

Article 9.

State Capital Facilities Finance Act.

**§ 142-80. Short title.**

This Article may be cited as the State Capital Facilities Finance Act. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-81. Findings and purpose.**

The General Assembly finds as follows:

- (1) There is a continuing need for capital facilities for the State, many of which will continue to be provided on a "pay-as-you-go" basis by direct appropriations.
- (2) The State will also continue to provide capital facilities through the issuance of general obligation bonds.
- (3) There is a need, however, for the use of alternative financing methods, such as authorized in this Article, to facilitate the providing of capital facilities when circumstances and conditions warrant the providing of capital facilities through financing methods in addition to direct appropriations and the issuance of general obligation bonds.
- (4) The use of these alternative financing methods as authorized in this Article will provide financing flexibility to the State and permit the State to take advantage of changing financial and economic environments. (2003-284, s. 46.2; 2004-203, s. 79.)

**§ 142-82. Definitions.**

The following definitions apply in this Article:

- (1) Bonded indebtedness. – Limited obligation bonds and bond anticipation notes, including refunding bonds and notes, authorized to be issued under this Article.
- (2) Bonds or notes. – Limited obligation bonds and notes authorized to be issued under this Article.
- (2a) **(Expires December 31, 2028 – see note)** Build NC Bonds. – Special indebtedness issued to finance Build NC Projects, with the Build NC Net Proceeds of such special indebtedness used in accordance with both of the following requirements, measured in the aggregate for all issues:
  - a. Within two percent (2%) of fifty percent (50%) of the Build NC Net Proceeds during such period used for Division Need Projects in accordance with the requirements of Article 14B of Chapter 136 of the General Statutes.
  - b. The remainder of the Build NC Net Proceeds during such period used for Regional Impact Projects in accordance with the requirements of Article 14B of Chapter 136 of the General Statutes.
- (2b) **(Expires December 31, 2028 – see note)** Build NC Net Proceeds. – The proceeds of an issue of Build NC Bonds net of deposits for the costs described in sub-subdivisions d., e., and f. of subdivision (6) of this section.
- (2c) **(Expires December 31, 2028 – see note)** Build NC Project. – A capital facility identified and selected for financing with Build NC Bonds under this Article by the process set forth in Article 14B of Chapter 136 of the General Statutes.
- (3) Capital facility. – Any one or more of the following:

- a. Any one or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment, machinery, and furnishings in connection with these items.
- b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.
- c. Land or an interest in land.
- d. Other infrastructure.
- e. Furniture, fixtures, equipment, vehicles, machinery, and similar items.
- (4) Certificates of participation. – Certificates or other instruments delivered by a special corporation evidencing the assignment of proportionate undivided interests in rights to receive payments pursuant to a financing contract.
- (5) Certificates of participation indebtedness. – Financing contract indebtedness incurred by the State under a plan of finance in which a special corporation obtains funds to pay the cost of a capital facility to be financed through the delivery by the special corporation of certificates of participation.
- (6) Cost. – Any of the following in financing the cost of capital facilities as authorized by this Article:
  - a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving capital facilities, including the acquisition of land, rights-of-way, easements, franchises, equipment, machinery, furnishings, and other interests in real or personal property acquired or used in connection with a capital facility.
  - b. The cost of engineering, architectural, and other consulting services.
  - c. The cost of providing personnel to ensure effective management of capital facilities.
  - d. Finance charges, reserves for debt service, and other types of reserves required pursuant to the terms of any special indebtedness or related documents, interest before and during construction or acquisition of a capital facility and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction or acquisition.
  - e. Administrative expenses and charges.
  - f. The cost of bond insurance, investment contracts, credit enhancement facilities and liquidity facilities, interest rate swap agreements or other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of special indebtedness.
  - g. The cost of reimbursing the State, a State agency, or a special corporation for any payments made for any cost described in this subdivision.
  - h. Any other costs and expenses necessary or incidental to the purposes of this Article.
- (7) Credit facility. – An agreement that:
  - a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company,

- surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and
- b. Provides 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 with respect to any special indebtedness payable on demand or tender by the owner in consideration of the State's agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.
- (8) Department of Administration. – The North Carolina Department of Administration, created by Article 36 of Chapter 143 of the General Statutes or, if the Department is abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions or upon which are conferred by law the rights, powers, and duties given by this Article to the Department.
- (9) Financing contract. – A contract entered into pursuant to this Article to finance capital facilities and constituting a lease-purchase contract, installment-purchase contract, or other similar type installment financing contract. The term does not include, however, a contract that meets any one of the following conditions:
- a. It constitutes an operating lease under generally accepted accounting principles.
- b. It provides for the payment under the contract over its full term, including periods that may be added to the original term through the exercise of options to renew or extend, of an aggregate principal amount of not in excess of five thousand dollars (\$5,000) or any greater amount that may be established by the Council of State if the Council of State determines (i) the aggregate amount to be paid under these contracts will not have a significant impact on the State budgetary process or the economy of the State and (ii) the change will lessen the administrative burden on the State.
- c. It is executed and provides for the making of all payments under the contract, including payment to be made during any period that may be added to the original term through the exercise of options to renew or extend, in the same fiscal year.
- (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a financing contract, including certificates of participation indebtedness.
- (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal biennium.
- (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one calendar year and ending on June 30 of the next calendar year.
- (13) Limited obligation bond. – A limited obligation bond issued pursuant to G.S. 142-88 and payable and secured as provided in G.S. 142-89.

- (14) Par formula. – A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any special indebtedness, including any of the following:
  - a. A provision providing for an adjustment so that the purchase price of special indebtedness in the open market would be as close to par as possible.
  - b. A provision providing for an adjustment based upon a percentage or percentages of a prime rate or base rate, which percentages may vary or be applied for different periods of time.
  - c. Any provision that the State Treasurer determines is consistent with this Article and will not materially and adversely affect the financial position of the State and the marketing of special indebtedness at a reasonable interest cost to the State.
- (15) Person. – An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.
- (16) Special corporation. – Either of the following:
  - a. A nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of facilitating the incurrence of certificates of participation indebtedness by the State under this Article.
  - b. A private corporation or other entity issuing certificates of participation pursuant to this Article.
- (17) Special indebtedness. – Financing contract indebtedness and bonded indebtedness issued or incurred pursuant to this Article.
- (18) State. – The State of North Carolina, including any State agency.
- (19) State agency. – Any agency, 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.
- (20) State Treasurer. – The incumbent Treasurer, from time to time, of the State. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2018-16, s. 3.)

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

- (a) General Assembly Approval. – The State may incur or issue special indebtedness subject to the terms and conditions provided in this Article for the purpose of financing the cost of capital facilities that meet one of the following conditions:
  - (1) The General Assembly has enacted legislation describing the capital facility and authorizing its financing by the incurrence or issuance of special indebtedness up to a specific maximum amount.
  - (2) The General Assembly has enacted legislation authorizing the incurrence or issuance of special indebtedness up to a specific maximum amount for a specific category of capital facilities and the capital facility meets all of the conditions set in that legislation.
- (b) Limitation. – The General Assembly may enact legislation to incur or issue special indebtedness under subsection (a) of this section only if it determines at the time the legislation is enacted that the amount of special indebtedness authorized by the legislation does not exceed the

limitation in this subsection. The determination of the General Assembly must be based upon reasonable estimations and once made may be relied upon as conclusive.

The sum of the special indebtedness authorized by the legislation and all other special indebtedness authorized by legislation enacted after January 1, 2013, may not exceed twenty-five percent (25%) of the bond indebtedness of the State supported by the General Fund that was authorized pursuant to legislation enacted after January 1, 2013. For purposes of this section, bond indebtedness supported by the General Fund includes both special indebtedness and general obligation bond indebtedness of the State that is supported by the General Fund. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2013-78, s. 1.)

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

(a) Notice and Certificate. – Whenever the State or a State agency determines that special indebtedness is appropriate to finance capital facilities, it shall notify the Department of Administration. If the Department of Administration concurs, it shall provide written notice to the State Treasurer advising the State Treasurer of this determination.

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

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

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

- (1) Authorize the providing of a particular capital facility or, in general terms, the types or classifications of capital facilities to be provided.
- (2) Set the aggregate principal amount or maximum principal amount of the special indebtedness authorized.
- (3) Set the maturity or maximum maturity of the special indebtedness authorized.
- (4) Set the rate, rates, or maximum rate of interest, which may be fixed or vary over a period of time, of the special indebtedness authorized.
- (5) Include any other conditions or matters not inconsistent with the provisions of this Article in the discretion of the Council of State, which may include the adoption or approvals as may be authorized in G.S. 142-88 and G.S. 142-89.

(d) Financing Terms. – No special indebtedness shall be incurred or issued without the prior written approval of the State Treasurer as provided in this subsection, which is in addition to the certificate given by the State Treasurer pursuant to subsection (a) of this section. In determining

whether to approve the proposed financing, the State Treasurer may consider any factors the State Treasurer considers relevant in order to find and determine all of the following:

- (1) The amounts to become due under the special indebtedness, including the interest component or rate, are adequate and not excessive for the purpose proposed.
- (2) The increase, if any, in State revenues, including taxes, necessary to pay the sums to become due under the special indebtedness is not excessive.
- (3) The special indebtedness can be incurred or issued on terms desirable to the State.

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

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

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

(h) **Oversight by Joint Legislative Commission.** – After all the requirements for approval and oversight provided in this section have been met, and at least five days before the issuance or incurrence of the special indebtedness, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations. This report must include the details of the proposed special indebtedness, including the capital facilities to be financed by the indebtedness, the amount of the proposed indebtedness, the type of indebtedness to be issued or incurred, and any other information required by the Commission. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-85. Security; other requirements.**

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

- (1) A lien on or security interest in one or more, all, or any part of the capital facilities to be financed by the special indebtedness.
- (2) If the special indebtedness is to finance construction of improvements on real property, a lien on or security interest in all or any part of the land on which the improvements are to be located.

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

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

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

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

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

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

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

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

(h) State Property Law Exception. – Chapter 146 of the General Statutes does not apply to any transfer of the State's interest in property authorized by this Article, whether to a deed of trust trustee or other secured party as security for special indebtedness, or to a purchaser of property in connection with a foreclosure or similar conveyance of property to realize upon the security for special indebtedness following the State's default on its obligations under the special indebtedness. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

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

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

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

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

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

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

(f) Terms and Conditions. – All other conditions set forth elsewhere in this Article with respect to financing contract indebtedness shall also be satisfied prior to incurring any financing contract indebtedness. To the extent applicable as conclusively determined by the State Treasurer, the provisions of G.S. 142-89, 142-90, and 142-91 apply to financing contract indebtedness. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

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

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

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

(c) Terms; Interest. – Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer



determines to be in the best interest of the State and to effect the purposes of this Article, except that the terms of the sale must also be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

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

(e) Other Conditions. – All other conditions set forth elsewhere in this Article with respect to certificates of participation indebtedness, including the conditions set forth in G.S. 142-86, must be satisfied before any certificates of participation indebtedness is incurred. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

#### **§ 142-88. Bonded indebtedness.**

The State Treasurer is authorized, by and with the consent of the Council of State as provided in this Article, to issue and sell at one time or from time to time bonds of the State to be designated "State of North Carolina Limited Obligation Bonds, Series\_\_\_\_ " or notes of the State as provided in this Article, for the purpose of providing funds, with any other available funds, for the uses authorized in this Article. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

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

(a) **(Effective January 1, 2019, and expires December 31, 2028)** Terms and Conditions. – Bonds or notes may bear any dates; may be serial or term bonds or notes, or any combination of these; may mature in any amounts and at any times, not exceeding 15 years from their dates for Build NC Bonds and 40 years from their dates for all other bonds and notes; may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts; may bear interest at any rates, which may vary from time to time; and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(a) **(Effective January 1, 2029)** Terms and Conditions. – Bonds or notes may bear any dates; may be serial or term bonds or notes, or any combination of these; may mature in any amounts and at any times, not exceeding 40 years from their dates; may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts; may bear interest at any rates, which may vary from time to time; and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. – Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or bear the Governor's facsimile signature, shall be signed by the State Treasurer or bear the State Treasurer's facsimile signature, and shall bear the great seal of the State or a facsimile of the seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a

manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. If any officer whose signature or facsimile signature appears on bonds or notes issued under this Article ceases to be that officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the bonds or notes. Bonds or notes issued under this Article may bear the facsimile signatures of persons who, at the actual time of the execution of the bonds or notes, were the proper officers to sign any bond or note although at the date of the bond or note those persons may not have been officers.

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

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

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

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

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

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

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

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

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

(h) Trust Agreement. – In the discretion of the State Treasurer, any bonds and notes issued under this Article may be secured by a trust agreement or similar instrument between the State and a corporate trustee or by a resolution of the Council of State providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank that has the powers of a trust company within or without the State. The trust agreement or similar instrument or resolution, hereinafter referred to as "the trust", may provide for security and pledges and assignments that are permitted under this Article and may provide for the granting of a lien or security interest as authorized by G.S. 142-85. The trust may contain any provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued under the trust that are reasonable and not in violation of law, including covenants setting forth the duties of the State with respect to the purposes for which bond or note proceeds may be applied, the disposition and application of the revenues or assets of the State, the duties of the State with respect to the capital facilities financed, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Article pursuant to the same trust shall be equally and ratably secured as provided in the trust, without priority by reasons of number, dates of bonds or notes, execution, or delivery, in accordance with the provisions of this Article and of the trust. The trust may, however, provide that bonds or notes issued pursuant to the trust shall, to the extent and in the manner prescribed in the trust, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security of the payment, to any other bonds or notes issued pursuant to the trust. It is lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money under this Article to furnish any indemnifying bonds or to pledge any securities that may be required by the State Treasurer. The trust may set out the rights and remedies of the owners of any bonds or notes and of any trustee and may restrict the individual

rights of action by the owners. In addition to the foregoing, the trust may contain any other provisions the State Treasurer considers appropriate for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of the trust may be treated as a part of the cost of any capital facility or as an administrative charge and may be paid from the proceeds of the bonds or notes or from any other available funds. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2018-16, s. 5.)

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

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

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

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of special indebtedness secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes and financing contract indebtedness during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-91. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, credit enhancement facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of special indebtedness. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, fiduciaries, and bond attorneys to be associated with any incurrence or issuance of special indebtedness under this Article as the State Treasurer considers appropriate. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

**§ 142-92. Tax exemption.**

Special indebtedness shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting income taxes on the gain from the transfer of the indebtedness; and franchise taxes. The interest component of any payments made by the State under special indebtedness, including the interest component of any certificates of participation, is not subject to taxation as to income. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2015-264, s. 16(h).)

**§ 142-93. Investment eligibility.**

Special indebtedness are securities or obligations in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions; insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, and other financial institutions engaged in business in the State; and executors, administrators, trustees, and other fiduciaries. Special indebtedness are securities or obligations that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is now or may later be authorized by law. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79.)

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

The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General Statutes and any other laws or rules of the State that relate to the acquisition and construction of State property apply to the financing of capital facilities through the use of special indebtedness pursuant to this Article. This section does not apply to the construction and lease-purchase, including leases with an option to purchase at the end of the lease term for a nominal sum, of State office buildings pursuant to proposals submitted before the effective date of this Article in response to requests for proposals, to the extent any of those proposals, as they may be supplemented or amended, are approved by the Department of Administration and any of these leases or lease-purchase agreements are approved by the Council of State in accordance with G.S. 143-341(4)d2. With the exception of Article 8 of Chapter 143 of the General Statutes, this section does not apply to any special indebtedness issued pursuant to this Article for the purchase, construction, or operation of capital facilities by Gateway University Research Park, Inc., a joint Millennial Campus in Greensboro. (2003-284, s. 46.2; 2003-314, s. 1; 2004-203, s. 79; 2008-204, s. 3.)

**§ 142-95:** Repealed by Session Laws 2007-527, s. 39, effective August 31, 2007.

**§ 142-96. Savings from refinancing of special indebtedness to be placed in the Savings Reserve Account.**

- (a) Whenever special indebtedness issued or incurred pursuant to this Article is refinanced:
- (1) The General Assembly shall not reduce the funds appropriated for servicing the refinanced debt during the fiscal biennium in which the refinancing occurs.
  - (2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Savings Reserve established pursuant to G.S. 143C-4-2 during the fiscal biennium in which the refinancing occurs.

(3) The Director of the Budget shall, in the fiscal biennium immediately following the refinancing, adjust the amount of debt service funded in the base budget so that it aligns with actual debt service needs.

(b) Subsection (a) of this section applies only if, and to the extent that, the balance of the Savings Reserve remains below the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f).

(c) This section does not apply to special indebtedness of the State serviced by the Highway Fund or Highway Trust Fund or other transportation-related debt financing arrangements.

(d) If, and to the extent that, the balance of the Savings Reserve is at or above the recommended Savings Reserve balance developed pursuant to G.S. 143C-4-2(f), whenever special indebtedness issued or incurred by the State is refinanced, the following shall apply:

(1) The General Assembly shall not reduce the funds appropriated for serving the refinanced debt during the fiscal biennium in which the refinancing occurs.

(2) The State Controller shall, in conjunction with the State Treasurer, periodically transfer the savings resulting from the refinancing of the debt to the Unfunded Liability Solvency Reserve, established under G.S. 143C-4-10, during the fiscal biennium in which the refinancing occurs.

(3) In the fiscal biennium immediately following the refinancing, the Director of the Budget shall adjust the amount of debt service funded in the base budget so that it aligns with the actual debt service needs. (2015-241, s. 6.23(b); 2017-5, s. 4; 2018-30, s. 2(b).)

**§ 142-97. (Expires December 31, 2028 – see note) Additional provisions with respect to Build NC Bonds.**

The following requirements and limitations apply to the issuance and sale of Build NC Bonds:

(1) Subject to appropriation by the General Assembly, funds from the Highway Trust Fund shall be the source for repayment of special indebtedness resulting from the sale of Build NC Bonds.

(2) The State Treasurer shall not issue any Build NC Bonds unless (i) the State Treasurer recommends the issuance of the Build NC Bonds and (ii) the State Treasurer has made a determination that all of the following requirements have been or shall be met:

a. The Department of Transportation's average month-end cash balance for the first three months in the calendar year prior to the date of determination is equal to or less than one billion dollars (\$1,000,000,000).

b. The total amount of Build NC Bonds outstanding after such issuance will not cause the recommended transportation debt target established by the Debt Affordability Advisory Committee in accordance with G.S. 142-101 to be exceeded.

c. At least six months prior to the expected date of the Build NC Bond issuance, the Department of Transportation:

1. Consulted with the State Treasurer about the proposed Build NC Bond issuance.

2. Consulted with the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations to provide details of the proposed issuance, including (i) the total amount of the Build NC Bonds that will be issued, (ii) the estimated amount of the debt service payments, and (iii) the estimated amount of debt capacity that would be remaining after the issuance.
- (3) Except as otherwise provided in subdivision (7) of this section, the total amount of special indebtedness from the issuance of Build NC Bonds shall not exceed three billion dollars (\$3,000,000,000).
- (4) Except as otherwise provided in subdivision (7) of this section, each individual issuance of Build NC Bonds is limited to no more than three hundred million dollars (\$300,000,000) in each fiscal year.
- (5) The Department of Transportation may not use the proceeds realized from the sale of Build NC Bonds for a nonhighway project or a project utilizing tolling pursuant to the authority set forth in subdivision (39) or (39a) of G.S. 136-18.
- (6) For purposes of satisfying the requirements of G.S. 142-15.17, Build NC Projects constitute projects as to which the General Assembly has enacted legislation expressly approving the use of a State-supported financing arrangement.
- (7) The restrictions set forth in sub-subdivision a. of subdivision (2) of this section and subdivisions (3) and (4) of this section do not apply to Build NC Bonds that are refunding bonds meeting the requirements set forth in G.S. 142-29.5.
- (8) The provisions of G.S. 142-83 do not apply to Build NC Bonds, nor shall Build NC Bonds be counted for the purposes of that section in limiting the issuance of other debt.
- (9) The provisions of subsection (e) of G.S. 142-84 do not apply to Build NC Bonds. (2018-16, s. 4.)

§ 142-98: Reserved for future codification purposes.

§ 142-99: Reserved for future codification purposes.