

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 95*

Short Title: State Energy Conservation Program.

(Public)

Sponsors: Senators Plexico; Cooper, Seymour, Allran, Martin of Guilford, Lee, Tally, Forrester, Hartsell, Soles, Ballance, and Daniel.

Referred to: State Personnel and State Government.

February 9, 1993

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE ANNUAL DEPARTMENT BUDGET REQUESTS TO
2 INCLUDE A SEPARATE LINE ITEM FOR ENERGY EXPENSES; TO
3 AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO
4 ALTERNATIVE FINANCING AGREEMENTS FOR THE PURCHASE OF
5 ENERGY CONSERVATION MEASURES; TO ESTABLISH THE STATE
6 FACILITIES ENERGY CONSERVATION PROGRAM; AND TO AUTHORIZE
7 THE ISSUANCE OF BONDS THAT ARE SECURED BY AN INTEREST IN THE
8 PROPERTY PURCHASED.
9

10 Whereas, energy conservation measures that substantially reduce energy use
11 provide an opportunity to save large sums of money by reducing utility bills; and

12 Whereas, energy conservation measures that substantially reduce energy use
13 benefit the environment by slowing the depletion of nonrenewable energy sources, by
14 lessening the need to construct more power plants, and reducing harmful emissions and
15 other negative side effects of energy use that harm the environment and the health of the
16 public; and

17 Whereas, the State should take a leadership role in energy conservation; and

18 Whereas, the positive impact on the State's budget and the positive impact on
19 the environment compel the State to implement energy conservation measures in State
20 facilities; Now, therefore,

21 The General Assembly of North Carolina enacts:

22 Section 1. G.S. 143-6(a) reads as rewritten:

1 "(a) On or before the first day of September in the even-numbered years, each of
2 the departments, bureaus, divisions, officers, boards, commissions, institutions, and
3 other State agencies and undertakings receiving or asking financial aid from the State,
4 or receiving or collecting funds under the authority of any general law of the State, shall
5 furnish the Director all the information, data and estimates which he may request with
6 reference to past, present and future appropriations and expenditures, receipts, revenue,
7 and income. The budget estimates shall include for those agencies which pay for
8 energy directly a line item for energy expenses itemized by type of energy and
9 location."

10 Sec. 2. G.S. 143-49 is amended by adding a new subdivision to read:

11 "(7) To purchase or finance the purchase of real property or any
12 improvements and fixtures thereon or to finance the acquisition,
13 construction, or repair of fixtures or improvements on real property for
14 use or in connection with an energy conservation measure by an
15 alternative financing agreement that creates in the fixture or
16 improvements a security interest to secure payment of moneys
17 advanced or made available for such acquisition, construction, or
18 repair.

19 An alternative financing agreement may include provisions for the
20 costs of fully implementing the energy conservation measure and
21 provisions for ultimate ownership by the State or the State agency and
22 may obligate the State agency to pay costs of maintenance, operation,
23 insurance, and taxes.

24 No contract entered into under this subdivision may contain a
25 nonsubstitution clause that restricts the right of the State to: (i)
26 continue to provide a service or activity; or (ii) replace or provide a
27 substitute for any fixture, improvement, project, or property financed
28 or purchased pursuant to such contract.

29 Amounts payable by the State under an alternative financing
30 agreement entered into pursuant to this subdivision during any fiscal
31 year may be paid pursuant to the provisions of G.S. 143-64.25. If the
32 funds allocated under G.S. 143-64.25 are insufficient for the amounts
33 payable, the insufficiency shall be limited to funds appropriated for
34 such fiscal year by the General Assembly in its discretion and
35 deposited in a reserve established for this purpose in the Department of
36 State Treasurer or to annual appropriations or from other funds legally
37 available to the State agency. No deficiency judgment may be
38 rendered against the State in any action for breach of a contractual
39 obligation authorized by this subdivision, and the taxing power of the
40 State may not be pledged directly or indirectly to secure any moneys
41 due under a contract authorized by this subdivision. In the event that
42 the General Assembly does not appropriate sums sufficient to pay the
43 insufficiencies due under a contract entered into pursuant to this
44 subdivision to finance the acquisition or improvement of property, the

1 net proceeds received from the sale or other disposition of such
2 property pursuant to an instrument or document conveying or creating
3 a security interest in such property to satisfy any unpaid amounts due
4 under such contract are hereby appropriated to the payment of such
5 unpaid amounts. Any net proceeds in excess of the amount required to
6 satisfy the obligation under the contract shall be paid to the State.

7 No contract shall be entered into pursuant to this subdivision unless
8 the State Treasurer has approved the contract and has determined that
9 the projected energy savings is sufficient to pay the debt service. Any
10 contract entered pursuant to this subdivision may provide for payments
11 hereunder representing interest on the purchase price of the property to
12 be acquired. In addition, before the Department of Administration
13 shall enter any contract pursuant to this subdivision, the State
14 Treasurer shall find and determine that (i) the amounts to become due
15 under the contract are not excessive for the purpose proposed; (ii) the
16 financing of the project under this subdivision is in the best interest of
17 the State; and (iii) the increase, if any, in State revenues necessary to
18 pay the sums to become due under the contract are not excessive.

19 A contract entered into pursuant to this subdivision may provide that
20 certificates of participation may be delivered for the purposes
21 hereinafter described by the party with whom a contract is entered into
22 pursuant to this subdivision if the State Treasurer determines that such
23 delivery is in the best interests of the State. Such certificates, which
24 shall represent the rights of the owners thereof to receive the payments
25 to become due under the contract, may be sold and delivered to
26 provide the source of funding for the property or improvements to be
27 purchased or otherwise acquired by the State pursuant to such contract,
28 and, if deemed advisable by the State Treasurer, to provide reserves for
29 the payments of such certificates and to pay the cost of delivery and
30 sale of the certificates.

31 If certificates of participation are to be sold and delivered, such
32 certificates may be delivered pursuant to a trust agreement with a
33 corporate trustee approved by the State Treasurer.

34 If the State Treasurer determines that it is in the best interest of the
35 State, the State Treasurer may arrange for the delivery of a credit
36 enhancement instrument to secure payment of any certificates of
37 participation. Further, the State Treasurer may provide that payments
38 by the State representing the interest component of the payments to be
39 made thereunder may be calculated based upon a variable interest rate.
40 The provision of G.S. 159-90(b) shall apply to any arrangements of a
41 credit enhancement instrument or a variable rate interest with respect
42 to any certificates of participation to the extent applicable.

43 After the cost of the fixture or improvement has been paid under
44 the alternative financing agreement, the department, institution, or

1 agency that implemented the energy conservation measure shall report
2 to the Energy Division, Department of Commerce the actual amount of
3 time required for the cost of each fixture or improvement to be
4 recouped, based on the actual energy savings of the improvement.
5 Annually, the Energy Division shall summarize these reports and
6 submit a summary report to the General Assembly and the Joint
7 Legislative Commission on Governmental Operations.

8 As used in this subdivision: (i)'Alternative financing agreement'
9 means a lease-purchase, an installment contract, a certificate of
10 participation agreement, or any other financing agreement or
11 instrument evidencing an obligation to pay moneys that creates in the
12 fixtures or improvements on real property a security interest to secure
13 payment of the purchase price to the seller or to an individual or entity
14 advancing moneys for the purchase transaction, and may include the
15 cost of the technical analysis conducted to determine the projected
16 energy savings after only that energy conservation measure is
17 implemented; (ii) 'Energy conservation measure' has the same
18 meaning as set forth in G.S. 143-64.20; and (iii) 'Technical analysis'
19 has the same meaning as set forth in G.S. 143-64.20."

20 Sec. 3. The title of Article 3B of Chapter 143 of the General Statutes reads as
21 rewritten:

22 "Energy Policy for State Agencies Concerning Major Construction or Renovation of
23 Buildings-Conservation in State Facilities."

24 Sec. 4. Existing Article 3B of Chapter 143 of the General Statutes is
25 designated as Part 1 of that Article, to be entitled "Energy Policy for State and State
26 Assisted Facilities."

27 Sec. 5. Article 3B of Chapter 143 of the General Statutes is amended by
28 adding a new Part to read:

29 **"PART 2. STATE FACILITIES ENERGY CONSERVATION PROGRAM.**
30 **"§ 143-64.20. Definitions.**

31 As used in this Article:

- 32 (1) 'Alternative financing agreement' has the same meaning as set forth in
33 G.S. 143-49(7).
34 (2) 'Energy Division' means the Energy Division of the Department of
35 Commerce.
36 (3) 'Energy conservation measure' means construction, rehabilitation,
37 acquisition, or modification of an installation in a facility which is
38 intended to reduce energy consumption or energy cost both or allow
39 the use of an alternative energy source, which may contain integral
40 control and measurement devices.
41 (4) 'State facility' means a building owned by the State or a group of
42 buildings owned by the State which are served by a central energy
43 distribution system or by components of a central energy distribution
44 system.

- 1 (5) 'Technical analysis' means a specialized engineering study conducted
2 within a facility to identify specific energy conservation opportunities,
3 the costs of acquiring and implementing these opportunities, and the
4 expected energy savings after implementation.

5 **"§ 143-64.21. State Facilities Energy Conservation Program.**

6 (a) The General Assembly finds that:

- 7 (1) State government should take a leadership role in aggressively
8 undertaking energy conservation in North Carolina.
9 (2) After the cost of implementing the energy conservation measure is
10 paid, the State will save substantial sums of money in reduced utility
11 bills.
12 (3) The actual energy savings that result from an energy conservation
13 measure should offset, in whole or in part, the costs of implementing
14 the energy conservation measure.
15 (4) The State should undertake only those energy conservation measures
16 which require less than an aggregate of six years for the recoupment of
17 the cost of the improvement based on the projected energy savings of
18 the improvement.
19 (5) The State should give highest priority to those energy conservation
20 measures which require less than an aggregate of two years for the
21 recoupment of the cost of the improvement based on the projected
22 energy savings of the improvement.
23 (6) It is in the best interest of the State to authorize the State Treasurer to
24 incur indebtedness in order to finance energy conservation measures,
25 such financing options to include alternative financing agreements and,
26 when the State Treasurer deems it appropriate, the issuing of bonds
27 secured by an interest in property.

28 (b) The State Facilities Energy Conservation Program is established to more
29 efficiently use energy resources in State facilities and to reduce the utility costs of the
30 State. The Energy Division shall develop, administer, and coordinate the State
31 Facilities Energy Conservation Program.

32 (c) The State Facilities Energy Conservation Program shall assist State agencies
33 as follows:

- 34 (1) Serve as a source of technical support for energy conservation
35 management.
36 (2) Identify sources of moneys for conducting technical analyses in
37 accordance with G.S. 143-64.23.

38 (d) The Energy Division shall:

- 39 (1) When necessary to carry out its duties under this Article, enter into
40 contracts with State agencies and other qualified contractors.
41 (2) Promulgate rules necessary to carry out the provisions of this Article.
42 (3) Provide criteria for the selection of State projects or facilities to
43 participate in this Program and develop a format that comports with
44 these criteria.

1 (4) Develop, with the assistance of the Department of Administration,
2 procedures for the technical analyses required under G.S. 143-64.23
3 and procedures for implementing energy conservation measures.

4 (5) Select, in order of priority and in consultation with the Department of
5 Administration, State projects or facilities to participate in this
6 Program.

7 (6) Monitor projects after implementation, at least until the project cost
8 has been paid.

9 (e) The Department of Administration shall consider the cost of an energy
10 conservation measure over its economic life when determining the cost of implementing
11 an energy conservation measure.

12 **"§ 143-64.22. Energy Technical Analysis Loan Fund.**

13 (a) The Energy Technical Analysis Loan Fund is created. This Fund shall be a
14 nonreverting revolving loan fund to be administered by the Energy Division. This Fund
15 shall consist of moneys appropriated or allocated to it by the General Assembly and any
16 grants, fees, or other moneys paid to it. The interest accruing to the Fund shall be
17 credited to the Fund.

18 (b) The Energy Technical Analysis Loan Fund may be used for State
19 departments, institutions, or agencies for the cost of conducting a technical analysis
20 under G.S. 143-64.23. The State department, institution, or agency that used the funds
21 shall repay the Fund within 60 days of receiving financing to implement an energy
22 conservation measure or within 180 days of determining that no energy conservation
23 measure will be implemented under this Part.

24 **"§ 143-64.23. Identification and implementation of energy conservation measures.**

25 (a) Each State project or facility that is selected shall undergo a technical analysis
26 conducted by an engineer qualified to conduct such analyses. The Energy Division, in
27 consultation with the Department of Administration, shall review all completed
28 technical analyses. If the Energy Division does not approve a technical analysis, the
29 energy conservation measure shall not be implemented.

30 (b) Only those energy conservation measures identified by the technical analysis
31 which are economically practical, which do not require more than an aggregate of six
32 years for the recoupment of the cost of construction of the improvements, and which,
33 according to the technical analysis, have a projected energy savings sufficient to pay the
34 debt service may be implemented. Those energy conservation measures identified by
35 the technical analysis which do not require more than an aggregate of two years for the
36 recoupment of the cost of construction of the improvements used to secure the
37 implementation of the energy conservation measures shall be given priority.

38 (c) The Energy Division must obtain final approval from the Joint Legislative
39 Commission on Governmental Operations prior to implementing an energy
40 conservation measure.

41 (d) Implementation of energy conservation measures must commence within 60
42 days after financing is made available to the State agency.

43 **"§ 143B-64.24. State Energy Improvement Bond Fund.**

1 (a) The State Energy Improvement Bond Fund is created. This Fund shall be a
2 nonreverting fund to be administered by the State Treasurer. Any moneys obtained
3 from bonds issued by the State Treasurer or by any nonprofit, tax-exempt private
4 corporation created principally for the purpose of funding energy conservation measures
5 pursuant to this Article shall be deposited in this Fund. This Fund shall also consist of
6 moneys appropriated to it by the General Assembly and any grants, fees, or other
7 moneys paid to it. The interest accruing to this Fund shall be credited to the Fund.

8 (b) Subject to the provisions of G.S. 143B-64.27, the State Energy Improvement
9 Bond Fund may be used by State departments, institutions, or agencies for the total cost
10 of implementing energy conservation measures and for technical analyses conducted in
11 accordance with G.S. 143-64.23.

12 **"§ 143-64.25. Financing.**

13 (a) For the purpose of financing an energy conservation measure pursuant to this
14 Article, the State Treasurer shall determine which type of financing, if any, is
15 appropriate for any particular energy conservation measure that is selected.

16 (b) The Department of Administration, the State Treasurer, or a State agency or
17 institution through the Department of Administration may enter into an alternative
18 financing agreement pursuant to the provisions of G.S. 143-49(7). The obligations may
19 be in such form, for such term, bearing such interest, and containing such provisions as
20 the State Treasurer deems necessary or appropriate. The State may not incur debt in
21 excess of thirty million dollars (\$30,000,000) under this subsection.

22 (c) The State Treasurer may reduce the cost of financing the implementation of
23 an energy conservation measure by the State Treasurer or any nonprofit, tax-exempt
24 private corporation created principally for the purpose of funding energy conservation
25 measures pursuant to this Article, by issuing bonds and depositing these bonds in the
26 State Energy Improvement Bond Fund pursuant to G.S. 143-64.24. In the event the
27 State Treasurer determines that it is in the best interest of the State to issue bonds, a
28 security interest in the fixtures or improvements will be created to secure payment of the
29 purchase price to the seller or to an individual or entity supplying financing for the
30 purchase transaction. The taxing power of this State shall not be pledged directly or
31 indirectly to secure any financing pursuant to this subsection.

32 **"§ 143-64.26. Budget flexibility.**

33 (a) The State Planning Office may allocate any unspent funds for the energy
34 budget of a State department, institution, or agency that undertakes an energy
35 conservation measure for the current fiscal year for debt service for that energy
36 conservation measure. If these funds are not sufficient to cover debt service, the State
37 Planning Office may allocate funds from a reserve established in the Department of
38 State Treasurer for this purpose.

39 (b) For the duration of the financing agreement, the State Planning Office shall
40 receive an allocation of funds equal to the difference between the energy budget prior to
41 implementation of the energy conservation measure for the State department, institution,
42 or agency which undertook an energy conservation measure and the current actual
43 energy expense. These funds shall be used for the debt service on that energy
44 conservation measure.

1 **"§ 143-64.27. Agreements funded with bond proceeds.**

2 (a) An agreement that is financed with bond proceeds pursuant to G.S. 143-
3 64.25(c) may include provisions for the costs of fully implementing the energy
4 conservation measure and provisions for ultimate ownership by the State or the State
5 agency and may obligate the State agency to pay costs of maintenance, operation,
6 insurance, and taxes.

7 (b) No agreement financed with bond proceeds pursuant to G.S. 143-64.25(c)
8 may contain a nonsubstitution clause that restricts the right of the State to: (i) continue
9 to provide a service or activity; or (ii) replace or provide a substitute for any fixture,
10 improvement, project, or property financed or purchased pursuant to such contract.

11 (c) Amounts payable by the State under an agreement financed with bond
12 proceeds pursuant to G.S. 143-64.25(c) during any fiscal year may be paid pursuant to
13 the provisions of G.S. 143-64.26. If the funds allocated under G.S. 143-64.26 are
14 insufficient for the amounts payable, the insufficiency shall be limited to funds
15 appropriated for such fiscal year by the General Assembly in its discretion and
16 deposited in a reserve established for this purpose in the Department of State Treasurer
17 or to annual appropriations or from other funds legally available to the State agency.
18 No deficiency judgment may be rendered against the State in any action for breach of a
19 contractual obligation authorized by G.S. 143-64.25(c). In the event that the General
20 Assembly does not appropriate sums sufficient to pay the insufficiencies due under an
21 agreement entered into pursuant to G.S. 143-64.25(c) to finance the acquisition or
22 improvement of property, the net proceeds received from the sale or other disposition of
23 such property pursuant to an instrument or document conveying or creating a security
24 interest in such property to satisfy any unpaid amounts due under such contract are
25 hereby appropriated to the payment of such unpaid amounts. Any net proceeds in
26 excess of the amount required to satisfy the obligation under the contract shall be paid
27 to the State.

28 (d) No agreement financed with bond proceeds pursuant to G.S. 143-64.25(c)
29 shall be entered into unless the State Treasurer has approved the agreement and has
30 determined that the projected energy savings is sufficient to pay the debt service. Any
31 such agreement may provide for payments hereunder representing interest on the
32 purchase price of the property to be acquired. In addition, prior to entering into such an
33 agreement, the State Treasurer shall find and determine that (i) the amounts to become
34 due under the contract are not excessive for the purpose proposed; (ii) the financing of
35 the project with bond proceeds is in the best interest of the State; and (iii) the increase, if
36 any, in State revenues necessary to pay the sums to become due under the agreement are
37 not excessive.

38 (e) An agreement funded with bond proceeds pursuant to G.S. 143-64.25(c) may
39 provide that certificates of participation may be delivered for the purposes hereinafter
40 described by the party with whom such an agreement is entered into if the State
41 Treasurer determines that such delivery is in the best interest of the State. Such
42 certificates, which shall represent the rights of the owners thereof to receive the
43 payments to become due under the contract, may be sold and delivered to provide the
44 source of funding for the property or improvements to be purchased or otherwise

1 acquired by the State pursuant to such agreement, and, if deemed advisable by the State
2 Treasurer, to provide reserves for the payments of such certificates and to pay the cost
3 of delivery and sale of the certificates.

4 (f) If certificates of participation are to be sold and delivered, such certificates
5 may be delivered pursuant to a trust agreement with a corporate trustee approved by the
6 State Treasurer.

7 (g) If the State Treasurer determines that it is in the best interest of the State, the
8 State Treasurer may arrange for the delivery of a credit enhancement instrument to
9 secure payment of any certificates of participation. Further, the State Treasurer may
10 provide that payments by the State representing the interest component of the payments
11 to be made thereunder may be calculated based upon a variable interest rate. The
12 provision of G.S. 159-90(b) shall apply to any arrangements of a credit enhancement
13 instrument or a variable rate interest with respect to any certificates of participation to
14 the extent applicable.

15 (h) After the cost of the fixture or improvement has been paid under the
16 agreement, the department, institution, or agency that implemented the energy
17 conservation measure shall report to the Energy Division the actual amount of time
18 required for the cost of each fixture or improvement to be recouped, based on the actual
19 energy savings of the improvement. Annually, the Energy Division shall summarize
20 these reports and submit a summary report to the General Assembly and the Joint
21 Legislative Commission on Governmental Operations.

22 **"§ 143-64.28. Additional reporting requirements.**

23 The Energy Division shall report on a quarterly basis to the Joint Legislative
24 Commission on Governmental Operations. This report shall include:

- 25 (1) The technical analyses conducted in the previous quarter, including the
26 location of the buildings subject to the analyses and the results of the
27 analyses.
- 28 (2) Any proposed energy conservation measures for which the Energy
29 Division seeks the Commission's final approval, the cost of
30 implementing for each, the projected energy savings, and the projected
31 payback period for each energy conservation measure.
- 32 (3) The energy conservation measures that were initiated during the
33 previous quarter, the terms of the financing, and the progress to date.
- 34 (4) The energy conservation measures that were completed during the
35 previous quarter, including the actual cost of implementing each
36 energy conservation measure.
- 37 (5) The financings that were fully paid during the previous quarter,
38 including the actual energy savings that were applied to payments, the
39 amount, if any, of moneys from the reserve that had to be used to make
40 payments for insufficient energy savings, and the actual cost of
41 implementing each energy conservation measure.
- 42 (6) Any other information requested by the Commission.

43 **"§ 143-64.29. Scope of this Article.**

1 The provisions of this Article apply to all State facilities, including facilities in The
2 University of North Carolina system and State hospitals."

3 Sec. 6. **Definitions.** As used in Sections 6 through 12 of this act, unless the
4 context otherwise requires:

5 (1) " Bonds" means bonds issued under this section.

6 (2) " Cost" means, without intending thereby to limit or restrict any proper
7 definition of such work in financing the cost of energy conservation
8 measures as authorized by Sections 3 through 5 of this act,

9 a. The cost of constructing, reconstructing, enlarging, acquiring,
10 and improving facilities in order to reduce energy use and
11 acquiring equipment therefor;

12 b. The cost of conducting technical analyses as may be required;

13 c. Administrative expenses and charges;

14 d. The cost of bond insurance, investment contracts, credit
15 enhancement and liquidity facilities, interest-rate swap
16 agreements, financial and legal consultants, and related costs of
17 bond and note issuance, to the extent and as determined by the
18 State Treasurer; and

19 e. Any other costs and expenses necessary or incidental to the
20 purposes of this act.

21 (3) " Credit facility" means an agreement entered into by the State
22 Treasurer on behalf of the State with a bank, savings and loan
23 association or other banking institution, an insurance company,
24 reinsurance company, surety company or other insurance institution, a
25 corporation, investment banking firm or other investment institution,
26 or any financial institution or other similar provider of a credit facility,
27 which provider may be located within or without the United States of
28 America, such agreement providing for prompt payment of all or any
29 part of the principal or purchase price (whether at maturity,
30 presentment or tender for purchase, redemption or acceleration),
31 redemption premium, if any, and interest on any bonds or notes
32 payable on demand or tender by the owner, in consideration of the
33 State agreeing to repay the provider of the credit facility in accordance
34 with the terms and provisions of such agreement.

35 (4) " Notes" means notes issued under this act.

36 (5) " Par formula" means any provision or formula adopted by the State to
37 provide for the adjustment, from time to time, of the interest rate or
38 rates borne by any bonds or notes, including:

39 a. A provision providing for such adjustment so that the purchase
40 price of such bonds or notes in the open market would be as
41 close to par as possible;

42 b. A provision providing for such adjustment based upon a
43 percentage or percentages of a prime rate or base rate, which

1 percentage or percentages may vary or be applied for different
2 periods of time; or

- 3 c. Such other provision as the State Treasurer may determine to be
4 consistent with this act and will not materially and adversely
5 affect the financial position of the State and the marketing of
6 bonds or notes at a reasonable interest cost to the State.

7 **Sec. 7. Authorization of Bonds and Notes.** The State Treasurer may issue
8 and sell, at one time or from time to time, bonds of the State to be designated "State of
9 North Carolina Energy Conservation Bonds", with such additional designations as may
10 be determined to indicate the issuance of bonds from time to time, or notes of the State
11 as herein provided, in a principal amount not exceeding ten million dollars
12 (\$10,000,000) annually, not to exceed an aggregate principal amount of twenty million
13 dollars (\$20,000,000), for the purpose of providing funds, with any other available
14 funds, for the purposes authorized in this act.

15 **Sec. 8. Uses of Bond and Note Proceeds.** The proceeds of bonds and notes,
16 including premium thereon, if any, except the proceeds of bonds the issuance of which
17 has been anticipated by bond anticipation notes or the proceeds of refunding bonds or
18 notes, shall be placed by the State Treasurer in the State Energy Improvement Bond
19 Fund, established in G.S. 143-64.23 as enacted by Section 5 of this act and shall be
20 disbursed as herein provided.

21 Any additional moneys which may be received by means of a grant or grants
22 from the United States of America or any agency or department thereof or from any
23 other source to aid in financing the cost of any energy conservation measures authorized
24 by this act may be placed by the State Treasurer in a separate fund and shall be
25 disbursed, to the extent permitted by the terms of such grant or grants, without regard to
26 any limitations imposed by this act.

27 The proceeds of bonds and notes may be used with any other moneys made
28 available by the General Assembly for the cost of implementing energy conservation
29 measures consistent with Article 3B of Chapter 143 of the General Statutes as enacted
30 by Section 5 of this act, including the proceeds of any other State bond issues, whether
31 heretofore made available or which may be made available at the session of the General
32 Assembly at which this act is ratified or any subsequent sessions. The proceeds of
33 bonds and notes shall be expended and disbursed under the direction and supervision of
34 the Director of the Budget. The funds provided by this act shall be disbursed for the
35 purposes provided in this act upon warrants drawn on the State Treasurer by the State
36 Comptroller, which warrants shall not be drawn until requisition has been approved by
37 the Director of the Budget and which requisition shall be approved only after full
38 compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General
39 Statutes, as it may be amended from time to time.

40 **Sec. 9. Reports.** The Energy Division shall provide annual reports to the
41 Joint Legislative Commission on Governmental Operations, the Chairpersons of the
42 Senate and House Appropriation Committees, and the Fiscal Research Division on the
43 expenditure of moneys from the State Energy Improvement Bond Fund.

1 Sec. 10. **Issuance of Bonds and Notes. (a) Terms and Conditions.** Bonds or
2 notes may bear such date or dates, may be serial or term bonds or notes, or any
3 combination thereof, may mature in such amounts and at such time or times, not
4 exceeding 40 years from their date or dates, may be payable at such place or places,
5 either within or without the United States of America, in such coin or currency of the
6 United States of America as at the time of payment is legal tender for payment of public
7 and private debts, may bear interest at such rate or rates, which may vary from time to
8 time, and may be made redeemable before maturity, at the option of the State or
9 otherwise as may be provided by the State, at such price or prices, including a price less
10 that the face amount of the bonds or notes, and under such terms and conditions, all as
11 may be determined by the State Treasurer, by and with the consent of the Council of
12 State.

13 **(b) Signatures; Form and Denomination; Registration.** Bonds or notes may
14 be issued as certificated or uncertificated obligations. If issued as certificated
15 obligations, bonds or notes shall be signed on behalf of the State by the Governor or
16 shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his
17 facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall
18 be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the
19 Governor and the State Treasurer, the bonds or notes shall also bear a manual signature
20 which may be that of a bond registrar, trustee, paying agent, or designated assistant of
21 the State Treasurer. Should any officer whose signature or facsimile signature appears
22 on bonds or notes cease to be such officer before the delivery of the bonds or notes, the
23 signature or facsimile signature shall nevertheless have the same validity for all
24 purposes as if the officer had remained in office until delivery and bonds or notes may
25 bear the facsimile signatures of persons who at the actual time of the execution of the
26 bonds or notes shall be the proper officers to sign any bond or note although at the date
27 of the bond or note such persons may not have been such officers. The form and
28 denomination of bonds or notes, including the provisions with respect to registration of
29 the bonds or notes and any system for their registration, shall be as the State Treasurer
30 may determine in conformity with this act; provided, however, that nothing in this act
31 shall prohibit the State Treasurer from proceeding, with respect to the issuance and form
32 of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the
33 Registered Public Obligations Act, as said Chapter may be amended from time to time,
34 as well as under this act.

35 **(c) Manner of Sale; Expenses.** Subject to determination by the Council of State
36 as to the manner in which bonds or notes shall be offered for sale, whether at public or
37 private sale, whether within or without the United States of America, and whether by
38 publishing notices in certain newspapers and financial journals, mailing notices, inviting
39 bids by correspondence, negotiating contracts of purchase or otherwise, the State
40 Treasurer is authorized to sell bonds or notes at one time or from time to time at such
41 rate or rates of interest, which may vary from time to time, and at such price or prices,
42 including a price less than the face amount of the bonds or notes, as the State Treasurer
43 may determine. All expenses incurred in the preparation, sale, and issuance of bonds or

1 notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other
2 available moneys.

3 (d) Notes; Repayment.

4 (1) By and with the consent of the Council of State, the State Treasurer is
5 hereby authorized to borrow money and to execute and issue notes of
6 the State for the same, but only in the following circumstances and
7 under the following conditions:

- 8 a. For anticipating the sale of bonds to the issuance of which the
9 Council of State shall have given consent, if the State Treasurer
10 shall deem it advisable to postpone the issuance of the bonds;
11 b. For the payment of interest on or any installment of principal of
12 any bonds then outstanding, if there shall not be sufficient funds
13 in the State treasury with which to pay the interest or
14 installment of principal as they respectively become due;
15 c. For the renewal of any loan evidenced by notes herein
16 authorized;
17 d. For the providing of prison and youth services facilities as
18 herein authorized; and
19 e. For refunding bonds or notes as herein authorized.

20 (2) Funds derived from the sale of bonds or notes may be used in the
21 payment of any bond anticipation notes issued under this act. Funds
22 provided by the General Assembly for the payment of interest on or
23 principal of bonds shall be used in paying the interest on or principal
24 of any notes and any renewals thereof, the proceeds of which shall
25 have been used in paying interest on or principal of the bonds.

26 (e) **Refunding Bonds and Notes.** By and with the consent of the Council of
27 State, the State Treasurer is authorized to issue and sell refunding bonds and notes
28 pursuant to the provisions of the State Refunding Bond Act, as it may be amended from
29 time to time, for the purpose of refunding bonds or notes issued pursuant to this act.
30 The refunding bonds and notes may be combined with any other issues of State bonds
31 and notes similarly secured.

32 (f) **Tax Exemption.** Bonds and notes and their transfer (including any profit
33 made on the sale thereof) shall be exempt from all State, county, and municipal taxation
34 or assessment, direct or indirect, general or special, whether imposed for the purpose of
35 general revenue or otherwise, excluding inheritance and gift taxes. The interest on
36 bonds and notes shall not be subject to taxation as to income, nor shall the bonds and
37 notes be subject to taxation when constituting a part of the surplus of any bank, trust
38 company, or other corporation.

39 (g) **Investment Eligibility.** Bonds and notes are hereby made securities in
40 which all public officers, agencies, and public bodies of the State and its political
41 subdivisions, all insurance companies, trust companies, investment companies, banks,
42 savings banks, savings and loan associations, credit unions, pension or retirement funds,
43 other financial institutions engaged in business in the State, executors, administrators,
44 trustees, and other fiduciaries may properly and legally invest funds, including capital in

1 their control or belonging to them. Bonds and notes are hereby made securities which
2 may properly and legally be deposited with and received by any officer or agency of the
3 State or political subdivision of the State for any purpose for which the deposit of
4 bonds, notes, or obligations of the State or any political subdivision is now or may
5 hereafter be authorized by law.

6 (h) **No Faith and Credit.** The faith and credit and taxing power of the State
7 is not pledged for the payment of the principal of and the interest on bonds and notes.

8 (i) **Date of Issuance or Sale.** No bonds or notes may be issued or sold under
9 this act prior to the beginning of the 1993-94 fiscal year.

10 Sec. 11. **Variable Interest Rates.** In fixing the details of bonds and notes,
11 the State Treasurer may provide that any of the bonds or notes may:

- 12 (1) Be made payable from time to time on demand or tender for purchase
13 by the owner thereof, provided a credit facility supports the bonds or
14 notes, unless the State Treasurer specifically determines that a credit
15 facility is not required upon a finding and determination by the State
16 Treasurer that the absence of a credit facility will not materially and
17 adversely affect the financial position of the State and the marketing of
18 the bonds or notes at a reasonable interest cost to the State;
- 19 (2) Be additionally supported by a credit facility;
- 20 (3) Be made subject to redemption or a mandatory tender for purchase
21 prior to maturity;
- 22 (4) Bear interest at a rate or rates that may vary for such period or periods
23 of time, all as may be provided in the proceedings providing for the
24 issuance of the bonds or notes, including, without limitation, such
25 variations as may be permitted pursuant to a par formula; and
- 26 (5) Be made the subject of a remarketing agreement whereby an attempt is
27 made to remarket bonds or notes to new purchasers prior to their
28 presentment for payment to the provider of the credit facility or to the
29 State.

30 If the aggregate principal amount repayable by the State under a credit facility
31 is in excess of the aggregate principal amount of bonds or notes secured by the credit
32 facility, whether as a result of the inclusion in the credit facility of a provision for the
33 payment of interest for a limited period of time or the payment of a redemption
34 premium or for any other reason, then the amount of authorized but unissued bonds or
35 notes during the term of such credit facility shall not be less than the amount of such
36 excess, unless the payment of such excess is otherwise provided for by agreement of the
37 State executed by the State Treasurer.

38 Sec. 12. **Interpretation of Act.** (a) **Additional Method.** The foregoing sections
39 of this act shall be deemed to provide an additional and alternative method for the doing
40 of the things authorized thereby and shall be regarded as supplemental and additional to
41 powers conferred by other laws, and shall not be regarded as in derogation of any
42 powers now existing.

43 (b) **Liberal Construction.** This act, being necessary for the health and welfare
44 of the people of the State, shall be liberally construed to effect the purposes thereof.

1 (c) **Inconsistent Provisions.** Insofar as the provisions of this act are inconsistent
2 with the provisions of any general laws, or parts thereof, the provisions of this act shall
3 be controlling.

4 (d) **Severability.** If any provision of this act or the application thereof to any
5 person or circumstance is held invalid, such invalidity shall not affect other provisions
6 or applications of the act which can be given effect without the invalid provision or
7 application, and to this end the provisions of this act are declared to be severable.

8 Sec. 13. This act becomes effective July 1, 1993.