

## Chapter 122A.

### North Carolina Housing Finance Agency.

#### § 122A-1. Short title.

This Chapter shall be known and may be cited as the "North Carolina Housing Finance Agency Act." (1969, c. 1235, s. 1; 1973, c. 1296, s. 1.)

#### § 122A-2. Legislative findings and purposes.

The General Assembly hereby finds and declares that as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods and as a result of actions involving highways, public facilities and urban renewal activities there exists in the State of North Carolina a serious shortage of decent, safe and sanitary residential housing available at low prices or rentals to persons and families of lower income. This shortage is severe in certain urban areas of the State, is especially critical in the rural areas, and is inimical to the health, safety, welfare and prosperity of all residents of the State and to the sound growth of North Carolina communities.

The General Assembly hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford, or to achieve the urgently needed rehabilitation of much of the present lower income housing. It is imperative that the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout North Carolina.

The General Assembly hereby finds and declares further that the purposes of this Chapter are to provide financing for residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income.

The General Assembly hereby finds and declares further that in accomplishing this purpose, the North Carolina Housing Finance Agency, a public agency and an instrumentality of the State, is acting in all respects for the benefit of the people of the State in the performance of essential public functions and serves a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the North Carolina Housing Finance Agency, is empowered to act on behalf of the State of North Carolina and its people in serving this public purpose for the benefit of the general public.

The General Assembly hereby further finds and declares that it shall be the policy of said Agency, whenever feasible, to give first priority in its programs to assisting persons and families of lower income in the purchase and rehabilitation of residential housing, and to undertake its programs in the areas where the greatest housing need exists, and to give priority to projects and individual units which conform to sound principles and practices of comprehensive land use and environmental planning, regional development planning and transportation planning as established by units of local government and regional organizations having jurisdiction over the area within which such projects and units are to be located if such government agencies exist in an area under consideration. However, no area of need shall be penalized because government planning agencies do not exist in such areas.

The General Assembly hereby also further finds and declares that private enterprise and investment have not been able to provide, without assistance, the needed installation of energy

saving materials in owner occupied residences of persons and families of lower income. It is imperative for the health, safety and welfare of these persons and the general public that their residences be suitably heated at affordable cost in order to provide decent housing; and that the consumption of nonrenewable sources of energy be reduced. Therefore, the General Assembly finds that one of the purposes of this Chapter is to assist persons and families of lower income to obtain loans for the purpose of heating their homes at affordable cost and at the same time to significantly reduce the amount of consumption of nonrenewable sources of energy. (1969, c. 1235, s. 2; 1973, c. 1296, s. 2; 1977, c. 1083, s. 1.)

### **§ 122A-3. Definitions.**

The following definitions apply in this Chapter:

- (1) Agency. – The North Carolina Housing Finance Agency created by this Chapter.
- (2) Bonds or notes. – The bonds or the bond anticipation notes or construction loan notes authorized to be issued by the Agency under this Chapter.
- (3) Counseling agency. – A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.
- (4) Energy conservation loan. – A loan obtained from a mortgage lender for the purpose of satisfying an existing obligation of a borrower who is the resident owner of a single-family dwelling or of "residential housing." The existing obligation of the owner in an "energy conservation loan" must have been incurred to pay for the purchase of materials or the installation of materials, or both, which results in a significant decrease in the amount of consumption of nonrenewable sources of energy in order to provide or maintain a comfortable level of room temperatures in his residence during the winter. "Energy conservation loan" does not include a loan obtained to refinance an existing loan agreement unless payment or collection of the original loan was guaranteed by the Agency.
- (5) Federally insured securities. – An evidence of indebtedness secured by a first mortgage lien on residential housing for persons of lower income and insured or guaranteed as to repayment of principal and interest by the United States or any agency or instrumentality thereof.
- (6) Governmental agency. – Any department, division, public agency, political subdivision, or other public instrumentality of the State, the federal government, any other State or public agency, or any two or more thereof.
- (7) Mortgage or mortgage loan. – A mortgage loan for residential housing, including, without limitation, a mortgage loan to finance, either temporarily or permanently, the construction, rehabilitation, improvement, or acquisition and rehabilitation or improvement of residential housing and a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage. A mortgage obligation may be evidenced by a security document and secured by a lien upon real property, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

- (8) Mortgage lenders. – Any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the federal government, and any other financial institution authorized to transact business in the State.
- (9) Mortgagee. – The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.
- (10) Obligations. – Any bonds or bond anticipation notes authorized to be issued by the Agency under the provisions of this Chapter.
- (11) Persons and families of lower income. – Persons and families deemed by the Agency to require such assistance as is made available by this Chapter on account of insufficient personal or family income, taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower-income basis, and (v) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing and deemed by the Agency therefore to be eligible to occupy residential housing financed wholly or in part, with mortgages, or with other public or private assistance.
- (12) Rehabilitation. – The renovation or improvement of residential housing by the owner of said residential housing.
- (13) Residential housing. – A specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the rehabilitation of buildings and improvements, and such other nonhousing facilities as may be incidental or appurtenant thereto.
- (14) State. – The State of North Carolina. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17; 1975, c. 19, s. 42; 1977, c. 1083, s. 2; 1979, 2nd Sess., c. 1238, s. 1; 1981, c. 344, s. 1; 1983, c. 148, s. 1; 2008-107, s. 21.1(a); 2012-194, s. 24.)

**§ 122A-4. North Carolina Housing Finance Agency.**

(a) There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Agency shall be governed by a board of directors composed of 13 members. The directors of the Agency shall be residents of the State and shall not hold other public office.

(c) The General Assembly shall appoint eight directors, four upon the recommendation of the Speaker of the House of Representatives (at least one of whom shall have had experience with a mortgage-servicing institution and one of whom shall be experienced as a licensed real estate broker), and four upon the recommendation of the President Pro Tempore of the Senate (at least one of whom shall be experienced with a savings and loan institution and one of whom shall be experienced in home building). Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Notwithstanding any other provision of law, the terms of the four noncategorical appointments by the General Assembly shall expire on June 30, 1983. Subsequent

noncategorical appointments shall be for terms of two years each. The terms of the initial categorical appointees by the General Assembly upon the recommendation of the Speaker shall expire on June 30, 1983; the terms of subsequent appointees shall be two years. The term of one of the initial categorical appointees by the General Assembly upon the recommendation of the President of the Senate shall expire on June 30, 1983, and the other on June 30, 1985; the terms of subsequent appointees shall be four years.

(d) The Governor shall appoint four of the directors of the Agency; one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in public housing policy, and one shall be experienced in the manufactured housing industry. The four appointees of the Governor shall be appointed for staggered four-year terms, two being appointed initially for three years and two for four years, and shall continue in office until their successors are duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(e) Any member of the board of directors shall be eligible for reappointment. The 12 members of the board shall then elect a thirteenth member to the board by simple majority vote. Each member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the Secretary of State.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall 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 Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the North Carolina Human Resources Act. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the North Carolina Human Resources Act. The salary of the Executive Director shall be fixed by the Board of Directors. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the North Carolina Human Resources Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of any other officers it finds necessary or advisable, and the Board of Directors shall fix the compensation of these officers. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

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, from funds of the Agency, 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.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary 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 may have copies made of all minutes and other records and documents of the Agency and may 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. Seven 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, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 26; 1995, c. 490, s. 24; 2004-124, s. 31.15(a); 2013-382, s. 9.1(c).)

#### **§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out the provisions of this Chapter, including the power:

- (1) To participate in any federally assisted lease program for housing for persons of lower income under any federal legislation, including, without limitation, section 8 of the National Housing Act; provided, however, that such participation may take place only upon the request and approval of the governing body of the county, city or town in which any such project is to be located;
- (2) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Agency that mortgage loans are not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase and enter into commitments by itself or together with others for
  - a. The purchase of mortgage loans made by mortgage lenders to sponsors of residential housing or to persons of lower income for residential housing where the Agency has given its approval prior to the initial making of the mortgage loan; provided, however, that any such purchase shall be made only upon the determination by the Agency that mortgage loans were, at the time the approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, or
  - b. The purchase of mortgage loans made by mortgage lenders without such prior approval to sponsors of housing for persons and families of any income or to persons of any income for housing upon such terms and

conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing as the Agency may prescribe by its rules and regulations; provided, however, that (i) any such purchase of existing mortgage loans shall be made only upon the determination by the Agency that such new mortgage loans are not otherwise available from private lenders upon reasonably equivalent terms and conditions, and (ii) the Agency shall purchase mortgage loans made to sponsors of housing for persons and families not of lower income or to persons not of lower income for housing only upon the determination by the Agency that mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing are not available for purchase by the Agency upon reasonable terms and conditions;

- (4) Repealed by Session Laws 1973, c. 1296, s. 24;
- (4a) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to originate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the Agency; Provided, however, that loans shall be made by such mortgage lenders only upon the determination by the Agency that such financing is not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;
- (6) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Agency has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property to a tenant pending such sale, transfer or conveyance;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a loan of any type permitted by this Chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the Agency is a party;

- (10) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue its obligation as evidence of any such borrowing;
- (11) To include in any borrowing such amounts as may be deemed necessary by the Agency to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents thereof;
- (14) To promote research and development in scientific methods of constructing low-cost residential housing of high durability;
- (15) To service or contract for the servicing of mortgage loans and to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Agency to facilitate the purposes of this Chapter;
- (16) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money, including the proceeds of general obligation bonds of the State;
- (17) To sue and be sued in its own name, plead and be impleaded;
- (18) To establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of directors deems advisable or necessary in carrying out the purposes of this Chapter;
- (19) To adopt an official seal and alter the same at pleasure;
- (20) 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;
- (21) To employ fiscal consultants, engineers, 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;
- (22) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; provided, however, that the Agency shall first determine that the proceeds of such securities will be utilized for the purpose of making new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing, all as specified in regulations to be adopted by the Agency;
- (23) To provide, or contract for the providing of, management and counseling services whenever, in the judgment of the Agency, no other satisfactory low-income housing counseling service is available for occupants of rental projects for persons of lower income or for prospective homeowners of lower income; provided, however, that no such program shall be undertaken until the

- Agency shall have made a study of its feasibility and shall have determined that the undertaking of such program will not adversely affect other programs of the Agency;
- (24) To advise the Governor regarding the coordination of public and private low- and moderate-income housing programs;
  - (25) To participate in and administer federal housing programs, including housing rehabilitation, construction of new housing, assistance to the homeless, and home ownership assistance;
  - (26) To acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The Board of Directors may pledge or encumber income and assets of the Agency to secure financing for real property; and
  - (27) To select and retain, subject to the 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.
  - (28) Repealed by Session Laws 2010-31, s. 23.1(b). (1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43; 1975, c. 616, ss. 1, 2; 1981, c. 895, s. 3; 1983, c. 148, s. 2; 1993, c. 321, s. 305(b); 2008-194, s. 1(a); 2009-570, s. 15; 2010-31, ss. 23.1(a), (b); 2011-288, s. 7.)

**§ 122A-5.1. Rules and regulations governing Agency activity.**

(a) The Agency shall from time to time adopt, modify or repeal rules and regulations governing the purchase of federally insured securities by the Agency and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

- (1) Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for the purchase of federally insured securities;
- (2) Limitations or restrictions as to the number of family units, location or other qualifications or characteristics of residences to be financed by mortgage loans and requirements as to the income limits of persons and families of lower income occupying such residences;
- (3) Restrictions as to the interest rates on mortgage loans or the return which may be realized by mortgage lenders on any mortgage loans or on the sale of federally insured securities to the Agency;
- (4) Requirements as to commitments by mortgage lenders with respect to the use of the proceeds of sale of any federally insured securities;
- (5) Schedules of any fees and charges necessary to provide for expenses and reserves of the Agency; and
- (6) Any other matters related to the duties and the exercise of the powers of the Agency to purchase and sell mortgage loans, or to purchase federally insured securities.

Such rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction of decent, safe and sanitary residential

housing at low prices or rentals which persons and families of lower income can afford; (ii) the rehabilitation of present lower-income housing; (iii) increasing the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public action or natural disaster; (iv) the encouraging of private enterprise and investment to sponsor, build and rehabilitate residential housing for such persons and families to prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout the State; and (v) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

(b) The interest rate or rates and other terms of federally insured securities or mortgage loans purchased from the proceeds of any issue of bonds of the Agency shall be at least sufficient to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by the Agency in repayment of such federally insured securities or such loans and interest thereon.

(c) The Agency shall require as a condition of the purchase of federally insured securities from a mortgage lender and the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender where the Agency has not given its approval prior to the initial making of the mortgage loan that such mortgage lender shall on or prior to the one-hundred-eightieth day (or such earlier day as may be prescribed by rules and regulations of the Agency) following the receipt of the sale proceeds have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make from such sale proceeds, new mortgage loans with respect to residential housing in the State having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such sale proceeds. The Agency shall not purchase nor make commitment to purchase mortgage loans, federally insured securities or other obligations from a mortgage lender from which it has previously purchased federally insured securities or mortgage loans initially made without such prior approval unless said mortgage lender has either made or entered into written commitments to make such new mortgage loans. (1973, c. 1296, s. 44; 1975, c. 616, s. 3.)

#### **§ 122A-5.2. Mortgage insurance authority.**

(a) The Agency may upon application of a proposed mortgagee insure and make advance commitments to insure payments required by a loan for residential housing for persons of lower income upon such terms and conditions as the Agency may prescribe. Mortgage loans insured by the Agency under this Chapter may provide financing for related ancillary facilities to the extent permitted by applicable Agency regulations. Mortgage loans insured by the Agency under this Chapter shall be secured by a first mortgage.

The aggregate principal amount of all mortgages so insured by the Agency under this Chapter and outstanding at any one time shall not exceed 10 times the average annual balance for the preceding calendar year of funds on deposit in the housing mortgage insurance fund, the creation of which is hereby authorized. The aggregate amount of principal obligations of all mortgages so insured shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from moneys on deposit to the credit of the housing mortgage insurance fund. Any contract of insurance executed by the Agency under this section shall be conclusive evidence of eligibility for such mortgage insurance and the validity of any contract of insurance so executed or of an advance commitment to issue such shall be incontestable

in the hands of a mortgagee from the date of execution of such contract or commitment, except for fraud or misrepresentation on the part of such mortgagee and, as to commitments to insure, noncompliance with the terms of the advance commitment or Agency regulations in force at the time of issuance of the advance commitment.

(b) For mortgage payments to be eligible for insurance under the provisions of this Chapter, the underlying mortgage loan shall:

- (1) Be one which is made and held by a mortgagee approved by the Agency as responsible and able to service the mortgage properly;
- (2) Not exceed (i) ninety percent (90%) of the estimated cost of the proposed housing if owned or to be owned by a profit-making sponsor or (ii) one hundred percent (100%) of the estimated cost of such proposed housing if owned or to be owned by a nonprofit housing sponsor or, if owned by a person or family of lower income, in the case of a single family dwelling or condominium;
- (3) Have a maturity satisfactory to the Agency but in no case longer than eighty percent (80%) of the Corporation's [Agency's] estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier;
- (4) Contain amortization provisions satisfactory to the Agency requiring periodic payments by the mortgagor not in excess of his ability to pay as determined by the Agency;
- (5) Be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as the Agency may prescribe.

(c) All applications for mortgage insurance shall be forwarded, together with an application fee prescribed by the Agency, to the executive director of the Agency. The Agency shall cause an investigation of the proposed housing to be made, review the application and the report of the investigation, and approve or deny the application. No application shall be approved unless the Agency finds that it is consistent with the purposes of this Chapter and further finds that the financing plan for the proposed housing is sound. The Agency shall notify the applicant and the proposed lender of its decision. Any such approval shall be conditioned upon payment to the Agency, within such reasonable time and after notification of approval as may be specified by the Agency, of the commitment fee prescribed by the Agency.

(d) The Agency shall fix mortgage insurance premiums for the insurance of mortgage payments under the provision of this Chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one half of one percent (1/2 of 1%) per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by the Agency.

(e) In the event of default by the mortgagor, the mortgagee shall notify the Agency both of the default and the mortgagee's proposed course of action. When it appears feasible, the Agency may for a temporary period upon default or threatened default by the mortgagor authorize mortgage payments to be made by the Agency to the mortgagee which payments shall be repaid under such conditions as the Agency may prescribe. The Agency may also agree to revised terms

of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon:

- (1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the Agency by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to the Agency without recourse except such claims as may have been released with the consent of the Agency; or
- (2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the Agency with an assignment, without recourse, to the Agency of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or
- (3) The acceptance by the Agency of title to the property or an assignment of the mortgage, without recourse to the Agency, in the event the Agency determines it imprudent to proceed under (1) or (2) above.

Upon the occurrence of either (1), (2) or (3) hereof, the obligation of the mortgagee to pay premium charges for insurance shall cease, and the Agency shall, within 30 days thereafter, pay to the mortgagee ninety-eight percent (98%) of the sum of (i) the then unpaid principal balance of the insured indebtedness, (ii) the unpaid interest to the date of conveyance or assignment to the Agency, as the case may be, (iii) the amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments and mortgage insurance premiums, and (iv) such other necessary fees, costs or expenses of the mortgagee as may be approved by the Agency.

(f) Upon request of the mortgagee, the Agency may at any time, under such terms and conditions as it may prescribe, consent to the release of the mortgagor from his liability or consent to the release of parts of the property from the lien of the mortgage, or approve a substitute mortgagor or sale of the property or part thereof.

(g) No claim for the benefit of the insurance provided in this Chapter shall be accepted by the Agency except within one year after any sale or acquisition of title of the mortgaged premises described in subdivisions (1) or (2) of subsection (e) of this section.

(h) There shall be paid into the housing mortgage insurance fund (i) all premiums received by the Agency for the granting of such mortgage insurance, (ii) any moneys or other assets received by the Agency as a result of default or delinquency on mortgage loans insured by the Agency, including any proceeds from the sale or lease of real property, (iii) any moneys appropriated and made available by the State for the purpose of such fund. (1973, c. 1296, s. 45.)

### **§ 122A-5.3. Energy conservation loan authority.**

(a) The Agency may guarantee the payment or collection of energy conservation loans pursuant to and in accordance with the provisions of this Chapter when the Agency has given its approval prior to the initial making of the loan; provided that any such guarantee shall be made only upon determination by the Agency that energy conservation loans were at the time of approval not otherwise available from private lenders upon reasonably equivalent terms and conditions; and

provided further, no single guarantee of payment or collection shall exceed the sum of twelve hundred dollars (\$1200) and no person or family of lower income shall be entitled to more than one loan guarantee.

(b) At no time may the Agency have outstanding loan guarantees in which the liability of the Agency exceeds 15 times any amounts remaining unspent from the specific funds appropriated by the General Assembly for the energy conservation loan guarantee program plus any specific grants or donations for this purpose; but the Agency is authorized to expend any unspent amounts from these sources to satisfy its liabilities under the loan guarantee program; provided no other assets of the Agency shall be obligated or expended in satisfaction of its energy conservation loan guarantee liability.

(c) The Agency shall from time to time adopt, modify, or repeal rules and regulations governing the guaranteeing of energy conservation loans including rules and regulations as to any or all of the following:

- (1) Procedures for the submission and approval of requests to guarantee energy conservation loans including advance commitments by the Agency to guarantee loans;
- (2) Limitations and restrictions on the number of family units, location or other qualifications or characteristics of residences in regard to which energy conservation work is performed to qualify for a loan guarantee;
- (3) Restrictions as to interest rates on energy conservation loans or the return which may be realized by mortgage lenders on energy conservation loans guaranteed by the Agency;
- (4) Schedules of any fees and charges necessary to provide for the administrative expenses of the Agency allocable to the administration of the energy conservation loan guarantee program;
- (5) Procedures regarding the servicing of energy conservation loan guarantees including procedures for honoring defaults and procedures to be implemented to enforce the obligations of the borrowers to repay guaranteed energy conservation loans;
- (6) Any other matters related to the duties and the exercise of the power of the Agency with respect to the energy conservation loan guarantee program deemed necessary to effectuate the purposes of this act. (1977, c. 1083, s. 3.)

#### **§ 122A-5.4. Housing for persons and families of moderate income.**

(a) The General Assembly hereby finds and determines that there is a serious shortage of decent, safe and sanitary housing which persons and families of moderate income in the State can afford; that it is in the best interests of the State to encourage home ownership by persons and families of moderate income; that the assistance provided by this section will enable persons and families of moderate income to acquire existing decent, safe and sanitary housing without undue financial hardship and will encourage private enterprise to sponsor, build and rehabilitate additional housing for such persons and families; and that the Agency in providing such assistance is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) The terms "persons and families of lower income" and "persons of lower income" wherever they appear in this Chapter, except where they appear in G.S. 122A-2 and G.S. 122A-3,

shall be deemed to include "persons and families of moderate income" as defined in clause (c) of this section.

(c) "Persons and families of moderate income" means persons and families deemed by the Agency to require the assistance made available by this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis. (1979, c. 810; 2008-107, s. 21.1(b).)

#### **§ 122A-5.5. Rehabilitation Loan Authority.**

(a) In order to effectuate the authority of the Agency to participate in commitments to purchase and to purchase mortgage loans for the rehabilitation of existing residential housing the Agency is hereby empowered to adopt, modify or repeal rules and regulations governing the making or participation in the making of mortgage loans and the purchase or participation in commitments for the purchase of mortgage loans for the rehabilitation of existing residential housing.

(b) The rules and regulations of the Agency adopted pursuant to this section shall provide at a minimum that:

- (1) Rehabilitation mortgage loans shall be for the purpose of owner-financed improvements to or renovation of residential housing;
- (2) Requirements for eligibility for rehabilitation mortgage loans shall be consistent with all applicable federal laws and regulations governing bonds for rehabilitation mortgage loans in order to insure that such bonds are exempt from taxation. (1981, c. 344, s. 2.)

#### **§ 122A-5.6. Terms and conditions of loans to and by mortgage lenders.**

(a) The Agency shall from time to time adopt, modify, amend or repeal rules and regulations governing the making of loans to mortgage lenders and the application of the proceeds thereof. These rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction and rehabilitation of decent, safe and sanitary residential housing available to persons and families of lower income and persons and families of moderate income at prices or rentals that they can afford; (ii) the encouragement of private enterprise and investment to sponsor, build and rehabilitate residential housing for persons and families of lower income and persons and families of moderate income; and (iii) the restriction of the financial return and benefit to the mortgage lenders from such loans to an amount that is necessary to induce their participation and that is not excessive as determined by prevailing market conditions.

(b) Notwithstanding any other provision of this section, the interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the Agency shall provide that the amounts received by the Agency in repayment of the loans and interest thereon shall be at least sufficient to assure the payment of the principal of and the interest on the bonds as they become due.

(c) The Agency shall enter into a written agreement with each mortgage lender that shall require as a condition of each loan to such mortgage lender that the mortgage lender shall originate new mortgage loans within a reasonable period of time as determined by the Agency's rules and

regulations and that such new mortgage loans shall have such stated maturities as determined by the Agency's rules and regulations.

(d) The loans to mortgage lenders shall be general obligations of the respective mortgage lenders owing them. The Agency shall require that such loans shall be additionally secured as to payment of both principal and interest by a pledge and lien upon collateral security. The collateral security itself shall be in such amount as the Agency determines will assure the payment of the principal of and the interest on the bonds as they become due. Collateral security shall be deemed to be sufficient if the principal of and the interest on the collateral security, when due, will be sufficient to pay the principal of and the interest on the bonds. The collateral security shall consist of any of the following items: (i) direct obligations of, or obligations guaranteed by, the State or the United States of America; (ii) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the Agency, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, Fannie Mae or the Government National Mortgage Association; (iii) direct obligations of or obligations guaranteed by the State; (iv) mortgages insured or guaranteed by the United States of America or an instrumentality of it as to payment of principal and interest; (v) any other mortgages secured by real estate on which there is located a residential structure, the collateral value of which shall be determined by the regulations issued from time to time by the Agency; (vi) obligations of Federal Home Loan Banks; (vii) certificates of deposit of banks or trust companies, including the trustee, organized under the laws of the United States or any state, which have a combined capital and surplus of at least fifteen million dollars (\$15,000,000); (viii) Bankers Acceptances; and (ix) commercial paper that has been classified for rating purposes by Dun & Bradstreet, Inc., as Prime-1 or by Standard & Poor's Corp. as A-1.

(e) The Agency may require as a condition of any loan to a mortgage lender such representations and warranties that it determines to be necessary to secure such loans and to carry out the purposes of this section. (1983, c. 148, s. 3; 2001-487, s. 14(i).)

#### **§ 122A-5.7. Homeownership Assistance Fund authorized; authority.**

The North Carolina Housing Finance Agency is authorized to establish a Homeownership Assistance Fund (hereinafter referred to as "the Fund") to assist families of low and moderate income in the purchase of affordable residential housing. To achieve this purpose, the Agency may use the Fund to provide additional security for eligible loans, to subsidize down payments, principal payments and interest payments, and to provide any type of mortgage assistance the Agency deems necessary. The Fund shall operate as a revolving fund. The Agency shall adopt rules for the operation and use of the Fund. These funds shall be used for people who otherwise would be unable to receive subsidized loans from the Housing Finance Agency. (1983, c. 923, s. 203.)

#### **§ 122A-5.8. Distressed multi-family residential rental housing provisions.**

(a) The General Assembly hereby finds and determines that a serious shortage of decent, safe and sanitary multi-family residential rental housing which persons and families of low and moderate income in the State can afford continues to exist; that it is in the best interests of the State to continue to promote and maintain the viability of such housing and to encourage private enterprise to sponsor, build and rehabilitate additional multi-family residential rental housing for such low and moderate income persons and families; that certain multi-family residential rental housing projects financed by the Agency are currently experiencing financial difficulties due to low occupancy levels; that measures to facilitate higher occupancy levels by extending occupancy

on a temporary basis to those with incomes in excess of required low and moderate levels will help to maintain certain multi-family residential rental housing for persons and families of low and moderate income to prevent foreclosure and the use of such facilities without regard to income limitations; and that the Agency in providing such temporary assistance is promoting the health, welfare and property of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) "Distressed rental housing project" means any multi-family residential rental housing project heretofore or hereafter financed by the Agency that, as determined by resolution of the Board of Directors of the Agency, has an occupancy level below that required for sustaining operation and as a result thereof needs to increase its occupancy levels in order to avoid foreclosure and the subsequent use of such facilities without regard to the Agency's income limitations. In determining the foregoing, the Board of Directors of the Agency shall take into consideration (1) occupancy rates of the project, (2) market conditions affecting the project, (3) costs of operation of the project, (4) debt service for the project, (5) management of the project and such other factors as the Board of Directors may deem relevant.

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the project's occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default.

(d) The Board of Directors may also determine, by resolution, to permit additional rental units at any such distressed rental housing project, to be rented to persons or families without regard to income, subject to the restriction contained in subsection (c) of this section, provided that: (1) the units therein that have been available for rental without regard to income have been available for a period of time not less than three months, (2) the Agency has determined that permitting additional units, in excess of ten percent (10%), to be rented without regard to income is necessary in order for such distressed rental housing project to avoid foreclosure, and (3) the total number of housing units at any distressed rental housing project rented without regard to income shall not exceed fifteen percent (15%) of the total number of units therein.

(e) Once a distressed rental housing project attains sustaining occupancy at a level satisfactory to the Agency, the Agency will thereafter require the owners of such distressed rental housing project to rent only to persons and families of low and moderate income and will require that any units that were leased without regard to income limitations pursuant to the provisions of this section will next be leased, when such units become vacant, only to persons and families whose incomes fall within the then current Agency income limitations. (1987, c. 305, s. 1; 1989, c. 454, ss. 1-3; 1989, c. 454, s. 3.)

#### **§ 122A-5.9. Formation of subsidiary corporations to own and operate housing projects.**

(a) The Agency may acquire, by purchase or otherwise, construct, acquire, develop, own, repair, maintain, improve, rehabilitate, renovate, furnish, equip, operate, and manage residential rental housing projects to rent to persons and families of lower and moderate income.

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

(c) No statutory provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the Agency or to any nonprofit corporation formed pursuant to this section. (1987, c. 305, s. 2.)

**§§ 122A-5.10 through 122A-5.12:** Repealed by Session Laws 2014-115, s. 55(a), effective January 1, 2015.

**§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.**

(a) The North Carolina Housing Finance Agency shall establish an Adult Care Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter "Fire Protection Fund") to assist owners of adult care homes, group homes for developmentally disabled adults, and nursing homes with the purchase and installation of fire protection systems and emergency generators in existing and new adult care homes, group homes for developmentally disabled adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

(b) The Agency, in consultation with the Department of Health and Human Services, shall adopt rules for the management and use of the Fire Protection Fund. These rules at a minimum shall provide for the following:

- (1) Financial incentives for owners of facilities who utilize Fire Protection Fund monies to install sprinkler systems instead of smoke detection equipment.
- (2) Maximum loan amounts of one dollar and seventy-five cents (\$1.75) per square foot for advanced smoke detectors and digital communication equipment, three dollars and seventy-five cents (\$3.75) per square foot for residential sprinkler systems, and six dollars (\$6.00) per square foot for institutional sprinkler systems.
- (3) Interest rates from three percent (3%) to six percent (6%) for a period not to exceed 20 years for sprinkler systems and 10 years for smoke detection systems.
- (4) Documentary verification that owners of facilities obtain fire protection systems and emergency generators at a reasonable cost.
- (5) Acceleration of a loan when statutory fire protection requirements are not met by the facility for which the loan was made.
- (6) Loan approval priority criteria that considers the frailty level of residents at a facility.
- (7) Loan origination and servicing fees.

(c) Proceeds from the Fire Protection Fund, not to exceed ten thousand dollars (\$10,000) annually, may be used to provide staff support to the North Carolina Housing Finance Agency for loan processing under this section and to the Department of Health and Human Services for review and approval of fire protection plans and inspection of fire protection systems. (1996, 2nd Ex. Sess., c. 18, s. 24.26B(a); 1997-443, s. 11A.118(a); 1999-237, s. 11.17; 2000-67, s. 11.10.)

**§ 122A-5.14. Home Protection Program and Fund.**

(a) The North Carolina Housing Finance Agency shall establish and administer the Home Protection Program ("Program") to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

- (1) Develop and administer the Home Protection Program Fund ("Fund") to ensure that workers in North Carolina have assistance to avoid losing their homes to foreclosure.
- (2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.
- (3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.
- (4) Designate, approve, and fund nonprofit counseling agencies in North Carolina to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.
- (5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

(b) Home Protection Period. – Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following for a period of 120 days following the date of the mortgagor's properly filed application:

- (1) Accelerate the maturity of any mortgage obligation covered under this section.
- (2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.
- (3) Take possession of any security of the mortgagor for the mortgage obligation.
- (4) Procure or receive a deed in lieu of foreclosure.
- (5) Enter judgment by confession pursuant to a note accompanying a mortgage.
- (6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within 10 business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

(c) Rule Making. – Solely with respect to the adoption of procedures for the program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

- (1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.
- (2) Accept oral and written comments on the proposed procedures.
- (3) Hold at least one public hearing on the proposed procedures.

(d) Annual Report. – By April 1 of each year, the Agency shall report to the House Appropriations Subcommittee on General Government and Senate Appropriations Subcommittee on General Government and Information Technology on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests. (2008-107, s. 21.1(c).)

#### **§ 122A-5.15. Workforce Housing Loan Program.**

(a) The North Carolina Housing Finance Agency shall establish and administer the Workforce Housing Loan Program for the purpose of making revolving loans for qualified low-income housing development in the State. Funds appropriated to the North Carolina Housing Trust Fund for the Workforce Housing Loan Program shall be used by the Agency only as provided in this section.

(b) The following definitions apply in this section:

(1) Code. – As defined in G.S. 105-228.90.

(2) Qualified North Carolina low-income housing development. – A qualified low-income project or building that is allocated a federal tax credit under section 42(h)(1) of the Code.

(3) Qualified residential unit. – A housing unit that meets the requirements of section 42 of the Code.

(c) A taxpayer allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is eligible for a loan under the Workforce Housing Loan Program if the taxpayer satisfies the loan criteria established by the Agency. The loan criteria shall support the financing of similar types of developments as provided in G.S. 105-129.42 and shall be developed in partnership with developers of low-income housing in the State who receive a federal low-income housing tax credit under section 42 of the Code. The Agency shall take into consideration all eligible sources of funding for each development project, including whether there are other eligible sources of funding available for the development project. No loan made to a taxpayer under this section shall exceed two million dollars (\$2,000,000) if the low-income housing development is located in a low-income county, as designated by the Agency; one million five hundred dollars (\$1,500,000) in a moderate-income county, as designated by the Agency; and two hundred fifty thousand dollars (\$250,000) in a high-income county, as designated by the Agency.

(d) By February 1 of each year, the Agency shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the number of loans made under this section, the amount of each loan, and whether the low-income housing development is located in a low-, moderate-, or high-income county, as designated by the Agency. (2017-57, s. 28.1; 2021-180, s. 29.4(a).)

#### **§ 122A-6. Credit of State not pledged.**

Obligations issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues or assets of the Agency. Each obligation issued under this Chapter shall contain on the face thereof a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor

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

Expenses incurred by the Agency in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to this Chapter and no liability shall be incurred by the Agency hereunder beyond the extent to which moneys shall have been so provided. Provided the provisions of this section do not apply to the liability of the Agency with respect to energy conservation loan guarantees. (1969, c. 1235, s. 6; 1973, c. 1296, s. 46; 1977, c. 1083, s. 4.)

#### **§ 122A-6.1. Credit of State not pledged to satisfy liabilities under energy conservation loan guarantees.**

Energy conservation loan guarantees issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability, obligation of the State or of any political subdivision thereof, or a pledge of the faith and credit of the State or of any political subdivision thereof, but shall be payable solely from any unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any donations and grants for this specific purpose. Each guarantee issued by the Agency shall contain on its face a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any specific donations and grants for this purpose, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such guarantees.

Provided any recoveries from the borrower or others which ultimately reduce the amounts paid out by the Agency in satisfaction of its liabilities under the energy conservation loan guarantee program shall be deemed unspent appropriations, donations or grants. (1977, c. 1083, s. 5.)

#### **§ 122A-7. Repealed by Session Laws 1973, c. 1296, s. 47.**

#### **§ 122A-8. Bonds and notes.**

The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of bonds and notes of the Agency to carry out and effectuate its corporate purposes. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing. The total amount of bonds, bond anticipation notes, and construction loan notes outstanding at any one time shall not exceed three billion dollars (\$3,000,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided 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 assets of the Agency. 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 under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 43 years from their date or dates,

as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter, as long as the sale is approved by the Agency.

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 such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

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

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8; 1973, c. 1296, s. 48; 1979, c. 844; 1979, 2nd Sess., c. 1238, s. 2; 1981, c. 343; 1983 (Reg. Sess., 1984), c. 1062, s. 2; 1985, c. 769, s. 2; 1997-13, s. 1; 2001-185, s. 1.)

§ 122A-8.1: Repealed by Session Laws 2008-194, s. 1(b), effective August 8, 2008.

#### **§ 122A-9. Trust agreement or resolution.**

In the discretion of the Agency any obligations issued under the provisions of this Chapter 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 providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the Agency, including, without limitation, mortgage loans, mortgage loan commitments, contracts, agreements and other security or investment obligations, the fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon and any other moneys received or to be received by the

Agency. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations 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 obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the Agency, the terms and conditions for the issuance of additional obligations, and the custody, safeguarding and application of all moneys. 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 obligations, 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 forth the rights and remedies of the holders of any obligations and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the Agency. (1969, c. 1235, s. 9; 1973, c. 1296, s. 49.)

#### **§ 122A-10. Validity of any pledge.**

The pledge of any assets or revenues of the Agency to the payment of the principal of or the interest on any obligations of the Agency shall be valid and binding from the time when the pledge is made and any such assets or revenues 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. Nothing herein shall be construed to prohibit the Agency from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations. (1969, c. 1235, s. 10; 1973, c. 1296, s. 50.)

#### **§ 122A-11. Trust funds.**

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide.

Any moneys received pursuant to the authority of this Chapter and any other moneys available to the Agency for investment may be invested:

- (1) As provided in G.S. 159-30, except that for purposes of G.S. 159-30(b) the Agency may deposit moneys at interest in banks or trust companies outside as well as in this State, as long as any moneys at deposit outside this State are collateralized to the same extent and manner as if at deposit in this State;
- (2) In evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are

- guaranteed by the United States government, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state in the capacity of custodian;
- (3) In obligations which are collateralized by mortgage pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae;
  - (4) In a trust certificate or similar instrument evidencing an equity investment in a trust or other similar arrangement which is formed for the purpose of issuing obligations which are collateralized by mortgage pass-through or participation certificates guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or Fannie Mae; and
  - (5) In repurchase agreements with respect to (i) direct obligations of the United States government, (ii) obligations the principal of and the interest on which are guaranteed by the United States government, or (iii) obligations described in G.S. 159-30(c)(2), (3), (6), or (7), if all of the following conditions are met:
    - a. The repurchase agreement is entered into with an institution whose ability to pay its unsecured long-term obligations (including, if the institution is an insurance company, its claims paying ability) is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the term of the repurchase agreement is for a period of one year or less, however, the repurchase agreement may be entered into with an institution that does not have such a long-term rating if its ability to pay its unsecured short-term obligations is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the institution with which the agreement is to be entered does not meet the ratings requirement of this subparagraph, the repurchase agreement may nevertheless be entered into with the institution if the obligations of the institution under the repurchase agreement are fully guaranteed by another institution that does meet the ratings requirement of this subparagraph.
    - b. The repurchase agreement provides that it shall be terminated, without penalty, if the institution with which the repurchase agreement is entered or by whom the institution's obligations are guaranteed fails to maintain (i) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's long-term obligations, a rating of its long-term obligations in one of the three highest ratings categories by at least one nationally recognized securities rating agency, or (ii) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's short-term obligations, a rating of its short-term obligations in one of the two highest ratings categories by at least one nationally recognized securities rating agency. The repurchase agreement does not have to be terminated, however, if a new guarantor meeting the rating requirement set forth in subparagraph a. as the requirement necessary for the Agency to enter the repurchase agreement agrees to fully guarantee the obligations of the institution under the repurchase agreement.

- c. The obligations that are subject to the repurchase agreement are delivered (in physical or in book entry form) to the Agency, or any financial institution serving either as trustee for obligations issued by the Agency or as fiscal agent for the Agency or the State Treasurer or are supported by a safekeeping receipt issued by a depository satisfactory to the Agency. The repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the Agency holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement.
- d. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the Agency or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the agency have been established for the benefit of the Agency or its assignee.
- e. The securities are free and clear of any adverse third-party claims.
- f. The repurchase agreement is in a form satisfactory to the Agency. (1969, c. 1235, s. 11; 1973, c. 1296, s. 51; 1985, c. 479, s. 149(b); 1985 (Reg. Sess., 1986), c. 1014, s. 185; 1997-13, s. 2; 2001-181, s. 1.)

**§ 122A-12. Remedies.**

Any holder of obligations issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such obligations, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by the Agency or by any officer thereof. (1969, c. 1235, s. 12; 1973, c. 1296, s. 52.)

**§ 122A-13. Negotiable instruments.**

Notwithstanding any of the foregoing provisions of this Chapter or any recitals in any obligations issued under the provisions of this Chapter, all such obligations and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State, subject only to any applicable provisions for registration. (1969, c. 1235, s. 13.)

**§ 122A-14. Obligations eligible for investment.**

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

may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1969, c. 1235, s. 14.)

**§ 122A-15. Refunding obligations.**

The Agency is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Agency, for any corporate purpose of the Agency. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Agency in respect of the same shall be governed by the provisions of this Chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1965, c. 1235, s. 15; 1973, c. 1296, s. 55.)

**§ 122A-16. Oversight by committees of General Assembly; annual reports.**

The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the Office of State Budget and Management, State Auditor, the aforementioned committees of the General Assembly and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4; 1981, c. 895, s. 4; 1981 (Reg. Sess., 1982), c. 1191, s. 34; 1983 (Reg. Sess., 1984), c. 1034, s. 134; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 67.)

**§ 122A-17. Officers not liable.**

No member or other officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (1969, c. 1235, s. 17; 1973, c. 1296, s. 57.)

**§ 122A-18. Authorization to accept appropriated moneys.**

The Agency is authorized to accept such moneys as may be appropriated from time to time by the General Assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the Agency. (1969, c. 1235, s. 18; 1973, c. 1296, s. 58.)

**§ 122A-19. Tax exemption.**

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Agency shall not be required to pay any tax or assessment on any property owned by the Agency under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Agency under the provisions of this Chapter shall 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 obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1969, c. 1235, s. 19; 1973, c. 1296, s. 59; 1995, c. 46, s. 10.)

**§ 122A-20. Conflict of interest.**

If any member, officer or employee of the Agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the Agency, including any loan to any sponsor, builder or developer, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency, and the member, officer or employee having such interest therein shall not participate on behalf of the Agency in the authorization of any such contract. (1969, c. 1235, s. 20; 1973, c. 1296, s. 60.)

**§ 122A-21. Additional method.**

The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1969, c. 1235, s. 21.)

**§ 122A-22. Chapter liberally construed.**

This Chapter, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1969, c. 1235, s. 22.)

**§ 122A-23. Inconsistent laws inapplicable.**

Insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Chapter shall be controlling. (1969, c. 1235, s. 24.)