

## Chapter 159D

### The North Carolina Capital Facilities Financing Act.

#### Article 1.

#### Industrial And Pollution Control Facilities Financing.

##### § 159D-1. Short title.

This Article may be referred to as "The North Carolina Industrial and Pollution Control Facilities Financing Act." (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 1; 2000-179, s. 2.)

##### § 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 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 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) Repealed by Session Laws 2000, c. 179, s. 2.

(c1) Repealed by Session Laws 2000, c. 179, s. 2.

(d) Repealed by Session Laws 2000, c. 179, s. 2. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 2, 3; 2000-179, s. 2.)

##### § 159D-3. Definitions.

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

- (1) "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, created pursuant to the provisions of this Article.
- (4) "Bonds" shall mean revenue bonds issued under the provisions of this Article.
- (4a) "Code" means the Internal Revenue Code of 1986, as amended.
- (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) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.
- (7) "Financing agreement" shall mean a written instrument establishing the rights and responsibilities of the 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 agency. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this 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, 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" means 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, which may be an industrial or manufacturing factory, mill, assembly plant, fabricating plant, freight terminal, industrial research, development or laboratory facility, industrial processing facility for industrial or manufactured products, a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution 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 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 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 has been certified by the entity exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 4, 4.1; 2000-179, s. 2; 2009-140, s. 8.)

**§ 159D-4: Repealed by Session Laws 2000-179, s. 2.**

**§ 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. (2000-179, s. 2.)

**§ 159D-5. General powers.**

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, 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 agency under this 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 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 agency or from any contribution, gift or donation or other funds made available to the 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 agency and to fix and pay their compensation from funds available to the 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 granted in this Article. (1977, 2nd Sess., c. 1198, s. 1; 1985, c. 723, s. 3; 2000-179, s. 2.)

**§ 159D-6. Bonds.**

(a) The agency is authorized to provide for the issuance, at one time or from time to time, of bonds of the 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 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 agency prior to the issuance of the bonds. The 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 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 such delivery. The agency may also provide for the authentication of the bonds by a trustee or fiscal agent.

(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 the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the 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, 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.

(e) Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of the 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 specifically required by this Article and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

#### **§ 159D-7. Approval of project by Secretary of Commerce.**

(a) Approval Required. – No bonds may be issued by the agency pursuant to this Article unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The 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 the Secretary makes all of the following, applicable findings:

- (1) In the case of a proposed industrial project, 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 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 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 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. – 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, Generally. – 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.

(d1) Public Hearing, Multiple Projects. – Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located.

(e) Certificate of Department of Environmental Quality. – 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 Environmental Quality 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 shall not make the

findings required by subdivision (b)(2a) of this section unless the Secretary has first received a certification from the Department of Environmental Quality 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 Environmental Quality. The Department of Environmental Quality 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 the Secretary's discretion, approve the proposed project if 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 the Secretary's review of each proposed project, the Secretary may require the agency to obtain and submit such data and information about such 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.

(h) Certificate of Approval. – If the Secretary approves the proposed project, the Secretary shall prepare a certificate of approval evidencing such 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 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 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. 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 agency, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

The certificate of approval shall become 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 one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again 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 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 to this section. (1977,



2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82; 1997-443, s. 11A.123; 2000-179, s. 2; 2002-172, s. 5.2; 2003-416, s. 2; 2004-132, s. 2; 2015-241, s. 14.30(u).)

#### **§ 159D-8. Approval of bonds.**

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

The 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 credit enhancement, 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 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 forms and rules that the Secretary considers reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52); 1991 (Reg. Sess., 1992), c. 959, s. 83; 2000-179, s. 2; 2002-172, s. 5.3.)

#### **§ 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 determines to be for the best interests of the agency and effectuate best the purposes of this Article irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, as long as the sale is approved by the agency and the obligor. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

#### **§ 159D-10. Location of projects.**

Any project of the agency shall be located within the boundaries of 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. (1977, 2nd Sess., c. 1198, s. 1; 1993, c. 130, s. 2; 2000-179, s. 2.)

**§ 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 issued by the agency to pay the cost of the project as they respectively become due;
  - (3) The obligor shall pay all costs incurred by the 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 payment of the bonds or provision for payment has been 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 similar transaction.
- (c) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor 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 been made.
- (d) The financing agreement may provide the agency with rights and remedies in the event of a default by the obligor 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 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 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 agency need not have any ownership or possessory interest in the project.

(f) The 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) The financing agreement may contain any additional provisions the agency considers necessary or convenient to effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 7; 2000-179, s. 2.)

#### **§ 159D-12. Security documents.**

(a) Bonds issued under the provisions of this Article may be secured by a security document which may be a trust instrument between the 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 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 pledged to, and charged with, the payment of the principal of and the interest on such bonds as 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 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 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 is lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues or other funds provided under this Article to furnish such indemnifying bonds or to pledge such securities as may be required by the 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 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 agency are necessary or convenient or effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-13. Trust funds.**

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Article, whether as proceeds from the sale of bonds or as revenues, are trust funds to be held and applied solely as provided in this Article. The security document may provide that any of the money may be temporarily invested and reinvested pending its disbursement in any securities and other investments as provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee and shall hold and apply it for the purpose of this Article, subject to any regulations this Article and the security document provide. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-14. Tax exemption.**

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

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

All projects and all transactions for them are subject to taxation to the extent they would be subject to taxation if no public body were involved with them. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-15. Construction contracts.**

The 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 agency as the agency may require in such agreement. Such agreement may provide that the 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. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-16. Conflict of interest.**

If any officer, commissioner or employee of the agency is interested either directly or indirectly in any contract with the agency, such interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the officer, commissioner, employee or member having such interest shall not participate on behalf of the agency in the authorization of the project. This section does not apply to the ownership of less than one 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 does not affect the validity of bonds issued pursuant to the provisions of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

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

Bonds issued under the provisions of this Article do not constitute a debt of the State or any political subdivision or a pledge of the faith and credit of the State or any political subdivisions, but shall be payable solely from the revenues and other funds provided for payment. Each bond issued under this Chapter shall contain on its face a statement to the effect that the agency shall not be obligated to pay the bonds or the interest on it except from the revenues and other funds pledged for payment and that neither the faith and credit nor the taxing power of the State or any political subdivision is pledged to the payment of the principal of or the interest on the bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

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

Bonds issued by the agency under the provisions of this Article are 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. (1977, 2nd Sess., c. 1198, s. 1.; 2000-179, s. 2.)

**§ 159D-19. Revenue refunding bonds.**

(a) The agency is authorized to provide by resolution for the issuance of refunding bonds of the agency for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Article, or under the provisions of Chapter 159C of the General Statutes, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of such bonds, and, if considered advisable by the 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 bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the agency in respect to the bonds are governed by the provisions of this Article that relate to the issuance of 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, 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 Article, the approval required by G.S. 159D-7 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 Article and, if sold, the proceeds 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 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 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 if these obligations mature or are subject to redemption by the holder, at the holder's option not later than the respective dates when the proceeds, together with the interest accruing on them will be required for the purposes intended. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 8; 2000-179, s. 2.)

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

The 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. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-21: Repealed by Session Laws 2000-179, s. 2.**

**§ 159D-22: Repealed by Session Laws 2000-179, s. 2.**

**§ 159D-23: Repealed by Session Laws 2001-218, s. 5.**

**§ 159D-24. Officers not liable.**

No member of the Board of Directors of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-25. Additional method.**

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. They do not derogate any other powers. The issuance of bonds or refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-26. Liberal construction.**

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§ 159D-27. Inconsistent laws inapplicable.**

Insofar as the provisions of this Article are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Article shall be controlling. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

**§§ 159D-28 through 159D-34. Reserved for future codification purposes.**

## Article 2.

### Private Capital Facilities Finance Act.

**§ 159D-35. Short title.**

This Article shall be known, and may be cited, as the "Private Capital Facilities Finance Act." (1985 (Reg. Sess., 1986), c. 794, s. 1; 1998-124, s. 2; 2000-179, s. 2.)

**§ 159D-36. Legislative findings.**

It is 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 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 Article, all to the public benefit and good, to the extent and in the manner provided in this Article.

It is 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. (1985 (Reg. Sess., 1986), c. 794, s. 2; 1998-124, s. 3; 2000-179, s. 2.)

### **§ 159D-37. Definitions.**

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

- (1) "Agency" means the North Carolina Capital Facilities Finance Agency or, should this agency be abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Article to the 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 of a project financed under the provisions of this 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), (4) Repealed by Session Laws 2000, c. 179. s. 2, effective July 1, 2000.
- (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 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, an institution for elementary and secondary education, or a special purpose institution that, pursuant to the provisions of this Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, 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 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" includes landscaping, site preparation, furniture, equipment and machinery, and other similar items necessary or convenient for operation of a particular facility in the manner for which its use is intended. The term also includes all appurtenances and incidental facilities, such as headquarters or office facilities, maintenance, storage, or utility facilities, parking facilities, and other facilities related to, required, or useful for the operation of the project or essential or convenient for the orderly conduct of the facility. The term "project" does not include the cost of items that customarily result in a current operating charge, such as books, fuel, or supplies. 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. (1985 (Reg. Sess., 1986), c. 794, s. 3; 1998-124, s. 4; 2000-179, s. 2; 2007-128, s. 2.)

**§ 159D-38. Capital facilities finance agency.**

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

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

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute

book or journal of the agency and its official seal. The secretary-treasurer shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

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

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

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

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

### **§ 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 Article, 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 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.
- (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.
- (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.

- (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 these purposes with respect to, any real or personal property or interest 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 from them whether 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.
- (6) To pledge or assign the revenues and receipts from any project and from any loan agreement, agreement of sale, or lease, including any loan repayments, purchase price payments, rent, or other income received under a loan agreement, agreement of sale, or lease.
- (7) To borrow money as provided in this Article to carry out and effectuate its corporate purposes and to issue 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, and to issue revenue refunding 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 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.
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and 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.
- (11) To conduct studies and surveys respecting the need for projects and their location, financing and 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.
- (13) To sue and be sued in its own name, plead and be 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 the federally guaranteed security or federally insured mortgage note 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.
- (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.

- (16) To make loans to a participating institution to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by the participating institutions for the cost of a 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 Article.
- (18) To adopt an official seal and alter it at pleasure.
- (19) To do all other things necessary or convenient to carry out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 5; 1998-124, s. 5; 2000-179, s. 2.)

**§ 159D-40. Criteria and requirements.**

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

- (1) No project shall be sold or leased nor any loan made to any participating institution 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 any other responsibilities imposed under the agreement of sale or lease or loan agreement.
- (2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves for payment and for the operation, repair and maintenance of the project at the expense of the participating institution.
- (3) The public facilities, including utilities, and public services necessary for the project will be made 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, 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. (1985 (Reg. Sess., 1986), c. 794, s. 6; 1998-124, s. 6; 2000-179, s. 2.)

**§ 159D-41. Procedural requirements.**

Any participating institution may submit to the agency, and the agency may consider, a proposal for financing a project using forms and following instructions prescribed by the agency. The proposal shall set forth the type and location of the project and may include other information and data respecting the project and the extent to which the project conforms to the criteria and requirements set forth in this Article. The agency may request the applicant to provide additional information and data respecting the project. The agency is authorized to make or cause to be made

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 applicant, the extent to which the project otherwise conforms to the criteria and requirements of this Article, and any other factors the agency considers relevant or convenient in carrying out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 7; 1998-124, s. 7; 2000-179, s. 2.)

**§ 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 to effectuate the purposes of this Article, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent 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 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 or with respect to which the loan was 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 agreement, except costs paid out of the proceeds of bonds or notes or otherwise, including insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants, and others.
- (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all bonds and all other obligations incurred by the agency in connection with the project covered by the agreement are retired or provision for their retirement is 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 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 the project to 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 that project. (1985 (Reg. Sess., 1986), c. 794, s. 8; 1998-124, s. 8; 2000-179, s. 2.)

**§ 159D-43. Construction contracts.**

If the agency determines that the purposes of this 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 any bid security requirements and other procedures in connection with the award of the contracts as in its judgment will protect the public interest. The agency may by written contract engage the services of the participating institution in the construction of the project and may provide in the contract that the participating institution, subject to any conditions and requirements consistent with the provisions of this Article prescribed in the contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described in the contract including the acquisition of the site and other real property for 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 the project directly by 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 of these functions pending reimbursement by the agency. 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 these functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that are required in connection to assure compliance with the provisions of this Article and the contract. (1985 (Reg. Sess., 1986), c. 794, s. 9; 1998-124, s. 9; 2000-179, s. 2.)

#### **§ 159D-44. Credit of State not pledged.**

Bonds or notes issued under the provisions of this Article shall not be secured by a pledge of the faith and credit of the State or of any political subdivision of the State, or create an indebtedness of the State, or of any political subdivision of the State requiring any voter approval, but shall be payable solely from the revenues and other funds provided for payment. Each bond or note issued under this Article shall contain on its face a statement to the effect that the agency is not obligated to pay it nor the interest on it except from the revenues and other funds pledged for its payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged as security for the payment of the principal of or the interest on the bond or note.

Expenses incurred by the agency in carrying out the provisions of this Article may be made payable from funds provided pursuant to, or made available for use under, this Article and no liability shall be incurred by the agency under this Article beyond the extent to which moneys have been so provided. (1985 (Reg. Sess., 1986), c. 794, s. 10; 2000-179, s. 2.)

#### **§ 159D-45. Bonds and notes.**

(a) The agency is 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 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 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 appears on any bonds or notes or coupons attached to them ceases to be that officer before their delivery, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until 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 Article unless the issuance thereof is approved by the Local Government Commission.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes. The application must include any information and documents concerning the proposed financing and prospective borrower, vendee or lessee required by the Secretary.

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 in this 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 the bonds or notes if, upon the information and evidence it receives, it finds that the proposed financing will effectuate the purposes of this Article.

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, 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 determines to be for the best interests of the agency and to effectuate best the purposes of this Article, 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, 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 the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which become mutilated or are destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this 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 specifically required by this Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, 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.

(g) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate the agency as the governmental entity authorized to issue recovery zone facility bonds. (1985 (Reg. Sess., 1986), c. 794, s. 11; 2000-179, s. 2; 2009-140, s. 9.)

#### **§ 159D-46. Trust agreement or resolution.**

In the discretion of the agency any bonds or notes issued under the provisions of this 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 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 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 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 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. (1985 (Reg. Sess., 1986), c. 794, s. 12; 2000-179, s. 2.)

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

(a) The agency is 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 of the project and to contract with any participating institution for its use. The agency may require that the participating institution operate, repair or maintain such project and bear the cost and other costs of the agency in connection 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 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, (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 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, 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 Article are valid and binding from the time when they are made. All revenues so pledged and thereafter received by the agency are immediately subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether the parties have notice 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 pledges to and agrees with the holders of any bonds or notes issued by the agency that so long as any of 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 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 they become due and payable, to create and maintain any reserves provided for their payment, and to fulfill the terms of any agreements made with the bondholders or 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. (1985 (Reg. Sess., 1986), c. 794, s. 13; 1998-124, s. 10; 2000-179, s. 2.)

#### **§ 159D-48. Trust funds.**

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Article, 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, are trust funds to be held and applied solely as provided in this Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply them for the purposes of this Article, subject to any limitations provided in this Article and in the resolution or trust agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended. (1985 (Reg. Sess., 1986), c. 794, s. 14; 2000-179, s. 2.)

#### **§ 159D-49. Remedies.**

Any holder of bonds or notes issued under the provisions of this 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 Article, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the agency or by any officer of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 15; 2000-179, s. 2.)

#### **§ 159D-50. Investment securities.**

All bonds, notes and interest coupons issued under this Article are 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 that Article, subject only to the provisions of the bonds and notes pertaining to registration. (1985 (Reg. Sess., 1986), c. 794, s. 16; 2000-179, s. 2.)

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

Bonds or notes issued under the provisions of this Article are 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. These bonds or notes are 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 authorized by law. (1985 (Reg. Sess., 1986), c. 794, s. 17; 2000-179, s. 2.)

**§ 159D-52. Refunding bonds or notes.**

(a) The agency is authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which have been issued under the provisions of this Article, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds or notes and, if 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 refunding bonds or notes, their maturities and other details the rights of their holders, and the rights, duties and obligations of the agency are governed by the provisions of this Article which relate to the issuance of bonds or notes, as appropriate.

Refunding bonds may be sold or exchanged for outstanding bonds issued under this Article and, if sold, their proceeds, and investment earnings on them, may be applied, with any other available funds, to the purchase, redemption, or payment of the bonds being refunded, to the payment of any interest on the refunding bonds, and to the payment of any expenses in connection with the refunding. 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 if the obligations mature or are subject to redemption by 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. (1985 (Reg. Sess., 1986), c. 794, s. 18; 2000-179, s. 2.)

**§ 159D-53. Annual report.**

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Article for the preceding year to the Governor, the State Auditor, the General Assembly, and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this Article to be made at least once in each year by an independent certified public accountant and the cost of the audit may be paid from any available moneys of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 19; 2000-179, s. 2; 2010-96, s. 34.)

**§ 159D-54. Officers not liable.**

No member or officer of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 20; 2000-179, s. 2.)

**§ 159D-55. Tax exemption.**

The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare.

Any bonds or notes issued by the agency under the provisions of this Article 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. (1985 (Reg. Sess., 1986), c. 794, s. 21; 1995, c. 46, s. 5; 2000-179, s. 2.)

**§ 159D-56. Conflict of interest.**

If any member, officer or employee of the agency is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, 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 an interest in a contract shall not participate on behalf of the agency in the authorization of the contract. (1985 (Reg. Sess., 1986), c. 794, s. 22; 2000-179, s. 2.)

**§ 159D-57. Additional method.**

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. This Article does not derogate any existing powers. The issuance of bonds or notes under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 23; 2000-179, s. 2.)

**§§ 159D-58 through 159D-64:** Reserved for future codification purposes.

Article 3.

Life Sciences Revenue Bond Authority.

**§ 159D-65:** Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

**§ 159D-66:** Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

**§ 159D-67:** Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

**§ 159D-68:** Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

**§ 159D-69:** Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.