

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 684*
Committee Substitute Favorable 6/4/03
Committee Substitute #2 Favorable 6/10/03

Short Title: Psychiatric Hospital Financing.

(Public)

Sponsors:

Referred to:

March 26, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A STATUTORY FRAMEWORK FOR THE FINANCING OF
3 CAPITAL FACILITIES BY THE STATE AND TO AUTHORIZE THE
4 ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE
5 CONSTRUCTION OF A NEW PSYCHIATRIC HOSPITAL TO BE LOCATED IN
6 BUTNER.

7 The General Assembly of North Carolina enacts:

8 **PART 1. STATE CAPITAL FACILITIES FINANCE ACT**

9 **SECTION 1.** Chapter 142 of the General Statutes is amended by adding a
10 new Article to read:

11 "Article 9.

12 "State Capital Facilities Finance Act.

13 **"§ 142-80. Short title.**

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

15 **"§ 142-81. Findings and purpose.**

16 The General Assembly finds as follows:

- 17 (1) There is a continuing need for capital facilities for the State, many of
18 which will continue to be provided on a "pay-as-you-go" basis by
19 direct appropriations.
- 20 (2) The State will also continue to provide capital facilities through the
21 issuance of general obligation bonds.
- 22 (3) There is a need, however, for the use of alternative financing methods,
23 such as authorized in this Article, to facilitate the providing of capital
24 facilities when circumstances and conditions warrant the providing of
25 capital facilities through financing methods in addition to direct
26 appropriations and the issuance of general obligation bonds.
- 27 (4) The use of these alternative financing methods as authorized in this
28 Article will provide financing flexibility to the State and permit the

1 State to take advantage of changing financial and economic
2 environments.

3 **"§ 142-82. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Bonded indebtedness. – Limited obligation bonds and bond
6 anticipation notes, including refunding bonds and notes, authorized to
7 be issued under this Article.
- 8 (2) Bonds or notes. – Limited obligation bonds and notes authorized to be
9 issued under this Article.
- 10 (3) Capital facility. – Any one or more of the following:
- 11 a. Any one or more buildings, utilities, structures, or other
12 facilities or property developments, including streets and
13 landscaping, and the acquisition of equipment, machinery, and
14 furnishings in connection with these items.
- 15 b. Additions, extensions, enlargements, renovations, and
16 improvements to existing buildings, utilities, structures, or other
17 facilities or property developments, including streets and
18 landscaping.
- 19 c. Land or an interest in land.
- 20 d. Other infrastructure.
- 21 e. Furniture, fixtures, equipment, vehicles, machinery, and similar
22 items.
- 23 (4) Certificates of participation. – Certificates or other instruments
24 delivered by a special corporation evidencing the assignment of
25 proportionate undivided interests in rights to receive payments
26 pursuant to a financing contract.
- 27 (5) Certificates of participation indebtedness. – Financing contract
28 indebtedness incurred by the State under a plan of finance in which a
29 special corporation obtains funds to pay the cost of a capital facility to
30 be financed through the delivery by the special corporation of
31 certificates of participation.
- 32 (6) Cost. – Any of the following in financing the cost of capital facilities
33 as authorized by this Article:
- 34 a. The cost of constructing, reconstructing, renovating, repairing,
35 enlarging, acquiring, and improving capital facilities, including
36 the acquisition of land, rights-of-way, easements, franchises,
37 equipment, machinery, furnishings, and other interests in real or
38 personal property acquired or used in connection with a capital
39 facility.
- 40 b. The cost of engineering, architectural, and other consulting
41 services.
- 42 c. The cost of providing personnel to ensure effective
43 management of capital facilities.

- 1 d. Finance charges, reserves for debt service, other types of
2 reserves required pursuant to the terms of any special
3 indebtedness or related documents, and interest before and
4 during construction or acquisition of a capital facility and, if
5 considered advisable by the State Treasurer, for a period not
6 exceeding two years after the estimated date of completion of
7 construction or acquisition.
- 8 e. Administrative expenses and charges.
- 9 f. The cost of bond insurance, investment contracts, credit
10 enhancement facilities and liquidity facilities, interest rate swap
11 agreements or other derivative products, financial and legal
12 consultants, and related costs of the incurrence or issuance of
13 special indebtedness.
- 14 g. The cost of reimbursing the State, a State agency, or a special
15 corporation for any payments made for any cost described in
16 this subdivision.
- 17 h. Any other costs and expenses necessary or incidental to the
18 purposes of this Article.

19 (7) Credit facility. – An agreement that:

- 20 a. Is entered into by the State with a bank, savings and loan
21 association, or other banking institution, an insurance company,
22 reinsurance company, surety company or other insurance
23 institution, a corporation, investment banking firm or other
24 investment institution, or any financial institution or other
25 similar provider of a credit facility, which provider may be
26 located within or without the United States of America; and
- 27 b. Provides for prompt payment of all or any part of the principal
28 or purchase price (whether at maturity, presentment or tender
29 for purchase, redemption, or acceleration), redemption
30 premium, if any, and interest with respect to any special
31 indebtedness payable on demand or tender by the owner in
32 consideration of the State's agreeing to repay the provider of the
33 credit facility in accordance with the terms and provisions of
34 the agreement.

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

41 (9) Financing contract. – A contract entered into pursuant to this Article to
42 finance capital facilities and constituting a lease-purchase contract,
43 installment purchase contract, or other similar type of installment

1 financing contract. The term does not include, however, a contract that
2 meets any one of the following conditions:

3 a. It constitutes an operating lease under generally accepted
4 accounting principles.

5 b. It provides for the payment under the contract over its full term,
6 including periods that may be added to the original term
7 through the exercise of options to renew or extend, of an
8 aggregate principal amount of not in excess of five thousand
9 dollars (\$5,000) or any greater amount that may be established
10 by the Council of State if the Council of State determines (i) the
11 aggregate amount to be paid under these contracts will not have
12 a significant impact on the State budgetary process or the
13 economy of the State and (ii) the change will lessen the
14 administrative burden on the State.

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

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

21 (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal
22 biennium.

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

25 (13) Limited obligation bond. – A limited obligation bond issued pursuant
26 to G.S. 142-88 and payable and secured as provided in G.S. 142-89.

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

31 a. A provision providing for an adjustment so that the purchase
32 price of special indebtedness in the open market would be as
33 close to par as possible.

34 b. A provision providing for an adjustment based upon a
35 percentage or percentages of a prime rate or base rate, which
36 percentages may vary or be applied for different periods of
37 time.

38 c. Any provision that the State Treasurer determines is consistent
39 with this Article and will not materially and adversely affect the
40 financial position of the State and the marketing of special
41 indebtedness at a reasonable interest cost to the State.

42 (15) Person. – An individual, a firm, a partnership, an association, a
43 corporation, a limited liability company, or any other organization or
44 group acting as a unit.

- 1 (16) Special corporation. – Either of the following:
2 a. A nonprofit corporation created under Chapter 55A of the
3 General Statutes for the purpose of facilitating the incurrence of
4 certificates of participation indebtedness by the State under this
5 Article.
6 b. A private corporation or other entity issuing certificates of
7 participation pursuant to this Article.
8 (17) Special indebtedness. – Financing contract indebtedness and bonded
9 indebtedness issued or incurred pursuant to this Article.
10 (18) State. – The State of North Carolina, including any State agency.
11 (19) State agency. – Any agency, institution, board, commission, bureau,
12 council, department, division, officer, or employee of the State. The
13 term does not include counties, municipal corporations, political
14 subdivisions, local boards of education, or other local public bodies.
15 (20) State Treasurer. – The incumbent Treasurer, from time to time, of the
16 State.

17 **"§ 142-83. Authorization of special indebtedness; General Assembly approval.**

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

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

28 **"§ 142-84. Procedure for incurrence or issuance of special indebtedness.**

29 (a) Notice and Certificate. – Whenever the State or a State agency intends to use
30 special indebtedness to finance capital facilities, it shall notify the Department of
31 Administration. If the Department of Administration intends for the State to use special
32 indebtedness to finance the capital facilities, it shall provide written notice to the State
33 Treasurer advising the State Treasurer of its intent. The State Treasurer may require a
34 preliminary conference with the Department of Administration to consider the proposed
35 financing.

36 After the filing of the notice and after any preliminary conference, the State
37 Treasurer shall consult with the Office of State Budget and Management as to the
38 revenues expected by that Office to be available to pay all sums to come due on the
39 special indebtedness during its term. If, after consulting with the Office of State Budget
40 and Management, the State Treasurer determines by written certificate that it may be
41 desirable to use special indebtedness to finance the capital facilities, the Department of
42 Administration shall request the Council of State to give its preliminary approval of the
43 use of special indebtedness to finance the capital facilities. The Department of

1 Administration must promptly file copies of the notice and certificate required by this
2 subsection with the Governor and the Council of State.

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

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

12 (1) Authorize the providing of a particular capital facility or, in general
13 terms, the types or classifications of capital facilities to be provided.

14 (2) Set the aggregate principal amount or maximum principal amount of
15 the special indebtedness authorized.

16 (3) Set the maturity or maximum maturity of the special indebtedness
17 authorized.

18 (4) Set the rate, rates, or maximum rate of interest, which may be fixed or
19 vary over a period of time, of the special indebtedness authorized.

20 (5) Include any other conditions or matters not inconsistent with the
21 provisions of this Article in the discretion of the Council of State,
22 which may include the adoption or approvals as may be authorized in
23 G.S. 142-88 and G.S. 142-89.

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

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

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

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

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

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

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

12 (h) Report to Joint Legislative Commission. – After all the requirements for
13 approval and oversight provided in this section have been met, and at least five days
14 before the issuance or incurrence of the special indebtedness, the State Treasurer must
15 report to the Joint Legislative Commission on Governmental Operations. This report
16 must include the details of the proposed special indebtedness, including the capital
17 facilities to be financed by the indebtedness, the amount of the proposed indebtedness,
18 the type of indebtedness to be issued or incurred, and any other information required by
19 the Commission.

20 **"§ 142-85. Security; other requirements.**

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

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

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

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

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

42 (c) Governor's Budget. – Documentation relating to any special indebtedness
43 may include provisions requesting the Governor to submit in the Governor's budget

1 proposal or any amendments or supplements to the budget proposed appropriations
2 necessary to make the payments required by the special indebtedness.

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

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

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

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

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

33 (2) The disposition and application of the revenues of the State, including
34 taxes.

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

37 (4) The disposition of any charges and collection of any revenues and
38 administrative charges.

39 (5) The terms and conditions of the issuance of additional special
40 indebtedness.

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

42 (h) State Property Law Exception. – Chapter 146 of the General Statutes does not
43 apply to any transfer of the State's interest in property authorized by this Article,
44 whether to a deed of trust trustee or other secured party as security for special

1 indebtedness, or to a purchaser of property in connection with a foreclosure or similar
2 conveyance of property to realize upon the security for special indebtedness following
3 the State's default on its obligations under the special indebtedness.

4 **"§ 142-86. Financing contract indebtedness.**

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

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

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

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

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

25 (f) Terms and Conditions. – All other conditions set forth elsewhere in this
26 Article with respect to financing contract indebtedness shall also be satisfied prior to
27 incurring any financing contract indebtedness. To the extent applicable as conclusively
28 determined by the State Treasurer, the provisions of G.S. 142-89, 142-90, and 142-91
29 apply to financing contract indebtedness.

30 **"§ 142-87. Additional requirements for certificates of participation indebtedness.**

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

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

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

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

12 (e) Other Conditions. – All other conditions set forth elsewhere in this Article
13 with respect to certificates of participation indebtedness, including the conditions set
14 forth in G.S. 142-86, must be satisfied before any certificates of participation
15 indebtedness is incurred.

16 **"§ 142-88. Bonded indebtedness.**

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

22 **"§ 142-89. Issuance of limited obligation bonds and notes.**

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

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

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

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

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

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

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

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

31 (1) For anticipating the sale of bonds, the issuance of which the Council of
32 State has approved if the State Treasurer considers it advisable to
33 postpone the issuance of the bonds.

34 (2) For the payment of interest on or any installment of principal of any
35 bonds then outstanding if there are not sufficient funds in the State
36 treasury with which to pay the interest or installment of principal as
37 they respectively become due.

38 (3) For the renewal of any loan evidenced by notes authorized in this
39 Article.

40 (4) For the purposes authorized in this Article.

41 (5) For refunding bonds or notes or financing contract indebtedness as
42 authorized in this Article.

43 Funds derived from the sale of limited obligation bonds or notes may be used in the
44 payment of any bond anticipation notes issued under this Article. Funds provided by the

1 General Assembly for the payment of interest on or principal of bonds shall be used in
2 paying the interest on or principal of any notes and any renewals thereof, the proceeds
3 of which have been used in paying interest on or principal of the bonds.

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

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

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

1 as provided in the trust, without priority by reasons of number, dates of bonds or notes,
2 execution, or delivery, in accordance with the provisions of this Article and of the trust.
3 The trust may, however, provide that bonds or notes issued pursuant to the trust shall, to
4 the extent and in the manner prescribed in the trust, be subordinated and junior in
5 standing, with respect to the payment of principal and interest and to the security of the
6 payment, to any other bonds or notes issued pursuant to the trust. It is lawful for any
7 bank or trust company that may act as depository of the proceeds of bonds or notes,
8 revenues, or any other money under this Article to furnish any indemnifying bonds or to
9 pledge any securities that may be required by the State Treasurer. The trust may set out
10 the rights and remedies of the owners of any bonds or notes and of any trustee, and may
11 restrict the individual rights of action by the owners. In addition to the foregoing, the
12 trust may contain any other provisions the State Treasurer considers appropriate for the
13 security of the owners of any bonds or notes. Expenses incurred in carrying out the
14 provisions of the trust may be treated as a part of the cost of any capital facility or as an
15 administrative charge and may be paid from the proceeds of the bonds or notes or from
16 any other available funds.

17 **"§ 142-90. Variable rate demand bonds and notes and financing contract**
18 **indebtedness.**

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

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

40 (b) If the aggregate principal amount payable by the State under a credit facility
41 is in excess of the aggregate principal amount of special indebtedness secured by the
42 credit facility, whether as a result of the inclusion in the credit facility of a provision for
43 the payment of interest for a limited period of time or the payment of a redemption
44 premium or for any other reason, then the amount of authorized but unissued bonds or

1 notes and financing contract indebtedness during the term of the credit facility shall not
2 be less than the amount of the excess, unless the payment of the excess is otherwise
3 provided for by agreement of the State executed by the State Treasurer.

4 **"§ 142-91. Other agreements.**

5 The State Treasurer may authorize, execute, obtain, or otherwise provide for bond
6 insurance, investment contracts, credit and liquidity facilities, credit enhancement
7 facilities, interest rate swap agreements and other derivative products, and any other
8 related instruments and matters the State Treasurer determines are desirable in
9 connection with the issuance of special indebtedness. The State Treasurer is authorized
10 to employ and designate any financial consultants, underwriters, fiduciaries, and bond
11 attorneys to be associated with any incurrence or issuance of special indebtedness under
12 this Article as the State Treasurer considers appropriate.

13 **"§ 142-92. Tax exemption.**

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

20 **"§ 142-93. Investment eligibility.**

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

32 **"§ 142-94. Procurement of capital facilities.**

33 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
34 Statutes and any other laws or rules of the State that relate to the acquisition and
35 construction of State property apply to the financing of capital facilities through the use
36 of special indebtedness pursuant to this Article. This section does not apply to the
37 construction and lease-purchase, including leases with an option to purchase at the end
38 of the lease term for a nominal sum, of State office buildings pursuant to proposals
39 submitted before the effective date of this Article in response to requests for proposals,
40 to the extent any of those proposals, as they may be supplemented or amended, are
41 approved by the Department of Administration and any of these leases or lease-purchase
42 agreements are approved by the Council of State in accordance with G.S.
43 143-341(4)d2."

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

3 "d2. To purchase or finance the purchase of buildings, utilities,
4 structures, or other facilities or property developments,
5 including streets and landscaping, the acquisition of land,
6 equipment, machinery, and furnishings in connection therewith;
7 additions, extensions, enlargements, renovations and
8 improvements to existing buildings, utilities, structures, or other
9 facilities or property developments, including streets and
10 landscaping; land or any interest in land; other infrastructure;
11 furniture, fixtures, equipment, vehicles, machinery, and similar
12 items; or any combination of the foregoing, through installment
13 purchase, lease-purchase, or other similar type installment
14 financing agreements in the manner and to the extent provided
15 in Article 9 of Chapter 142 of the General Statutes. Any
16 contract entered into or any proceeding instituted contrary to the
17 provisions of this paragraph is voidable in the discretion of the
18 Council of State."

19 **PART 2. PSYCHIATRIC HOSPITAL CONSTRUCTION**

20 **SECTION 2.1.** Construction of Psychiatric Hospital. – In accordance with
21 G.S. 142-83, as enacted by this act, this section authorizes the issuance or incurrence of
22 financing contract indebtedness in a maximum aggregate principal amount of one
23 hundred ten million dollars (\$110,000,000) to finance the cost of the project described
24 in this Part, subject to the limitations described in this Part. The financing contract
25 indebtedness shall not be incurred prior to July 1, 2004.

26 **SECTION 2.2.** The Project. – The project shall consist of the acquisition,
27 construction, and equipping of an approximately 450,000 square foot, 432-bed new
28 psychiatric hospital to be located in Butner.

29 **SECTION 2.3.** Authorization of Financing Contracts. – The State, with the
30 prior approval of the State Treasurer and the Council of State, as provided in Article 9
31 of Chapter 142 of the General Statutes as enacted by this act, is authorized to execute
32 and deliver one or more financing contracts in order to provide funds to the State to be
33 used, together with other available funds, to pay the cost of the project, in an aggregate
34 principal amount not to exceed one hundred ten million dollars (\$110,000,000). The
35 State Treasurer may, in the Treasurer's sole discretion, require one or more reports
36 satisfactory to the Treasurer evidencing the savings expected to be realized from the
37 closure of existing psychiatric hospitals that are to be replaced by the project and the
38 feasibility of the financing of the project.

39 **PART 3. GENERAL PROVISIONS FOR PSYCHIATRIC HOSPITAL**

40 **SECTION 3.1.** The Secretary of Health and Human Services shall maintain
41 all existing educational and research programs in psychiatry and psychology conducted
42 at Dorothea Dix Hospital and John Umstead Hospital by the University of North
43 Carolina School of Medicine and by the Psychology Department within the College of
44 Arts and Sciences at the University of North Carolina at Chapel Hill, unless the

1 programs are otherwise modified by the University of North Carolina School of
2 Medicine or the College of Arts and Sciences. The University of North Carolina School
3 of Medicine shall retain authority over all educational and research programs in
4 psychiatry and the University of North Carolina College of Arts and Sciences shall
5 retain authority over all educational and research programs in psychology conducted at
6 these hospitals and at any new State psychiatric hospital. The Secretary shall consult
7 with the University of North Carolina School of Medicine in programmatic, operational,
8 and facility planning of the new psychiatric hospital to ensure appropriate patient
9 treatment and continuation of educational and research programs conducted by the
10 University of North Carolina School of Medicine. In addition, the Secretary shall
11 consult with the University of North Carolina College of Arts and Sciences to ensure
12 appropriate continuation of educational and research programs conducted by the
13 University of North Carolina College of Arts and Sciences.

14 **SECTION 3.2.** Part 3 of Article 8 of Chapter 153A of the General Statutes is
15 amended by adding the following new section to read:

16 **"§ 153A-178. Disposition of county property for a State psychiatric hospital.**

17 When the Secretary of Health and Human Services selects a county for the location
18 of a new State psychiatric hospital as authorized by law, the county selected for the
19 location of the new State psychiatric hospital is authorized under the general law to
20 acquire real and personal property and convey it to the State under G.S. 160A-274 or
21 other applicable law for use as a psychiatric hospital. The county may acquire the
22 property by eminent domain, and the power under this section is supplementary to any
23 other power the county may have to take property by eminent domain."

24 **SECTION 3.3.** G.S. 143-15.3D is amended by adding the following new
25 subsection to read:

26 "(c) Notwithstanding G.S. 143-18, any nonrecurring savings in State
27 appropriations realized from the closure of any State psychiatric hospitals that are in
28 excess of the cost of operating and maintaining a new State psychiatric hospital shall not
29 revert to the General Fund but shall be placed in the Trust Fund and shall be used for the
30 purposes authorized in this section. Notwithstanding G.S. 143-18, recurring savings
31 realized from the closure of any State psychiatric hospitals shall not revert to the
32 General Fund but shall be used for the payment of debt service on financing contract
33 indebtedness authorized pursuant to Article 9 of Chapter 142 of the General Statutes for
34 the construction of a new State psychiatric hospital. Any remainder not needed for this
35 debt service shall be credited to the Department of Health and Human Services to be
36 used only for the purposes of subsections (b)(2) and (b)(3) of this section."

37 **SECTION 3.4.(a)** Dorothea Dix Hospital Property Study Commission. – If
38 any of the State-owned real property encompassing the Dorothea Dix Hospital campus
39 is no longer needed by Dorothea Dix Hospital and is not transferred to another State
40 agency or agencies before the sale of any or all of the property to a nongovernmental
41 entity, options for this sale shall be considered by the Dorothea Dix Hospital Property
42 Study Commission. The Commission shall make recommendations on the options for
43 sale of the property to the Joint Legislative Commission on Governmental Operations
44 before any sale of any or all parts of the property.

1 **SECTION 3.4.(b)** Creation and Membership. – The Dorothea Dix Hospital
2 Property Study Commission is created. The Commission shall consist of nine members,
3 four appointed by the President Pro Tempore of the Senate and four appointed by the
4 Speaker of the House of Representatives. The Secretary of Health and Human Services
5 shall serve as an ex officio member of the Commission.

6 **PART 4. GENERAL PROVISIONS**

7 **SECTION 4.1.** Interpretation of Act. (a) Additional Method. – This act
8 provides an additional and alternative method for the doing of the things authorized by
9 this act and shall be regarded as supplemental and additional to powers conferred by
10 other laws. Except where expressly provided, this act shall not be regarded as in
11 derogation of any powers now existing. The authority granted in this act is in addition to
12 other laws now or hereinafter enacted authorizing the State to issue or incur
13 indebtedness.

14 **SECTION 4.1.(b)** Statutory References. – References in this act to specific
15 sections or Chapters of the General Statutes are intended to be references to those
16 sections or Chapters as they may be amended from time to time by the General
17 Assembly.

18 **SECTION 4.1.(c)** Liberal Construction. – This act, being necessary for the
19 health and welfare of the people of the State, shall be liberally construed to effect its
20 purposes.

21 **SECTION 4.1.(d)** Severability. – If any provision of this act or its
22 application to any person or circumstance is held invalid, that invalidity does not affect
23 other provisions or applications of the act that can be given effect without the invalid
24 provision or application, and to this end the provisions of this act are severable.

25 **SECTION 4.2.** Effective Date. – This act is effective when it becomes law.