Act. (a) Additional Method. – This act
34 provides an additional and alternative method for the doing of the things authorized by
35 this act and shall be regarded as supplemental and additional to powers conferred by
36 other laws. Except where expressly provided, this act shall not be regarded as in
37 derogation of any powers now existing. The authority granted in this act is in addition to
38 other laws now or hereinafter enacted authorizing the State to issue or incur
39 indebtedness.

40 **SECTION 8.1.(b)** Statutory References. – References in this act to specific
41 sections or Chapters of the General Statutes are intended to be references to those
42 sections or Chapters as they may be amended, from time to time, by the General
43 Assembly.

1 **SECTION 8.1.(c)** Liberal Construction. – This act, being necessary for the
2 health and welfare of the people of the State, shall be liberally construed to effect its
3 purposes.

4 **SECTION 8.1.(d)** Severability. – If any provision of this act or its
5 application to any person or circumstance is held invalid, that invalidity does not affect
6 other provisions or applications of the act that can be given effect without the invalid
7 provision or application, and to this end the provisions of this act are severable.

8 **SECTION 8.2.** Effective Date. – This act is effective when it becomes law.