

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1098
House Committee Substitute Favorable 6/15/04
House Committee Substitute #2 Favorable 6/15/04
House Committee Substitute #3 Favorable 6/16/04

Short Title: State Health and Biotechnology Financing.

(Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO
3 FINANCE VITAL STATE FACILITIES FOR HEALTH CARE AND
4 BIOTECHNOLOGY RESEARCH, TO SUPPORT REPAYMENT OF THE DEBT
5 FROM THE HEALTH AND WELLNESS AND TOBACCO TRUST FUNDS,
6 AND TO DIRECT THE STATE TREASURER TO STUDY THE POTENTIAL
7 COSTS AND BENEFITS OF INNOVATIVE STATE FINANCING.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** In accordance with G.S. 142-83, this section authorizes the
10 issuance or incurrence of special indebtedness in the following maximum aggregate
11 principal amounts to finance the costs of acquiring, constructing, and equipping the
12 following projects. The State, with the prior approval of the State Treasurer and the
13 Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is
14 authorized to issue or incur special indebtedness in order to provide funds to the State to
15 be used, together with other available funds, to pay the cost of these projects.

- 16 (1) One hundred eighty million dollars (\$180,000,000) for a new cancer
17 rehabilitation and treatment center, a nearby physicians' office
18 building, and a walkway between the two, all to be located at the
19 University of North Carolina Hospitals at Chapel Hill.
- 20 (2) Sixty million dollars (\$60,000,000) for the North Carolina
21 Cardiovascular Diseases Institute at East Carolina University.
- 22 (3) Thirty-five million dollars (\$35,000,000) for a Bioinformatics Center
23 at the University of North Carolina at Charlotte.
- 24 (4) Twenty-eight million dollars (\$28,000,000) for a stand-alone facility to
25 house the new Pharmacy School program to be located at Elizabeth
26 City State University, and interim temporary facilities to house the
27 program during construction of the stand-alone facility.

1 (5) Thirty-five million dollars (\$35,000,000) for a Center for Health
2 Promotion and Partnerships at the University of North Carolina at
3 Asheville.

4 **SECTION 2.** G.S. 147-86.30 reads as rewritten:

5 **"§ 147-86.30. Health and Wellness Trust Fund established.**

6 (a) Fund Established. – There is established the Health and Wellness Trust Fund
7 in the Office of the State Treasurer ~~to that shall~~ be used to develop a comprehensive
8 plan to finance programs and initiatives to improve the health and wellness of the
9 people of North Carolina. As used in this Article, the term "Fund" means the Health and
10 Wellness Trust Fund. It is the intent of the General Assembly that the funds provided
11 pursuant to this Article to address the health needs of North Carolinians be used to
12 supplement, not supplant, existing funding of health and wellness programs.

13 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
14 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
15 shall be the custodian of the Fund and shall invest its assets in accordance with
16 G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund
17 shall become part of the Fund. Any balance remaining in the Fund at the end of any
18 fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.
19 Payments from the Fund shall be made on the warrant of the chair of the Commission,
20 pursuant to directives of the Commission. The Commission may expend moneys in the
21 Fund only as provided in subsections (c) and (d) of this section.

22 ~~(c) Creation of Fund Reserve. – The Commission shall reserve, and shall not~~
23 ~~expend, fifty percent (50%) of each annual payment allocated to the Health and~~
24 ~~Wellness Trust Fund pursuant to G.S. 143-16.4 during years 2001 through 2025 to~~
25 ~~create and build the Fund Reserve. During years 2001 through 2025, the Commission~~
26 ~~may expend any investment earnings on the reserved funds. Beginning in year 2026,~~
27 ~~and thereafter, the Commission shall not expend the reserved funds but may continue to~~
28 ~~expend any investment earnings on the reserved funds.~~ Priority Use of Funds. – As soon
29 as practicable after the beginning of each fiscal year, the State Treasurer must certify in
30 writing to the chair of the Commission the estimated amount of debt service anticipated
31 to be paid during the fiscal year for special indebtedness authorized by Senate Bill 1098,
32 2003 General Assembly. The chair of the Commission must issue a warrant from the
33 Fund to the General Fund for the lesser of (i) one-half of the amount certified by the
34 Treasurer and (ii) thirty percent (30%) of the Fund's receipts for the current fiscal year.

35 (d) ~~Use of Nonreserved Remaining Funds. – The Commission may expend or~~
36 ~~commit moneys in the Fund in a fiscal year only after the payment required by~~
37 ~~subsection (c) of this section has been made. all of the annual payments for years 1998,~~
38 ~~1999, and 2000 and may expend the remaining fifty percent (50%) portion of each~~
39 ~~annual payment thereafter through the year 2025 that is not reserved pursuant to~~
40 ~~subsection (c) of this section. Any unexpended or unencumbered portion of the~~
41 ~~nonreserved portion of each annual payment for years 2001 through 2025 that has not~~
42 ~~been expended or encumbered by the third June 30th following the date of the receipt of~~
43 ~~the payment shall be reserved pursuant to subsection (c) of this section. The~~

1 ~~Commission may expend any investment earnings on the nonreserved funds in the year~~
2 ~~in which the investment earnings are received by the Fund.~~

3 (e) Fund Purposes. – Moneys from the Fund may be used for any of the
4 following purposes:

5 (1) To address the health needs of vulnerable and underserved populations
6 in North Carolina.

7 (2) To fund programs and initiatives that include research, education,
8 prevention, and treatment of health problems in North Carolina and to
9 increase the capacity of communities to respond to the public's health
10 needs.

11 (3) To develop a comprehensive, community-based plan with goals and
12 objectives to improve the health and wellness of the people of North
13 Carolina with a priority on preventing, reducing, and remedying the
14 health effects of tobacco use and with an emphasis on reducing youth
15 tobacco use. The plan shall include measurable health and wellness
16 objectives and a proposed timetable for achieving these objectives. In
17 developing the plan, the Commission shall consider all facets of
18 health, including prevention, education, treatment, research, and
19 related areas.

20 (f) Limit on Operating and Administrative Expenses. – No more than two and
21 one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year
22 beginning July 1 or a total ~~sum~~ of one million dollars (\$1,000,000), whichever is less,
23 may be used each fiscal year for administrative and operating expenses of the
24 Commission and its staff. All administrative expenses of the Commission shall be paid
25 from the Fund."

26 **SECTION 3.** G.S. 143-719 reads as rewritten:

27 "**§ 143-719. Tobacco Trust Fund; creation; ~~investment~~ investment; priority use.**

28 (a) Fund Established. – The Tobacco Trust Fund is established in the Office of
29 the State Treasurer. The Fund shall be used ~~to provide financial assistance in accordance~~
30 ~~with~~ for the purposes provided in this Article.

31 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
32 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
33 ~~shall be~~ is the custodian of the Fund and shall invest the assets in accordance with
34 G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund ~~shall~~
35 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal
36 year ~~shall be~~ is carried forward in the Fund for the next succeeding fiscal year.
37 Payments from the Fund shall be made on the warrant of the chair of the Commission,
38 pursuant to the directives of the Commission.

39 (c) Priority Use of Funds. – As soon as practicable after the beginning of each
40 fiscal year, the State Treasurer must certify in writing to the chair of the Commission
41 the estimated amount of debt service anticipated to be paid during the fiscal year for
42 special indebtedness authorized by Senate Bill 1098, 2003 General Assembly. The chair
43 of the Commission must issue a warrant from the Fund to the General Fund for the

1 lesser of (i) one-half of the amount certified by the Treasurer and (ii) thirty percent
2 (30%) of the Fund's receipts for the current fiscal year."

3 **SECTION 4.** Article 9 of Chapter 142 of the General Statutes is amended by
4 adding a new section to read:

5 "**§ 142-95. RECOP indebtedness.**

6 (a) Authorization. – In addition to special indebtedness described in the
7 preceding sections of this Article, the State may incur special indebtedness as described
8 in this section to be called real estate certificates of participation (RECOP)
9 indebtedness. RECOP indebtedness shall be incurred for the purposes and otherwise as
10 prescribed in the preceding sections of this Article, with the exceptions and limitations
11 provided in this section. All of the provisions of this Article apply to RECOP
12 indebtedness except to the extent a provision of this section specifically conflicts with a
13 provision in the preceding sections of this Article.

14 (b) Purposes. – In addition to the purposes provided in G.S. 142-83, RECOP
15 indebtedness may be incurred to refund any indebtedness of the State. RECOP
16 indebtedness may refund non-RECOP indebtedness to the same extent it may refund
17 RECOP indebtedness in accordance with the preceding sections of this Article, except
18 that the General Assembly must first enact legislation authorizing the incurrence of
19 RECOP indebtedness for this purpose up to a specific maximum amount. The proceeds
20 of RECOP indebtedness may not be used for operating expenses, start-up costs, or other
21 items of working capital.

22 (c) Security. – In addition to the security authorized in G.S. 142-85(a), RECOP
23 indebtedness may be secured by any property or interest in property of the State selected
24 by the Director of the Budget in consultation with the State Treasurer and approved by
25 the Council of State in accordance with this Article. Before selecting as security any
26 property or interest in property not authorized in G.S. 142-85, the Director of the
27 Budget must consult with the Joint Legislative Commission on Governmental
28 Operations. This subsection supplements G.S. 142-85(a); all of the remaining provisions
29 of G.S. 142-85 apply to RECOP indebtedness.

30 (d) Principal. – The entire principal amount may mature on a single date. No
31 principal reduction is required prior to maturity.

32 (e) Interest. – Interest on RECOP indebtedness may be payable partly
33 periodically and partly at maturity or earlier redemption, in the latter case with interest
34 accruing and compounding at a stated interest rate.

35 (f) Additional State Property Law Exception. – Chapter 146 of the General
36 Statutes does not apply to any sale of the State's interest in property securing RECOP
37 indebtedness if the sales proceeds are used first to pay, or provide for the payment of, all
38 or a portion of that RECOP indebtedness. The property law exceptions in
39 G.S. 142-85(h) also apply to RECOP indebtedness."

40 **SECTION 5.(a)** Findings. – The General Assembly finds that there are
41 circumstances in which the State may benefit from the use of innovative or flexible
42 public financing tools not previously considered in North Carolina. In light of the value
43 of State property and its great potential for appreciation, financing vehicles may be
44 developed that provide for a lower annual debt service in exchange for a larger payment

1 when the debt matures. In the context of urgent State needs or temporary budget
2 restrictions, the General Assembly finds that it may be in the best interest of the State to
3 be able to take advantage of this type of financing option. In order for the General
4 Assembly to make a policy decision on this issue, more economic and financial
5 information is needed.

6 **SECTION 5.(b)** Study. – The State Treasurer shall study the effects of
7 refunding State indebtedness or financing new State facilities with RECOP indebtedness
8 as defined in G.S. 142-95. In evaluating the feasibility of incurring RECOP
9 indebtedness and the surrounding policy issues, the State Treasurer shall evaluate all of
10 the following:

- 11 (1) The overall net economic cost to the State in incurring RECOP
12 indebtedness as compared to other forms of indebtedness.
- 13 (2) The relative annual debt service costs and final maturity payments of
14 RECOP indebtedness as compared to other forms of indebtedness.
- 15 (3) The availability of alternative financing opportunities and their relative
16 costs to the State.
- 17 (4) For refundings, whether the refunding would result in an economic
18 gain, overall lower borrowing costs, or other benefits to the State.
- 19 (5) Factors that affect which circumstances might make RECOP financing
20 more or less desirable.
- 21 (6) The impact on the State's credit rating of various debt options in
22 various situations.
- 23 (7) Any other issues the State Treasurer considers relevant.

24 **SECTION 5.(c)** Report. – The State Treasurer shall report to the Joint
25 Legislative Commission on Governmental Operations by February 1, 2005, the results
26 of this study, including specific findings and recommendations.

27 **SECTION 6.** Sections 2 and 3 of this act become effective July 1, 2004. The
28 remainder of this act is effective when it becomes law.