

§ 159D-38. Capital facilities finance agency.

(a) There is created a body politic and corporate to be known as "North Carolina Capital Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of the board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor. Each director shall continue in office until a successor is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made the appointment. Any member of the board of directors is eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are in writing expressly waived. Each appointive member of the board of directors shall take an oath of office to administer the duties of office faithfully and impartially and a record of the oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chair and a vice-chair, whose terms extend to the earlier of either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and any other officers it considers necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. The secretary-treasurer shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board of directors of the agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by the board of directors of the agency. The board of directors may, however, appoint an executive committee to act on behalf of the board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency impairs the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina Capital Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b).

(f) An individual serving on the board of directors for the agency shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of that service, except where any of the following apply:

- (1) The individual was not acting within the scope of that individual's official duties.
- (2) The individual was not acting in good faith.
- (3) The individual committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The individual derived an improper personal financial benefit, either directly or indirectly, from the transaction.
- (5) The individual incurred the liability from the operation of a motor vehicle. (1985 (Reg. Sess., 1986), c. 794, s. 4; 1995, c. 490, s. 17(a); 2000-179, s. 2; 2018-84, s. 6(b).)