

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**HOUSE BILL 154*
Committee Substitute Reported Without Prejudice 6/4/03**

Short Title: DNA Analysis/Sex Assault Kits.

(Public)

Sponsors:

Referred to:

March 3, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO APPROPRIATE FUNDS TO PERFORM DNA ANALYSIS ON
3 UNTESTED SEXUAL ASSAULT KITS LOCATED IN LAW ENFORCEMENT
4 DEPARTMENTS ACROSS NORTH CAROLINA, TO AUTHORIZE THE
5 ISSUANCE OF SPECIAL INDEBTEDNESS FOR A STATE BUREAU OF
6 INVESTIGATION LABORATORY ADDITION FOR RAPE KIT DNA TESTING
7 AND OTHER FORENSIC PURPOSES, AND TO PROVIDE A STATUTORY
8 FRAMEWORK FOR THE FINANCING OF CAPITAL FACILITIES BY THE
9 STATE.

10 The General Assembly of North Carolina enacts:

11 **PART 1. RAPE KIT APPROPRIATION**

12 **SECTION 1.** There is appropriated from the General Fund to the
13 Department of Justice the sum of one hundred two thousand three hundred forty-four
14 dollars (\$102,344) for the 2003-2004 fiscal year and the sum of two hundred sixty-nine
15 thousand one hundred forty-four dollars (\$269,144) for the 2004-2005 fiscal year to
16 help support staff positions, training, and supplies needed to process rape kits.

17 **PART 2. RAPE KIT TESTING LAB**

18 **SECTION 2.** In accordance with G.S. 142-83, as enacted by this act, this
19 Part authorizes the issuance or incurrence of up to three million six hundred thousand
20 dollars (\$3,600,000) of financing contract indebtedness to be used for the addition of a
21 wing to the State Bureau of Investigation's crime laboratory that will provide laboratory
22 facilities for rape kit testing and other forensic purposes. The State, with the prior
23 approval of the State Treasurer and Council of State as provided in Article 9 of Chapter
24 142 of the General Statutes, is authorized to execute and deliver one or more financing
25 contracts in a maximum aggregate principal amount of three million six hundred
26 thousand dollars (\$3,600,000) in order to provide funds to the State to be used, together
27 with any other available funds, to pay the cost of the project.

28 **PART 3. STATE CAPITAL FACILITIES FINANCE**

1 proportionate undivided interests in rights to receive payments
2 pursuant to a financing contract.

3 (5) Certificates of participation indebtedness. – Financing contract
4 indebtedness incurred by the State under a plan of finance in which a
5 special corporation obtains funds to pay the cost of a capital facility to
6 be financed through the delivery by the special corporation of
7 certificates of participation.

8 (6) Cost. – Any of the following in financing the cost of capital facilities
9 as authorized by this Article:

10 a. The cost of constructing, reconstructing, renovating, repairing,
11 enlarging, acquiring, and improving capital facilities, including
12 the acquisition of land, rights-of-way, easements, franchises,
13 equipment, machinery, furnishings, and other interests in real or
14 personal property acquired or used in connection with a capital
15 facility.

16 b. The cost of engineering, architectural, and other consulting
17 services.

18 c. The cost of providing personnel to ensure effective
19 management of capital facilities.

20 d. Finance charges, reserves for debt service, and other types of
21 reserves required pursuant to the terms of any special
22 indebtedness or related documents, interest before and during
23 construction or acquisition of a capital facility and, if
24 considered advisable by the State Treasurer, for a period not
25 exceeding two years after the estimated date of completion of
26 construction or acquisition.

27 e. Administrative expenses and charges.

28 f. The cost of bond insurance, investment contracts, credit
29 enhancement facilities and liquidity facilities, interest rate swap
30 agreements or other derivative products, financial and legal
31 consultants, and related costs of the incurrence or issuance of
32 special indebtedness.

33 g. The cost of reimbursing the State, a State agency, or a special
34 corporation for any payments made for any cost described in
35 this subdivision.

36 h. Any other costs and expenses necessary or incidental to the
37 purposes of this Article.

38 (7) Credit facility. – An agreement that:

39 a. Is entered into by the State with a bank, savings and loan
40 association, or other banking institution, an insurance company,
41 reinsurance company, surety company or other insurance
42 institution, a corporation, investment banking firm or other
43 investment institution, or any financial institution or other

- 1 similar provider of a credit facility, which provider may be
2 located within or without the United States of America; and
3 b. Provides for prompt payment of all or any part of the principal
4 or purchase price (whether at maturity, presentment or tender
5 for purchase, redemption, or acceleration), redemption
6 premium, if any, and interest with respect to any special
7 indebtedness payable on demand or tender by the owner in
8 consideration of the State agreeing to repay the provider of the
9 credit facility in accordance with the terms and provisions of
10 the agreement.
- 11 (8) Department of Administration. – The North Carolina Department of
12 Administration created by Article 36 of Chapter 143 of the General
13 Statutes, or if the Department is abolished or otherwise divested of its
14 functions under this Article, the public body succeeding it in its
15 principal functions or upon which are conferred by law the rights,
16 powers, and duties given by this Article to the Department.
- 17 (9) Financing contract. – A contract entered into pursuant to this Article to
18 finance capital facilities and constituting a lease-purchase contract,
19 installment purchase contract, or other similar type installment
20 financing contract. The term does not include, however, a contract that
21 meets any one of the following conditions:
- 22 a. It constitutes an operating lease under generally accepted
23 accounting principals.
- 24 b. It provides for the payment under the contract over its full term,
25 including periods that may be added to the original term
26 through the exercise of options to renew or extend, of an
27 aggregate principal amount of not in excess of five thousand
28 dollars (\$5,000) or any greater amount that may be established
29 by the Council of State, if the Council of State determines (i)
30 the aggregate amount to be paid under these contracts will not
31 have a significant impact on the State budgetary process or the
32 economy of the State and (ii) the change will lessen the
33 administrative burden on the State.
- 34 c. It is executed and provides for the making of all payments
35 under the contract, including payment to be made during any
36 period that may be added to the original term through the
37 exercise of options to renew or extend, in the same fiscal year.
- 38 (10) Financing contract indebtedness. – Indebtedness incurred pursuant to a
39 financing contract, including certificates of participation indebtedness.
- 40 (11) Fiscal period. – A fiscal biennium or a fiscal year of the fiscal
41 biennium.
- 42 (12) Fiscal year. – The fiscal year of the State beginning on July 1 of one
43 calendar year and ending on June 30 of the next calendar year.

- 1 (13) Limited obligation bond. – A limited obligation bond issued pursuant
2 to G.S. 142-88 and payable and secured as provided in G.S. 142-89.
- 3 (14) Par formula. – A provision or formula adopted by the State to provide
4 for the adjustment, from time to time, of the interest rate or rates borne
5 or provided for by any special indebtedness, including any of the
6 following:
- 7 a. A provision providing for an adjustment so that the purchase
8 price of special indebtedness in the open market would be as
9 close to par as possible.
- 10 b. A provision providing for an adjustment based upon a
11 percentage or percentages of a prime rate or base rate, which
12 percentages may vary or be applied for different periods of
13 time.
- 14 c. Any provision that the State Treasurer determines is consistent
15 with this Article and will not materially and adversely affect the
16 financial position of the State and the marketing of special
17 indebtedness at a reasonable interest cost to the State.
- 18 (15) Person. – An individual, a firm, a partnership, an association, a
19 corporation, a limited liability company, or any other organization or
20 group acting as a unit.
- 21 (16) Special corporation. – Either of the following:
- 22 a. A nonprofit corporation created under Chapter 55A of the
23 General Statutes for the purpose of facilitating the incurrence of
24 certificates of participation indebtedness by the State under this
25 Article.
- 26 b. A private corporation or other entity issuing certificates of
27 participation pursuant to this Article.
- 28 (17) Special indebtedness. – Financing contract indebtedness and bonded
29 indebtedness issued or incurred pursuant to this Article.
- 30 (18) State. – The State of North Carolina, including any State agency.
- 31 (19) State agency. – Any agency, institution, board, commission, bureau,
32 council, department, division, officer, or employee of the State. The
33 term does not include counties, municipal corporations, political
34 subdivisions, local boards of education, or other local public bodies.
- 35 (20) State Treasurer. – The incumbent Treasurer, from time to time, of the
36 State.

37 **"§ 142-83. Authorization of special indebtedness; General Assembly approval.**

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

- 41 (1) The General Assembly has enacted legislation describing the capital
42 facility and authorizing its financing by the incurrence or issuance of
43 special indebtedness up to a specific maximum amount.

1 (2) The General Assembly has enacted legislation authorizing the
2 incurrence or issuance of special indebtedness up to a specific
3 maximum amount for a specific category of capital facilities, and the
4 capital facility meets all of the conditions set in that legislation.

5 **"§ 142-84. Procedure for incurrence or issuance of special indebtedness.**

6 (a) Notice and Certificate. – Whenever the State or a State agency intends to use
7 special indebtedness to finance capital facilities, it shall notify the Department of
8 Administration. If the Department of Administration intends for the State to use special
9 indebtedness to finance the capital facilities, it shall provide written notice to the
10 Treasurer advising the Treasurer of its intent. The Treasurer may require a preliminary
11 conference with the Department of Administration to consider the proposed financing.

12 After the filing of the notice and after any preliminary conference, the State
13 Treasurer shall consult with the Office of State Budget and Management as to the
14 revenues expected by that Office to be available to pay all sums to come due on the
15 special indebtedness during its term. If, after consulting with the Office of State Budget
16 and Management, the State Treasurer determines by written certificate that it may be
17 desirable to use special indebtedness to finance the capital facilities, the Department of
18 Administration shall request the Council of State to give its preliminary approval of the
19 use of special indebtedness to finance the capital facilities. The Department of
20 Administration must promptly file copies of the notice and certificate required by this
21 subsection with the Governor and the Council of State.

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

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

- 31 (1) Authorize the providing of a particular capital facility or, in general
32 terms, the types or classifications of capital facilities to be provided.
- 33 (2) Set the aggregate principal amount or maximum principal amount of
34 the special indebtedness authorized.
- 35 (3) Set the maturity or maximum maturity of the special indebtedness
36 authorized.
- 37 (4) Set the rate, rates, or maximum rate of interest, which may be fixed or
38 vary over a period of time, of the special indebtedness authorized.
- 39 (5) Include any other conditions or matters not inconsistent with the
40 provisions of this Article in the discretion of the Council of State,
41 which may include the adoption or approvals as may be authorized in
42 G.S. 142-88 and G.S. 142-89.

43 (d) Oversight by Treasurer. – No special indebtedness shall be incurred or issued
44 without the prior written approval of the State Treasurer as provided in this subsection.

1 which is in addition to the certificate given by the State Treasurer pursuant to subsection
2 (a) of this section. In determining whether to approve the proposed financing, the State
3 Treasurer may consider any factors the State Treasurer considers relevant in order to
4 find and determine all of the following:

5 (1) The amounts to become due under the special indebtedness, including
6 the interest component or rate, are adequate and not excessive for the
7 purpose proposed.

8 (2) The increase, if any, in State revenues, including taxes, necessary to
9 pay the sums to become due under the special indebtedness is not
10 excessive.

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

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

20 (f) Type of Debt and Security. – In the absence of a determination by the
21 Council of State, the State Treasurer, after consultation with the Department of
22 Administration, shall determine the specific security offered and whether the special
23 indebtedness to be issued or incurred shall be financing contract indebtedness,
24 certificates of participation indebtedness, bonded indebtedness, or some combination of
25 these.

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

31 (h) Report to Joint Legislative Commission. – After all the requirements for
32 approval and oversight provided in this section have been met, and at least five days
33 before the issuance or incurrence of the special indebtedness, the State Treasurer must
34 report to the Joint Legislative Commission on Governmental Operations. This report
35 must include the details of the proposed special indebtedness, including the capital
36 facilities to be financed by the indebtedness, the amount of the proposed indebtedness,
37 the type of indebtedness to be issued or incurred, and any other information required by
38 the Commission.

39 **"§ 142-85. Security; other requirements.**

40 (a) Security. – In order to secure (i) lease or installment payments to be made to
41 the lessor, seller, or other person advancing moneys or providing financing under a
42 financing contract, (ii) payment of the principal of and interest on bonded indebtedness,
43 or (iii) payment obligations of the State to the provider of bond insurance, a credit

1 facility, a liquidity facility, or a derivative agreement, special indebtedness may create
2 any combination of the following:

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

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

8 (3) If the special indebtedness is to finance renovations or improvements
9 to existing facilities or the installation of fixtures in existing facilities,
10 a lien on or security interest in one or more, all, or any part of the
11 facilities.

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

18 (c) Governor's Budget. – Documentation relating to any special indebtedness
19 may include provisions requesting the Governor to submit in the Governor's budget
20 proposal or any amendments or supplements to the budget proposed appropriations
21 necessary to make the payments required by the special indebtedness.

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

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

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

43 (g) Protection of Lender. – Special indebtedness may contain any provisions for
44 protecting and enforcing the rights and remedies of the person advancing moneys or

1 providing financing under a financing contract, the owners of bonded indebtedness, or
2 others to whom the State is obligated under special indebtedness or any related
3 documents as may be reasonable and proper and not in violation of law. These
4 provisions may include covenants setting forth the duties of the State in respect of any
5 of the following:

6 (1) The purposes to which the proceeds of special indebtedness may be
7 applied.

8 (2) The disposition and application of the revenues of the State, including
9 taxes.

10 (3) Insuring, maintaining, and other duties with respect to the capital
11 facilities financed.

12 (4) The disposition of any charges and collection of any revenues and
13 administrative charges.

14 (5) The terms and conditions of the issuance of additional special
15 indebtedness.

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

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

23 **"§ 142-86. Financing contract indebtedness.**

24 (a) Treasurer Oversight. – Financing contract indebtedness shall not be incurred
25 until all documentation providing for its incurrence has been approved by the State
26 Treasurer, after the State Treasurer has consulted with the Department of
27 Administration.

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

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

35 (d) Party. – All financing contracts shall be executed on behalf of the State by the
36 State Treasurer or, upon delegation by the State Treasurer, by the Department of
37 Administration.

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

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

6 **"§ 142-87. Additional requirements for certificates of participation indebtedness.**

7 (a) Treasurer Oversight. – A financing contract shall not be used in connection
8 with the delivery of certificates of participation by a special corporation until all
9 documentation providing for its use has been approved by the State Treasurer, after the
10 State Treasurer has consulted with the Department of Administration. All
11 documentation providing for the delivery and sale of certificates of participation must
12 be approved by the State Treasurer.

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

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

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

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

35 **"§ 142-88. Bonded indebtedness.**

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

41 **"§ 142-89. Issuance of limited obligation bonds and notes.**

42 (a) Terms and Conditions. – Bonds or notes may bear any dates, may be serial or
43 term bonds or notes, or any combination of these, may mature in any amounts and at
44 any times, not exceeding 40 years from their dates, may be payable at any places, either

1 within or without the United States, in any coin or currency of the United States that at
2 the time of payment is legal tender for payment of public and private debts, may bear
3 interest at any rates, which may vary from time to time, and may be made redeemable
4 before maturity, at the option of the State or otherwise as may be provided by the State,
5 at any prices, including a price greater than the face amount of the bonds or notes, and
6 under any terms and conditions, all as may be determined by the State Treasurer, by and
7 with the consent of the Council of State.

8 (b) Signatures; Form and Denomination; Registration. – Bonds or notes may be
9 issued in certificated or uncertificated form. If issued in certificated form, bonds or
10 notes shall be signed on behalf of the State by the Governor or shall bear the Governor's
11 facsimile signature, shall be signed by the State Treasurer or shall bear the State
12 Treasurer's facsimile signature, and shall bear the great seal of the State or a facsimile of
13 the seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures
14 of the Governor and the State Treasurer, the bonds or notes shall also bear a manual
15 signature which may be that of a bond registrar, trustee, paying agent, or designated
16 assistant of the State Treasurer. If any officer whose signature or facsimile signature
17 appears on bonds or notes issued under this Article ceases to be that officer before the
18 delivery of the bonds or notes, the signature or facsimile signature shall nevertheless
19 have the same validity for all purposes as if the officer had remained in office until
20 delivery of the bonds or notes. Bonds or notes issued under this Article may bear the
21 facsimile signatures of persons, who at the actual time of the execution of the bonds or
22 notes were the proper officers to sign any bond or note, although at the date of the bond
23 or note those persons may not have been officers.

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

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

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

42 Any additional moneys that may be received by means of a grant or grants from the
43 United States or any agency or department thereof or from any other source to aid in

1 financing the cost of a capital facility may be disbursed, to the extent permitted by the
2 terms of the grant or grants, without regard to any limitations imposed by this Article.

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

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

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

14 (3) For the renewal of any loan evidenced by notes authorized in this
15 Article.

16 (4) For the purposes authorized in this Article.

17 (5) For refunding bonds or notes or financing contract indebtedness as
18 authorized in this Article.

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

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

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

3 (h) Trust Agreement. – In the discretion of the State Treasurer, any bonds and
4 notes issued under this Article may be secured by a trust agreement or similar
5 instrument between the State and a corporate trustee or by a resolution of the Council of
6 State providing for the appointment of a corporate trustee. The corporate trustee may be,
7 in either case, any trust company or bank that has the powers of a trust company within
8 or without the State. The trust agreement or similar instrument or resolution, hereinafter
9 referred to as "the trust", may provide for security and pledges and assignments that are
10 permitted under this Article and may provide for the granting of a lien or security
11 interest as authorized by G.S. 142-85. The trust may contain any provisions for
12 protecting and enforcing the rights and remedies of the owners of any bonds or notes
13 issued under the trust that are reasonable and not in violation of law, including
14 covenants setting forth the duties of the State with respect to the purposes for which
15 bond or note proceeds may be applied, the disposition and application of the revenues or
16 assets of the State, the duties of the State with respect to the capital facilities financed,
17 the disposition of any charges and collection of any revenues and administrative
18 charges, the terms and conditions of the issuance of additional bonds and notes, and the
19 custody, safeguarding, investment, and application of all moneys. All bonds and notes
20 issued under this Article pursuant to the same trust shall be equally and ratably secured
21 as provided in the trust, without priority by reasons of number, dates of bonds or notes,
22 execution, or delivery, in accordance with the provisions of this Article and of the trust.
23 The trust may, however, provide that bonds or notes issued pursuant to the trust shall, to
24 the extent and in the manner prescribed in the trust, be subordinated and junior in
25 standing, with respect to the payment of principal and interest and to the security of the
26 payment, to any other bonds or notes issued pursuant to the trust. It is lawful for any
27 bank or trust company that may act as depository of the proceeds of bonds or notes,
28 revenues, or any other money under this Article to furnish any indemnifying bonds or to
29 pledge any securities that may be required by the State Treasurer. The trust may set out
30 the rights and remedies of the owners of any bonds or notes and of any trustee and may
31 restrict the individual rights of action by the owners. In addition to the foregoing, the
32 trust may contain any other provisions the State Treasurer considers appropriate for the
33 security of the owners of any bonds or notes. Expenses incurred in carrying out the
34 provisions of the trust may be treated as a part of the cost of any capital facility or as an
35 administrative charge and may be paid from the proceeds of the bonds or notes or from
36 any other available funds.

37 **"§ 142-90. Variable rate demand bonds and notes and financing contract**
38 **indebtedness.**

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

- 41 (1) It is payable from time to time on demand or tender for purchase by
42 the owner thereof, if a credit facility supports the special indebtedness,
43 unless the State Treasurer specifically determines that a credit facility
44 is not required upon a determination by the State Treasurer that the

1 absence of a credit facility will not materially and adversely affect the
2 financial position of the State or the marketing of the bonds or notes or
3 financing contract indebtedness at a reasonable interest cost to the
4 State.

5 (2) It is additionally supported by a credit facility.

6 (3) It is subject to redemption or mandatory tender for purchase prior to
7 maturity.

8 (4) It bears interest at a rate or rates that may be fixed or may vary over
9 any period of time, as may be provided in the proceedings providing
10 for the issuance or incurrence of the special indebtedness, including
11 any variations that may be permitted pursuant to a par formula.

12 (5) It is the subject of a remarketing agreement under which an attempt is
13 made to remarket special indebtedness to new purchasers before its
14 presentation for payment to the provider of the credit facility or to the
15 State.

16 (b) If the aggregate principal amount payable by the State under a credit facility
17 is in excess of the aggregate principal amount of special indebtedness secured by the
18 credit facility, whether as a result of the inclusion in the credit facility of a provision for
19 the payment of interest for a limited period of time or the payment of a redemption
20 premium or for any other reason, then the amount of authorized but unissued bonds or
21 notes and financing contract indebtedness during the term of the credit facility shall not
22 be less than the amount of the excess, unless the payment of the excess is otherwise
23 provided for by agreement of the State executed by the State Treasurer.

24 **"§ 142-91. Other agreements.**

25 The State Treasurer may authorize, execute, obtain, or otherwise provide for bond
26 insurance, investment contracts, credit and liquidity facilities, credit enhancement
27 facilities, interest rate swap agreements and other derivative products, and any other
28 related instruments and matters the State Treasurer determines are desirable in
29 connection with the issuance of special indebtedness. The State Treasurer is authorized
30 to employ and designate any financial consultants, underwriters, fiduciaries, and bond
31 attorneys to be associated with any incurrence or issuance of special indebtedness under
32 this Article as the State Treasurer considers appropriate.

33 **"§ 142-92. Tax exemption.**

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

40 **"§ 142-93. Investment eligibility.**

41 Special indebtedness are securities or obligations in which all of the following may
42 invest, including capital in their control or belonging to them: public officers, agencies,
43 and public bodies of the State and its political subdivisions; insurance companies, trust
44 companies, investment companies, banks, savings banks, savings and loan associations,

1 credit unions, pension or retirement funds, and other financial institutions engaged in
2 business in the State; and executors, administrators, trustees, and other fiduciaries.
3 Special indebtedness are securities or obligations that may properly and legally be
4 deposited with and received by any officer or agency of the State or political
5 subdivision of the State for any purpose for which the deposit of bonds, notes, or
6 obligations of the State or any political subdivision is now or may later be authorized by
7 law.

8 **"§ 142-94. Procurement of capital facilities.**

9 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
10 Statutes and any other laws or rules of the State that relate to the acquisition and
11 construction of State property apply to the financing of capital facilities through the use
12 of special indebtedness pursuant to this Article. This section does not apply to the
13 construction and lease-purchase, including leases with an option to purchase at the end
14 of the lease term for a nominal sum, of State office buildings pursuant to proposals
15 submitted before the effective date of this Article in response to requests for proposals
16 to the extent any of those proposals, as they may be supplemented or amended, are
17 approved by the Department of Administration and any of these leases or lease-purchase
18 agreements are approved by the Council of State in accordance with G.S.
19 143-341(4)d2."

20 **SECTION 3.2.** G.S. 143-341(4) is amended by adding a new sub-subdivision
21 to read:

22 " d2. To purchase or finance the purchase of buildings, utilities,
23 structures, or other facilities or property developments,
24 including streets and landscaping, the acquisition of land,
25 equipment, machinery and furnishings in connection therewith;
26 additions, extensions, enlargements, renovations and
27 improvements to existing buildings, utilities, structures, or other
28 facilities or property developments, including streets and
29 landscaping; land or any interest in land; other infrastructure;
30 furniture, fixtures, equipment, vehicles, machinery and similar
31 items; or any combination of the foregoing, through installment
32 purchase, lease purchase, or other similar type installment
33 financing agreements in the manner and to the extent provided
34 in Article 9 of Chapter 142 of the General Statutes. Any
35 contract entered into or any proceeding instituted contrary to the
36 provisions of this paragraph is voidable in the discretion of the
37 Council of State."

38 **PART 4. GENERAL PROVISIONS**

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

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

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

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

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

14 **SECTION 4.2.** Effective Date. – Section 1 of this act becomes effective July
15 1, 2003. The remainder of this act is effective when it becomes law.