

Chapter 131A.

Health Care Facilities Finance Act.

§131A-1. Short title.

This Chapter shall be known, and may be cited, as the "Health Care Facilities Finance Act." (1975, c. 766, s. 1.)

§ 131A-2. Legislative findings.

It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

- (1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and
- (2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and
- (3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Chapter is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1; 1993, c. 553, s. 42.)

§ 131A-3. Definitions.

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

- (1) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the Commission under this Chapter;
- (2) "Commission" means the North Carolina Medical Care Commission, created by Part 10 of Article 3 of Chapter 143B of the General Statutes, or, should said Commission be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the Commission;
- (3) "Cost" as applied to any health care facilities means the cost of construction or acquisition; the cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved; the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved or relocated; the cost of all machinery, fixed and

movable equipment and furnishings; financing charges, interest prior to and during construction and, if deemed advisable by the Commission, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications; the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or acquiring such health care facilities; the cost of administrative and other expenses necessary or incident to the construction or acquisition of such health care facilities, and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service; the cost of reimbursing any public or nonprofit agency for any payments made for any cost described above or the refinancing of any cost described above, provided that no payment shall be reimbursed or any cost be refinanced if such payment was made or such cost was incurred earlier than two years prior to the effective date of this Chapter; provided further, that it is the intent that any costs described above shall be payable solely from the revenues of the health care facilities;

- (4) "Health care facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation: general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; nursing homes, including skilled nursing facilities and intermediate care facilities; facilities for continuing care of the elderly and infirm; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer; and other electronic facilities, fire-fighting facilities, pharmaceutical facilities and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for health care facilities staff members and physicians; and such other health care facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;
- (5) "Non-profit agency" means any nonprofit corporation existing or hereafter created and empowered to acquire, by lease or otherwise, operate or maintain health care facilities;
- (6) "Public agency" means any county, city, town, hospital district or other political subdivision of the State existing or hereafter created pursuant to the laws of the State authorized to acquire, by lease or otherwise, operate or maintain health care facilities;
- (7) "State" means the State of North Carolina;

- (8) "Federally guaranteed security" means any security, investment or evidence of indebtedness issued pursuant to any provision of federal law for the purpose of financing or refinancing the cost of any health care facilities which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal or interest by the United States of America or any instrumentality thereof;
- (9) "Federally insured mortgage note" means any loan secured by a mortgage or deed of trust on any health care facilities owned or leased by any public or nonprofit agency which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage or a deed of trust.
- (10) "Continuing care" means the furnishing, pursuant to a continuing care agreement, of shelter, food, and nursing care to an individual not related by consanguinity or affinity to the provider furnishing such care. Other personal services provided shall be designated in the continuing care agreement. Continuing care shall include only life care, care for life, or care for a term of years;
- (11) "Life care" or "care for life" means a life lease, life membership, life estate, or similar agreement between an individual and a provider by which the individual pays a fee for the right to occupy a space in the continuing care facility and to receive continuing care for life; and
- (12) "Care for a term of years" means an agreement between an individual and a provider whereby the individual pays a fee for the right to occupy space in a continuing care facility, and to receive continuing care, for at least one year, but for less than the life of the member. (1975, c. 766, s. 1; 1979, c. 54, s. 1; 1981, c. 64; c. 867, ss. 1, 2; 2005-238, s. 13.)

§ 131A-4. Additional powers.

The Commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with and mortgages and conveyances to public and nonprofit agencies, persons, firms, corporations, governmental agencies and others;
- (2) To acquire by purchase, the exercise of the power of eminent domain but only in connection with a financing for a public agency, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any health care facilities, upon such terms and at such cost as shall be agreed upon by the owner and the Commission;

- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any health care facilities;
- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed security and moneys received therefrom whether such securities are initially acquired by the Commission or a public or nonprofit agency, and any proceeds derived by the Commission from sales of property, insurance, condemnation awards or other sources;
- (6) To pledge or assign the revenues and receipts from any health care facilities and any agreement of sale or lease or the purchase price payments, rent and income received thereunder;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any health care facilities, to lend money to any public or nonprofit agency to pay all or any part of the cost of health care facilities, to acquire any federally guaranteed security or any federally insured mortgage note, to lend money to any public or nonprofit agency for the acquisition of any federally guaranteed security and to issue revenue refunding bonds;
- (8) To finance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any health care facilities and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the Commission for such purpose;
- (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, professional contracts and charges for the use of, or services rendered by, any health care facilities;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, health care consultants, appraisers and such other consultants and employees as may be required in the judgment of the Commission and to fix and pay their compensation from funds available to the Commission therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;
- (11) To conduct studies and surveys respecting the need for health care facilities and their location, financing and construction;
- (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to health care facilities from federal and State

agencies or instrumentalities and to accept, receive and agree to and comply with the terms and conditions governing payments under any health insurance programs;

- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the Commission deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any public or nonprofit agency to finance or refinance the cost of any health care facilities.

Any power granted to the Commission under the provisions of this Chapter may be exercised by the executive committee of the Commission when the Commission is not in session, except that the executive committee may not overrule, reverse or disregard any action of the full Commission. The chairman of the Commission may call meetings of the executive committee at any time. (1975, c. 766, s. 1; 1977, c. 267; 1979, c. 54, ss. 2-6; 1985, c. 723, s. 4.)

§ 131A-5. Criteria and requirements.

In undertaking any health care facilities pursuant to this Chapter, the Commission shall be guided by and shall observe the following criteria and requirements; provided that the determination of the Commission as to its compliance with such criteria and requirements shall be final and conclusive:

- (1) There is a need for the health care facilities in the area in which the health care facilities are to be located;
- (2) No health care facilities shall be sold or leased nor any loan made to any public or nonprofit agency which is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to operate, repair and maintain at its own expense the health care facilities and to discharge such other responsibilities as may be imposed under the agreement of sale or lease or loan agreement;
- (3) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the health care facilities at the expense of the public or nonprofit agency; and
- (4) The public facilities, including utilities, and public services necessary for the health care facilities will be made available. (1975, c. 766, s. 1; 1979, c. 54, s. 7.)

§ 131A-6. Additional powers of public agencies.

For the purposes of this Chapter, public agencies are authorized and empowered to enter into contracts and agreements, including loan agreements and agreements of sale or lease, with the Commission to facilitate the financing or refinancing, acquiring, constructing, equipping, providing, operating and maintaining of health care facilities and pursuant to any such loan agreement or agreement of sale or lease to operate, repair and maintain any health care facilities

and, subject to the provisions of G.S. 131A-8, to pay the cost thereof and the loan repayments, purchase price payments or rent therefor from any funds available for such purposes. In addition, public agencies may mortgage, pledge, assign, grant a security interest in, or otherwise encumber a health care facility, whether owned or leased, to secure obligations under a loan agreement or similar debt instrument in connection with the issuance of bonds or notes by the Commission under this Chapter. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this section may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, a health care facility and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14. (1975, c. 766, s. 1; 1979, c. 54, s. 8; 2005-238, s. 14.)

§ 131A-7. Procedural requirements.

In addition to health care facilities initiated by the Commission, any public or nonprofit agency may submit to the Commission, and the Commission may consider, a proposal for financing health care facilities using such forms and following such instructions as may be prescribed by the Commission. Such proposal shall set forth the type and location of the health care facilities and may include other information and data available to the public or nonprofit agency respecting the health care facilities and the extent to which such health care facilities conform to the criteria and requirements set forth in this Chapter. The Commission may request the public or nonprofit agency to provide additional information and data respecting the health care facilities. The Commission is authorized to make or cause to be made such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the health care facilities, the extent to which the health care facilities will contribute to the health and welfare of the area in which they will be located, the powers, experience, background, financial condition, record of service and capability of the management of the public or nonprofit agency, the extent to which the health care facilities otherwise conform to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter. (1975, c. 766, s. 1.)

§ 131A-8. Operation of health care facilities; loan agreements; agreements of sale or lease; conveyance of interest in health care facilities.

All health care facilities shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin.

The Commission may sell or lease any health care facilities to a public or nonprofit agency for operation and maintenance or lend money to any public or nonprofit agency in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

- (1) The public or nonprofit agency shall, at its own expense, operate, repair and maintain the health care facilities covered by such agreement;
- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all

- of the interest, principal and any redemption premium on the bonds or notes issued by the Commission to pay the cost of the health care facilities sold or leased thereunder or to make the loan with respect thereto;
- (3) The public or nonprofit agency shall pay all other costs incurred by the Commission in connection with the providing of the health care facilities covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;
 - (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the Commission in connection with the health care facilities covered by any such agreement shall be retired or provision for such retirement shall be made; and
 - (5) The obligation of the public or nonprofit agency to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the public or nonprofit agency until the bonds have been retired or provision has been made for such retirement.

All obligations payable by a public agency under a loan agreement or an agreement of sale or lease, including the obligation to make loan repayments or purchase price payments or to pay rent and to pay the costs of operating, repairing and maintaining health care facilities, shall be payable solely from the revenues of the health care facilities being purchased or leased or with respect to which a loan is made or other health care facilities of the health care facilities of the public agency or from any federally guaranteed security and moneys received therefrom and shall not be payable from or charged upon any funds of the public agency other than the revenues pledged to such payment; provided, however, that nothing herein shall restrict the power of any county, city, town or other political subdivision of the State or any hospital district created pursuant to Article 13C of Chapter 131 of the General Statutes to submit to its qualified voters a health care facility maintenance tax under Article 13B of said Chapter 131 for the purposes of financing the cost of operation, equipment and maintenance of any health care facility financed for any public agency under this Chapter and all health care facilities authorized to be financed under this Chapter and leased to public agencies are hereby declared to be included within the definition "hospital facility" as used in said Article 13B.

Where the Commission has acquired a possessory or ownership interest in any health care facilities which it has undertaken on behalf of a public or nonprofit agency it shall promptly convey, without the payment of any consideration, all its right, title and interest in such health care facilities to such public or nonprofit agency upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities. (1975, c. 766, s. 1; 1979, c. 54, s. 9.)

§ 131A-9. Construction contracts.

Contracts for the construction of any health care facilities on behalf of a public agency shall be awarded by the Commission in accordance with Article 8 of Chapter 143 of the General Statutes. If the Commission shall determine that the purposes of this Chapter will be more effectively served, the Commission in its discretion may award or cause to be awarded contracts for the construction of any health care facilities on behalf of a nonprofit agency upon a negotiated

basis as determined by the Commission. The Commission shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The Commission may by written contract engage the services of the public or nonprofit agency in the construction of such health care facilities and may provide in such contract that such public or nonprofit agency, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the Commission for the performance of the functions described therein, including the acquisition of the site and other real property for such health care facilities, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such health care facilities directly by such public or nonprofit agency, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the Commission. Any such contract may provide that the Commission may, out of proceeds of bonds or notes, make advances to or reimburse the public or nonprofit agency for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the Commission and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract. (1975, c. 766, s. 1.)

§ 131A-10. Credit of State not pledged.

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

Expenses incurred by the Commission in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to, or made available for use under, this Chapter and no liability shall be incurred by the Commission hereunder beyond the extent to which moneys shall have been so provided. (1975, c. 766, s. 1.)

§ 131A-11. Bonds and notes.

The Commission is hereby authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the Commission to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Commission at such price or prices and upon such terms and conditions as may be determined by the Commission. 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 Commission. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Commission. The Commission 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 Commission 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 Commission may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the Commission under this Chapter unless the issuance thereof is approved by the Local Government Commission of North Carolina.

The Commission shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes which shall contain such information and have attached to it such documents concerning the proposed financing and prospective borrower, vendee or lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements mentioned in G.S. 131A-5, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will effectuate the purposes of this Chapter.

Upon the filing with the Local Government Commission of a resolution of the Commission requesting that its bonds or 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 Local Government Commission shall determine to be for the best interests of the Commission and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the Commission.

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 Commission may provide in the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

Prior to the preparation of definitive bonds, the Commission 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 Commission 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, or any trust agreement securing, such bonds or notes. (1975, c. 766, s. 1; 1979, c. 54, s. 10.)

§ 131A-12. Trust agreement or resolution.

In the discretion of the Commission any bonds or notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the Commission received pursuant to this Chapter, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any health care facilities and may mortgage any health care facilities. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the Commission, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the Commission with respect to the acquisition, construction, maintenance, repair and operation of any health care facilities, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Chapter and of such trust agreement or resolution; except that the Commission may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any health care facilities or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the Commission. (1975, c. 766, s. 1; 1979, c. 54, s. 11.)

§ 131A-13. Revenues; pledges of revenues.

(a) The Commission is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any health care facilities, and any part or section thereof, and to contract with any public or nonprofit agency for the use thereof. The Commission may require that the public or nonprofit agency shall operate, repair or maintain such facilities and shall bear the cost thereof and other costs of the Commission in connection therewith, subject to the provisions of G.S. 131A-8 with respect to a public agency, as may be provided in the agreement of sale or lease or other contract with the Commission, in addition to other obligations imposed under such agreement or contract.

(b) The fees, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with such other funds as may be made available therefor, (i) to pay the costs of operating, repairing and maintaining the health care facilities, to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as the same shall become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, such bonds; and such fees, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the health care facilities.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this Chapter shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Commission 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 Commission, irrespective of whether such parties have notice thereof. The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the Commission.

(d) The State of North Carolina does pledge to and agree with the holders of any bonds or notes issued by the Commission that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the Commission at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any health care facilities in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the costs of operating, repairing and maintaining the health care facilities, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable and to create and maintain any reserves provided therefor and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged. (1975, c. 766, s. 1; 1979, c. 54, s. 12.)

§ 131A-14. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any health care facilities, shall be deemed to be trust funds to

be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes 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 of this Chapter, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1975, c. 766, s. 1; 1979, c. 54, s. 13.)

§ 131A-15. Remedies.

Any holder of bonds or notes 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 bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Commission 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 Commission or by any officer thereof. (1975, c. 766, s. 1.)

§ 131A-16. Negotiable instruments.

All bonds and interest coupons appertaining thereto issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under said Article 8, subject only to the provisions of the bonds pertaining to registration. (1975, c. 766, s. 1.)

§ 131A-17. Bonds or notes eligible for investment.

Bonds or notes 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 bonds or notes 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. (1975, c. 766, s. 1.)

§ 131A-18. Refunding bonds or notes.

The Commission is hereby authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes 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 bonds or notes and, if deemed advisable by the Commission, for any corporate purpose of the Commission, including, without limitation:

- (1) Constructing improvements, additions, extensions or enlargements of the health care facilities in connection with which the bonds or notes to be refunded shall have been issued, and
- (2) Paying all or any part of the cost of any additional health care facilities.

The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Commission in respect of the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds or notes, insofar as such provisions may be appropriate therefor.

Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes 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 refunding bonds or notes, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such refunding bonds or notes 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. (1975, c. 766, s. 1.)

§ 131A-19. Annual report.

The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the Secretary of Health and Human Services, the General Assembly, and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Chapter 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 Commission. (1975, c. 766, s. 1; 1997-443, s. 11A.118(a); 2006-203, s. 71.)

§ 131A-20. Officers not liable.

No member or officer of the Commission shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1975, c. 766, s. 1.)

§ 131A-21. 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 and will promote their health and welfare. If bonds or notes are issued by the Commission to provide or improve a health care facility, then until the bonds or notes are retired, the facility for which bonds or notes are issued is exempt from property taxes to the extent provided in this section. If refunding bonds or notes are issued to refund bonds or notes issued to provide or improve a health care facility, the facility will continue to be exempt from property taxes as provided in this section until such time as the refunding bonds or notes are retired, provided that the final maturity of the refunding bonds or notes does not extend beyond the final maturity of the original bonds or notes.

Property may be exempt from property taxes as provided in this section if a timely application for the exemption is filed with the assessor of the county in which the property is located as required under G.S. 105-282.1. The property tax exemption under this section shall not exceed the lesser of the original principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility. If bonds or notes are issued to finance more than one health care facility, only that portion of the principal amount of the bonds or notes used to provide or improve the particular facility, including any allocable reserves and financing costs, may be considered for the purpose of determining the amount of the exemption allowable under this section. The exemption authorized by this section shall begin with the first full tax year of the taxpayer following the issuance of the bonds and notes. This section does not affect a health care facility's eligibility for a property tax exemption under Subchapter II of Chapter 105 of the General Statutes.

Any bonds or notes issued by the Commission 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, estate, or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1975, c. 766, s. 1; 1995, c. 46, s. 12; 2000-20, s. 1; 2001-139, s. 10.)

§ 131A-22. Conflict of interest.

If any member, officer or employee of the Commission 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 Commission, such interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer or employee having such interest therein shall not participate on behalf of the Commission in the authorization of any such contract. (1975, c. 766, s. 1.)

§ 131A-23. 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. (1975, c. 766, s. 1.)

§ 131A-24. Liberal construction.

This Chapter, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof. (1975, c. 766, s. 1.)

§ 131A-25. 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. (1975, c. 766, s. 1.)

