

Article 1A.

Issuance Accountability.

**§ 142-15.15. Findings.**

The General Assembly hereby finds as follows:

- (1) From time to time, the General Assembly has authorized the State and State entities to acquire or lease assets and has structured the acquisition or leasing of those assets in ways that obligate the State to make payments similar to the obligation of the State to make payments for borrowed money.
- (2) Some of these arrangements have been made pursuant to specific legislative authorization of the General Assembly, such as the financing of assets pursuant to the State Capital Facilities Finance Act, the State Energy Conservation Act, and the State and Local Government Revenue Bond Act, while other arrangements have been entered into pursuant to broader and more general legislative authorization, such as general powers to lease property.
- (3) Depending upon the terms, some arrangements may be treated as similar to obligating the State to make payments for borrowed money and, therefore, have an impact on the State's credit ratings, the future debt affordability, the ability to address budgetary shortfalls, the ability to enforce its contract rights regarding the quality, the durability and performance of the assets acquired, the management of federal income tax compliance requirements, the management of federal securities law compliance, and on the other matters of State finances.
- (4) Due to these consequences, the General Assembly enacts this Article to set forth limitations on the ability of State entities to enter into financing arrangements that constitute State-supported financing arrangements in order to assure that the General Assembly is involved in reviewing and authorizing these transactions and that the transactions are properly managed by State departments and officials. (2016-94, s. 37.8(a).)

**§ 142-15.16. Definitions.**

The following definitions apply in this Article:

- (1) **Financing arrangement.** – An installment financing arrangement, lease-purchase arrangement, arrangement under which funds are to be paid in the future based upon the availability of an asset, or any similar arrangement in the nature of a financing having a term (including renewal options) of greater than one year, in which a State entity agrees to make payments to acquire or obtain a capital asset for a State entity. Any arrangement that results in the identification of a portion of a lease payment, installment payment, or similar scheduled payment as "interest" for purposes of federal income taxation is a financing arrangement for purposes of this Article; provided, however, that (i) a contractual provision that requires interest charges for late or overdue payments shall not by themselves convert a construction or procurement contract into a financing arrangement and (ii) a contractual provision in a construction or purchase contract in which a State entity will withhold or retain from amounts otherwise payable under the contract a retainage until completion of construction, the resolution or adjudication of disputes under the contract, the satisfaction of contract provisions requiring that the property constructed or

acquired meets specified performance or quality standards, or similar contractual provisions designed to protect the interests of the State under the contract do not convert an arrangement that otherwise does not constitute a financing arrangement into a financing arrangement. The term does not include any of the following:

- a. A true operating lease.
  - b. Provisions in a construction or purchase contract in which payments are to be made over an extended period of time in accordance with the terms of the contract as construction is completed or assets are delivered.
  - c. A public-private partnership entered into pursuant to G.S. 143-128.1C.
  - d. Agreements entered into pursuant to G.S. 136-18(39a).
- (2) State entity. – The State of North Carolina and every agency, authority, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include counties, municipal corporations, political subdivisions, local boards of education, or other local public bodies.
- (3) State-supported financing arrangement. – Any financing arrangement that requires payments that are payable, whether directly or indirectly, and whether or not subject to the appropriation of funds for payment, by payments from the General Fund, the Highway Fund, the Highway Trust Fund, or other funds and accounts of the State that are funded from the general revenues and other taxes and fees of the State or State entities. A State-supported financing arrangement does not include a financing arrangement where bonds or other obligations are issued or incurred to carry out a financing program authorized by the General Assembly under which the bonds or other obligations are payable from moneys derived from specified, limited, nontax sources, such as (i) loan payments made by a non-State entity receiving the benefit of financing by a State entity (including an "obligor" or "participating institution" within the meaning of Chapter 159D of the General Statutes, a "public agency" or a "nonprofit agency" within the meaning of Article 1 of Chapter 131A of the General Statutes, and similar entities); (ii) revenues of a revenue-producing enterprise or activity (such as "revenues" within the meaning of Part 4 of Article 1 of Chapter 116 of the General Statutes and "obligated resources" within the meaning of Article 3 of Chapter 116D of the General Statutes); and (iii) loan payments received, loans owned, and other assets of a State entity that are pledged to secure bonds under programs to finance that type of assets and the associated activities (such as mortgage loans under Chapter 122A of the General Statutes and student loans under Article 23 of Chapter 116 of the General Statutes). (2016-94, s. 37.8(a); 2019-240, s. 27.1(d).)

**§ 142-15.17. No State-supported financing of certain assets without approval of the General Assembly.**

No State entity shall enter into any State-supported financing arrangement with respect to the acquisition of a capital asset having a value of five million dollars (\$5,000,000) or more, unless the General Assembly has enacted legislation expressly approving (i) the acquisition, project, or undertaking to be financed and (ii) the use of the State-supported financing arrangement. The

legislation required by this section may be in the form of either an act that refers to the specific asset or project and the manner of financing or an act that identifies a type of asset or project and a maximum amount that may be financed or incurred for that type of asset or project. Examples of references to a specific asset or project include guaranteed energy savings contracts or energy conservation measures of a type described in Article 3B of Chapter 143 of the General Statutes or repairs and renovations of State-owned buildings. (2016-94, s. 37.8(a); 2016-123, s. 10.1(a).)