

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-179
SENATE BILL 1472

AN ACT TO PROVIDE REVENUE BOND FINANCING OF CERTAIN PRIVATE PROJECTS THAT PERFORM A PUBLIC PURPOSE AND TO REORGANIZE THE INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115E of the General Statutes is recodified as Article 2 of Chapter 159D of the General Statutes.

Section 2. Chapter 159D of the General Statutes, as amended by this act, reads as rewritten:

"Chapter 159D.

**"The North Carolina ~~Industrial and Pollution~~
~~Control~~ Capital Facilities Pool Program Financing Act.**

"Article 1.

"Industrial and Pollution Control Facilities Financing.

"§ 159D-1. Short title.

This ~~chapter~~ Article may be referred to as "The North Carolina Industrial and Pollution Control Facilities ~~Pool Program~~ Financing Act."

"§ 159D-2. Legislative findings and purposes.

(a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities

for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs ~~into [in] in~~ the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, which are essential to the economic growth of the State, and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this ~~Chapter, Article,~~ especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

~~(c) The General Assembly further finds that the federal government and its agencies have established, and may in the future establish, programs to promote gainful employment opportunity and the prevention and control of the pollution of air, land and waters of the United States through assistance in the financing of industrial and manufacturing facilities and pollution control facilities for industry and that the economical implementation of such programs in the State of North Carolina may require the financing of such facilities through a uniform statewide program.~~

~~(c1) The General Assembly further finds that certain provisions of federal tax law, economies of scale and credit market conditions make it advantageous for counties in North Carolina to be authorized to create a single authority with the legal capacity to combine separate financings into one or more pools that may be offered for sale on more favorable terms than any single financing standing alone.~~

~~(d) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the State, by authorizing counties to create an authority which shall be a political subdivision and body corporate and politic of the State. This body is to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities, in each case in connection with pool programs to effect such purposes; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities.~~

"§ 159D-3. Definitions.

The following terms, whenever used or referred to in this ~~Chapter, Article,~~ shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1) ~~"Agency" shall include any agency, bureau, commission, department or instrumentality.~~
'Agency' means the North Carolina Capital Facilities Finance Agency, an agency of the State created pursuant to G.S. 159D-38 of the North Carolina Capital Facilities Finance Act, codified as Article 2 of this Chapter.
- (2) 'Air pollution control facility' shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.
- (3) 'Authority' shall mean The North Carolina Industrial and Pollution Control Facilities Financing Authority, a political subdivision and body politic of the State, ~~which may be created pursuant to the provisions of this Chapter and which shall have the powers and authority specified in and by this Chapter. Article.~~
- (4) 'Bonds' shall mean revenue bonds ~~of an authority~~ issued under the provisions of this ~~Chapter. Article.~~
- (5) 'Cost' as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including a reserve for debt services.
- (6) ~~'Pool program' shall mean a program of the authority whereby separate financings for obligors are combined into one or more pools~~

~~for purposes of sale. The credit of such financings or the pool may be enhanced by participation in a federal program, by a guaranty such as a surety bond, insurance or a letter of credit, by additional collateral or by any other device, fund or guaranty by any person other than the authority, agency, under which payment of bonds or the obligations of an obligor under a financing agreement shall be guaranteed, in whole or in part, by such person or persons.~~

- (7) 'Financing agreement' shall mean a written instrument establishing the rights and responsibilities of the ~~authority~~ agency and the operator with respect to a project financed by the issue of bonds.
- (8) 'Governing body' shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.
- (9) 'Obligor' shall mean collectively the operator and any others (including, but not by way of limitation, any other person, collateral device or fund that shall be obligated to pay) who or which shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the ~~authority~~ agency. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this ~~Chapter~~ Article as the obligor.
- (10) 'Operator' shall mean the person entitled to the use or occupancy of a project.
- (11) 'Political subdivision' shall mean any county, city, town, other unit of local government or any other governmental corporation, ~~agency~~ entity, authority or instrumentality of the State now or hereafter existing.
- (12) 'Pollution and pollutants' shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.
- (13) 'Project' shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility or industrial processing facility for industrial or manufactured products, or (ii) any pollution control project for

industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

- (14) 'Revenues' shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.
- (15) 'Security document' shall mean a written instrument or instruments establishing the rights and responsibilities of the ~~authority~~ agency and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the ~~authority's~~ agency's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.
- (16) 'Solid waste' shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.
- (17) 'Solid waste disposal facility' shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.
- (18) 'Water pollution control facility' shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which ~~shall have~~ has been certified by the ~~agency~~ entity exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution.

~~"§ 159D-4. Creation of the authority.~~

~~(a) The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The North Carolina Industrial Facilities and Pollution Control Financing Authority", in order to effectuate in the most economical manner the acquisition, construction and financing of projects through pool programs.~~

~~If each governing body shall determine that it is in the best interest of the county to cause to be created and to become a member of the authority, each governing body shall adopt a resolution so finding and setting forth the names of the counties which are proposed to be initial members of the authority. The governing body of the county shall thereupon by ordinance or resolution appoint one commissioner of the authority.~~

~~Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member counties; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing body of each respective county appointing a commissioner has made the aforesaid determination; and (v) the desire that an authority be organized as a political subdivision and a body corporate and politic under this Chapter.~~

~~The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.~~

~~The Secretary of State shall examine the application and, if he finds that the name proposed for the authority is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.~~

~~When the application has been made, filed and recorded as herein provided, the authority shall constitute a political subdivision and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member counties.~~

~~In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.~~

~~Notice of the issuance of such certificate shall be given to all of the proposed member counties by the Secretary of State. If a commissioner of any such county has not signed the application to the Secretary of State and such county does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such county shall be deemed to have elected not to be a member of the~~

~~authority. As soon as practicable after the expiration of such 40 day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those counties which have elected to become members of the authority. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the authority.~~

~~(b) After the creation of the authority, any county may become a member thereof upon application to the authority after adoption of a resolution or ordinance by the governing body of the county setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county may withdraw from membership in the authority, provided, however, that all contractual rights acquired and obligations incurred while a county was a member shall remain in full force and effect.~~

~~(c) The authority shall consist of a board of commissioners appointed by the respective governing bodies of the counties which are members of the authority. Each commissioner shall have one vote. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of such oath shall be filed with the governing body of the appointing municipality and spread upon its minutes.~~

~~(d) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.~~

~~(e) A majority of the commissioners of the authority then in office shall constitute a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote of a majority of all the commissioners of the authority shall be necessary for any action of the board. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county in which the project with respect to which the bonds were issued is located.~~

~~(f) If at any time there shall be more than seven counties which are members of the authority, the board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member counties. Any power of the authority under the provisions of this Chapter may be exercised by the executive committee of the authority between meetings of the authority, except that the executive committee may not overrule, reverse or disregard any action of the board of commissioners of the authority. The membership of the executive committee, terms of office of members thereof and the method of filling vacancies therein shall be fixed by the rules or bylaws of the board of commissioners.~~

~~(g) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.~~

~~(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority.~~

"§ 159D-4.1. Jurisdiction of the agency.

All actions taken by counties, local officials, the Secretary of State, the State Treasurer, and other interested parties to create and organize The North Carolina Industrial Facilities and Pollution Control Financing Authority are ratified and confirmed. All duties, powers, jurisdiction, and responsibilities vested by statute or by contract in the authority are transferred to and vested in the North Carolina Capital Facilities Finance Agency, subject to the provisions of this Article. Upon this transfer, the agency is responsible for all duties and obligations of the authority entered into or incurred, by contract or otherwise, before the transfer. Particularly, the agency is responsible for all matters relating to any outstanding bonds of the authority to the same extent that the authority was responsible for them before the date of transfer. The agency for all purposes assumes the role and is the legal successor of the authority. Upon this transfer, the authority is dissolved.

"§ 159D-5. General powers.

The authority agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, Article, including, but without limiting the generality of the foregoing, the powers: including all of the following:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (2) To adopt an official seal and alter the same at pleasure;

- (3) To maintain an office at such place or places as it may determine;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
- (6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the ~~authority~~-agency under this ~~Chapter~~; Article;
- (7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;
- (8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (9) To pledge or assign revenues of the ~~authority~~-agency;
- (10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the ~~authority~~-agency or from any contribution, gift or donation or other funds made available to the ~~authority~~-agency for such purpose;
- (11) To fix, charge and collect revenues with respect to any project;
- (12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the ~~authority~~-agency and to fix and pay their compensation from funds available to the ~~authority~~-agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and
- (13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers ~~herein granted~~-granted in this Article.

"§ 159D-6. Bonds.

(a) The ~~authority~~-agency is ~~hereby~~ authorized to provide for the issuance, at one time or from time to time, of bonds of the ~~authority~~-agency for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable under the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the

approval of the ~~authority~~ agency and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the ~~authority~~ agency prior to the issuance of the bonds. The ~~authority~~ agency shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be such that officer before the delivery of ~~such~~ the bonds, ~~such~~ the signature or ~~such~~ the facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the officer had remained in office until such delivery. The ~~authority~~ agency may also provide for the authentication of the bonds by a trustee or fiscal agent. ~~The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.~~

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which ~~such~~ the bonds ~~shall have been~~ were issued, and shall be disbursed in such manner and under such restrictions, if any, as the ~~authority~~ agency may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency.

(c) The proceeds of bonds issued pursuant to this Article shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

- (1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.
- (2) The original expenditure was paid more than 60 days before the agency took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the agency's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, whether or not they are incurred or paid within 60 days of the agency's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land

acquisition and site preparation. In any event, an expenditure originally paid before the agency took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the agency finds that reimbursing those costs from bond proceeds will promote the purposes of this Article.

~~The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.~~

(e) Bonds may be issued under the provisions of this ~~Chapter~~Article without obtaining, except as otherwise expressly provided in this ~~Chapter~~Article, the consent of the ~~State or of any political subdivision or of any agency of either thereof~~, State or of any political subdivision and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things ~~which are~~ specifically required by this ~~Chapter~~Article and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same.

"§ 159D-7. Approval of ~~project~~project by Secretary of Commerce.

(a) Approval Required. – No bonds may be issued by the ~~authority~~agency pursuant to this Article unless the project for which ~~the~~their issuance thereof is proposed is first approved by the Secretary of Commerce. The ~~authority~~agency shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. – The Secretary shall not approve any proposed project unless ~~he~~ shall make the Secretary makes all of the following, applicable findings:

- (1) In the case of a proposed industrial project,
 - a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) which is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) ~~which~~ is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and
 - b. That the proposed project will not have a materially adverse effect on the ~~environment~~environment.
- (2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise ~~occur~~and occur.
- (2a) In the case of a hazardous waste facility or low-level radioactive waste facility ~~which~~that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the ~~environment~~and environment.

- (3) In any case (whether the proposed project is an industrial or a pollution control project),
- a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
 - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
 - c. That the financing of such project by the ~~authority agency~~ will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(c) ~~Initial Operator. – In no case shall the Secretary of Commerce~~ If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(d) Public Hearing. – The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(e) Certificate of Department of Environment and Natural Resources. – The Secretary of Commerce shall not make the findings required by subdivisions (b) (1)b and (2) of this section unless ~~he shall have the Secretary has~~ first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. ~~In no case shall the~~ ~~The Secretary of Commerce shall not~~ make the findings required by

subdivision (b) (2a) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. ~~In any case where the Secretary shall make~~ The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the agency consents to a longer period of time.

(f) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (b) (1)a of this section, the Secretary may, in ~~his~~ the Secretary's discretion, approve the proposed project if ~~he shall have~~ the Secretary has received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(g) Rules. – To facilitate ~~his~~ the Secretary's review of each proposed project, the Secretary may require the ~~authority~~ agency to obtain and submit such data and information about such project as the Secretary may prescribe. ~~In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected.~~ The Secretary may also prescribe such forms and such rules and regulations ~~as he shall deem~~ the Secretary considers reasonably necessary to implement the provisions of this section.

(h) Certificate of Approval. – If the Secretary approves the proposed project, ~~he~~ the Secretary shall prepare a certificate of approval evidencing such approval and setting forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes ~~of North Carolina~~ only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the ~~authority~~ agency, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

~~Such~~ The certificate of approval shall become effective immediately following the expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. ~~Such~~ The certificate shall expire one year after its date unless extended by the Secretary who shall not extend ~~such~~ the certificate unless ~~he shall~~ the Secretary again ~~approve~~ approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Article or Chapter 159C of the General Statutes to pay all or part of the costs of the project, however, the certificate expires three years after the date of the first issuance of the bonds.

(i) Certificate Issued Under Chapter 159C Effective. – Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 ~~shall be deemed to satisfy~~ satisfies the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant ~~hereto~~ to this section.

"§ 159D-8. Approval of bonds.

(a) No bonds may be issued by the ~~authority~~ agency pursuant to this Article unless the issuance ~~thereof~~ is first approved by the Local Government Commission.

The ~~authority~~ agency shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

- (1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.
- (2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.
- (3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(c) To facilitate the review of the proposed bond issue by the commission, the Secretary may require the ~~authority~~ agency to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security

document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe ~~such forms and such rules and regulations as he shall deem~~ that the Secretary considers reasonably necessary to implement the provisions of this section.

"§ 159D-9. Sale of bonds.

Bonds issued under this Article may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission ~~shall determine~~ determines to be for the best interests of the ~~authority~~ agency and effectuate best the purposes of this ~~Chapter~~ Article irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor ~~provisions provided that such sale shall be~~ provisions, as long as the sale is approved by the authority agency and the obligor.

"§ 159D-10. Location of projects.

~~Except as provided in this section, any~~ Any project of the ~~authority~~ agency shall be located within the boundaries of a ~~county which is a member of the authority.~~ A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. the State. Bonds may not be issued to finance any project or group of projects in any county of the State unless the board of commissioners for the county in which the project is located has consented to the location of the project within the county.

"§ 159D-11. Financing agreements.

- (a) Every financing agreement shall provide that:
- (1) Repealed by Session Laws 1987, c. 517, s. 7.
 - (2) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, and interest on the bonds ~~that shall be issued by the authority~~ agency to pay the cost of the project as ~~the same shall they~~ respectively become due;
 - (3) The obligor shall pay all costs incurred by the ~~authority~~ agency in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;
 - (4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and
 - (5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until ~~such~~

payment of the bonds or provision for payment has been ~~therefor shall be made.~~

(b) The financing agreement may be in the nature of:

- (1) A sale and leaseback,
- (2) A lease purchase,
- (3) A conditional sale,
- (4) An installment sale,
- (5) A secured or unsecured loan,
- (6) A loan and mortgage, or
- (7) Another ~~Other~~ similar transaction.

(c) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment has ~~therefor, shall have~~ been made.

(d) The financing agreement may provide the ~~authority~~ agency with rights and remedies in the event of a default by the obligor ~~thereunder~~ under it including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the financing agreement;
- (2) Reentry and repossession of the project;
- (3) Termination of the financing agreement;
- (4) Leasing or sale or ~~fore closure~~ ~~[sic]~~ foreclosure of the project to others; and
- (5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(e) The ~~authority's~~ agency's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the ~~authority~~ agency need not have any ownership or possessory interest in the project.

(f) The ~~authority~~ agency may assign all or any of its rights and remedies under the financing agreement to the trustee or bondholders under the security document.

(g) ~~Any such~~ The financing agreement may contain ~~such~~ any additional provisions ~~as in the determination of the authority~~ the agency considers ~~are~~ necessary or convenient to effectuate the purposes of this ~~Chapter~~ Article.

"§ 159D-12. Security documents.

(a) Bonds issued under the provisions of this ~~Chapter~~ Article may be secured by a security document which may be a trust instrument between the ~~authority~~ agency and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except ~~such part thereof as may be necessary to provide reserves therefor, if any, any part necessary to provide reserves~~ shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be ~~thereby~~ pledged to, and charged with, the payment of the principal of and the interest on such bonds as ~~the same shall they~~ become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the ~~authority~~ agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the ~~authority, agency~~, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the security document;
- (2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
- (3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
- (4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

(b) It ~~shall be~~ is lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this ~~Chapter~~ Article to furnish such indemnifying bonds or to pledge such securities as may be required by the ~~authority, agency~~. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The ~~authority~~ agency may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

Any such security document may contain such additional provisions as in the determination of the ~~authority~~ agency are necessary or convenient or effectuate the purposes of this ~~Chapter~~ Article.

"§ 159D-13. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this ~~Chapter~~ Article, whether as proceeds from the sale of bonds or as revenues, ~~shall be deemed to be~~ are trust funds to be held and applied solely as provided in this ~~Chapter~~ Article. The security document may provide that any of ~~such moneys~~ the money may be temporarily invested and reinvested pending ~~the~~ its

disbursement thereof in such any securities and other investments as shall be provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, ~~such moneys shall be~~ the money is deposited shall act as trustee of such moneys and shall hold and apply ~~the same~~ it for the purpose hereof, ~~of this Article,~~ subject to such any regulations as ~~this Chapter Article~~ and ~~such the~~ security document may provide.

"§ 159D-14. Tax exemption.

The ~~authority agency shall not be~~ is not required to pay any taxes on any project or on any other property owned by the ~~authority agency~~ under the provisions of this ~~Chapter Article~~ or upon the income ~~therefrom.~~ from the property.

The interest on bonds issued by the ~~authority agency shall be~~ is exempt from all income taxes within the State.

All projects and all transactions ~~therefor shall be~~ for them are subject to taxation to the extent ~~such projects and transactions they~~ would be subject to taxation if no public body were involved ~~therewith.~~ with them.

"§ 159D-15. Construction contracts.

The ~~authority agency~~ may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approval by the ~~authority agency~~ as the ~~authority agency~~ may require in such agreement. Such agreement may provide that the ~~authority agency~~ may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts.

"§ 159D-16. Conflict of interest.

If any officer, commissioner or employee of the ~~authority agency shall be~~ is interested either directly or indirectly in any contract with the ~~authority agency,~~ such interest shall be disclosed to the ~~authority agency~~ and shall be set forth in the minutes of the ~~authority agency,~~ and the officer, commissioner, employee or member having such interest ~~therein~~ shall not participate on behalf of the ~~authority agency~~ in the authorization of ~~any such contract; provided, however, that this section shall~~ the project. This section does not apply to the ownership of less than one ~~per centum~~ percent (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section ~~shall~~ does not affect the validity of bonds issued pursuant to the provisions of this ~~Chapter Article.~~

"§ 159D-17. Credit of State not pledged.

Bonds issued under the provisions of this ~~Chapter Article shall do not~~ not be deemed to constitute a debt of the State or any political subdivision ~~or any agency thereof~~ or a pledge of the faith and credit of the State or any political ~~subdivision or any such agency, subdivisions,~~ but shall be payable solely from the revenues and other funds provided ~~therefor.~~ for payment. Each bond issued under this Chapter shall contain on ~~the face thereof~~ its face a statement to the effect that the ~~authority agency shall not be~~ obligated to pay ~~the same bonds~~ or the interest ~~thereon~~ on it except from the revenues and other funds pledged ~~therefor~~ for payment and that neither the faith and credit nor

the taxing power of the State or any political subdivision ~~or any agency thereof~~ is pledged to the payment of the principal of or the interest on ~~such~~ the bonds.

"§ 159D-18. Bonds eligible for investment.

Bonds issued by ~~an authority~~ the agency under the provisions of this ~~Chapter~~ Article are ~~hereby made~~ securities in which all public officers and agencies of the State and all political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

"§ 159D-19. Revenue refunding bonds.

(a) The ~~authority~~ agency is ~~hereby~~ authorized to provide by resolution for the issuance of refunding bonds of the ~~authority~~ agency for the purpose of refunding any bonds then outstanding ~~which that shall~~ have been issued under the provisions of this ~~Chapter, Article,~~ or under the provisions of Chapter 159C of the General Statutes, including the payment of any redemption premium ~~thereon~~ and any interest accrued or to accrue to the date of redemption of such bonds, and, if ~~deemed~~ considered advisable by the ~~authority,~~ agency, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and
- (2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of ~~such~~ bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the ~~authority~~ agency in respect to the ~~same shall be~~ bonds are governed by the provisions of this ~~Chapter which Article that~~ relate to the issuance of ~~bonds, insofar as such provisions may be appropriate therefor.~~ bonds.

The approvals required by G.S. 159D-7 and G.S. 159D-8 shall be obtained prior to the issuance of any refunding ~~bonds; provided, however, bonds, except~~ that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this ~~Chapter, Article,~~ the approval required by G.S. 159D-7 ~~shall not be~~ is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this ~~Chapter~~ Article and, if sold, the proceeds ~~thereof~~ may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the ~~authority,~~ agency, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the ~~same,~~ bonds to the payment of any interest on such refunding bonds, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally

guaranteed by, the United States of America ~~which shall if these obligations mature or which shall be~~ are subject to redemption by the holder thereof, at the option of such holder, ~~holder,~~ at the holder's option not later than the respective dates when the proceeds, together with the interest accruing ~~thereon~~ on them will be required for the purposes intended.

"§ 159D-20. No power of eminent domain.

The ~~authority~~ agency shall not have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain.

"§ 159D-21. Dissolution of the authority.

~~Whenever the board of commissioners of the authority and the governing bodies of two-thirds of the counties which are then members of the authority shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing bodies may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest as provided in said joint resolution, and possession of such funds and other property shall forthwith be delivered as provided in said joint resolution.~~

~~"§ 159D-22. Annual reports; application of Article 3, Subchapter III of Chapter 159.~~

~~The authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing bodies of the counties which are then members of the authority. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.~~

~~The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled 'The Local Government Budget and Fiscal Control Act' shall have no application to the authority.~~

"§ 159D-23. Application of Article 9 of Chapter 25.

The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply ~~[to]~~ Code apply to transactions under this ~~Chapter 159D~~ Article to the same extent ~~the provisions of such Article 9 would apply were as if~~ G.S. 25-9-104(e) and G.S. 25-9-302(6) hereby were repealed.

"§ 159D-24. Officers not liable.

~~No commissioner of any authority~~ member of the Board of Directors of the agency shall be subject to any personal liability or accountability by reason of ~~his~~ the issuance or execution of any bonds or the issuance thereof. bonds.

"§ 159D-25. Additional method.

The foregoing sections of this ~~Chapter~~ Article shall be deemed to provide an additional and alternative method for the doing of the things authorized ~~thereby~~ and

~~shall be regarded as~~ are supplemental and additional to powers conferred by other laws, and ~~shall not be regarded as in derogation of any powers now existing; provided, however, that the laws.~~ They do not derogate any other powers. The issuance of bonds or refunding bonds under the provisions of this Chapter Article need not comply with the requirements of any other law applicable to the issuance of bonds.

"§ 159D-26. Liberal construction.

This ~~Chapter, Article,~~ being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect ~~the purposes hereof.~~ its purposes.

"§ 159D-27. Inconsistent laws inapplicable.

Insofar as the provisions of this ~~Chapter Article~~ are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this ~~Chapter Article~~ shall be controlling.

"ARTICLE 2.

"Private ~~Educational Capital~~ Facilities Finance Act.

"§ 159D-35. Short title.

This ~~Chapter Article~~ shall be known, and may be cited, as the 'Private ~~Educational Capital~~ Facilities Finance Act.'

"§ 159D-36. Legislative findings.

It is ~~hereby~~ declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this ~~Chapter Article~~ to provide a measure of assistance and an alternative method to enable private institutions for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures that are needed to accomplish the purposes of this ~~Chapter, Article,~~ all to the public benefit and good, to the extent and in the manner provided ~~herein.~~ in this Article.

It is ~~hereby~~ further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students.

The General Assembly also finds that the private sector often provides services and opportunities to the people of the State of North Carolina in activities that constitute a public purpose, and that these activities by the private sector are to be fostered and encouraged. The people of the State of North Carolina will benefit from the enactment of laws and creation of programs that assist the private sector in obtaining financing for capital improvements of facilities that will be used in conducting these activities.

"§ 159D-37. Definitions.

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

- (1) 'Agency' means the North Carolina ~~Education~~ Capital Facilities Finance Agency ~~created by this Chapter~~, or, should ~~said this~~ agency be abolished or otherwise divested of its functions under this ~~Chapter, 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 ~~Chapter Article~~ to the agency.
- (1a) 'Bonds' or 'notes' means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Article, including revenue refunding bonds, notwithstanding that they may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.
- (2) 'Cost', as applied to any project or any portion ~~thereof~~ of a project financed under the provisions of this ~~Chapter, Article~~, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred before November 25, 1981.
- (3) ~~"Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food~~

~~service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.~~

- (4) ~~'Bonds' or 'notes' means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.~~
- (4a) 'Institution for elementary and secondary education' means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination ~~thereof.~~ of these.
- (5) 'Institution for higher education' means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.
- (6) 'Participating institution' means an institution for higher ~~education or education,~~ an institution for elementary and secondary education or a special purpose institution that, pursuant to the provisions of this ~~Chapter,~~ Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, ~~renovating~~ renovating, or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this ~~Chapter.~~ Article.

(6a) 'Project' means any one or more buildings, structures, equipment, improvements, additions, extensions, enlargements, or other facilities comprising any of the following:

a. Educational facilities used by an institution for higher education or an institution for elementary and secondary education, including dormitories and other housing facilities, housing facilities for student nurses, dining halls and other food preparation and food service facilities, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, and other structures or facilities related to these facilities or required or useful for the instruction of students, the conducting of research, or the operation of the institution.

b. Student housing facilities to be owned or operated by an owner or operator other than an institution for higher education or an institution for elementary and secondary education.

c. A special purpose project as defined in G.S. 159C-3. The term 'project' also includes landscaping, site preparation, furniture, equipment and machinery, and other similar items necessary or convenient for operation of a particular facility, building, or structure in the manner for which its use is intended, and maintenance, storage, or utility facilities and other structures or facilities related to, required, or useful for the operation of the facilities, including parking and other facilities or structures essential or convenient for the orderly conduct of the facility. The term 'project' does not include such items as books, fuel, or supplies or other items the costs of which customarily result in a current operating charge. The term does not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(6b) 'Special purpose institution' means a for-profit or not-for-profit corporation or similar entity that undertakes any of the activities set forth in sub-subdivisions (6a)b. and (6a)c. of this section.

(7) 'State' means the State of North Carolina.

"§ 159D-38. ~~Educational~~ Capital facilities finance agency.

(a) There is hereby created a body politic and corporate to be known as 'North Carolina ~~Educational~~ 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 ~~said~~ 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 of the 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 Governor, and each director shall continue in office until his successor shall be 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 such the appointment. Any member of the board of directors shall be 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 same notice and hearing are in writing expressly waived. Each appointive member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such 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 chairman and a vice chairman. The terms of the chairman and vice chairman shall 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 such any other officers as it shall deem 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. He 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; ~~provided, however, that the agency.~~ The board of directors may may, however, appoint an executive committee to act on behalf of said 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 shall impair impairs the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina ~~Educational~~ 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).

"§ 159D-39. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this ~~Chapter, Article, including, but without limiting the generality of the foregoing, the power: including all of the following:~~

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this ~~Chapter, Article,~~ including loan agreements and agreements of sale or leases with mortgages and deeds of trust and conveyances to participating institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement ~~agreements; agreements.~~
- (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the ~~agency; agency.~~
- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any ~~project; project.~~
- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for ~~any such these~~ purposes with respect to, any real or personal property or interest ~~therein; in property.~~
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received ~~therefrom from them~~ whether ~~such the~~ securities are initially acquired by the agency or a participating institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other ~~sources; sources.~~
- (6) To pledge or assign the revenues and receipts from any project and ~~from any loan agreement, agreement of sale sale, or lease of the lease,~~ including any loan repayments, purchase price payments, ~~rent and rent,~~

- or other income received ~~thereunder~~; under a loan agreement, agreement of sale, or lease.
- (7) To borrow money as ~~herein~~ provided in this Article to carry out and effectuate its corporate purposes and to issue ~~in evidence thereof~~ bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution for the acquisition of any federally guaranteed ~~securities~~ securities, and to issue revenue refunding ~~bonds~~; bonds.
 - (8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for ~~such purpose~~; this purpose.
 - (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any ~~project~~; project.
 - (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and ~~such any other~~ consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the ~~agency therefor~~; agency.
 - (11) To conduct studies and surveys respecting the need for projects and their location, financing and ~~construction~~; construction.
 - (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or ~~instrumentalities~~; instrumentalities.
 - (13) To sue and be sued in its own name, plead and be ~~impleaded~~; impleaded.
 - (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use ~~any such the~~ federally guaranteed security or federally insured mortgage note ~~in such manner as the agency deems as the agency considers~~ in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution to finance or refinance the cost of any ~~project~~; project.
 - (15) To make loans to any participating institution for the cost of a project in accordance with an agreement between the agency and the participating ~~institution~~; institution.
 - (16) To make loans to a participating institution to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by ~~such the~~ participating institutions for the cost of a ~~project~~; project.

- (17) To charge and to apportion among participating institutions its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this ~~Chapter; Article.~~
- (18) To adopt an official seal and alter ~~the same at pleasure; and it at pleasure.~~
- (19) To do all other things necessary or convenient to carry out the purposes of this ~~Chapter. Article.~~

"§ 159D-40. Criteria and requirements.

(a) In undertaking any project pursuant to this ~~Chapter, Article,~~ the agency shall be guided by and shall observe the following criteria and ~~requirements; provided that the requirements listed below. The~~ determination of the agency as to its compliance with ~~such these~~ criteria and requirements ~~shall be final and conclusive; is conclusive.~~

- (1) No project shall be sold or leased nor any loan made to any ~~participating institution for higher education or any institution for elementary and secondary education~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge ~~such any~~ other responsibilities as ~~may be imposed~~ under the agreement of sale or lease or loan ~~agreement; agreement.~~
- (2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves ~~therefor for~~ payment and for the operation, repair and maintenance of the project at the expense of the participating ~~institution; institution.~~
- (3) The public facilities, including utilities, and public services necessary for the project will be made ~~available; and available.~~
- (4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, ~~color-color,~~ or national origin.

(b) In making these determinations, the agency may consider the participating institution's experience and ratio of current assets to current liabilities; the participating institution's net worth, earnings trends, and coverage of fixed charges; the nature of the project involved; and any additional security for payment of the bonds and performance of the participating institution's obligations under the agreement of sale or lease or loan agreement, such as credit enhancement, insurance, guaranties, or property pledged to secure the payment and performance.

"§ 159D-41. Procedural requirements.

Any ~~participating institution for higher education or any institution for elementary and secondary education~~ may submit to the agency, and the agency may consider, a proposal for financing a project using ~~such~~ forms and following ~~such~~ instructions as ~~may be prescribed~~ by the agency. ~~Such~~ The proposal shall set forth the type and location of the project and may include other information and data ~~available to the institution for higher education or the institution for elementary and secondary education~~ respecting

the project and the extent to which ~~such~~ the project conforms to the criteria and requirements set forth in this ~~Chapter, Article.~~ The agency may request the ~~institution for higher education or the institution for elementary and secondary education~~ applicant to provide additional information and data respecting the project. The agency is authorized to make or cause to be made ~~such~~ any investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the ~~institution for higher education or the institution for elementary and secondary education,~~ applicant, the extent to which the project otherwise conforms to the criteria and requirements of this ~~Chapter, Article,~~ and ~~such~~ any other factors as ~~may be deemed~~ the agency considers relevant or convenient in carrying out the purposes of this ~~Chapter, Article.~~

"§ 159D-42. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

(a) The agency may sell or lease any project to a participating institution for operation and maintenance or lend money to any participating institution ~~in such manner as shall to~~ effectuate the purposes of this ~~Chapter, Article,~~ under a loan agreement or an agreement of sale or lease in form and substance not inconsistent ~~herewith. Any such~~ with this Article. The loan agreement or agreement of sale or lease may include provisions that:

- (1) The participating institution shall, at its own expense, operate, repair and maintain the project covered by ~~such agreement; the agreement.~~
- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased ~~thereunder~~ or with respect to which the loan was ~~made; made.~~
- (3) The participating institution shall pay all other costs incurred by the agency in connection with the providing of the project covered by any ~~such~~ agreement, except ~~such~~ costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, including insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, ~~such~~ the bonds or notes and the fees and expenses of trustees, paying agents, attorneys, ~~consultants and others; consultants, and others.~~
- (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all ~~such~~ bonds and all other obligations incurred by the agency in connection with the project covered by ~~any such~~ the agreement are retired or provision for ~~such~~ their retirement is ~~made; and made.~~

- (5) The obligation of the participating institution to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution until the bonds have been retired or provision has been made for ~~such~~ their retirement.

(b) If the agency has acquired a possessory or ownership interest in any project it has undertaken on behalf of a participating institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in ~~such-the~~ project to such-that participating institution upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with ~~such~~ that project.

"§ 159D-43. Construction contracts.

If the agency determines that the purposes of this ~~Chapter-Article~~ will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution upon a negotiated basis as determined by the agency. The agency shall prescribe ~~such-any~~ bid security requirements and other procedures in connection with the award of such-the contracts as in its judgment ~~shall-will~~ protect the public interest. The agency may by written contract engage the services of the participating institution in the construction of ~~such-the~~ project and may provide in any-such-the contract that ~~such-the~~ participating institution, subject to such-any conditions and requirements consistent with the provisions of this ~~Chapter-Article~~ as shall be prescribed in such-the contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described ~~therein, in the contract~~ including the acquisition of the site and other real property for such-the project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of ~~such-the~~ project directly by such-the participating institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost ~~thereof-of these functions~~ pending reimbursement by the agency. Any-such-The contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution for its costs incurred in the performance of ~~such-these~~ functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be-are required in connection ~~therewith~~ to assure compliance with the provisions of this Chapter-Article and such-the contract.

"§ 159D-44. Credit of State not pledged.

Bonds or notes issued under the provisions of this ~~Chapter-Article~~ shall not be secured by a pledge of the faith and credit of the State or of any political subdivision ~~thereof-or be deemed to-of the State, or~~ create an indebtedness of the State, or of any such-political subdivision thereof, of the State requiring any voter approval, but shall be payable solely from the revenues and other funds provided ~~therefor-for~~ payment. Each bond or note issued under this Chapter-Article shall contain on the face thereof-its face a statement to the effect that the agency ~~shall not be-is not~~ obligated to pay the same-it nor

the interest ~~thereon~~ on it except from the revenues and other funds pledged ~~therefor~~ for its payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision ~~thereof~~ of the State is pledged as security for the payment of the principal of or the interest on ~~such~~ the bond or note.

Expenses incurred by the agency in carrying out the provisions of this ~~Chapter Article~~ Article may be made payable from funds provided pursuant to, or made available for use under, this ~~Chapter Article~~ Article and no liability shall be incurred by the agency ~~hereunder~~ under this Article beyond the extent to which moneys ~~shall~~ have been so provided.

"§ 159D-45. Bonds and notes.

(a) The agency is ~~hereby~~ authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the agency to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this ~~Chapter Article~~ Article for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the agency at such price or prices and upon such terms and conditions as may be determined by the agency. The bonds may also be made payable from time to time on demand or tender for purchase by the owner upon such terms and conditions as may be determined by the agency. Any such bonds or notes shall bear interest at such rate or rates (including variable rates) as may be determined by the Local Government Commission of ~~North Carolina~~ with the approval of the agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the agency. The agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or notes or coupons attached ~~thereto shall cease to be such~~ to them ceases to be that officer before ~~the delivery thereof, such~~ their delivery, the signature or ~~such~~ facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the officer had remained in office until ~~such~~ delivery. The agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the agency under this ~~Chapter Article~~ Article unless the issuance thereof is approved by the Local Government ~~Commission of North Carolina~~ Commission.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of ~~such the~~ bonds or notes ~~which shall contain such notes~~. The application must include any information and have attached to it such documents concerning the proposed financing and prospective borrower, vendee or lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements ~~mentioned in this Chapter, Article,~~ the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of ~~such the~~ bonds or notes if, upon the information and evidence it receives, it finds ~~and determines~~ that the proposed financing will effectuate the purposes of this ~~Chapter, Article.~~

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, ~~such the~~ bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission ~~shall determine~~ determines to be for the best interests of the agency and to effectuate best the purposes of this Chapter, Article, ~~provided that such sale shall be as long as the sale is approved by the agency.~~

(c) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the agency may provide in the resolution authorizing the issuance of, or any trust agreement securing, ~~such the~~ bonds or notes.

(d) Prior to the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when ~~such bonds shall the bonds~~ have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which ~~shall become~~ mutilated or ~~shall be are~~ destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this ~~Chapter Article~~ without obtaining, except as otherwise expressly provided in this ~~Chapter, Article,~~ the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things ~~which are~~ specifically required by this ~~Chapter Article~~ and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, ~~such the~~ bonds or notes.

(f) Before the issuance of bonds pursuant to this Article to finance a project, the Agency shall hold a public hearing with respect to the proposed project and the issuance of the bonds to finance the proposed project. The public hearing may be held at any location designated by the Agency, including at the offices of the Agency in Raleigh, North Carolina.

The public hearing may be conducted by the Agency or by a hearing officer designated by the Agency to conduct public hearings. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county where the proposed project is to be located not less than 14 days before the public

hearing. The notice must describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the Agency considers appropriate. A copy of the notice of public hearing must be mailed to the clerk of the Board of Commissioners of the county in which the proposed project is to be located and to the governing body of any city or town in which the proposed project is to be operated.

"§ 159D-46. Trust agreement or resolution.

In the discretion of the agency any bonds or notes issued under the provisions of this ~~Chapter~~ Article may be secured by a trust agreement by and between the agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the agency received pursuant to this ~~Chapter~~ Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the agency with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this ~~Chapter~~ Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this ~~Chapter~~ Article and of such trust agreement or resolution; except that the agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the agency ~~may deem~~ considers reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or

resolution may be treated as a part of the cost of any project or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency.

"§ 159D-47. Revenues; pledges of revenues.

(a) The agency is ~~hereby~~ authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section ~~thereof, of the project~~ and to contract with any participating institution for ~~the use thereof, its use.~~ The agency may require that the participating institution shall operate, repair or maintain such project and shall bear the cost ~~thereof~~ and other costs of the agency in connection ~~therewith, with the project~~ all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under ~~such~~ the agreement or contract.

(b) The fees, loan repayments, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with any other available funds, ~~such other funds as may be made available therefor,~~ (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as ~~the same shall they~~ become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, ~~such bonds; and such the bonds.~~ The fees, loan repayments, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this ~~Chapter Article~~ shall be are valid and binding from the time when ~~such pledges they~~ are made. All ~~such~~ revenues so pledged and thereafter received by the agency shall are immediately ~~be~~ subject to the lien of ~~such the~~ pledge without any physical delivery ~~thereof~~ or further act, and the lien of ~~any such the~~ pledge shall be is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether ~~such the~~ parties have notice ~~thereof, of it.~~ The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the agency.

(d) The State of North Carolina ~~does pledge to and agree~~ pledges to and agrees with the holders of any bonds or notes issued by the agency that so long as any of ~~such the~~ bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any project in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with ~~such other funds as may be made available therefor,~~ any other available funds to pay the costs of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as ~~the same shall they~~ become due and ~~payable and payable,~~ to create and maintain any reserves provided

~~therefor for their payment, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State noteholders. The State will not in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged.~~

"§ 159D-48. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this ~~Chapter, Article, including, without limitation,~~ including fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project, ~~shall be deemed to be~~ are trust funds to be held and applied solely as provided in this ~~Chapter, Article.~~ The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of ~~such these~~ moneys may be temporarily invested pending ~~the their~~ disbursement ~~thereof~~ and shall provide that any officer with whom, or any bank or trust company with which, such moneys ~~shall be~~ are deposited shall act as trustee of such moneys and shall hold and apply ~~the same them~~ for the purposes of this ~~Chapter, Article,~~ subject to ~~such any~~ limitations as provided in this Chapter Article and such in the resolution or trust agreement may provide. Any such agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended.

"§ 159D-49. Remedies.

Any holder of bonds or notes issued under the provisions of this ~~Chapter Article~~ or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the agency pursuant to this ~~Chapter, Article,~~ and may enforce and compel the performance of all duties required by this ~~Chapter Article~~ or by such trust agreement or resolution to be performed by the agency or by any officer ~~thereof of the agency.~~

"§ 159D-50. Investment securities.

All bonds, notes and interest coupons ~~appertaining thereto~~ issued under this ~~Chapter Article~~ are ~~hereby made~~ investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under ~~said Article 8, that Article,~~ subject only to the provisions of the bonds and notes pertaining to registration.

"§ 159D-51. Bonds or notes eligible for investment.

Bonds or notes issued under the provisions of this ~~Chapter Article~~ are ~~hereby made~~ securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

~~Such~~ These bonds or notes are ~~hereby made~~ securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is ~~now or may hereafter be~~ authorized by law.

"§ 159D-52. Refunding bonds or notes.

(a) The agency is ~~hereby~~ authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which ~~shall~~ have been issued under the provisions of this ~~Chapter, Article~~, including the payment of any redemption premium ~~thereon~~ and any interest accrued or to accrue to the date of redemption of ~~such the~~ bonds or notes and, if ~~deemed~~ considered advisable by the agency, for any corporate purpose of the agency, including, without limitation:

- (1) Constructing improvements, additions, extensions or enlargements of the project in connection with which the bonds or notes to be refunded shall have been issued, and
- (2) Paying all or any part of the cost of any additional project.

(b) The issuance of ~~such refunding~~ bonds or notes, ~~the their~~ maturities and other ~~details thereof, details~~ the rights of ~~the holders thereof, their holders~~, and the rights, duties and obligations of the agency ~~in respect of the same shall be~~ are governed by the provisions of this ~~Chapter Article~~ which relate to the issuance of bonds or notes, ~~insofar as such provisions may be appropriate therefor. as appropriate.~~

~~Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes issued under this Chapter Article and, if sold, the proceeds thereof their proceeds, and investment earnings on them, may be applied, in addition to any other authorized purposes, with any other available funds, to the purchase, redemption redemption, or payment of such the bonds or notes, with any other available funds, being refunded, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such the refunding bonds or notes bonds, and to the payment of any expenses in connection with such the refunding. Such The proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall if the obligations mature or which shall be are subject to redemption by the holders thereof, at the option of such holders, the holders, at their option not later than the respective dates when the proceeds, together with the interest accrued thereon, will be required for the purposes intended.~~

"§ 159D-53. Annual report.

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this ~~Chapter Article~~ for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this ~~Chapter Article~~ to be made at least once in each year by an independent certified public accountant and the cost ~~thereof of the audit~~ may be paid from any available moneys of the agency.

"§ 159D-54. Officers not liable.

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

"§ 159D-55. Tax exemption.

The exercise of the powers granted by this ~~Chapter~~ Article will be in all respects for the benefit of the people of the State and will promote their health and ~~welfare, and no tax or assessment shall be levied upon any project undertaken by the agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project.~~ welfare.

Any bonds or notes issued by the agency under the provisions of this ~~Chapter~~ Article shall ~~are~~ at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income.

"§ 159D-56. Conflict of interest.

If any member, officer or employee of the agency ~~shall be~~ is interested either directly or indirectly, or ~~shall be~~ is an officer or employee of or ~~have~~ has an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, ~~such~~ this interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having ~~such an~~ such an interest ~~therein~~ in a contract shall not participate on behalf of the agency in the authorization of ~~any such~~ the contract.

"§ 159D-57. Additional method.

The foregoing sections of this ~~Chapter~~ Article ~~shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as and are supplemental and additional to powers conferred by other laws,~~ laws. ~~and shall not be regarded as in derogation of any powers now existing; provided, however, that the~~ This Article does not derogate any existing powers. ~~The issuance of bonds or notes under the provisions of this Chapter~~ Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes."

Section 3. G.S. 159C-3 reads as rewritten:

"§ 159C-3. Definitions.

The following ~~terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:~~ definitions apply in this Chapter:

- (1) ~~"Agency" shall include any Agency.~~ – Any agency, bureau, commission, department ~~department,~~ or instrumentality.
- (2) ~~"Air pollution control facility" shall mean any Air pollution control facility.~~ – Any structure, equipment ~~equipment,~~ or other facility for, including any increment in the cost of any structure, equipment ~~equipment,~~ or facility attributable to, the purpose of treating, neutralizing ~~neutralizing,~~ or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing

neutralizing, or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency government entity having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

- (3) ~~"Bonds" shall mean revenue Bonds. – Revenue bonds of an authority issued under the provisions of this Chapter.~~
- (4) ~~"Cost" Cost. – This term as applied to any project shall embrace~~ embraces all capital costs thereof, of the project, including the all of the following:
- a. The cost of eonstruction, the construction.
 - b. The cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the unimproved.
 - c. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such those buildings or structures may be moved or relocated, the relocated.
 - d. The cost of all machinery and equipment, installation, start-up expenses, financing charges, and interest prior to, during and for a period not exceeding one year after completion of construction, the construction.
 - e. The cost of engineering and architectural surveys, plans and specifications, the specifications.
 - f. The cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of such the project, administrative and other expenses necessary or incident to the acquisition or construction of such the project and the financing of the acquisition and construction thereof. of the project.
- (5) ~~"Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.~~
- (6) ~~"Financing agreement" shall mean a Financing agreement. – A written instrument establishing the rights and responsibilities of the authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds.~~

- (6a) Governing body. – The board, commission, council, or other body in which the general legislative powers of any county or other political subdivision are vested.
- (6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; or distribution facility for industrial or manufactured products.
- (7) ~~"Obligor" shall mean any person or persons,~~ Obligor. – Any person, which may include the operator, who ~~shall be~~ is obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.
- (8) ~~"Operator" shall mean the~~ Operator. – The person entitled to the use or occupancy of a project.
- (9) ~~"Political subdivision" shall mean any~~ Political subdivision. – Any county, city, town, other unit of local government or any other governmental corporation, ~~agency, authority,~~ authority, or instrumentality of the State now or hereafter existing.
- (10) ~~"Pollution" and "pollutants" shall mean any~~ Pollution or pollutants. – Any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render ~~such the~~ air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.
- (10a) Pollution control project. – Any air pollution control facility, water pollution control facility, or solid waste disposal facility if the facility is in connection with either an industrial project or a public utility plant.
- (11) ~~"Project" shall mean any land, equipment or any~~ Project. – Any land or equipment or one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial ~~project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility, or industrial processing facility or distribution facility for industrial or manufactured products, or project,~~ (ii) any pollution control project for industry or for public utilities ~~which project may be any air pollution~~

~~control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill or plant described in clause (i) of this subdivision or in connection with a public utility plant, or (iii) utilities, (iii) any special purpose project, or (iv) any combination of projects mentioned in clauses (i) and (ii) (i) through (iii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto. to it.~~

- (12) ~~"Revenues" shall mean, with Revenues. – With respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom from the project or from the financing agreement or security document in connection therewith. with the project.~~
- (13) ~~"Security document" shall mean a Security document. – A written instrument or instruments establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, and which may provide for, or be in the form of an agreement with, a trustee for the benefit of such the bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.~~
- (14) ~~"Solid waste" shall mean solid Solid waste. – Solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.~~
- (15) ~~"Solid waste disposal facility" shall mean a Solid waste disposal facility. – A facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.~~
- (15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:
- a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
 - b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the

- collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.
- c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
 - d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.
 - e. Public auditoriums, gymnasiums, stadiums, and convention centers.
 - f. Recreational facilities.
 - g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid or other waste that are described in G.S. 159I-8.
 - h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons.
- (16) ~~"Water pollution control facility" shall mean any~~ Water pollution control facility. – Any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which shall have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution."

Section 4. G.S. 159C-5 is amended by adding a new subdivision to read:

"§ 159C-5. General powers.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

- ...
- (7a) To acquire by purchase, lease, gift, or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee interest, for the construction, operation, or maintenance of any project;

... ."

Section 5. G.S. 159C-6 reads as rewritten:

"§ 159C-6. Bonds.

(a) Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of ~~such the~~ bonds shall be payable solely from the funds ~~herein authorized for such authorized in this Article for their~~ payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission ~~of North Carolina~~ with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at ~~such any~~ time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at ~~such any~~ price or prices and under ~~such any~~ terms and conditions, as may be fixed by the authority ~~prior to before~~ the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached ~~thereto, to them,~~ and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature ~~or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the person had remained in office until such delivery.~~ or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of ~~the project or projects, or a portion thereof, all or part of the project~~ for which the bonds were issued, and shall be disbursed in ~~such any~~ manner and under ~~such any~~ restrictions, ~~if any,~~ as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than ~~such this~~ cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

(c) The proceeds of bonds shall not be used to refinance the cost of ~~a an~~ an industrial project or a pollution control project. For the purposes of this section, a cost of ~~a an industrial project or a pollution control project~~ is considered refinanced if both of the following conditions are met:

- (1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

- (2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) However, Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a-an industrial project or a pollution control project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of a-an industrial project or a pollution control project, such as expenditures for land acquisition and site preparation. In any event, an expenditure in connection with an industrial project or a pollution control project originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may ~~only~~ be reimbursed from bond proceeds only if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

(e) An authority may make loans to an obligor to refund outstanding loans, obligations, deeds of trust, or advances issued, made, or given by the obligor for the cost of a special purpose project.

(f) The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when ~~such the~~ bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(g) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, ~~conditions~~ conditions, or things which that are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of ~~such bonds and securing the same. the bonds and securing the bonds.~~

Section 6. G.S. 159C-7 reads as rewritten:

"§ 159C-7. Approval of ~~project~~ industrial projects and pollution control projects by Secretary of Commerce.

(a) Approval Required. – No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution control project with the Secretary of Commerce, and shall notify the Local Government Commission of ~~such the~~ filing.

(b) Findings. – The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

- (1) In the case of a proposed industrial project,
 - a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) is above the average weekly manufacturing wage paid in the county, or (ii) is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and
 - b. That the proposed project will not have a materially adverse effect on the environment.
- (2) In the case of a proposed pollution control project, that ~~such the~~ project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.
- (2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.
- (3) In ~~any case (whether the proposed project is the case of an industrial project or a pollution control project),~~ project, except a pollution control project for a public utility,
 - a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
 - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate ~~such the~~ the project, and
 - c. That the financing of ~~such the~~ the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. – If the initial proposed operator of ~~a~~ an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions ~~(1)a.~~ ~~(b)(1)a.~~ and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. – The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. – The Secretary of Commerce shall not make the findings required by subdivisions (b) (1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. – If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in ~~subparagraph~~ subdivision (b) (1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. – To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit ~~such~~ any data and information about ~~such~~ the project as the Secretary may prescribe. The

Secretary may also prescribe ~~such~~ forms and ~~such~~ rules as the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. – If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing ~~such~~ the approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. ~~Any such~~ This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of ~~such~~ the findings and approval shall have been so published, in the Superior Court of Wake County. The superior court is ~~hereby~~ vested with jurisdiction to hear ~~such~~ the action, but if no ~~such~~ action is filed within the 30 days ~~herein~~ prescribed, the validity of ~~such~~ the approval shall be ~~is~~ conclusively presumed, and no court shall ~~have~~ has authority to inquire into ~~such~~ the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the governing body of the county board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval shall ~~become~~ becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate shall ~~expire~~ expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate shall ~~expire~~ expires three years after the date of the first issuance of the bonds."

Section 7. G.S. 159C-8 reads as rewritten:

"§ 159C-8. Approval of bonds.

(a) No bonds may be issued by an authority unless the issuance ~~thereof~~ of the bonds is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of ~~the Department of Commerce of such filing.~~ the filing if the project is an industrial project or pollution control project.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may ~~consider, without limitation,~~ consider any of the following:

- (1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional

security such as credit enhancement, insurance, guaranties or property to be pledged to secure such bonds.

- (2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of ~~such the~~ project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for ~~such the~~ project and on account of any increase in population which are expected to result ~~therefrom, from the~~ project.
- (3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.
- (4) Any other factors the Commission considers relevant.

(c) The Local Government Commission shall not approve the issuance of bonds for a special purpose project unless the governing body of the county in which the special purpose project is located has conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purposes of paying all or a part of the proposed special purpose project. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed special purpose project, including its general location, and any other information the governing body considers appropriate.

(d) If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision ~~(1)-(b)(1)~~ of this section only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit ~~such any~~ financial data and information about the proposed bond issue and the security ~~therefor, for it,~~ including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe ~~such forms and such rules and regulations as he shall deem any forms and rules the Secretary considers~~ reasonably necessary to implement the provisions of this section. "

Section 8. G.S. 159C-11 reads as rewritten:

"§ 159C-11. Financing agreements.

- (a) Every financing agreement shall provide that:
 - (1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and

- interest on the bonds ~~that shall be~~ issued by the authority to pay the cost of the project as ~~the same shall they~~ respectively become ~~due; due.~~
- (2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, ~~including, but without limitation,~~ including insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and ~~others; others.~~
 - (3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the ~~project; and project.~~
 - (4) The obligor's obligation to provide for the payment of the bonds in full ~~shall not be~~ is not subject to cancellation, termination or abatement until ~~such~~ payment of the bonds or provision for their payment has been therefor shall be made.
 - (5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (b) (1)a. and (3)b. of G.S. 159C-7 ~~and if the project is an industrial project or a pollution control project, and is subject in any event to the approval of the Local Government Commission under G.S. 159C-8.~~

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision ~~therefor, shall have~~ for payment, has been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor ~~thereunder including, without limitation,~~ under the agreement, including any one or more of the following:

- (1) Acceleration of all amounts payable under the financing agreement;
- (2) Reentry and repossession of the project;
- (3) Termination of the financing agreement;
- (4) Leasing or sale or foreclosure of the project to others; and
- (5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(c) The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

~~Any such~~ The financing agreement may contain ~~such~~ any additional provisions as ~~in the determination of the authority are~~ considers necessary or convenient to effectuate the purposes of this Chapter."

Section 9. G.S. 159C-19 reads as rewritten:

"§ 159C-19. Revenue refunding bonds.

(a) Each authority is ~~hereby~~ authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium ~~thereon~~ on them and any interest accrued or to accrue to the date of redemption of ~~such~~ the bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded have been issued, and
- (2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of ~~such~~ these bonds, ~~the~~ their maturities and other ~~details thereof, details,~~ the rights of ~~the holders thereof, their holders,~~ and the rights, ~~duties~~ duties, and obligations of the authority in respect to ~~the same~~ them shall be governed by the provisions of this Chapter that relate to the issuance of bonds, ~~insofar as such provisions may be appropriate therefor,~~ to the extent appropriate, including that ~~any such~~ the bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; ~~provided, however, that in the case where bonds,~~ except that if the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 ~~shall not be~~ is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, ~~the proceeds thereof~~ their proceeds may be applied, in addition to any other authorized purposes, to the purchase, ~~redemption~~ redemption, or payment of ~~such~~ the outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time ~~not more than five years prior to~~ before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded ~~thereby~~ by them. Pending the application of the proceeds of ~~such~~ the refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing ~~the same, them,~~ to the payment of any interest on ~~such~~ the refunding bonds and any expenses in connection with ~~such~~ the refunding, ~~such~~ the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America ~~which shall mature or which shall be~~ that mature or are subject to redemption by the ~~holder thereof,~~ holder, at

the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing ~~thereon,~~ on them, will be required for the purposes intended."

Section 10. The amendments to G.S. 159D-55, as recodified by this act, become effective with respect to obligations issued on or after August 1, 2000. The remainder of this act becomes effective July 1, 2000.

In the General Assembly read three times and ratified this the 11th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:16 a.m. this 2nd day of August, 2000