

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 559

Short Title: Municipal Pooled Projects.

(Public)

Sponsors: Senator Rauch.

Referred to: Finance.

March 21, 1989

A BILL TO BE ENTITLED

AN ACT CREATING THE NORTH CAROLINA MUNICIPAL POOLED CAPITAL PROJECTS FINANCING AGENCY AND THE NORTH CAROLINA COUNTY POOLED CAPITAL PROJECTS FINANCING AGENCY, SUCH AGENCIES TO PROVIDE FINANCING FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION BY MUNICIPALITIES AND COUNTIES RESPECTIVELY, OF CAPITAL PROJECTS, INCLUDING THE ACQUISITION OF EQUIPMENT, AND AMENDING CERTAIN GENERAL LAWS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

“CHAPTER 159H.

“NORTH CAROLINA MUNICIPAL AND COUNTY POOLED CAPITAL PROJECTS FINANCING ACT.

“§ 159H-1. Short title.

This Chapter shall be known and may be cited as the ‘North Carolina Municipal and County Pooled Capital Projects Financing Act.’

“§ 159H-2. Legislative findings.

The General Assembly of North Carolina hereby finds, determines and declares as follows:

- (1) In order to promote and preserve their economy and the health, safety and prosperity of their residents, cities and counties in North Carolina have a need to acquire, construct and install equipment, capital

- 1 improvements and property to help meet the infrastructure
2 requirements of their communities.
- 3 (2) The pooling of the financing needs of several cities and a like pooling
4 for counties, and the issuance of bonds by an instrumentality of the
5 State to finance the cost of projects will reduce the costs of such
6 financing and will increase the number of financing options available
7 by, among other things, providing access to a broader bond market
8 than would otherwise be available to units of government with
9 intermittent financing needs, by reducing issuance and marketing
10 expenses and by providing such units with the opportunity to obtain
11 credit and liquidity enhancement facilities that might otherwise be
12 unavailable or more costly, thus reducing interest costs to such units.
- 13 (3) The stringent restrictions of the Internal Revenue Code of 1986, as
14 amended, have in many instances reduced the flexibility and have
15 increased the costs of financing such capital projects.
- 16 (4) The Internal Revenue Code of 1986, as amended, places certain
17 restrictions on the investment of proceeds of bonds issued by states
18 and their political subdivisions and requires that certain earnings on
19 the proceeds of bonds of such entities be rebated to the federal
20 government, in each case in order for interest on such bonds to not be
21 includable in the gross income of the owners thereof for purposes of
22 federal income taxation. The Tax Reform Act of 1986 and the
23 Technical and Miscellaneous Revenue Act of 1988 provide certain
24 exceptions from the restrictions and requirements of said Code for two
25 hundred million dollars (\$200,000,000) of bonds issued for a loan
26 funding program of the North Carolina League of Municipalities and
27 the North Carolina Municipal Pooled Capital Projects Financing
28 Agency created by this Chapter intends to issue two hundred million
29 dollars (\$200,000,000) of bonds under this Chapter which will benefit
30 from such exceptions and thereby benefit the municipalities to which
31 loans are made by said Agency. The North Carolina Municipal Pooled
32 Capital Projects Financing Agency also intends to issue bonds under
33 this Chapter which will not have any such benefits. Any bonds issued
34 under this Chapter by the North Carolina County Pooled Capital
35 Projects Financing Agency created by this Chapter will not have any
36 such benefits.
- 37 (5) The well-being of residents of cities and counties and the economic
38 and governmental viability and prosperity of cities and counties in
39 North Carolina will be served as provided in this Chapter by the
40 establishment of two instrumentalities of the State to provide financing
41 through the issuance by such instrumentalities of one or more issues of
42 bonds to provide funds for the acquisition of capital projects.
- 43 (6) By restricting the loans to be made to cities and counties to short-term
44 loans with terms not in excess of 10 years as herein provided, the

possibility of achieving the governmental purpose of recycling loan repayments on such short-term loans to other borrowers is enhanced.

"§ 159H-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) 'Acquisition' when used in respect of a project, means acquisition, construction, improvement or installation, and 'acquire,' 'acquiring' and other forms of the word 'acquisition' shall have the meanings correlative thereto.
- (2) 'Administrative charges' means any charge made by the Agency to a city or a county for the providing of financing pursuant to this Chapter and may include, without limitation, charges for financing costs, charges for the costs of bond and reserve fund insurance, of credit-enhancement and liquidity facilities and of interest-rate agreements and charges for administrative expenses of the Agency incurred in the exercise of its powers and duties conferred by this Chapter.
- (3) 'Agency' or 'the Agency' means the County Agency or the Municipal Agency, individually, as well as the County Agency and the Municipal Agency, collectively, it being the intent of this Chapter that the use of the term 'Agency' or 'the Agency' shall, unless the context clearly indicates otherwise, embrace each such Agency, the County Agency being empowered to make loans to counties and the Municipal Agency being empowered to make loans to cities, and each such Agency shall have the powers and shall be subject to the limitations provided by this Chapter.
- (4) 'Association of County Commissioners' means the North Carolina Association of County Commissioners, a federation of county governments in the State.
- (5) 'Board' means the board of directors of the Agency or any other governing body of the Agency succeeding to the principal functions thereof.
- (6) 'Bonds' means the revenue bonds authorized to be issued by the Agency under this Chapter. As used in this Chapter, unless the context otherwise clearly indicates, the term 'bonds' does not include any loan obligation.
- (7) 'City' means any city, as defined in G.S. 160A-1(2), as it may be amended from time to time.
- (8) 'City Council' means any council, as defined in G.S. 160A-1(3), as it may be amended from time to time.
- (9) 'Cost' means the capital cost of acquiring any project, including, without limitation, the following:
 - a. The costs of doing any or all of the following deemed necessary or convenient by a city or county:

- 1 1. Acquiring, constructing, erecting, providing, developing,
2 installing, furnishing, and equipping;
- 3 2. Reconstructing, remodeling, altering, renovating,
4 replacing, refurbishing, and reequipping;
- 5 3. Enlarging, expanding, and extending; and
- 6 4. Demolishing, relocating, improving, grading, draining,
7 landscaping, paving, widening, and resurfacing;
- 8 b. The costs of all property, both real and personal and both
9 improved and unimproved, and of plants, works, appurtenances,
10 structures, facilities, furnishings, machinery, equipment,
11 vehicles, easements, water rights, franchises, and licenses used
12 or useful in connection with the purpose authorized;
- 13 c. The costs of demolishing or moving structures from land
14 acquired and acquiring any lands to which such structures
15 thereafter are to be moved;
- 16 d. Financing charges, including estimated interest during the
17 acquisition of such project and for six months thereafter;
- 18 e. The costs of services to provide and the cost of plans,
19 specifications, studies and reports, surveys, and estimates of
20 costs and revenues;
- 21 f. The costs of paying any interim financing related to the
22 acquisition of a project;
- 23 g. Administrative and legal expenses and administrative charges;
- 24 h. The costs of obtaining bond and reserve fund insurance and
25 investment contracts, of credit-enhancement facilities, liquidity
26 facilities and interest-rate agreements and of establishing and
27 maintaining debt service and other reserves; and
- 28 i. Any other services, costs, and expenses necessary or incidental
29 to the purpose authorized.
- 30 (10) 'County' means any county, as defined in G.S. 153A-1(3), as it may be
31 amended from time to time.
- 32 (11) 'County Agency' means the North Carolina County Pooled Capital
33 Projects Financing Agency created by this Chapter as a public agency
34 and an instrumentality of the State to make loans to counties or, should
35 said Agency be abolished or otherwise divested of the functions given
36 under this Chapter, the public body succeeding it in its principal
37 functions, or upon which are conferred by law the rights, powers and
38 duties given to said Agency by this Chapter.
- 39 (12) 'County Board of Commissioners' means the governing body of a
40 county, as defined in G.S. 153A-12 and Article 4 of Chapter 153A of
41 the General Statutes, as either may be amended from time to time.
- 42 (13) 'Interest-rate agreement' means any interest-rate protection agreement,
43 interest liability swap agreement, interest ceiling agreement, interest
44 rate guaranty or any other contract, other than a bond or note, with a

1 third party that provides for a fixed or maximum amount of interest
2 expense payable by the Agency in respect of its bonds or notes.

3 (14) 'League of Municipalities' means the North Carolina League of
4 Municipalities, a federation of municipal governments in the State.

5 (15) 'Loan obligation' means any bond, note, contract, loan agreement or
6 other written agreement of a city or a county delivered to the Agency
7 and evidencing the city's or county's receipt of loan proceeds from the
8 sale of a portion of the Agency's bonds or from other available money
9 of the Agency and setting forth the terms of the city's or county's
10 agreement to make payments to the Agency in respect of such loan.

11 (16) 'Local Government Commission' means the Local Government
12 Commission established by G.S. 159-3 and any successor of said
13 Commission.

14 (17) 'Municipal Agency' means the North Carolina Municipal Pooled
15 Capital Projects Financing Agency created by this Chapter as a public
16 agency and an instrumentality of the State to make loans to cities or,
17 should said Agency be abolished or otherwise divested of the functions
18 given under this Chapter, the public body succeeding it in its principal
19 functions, or upon which are conferred by law the rights, powers and
20 duties given to said Agency by this Chapter.

21 (18) 'Notes' means the revenue notes or revenue bond anticipation notes
22 authorized to be issued by the Agency under this Chapter. As used in
23 this Chapter, the term 'notes' does not include any loan obligation.

24 (19) 'Project' means any capital project, including equipment, that may be
25 acquired, with loan proceeds provided by the Agency, by a city or a
26 county in accordance with the general, special or local laws, including
27 this Chapter, of the State.

28 (20) 'Revenues' means all moneys received by the Agency (other than the
29 proceeds received by the Agency from the sale of bonds or notes) in
30 connection with the providing of financing to cities and counties,
31 including, without limitation, (i) the payments received by the Agency
32 of the principal of and premium, if any, and interest on loan
33 obligations, (ii) administrative charges, but only to the extent
34 determined by the Agency, and (iii) investment earnings on all
35 revenues, funds and other moneys of the Agency.

36 (21) 'State' means the State of North Carolina.

37 **"§ 159H-4. Creation of Municipality Agency.**

38 (a) There is hereby created a body politic and corporate to be known as the
39 'North Carolina Municipal Pooled Capital Projects Financing Agency' which shall be
40 constituted a public agency and an instrumentality of the State for the performance of
41 essential governmental and public functions.

42 (b) The governing body of the Agency shall be known as its Board of Directors
43 and shall consist of nine members. One of the members of the Board shall be the State
44 Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the

1 Board of Directors. Two members shall be appointed by the Governor, three members
2 shall be appointed by the General Assembly upon the recommendation of the Speaker
3 of the House of Representatives in accordance with G.S. 120-121 and three members
4 shall be appointed by the Senate upon the recommendation of the President Pro
5 Tempore in accordance with G.S. 120-121. The appointments made by the Governor
6 and the recommendations made by the Speaker and the President of the Senate shall be
7 made from a list of at least three nominees who may or may not be municipal officials
8 for each position submitted by the League of Municipalities. The appointments to be
9 made initially by the Governor, by the General Assembly in respect of the
10 recommendation of the Speaker and by the General Assembly in respect of the
11 recommendation of the President Pro Tempore of the Senate shall be for terms
12 beginning on the date of their respective appointments and expiring on June 30, 1990,
13 June 30, 1991, and June 30, 1992. Appointments made to succeed the initial
14 appointments shall be for two-year terms commencing, respectively, on July 1, 1990,
15 July 1, 1991, and July 1, 1992, and subsequent appointments shall be for two-year
16 terms.

17 (c) All members of the Board shall remain in office until their successors are
18 appointed and qualify. Vacancies in appointments made by the Governor shall be filled
19 by the Governor for the remainder of the unexpired terms. Vacancies in appointments
20 made by the General Assembly shall be filled in accordance with G.S. 120-122, as it
21 may be amended from time to time. Persons appointed to fill vacancies shall qualify in
22 the same manner as persons appointed for full terms.

23 (d) Any member of the Board may be removed from office for misfeasance,
24 malfeasance, nonfeasance or improper influence in accordance with the provisions of
25 G.S. 143B-13, as it may be amended from time to time, and the resulting vacancy shall
26 be filled as provided herein for vacancies in general.

27 (e) The Board of Directors shall adopt bylaws with respect to the call of
28 meetings, quorums (which shall be no less than five members of the Board), voting
29 procedures, the keeping of records and such other organizational and administrative
30 matters as the Board of Directors may determine.

31 (f) No vacancy in the membership of the Board of Directors shall impair the
32 right of a quorum to exercise all rights and to perform all the duties of the Board of
33 Directors and the Agency.

34 (g) No part of the revenues or assets of the Agency shall inure to the benefit of or
35 be distributable to its members or officers or other private persons. The members of the
36 Board of Directors shall receive no salary for their services but shall be entitled to
37 receive per diem and allowances in accordance with the provisions of G.S. 138-5, as it
38 may be amended from time to time.

39 (h) The Agency shall be contained within the Department of State Treasurer as if
40 it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-
41 6(b).

42 **"§ 159H-5. Creation of County Agency.**

43 (a) There is hereby created a body politic and corporate to be known as the
44 'North Carolina County Pooled Capital Projects Financing Agency' which shall be

1 constituted a public agency and an instrumentality of the State for the performance of
2 essential governmental and public functions.

3 (b) The governing body of the Agency shall be known as its Board of Directors
4 and shall consist of nine members. One of the members of the Board shall be the State
5 Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the
6 Board of Directors. Two members shall be appointed by the Governor, three members
7 shall be appointed by the General Assembly upon the recommendation of the Speaker
8 of the House of Representatives in accordance with G.S. 120-121 and three members
9 shall be appointed by the Senate upon the recommendation of the President Pro
10 Tempore in accordance with G.S. 120-121. The appointments made by the Governor
11 and the recommendations made by the Speaker and the President of the Senate shall be
12 made from a list of at least three nominees who may or may not be county officials for
13 each position submitted by the Association of County Commissioners. The
14 appointments to be made initially by the Governor, by the General Assembly in respect
15 of the recommendation of the Speaker and by the General Assembly in respect of the
16 recommendation of the President Pro Tempore of the Senate shall be for terms
17 beginning on the date of their respective appointments and expiring on June 30, 1990,
18 June 30, 1991, and June 30, 1992. Appointments made to succeed the initial
19 appointments shall be for two-year terms commencing, respectively, on July 1, 1990,
20 July 1, 1991, and July 1, 1992, and subsequent appointments shall be for two-year
21 terms.

22 (c) All members of the Board shall remain in office until their successors are
23 appointed and qualify. Vacancies in appointments made by the Governor shall be filled
24 by the Governor for the remainder of the unexpired terms. Vacancies in appointments
25 made by the General Assembly shall be filled in accordance with G.S. 120-122, as it
26 may be amended from time to time. Persons appointed to fill vacancies shall qualify in
27 the same manner as persons appointed for full terms.

28 (d) Any member of the Board may be removed from office for misfeasance,
29 malfesance, nonfesance or improper influence in accordance with the provisions of
30 G.S. 143B-13, as it may be amended from time to time, and the resulting vacancy shall
31 be filled as provided herein for vacancies in general.

32 (e) The Board of Directors shall adopt bylaws with respect to the call of
33 meetings, quorums (which shall be no less than five members of the Board), voting
34 procedures, the keeping of records and such other organizational and administrative
35 matters as the Board of Directors may determine.

36 (f) No vacancy in the membership of the Board of Directors shall impair the
37 right of a quorum to exercise all rights and to perform all the duties of the Board of
38 Directors and the Agency.

39 (g) No part of the revenues or assets of the Agency shall inure to the benefit of or
40 be distributable to its members or officers or other private persons. The members of the
41 Board of Directors shall receive no salary for their services but shall be entitled to
42 receive per diem and allowances in accordance with the provisions of G.S. 138-5, as it
43 may be amended from time to time.

1 (h) The Agency shall be contained within the Department of State Treasurer as if
2 it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-
3 6(b).

4 **"§ 159H-6. General powers of Agency.**

5 The Agency shall have all of the powers necessary or convenient to carry out and to
6 effect the purposes and provisions of this Chapter, including without limitation, the
7 powers:

- 8 (1) To make and execute contracts and agreements necessary or incidental
9 to exercise of its powers and duties under this Chapter, including,
10 without limitation, agreements in respect of loan obligations and
11 agreements with issuers of credit-enhancement facilities, liquidity
12 facilities, bond insurance policies, reserve fund insurance policies and
13 investment contracts and interest-rate agreements;
- 14 (2) To contract with any city or county with respect to any of the matters
15 covered by this Chapter;
- 16 (3) To establish a debt service reserve fund or funds and other reserve
17 funds and to borrow money and to purchase insurance and investment
18 contracts to establish, maintain or increase such funds;
- 19 (4) To agree to apply and assign any money, loan obligations and other
20 revenues;
- 21 (5) To borrow money as herein provided to carry out and effect its
22 corporate purposes and to issue in evidence thereof bonds, notes, or
23 bond anticipation notes for the purpose of providing funds therefor,
24 including, but not limited to, funds for the financing and refinancing of
25 the cost of projects, including the payment or advance on behalf of
26 cities and counties of the costs of such acquisition;
- 27 (6) To apply any payments, or prepayments, or principal of or interest on
28 any loan obligation, to the extent such payment or prepayment is not
29 necessary to pay debt service on the Agency's bonds or notes, to the
30 financing of the cost of projects for cities and counties to the same
31 extent as provided in Section 7 hereof;
- 32 (7) To fix, revise, charge and collect or cause to be fixed, revised, charged
33 and collected and to apportion administrative charges among cities and
34 counties participating in any program of the Agency;
- 35 (8) To employ an administrator to administer the operations of the Agency
36 (which administrator, in the case of the Municipal Agency, may be the
37 League of Municipalities and, in the case of the County Agency, may
38 be the Association of County Commissioners), insurance consultants,
39 fiscal and financial consultants, underwriters, attorneys, trustees,
40 remarketing agents and such other consultants, agents and employees
41 as may be required in the judgment of the Agency and to fix and pay
42 their compensation from funds available to the Agency therefor;
- 43 (9) To conduct or cause to be conducted studies and surveys in respect of
44 the capital needs of cities and counties;

- 1 (10) To apply for, accept, receive and agree to and to comply with the terms
2 and conditions governing grants, loans, advances, contributions, gifts,
3 and other aid from any source whatsoever, including federal and State
4 sources;
5 (11) To sue and be sued in its own name, to plead and be impleaded;
6 (12) To adopt an official seal and to alter the same at its pleasure;
7 (13) To establish and revise from time to time minimum standards and
8 criteria for determining the eligibility of specific cities and counties to
9 obtain financing and to acquire projects as provided in this Chapter;
10 (14) To deposit, disburse and invest, pursuant to the provisions of this
11 Chapter, the proceeds of any fund established in accordance with this
12 Chapter and to determine the application of the proceeds of any
13 earnings thereon; and
14 (15) To do all other things necessary or convenient to carry out the
15 purposes of this Chapter.

16 **"§ 159H-7. Specific powers of agency.**

17 (a) The Agency shall have the power which in its discretion it may exercise from
18 time to time to enter into one or more loan obligations with a city or a county, providing
19 for the making of a loan by the Agency to such city or county, or to acquire a loan
20 obligation from a city or county, to finance or refinance the cost of the acquisition of a
21 project; and

22 (b) Any loan obligation entered into by the Agency with a city or a county shall
23 be in writing and shall set forth the terms and conditions agreed to between the Agency
24 and the city or the county for the Agency's loan to such city or county including without
25 limitation, the following:

- 26 (1) The term of such loan obligation, which term shall not exceed 10 years
27 unless extended pursuant to an amendment pursuant to G.S. 159H-
28 9(d);
29 (2) The payment provisions and prepayments provisions, if any, required
30 to enable the Agency to administer its programs and to pay when due
31 the principal of and premium, if any, and interest on bonds or notes or
32 other obligations of the Agency incurred to make such loan or to
33 acquire such loan obligation and to pay or reimburse the Agency for
34 such city's or county's administrative charges and the cost of
35 establishing and maintaining any reserves;
36 (3) The security for payment by the city or county of such loan obligation;
37 and
38 (4) Such other provisions and covenants as the Board may require.

39 (d) Nothing in this Chapter shall be deemed to change the application of the
40 provisions of Article 8 of Chapter 143 of the General Statutes, as it may be amended
41 from time to time, relating to competitive bidding for public contracts, including
42 particularly, but without limitation, the provisions of G.S. 143-49(6), as it may be
43 amended from time to time, to cities or counties acquiring projects under this Chapter

1 and, to the extent that such cities or counties comply with such competitive bidding
2 requirements, there shall be no further such requirements in respect of the Agency.

3 **"§ 159H-8. Eligibility for obtaining financing.**

4 (a) In determining the eligibility of a city or county for financing a project with a
5 loan from the Agency, the Agency may consider:

- 6 (1) The type and useful life of and the need for the project to be financed
7 or refinanced;
- 8 (2) The amount of financing or the cost of the project sought;
- 9 (3) The credit rating, if any, of such city or county;
- 10 (4) The future financing and capital needs of such city or county;
- 11 (5) The availability and cost to such city or county of other methods of
12 financing;
- 13 (6) The construction, disbursement and management procedures in effect
14 in such city or county; and
- 15 (7) Such other factors as the Agency may, in its discretion, determine to
16 be relevant in the providing of such financing.

17 (b) As a condition of determining eligibility for participating in one or more
18 financing programs, the Agency may establish:

- 19 (1) Procedures requiring compliance by cities or counties with such
20 construction, disbursement and accounting procedures and programs
21 as the Agency may determine;
- 22 (2) Minimum credit ratings or criteria;
- 23 (3) Minimum and maximum amounts with respect to the cost of the
24 projects to be financed under this Chapter;
- 25 (4) Procedures that may be employed by the Agency in respect of cities or
26 counties that default in their obligations under loan obligations; and
- 27 (5) Such other procedures, conditions and requirements as the Agency
28 determines to be necessary or desirable in establishing its programs.

29 (c) Nothing in this Chapter shall be deemed to restrict or limit the powers
30 otherwise available to a city or a county, except to the extent restricted by the terms of
31 any loan obligations or other agreements between a city or a county and the Agency, to
32 obtain financing or refinancing or to acquire capital projects from a source other than
33 the Agency or to establish or continue its own financing or acquisition program or to
34 enter into any other financing program.

35 **"§ 159H-9. Specific powers of cities and counties to enter into loan obligations.**

36 (a) Any city or county determined by the Agency to be eligible within G.S.
37 159H-8 may borrow money from the Agency for the purpose of financing or
38 refinancing the cost of acquisition by the city or county of a project. The city or county
39 shall enter into a loan obligation with the Agency, which agreement shall set forth the
40 terms and conditions of such loan, including without limitation, terms and conditions
41 described in G.S. 159H-7, all as shall be determined and approved by the city council of
42 such city or the county board of commissioners for such county.

1 **(b)** The obligation of a city or a county under any loan obligation entered into
2 with the Agency pursuant to this section shall be payable and otherwise secured as
3 provided in G.S. 159H-10.

4 **(c)** In connection with entering into a loan obligation, a city or a county is
5 authorized to enter into a credit facility, as defined in G.S. 159H-10, and the obligation
6 of a city or a county under any such credit facility to repay any drawing thereunder may
7 be made payable and otherwise secured, to the extent applicable, as provided in G.S.
8 159H-10.

9 **(d)** The Agency or a city or a county may propose an amendment, and nothing in
10 this Chapter shall be deemed as restricting the power of the Agency or the city or a
11 county to agree to any amendment to a loan obligation, including an amendment
12 restructuring or otherwise relating to the principal repayment schedule and the interest
13 payment schedule set forth in such loan obligation, upon a determination by the Agency
14 that such amendment is:

15 **(1)** Consistent with the then existing financial condition of the city or the
16 county and its ability to meet its obligations under the loan obligation;
17 and

18 **(2)** Consistent with the then existing financial condition of the Agency and
19 the administration of the Agency's duties and responsibilities under
20 this Chapter. Any amendment relating to the term of a loan obligation
21 shall not extend the original term more than twenty percent (20%)
22 beyond such original term.

23 **(e)** No loan obligation or amendment thereto shall become effective without the
24 approval of the Local Government Commission. In determining whether a loan
25 obligation or any amendment thereto should be approved, the Local Government
26 Commission may consider, to the extent applicable as shall be determined by the Local
27 Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as
28 either may be amended from time to time. The Local Government Commission shall
29 approve any such loan obligation, or any amendment thereto, if, upon the information
30 and evidence it receives, it finds and determines that such loan obligation, or
31 amendment thereto, will satisfy such criteria and will effect the purposes of this
32 Chapter. After considering a loan obligation or an amendment thereto, the Local
33 Government Commission shall enter its order either approving or disapproving such
34 obligation or amendment. An order of approval shall not be regarded as an approval of
35 the legality of such obligation or amendment in any respect. If the Local Government
36 Commission enters an order disapproving such obligation or amendment, the
37 proceedings under this subsection shall be at an end.

38 **"§ 159H-10. Sources and security for payment of loan obligations.**

39 **(a)** The source or sources of and the security for payment of each loan obligation
40 shall be determined by the city council of the city or the county board of commissioners
41 for the county and shall be set forth in the loan obligation.

42 **(b)** In the event that, under the provisions of The Local Government Bond Act, as
43 it may be amended from time to time, a bond order authorizing the issuance of bonds
44 that pledge the faith and credit of a city or a county for the purpose of providing funds

1 for one or more purposes that constitute projects within the meaning of this Chapter has
2 taken effect, then, in lieu of issuing any bonds authorized, or any bond anticipation note
3 in anticipation of such bonds, but not sold and delivered pursuant to such order, the city
4 council or the county board of commissioners may enter into a loan obligation
5 authorized by this Chapter and may pledge the faith and credit of the city or the county,
6 as the case may be, to secure its obligation to make the payments required under such
7 loan obligation, provided the following conditions are met:

8 (1) The aggregate principal amount due under such loan obligation does
9 not exceed the aggregate amount of authorized but unissued bonds, or
10 any bond anticipation notes in anticipation of such bonds, under the
11 bond order; and

12 (2) The project to be acquired is a purpose for which proceeds of bonds or
13 bond anticipation notes may be expended under the bond order.

14 (c) Each city and county is also hereby authorized to agree to apply to the
15 payment of a loan obligation any available source or sources of revenues of such city
16 and county and, to the extent the generation of such revenues is within the power of
17 such city or county, to enter into covenants to take action in order to generate such
18 revenues, provided such agreement to use such sources to make payments or such
19 covenant to generate revenues does not constitute a pledge of the city's or county's
20 taxing power.

21 (d) Each city and county is also hereby authorized to enter into loan obligations
22 constituting a continuing contract and providing for the making of payments in ensuing
23 fiscal years from any available source or sources of revenues, including the proceeds of
24 taxes realized from the exercise of the city's or county's power of taxation, appropriated
25 by the city or county in its annual budget provided:

26 (1) The city council or county board of commissioners shall have
27 appropriated sufficient funds to pay any amount to be paid under such
28 loan obligation in the fiscal year in which such contract is entered into,
29 such appropriation to be made prior to the entering into of such loan
30 obligation;

31 (2) There is included in any such loan obligation a provision automatically
32 cancelling the loan obligation in the event the city council or county
33 board of commissioners decides not to appropriate funds to make
34 payment in an ensuing fiscal year in which event the obligation of the
35 city or county to make any future payments in any ensuing fiscal year
36 shall cease;

37 (3) No deficiency judgment requiring the exercise of the city's or county's
38 power of taxation may be entered against the city or county in any
39 action for breach of a contractual obligation authorized by this
40 subsection; and

41 (4) The taxing power of the city or county is not pledged to secure any
42 payments to be made pursuant to the loan obligation and the Agency
43 shall have agreed that it has no right to require the exercise of a city's
44 or a county's power of taxation to secure such loan obligation.

1 No loan obligation shall contain a nonsubstitution clause which restricts the right of
2 a city or county to replace or provide a substitute for any project financed pursuant to
3 such loan obligation.

4 The obligation of a city or a county with respect to the sources of revenues
5 authorized by subsections (c) and (d) of this section shall be specifically identified
6 in the proceedings of the city council or the county board of commissioners authorizing
7 the city or county to enter into a loan obligation, which loan obligation shall be valid
8 and binding from the date the city or county enters into the loan obligation. Such
9 sources of payment so specifically identified and then held or thereafter received by a
10 city or a county, any fiduciary or the Agency shall immediately be subject to the lien of
11 such loan obligation without any physical delivery of such sources or further act, and
12 such lien shall be valid and binding as against all parties having claims of any kind in
13 tort, contract, or otherwise against a city or county without regard to whether such
14 parties have notice thereof. The proceedings, the loan obligation or any other document
15 or action by which such lien on a source of payment is created need not be filed or
16 recorded in any manner other than as provided in this Chapter.

17 Any loan obligation secured by a source or sources of revenue authorized by
18 subsections (b), (c) or (d) of this section may provide additional security by the granting
19 of a security interest in the project acquired to secure payment of the purchase money
20 provided by such loan obligation, including a deed of trust on any real property so
21 acquired.

22 (e) The interest payable by a city or a county to the Agency on any loan
23 obligation may be at such rate or rates, including variable rates, as may be determined
24 by the Local Government Commission with the approval of the city council or the
25 county board of commissioners. Such approval may be given as the city council or the
26 county board of commissioners may direct, including without limitation, a certificate
27 signed by a representative of the city or the county designated by the city council or the
28 county board of commissioners. The Agency may determine that it is necessary that
29 certain provisions in the Agency's bonds or notes be reflected, in similar terms, in loan
30 obligations, so that if it is necessary to vary the interest rate or call the principal prior to
31 maturity of certain of the Agency's bonds or notes the Agency will have the power to
32 effect a similar variation in interest rate or a similar call prior to maturity of certain loan
33 obligations. Accordingly, in fixing the details of a loan obligation, the city council or
34 the county board of commissioners is hereby authorized to provide that a loan
35 obligation, (i) may be made payable from time to time on demand or tender for purchase
36 by the Agency provided a credit facility supports such loan obligation, unless the city
37 council or the county board of commissioners specifically determines that a credit
38 facility is not required upon a finding and determination by the city council or the
39 county board of commissioners that the absence of a credit facility will not affect the
40 city's or the county's ability to make payment on demand or tender, and will not
41 materially and adversely affect the financial position of the city or the county and the
42 entering into of the loan obligation at a reasonable interest cost to the city or the county;
43 (ii) may be additionally supported by a credit facility; (iii) may be made subject to
44 redemption by the city or the county prior to maturity with such variations as may be

1 permitted pursuant to a par formula; and (iv) may bear interest at a rate or rates that may
2 vary for such period or periods of time, all as may be provided in the proceedings of the
3 city council or the county board of commissioners providing for the entering into of the
4 loan obligation, including, without limitation, such variations as may be permitted
5 pursuant to a par formula.

6 (f) As used in this section, the following terms shall have the following
7 meanings:

8 (1) 'Credit Facility' means an agreement entered into by the city or the
9 county with a bank, savings and loan association or other banking
10 institution, an insurance company, reinsurance company, surety
11 company or other insurance institution, a corporation, investment
12 banking firm or other investment institution, or any financial
13 institution providing for prompt payment of all or any part of the
14 principal or purchase price (whether at maturity, presentment or tender
15 for purchase, redemption or acceleration), redemption premium, if any,
16 and interest on any loan obligation payable on demand or tender by the
17 Agency, in consideration of the city or the county agreeing to repay the
18 provider of such credit facility in accordance with the terms and
19 provisions of such agreement; the provider of any credit facility may
20 be located either within or without the United States of America.

21 (2) 'Par Formula' shall mean any provision or formula adopted by the city
22 or the county to provide for the adjustment, from time to time, of the
23 interest rate or rates borne by any loan obligation including:

24 a. A provision providing for such adjustment so that the purchase
25 price of such loan obligation in the open market would be as
26 close to par as possible,

27 b. A provision providing for such adjustment based upon a
28 percentage or percentages of a prime rate or base rate, which
29 percentage or percentages may vary or be applied for different
30 periods of time,

31 c. A provision providing for such adjustment based upon the
32 adjustments of the interest rate or rates of the Agency's bonds
33 and notes, or

34 d. Such other provision as the city or the county may determine to
35 be consistent with this Chapter and will not affect the city's or
36 the county's ability to pay the principal of and the interest on
37 any loan obligation, and will not materially and adversely affect
38 the financial position of the city or the county and the entering
39 into of the loan obligation at a reasonable interest cost to the
40 city or the county.

41 (g) Any loan obligation may provide for an acceleration of the repayment
42 schedule thereunder.

43 **"§ 159H-11. Credit of State not pledged.**

1 Bonds or notes issued by the Agency under the provisions of this Chapter shall not
2 be secured by a pledge of the faith and credit of the State or of any political subdivision
3 thereof or be deemed to create an indebtedness of the State, or of any such political
4 subdivision thereof, requiring any voter approval, but shall be payable solely from
5 Agency revenues and other funds provided therefor. Each bond or note issued by the
6 Agency under this Chapter shall contain on the face thereof a statement to the effect that
7 the Agency shall not be obligated to pay the same nor the interest nor the premium
8 thereon except from Agency revenues and other funds pledged therefor and that neither
9 the faith and credit nor the taxing power of the State or of any political subdivision
10 thereof is pledged as security for the payment of the principal of or the interest or
11 premium on such Agency bond or note.

12 Expenses incurred by the Agency in carrying out the provisions of this Chapter shall
13 be payable from revenues and other funds provided pursuant to, or available for use
14 under, this act, and no liability shall be incurred by the Agency hereunder beyond the
15 extent to which moneys shall have been so provided.

16 **"§ 159H-12. Bonds and notes.**

17 (a) The Agency may provide for the issuance, at one time or from time to time,
18 of bonds or notes, including bond anticipation notes and renewal notes, of the Agency to
19 carry out and effectuate its corporate purposes. The principal of and interest on such
20 bonds or notes shall be payable solely from funds provided under this Chapter for such
21 payment. Any such bond anticipation notes may be made payable from the proceeds of
22 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,
23 such notes may be paid from any available Agency revenues or other funds provided
24 therefor. Bonds and notes may also be paid from the proceeds of any credit
25 enhancement facility. The bonds and notes of each issue shall be dated and may be
26 made redeemable prior to maturity at the option of the Agency or otherwise, at such
27 price or prices on such date or dates and upon such terms and conditions as may be
28 determined by the Agency. The bonds or notes may also be made payable from time to
29 time on demand or tender for purchase by owner, all upon such terms and conditions as
30 may be determined by the Agency. Any such bonds or notes shall bear interest at such
31 rate or rates, including variable rates as herein authorized, as may be determined by the
32 Local Government Commission with the approval of the Agency.

33 (b) In fixing the details of bonds or notes, the Agency may provide that any of
34 the bonds or notes (i) may be made payable from time to time on demand or tender for
35 purchase by the owner thereof provided a credit facility supports such bonds or notes,
36 unless the Local Government Commission specifically determines that a credit facility
37 is not required upon a finding and determination by the Local Government Commission
38 that the absence of a credit facility will not materially and adversely affect the financial
39 position of the Agency and the marketing of the bonds or notes at a reasonable interest
40 cost to the Agency; (ii) may be additionally supported by a credit facility; (iii) may be
41 made subject to redemption prior to maturity with such variations as may be permitted
42 pursuant to a par formula; (iv) may bear interest at a rate or rates that may vary for such
43 period or periods of time, all as may be provided in the proceedings providing for the
44 issuance of such bonds or notes including, without limitation, such variations as may be

1 permitted pursuant to a par formula; and (v) may be made the subject of a remarketing
2 agreement whereby an attempt is made to remarket the bonds or notes to new
3 purchasers prior to their presentment for payment to the provider of the credit facility or
4 to the State. As used in this section, the following terms shall have the following
5 meanings:

6 (1) 'Credit Facility' means an agreement entered into by the Agency with
7 a bank, savings and loan association or other banking institution, an
8 insurance company, reinsurance company, surety company or other
9 insurance institution, a corporation, investment banking firm or other
10 investment institution, or any financial institution providing for prompt
11 payment of all or any part of the principal or purchase price (whether
12 at maturity, presentment or tender for purchase, redemption or
13 acceleration), redemption premium, if any, and interest on any bonds
14 or notes payable on demand or tender by the owner, in consideration of
15 the Agency agreeing to repay the provider of such credit facility in
16 accordance with the terms and provisions of such agreement; the
17 provider of any credit facility may be located either within or without
18 the United States of America.

19 (2) 'Par Formula' shall mean any provision or formula adopted by the
20 Agency to provide for the adjustment, from time to time, of the interest
21 rate or rates borne by any bonds or notes including:

22 a. A provision providing for such adjustment so that the purchase
23 price of such bonds or notes in the open market would be as
24 close to par as possible,

25 b. A provision providing for such adjustment based upon a
26 percentage or percentages of a prime rate or base rate, which
27 percentage or percentages may vary or be applied for different
28 periods of time, or

29 c. Such other provision as the Agency may determine to be
30 consistent with this act and will not materially and adversely
31 affect the financial position of the Agency and the marketing of
32 the bonds or notes at a reasonable interest cost to the Agency.

33 (c) Notes shall mature at such time or times and bonds shall mature, not
34 exceeding 40 years from their date or dates, as may be determined by the Agency. The
35 Agency shall determine the form and manner of execution of the bonds or notes,
36 including any interest coupons to be attached thereto, and shall fix the denomination or
37 denominations and the place or place of payment of principal and interest, which may
38 be any bank or trust company within or without the United States. In case any officer
39 whose signature or a facsimile of whose signature shall appear on any bonds or notes or
40 coupons (if any) shall cease to be such officer before the delivery thereof, such
41 signature or such facsimile shall nevertheless be valid and sufficient for all purposes the
42 same as if such officer had remained in office until such delivery and any bond or note
43 or coupon may bear the facsimile signatures of such persons who at the actual time of
44 the execution thereof shall be the proper officers to sign although at the date of such

1 bond or note or coupon such persons may not have been such officers. The Agency
2 may also provide for the authentication of the bonds or notes by a trustee or other
3 authenticating agent. The bonds or notes may be issued as certificated or uncertificated
4 obligations or both, and in coupon or in registered form, or both, as the Agency may
5 determine, and provision may be made for the registration of any coupon bonds or notes
6 as to principal alone and also as to both principal and interest, and for the reconversion
7 into coupon bonds or notes of any bonds or notes registered as to both principal and
8 interest, and for the interchange of registered and coupon bonds or notes, and any
9 system for registration may be established as the Agency may determine.

10 (d) No bonds or notes may be issued by the Agency under this Chapter unless the
11 issuance thereof is approved and such bonds or notes are sold by the Local Government
12 Commission as provided in this Chapter. The Agency shall file with the Secretary of
13 the Local Government Commission and application requesting approval of the issuance
14 of such bonds or notes which application shall contain such information and shall have
15 attached to it such documents concerning the proposed financing as the Secretary of the
16 Local Government Commission may require.

17 In determining whether a proposed bond or note issue should be approved, the Local
18 Government Commission may consider, to the extent applicable as shall be determined
19 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.
20 159-86, as either may be amended from time to time, as well as the effect of the
21 proposed financing upon any scheduled or proposed sale of obligations by the State or
22 by any of its agencies or departments or by any unit of local government in the State.
23 The Local Government Commission shall approve the issuance of such bonds or notes
24 if, upon the information and evidence it receives, it finds and determines that the
25 proposed financing will satisfy such criteria and will effect the purposes of this Chapter.

26 Upon the filing with the Local Government Commission of a written request of the
27 Agency requesting that its bonds or notes be sold, such bonds or notes, may be sold by
28 the Local Government Commission in such manner, either at public or private sale, and
29 for such price or prices as the Local Government Commission shall determine to be in
30 the best interests of the Agency and to effect the purposes of this Chapter, provided that
31 such sale shall be approved by the Agency.

32 (e) The proceeds of any bonds or notes shall be used solely for the purposes for
33 which such bonds or notes were issued and shall be disbursed in such manner and under
34 such restrictions, if any, as the Agency may provide in the resolution authorizing the
35 issuance of, or in any trust agreement securing such bonds or notes.

36 (f) Prior to the preparation of definitive bonds, the Agency may issue interim
37 receipts or temporary bonds, with or without coupons, exchangeable for definitive
38 bonds when such bonds have been executed and are available for delivery. The Agency
39 may also provide for the replacement of any bonds or notes which shall become
40 mutilated or shall be destroyed or lost.

41 (g) Bonds or notes may be issued under the provision of this Chapter without
42 obtaining, except as otherwise expressly provided in this Chapter, the consent of any
43 department, division, commission, board, body, bureau or agency of the State, and
44 without any other proceedings or the happening of any conditions or things other than

1 those proceedings, conditions or things that are specifically required by this Chapter and
2 the provisions of the resolution authorizing the issuance of, or any trust agreement
3 securing, such bonds or notes.

4 **"§ 159H-13. Trust agreement or resolution.**

5 In the discretion of the Agency, any bonds and notes issued under the provisions of
6 this Chapter may be secured by a trust agreement by and between the Agency and a
7 corporate trustee or by a resolution providing for the appointment of a corporate trustee
8 thereunder, which corporate trustee may be, in either case, any trust company or bank
9 having the powers of a trust company within or without the State. Such trust agreement
10 or resolution may pledge or assign all or part of the revenues or assets of the Agency,
11 including, without limitation, loan obligations, agreements or commitments to enter into
12 loan obligations, contracts, agreements and other security or investment obligations, any
13 fees or charges made or received by the Agency, the moneys received in payment of
14 loans and interest thereon and any other moneys received or to be received by the
15 Agency. Such trust agreement or resolution may contain such provisions for protecting
16 and enforcing the rights and remedies of the owners of any bonds or notes issued
17 thereunder as may be reasonable and proper and not in violation of law, including
18 covenants setting forth the duties of the Agency in respect of the purposes to which
19 bond or note proceeds may be applied, the disposition and application of the revenues or
20 assets of the Agency, the duties of the Agency with respect to the acquisition and
21 disposition of any project and the purchase, acceptance and disposition of any loan
22 obligation, the charges and collection of any revenues and administrative charges, the
23 terms and conditions for the issuance of additional bonds and notes, and the custody,
24 safeguarding, investment and application of all moneys. All bonds and notes issued
25 under this Chapter shall be equally and ratably secured by a pledge, charge, and lien
26 upon the revenues or assets provided in such trust agreement or resolution, without
27 priority by reason of number, or dates of bonds or notes, execution, or delivery, in
28 accordance with the provision of this Chapter and of such trust agreement or resolution;
29 except that the Agency may provide in such trust agreement or resolution that bonds or
30 notes issued pursuant thereto shall, to the extent and in the manner prescribed in such
31 trust agreement or resolution be subordinated and junior in standing, with respect to the
32 payment of principal and interest and to the security thereof, to any other bonds or
33 notes. It shall be lawful for any bank or trust company that may act as depository of the
34 proceeds of bonds or note, revenues, assets or other money hereunder to furnish such
35 indemnifying bonds or to pledge such securities as may be required by the Agency.
36 Any such trust agreement or resolution may set out the rights and remedies of the
37 owners of any bonds or notes and of any trustee, and may restrict the individual rights
38 of action by any such owners. In addition to the foregoing, any such trust agreement or
39 resolution may contain such other provisions as the Agency may deem reasonable and
40 proper for the security of the owners of any bonds or notes. Expenses incurred in
41 carrying out the provisions of such trust agreement or resolution may be treated as a part
42 of the cost of any project or as an administrative charge and may be paid from the
43 revenues or assets pledged or assigned to the payment of the principal of and the interest
44 on bonds and notes or from any other funds available to the Agency.

1 The Agency may set the terms and conditions of loan obligations, including, without
2 limitation, the repayment terms, so as to provide a fund sufficient, with such other funds
3 as may be made available therefor, including, without limitation, investment income and
4 the proceeds of administrative charges to the extent determined by the Agency, (i) to
5 pay the costs of operation of the Agency, (ii) to pay the principal of and the interest on
6 all bonds and notes as the same shall become due and payable, and (iii) to create and
7 maintain any reserves provided for in the trust agreement or resolution securing such
8 bonds or notes.

9 All pledges of any assets or revenues of the Agency as authorized by this Chapter
10 shall be valid and binding from the time when such pledges are made. All such assets
11 or revenues so pledged and thereafter received by the Agency shall immediately be
12 subject to the lien of such pledge without any physical delivery thereof or further act,
13 and the lien of any such pledge shall be valid and binding as against all parties having
14 claims of any kind in tort, contract or otherwise against the Agency, irrespective of
15 whether such parties have notice thereof. The trust agreement or resolution by which a
16 pledge is created or any loan obligation need not be filed or recorded except in the
17 records of the Agency.

18 The State does pledge to and agree with the holders of any bonds or notes issued by
19 the Agency that so long as any of such bonds or notes are outstanding and unpaid the
20 State will not limit or alter the rights vested in the Agency at the time of issuance of the
21 bonds or notes to set the terms and conditions of loan obligations in connection with
22 which the bonds or notes were issued, so as to provide a fund sufficient, with such other
23 funds as may be made available therefor, including, without limitation, investment
24 income and the proceeds of administrative charges to the extent determined by the
25 Agency, to pay the costs of operation of the Agency, to pay the principal of and the
26 interest on all bonds and notes as the same shall become due and payable and to create
27 and maintain any reserves provided therefor and to fulfill the terms of any agreements
28 made with the bondholders or noteholders, nor will the State in any way impair the
29 rights and remedies of the bondholders or noteholders until the bonds or notes and all
30 costs and expenses in connection with any action or proceedings by or on behalf of the
31 bondholders or noteholders, are fully paid, met and discharged.

32 **"§ 159H-14. Trust Funds.**

33 Notwithstanding any other provisions of law to the contrary, all moneys received
34 pursuant to the authority of this Chapter, including, without limitation, payments made
35 under and the proceeds received from the sale or other disposition of loan obligations,
36 proceeds received from the disposition by the Agency of any project and any other
37 revenues and funds (except any portion, as designated by the Agency, representing
38 administrative charges) received by the Agency, shall be deemed to be trust funds to be
39 held and applied solely as provided in this Chapter. The resolution authorizing the
40 issuance of, or any trust agreement securing, any bonds or notes may provide that any of
41 such moneys may be invested temporarily pending the disbursement thereof and shall
42 provide that any officer with whom, or any bank or trust company with which, such
43 moneys shall be deposited shall act as trustee of such moneys and shall hold and apply
44 the same for the purposes of this Chapter, subject to such regulations as this Chapter or

1 such resolution or trust agreement may provide. Any such moneys may be deposited
2 and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be
3 amended from time to time; provided, however, that

4 (1) Any deposit or investment authorized by either section may be
5 deposited or invested with any bank located inside or outside the State,
6 including outside the United States of America, provided that any such
7 bank is a bank whose unsecured obligations are rated in either of the
8 two highest rating categories by either Moody's Investors Service or
9 Standard & Poor's Corporation; and

10 (2) Any deposit or investment may be pursuant to either said section and if
11 one section is less restrictive or the other section authorizes additional
12 deposit and investment options the Agency may proceed under either
13 section so that the Agency shall have the broadest deposit and
14 investment options available under either section.

15 **"§ 159H-15. Remedies.**

16 Any owner of bonds or notes issued under the provisions of this Chapter or any
17 coupons appertaining thereto, and the trustee under any trust agreement securing or
18 resolution authorizing the issuance of such bonds or notes, except to the extent the
19 rights herein given may be restricted by such trust agreement or resolution, may, either
20 at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce
21 any and all rights under the laws of the State or granted hereunder or under such trust
22 agreement or resolution, or under any other contract executed by the Agency pursuant to
23 this Chapter and may enforce and compel the performance of all duties required by this
24 Chapter or by such trust agreement or resolution by the Agency or by any officer
25 thereof.

26 **"§ 159H-16. Status of Bonds and Notes Under Uniform Commercial Code.**

27 All bonds and notes and interest coupons (if any) issued under this Chapter are
28 hereby made investment securities within the meaning of and for all the purposes of
29 Article 8 of the Uniform Commercial Code as enacted in this State as Chapter 25 of the
30 General Statutes.

31 **"§ 159H-17. Bonds and Notes Eligible for Investment.**

32 Bonds and notes issued under the provisions of this Chapter are hereby made
33 securities in which all public offices, agencies and public bodies of the State and its
34 political subdivisions, all insurance companies, trust companies, investment companies,
35 banks, savings banks, building and loan associations, credit unions, pension or
36 retirement funds, other financial institutions engaged in business in the State, executors,
37 administrators, trustees, and other fiduciaries may properly and legally invest funds,
38 including capital in their control or belonging to them. Such bonds or notes are hereby
39 made securities which may properly and legally be deposited with and received by any
40 officer or agency of the State or political subdivision of the State for any purpose for
41 which the deposit of bonds, notes or obligations of the State or any political subdivision
42 is now or may hereafter be authorized by law.

43 **"§ 159H-18. Refunding bonds and notes.**

1 (a) The Agency may issue bonds and notes for the purposes of refunding any
2 bonds or notes issued pursuant to this Chapter including the payment of any redemption
3 premium thereon and any interest accrued or to accrue to the date of redemption or
4 maturity of such bonds or notes and, if deemed advisable by the Agency, for any
5 additional corporate purposes of the Agency.

6 Any such refunding bonds or notes may bear interest at rates, including variable
7 rates as authorized in G.S. 159H-12, lower, the same as or higher than and have
8 maturities shorter than, the same as or longer than the bonds or notes being refunded.
9 The proceeds of any such refunding bonds or notes may be applied:

- 10 (1) To the payment and retirement of the bonds or notes being refunded by
11 direct application to such payment and retirement,
- 12 (2) To the payment and retirement of the bonds or notes being refunded by
13 the deposit in trust of such proceeds,
- 14 (3) To the payment of any expenses incurred in connection with such
15 refunding, and
- 16 (4) For any other uses not inconsistent with such refunding.

17 (b) Any money so held in trust may be invested in:

- 18 (1) Direct obligations of the United States of America,
- 19 (2) Obligations the principal of and the interest on which are guaranteed
20 by the United States of America.
- 21 (3) Evidences of ownership of a proportionate interest in specified
22 obligations described in (b)(1) and (b)(2) above, which obligations are
23 held by a bank or trust company organized and existing under the laws
24 of the United States of America or any state thereof in the capacity of
25 custodian,
- 26 (4) Obligations of the State or local governments thereof, provision for the
27 payment of the principal of and interest on which obligations shall
28 have been made by deposit with a trustee or escrow agent of
29 obligations described in (1), (2) or (3) above, the maturing principal of
30 and interest on which, when due and payable, shall provide sufficient
31 money with any other money held in trust for such purpose to pay the
32 principal of, premium, if any, and interest on such obligations of the
33 State or local governments thereof, and which are rated in the highest
34 category by Standard & Poor's Corporation and Moody's Investors
35 Service,
- 36 (5) Obligations of the State or local governments thereof, the principal of
37 and interest on which, when due and payable, have been insured by a
38 bond insurance company which is rated in the highest category by
39 Standard & Poor's Corporation and Moody's Investors Service,
- 40 (6) Full faith and credit obligations of the State or local governments
41 thereof which are rated in the highest category by Standard & Poor's
42 Corporation and Moody's Investors Service, and
- 43 (7) Any obligations or investments in which the State Treasurer is
44 authorized, at the time of such investment, to invest funds of the State.

1 The proceedings providing for the issuance of any such refunding bonds or notes
2 may limit the investments in which the proceeds of a particular refunding issue may be
3 invested.

4 Nothing in this section shall be construed as a limitation (i) on the duration of
5 any deposit in trust for the retirement of bonds or notes being refunded but which shall
6 not have matured and which shall not be then redeemable or, if then redeemable, shall
7 not have been called for redemption or (ii) on the power to issue bonds or notes for the
8 combined purpose of refunding bonds or notes and providing moneys for any corporate
9 purpose as provided in this Chapter.

10 **"§ 159H-19. Annual audit.**

11 The Agency shall cause an audit of its books and accounts relating to its activities
12 under this Chapter to be made at least once in each year by an independent certified
13 public accountant or by the State Auditor and the cost thereof may be paid from any
14 available administrative charges or other available moneys of the Agency.

15 **"§ 159H-20. Officers not liable.**

16 No member or officer of the Agency shall be subject to any personal liability or
17 accountability by reason of his execution of any bonds or notes or the issuance thereof.

18 **"§ 159H-21. Tax exemption.**

19 All of the bonds and notes authorized by this Chapter and the coupons (if any)
20 appertaining thereto, and their transfer (including any profit made on the sale thereof),
21 shall be exempt from all State, county and municipal taxation or assessment, direct or
22 indirect, general or special, whether imposed for the purpose of general revenue or
23 otherwise, excluding inheritance and gift taxes, and the interest on the bonds and notes
24 shall not be subject to taxation as to income, nor shall the bonds, notes and coupons (if
25 any) be subject to taxation when constituting a part of the surplus of any bank, trust
26 company or other corporation.

27 **"§ 159H-22. Conflict of interest.**

28 If any member, officer or employee of the Agency shall be interested either directly
29 or indirectly, or shall be an officer or employee of or have an ownership interest in any
30 firm or corporation, not including cities or counties interested directly or indirectly, in
31 any contract with the Agency, such interest shall be disclosed to the Agency and shall
32 be set forth in the minutes of the Agency, and the member, officer or employee having
33 such interest therein shall not participate on behalf of the Agency in the authorization of
34 any such contract. Other provisions of law notwithstanding, failure to take any or all
35 actions necessary to carry out the purposes of this section shall not affect the validity of
36 any bonds, notes or loan obligations issued pursuant to the provisions of this Chapter.

37 **"§ 159H-23. Alternative method.**

38 The foregoing sections of this Chapter shall be deemed to provide an additional and
39 alternative method for the doing of the things authorized thereby and shall be regarded
40 as supplemental and additional to powers conferred by other laws, and shall not be
41 regarded as in derogation of any powers now existing.

42 **"§ 159H-24. Liberal construction.**

43 This Chapter, being necessary for the health and welfare of the people of the State,
44 shall be liberally construed to effect the purposes thereof.

1 **"§ 159H-25. Inconsistent laws inapplicable.**

2 Insofar as the provisions of this Chapter are inconsistent with the provisions of any
3 general or special laws, or parts thereof, the provisions of this Chapter shall be
4 controlling."

5 Sec. 1.1. G.S. 159-148(b) reads as rewritten:

6 "(b) This Article shall not apply to:

- 7 (1) Contracts between a unit of local government and the State of North
8 Carolina or the United States of America (or any agency of either)
9 entered into as a condition to the making of grants or loans to the unit
10 of local government.
- 11 (2) Contracts for the purchase, lease, or lease with option to purchase of
12 motor vehicles or voting machines.
- 13 (3) Loan obligations entered into by a city or a county pursuant to the
14 North Carolina Municipal and County Pooled Capital Projects
15 Financing Act, Chapter 159H of the General Statutes."

16 Sec. 1.2. G.S. 105-198 reads as rewritten:

17 **"§ 105-198. Intangible personal property.**

18 The intangible personal properties enumerated and defined in this Article or
19 schedule are hereby classified under authority of Sec. 2(2), Article V of the
20 Constitution, and the taxes levied thereon are for the benefit of the State ~~and the for~~
21 distribution to political subdivisions of the State as hereinafter provided and said taxes so
22 ~~levied for the benefit of the political subdivisions of the State are levied for and on behalf of~~
23 ~~said political subdivisions of the State to the same extent and manner as if said levies were~~
24 ~~made by the governing authorities of the hereinafter provided.~~ Banks or banking
25 associations, trust companies or any combination of such facilities or services shall be
26 subject to the provisions of this Article for taxable years beginning on and after January
27 1, 1974."

28 Sec. 1.3. G.S. 150B-1(d) reads as rewritten:

29 "(d) The following are specifically exempted from the provisions of this Chapter: the
30 Administrative Rules Review Commission, the Employment Security Commission, the
31 Industrial Commission, the North Carolina Municipal Pooled Capital Projects Financing
32 Agency and the North Carolina County Pooled Capital Projects Financing Agency, the
33 Occupational Safety and Health Review Board in all actions that do not involve
34 agricultural employers, and the Utilities Commission.

35 The North Carolina National Guard is exempt from the provisions of this Chapter in
36 exercising its court-martial jurisdiction.

37 The Department of Human Resources is exempt from this Chapter in exercising its
38 authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the
39 General Statutes.

40 The Department of Correction is exempt from the provisions of this Chapter, except
41 for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

42 Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.
43 Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this
44 Chapter do not apply to the Department of Transportation.

1 Article 4 of this Chapter, governing judicial review of final administrative decisions,
2 shall apply to The University of North Carolina and its constituent or affiliated boards,
3 agencies, and institutions, but The University of North Carolina and its constituent or
4 affiliated boards, agencies, and institutions are specifically exempted from the
5 remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the
6 State Banking Commission, the Commissioner of Banks, the Savings and Loan Division
7 of the Department of Commerce, and the Credit Union Division of the Department of
8 Commerce.

9 Article 3 of this Chapter shall not apply to agencies governed by the provisions of
10 Article 3A of this Chapter, as set out in G.S. 150B-38(a).

11 Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste
12 Management Board in administering the provisions of G.S. 104E-6.2.

13 Article 2 of this Chapter shall not apply to the North Carolina Low-Level
14 Radioactive Waste Management Authority in administering the provisions of G.S.
15 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the
16 North Carolina Low-Level Radioactive Waste Management Authority in administering
17 the provisions of G.S. 104G-9, 104G-10, and 104G-11."

18 Sec. 1.4. G.S. 120-123 is amended by adding two new subdivisions to read:

19 "(53a) The North Carolina Municipal Pooled Capital Projects Financing
20 Agency, as established by G.S. 159H-4.

21 (53b) The North Carolina County Pooled Capital Projects Financing Agency,
22 as established by G.S. 159H-5."

23 Sec. 2. If any provisions of this act or the application thereof to any person or
24 circumstance is held invalid, such invalidity shall not affect other provisions or
25 applications of this act which can be given effect without the invalid provision or
26 application, and to this end the provisions of this act are declared to be severable.

27 Sec. 3. This act is effective upon ratification.