

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

H

1

HOUSE BILL 1238

Short Title: Finance Cancer Center/Cigarette Tax. (Public)

Sponsors: Representatives Hackney, Insko (Primary Sponsors); and Glazier.

Referred to: Finance.

April 24, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE A STATUTORY FRAMEWORK FOR THE FINANCING OF
2 CAPITAL FACILITIES BY THE STATE, TO AUTHORIZE THE ISSUANCE OF
3 SPECIAL INDEBTEDNESS TO FINANCE THE CONSTRUCTION OF THE
4 NORTH CAROLINA CANCER CENTER REPLACEMENT HOSPITAL, AND
5 TO INCREASE THE CIGARETTE TAX TO PROVIDE A SOURCE OF FUNDS
6 FOR THE CANCER CENTER.
7

8 The General Assembly of North Carolina enacts:

9 **PART 1. CANCER TREATMENT CENTER**

10 **SECTION 1.1.** Cancer Treatment Center. – In accordance with G.S. 142-83,
11 as enacted by this act, this section authorizes the issuance or incurrence of financing
12 contract indebtedness in a maximum principal amount of one hundred fifty million
13 dollars (\$150,000,000) to finance the cost of acquiring, constructing, and equipping a
14 new cancer rehabilitation and treatment center to be located at the University of North
15 Carolina Hospitals at Chapel Hill. The State, with the prior approval of the State
16 Treasurer and Council of State, as provided in Article 9 of Chapter 142 of the General
17 Statutes, as enacted by this act, is authorized to execute and deliver one or more
18 financing contracts in a maximum principal amount of one hundred fifty million dollars
19 (\$150,000,000) in order to provide funds to the State to be used, together with other
20 available funds, to pay the cost of this project.

21 **PART 2. STATE CAPITAL FACILITIES FINANCE**

22 **SECTION 2.1.** Chapter 142 of the General Statutes is amended by adding a
23 new Article to read:

"Article 9.

"State Capital Facilities Finance Act.

24 **"§ 142-80. Short title.**

25 This Article may be cited as the State Capital Facilities Finance Act.

26 **"§ 142-81. Findings and purpose.**

27 The General Assembly finds as follows:
28
29

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

15 **"§ 142-82. Definitions.**

16 The following definitions apply in this Article:

- 17 (1) Bonded indebtedness. – Limited obligation bonds and bond
18 anticipation notes, including refunding bonds and notes, authorized to
19 be issued under this Article.
- 20 (2) Bonds or notes. – Limited obligation bonds and notes authorized to be
21 issued under this Article.
- 22 (3) Capital facility. – Any one or more of the following:
- 23 a. Any one or more buildings, utilities, structures, or other
24 facilities or property developments, including streets and
25 landscaping, and the acquisition of equipment, machinery, and
26 furnishings in connection with these items.
- 27 b. Additions, extensions, enlargements, renovations, and
28 improvements to existing buildings, utilities, structures, or other
29 facilities or property developments, including streets and
30 landscaping.
- 31 c. Land or an interest in land.
- 32 d. Other infrastructure.
- 33 e. Furniture, fixtures, equipment, vehicles, machinery, and similar
34 items.
- 35 (4) Certificates of participation. – Certificates or other instruments
36 delivered by a special corporation evidencing the assignment of
37 proportionate undivided interests in rights to receive payments
38 pursuant to a financing contract.
- 39 (5) Certificates of participation indebtedness. – Financing contract
40 indebtedness incurred by the State under a plan of finance in which a
41 special corporation obtains funds to pay the cost of a capital facility to
42 be financed through the delivery by the special corporation of
43 certificates of participation.

- 1 (6) Cost. – Any of the following in financing the cost of capital facilities
2 as authorized by this Article:
- 3 a. The cost of constructing, reconstructing, renovating, repairing,
4 enlarging, acquiring, and improving capital facilities, including
5 the acquisition of land, rights-of-way, easements, franchises,
6 equipment, machinery, furnishings, and other interests in real or
7 personal property acquired or used in connection with a capital
8 facility.
- 9 b. The cost of engineering, architectural, and other consulting
10 services.
- 11 c. The cost of providing personnel to ensure effective
12 management of capital facilities.
- 13 d. Finance charges, reserves for debt service, and other types of
14 reserves required pursuant to the terms of any special
15 indebtedness or related documents, interest before and during
16 construction or acquisition of a capital facility and, if
17 considered advisable by the State Treasurer, for a period not
18 exceeding two years after the estimated date of completion of
19 construction or acquisition.
- 20 e. Administrative expenses and charges.
- 21 f. The cost of bond insurance, investment contracts, credit
22 enhancement facilities and liquidity facilities, interest rate swap
23 agreements or other derivative products, financial and legal
24 consultants, and related costs of the incurrence or issuance of
25 special indebtedness.
- 26 g. The cost of reimbursing the State, a State agency, or a special
27 corporation for any payments made for any cost described in
28 this subdivision.
- 29 h. Any other costs and expenses necessary or incidental to the
30 purposes of this Article.
- 31 (7) Credit facility. – An agreement that:
- 32 a. Is entered into by the State with a bank, savings and loan
33 association, or other banking institution, an insurance company,
34 reinsurance company, surety company, or other insurance
35 institution, a corporation, investment banking firm, or other
36 investment institution, or any financial institution or other
37 similar provider of a credit facility, which provider may be
38 located within or without the United States of America; and
- 39 b. Provides for prompt payment of all or any part of the principal
40 or purchase price (whether at maturity, presentment or tender
41 for purchase, redemption, or acceleration), redemption
42 premium, if any, and interest with respect to any special
43 indebtedness payable on demand or tender by the owner in
44 consideration of the State's agreeing to repay the provider of the

- 1 credit facility in accordance with the terms and provisions of
2 the agreement.
- 3 (8) Department of Administration. – The North Carolina Department of
4 Administration, created by Article 36 of Chapter 143 of the General
5 Statutes, or if the Department is abolished or otherwise divested of its
6 functions under this Article, the public body succeeding it in its
7 principal functions or upon which are conferred by law the rights,
8 powers, and duties given by this Article to the Department.
- 9 (9) Financing contract. – A contract entered into pursuant to this Article to
10 finance capital facilities and constituting a lease-purchase contract,
11 installment-purchase contract, or other similar type installment
12 financing contract. The term does not include, however, a contract that
13 meets any one of the following conditions:
- 14 a. It constitutes an operating lease under generally accepted
15 accounting principles.
- 16 b. It provides for the payment under the contract over its full term,
17 including periods that may be added to the original term
18 through the exercise of options to renew or extend, of an
19 aggregate principal amount of not in excess of five thousand
20 dollars (\$5,000) or any greater amount that may be established
21 by the Council of State if the Council of State determines (i) the
22 aggregate amount to be paid under these contracts will not have
23 a significant impact on the State budgetary process or the
24 economy of the State and (ii) the change will lessen the
25 administrative burden on the State.
- 26 c. It is executed and provides for the making of all payments
27 under the contract, including payment to be made during any
28 period that may be added to the original term through the
29 exercise of options to renew or extend, in the same fiscal year.
- 30 (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a
31 financing contract, including certificates of participation indebtedness.
- 32 (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal
33 biennium.
- 34 (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one
35 calendar year and ending on June 30 of the next calendar year.
- 36 (13) Limited obligation bond. – A limited obligation bond issued pursuant
37 to G.S. 142-88 and payable and secured as provided in G.S. 142-89.
- 38 (14) Par formula. – A provision or formula adopted by the State to provide
39 for the adjustment, from time to time, of the interest rate or rates borne
40 or provided for by any special indebtedness, including any of the
41 following:
- 42 a. A provision providing for an adjustment so that the purchase
43 price of special indebtedness in the open market would be as
44 close to par as possible.

- 1 b. A provision providing for an adjustment based upon a
2 percentage or percentages of a prime rate or base rate, which
3 percentages may vary or be applied for different periods of
4 time.
- 5 c. Any provision that the State Treasurer determines is consistent
6 with this Article and will not materially and adversely affect the
7 financial position of the State and the marketing of special
8 indebtedness at a reasonable interest cost to the State.
- 9 (15) Person. – An individual, a firm, a partnership, an association, a
10 corporation, a limited liability company, or any other organization or
11 group acting as a unit.
- 12 (16) Special corporation. – Either of the following:
- 13 a. A nonprofit corporation created under Chapter 55A of the
14 General Statutes for the purpose of facilitating the incurrence of
15 certificates of participation indebtedness by the State under this
16 Article.
- 17 b. A private corporation or other entity issuing certificates of
18 participation pursuant to this Article.
- 19 (17) Special indebtedness. – Financing contract indebtedness and bonded
20 indebtedness issued or incurred pursuant to this Article.
- 21 (18) State. – The State of North Carolina, including any State agency.
- 22 (19) State agency. – Any agency, institution, board, commission, bureau,
23 council, department, division, officer, or employee of the State. The
24 term does not include counties, municipal corporations, political
25 subdivisions, local boards of education, or other local public bodies.
- 26 (20) State Treasurer. – The incumbent Treasurer, from time to time, of the
27 State.

28 **"§ 142-83. Authorization of special indebtedness; General Assembly approval.**

29 The State may incur or issue special indebtedness subject to the terms and conditions
30 provided in this Article for the purpose of financing the cost of capital facilities that
31 meet one of the following conditions:

- 32 (1) The General Assembly has enacted legislation describing the capital
33 facility and authorizing its financing by the incurrence or issuance of
34 special indebtedness up to a specific maximum amount.
- 35 (2) The General Assembly has enacted legislation authorizing the
36 incurrence or issuance of special indebtedness up to a specific
37 maximum amount for a specific category of capital facilities, and the
38 capital facility meets all of the conditions set in that legislation.

39 **"§ 142-84. Procedure for incurrence or issuance of special indebtedness.**

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

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

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

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

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

32 (d) Financing Terms. – No special indebtedness shall be incurred or issued
33 without the prior written approval of the State Treasurer as provided in this subsection,
34 which is in addition to the certificate given by the State Treasurer pursuant to subsection
35 (a) of this section. In determining whether to approve the proposed financing, the State
36 Treasurer may consider any factors the State Treasurer considers relevant in order to
37 find and determine all of the following:

- 38 (1) The amounts to become due under the special indebtedness, including
39 the interest component or rate, are adequate and not excessive for the
40 purpose proposed.
- 41 (2) The increase, if any, in State revenues, including taxes, necessary to
42 pay the sums to become due under the special indebtedness, is not
43 excessive.

1 (3) The special indebtedness can be incurred or issued on terms desirable
2 to the State.

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

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

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

21 (h) Oversight by Joint Legislative Commission. – After all the requirements for
22 approval and oversight provided in this section have been met, and at least five days
23 before the issuance or incurrence of the special indebtedness, the State Treasurer must
24 report to the Joint Legislative Commission on Governmental Operations. This report
25 must include the details of the proposed special indebtedness, including the capital
26 facilities to be financed by the indebtedness, the amount of the proposed indebtedness,
27 the type of indebtedness to be issued or incurred, and any other information required by
28 the Commission.

29 **"§ 142-85. Security; other requirements.**

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

36 (1) A lien on or security interest in one or more, all, or any part of the
37 capital facilities to be financed by the special indebtedness.

38 (2) If the special indebtedness is to finance construction of improvements
39 on real property, a lien on or security interest in all or any part of the
40 land on which the improvements are to be located.

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

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

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

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

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

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

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

- 39 **(1)** The purposes to which the proceeds of special indebtedness may be
40 applied.
- 41 **(2)** The disposition and application of the revenues of the State, including
42 taxes.
- 43 **(3)** Insuring, maintaining, and other duties with respect to the capital
44 facilities financed.

1 (4) The disposition of any charges and collection of any revenues and
2 administrative charges.

3 (5) The terms and conditions of the issuance of additional special
4 indebtedness.

5 (6) The custody, safeguarding, investment, and application of all moneys.

6 (h) State Property Law Exception. – Chapter 146 of the General Statutes does not
7 apply to any transfer of the State's interest in property authorized by this Article,
8 whether to a deed of trust trustee or other secured party as security for special
9 indebtedness, or to a purchaser of property in connection with a foreclosure or similar
10 conveyance of property to realize upon the security for special indebtedness following
11 the State's default on its obligations under the special indebtedness.

12 **"§ 142-86. Financing contract indebtedness.**

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

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

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

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

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

32 (f) Terms and Conditions. – All other conditions set forth elsewhere in this
33 Article with respect to financing contract indebtedness shall also be satisfied prior to
34 incurring any financing contract indebtedness. To the extent applicable as conclusively
35 determined by the State Treasurer, the provisions of G.S. 142-89, 142-90, and 142-91
36 apply to financing contract indebtedness.

37 **"§ 142-87. Additional requirements for certificates of participation indebtedness.**

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

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

8 (c) Terms; Interest. – Certificates of participation may be sold by the State
9 Treasurer in the manner, either at public or private sale, and for any price or prices that
10 the State Treasurer determines to be in the best interest of the State and to effect the
11 purposes of this Article, except that the terms of the sale must also be approved by the
12 special corporation. Interest payable with respect to certificates of participation shall
13 accrue at the rate or rates determined by the State Treasurer with the approval of the
14 special corporation.

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

19 (e) Other Conditions. – All other conditions set forth elsewhere in this Article
20 with respect to certificates of participation indebtedness, including the conditions set
21 forth in G.S. 142-86, must be satisfied before any certificates of participation
22 indebtedness is incurred.

23 **§ 142-88. Bonded indebtedness.**

24 The State Treasurer is authorized, by and with the consent of the Council of State as
25 provided in this Article, to issue and sell at one time or from time to time bonds of the
26 State to be designated "State of North Carolina Limited Obligation Bonds, Series ____"
27 or notes of the State as provided in this Article, for the purpose of providing funds, with
28 any other available funds, for the uses authorized in this Article.

29 **§ 142-89. Issuance of limited obligation bonds and notes.**

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

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

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

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

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

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

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

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

38 (1) For anticipating the sale of bonds, the issuance of which the Council of
39 State has approved, if the State Treasurer considers it advisable to
40 postpone the issuance of the bonds.

41 (2) For the payment of interest on or any installment of principal of any
42 bonds then outstanding, if there are not sufficient funds in the State
43 treasury with which to pay the interest or installment of principal as
44 they respectively become due.

- 1 (3) For the renewal of any loan evidenced by notes authorized in this
2 Article.
3 (4) For the purposes authorized in this Article.
4 (5) For refunding bonds or notes or financing contract indebtedness as
5 authorized in this Article.

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

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

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

34 (h) Trust Agreement. – In the discretion of the State Treasurer, any bonds and
35 notes issued under this Article may be secured by a trust agreement or similar
36 instrument between the State and a corporate trustee or by a resolution of the Council of
37 State providing for the appointment of a corporate trustee. The corporate trustee may be,
38 in either case, any trust company or bank that has the powers of a trust company within
39 or without the State. The trust agreement or similar instrument or resolution, hereinafter
40 referred to as "the trust", may provide for security and pledges and assignments that are
41 permitted under this Article and may provide for the granting of a lien or security
42 interest as authorized by G.S. 142-85. The trust may contain any provisions for
43 protecting and enforcing the rights and remedies of the owners of any bonds or notes
44 issued under the trust that are reasonable and not in violation of law, including

1 covenants setting forth the duties of the State with respect to the purposes for which
2 bond or note proceeds may be applied, the disposition and application of the revenues or
3 assets of the State, the duties of the State with respect to the capital facilities financed,
4 the disposition of any charges and collection of any revenues and administrative
5 charges, the terms and conditions of the issuance of additional bonds and notes, and the
6 custody, safeguarding, investment, and application of all moneys. All bonds and notes
7 issued under this Article pursuant to the same trust shall be equally and ratably secured
8 as provided in the trust, without priority by reasons of number, dates of bonds or notes,
9 execution, or delivery, in accordance with the provisions of this Article and of the trust.
10 The trust may, however, provide that bonds or notes issued pursuant to the trust shall, to
11 the extent and in the manner prescribed in the trust, be subordinated and junior in
12 standing, with respect to the payment of principal and interest and to the security of the
13 payment, to any other bonds or notes issued pursuant to the trust. It is lawful for any
14 bank or trust company that may act as depository of the proceeds of bonds or notes,
15 revenues, or any other money under this Article to furnish any indemnifying bonds or to
16 pledge any securities that may be required by the State Treasurer. The trust may set out
17 the rights and remedies of the owners of any bonds or notes and of any trustee, and may
18 restrict the individual rights of action by the owners. In addition to the foregoing, the
19 trust may contain any other provisions the State Treasurer considers appropriate for the
20 security of the owners of any bonds or notes. Expenses incurred in carrying out the
21 provisions of the trust may be treated as a part of the cost of any capital facility or as an
22 administrative charge and may be paid from the proceeds of the bonds or notes or from
23 any other available funds.

24 **"§ 142-90. Variable rate demand bonds and notes and financing contract**
25 **indebtedness.**

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

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

1 presentment for payment to the provider of the credit facility or to the
2 State.

3 (b) If the aggregate principal amount payable by the State under a credit facility
4 is in excess of the aggregate principal amount of special indebtedness secured by the
5 credit facility, whether as a result of the inclusion in the credit facility of a provision for
6 the payment of interest for a limited period of time or the payment of a redemption
7 premium or for any other reason, then the amount of authorized but unissued bonds or
8 notes and financing contract indebtedness during the term of the credit facility shall not
9 be less than the amount of the excess, unless the payment of the excess is otherwise
10 provided for by agreement of the State executed by the State Treasurer.

11 **"§ 142-91. Other agreements.**

12 The State Treasurer may authorize, execute, obtain, or otherwise provide for bond
13 insurance, investment contracts, credit and liquidity facilities, credit enhancement
14 facilities, interest rate swap agreements and other derivative products, and any other
15 related instruments and matters the State Treasurer determines are desirable in
16 connection with the issuance of special indebtedness. The State Treasurer is authorized
17 to employ and designate any financial consultants, underwriters, fiduciaries, and bond
18 attorneys to be associated with any incurrence or issuance of special indebtedness under
19 this Article as the State Treasurer considers appropriate.

20 **"§ 142-92. Tax exemption.**

21 Special indebtedness shall at all times be free from taxation by the State or any
22 political subdivision or any of their agencies, excepting estate, inheritance, and gift
23 taxes; income taxes on the gain from the transfer of the indebtedness; and franchise
24 taxes. The interest component of any payments made by the State under special
25 indebtedness, including the interest component of any certificates of participation, is not
26 subject to taxation as to income.

27 **"§ 142-93. Investment eligibility.**

28 Special indebtedness are securities or obligations in which all of the following may
29 invest, including capital in their control or belonging to them: public officers, agencies,
30 and public bodies of the State and its political subdivisions; insurance companies, trust
31 companies, investment companies, banks, savings banks, savings and loan associations,
32 credit unions, pension or retirement funds, and other financial institutions engaged in
33 business in the State; and executors, administrators, trustees, and other fiduciaries.
34 Special indebtedness are securities or obligations that may properly and legally be
35 deposited with and received by any officer or agency of the State or political
36 subdivision of the State for any purpose for which the deposit of bonds, notes, or
37 obligations of the State or any political subdivision is now or may later be authorized by
38 law.

39 **"§ 142-94. Procurement of capital facilities.**

40 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
41 Statutes and any other laws or rules of the State that relate to the acquisition and
42 construction of State property apply to the financing of capital facilities through the use
43 of special indebtedness pursuant to this Article. This section does not apply to the
44 construction and lease-purchase, including leases with an option to purchase at the end

1 of the lease term for a nominal sum, of State office buildings pursuant to proposals
2 submitted before the effective date of this Article in response to requests for proposals,
3 to the extent any of those proposals, as they may be supplemented or amended, are
4 approved by the Department of Administration and any of these leases or lease-purchase
5 agreements are approved by the Council of State in accordance with G.S.
6 143-341(4)d2."

7 **SECTION 2.2.** G.S. 143-341(4) is amended by adding a new
8 sub-subdivision to read:

9 "d2. To purchase or finance the purchase of buildings, utilities,
10 structures, or other facilities or property developments,
11 including streets and landscaping, the acquisition of land,
12 equipment, machinery, and furnishings in connection therewith;
13 additions, extensions, enlargements, renovations, and
14 improvements to existing buildings, utilities, structures, or other
15 facilities or property developments, including streets and
16 landscaping; land or any interest in land; other infrastructure;
17 furniture, fixtures, equipment, vehicles, machinery, and similar
18 items; or any combination of the foregoing, through
19 installment-purchase, lease-purchase, or other similar type
20 installment financing agreements in the manner and to the
21 extent provided in Article 9 of Chapter 142 of the General
22 Statutes. Any contract entered into or any proceeding instituted
23 contrary to the provisions of this paragraph is voidable in the
24 discretion of the Council of State."

25 **PART 3. CIGARETTE TAX**

26 **SECTION 3.1.** G.S. 105-113.5 reads as rewritten:

27 **"§ 105-113.5. Tax on cigarettes.**

28 A tax is levied on the sale or possession for sale in this State, by a distributor, of all
29 cigarettes at the rate of ~~two and one-half mill~~ two-fifths cent (2/5¢) per individual
30 cigarette.

31 This tax does not apply to any of the following:

- 32 (1) Sample cigarettes distributed without charge in packages containing
33 five or fewer cigarettes.
- 34 (2) Cigarettes in a package of cigarettes given without charge by the
35 manufacturer of the cigarettes to an employee of the manufacturer who
36 works in a factory where cigarettes are made, if the cigarettes are not
37 taxed by the federal government."

38 **PART 4. GENERAL PROVISIONS**

39 **SECTION 4.1.** Interpretation of Act. (a) Additional Method. – This act
40 provides an additional and alternative method for the doing of the things authorized by
41 this act and shall be regarded as supplemental and additional to powers conferred by
42 other laws. Except where expressly provided, this act shall not be regarded as in
43 derogation of any powers now existing. The authority granted in this act is in addition to

1 other laws now or hereinafter enacted authorizing the State to issue or incur
2 indebtedness.

3 **SECTION 4.1.(b)** Statutory References. – References in this act to specific
4 sections or Chapters of the General Statutes are intended to be references to those
5 sections or Chapters as they may be amended from time to time by the General
6 Assembly.

7 **SECTION 4.1.(c)** Liberal Construction. – This act, being necessary for the
8 health and welfare of the people of the State, shall be liberally construed to effect its
9 purposes.

10 **SECTION 4.1.(d)** Severability. – If any provision of this act or its
11 application to any person or circumstance is held invalid, that invalidity does not affect
12 other provisions or applications of the act that can be given effect without the invalid
13 provision or application, and to this end the provisions of this act are severable.

14 **SECTION 4.2.** Effective Date. – Section 3.1 of this act becomes effective
15 April 1, 2004. The remainder of this act is effective when it becomes law.