

Article 3A.  
Refunding Bonds.

**§ 142-29.1. Title of Article.**

This Article may be known and cited as the "State Refunding Bond Act." (1935, c. 445, s. 1; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

**§ 142-29.2. Definitions.**

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (1) "Authorized investments" means
  - a. Direct obligations of the United States government,
  - b. Obligations the principal of and the interest on which are guaranteed by the United States government,
  - c. Evidences of ownership of proportionate interests in future interest and principal payments on specified obligations described in a. and b. above, 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 thereof in the capacity of custodian,
  - d. Obligations of state or local government municipal bond issuers, provision for the payment of the principal of and interest on which shall have been made by deposit with a trustee or escrow agent of obligations described in a., b. or c. above, the maturing principal of and interest on which, when due and payable, shall provide sufficient money with any other money held in trust for such purpose to pay the principal of, premium, if any, and interest on such obligations of state or local government municipal bond issuers, and which are rated in the highest rating by Standard & Poor's Corporation and Moody's Investors Service, Inc.,
  - e. Obligations of state or local government municipal bond issuers, the principal of and interest on which, when due and payable, have been insured by a bond insurance company which is rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, Inc.,
  - f. Full faith and credit obligations of state or local government bond issuers which are rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, Inc., and
  - g. Any obligations or investments in which the State Treasurer is authorized, at the time of such investment, to invest funds of the State.
- (2) "Bond documentation" means any resolution, order, trust agreement, trust indenture or other document authorizing the issuance of and securing any outstanding obligations.
- (3) "Bonds" means any bonds issued under the provisions of this Article.
- (4) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other

investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment for purchase, redemption or acceleration), redemption premium, if any, and interest on any refunding obligations payable on demand or tender by the owner issued in accordance with this Article, in consideration of the State agreeing to repay the provider of such credit facility in accordance with terms and provisions of such agreement, provided, that any such agreement shall provide that the obligation of the State thereunder shall have only such sources of payment as are permitted for the payment of refunding obligations issued under this Article.

- (5) "Notes" means any bond anticipation notes or notes issued under the provisions of this Article.
- (6) "Outstanding obligations" means any outstanding bonds, bond anticipation notes or notes of the State, whether now outstanding or hereafter issued, the payment of the principal of and the interest on which are secured by a pledge of the full faith, credit and taxing power of the State and which may also be secured, as and to the extent provided in applicable bond documentation, by additional security.
- (7) "Par formula" shall mean any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any refunding obligations so that the purchase price of such refunding obligations in the open market would be as close to par as possible.
- (8) "Refunding obligations" means any notes or bonds issued under the provisions of this Article. (1935, c. 445, s. 2; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

### **§ 142-29.3. Purpose.**

The purpose of this Article is to provide statutory procedures or to supplement existing procedures for the issuance of refunding obligations. (1935, c. 445, s. 3; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

### **§ 142-29.4. Powers.**

In addition to the powers it may now or hereafter have, the State shall have the following powers, subject to the provisions of this Article and applicable bond documentation:

- (1) to borrow money and issue one or more series of refunding obligations for the purpose of refunding all or any part of any series or combination of series of outstanding obligations including, without limitation, the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity or maturities of such outstanding obligations;
- (2) to apply the proceeds of refunding obligations
  - a. to the payment and retirement of outstanding obligations by direct application to such payment and retirement,
  - b. to the payment and retirement of outstanding obligations, whether by redemption or in accordance with their terms, by the deposit in trust of such proceeds,
  - c. to the payment of any expenses incurred in connection with such refunding, including the expense of any credit facility employed in connection with such refunding obligations, including, without

limitation, bond insurance policies, letters of credit and lines of credit, and

- d. for such other uses not inconsistent with any such refunding,
- (3) to issue refunding obligations in combination with any other bonds, bond anticipation notes, notes or financial obligations issued by the State;
- (4) to issue refunding obligations bearing interest at rates lower, the same as or higher than and having maturities shorter, the same as or longer than the outstanding obligations being refunded;
- (5) to issue one series of refunding obligations to refund one or more series of outstanding obligations;
- (6) to issue refunding obligations in exchange for outstanding obligations;
- (7) to apply to any purpose consistent with any refunding, including the funding of an escrow fund or account to be used for the payment or redemption of any outstanding obligations, moneys made available as a consequence of such refunding, including, without limitation, any moneys then on deposit in debt service reserve funds, principal accounts, interest accounts and sinking fund accounts in respect of the outstanding obligations being refunded and, subject to the approval of the Council of State, any moneys appropriated by the General Assembly for the payment of principal of or interest on the outstanding obligations being refunded; and
- (8) to invest any moneys, including any moneys held in trust, in authorized investments. (1935, c. 445, s. 4; 1985 (Reg. Sess., 1986), c. 823, s. 1.)

#### **§ 142-29.5. Authorization of refunding obligations.**

By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell, from time to time, refunding obligations for the purpose of refunding outstanding obligations as and to the extent authorized by this Article. The principal amount of any such refunding obligations shall not exceed the principal amount of outstanding obligations to be refunded unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements.

Refunding obligations issued pursuant to the provisions of this Article shall not be subject to limitations imposed by any other law including, without limitation, the other Articles of this Chapter. (1935, c. 445, s. 5; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1993, c. 542, s. 13.)

#### **§ 142-29.6. Sale of refunding obligations and provisions thereof.**

(a) The bonds shall bear such date or dates, shall be serial or term bonds, shall mature in such amounts and at such times, not exceeding 40 years from their date or dates, and shall bear interest at such rate or rates, which may vary from time to time as hereinafter authorized, and which may be represented, in part, by evidences of additional interest, and the bonds may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices and under such terms and conditions, all as may be fixed by the State Treasurer with the consent of the Council of State.

(b) The bonds shall be signed on behalf of the State by the Governor or shall bear his facsimile signature; shall be signed by the State Treasurer or shall bear his facsimile signature; and shall bear the Great Seal of the State or a facsimile thereof impressed or imprinted thereon; and interest coupons, if any, shall bear a facsimile of the signature of the State Treasurer. If the bonds

shall bear the facsimile signatures of the Governor and the State Treasurer, the bonds shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on any bonds or coupons (if any) cease to be such officer before the delivery of the bonds, such signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and any bond or coupon may bear the facsimile signatures of such persons who at the actual time of the execution of such bond or coupon shall be the proper officers to sign any bond or coupon although at the date of such bond or coupon such persons may not have been such officers. The form and denomination of the bonds and any coupons, including the provisions with respect to registration of the bonds, shall be as the State Treasurer may determine in conformity with this Article; provided, however, that nothing in this Article shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds, under the provisions of the Registered Public Obligations Act as well as this Article.

(c) Subject to determination by the Council of State as to the manner in which the bonds shall be offered for sale, whether at public or private sale and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell the bonds, at one time or from time to time, at a price equal to, greater than or less than the face amount of the bonds as the State Treasurer may determine to be in the best interests of the State. All expenses incurred in the preparation, sale and issuance of the refunding obligations shall be paid by the State Treasurer from the proceeds of any such refunding obligations or any other available moneys.

- (d) (1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money at such rate or rates of interest as the State Treasurer may determine to be in the best interests of the State, which may vary from time to time as hereinafter authorized, and to execute and issue bond anticipation notes or notes of the State for the same, but only in the following circumstances and under the following conditions:
- a. For anticipating the sale of any bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds;
  - b. For the payment of interest upon or any installment of principal of any of the bonds then outstanding, if there shall not be sufficient funds in the State Treasury with which to pay the interest or installment of principal as they respectively become due; or
  - c. For the renewal of any loan evidenced by bond anticipation notes or notes herein authorized.
- (2) Funds derived from the sale of bonds may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of such bonds.

Nothing in this Article shall be construed as a limitation on the duration of any deposit in trust for the retirement of outstanding obligations which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption.

(e) Coupons (if any) and any evidences of additional interest appertaining to bonds and notes shall, after the maturity of such coupons or evidences of additional indebtedness, be receivable in payment of all taxes, debts, dues, licenses, fines and demands of any kind whatever due the State.

(f) All refunding obligations shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the refunding obligations is not subject to taxation as income.

(g) Refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on refunding obligations, coupons (if any) and any evidences of additional indebtedness to the same extent as pledged to the outstanding obligations being refunded. To the extent additional security has been pledged to outstanding obligations, such additional security may, at the discretion of the State, be continued and similarly pledged to the appropriate refunding obligations, coupons (if any) and any evidences of additional indebtedness. (1935, c. 445, s. 6; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1995, c. 46, s. 15; 2015-264, s. 16(f).)

#### **§ 142-29.7. Additional refunding obligation provisions.**

In fixing the details of refunding obligations, the State Treasurer may provide that any of the refunding obligations:

- (1) May be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such refunding obligations, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the refunding obligations at a reasonable interest cost to the State;
- (2) May be additionally supported by a credit facility;
- (3) May be made subject to redemption prior to maturity with such variations as may be permitted in connection with a par formula;
- (4) May bear interest at a rate or rates that may vary as permitted pursuant to a par formula and for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such refunding obligations; and

- (5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the refunding obligations to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under an agreement is in excess of the aggregate principal amount of refunding obligations secured by the related credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued refunding obligations during the term of such agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer. (1935, c. 445, s. 7; 1985 (Reg. Sess., 1986), c. 823, s. 1.)