

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1430
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Senate Finance Committee Substitute Adopted 9/24/02
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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.

The General Assembly of North Carolina enacts:

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PART I. SPECIAL INDEBTEDNESS

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

"Article 8.

1 "State Capital Facilities Finance Act.

2 **"§ 142-60. Short title.**

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

4 **"§ 142-61. Findings and purpose.**

5 The General Assembly finds as follows:

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

20 **"§ 142-62. Definitions.**

21 The following definitions apply in this Article:

- 22 (1) Bonded indebtedness. – Limited obligation bonds and bond
23 anticipation notes, including refunding bonds and notes, authorized to
24 be issued under this Article.
- 25 (2) Bonds or notes. – Limited obligation bonds and notes authorized to be
26 issued under this Article.
- 27 (3) Capital facility. – Any one or more of the following:
- 28 a. Any one or more buildings, utilities, structures, or other
29 facilities or property developments, including streets and
30 landscaping, and the acquisition of equipment, machinery, and
31 furnishings in connection with these items.
- 32 b. Additions, extensions, enlargements, renovations, and
33 improvements to existing buildings, utilities, structures, or other
34 facilities or property developments, including streets and
35 landscaping.
- 36 c. Land or an interest in land.
- 37 d. Other infrastructure.
- 38 e. Furniture, fixtures, equipment, vehicles, machinery, and similar
39 items.
- 40 (4) Certificates of participation. – Certificates or other instruments
41 delivered by a special corporation evidencing the assignment of
42 proportionate undivided interests in rights to receive payments
43 pursuant to a financing contract.

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

- 1 b. Provides for prompt payment of all or any part of the principal
2 or purchase price (whether at maturity, presentment or tender
3 for purchase, redemption, or acceleration), redemption
4 premium, if any, and interest with respect to any special
5 indebtedness payable on demand or tender by the owner in
6 consideration of the State agreeing to repay the provider of the
7 credit facility in accordance with the terms and provisions of
8 the agreement.
- 9 (8) Department of Administration. – The North Carolina Department of
10 Administration created by Article 36 of Chapter 143 of the General
11 Statutes, or if the Department is abolished or otherwise divested of its
12 functions under this Article, the public body succeeding it in its
13 principal functions or upon which are conferred by law the rights,
14 powers, and duties given by this Article to the Department.
- 15 (9) Financing contract. – A contract entered into pursuant to this Article to
16 finance capital facilities and constituting a lease-purchase contract,
17 installment purchase contract, or other similar type installment
18 financing contract. The term does not include, however, a contract that
19 meets any one of the following conditions:
- 20 a. It constitutes an operating lease under generally accepted
21 accounting principles.
- 22 b. It provides for the payment under the contract over its full term,
23 including periods that may be added to the original term
24 through the exercise of options to renew or extend, of an
25 aggregate principal amount of not in excess of five thousand
26 dollars (\$5,000) or any greater amount that may be established
27 by the Council of State, if the Council of State determines (i)
28 the aggregate amount to be paid under these contracts will not
29 have a significant impact on the State budgetary process or the
30 economy of the State and (ii) the change will lessen the
31 administrative burden on the State.
- 32 c. It is executed and provides for the making of all payments
33 under the contract, including payment to be made during any
34 period that may be added to the original term through the
35 exercise of options to renew or extend, in the same fiscal year.
- 36 (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a
37 financing contract, including certificates of participation indebtedness.
- 38 (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal
39 biennium.
- 40 (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one
41 calendar year and ending on June 30 of the next calendar year.
- 42 (13) Limited obligation bond. – A limited obligation bond issued pursuant
43 to G.S. 142-68 and payable and secured as provided in G.S. 142-69.

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

35 **§ 142-63. Authorization of special indebtedness; General Assembly approval.**

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

- 39 (1) The General Assembly has enacted legislation describing the capital
40 facility and authorizing its financing by the incurrence or issuance of
41 special indebtedness up to a specific maximum amount.
42 (2) The General Assembly has enacted legislation authorizing the
43 incurrence or issuance of special indebtedness up to a specific

1 maximum amount for a specific category of capital facilities, and the
2 capital facility meets all of the conditions set in that legislation.

3 **"§ 142-64. Procedure for incurrence or issuance of special indebtedness.**

4 (a) Notice and Certificate. – Whenever the State or a State agency intends to use
5 special indebtedness to finance capital facilities, it shall notify the Department of
6 Administration. If the Department of Administration intends for the State to use special
7 indebtedness to finance the capital facilities, it shall provide written notice to the
8 Treasurer advising the Treasurer of its intent. The Treasurer may require a preliminary
9 conference with the Department of Administration to consider the proposed financing.

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

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

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

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

41 (d) Oversight by Treasurer. – No special indebtedness shall be incurred or issued
42 without the prior written approval of the State Treasurer as provided in this subsection,
43 which is in addition to the certificate given by the State Treasurer pursuant to subsection
44 (a) of this section. In determining whether to approve the proposed financing, the State

1 Treasurer may consider any factors the State Treasurer considers relevant in order to
2 find and determine all of the following:

3 (1) The amounts to become due under the special indebtedness, including
4 the interest component or rate, are adequate and not excessive for the
5 purpose proposed.

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

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

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

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

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

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

37 **"§ 142-65. Security; other requirements.**

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

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

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

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

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

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

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

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

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

41 (g) Protection of Lender. – Special indebtedness may contain any provisions for
42 protecting and enforcing the rights and remedies of the person advancing moneys or
43 providing financing under a financing contract, the owners of bonded indebtedness, or
44 others to whom the State is obligated under special indebtedness or any related

1 documents as may be reasonable and proper and not in violation of law. These
2 provisions may include covenants setting forth the duties of the State in respect of any
3 of the following:

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

6 (2) The disposition and application of the revenues of the State, including
7 taxes.

8 (3) Insuring, maintaining, and other duties with respect to the capital
9 facilities financed.

10 (4) The disposition of any charges and collection of any revenues and
11 administrative charges.

12 (5) The terms and conditions of the issuance of additional special
13 indebtedness.

14 (6) The custody, safeguarding, investment, and application of all moneys.

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

21 **"§ 142-66. Financing contract indebtedness.**

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

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

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

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

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

42 (f) Terms and Conditions. – All other conditions set forth elsewhere in this
43 Article with respect to financing contract indebtedness shall also be satisfied prior to
44 incurring any financing contract indebtedness. To the extent applicable as conclusively

1 determined by the State Treasurer, the provisions of G.S. 142-69, 142-70, and 142-71
2 apply to financing contract indebtedness.

3 **"§ 142-67. Additional requirements for certificates of participation indebtedness.**

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

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

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

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

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

32 **"§ 142-68. Bonded indebtedness.**

33 The State Treasurer is authorized, by and with the consent of the Council of State as
34 provided in this Article, to issue and sell at one time, or from time to time, bonds of the
35 State to be designated "State of North Carolina Limited Obligation Bonds, Series _____"
36 or notes of the State as provided in this Article, for the purpose of providing funds, with
37 any other available funds, for the uses authorized in this Article.

38 **"§ 142-69. Issuance of limited obligation bonds and notes.**

39 (a) Terms and Conditions. – Bonds or notes may bear any dates, may be serial or
40 term bonds or notes, or any combination of these, may mature in any amounts and at
41 any times, not exceeding 40 years from their dates, may be payable at any places, either
42 within or without the United States, in any coin or currency of the United States that at
43 the time of payment is legal tender for payment of public and private debts, may bear
44 interest at any rates, which may vary from time to time, and may be made redeemable

1 before maturity, at the option of the State or otherwise as may be provided by the State,
2 at any prices, including a price greater than the face amount of the bonds or notes, and
3 under any terms and conditions, all as may be determined by the State Treasurer, by and
4 with the consent of the Council of State.

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

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

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

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

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

43 (e) Notes; Repayment. – By and with the consent of the Council of State, the
44 State Treasurer is authorized to borrow money and to execute and issue notes of the

1 State for the same, but only in any of the following circumstances and under the
2 following conditions:

- 3
- 4 (1) For anticipating the sale of bonds, the issuance of which the Council of
5 State has approved, if the State Treasurer considers it advisable to
6 postpone the issuance of the bonds.
- 7 (2) For the payment of interest on or any installment of principal of any
8 bonds then outstanding, if there are not sufficient funds in the State
9 treasury with which to pay the interest or installment of principal as
10 they respectively become due.
- 11 (3) For the renewal of any loan evidenced by notes authorized in this
12 Article.
- 13 (4) For the purposes authorized in this Article.
- 14 (5) For refunding bonds or notes or financing contract indebtedness as
15 authorized in this Article.
- 16

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

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

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

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

35 **"§ 142-70. Variable rate demand bonds and notes and financing contract**
36 **indebtedness.**

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

- 39 (1) It is payable from time to time on demand or tender for purchase by
40 the owner thereof, if a credit facility supports the special indebtedness,
41 unless the State Treasurer specifically determines that a credit facility
42 is not required upon a determination by the State Treasurer that the
43 absence of a credit facility will not materially and adversely affect the
44 financial position of the State or the marketing of the bonds or notes or

1 financing contract indebtedness at a reasonable interest cost to the
2 State.

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

4 (3) It is subject to redemption or mandatory tender for purchase prior to
5 maturity.

6 (4) It bears interest at a rate or rates that may be fixed or may vary over
7 any period of time, as may be provided in the proceedings providing
8 for the issuance or incurrence of the special indebtedness, including
9 any variations that may be permitted pursuant to a par formula.

10 (5) It is the subject of a remarketing agreement under which an attempt is
11 made to remarket special indebtedness to new purchasers before its
12 presentment for payment to the provider of the credit facility or to the
13 State.

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

22 **"§ 142-71. Other agreements.**

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

31 **"§ 142-72. Tax exemption.**

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

38 **"§ 142-73. Investment eligibility.**

39 Special indebtedness are securities or obligations in which all of the following may
40 invest, including capital in their control or belonging to them: public officers, agencies,
41 and public bodies of the State and its political subdivisions; insurance companies, trust
42 companies, investment companies, banks, savings banks, savings and loan associations,
43 credit unions, pension or retirement funds, and other financial institutions engaged in
44 business in the State; and executors, administrators, trustees, and other fiduciaries.

1 Special indebtedness are securities or obligations that may properly and legally be
2 deposited with and received by any officer or agency of the State or political
3 subdivision of the State for any purpose for which the deposit of bonds, notes, or
4 obligations of the State or any political subdivision is now or may later be authorized by
5 law.

6 **"§ 142-74. Procurement of capital facilities.**

7 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
8 Statutes and any other laws or rules of the State that relate to the acquisition and
9 construction of State property apply to the financing of capital facilities through the use
10 of special indebtedness pursuant to this Article. This section does not apply to the
11 construction and lease-purchase, including leases with an option to purchase at the end
12 of the lease term for a nominal sum, of State office buildings pursuant to proposals
13 submitted before the effective date of this Article in response to requests for proposals,
14 to the extent any of those proposals, as they may be supplemented or amended, are
15 approved by the Department of Administration and any of these leases or lease-purchase
16 agreements are approved by the Council of State in accordance with G.S.
17 143-341(4)d2."

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

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

36 **PART II. REPAIR AND RENOVATIONS**

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

- 44 (1) Roof repairs and replacements.

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

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

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

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

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

35 **PART III. CORRECTIONAL FACILITIES ACQUISITION**

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

40 **SECTION 3.2.** Pamlico County Correctional Facility. – The State is
41 authorized to acquire the correctional facility located in Pamlico County that the State
42 currently leases from U.S. Corrections Corporation pursuant to the purchase option
43 provision in the lease. Title to these facilities shall be held in the name of the State. The

1 cost of acquiring the Pamlico County correctional facility shall be financed as provided
2 in Article 8 of Chapter 142 of the General Statutes.

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

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

18 **PART IV. PSYCHIATRIC HOSPITAL CONSTRUCTION**

19 **SECTION 4.1.** Construction of Psychiatric Hospital. – In accordance with
20 G.S. 142-63, as enacted by this act, this section authorizes the issuance or incurrence of
21 financing contract indebtedness in a maximum principal amount of one hundred million
22 dollars (\$100,000,000), which amount shall be reduced by the amount of any special
23 obligation bonds issued to finance the project under Part V of this act, to finance the
24 cost of the project described in Section 4.2 of this Part, subject to the limitations
25 described herein. The financing contract indebtedness shall not be incurred prior to July
26 1, 2004.

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

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

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

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

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

5 (1) Bonds. – Special obligation bonds issued by the State pursuant to this
6 act.

7 (2) Cost. – Any of the following, without limiting or restricting any proper
8 definition of this term in financing the cost of the project as authorized
9 by this act:

10 a. The cost of acquiring, constructing, and equipping the project,
11 including the acquisition of rights-of-way, easements,
12 equipment, furnishings, land, and other interests in real or
13 personal property acquired or used in connection with the
14 project.

15 b. The cost of engineering, architectural, and other consulting
16 services in connection with the project as may be required.

17 c. Finance charges, reserves for debt service, and other types of
18 reserves required pursuant to the terms of the trust agreement or
19 resolution or related documents, interest before and during
20 construction or acquisition of the project and, if considered
21 advisable by the State Treasurer, for a period not exceeding two
22 years after the estimated date of completion of construction or
23 acquisition.

24 d. Administrative expenses and charges.

25 e. The cost of bond insurance, investment contracts, credit and
26 liquidity facilities, interest rate swap agreements or other
27 derivative products, financial and legal consultants, and related
28 costs of the incurrence or issuance of the bonds.

29 f. The cost of reimbursing the State for any payments made for
30 any cost described above.

31 g. Any other costs and expenses necessary or incidental to the
32 purposes of this act.

33 (3) 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 the bonds payable

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

1 **SECTION 5.3.** Authorization. – The State Treasurer may, by and with the
2 consent of the Council of State, issue and sell special obligation bonds of the State to
3 pay the cost of the project, in a total principal amount not to exceed one hundred million
4 dollars (\$100,000,000), which maximum principal amount shall be reduced by the
5 amount of any special indebtedness incurred for the project under Part IV of this act.
6 The principal of, premium, if any, and interest on the bonds shall be payable solely from
7 the pledged revenues in accordance with the terms of the resolution or trust agreement
8 authorizing and securing the bonds. The State Treasurer may, in his sole discretion,
9 require one or more reports satisfactory to the State Treasurer evidencing the savings
10 expected to be realized from the closure of existing psychiatric hospitals that are to be
11 replaced by the project and the feasibility of the financing of the project.

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

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

1 any restrictions the Council of State may provide in the resolution authorizing the
2 issuance of, or any trust agreement securing, the bonds.

3 Except as otherwise expressly provided in this act, bonds may be issued
4 under this act without obtaining the consent of any department, division, commission,
5 board, body, bureau, or agency of the State, and without any other proceedings or the
6 happening of any conditions or things other than those proceedings, conditions, or
7 things that are specifically required by this act and the provisions of the resolution
8 authorizing the issuance of, or any trust agreement securing, the bonds.

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

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

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

39 Any pledge of the pledged revenues made by the State under the provisions
40 of this act shall be set forth in the resolution or trust agreement authorizing the issuance
41 of the bonds. The pledge of these pledged revenues made by the State shall be valid and
42 binding from the time when the pledge is made. All pledged revenues so pledged and
43 thereafter received by the State are immediately subject to the lien of the pledge without
44 any physical delivery or further act, and the lien of the pledge is valid and binding as

1 against all parties having claims of any kind in tort, contract, or otherwise against the
2 State, irrespective of whether the parties have notice of the lien. The resolution or trust
3 agreement by which a pledge is created need not be filed or recorded except in the
4 records of the Council of State.

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

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

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

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

1 purposes of this act, subject to any limitations this act and the resolution or trust
2 agreement provide. These moneys may be invested in any investment authorized by law
3 for investment of trust funds held by the State Treasurer.

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

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

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

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

39 The proceeds from the sale of any refunding bonds shall be applied to the
40 immediate payment and retirement of the obligations being refunded or, if not required
41 for the immediate payment of the obligations being refunded, the proceeds shall be
42 deposited in trust to provide for the payment and retirement of the obligations being
43 refunded and to pay any expenses incurred in connection with the refunding. Money in
44 a trust fund may be invested in (i) direct obligations of the United States government,

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

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

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

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

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

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

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

37 **"§ 153A-178. Disposition of county property for a State psychiatric hospital.**

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

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

3 "(c) Notwithstanding G.S. 143-18, any nonrecurring savings in State
4 appropriations realized from the closure of Dorothea Dix Hospital and John Umstead
5 Hospital that are in excess of the cost of operating and maintaining the new State
6 psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust
7 Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S.
8 143-18, recurring savings realized from the closure of Dorothea Dix Hospital and John
9 Umstead Hospital shall not revert to the General Fund but shall be retained by the
10 Department of Health and Human Services and used for the purposes of subsections
11 (b)(2) and (b)(3) of this section and for the repayment of debt service on financing
12 contract indebtedness authorized pursuant to Article 8 of Chapter 142 of the General
13 Statutes for the construction of a new State psychiatric hospital."

14 **SECTION 6.4.(a)** Dorothea Dix Hospital Property Study Commission. – If
15 the State-owned real property encompassing the Dorothea Dix Hospital campus is not
16 transferred to another State agency or agencies prior to the sale of any or all of the
17 property to a nongovernmental entity, options for such sale shall be considered by the
18 Dorothea Dix Hospital Property Study Commission. The Commission shall make
19 recommendations on the options for sale of the property to the Joint Legislative
20 Commission on Governmental Operations prior to any sale of any or all parts of the
21 property.

22 **SECTION 6.4.(b)** Creation and Membership. – There is hereby created the
23 Dorothea Dix Hospital Property Study Commission. The Commission shall consist of
24 nine members, four of which shall be appointed by the President Pro Tempore of the
25 Senate and four of which shall be appointed by the Speaker of the House of
26 Representatives. The Secretary of Health and Human Services shall serve as an ex
27 officio member of the Commission.

28 **SECTION 6.5.** Notwithstanding any other provisions of law, in fiscal year
29 2002-2003 the Department of Health and Human Services shall use up to two million
30 dollars (\$2,000,000) of funds available to the Department for the purpose of planning
31 and preliminary design through the schematic phase of replacement hospitals for Cherry
32 and Broughton psychiatric hospitals. The Division of Mental Health, Developmental
33 Disabilities and Substance Abuse Services shall locate the replacement hospitals in
34 Goldsboro and Morganton to serve the Eastern and Western regions of the State.

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

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

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

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

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

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

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

- a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;
- b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
- c. Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

(3) Project. – Any of the following:

- a. A project as defined in G.S. 159I-3.
- b. Any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works.
- c. With respect to a county, any project or purpose authorized or described in G.S. 159-48(b) or (c).
- d. With respect to a city, any project or purpose authorized or described in G.S. 159-48(b) or (d).

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

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

5 "**§ 160A-543. Bonds authorized.**

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

15 **PART VIII. GENERAL PROVISIONS**

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

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

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

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

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