

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 559

Finance Committee Substitute Adopted with Amendments 1 & 2 7/5/89

Short Title: Municipal Pooled Projects.

(Public)

Sponsors:

Referred to:

March 21, 1989

A BILL TO BE ENTITLED

AN ACT CREATING THE NORTH CAROLINA MUNICIPAL POOLED CAPITAL PROJECTS FINANCING AGENCY AND THE NORTH CAROLINA COUNTY POOLED CAPITAL PROJECTS FINANCING AGENCY, SUCH AGENCIES TO PROVIDE FINANCING FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION BY MUNICIPALITIES AND COUNTIES, RESPECTIVELY, OF CAPITAL PROJECTS, INCLUDING THE ACQUISITION OF EQUIPMENT, AND AMENDING CERTAIN GENERAL LAWS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

**“CHAPTER 159H.**

**“NORTH CAROLINA MUNICIPAL AND COUNTY POOLED CAPITAL PROJECTS FINANCING ACT.**

**“§ 159H-1. Short title.**

This Chapter shall be known and may be cited as the ‘North Carolina Municipal and County Pooled Capital Projects Financing Act.’

**“§ 159H-2. Legislative findings.**

The General Assembly of North Carolina hereby finds, determines and declares as follows:

- (1) In order to promote and preserve their economy and the health, safety and prosperity of their residents, cities and counties in North Carolina have a need to acquire, construct and install equipment, capital

- 1 improvements and property to help meet the infrastructure  
2 requirements of their communities.
- 3 (2) The pooling of the financing needs of several cities and a like pooling  
4 for counties, and the issuance of bonds by an instrumentality of the  
5 State to finance the cost of projects will reduce the costs of such  
6 financing and will increase the number of financing options available  
7 by, among other things, providing access to a broader bond market  
8 than would otherwise be available to units of government with  
9 intermittent financing needs, by reducing issuance and marketing  
10 expenses and by providing such units with the opportunity to obtain  
11 credit and liquidity enhancement facilities that might otherwise be  
12 unavailable or more costly, thus reducing interest costs to such units.
- 13 (3) The stringent restrictions of the Internal Revenue Code of 1986, as  
14 amended, have in many instances reduced the flexibility and have  
15 increased the costs of financing such capital projects.
- 16 (4) The Internal Revenue Code of 1986, as amended, places certain  
17 restrictions on the investment of proceeds of bonds issued by states  
18 and their political subdivisions and requires that certain earnings on  
19 the proceeds of bonds of such entities be rebated to the federal  
20 government, in each case in order for interest on such bonds to not be  
21 includable in the gross income of the owners thereof for purposes of  
22 federal income taxation. The Tax Reform Act of 1986 and the  
23 Technical and Miscellaneous Revenue Act of 1988 provide certain  
24 exceptions from the restrictions and requirements of said Code for two  
25 hundred million dollars (\$200,000,000) of bonds issued for a loan  
26 funding program of the North Carolina League of Municipalities and  
27 the North Carolina Municipal Pooled Capital Projects Financing  
28 Agency created by this Chapter intends to issue two hundred million  
29 dollars (\$200,000,000) of bonds under this Chapter which will benefit  
30 from such exceptions and thereby benefit the municipalities to which  
31 loans are made by said Agency. The North Carolina Municipal Pooled  
32 Capital Projects Financing Agency also intends to issue bonds under  
33 this Chapter which will not have any such benefits. Any bonds issued  
34 under this Chapter by the North Carolina County Pooled Capital  
35 Projects Financing Agency created by this Chapter will not have any  
36 such benefits.
- 37 (5) The well-being of residents of cities and counties and the economic  
38 and governmental viability and prosperity of cities and counties in  
39 North Carolina will be served as provided in this Chapter by the  
40 establishment of two instrumentalities of the State to provide financing  
41 through the issuance by such instrumentalities of one or more issues of  
42 bonds to provide funds for the acquisition of capital projects.
- 43 (6) By restricting the loans to be made to cities and counties to short-term  
44 loans with terms not in excess of 10 years from the first loan draw as

1           herein provided, the possibility of achieving the governmental purpose  
2           of recycling loan repayments on such short-term loans to other  
3           borrowers is enhanced.

4    **"§ 159H-3. Definitions.**

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

- 7           (1)   'Acquisition' when used in respect of a project, means acquisition,  
8           construction, improvement or installation, and 'acquire,' 'acquiring'  
9           and other forms of the word 'acquisition' shall have the meanings  
10           correlative thereto.
- 11          (2)   'Administrative charges' means any charge made by the Agency to a  
12           city or a county for providing financing pursuant to this Chapter and  
13           may include, without limitation, charges for financing costs, charges  
14           for the costs of bond and reserve fund insurance, of credit-  
15           enhancement and liquidity facilities and of interest-rate agreements,  
16           charges in respect of nonasset bond and investment income  
17           deficiencies, and charges for administrative expenses of the Agency  
18           incurred in the exercise of its powers and duties conferred by this  
19           Chapter.
- 20          (3)   'Agency' or 'the Agency' means the County Agency or the Municipal  
21           Agency, individually, as well as the County Agency and the Municipal  
22           Agency, collectively, it being the intent of this Chapter that the use of  
23           the term 'Agency' or 'the Agency' shall, unless the context clearly  
24           indicates otherwise, embrace each such Agency, the County Agency  
25           being empowered to make loans to counties and the Municipal Agency  
26           being empowered to make loans to cities, and each such Agency shall  
27           have the powers and shall be subject to the limitations provided by this  
28           Chapter.
- 29          (4)   'Association of County Commissioners' means the North Carolina  
30           Association of County Commissioners, a federation of county  
31           governments in the State.
- 32          (5)   'Board' means the board of directors of the Agency or any other  
33           governing body of the Agency succeeding to the principal functions  
34           thereof.
- 35          (6)   'Bonds' means the revenue bonds authorized to be issued by the  
36           Agency under this Chapter. As used in this Chapter, unless the context  
37           otherwise clearly indicates, the term 'bonds' does not include any loan  
38           obligation.
- 39          (7)   'City' means any city, as defined in G.S. 160A-1(2), as it may be  
40           amended from time to time.
- 41          (8)   'City Council' means any council, as defined in G.S. 160A-1(3), as it  
42           may be amended from time to time.
- 43          (9)   'Cost' means the capital cost of acquiring any project, including,  
44           without limitation, the following:

- 1           a.     The costs of doing any or all of the following deemed necessary  
2           or convenient by a city or county:  
3           1.     Acquiring, constructing, erecting, providing, developing,  
4           installing, furnishing, and equipping;  
5           2.     Reconstructing, remodeling, altering, renovating,  
6           replacing, refurbishing, and reequipping;  
7           3.     Enlarging, expanding, and extending; and  
8           4.     Demolishing, relocating, improving, grading, draining,  
9           landscaping, paving, widening, and resurfacing;  
10          b.     The costs of all property, both real and personal and both  
11          improved and unimproved, and of plants, works, appurtenances,  
12          structures, facilities, furnishings, machinery, equipment,  
13          vehicles, easements, water rights, air rights, franchises, and  
14          licenses used or useful in connection with the purpose  
15          authorized;  
16          c.     The costs of demolishing or moving structures from land  
17          acquired and acquiring any lands to which such structures  
18          thereafter are to be moved;  
19          d.     Financing charges, including estimated interest during the  
20          acquisition of such project and for six months thereafter;  
21          e.     The costs of services to provide and the cost of plans,  
22          specifications, studies and reports, surveys, and estimates of  
23          costs and revenues;  
24          f.     The costs of paying any interim financing, including principal,  
25          interest and premium, related to the acquisition of a project;  
26          g.     Administrative and legal expenses and administrative charges;  
27          h.     The costs of obtaining bond and reserve fund insurance and  
28          investment contracts, of credit-enhancement facilities, liquidity  
29          facilities and interest-rate agreements and of establishing and  
30          maintaining debt service and other reserves; and  
31          i.     Any other services, costs, and expenses necessary or incidental  
32          to the purpose authorized.  
33         (10) 'County' means any county, as defined in G.S. 153A-1(3), as it may be  
34          amended from time to time.  
35         (11) 'County Agency' means the North Carolina County Pooled Capital  
36          Projects Financing Agency created by this Chapter as a public agency  
37          and an instrumentality of the State to make loans to counties or, should  
38          said Agency be abolished or otherwise divested of the functions given  
39          under this Chapter, the public body succeeding it in its principal  
40          functions, or upon which are conferred by law the rights, powers and  
41          duties given to said Agency by this Chapter.  
42         (12) 'County Board of Commissioners' means the governing body of a  
43          county, as defined in G.S. 153A-12 and Article 4 of Chapter 153A of  
44          the General Statutes, as either may be amended from time to time.

- 1           (13) 'Interest-rate agreement' means any interest-rate protection agreement,  
2           interest liability swap agreement, interest ceiling agreement, interest  
3           rate guaranty or any other contract, other than a bond or note, with a  
4           third party that provides for a fixed or variable amount of interest  
5           expense payable by the Agency in respect of its bonds or notes.
- 6           (14) 'League of Municipalities' means the North Carolina League of  
7           Municipalities, a federation of municipal governments in the State.
- 8           (15) 'Loan obligation' means any bond, note, contract, loan agreement or  
9           other written agreement of a city or a county delivered to the Agency  
10           and evidencing the city's or county's receipt of loan proceeds from the  
11           sale of a portion of the Agency's bonds or from other available money  
12           of the Agency and setting forth the terms of the city's or county's  
13           agreement to make payments to the Agency in respect of such loan.
- 14           (16) 'Local Government Commission' means the Local Government  
15           Commission established by G.S. 159-3 and any successor of said  
16           Commission.
- 17           (17) 'Municipal Agency' means the North Carolina Municipal Pooled  
18           Capital Projects Financing Agency created by this Chapter as a public  
19           agency and an instrumentality of the State to make loans to cities or,  
20           should said Agency be abolished or otherwise divested of the functions  
21           given under this Chapter, the public body succeeding it in its principal  
22           functions, or upon which are conferred by law the rights, powers and  
23           duties given to said Agency by this Chapter.
- 24           (18) 'Notes' means the revenue notes or revenue bond anticipation notes  
25           authorized to be issued by the Agency under this Chapter. As used in  
26           this Chapter, unless the context otherwise clearly indicates, the term  
27           'notes' does not include any loan obligation.
- 28           (19) 'Project' means any capital project, including equipment, that may be  
29           acquired, with loan proceeds provided by the Agency, by a city or a  
30           county in accordance with the general, special or local laws, including  
31           this Chapter, of the State.
- 32           (20) 'Revenues' means all moneys received by the Agency (other than the  
33           proceeds received by the Agency from the sale of bonds or notes) in  
34           connection with the providing of financing to cities and counties,  
35           including, without limitation, (i) the payments received by the Agency  
36           of the principal of and premium, if any, and interest on loan  
37           obligations, (ii) administrative charges, but only to the extent  
38           determined by the Agency, and (iii) investment earnings on all  
39           revenues, funds and other moneys of the Agency.
- 40           (21) 'State' means the State of North Carolina.

41 **"§ 159H-4. Creation of Municipality Agency.**

42           (a) There is hereby created a body politic and corporate to be known as the  
43 'North Carolina Municipal Pooled Capital Projects Financing Agency' which shall be

1 constituted a public agency and an instrumentality of the State for the performance of  
2 essential governmental and public functions.

3 (b) The governing body of the Agency shall be known as its Board of Directors  
4 and shall consist of nine members. One of the members of the Board shall be the State  
5 Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the  
6 Board of Directors. Two members shall be appointed by the Governor, three members  
7 shall be appointed by the General Assembly upon the recommendation of the Speaker  
8 of the House of Representatives in accordance with G.S. 120-121 and three members  
9 shall be appointed by the General Assembly upon the recommendation of the President  
10 Pro Tempore of the Senate in accordance with G.S. 120-121. The appointments made  
11 by the Governor and the recommendations made by the Speaker and the President Pro  
12 Tempore shall be made from a list of at least three nominees who may or may not be  
13 municipal officials for each position submitted by the League of Municipalities. The  
14 appointments to be made initially by the Governor, by the General Assembly in respect  
15 of the recommendation of the Speaker and by the General Assembly in respect of the  
16 recommendation of the President Pro Tempore of the Senate shall be for terms  
17 beginning on the date of their respective appointments and expiring on June 30, 1990,  
18 June 30, 1991, and June 30, 1992, those to be made initially by the Governor shall be  
19 for terms beginning on the dates of their respective appointments and expiring on June  
20 30, 1991, and June 30, 1992. Appointments made to succeed the initial appointments  
21 shall be for two-year terms commencing, respectively, on July 1, 1990, July 1, 1991,  
22 and July 1, 1992, and subsequent appointments shall be for two-year terms.

23 (c) All members of the Board shall remain in office until their successors are  
24 appointed and qualify. Vacancies in appointments made by the Governor shall be filled  
25 by the Governor for the remainder of the unexpired terms. Vacancies in appointments  
26 made by the General Assembly shall be filled in accordance with G.S. 120-122, as it  
27 may be amended from time to time. Persons appointed to fill vacancies shall qualify in  
28 the same manner as persons appointed for full terms.

29 (d) Any member of the Board may be removed from office for misfeasance,  
30 malfesance, nonfeasance or improper influence in accordance with the provisions of  
31 G.S. 143B-13, as it may be amended from time to time, and the resulting vacancy shall  
32 be filled as provided herein for vacancies in general.

33 (e) The Board of Directors shall adopt bylaws with respect to the call of  
34 meetings, quorums (which shall be no less than five members of the Board), voting  
35 procedures, the keeping of records and such other organizational and administrative  
36 matters as the Board of Directors may determine.

37 (f) No vacancy in the membership of the Board of Directors shall impair the  
38 right of a quorum to exercise all rights and to perform all the duties of the Board of  
39 Directors and the Agency.

40 (g) No part of the revenues or assets of the Agency shall inure to the benefit of or  
41 be distributable to its members or officers or other private persons, except for per diem  
42 and allowance. The members of the Board of Directors shall receive no salary for their  
43 services but shall be entitled to receive per diem and allowances in accordance with the  
44 provisions of G.S. 138-5, as it may be amended from time to time.

1       (h) The Agency shall be contained within the Department of State Treasurer as if  
2 it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-  
3 6(b).

4 **"§ 159H-5. Creation of County Agency.**

5       (a) There is hereby created a body politic and corporate to be known as the  
6 'North Carolina County Pooled Capital Projects Financing Agency' which shall be  
7 constituted a public agency and an instrumentality of the State for the performance of  
8 essential governmental and public functions.

9       (b) The governing body of the Agency shall be known as its Board of Directors  
10 and shall consist of nine members. One of the members of the Board shall be the State  
11 Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the  
12 Board of Directors. Two members shall be appointed by the Governor, three members  
13 shall be appointed by the General Assembly upon the recommendation of the Speaker  
14 of the House of Representatives in accordance with G.S. 120-121 and three members  
15 shall be appointed by the General Assembly upon the recommendation of the President  
16 Pro Tempore in accordance with G.S. 120-121. The appointments made by the  
17 Governor and the recommendations made by the Speaker and the President Pro  
18 Tempore shall be made from a list of at least three nominees who may or may not be  
19 county officials for each position submitted by the Association of County  
20 Commissioners. The appointments to be made initially by the Governor, by the General  
21 Assembly in respect of the recommendation of the Speaker and by the General  
22 Assembly in respect of the recommendation of the President Pro Tempore of the Senate  
23 shall be for terms beginning on the date of their respective appointments and expiring  
24 on June 30, 1990, June 30, 1991, and June 30, 1992, those to be made initially by the  
25 Governor shall be for terms beginning on the dates of their respective appointments and  
26 expiring on June 30, 1991, and June 30, 1992. Appointments made to succeed the  
27 initial appointments shall be for two-year terms commencing, respectively, on July 1,  
28 1990, July 1, 1991, and July 1, 1992, and subsequent appointments shall be for two-year  
29 terms.

30       (c) All members of the Board shall remain in office until their successors are  
31 appointed and qualify. Vacancies in appointments made by the Governor shall be filled  
32 by the Governor for the remainder of the unexpired terms. Vacancies in appointments  
33 made by the General Assembly shall be filled in accordance with G.S. 120-122, as it  
34 may be amended from time to time. Persons appointed to fill vacancies shall qualify in  
35 the same manner as persons appointed for full terms.

36       (d) Any member of the Board may be removed from office for misfeasance,  
37 malfesance, nonfesance or improper influence in accordance with the provisions of  
38 G.S. 143B-13, as it may be amended from time to time, and the resulting vacancy shall  
39 be filled as provided herein for vacancies in general.

40       (e) The Board of Directors shall adopt bylaws with respect to the call of  
41 meetings, quorums (which shall be no less than five members of the Board), voting  
42 procedures, the keeping of records and such other organizational and administrative  
43 matters as the Board of Directors may determine.

1       (f) No vacancy in the membership of the Board of Directors shall impair the  
2 right of a quorum to exercise all rights and to perform all the duties of the Board of  
3 Directors and the Agency.

4       (g) No part of the revenues or assets of the Agency shall inure to the benefit of or  
5 be distributable to its members or officers or other private persons, except for per diem  
6 and allowance. The members of the Board of Directors shall receive no salary for their  
7 services but shall be entitled to receive per diem and allowances in accordance with the  
8 provisions of G.S. 138-5, as it may be amended from time to time.

9       (h) The Agency shall be contained within the Department of State Treasurer as if  
10 it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-  
11 6(b).

12 **"§ 159H-6. General powers of Agency.**

13       The Agency shall have all of the powers necessary or convenient to carry out and to  
14 effect the purposes and provisions of this Chapter, including, without limitation, the  
15 powers:

- 16       (1) To make and execute contracts and agreements necessary or incidental  
17 to exercise of its powers and duties under this Chapter, including,  
18 without limitation, agreements in respect of loan obligations and  
19 agreements with issuers of credit-enhancement facilities, liquidity  
20 facilities, bond insurance policies, reserve fund insurance policies and  
21 investment contracts and interest-rate agreements;
- 22       (2) To contract with any city or county with respect to any of the matters  
23 covered by this Chapter;
- 24       (3) To establish a debt service reserve fund or funds and other reserve  
25 funds and to borrow money and to purchase insurance and investment  
26 contracts to establish, maintain or increase such funds;
- 27       (4) To agree to apply and assign any money, loan obligations and other  
28 revenues;
- 29       (5) To borrow money as herein provided to carry out and effect its  
30 corporate purposes and to issue in evidence thereof bonds, notes, or  
31 bond anticipation notes for the purpose of providing funds therefor,  
32 including, but not limited to, funds for the financing and refinancing of  
33 the cost of projects, including the payment or advance on behalf of  
34 cities and counties of the costs of such projects;
- 35       (6) To apply any payments, or prepayments, or principal of or interest on  
36 any loan obligation, to the extent such payment or prepayment is not  
37 necessary to pay debt service on the Agency's bonds or notes, to the  
38 financing of the cost of projects for cities and counties to the same  
39 extent as provided in G.S. 159H-7;
- 40       (7) To fix, revise, charge and collect or cause to be fixed, revised, charged  
41 and collected and to apportion administrative charges among cities and  
42 counties participating in any program of the Agency;
- 43       (8) To employ an administrator to administer the operations of the Agency  
44 (which administrator, in the case of the Municipal Agency, may be the



1 League of Municipalities and, in the case of the County Agency, may  
2 be the Association of County Commissioners), insurance consultants,  
3 fiscal and financial consultants, underwriters, attorneys, trustees,  
4 remarketing agents and such other consultants, agents and employees  
5 as may be required in the judgment of the Agency and to fix and pay  
6 their compensation from funds available to the Agency therefor;

7 (9) To conduct or cause to be conducted studies and surveys in respect of  
8 the capital needs of cities and counties;

9 (10) To apply for, accept, receive and agree to and to comply with the terms  
10 and conditions governing grants, loans, advances, contributions, gifts,  
11 and other aid from any source whatsoever, including federal and State  
12 sources;

13 (11) To sue and be sued in its own name, to plead and be impleaded;

14 (12) To adopt an official seal and to alter the same at its pleasure;

15 (13) To establish and revise from time to time minimum standards and  
16 criteria for determining the eligibility of specific cities and counties to  
17 obtain financing and to make loans as provided in this Chapter;

18 (14) To deposit, disburse and invest, pursuant to the provisions of this  
19 Chapter, the proceeds of any fund established in accordance with this  
20 Chapter and to determine the application of the proceeds of any  
21 earnings thereon; and

22 (15) To do all other things necessary or convenient to carry out the  
23 purposes of this Chapter.

24 **"§ 159H-7. Specific powers of Agency.**

25 (a) The Agency shall have the power which in its discretion it may exercise from  
26 time to time to enter into one or more loan obligations with a city or a county, providing  
27 for the making of a loan by the Agency to such city or county, or to acquire a loan  
28 obligation from a city or county, to finance or refinance the cost of the acquisition of a  
29 project.

30 (b) Any loan obligation entered into by the Agency with a city or a county shall  
31 be in writing and shall set forth the terms and conditions agreed to between the Agency  
32 and the city or the county for the Agency's loan to such city or county including,  
33 without limitation, the following:

34 (1) The term of such loan obligation, which term shall not exceed 10 years  
35 from the first loan draw unless extended pursuant to an amendment  
36 described in G.S. 159H-9(d);

37 (2) The payment provisions and prepayments provisions, if any, required  
38 to enable the Agency to administer its programs and to pay when due  
39 the principal of and premium, if any, and interest on bonds or notes or  
40 other obligations of the Agency incurred to make such loan or to  
41 acquire such loan obligation and to pay or reimburse the Agency for  
42 such city's or county's administrative charges and the cost of  
43 establishing and maintaining any reserves;

1           (3) The security for payment by the city or county of such loan obligation;  
2           and

3           (4) Such other provisions and covenants as the Board may require.

4       (c) Nothing in this Chapter shall be deemed to change the application of the  
5 provisions of Article 8 of Chapter 143 of the General Statutes, as it may be amended  
6 from time to time, relating to competitive bidding for public contracts, or the application  
7 of the provisions of Article 3 of Chapter 143 of the General Statutes, as it may amended  
8 from time to time, including particularly, but without limitation, the provisions of G.S.  
9 143-49(6), as it may be amended from time to time, to cities or counties acquiring  
10 projects under this Chapter and, to the extent that such cities or counties comply with  
11 such competitive bidding requirements, there shall be no further such requirements in  
12 respect of the Agency.

13 **"§ 159H-8. Eligibility for obtaining financing.**

14       (a) In determining the eligibility of a city or county for financing a project with a  
15 loan from the Agency, the Agency may consider:

16           (1) The type and useful life of and the need for the project to be financed  
17 or refinanced;

18           (2) The amount of financing or the cost of the project sought;

19           (3) The credit rating, if any, of such city or county;

20           (4) The future financing and capital needs of such city or county;

21           (5) The availability and cost to such city or county of other methods of  
22 financing;

23           (6) The construction, disbursement and management procedures in effect  
24 in such city or county; and

25           (7) Such other factors as the Agency may, in its discretion, determine to  
26 be relevant in the providing of such financing.

27       (b) As a condition of determining eligibility for participating in one or more  
28 financing programs, the Agency may establish:

29           (1) Procedures requiring compliance by cities or counties with such  
30 construction, disbursement and accounting procedures and programs  
31 as the Agency may determine;

32           (2) Minimum credit ratings or criteria;

33           (3) Minimum and maximum amounts with respect to the cost of the  
34 projects to be financed under this Chapter;

35           (4) Procedures that may be employed by the Agency in respect of cities or  
36 counties that default in their obligations under loan obligations; and

37           (5) Such other procedures, conditions and requirements as the Agency  
38 determines to be necessary or desirable in establishing its programs.

39       (c) Nothing in this Chapter shall be deemed to restrict or limit the powers  
40 otherwise available to a city or a county, except to the extent restricted by the terms of  
41 any loan obligations or other agreements between a city or a county and the Agency, to  
42 obtain financing or refinancing or to acquire capital projects from a source other than  
43 the Agency or to establish or continue its own financing or acquisition program or to  
44 enter into any other financing program.

1 **§ 159H-9. Specific powers of cities and counties to enter into loan obligations.**

2 (a) Any city or county determined by the Agency to be eligible within G.S.  
3 159H-8 may borrow money from the Agency for the purpose of financing or  
4 refinancing the cost of acquisition by the city or county of a project. The city or county  
5 shall enter into a loan obligation with the Agency, which loan obligation shall set forth  
6 the terms and conditions of the loan, including without limitation, terms and conditions  
7 described in G.S. 159H-7, all as shall be determined and approved by the city council of  
8 the city or the county board of commissioners for the county.

9 (b) The obligation of a city or a county under any loan obligation entered into  
10 with the Agency pursuant to this section shall be payable and otherwise secured as  
11 provided in G.S. 159H-10.

12 (c) In connection with entering into a loan obligation, a city or a county is  
13 authorized to enter into a credit facility, as defined in G.S. 159H-10, and the obligation  
14 of a city or a county under any such credit facility to repay any drawing thereunder may  
15 be made payable and otherwise secured, to the extent applicable, as provided in G.S.  
16 159H-10.

17 (d) The Agency or a city or a county may propose an amendment, and nothing in  
18 this Chapter shall be deemed as restricting the power of the Agency or the city or a  
19 county to agree to any amendment to a loan obligation, including an amendment  
20 restructuring or otherwise relating to the principal repayment schedule and the interest  
21 payment schedule set forth in such loan obligation, upon a determination by the Agency  
22 that such amendment is:

23 (1) Consistent with the then existing financial condition of the city or the  
24 county and its ability to meet its obligations under the loan obligation;  
25 and

26 (2) Consistent with the then existing financial condition of the Agency and  
27 the administration of the Agency's duties and responsibilities under  
28 this Chapter. Any amendment relating to the term of a loan obligation  
29 shall not extend the original term more than twenty percent (20%)  
30 beyond such original term.

31 (e) No loan obligation or amendment thereto shall become effective without the  
32 approval of the Local Government Commission. In determining whether a loan  
33 obligation or any amendment thereto should be approved, the Local Government  
34 Commission may consider, to the extent applicable as shall be determined by the Local  
35 Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as  
36 either may be amended from time to time. The Local Government Commission shall  
37 approve any such loan obligation, or any amendment thereto, if, upon the information  
38 and evidence it receives, it finds and determines that such loan obligation, or  
39 amendment thereto, will satisfy such criteria and will effect the purposes of this  
40 Chapter. After considering a loan obligation or an amendment thereto, the Local  
41 Government Commission shall enter its order either approving or disapproving such  
42 obligation or amendment. An order of approval shall not be regarded as an approval of  
43 the legality of such obligation or amendment in any respect. If the Local Government

1 Commission enters an order disapproving such obligation or amendment, the  
2 proceedings under this subsection shall be at an end.

3 **"§ 159H-10. Sources and security for payment of loan obligations.**

4 (a) The source or sources of and the security for payment of each loan obligation  
5 shall be determined by the city council of the city or the county board of commissioners  
6 for the county and shall be set forth in the loan obligation.

7 (b) In the event that, under the provisions of The Local Government Bond Act, as  
8 it may be amended from time to time, a bond order authorizing the issuance of bonds  
9 that pledge the faith and credit of a city or a county for the purpose of providing funds  
10 for one or more purposes that constitute projects within the meaning of this Chapter has  
11 taken effect, then, in lieu of issuing any bonds authorized, or any bond anticipation note  
12 in anticipation of such bonds, but not sold and delivered pursuant to such order, the city  
13 council or the county board of commissioners may enter into a loan obligation  
14 authorized by this Chapter and may pledge the faith and credit of the city or the county,  
15 as the case may be, to secure its obligation to make the payments required under the  
16 loan obligation, or a credit facility in support of the loan obligation, provided the  
17 following conditions are met:

18 (1) The aggregate principal amount due under such loan obligation does  
19 not exceed the aggregate amount of authorized but unissued bonds, or  
20 any bond anticipation notes in anticipation of such bonds, under the  
21 bond order; and

22 (2) The project to be acquired is a purpose for which proceeds of bonds or  
23 bond anticipation notes may be expended under the bond order.

24 (c) Each city and county is also hereby authorized to agree to apply to the  
25 payment of a loan obligation any available source or sources of revenues of such city  
26 and county and, to the extent the generation of such revenues is within the power of  
27 such city or county, to enter into covenants to take action in order to generate such  
28 revenues, provided such agreement to use such sources to make payments or such  
29 covenant to generate revenues does not constitute a pledge of the city's or county's  
30 taxing power.

31 (d) Each city and county is also hereby authorized to enter into loan obligations  
32 constituting a continuing contract and providing for the making of payments in ensuing  
33 fiscal years from any available source or sources of revenues, including the proceeds of  
34 taxes realized from the exercise of the city's or county's power of taxation, appropriated  
35 by the city or county in its annual budget provided:

36 (1) The city council or county board of commissioners shall have  
37 appropriated sufficient funds to pay any amount to be paid under such  
38 loan obligation in the fiscal year in which such contract is entered into,  
39 such appropriation to be made prior to the entering into of such loan  
40 obligation;

41 (2) There is included in any such loan obligation a provision automatically  
42 cancelling the loan obligation in the event the city council or county  
43 board of commissioners decides not to appropriate funds to make  
44 payment in an ensuing fiscal year in which event the obligation of the

1 city or county to make any future payments in any ensuing fiscal year  
2 shall cease;

3 (3) No deficiency judgment requiring the exercise of the city's or county's  
4 power of taxation may be entered against the city or county in any  
5 action for breach of a contractual obligation authorized by this  
6 subsection; and

7 (4) The taxing power of the city or county is not pledged to secure any  
8 payments to be made pursuant to the loan obligation and the Agency  
9 shall have agreed that it has no right to require the exercise of a city's  
10 or a county's power of taxation to secure such loan obligation.

11 No loan obligation shall contain a nonsubstitution clause which restricts the right of  
12 a city or county to replace or provide a substitute for any project financed pursuant to  
13 such loan obligation.

14 The obligation of a city or a county with respect to the sources of revenues  
15 authorized by subsections (c) and (d) of this section shall be specifically identified  
16 in the proceedings of the city council or the county board of commissioners authorizing  
17 the city or county to enter into a loan obligation, which loan obligation shall be valid  
18 and binding from the date the city or county enters into the loan obligation. Such  
19 sources of payment so specifically identified and then held or thereafter received by a  
20 city or a county, any fiduciary or the Agency shall immediately be subject to the lien of  
21 such loan obligation without any physical delivery of such sources or further act, and  
22 such lien shall be valid and binding as against all parties having claims of any kind in  
23 tort, contract, or otherwise against a city or county without regard to whether such  
24 parties have notice thereof. The proceedings, the loan obligation or any other document  
25 or action by which such lien on a source of payment is created need not be filed or  
26 recorded in any manner other than as provided in this Chapter.

27 Any loan obligation secured by a source or sources of revenue authorized by  
28 subsections (b), (c) or (d) of this section may provide additional security by the granting  
29 of a security interest in the project acquired to secure payment of the purchase money  
30 provided by such loan obligation, including a deed of trust on any real property so  
31 acquired.

32 (e) The interest payable by a city or a county to the Agency on any loan  
33 obligation may be at such rate or rates, including variable rates, as may be determined  
34 by the Local Government Commission with the approval of the city council or the  
35 county board of commissioners. Such approval may be given as the city council or the  
36 county board of commissioners may direct, including without limitation, a certificate  
37 signed by a representative of the city or the county designated by the city council or the  
38 county board of commissioners. The Agency may determine that it is necessary that  
39 certain provisions in the Agency's bonds or notes be reflected, in similar terms, in loan  
40 obligations, so that if it is necessary to vary the interest rate or call the principal prior to  
41 maturity of certain of the Agency's bonds or notes, the Agency will have the power to  
42 effect a similar variation in interest rate or a similar call prior to maturity of certain loan  
43 obligations. Accordingly, in fixing the details of a loan obligation, the city council or  
44 the county board of commissioners is hereby authorized to provide that a loan

1 obligation (i) may be made payable from time to time on demand or tender for purchase  
2 by the Agency provided a credit facility supports such loan obligation, unless the city  
3 council or the county board of commissioners specifically determines that a credit  
4 facility is not required upon a finding and determination by the city council or the  
5 county board of commissioners that the absence of a credit facility will not affect the  
6 city's or the county's ability to make payment on demand or tender, and will not  
7 materially and adversely affect the financial position of the city or the county and the  
8 entering into of the loan obligation at a reasonable interest cost to the city or the county;  
9 (ii) may be additionally supported by a credit facility; (iii) may be made subject to  
10 redemption or a mandatory tender for purchase by the city or county prior to maturity;  
11 and (iv) may bear interest at a rate or rates that may vary for such period or periods of  
12 time, all as may be provided in the proceedings of the city council or the county board  
13 of commissioners providing for the entering into of the loan obligation, including,  
14 without limitation, such variations as may be permitted pursuant to a par formula.

15 (f) As used in this Chapter, the following terms shall have the following  
16 meanings:

17 (1) 'Credit Facility' means an agreement entered into by the city or the  
18 county with a bank, savings and loan association or other banking  
19 institution, an insurance company, reinsurance company, surety  
20 company or other insurance institution, a corporation, investment  
21 banking firm or other investment institution, or any financial  
22 institution providing for prompt payment of all or any part of the  
23 principal or purchase price (whether at maturity, presentment or tender  
24 for purchase, redemption or acceleration), redemption premium, if any,  
25 and interest on any loan obligation payable on demand or tender by the  
26 Agency, in consideration of the city or the county agreeing to repay the  
27 provider of such credit facility in accordance with the terms and  
28 provisions of such agreement; the provider of any credit facility may  
29 be located either within or without the United States of America.

30 (2) 'Par Formula' shall mean any provision or formula adopted by the city  
31 or the county to provide for the adjustment, from time to time, of the  
32 interest rate or rates borne by any loan obligation including:

33 a. A provision providing for such adjustment so that the purchase  
34 price of such loan obligation in the open market would be as  
35 close to par as possible,

36 b. A provision providing for such adjustment based upon a  
37 percentage or percentages of a prime rate or base rate, which  
38 percentage or percentages may vary or be applied for different  
39 periods of time,

40 c. A provision providing for such adjustment based upon the  
41 adjustments of the interest rate or rates of the Agency's bonds  
42 and notes, or

43 d. Such other provision as the city or the county may determine to  
44 be consistent with this Chapter and will not affect the city's or

1                   the county's ability to pay the principal of and the interest on  
2                   any loan obligation, and will not materially and adversely affect  
3                   the financial position of the city or the county and the entering  
4                   into of the loan obligation at a reasonable interest cost to the  
5                   city or the county.

6           (g) Any loan obligation may provide for an acceleration of the repayment  
7 schedule thereunder.

8           (h) If a city or county defaults on any loan obligation, the Agency shall have the  
9 authority to apply any reimbursement, distribution, or allotment of State funds to which  
10 the city or county is entitled toward payment of the loan obligation.

11 **"§ 159H-11. Credit of State not pledged.**

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

23           Expenses incurred by the Agency in carrying out the provisions of this Chapter shall  
24 be payable from revenues and other funds provided pursuant to, or available for use  
25 under, this act, and no liability shall be incurred by the Agency hereunder beyond the  
26 extent to which moneys shall have been so provided.

27 **"§ 159H-12. Bonds and notes.**

28           (a) The Agency may provide for the issuance, at one time or from time to time,  
29 of bonds or notes, including bond anticipation notes and renewal notes, of the Agency to  
30 carry out and effectuate its corporate purposes. The principal of and interest on such  
31 bonds or notes shall be payable solely from funds provided under this Chapter for such  
32 payment. Any such bond anticipation notes may be made payable from the proceeds of  
33 bonds or renewal notes or, in the event bond or renewal note proceeds are not available,  
34 such notes may be paid from any available Agency revenues or other funds provided  
35 therefor. Bonds and notes may also be paid from the proceeds of any credit  
36 enhancement facility. The bonds and notes of each issue shall be dated and may be  
37 made redeemable prior to maturity at the option of the Agency or otherwise, at such  
38 price or prices on such date or dates and upon such terms and conditions as may be  
39 determined by the Agency. The bonds or notes may also be made payable from time to  
40 time on demand or tender for purchase by owner, all upon such terms and conditions as  
41 may be determined by the Agency. Any such bonds or notes shall bear interest at such  
42 rate or rates, including variable rates as herein authorized, as may be determined by the  
43 Local Government Commission with the approval of the Agency.

1       (b) In fixing the details of bonds or notes, the Agency may provide that any of  
2 the bonds or notes (i) may be made payable from time to time on demand or tender for  
3 purchase by the owner thereof provided a credit facility supports such bonds or notes,  
4 unless the Local Government Commission specifically determines that a credit facility  
5 is not required upon a finding and determination by the Local Government Commission  
6 that the absence of a credit facility will not materially and adversely affect the financial  
7 position of the Agency and the marketing of the bonds or notes at a reasonable interest  
8 cost to the Agency; (ii) may be additionally supported by a credit facility; (iii) may be  
9 made subject to redemption or a mandatory tender purchase prior to maturity; (iv) may  
10 bear interest at a rate or rates that may vary for such period or periods of time, all as  
11 may be provided in the proceedings providing for the issuance of such bonds or notes  
12 including, without limitation, such variations as may be permitted pursuant to a par  
13 formula; and (v) may be made the subject of a remarketing agreement whereby an  
14 attempt is made to remarket the bonds or notes to new purchasers prior to their  
15 presentment for payment to the provider of the credit facility or to the State. As used in  
16 this section, the following terms shall have the following meanings:

17       (1) 'Credit Facility' means an agreement entered into by the Agency with  
18 a bank, savings and loan association or other banking institution, an  
19 insurance company, reinsurance company, surety company or other  
20 insurance institution, a corporation, investment banking firm or other  
21 investment institution, or any financial institution providing for prompt  
22 payment of all or any part of the principal or purchase price (whether  
23 at maturity, presentment or tender for purchase, redemption or  
24 acceleration), redemption premium, if any, and interest on any bonds  
25 or notes payable on demand or tender by the owner, in consideration of  
26 the Agency agreeing to repay the provider of such credit facility in  
27 accordance with the terms and provisions of such agreement; the  
28 provider of any credit facility may be located either within or without  
29 the United States of America.

30       (2) 'Par Formula' shall mean any provision or formula adopted by the  
31 Agency to provide for the adjustment, from time to time, of the interest  
32 rate or rates borne by any bonds or notes including:

33       a. A provision providing for such adjustment so that the purchase  
34 price of such bonds or notes in the open market would be as  
35 close to par as possible,

36       b. A provision providing for such adjustment based upon a  
37 percentage or percentages of a prime rate or base rate, which  
38 percentage or percentages may vary or be applied for different  
39 periods of time, or

40       c. Such other provision as the Agency may determine to be  
41 consistent with this act and will not materially and adversely  
42 affect the financial position of the Agency and the marketing of  
43 the bonds or notes at a reasonable interest cost to the Agency.



1       (c) Notes shall mature at such time or times and bonds shall mature, not  
2 exceeding 40 years from their date or dates, as may be determined by the Agency. The  
3 Agency shall determine the form and manner of execution of the bonds or notes,  
4 including any interest coupons to be attached thereto, and shall fix the denomination or  
5 denominations and the place or place of payment of principal and interest, which may  
6 be any bank or trust company within or without the United States. In case any officer  
7 whose signature or a facsimile of whose signature shall appear on any bonds or notes or  
8 coupons, if any, shall cease to be such officer before the delivery thereof, such signature  
9 or such facsimile shall nevertheless be valid and sufficient for all purposes the same as  
10 if such officer had remained in office until such delivery and any bond or note or  
11 coupon may bear the facsimile signatures of such persons who at the actual time of the  
12 execution thereof shall be the proper officers to sign although at the date of such bond  
13 or note or coupon such persons may not have been such officers. The Agency may also  
14 provide for the authentication of the bonds or notes by a trustee or other authenticating  
15 agent. The bonds or notes may be issued as certificated or uncertificated obligations or  
16 both, and in coupon or in registered form, or both, as the Agency may determine, and  
17 provision may be made for the registration of any coupon bonds or notes as to principal  
18 alone and also as to both principal and interest, and for the reconversion into coupon  
19 bonds or notes of any bonds or notes registered as to both principal and interest, and for  
20 the interchange of registered and coupon bonds or notes, and any system for registration  
21 may be established as the Agency may determine.

22       (d) No bonds or notes may be issued by the Agency under this Chapter unless the  
23 issuance thereof is approved and such bonds or notes are sold by the Local Government  
24 Commission as provided in this Chapter. The Agency shall file with the Secretary of  
25 the Local Government Commission an application requesting approval of the issuance  
26 of such bonds or notes which application shall contain such information and shall have  
27 attached to it such documents concerning the proposed financing as the Secretary of the  
28 Local Government Commission may require.

29       In determining whether a proposed bond or note issue should be approved, the Local  
30 Government Commission may consider, to the extent applicable as shall be determined  
31 by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S.  
32 159-86, as either may be amended from time to time, as well as the effect of the  
33 proposed financing upon any scheduled or proposed sale of obligations by the State or  
34 by any of its agencies or departments or by any unit of local government in the State.  
35 The Local Government Commission shall approve the issuance of such bonds or notes  
36 if, upon the information and evidence it receives, it finds and determines that the  
37 proposed financing will satisfy such criteria and will effect the purposes of this Chapter.

38       Upon the filing with the Local Government Commission of a written request of the  
39 Agency requesting that its bonds or notes be sold, the bonds or notes may be sold by the  
40 Local Government Commission in such manner, either at public or private sale, and for  
41 the price or prices as the Local Government Commission shall determine to be in the  
42 best interests of the Agency and to effect the purposes of this Chapter, provided that the  
43 sale shall be approved by the Agency.

1       (e) The proceeds of any bonds or notes shall be used solely for the purposes for  
2 which such bonds or notes were issued and shall be disbursed in such manner and under  
3 such restrictions, if any, as the Agency may provide in the resolution authorizing the  
4 issuance of, or in any trust agreement securing such bonds or notes.

5       (f) Prior to the preparation of definitive bonds, the Agency may issue interim  
6 receipts or temporary bonds, with or without coupons, exchangeable for definitive  
7 bonds when such bonds have been executed and are available for delivery. The Agency  
8 may also provide for the replacement of any bonds or notes which shall become  
9 mutilated or shall be destroyed or lost.

10       (g) Bonds or notes may be issued under the provision of this Chapter without  
11 obtaining, except as otherwise expressly provided in this Chapter, the consent of any  
12 department, division, commission, board, body, bureau or agency of the State, and  
13 without any other proceedings or the happening of any conditions or things other than  
14 those proceedings, conditions or things that are specifically required by this Chapter and  
15 the provisions of the resolution authorizing the issuance of, or any trust agreement  
16 securing, such bonds or notes.

17 **"§ 159H-13. Trust agreement or resolution.**

18       In the discretion of the Agency, any bonds and notes issued under the provisions of  
19 this Chapter may be secured by a trust agreement by and between the Agency and a  
20 corporate trustee or by a resolution providing for the appointment of a corporate trustee  
21 thereunder, which corporate trustee may be, in either case, any trust company or bank  
22 having the powers of a trust company within or without the State. Such trust agreement  
23 or resolution may pledge or assign all or part of the revenues or assets of the Agency,  
24 including, without limitation, loan obligations, agreements or commitments to enter into  
25 loan obligations, contracts, agreements and other security or investment obligations, any  
26 fees or charges made or received by the Agency, the moneys received in payment of  
27 loans and interest thereon and any other moneys received or to be received by the  
28 Agency. Such trust agreement or resolution may contain such provisions for protecting  
29 and enforcing the rights and remedies of the owners of any bonds or notes issued  
30 thereunder as may be reasonable and proper and not in violation of law, including  
31 covenants setting forth the duties of the Agency in respect of the purposes to which  
32 bond or note proceeds may be applied, the disposition and application of the revenues or  
33 assets of the Agency, the duties of the Agency with respect to the acquisition and  
34 disposition of any project and the purchase, acceptance and disposition of any loan  
35 obligation, the charges and collection of any revenues and administrative charges, the  
36 terms and conditions for the issuance of additional bonds and notes, and the custody,  
37 safeguarding, investment and application of all moneys. All bonds and notes issued  
38 under this Chapter shall be equally and ratably secured by a pledge, charge, and lien  
39 upon the revenues or assets provided in such trust agreement or resolution, without  
40 priority by reason of number, or dates of bonds or notes, execution, or delivery, in  
41 accordance with the provision of this Chapter and of such trust agreement or resolution;  
42 except that the Agency may provide in such trust agreement or resolution that bonds or  
43 notes issued pursuant thereto shall, to the extent and in the manner prescribed in such  
44 trust agreement or resolution be subordinated and junior in standing, with respect to the

1 payment of principal and interest and to the security thereof, to any other bonds or  
2 notes. It shall be lawful for any bank or trust company that may act as depository of the  
3 proceeds of bonds or notes, revenues, assets or other money hereunder to furnish such  
4 indemnifying bonds or to pledge such securities as may be required by the Agency.  
5 Any such trust agreement or resolution may set out the rights and remedies of the  
6 owners of any bonds or notes and of any trustee, and may restrict the individual rights  
7 of action by any such owners. In addition to the foregoing, any such trust agreement or  
8 resolution may contain such other provisions as the Agency may deem reasonable and  
9 proper for the security of the owners of any bonds or notes. Expenses incurred in  
10 carrying out the provisions of such trust agreement or resolution may be treated as a part  
11 of the cost of any project or as an administrative charge and may be paid from the  
12 revenues or assets pledged or assigned to the payment of the principal of and the interest  
13 on bonds and notes or from any other funds available to the Agency.

14 The Agency may set the terms and conditions of loan obligations, including, without  
15 limitation, the repayment terms, so as to provide a fund sufficient, with such other funds  
16 as may be made available therefor, including, without limitation, investment income and  
17 the proceeds of administrative charges to the extent determined by the Agency (i) to  
18 pay the costs of operation of the Agency; (ii) to pay the principal of and the interest on  
19 all bonds and notes as the same shall become due and payable; and (iii) to create and  
20 maintain any reserves provided for in the trust agreement or resolution securing such  
21 bonds or notes.

22 All pledges of any assets or revenues of the Agency as authorized by this Chapter  
23 shall be valid and binding from the time when such pledges are made. All such assets  
24 or revenues so pledged and thereafter received by the Agency shall immediately be  
25 subject to the lien of such pledge without any physical delivery thereof or further act,  
26 and the lien of any such pledge shall be valid and binding as against all parties having  
27 claims of any kind in tort, contract or otherwise against the Agency, irrespective of  
28 whether such parties have notice thereof. The trust agreement or resolution by which a  
29 pledge is created or any loan obligation need not be filed or recorded except in the  
30 records of the Agency.

31 The State does pledge to and agree with the holders of any bonds or notes issued by  
32 the Agency that so long as any of such bonds or notes are outstanding and unpaid the  
33 State will not limit or alter the rights vested in the Agency at the time of issuance of the  
34 bonds or notes to set the terms and conditions of loan obligations in connection with  
35 which the bonds or notes were issued, so as to provide a fund sufficient, with such other  
36 funds as may be made available therefor, including, without limitation, investment  
37 income and the proceeds of administrative charges to the extent determined by the  
38 Agency, to pay the costs of operation of the Agency, to pay the principal of and the  
39 interest on all bonds and notes as the same shall become due and payable and to create  
40 and maintain any reserves provided therefor and to fulfill the terms of any agreements  
41 made with the bondholders or noteholders, nor will the State in any way impair the  
42 rights and remedies of the bondholders or noteholders until the bonds or notes and all  
43 costs and expenses in connection with any action or proceedings by or on behalf of the  
44 bondholders or noteholders, are fully paid, met and discharged.

**"§ 159H-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, payments made under and the proceeds received from the sale or other disposition of loan obligations, proceeds received from the disposition by the Agency of any project and any other revenues and funds (except any portion, as designated by the Agency, representing administrative charges) received by the Agency, 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 invested temporarily 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 or such resolution or trust agreement may provide. Any such moneys may be deposited and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be amended from time to time; provided, however, that:

- (1) Any deposit or investment authorized by either section may be deposited or invested with any bank located inside or outside the State, including outside the United States of America, provided that any such bank is a bank whose unsecured obligations are rated in either of the two highest rating categories by either Moody's Investors Service or Standard & Poor's Corporation; and
- (2) Any deposit or investment may be made pursuant to either said section and if one section is less restrictive or the other section authorizes additional deposit and investment options, the Agency may proceed under either section so that the Agency shall have the broadest deposit and investment options, available under either section.

**"§ 159H-15. Remedies.**

Any owner of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement securing 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 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 by the Agency or by any officer thereof.

**"§ 159H-16. Status of bonds and notes under Uniform Commercial Code.**

All bonds and notes and interest coupons (if any) 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 as Chapter 25 of the General Statutes.

**"§ 159H-17. Bonds and notes eligible for investment.**

1 Bonds and notes issued under the provisions of this Chapter are hereby made  
2 securities in which all public offices, agencies and public bodies of the State and its  
3 political subdivisions, all insurance companies, trust companies, investment companies,  
4 banks, savings banks, building and loan associations, credit unions, pension or  
5 retirement funds, other financial institutions engaged in business in the State, executors,  
6 administrators, trustees, and other fiduciaries may properly and legally invest funds,  
7 including capital in their control or belonging to them. Such bonds or notes are hereby  
8 made securities which may properly and legally be deposited with and received by any  
9 officer or agency of the State or political subdivision of the State for any purpose for  
10 which the deposit of bonds, notes or obligations of the State or any political subdivision  
11 is now or may hereafter be authorized by law.

12 **"§ 159H-18. Refunding bonds and notes.**

13 (a) The Agency may issue bonds and notes for the purposes of refunding any  
14 bonds or notes issued pursuant to this Chapter including the payment of any redemption  
15 premium thereon and any interest accrued or to accrue to the date of redemption or  
16 maturity of such bonds or notes and, if deemed advisable by the Agency, for any  
17 additional corporate purposes of the Agency.

18 Any such refunding bonds or notes may bear interest at rates, including variable  
19 rates as authorized in G.S. 159H-12, lower, the same as or higher than and have  
20 maturities shorter than, the same as or longer than the bonds or notes being refunded.  
21 The proceeds of any such refunding bonds or notes may be applied:

- 22 (1) To the payment and retirement of the bonds or notes being refunded by  
23 direct application to such payment and retirement,
- 24 (2) To the payment and retirement of the bonds or notes being refunded by  
25 the deposit in trust of such proceeds,
- 26 (3) To the payment of any expenses incurred in connection with such  
27 refunding, and
- 28 (4) For any other uses not inconsistent with such refunding.

29 (b) Any money so held in trust may be invested in:

- 30 (1) Direct obligations of the United States of America,
- 31 (2) Obligations the principal of and the interest on which are guaranteed  
32 by the United States of America,
- 33 (3) Evidences of ownership of a proportionate interest in specified  
34 obligations described in (b)(1) and (b)(2) above, which obligations are  
35 held by a bank or trust company organized and existing under the laws  
36 of the United States of America or any state thereof in the capacity of  
37 custodian,
- 38 (4) Obligations of the State or local governments thereof, provision for the  
39 payment of the principal of and interest on which obligations shall  
40 have been made by deposit with a trustee or escrow agent of  
41 obligations described in subdivisions (1), (2), or (3) above, the  
42 maturing principal of and interest on which, when due and payable,  
43 shall provide sufficient money with any other money held in trust for  
44 such purpose to pay the principal of, premium, if any, and interest on

1           such obligations of the State or local governments thereof, and which  
2           are rated in the highest category by Standard & Poor's Corporation and  
3           Moody's Investors Service,

4           (5) Obligations of the State or local governments thereof, the principal of  
5           and interest on which, when due and payable, have been insured by a  
6           bond insurance company which is rated in the highest category by  
7           Standard & Poor's Corporation and Moody's Investors Service,

8           (6) Full faith and credit obligations of the State or local governments  
9           thereof which are rated in the highest category by Standard & Poor's  
10           Corporation and Moody's Investors Service, and

11           (7) Any obligations or investments in which the State Treasurer is  
12           authorized, at the time of such investment, to invest funds of the State.

13           The proceedings providing for the issuance of any such refunding bonds or notes  
14           may limit the investments in which the proceeds of a particular refunding issue may be  
15           invested.

16           Nothing in this section shall be construed as a limitation (i)           on the duration of  
17           any deposit in trust for the retirement of bonds or notes being refunded but which shall  
18           not have matured and which shall not be then redeemable or, if then redeemable, shall  
19           not have been called for redemption or (ii) on the power to issue bonds or notes for the  
20           combined purpose of refunding bonds or notes and providing moneys for any corporate  
21           purpose as provided in this Chapter.

22           **"§ 159H-19. Annual audit.**

23           The Agency shall cause an audit of its books and accounts relating to its activities  
24           under this Chapter to be made at least once in each year by an independent certified  
25           public accountant or by the State Auditor and the cost thereof may be paid from any  
26           available administrative charges or other available moneys of the Agency.

27           **"§ 159H-20. Officers not liable.**

28           No member or officer of the Agency shall be subject to any personal liability or  
29           accountability by reason of his execution of any bonds or notes or the issuance thereof.

30           **"§ 159H-21. Tax exemption.**

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

39           **"§ 159H-22. Conflict of interest.**

40           If any member, officer or employee of the Agency shall be interested either directly  
41           or indirectly, or shall be an officer or employee of or have an ownership interest in any  
42           firm or corporation, not including cities or counties interested directly or indirectly, in  
43           any contract with the Agency, such interest shall be disclosed to the Agency and shall  
44           be set forth in the minutes of the Agency, and the member, officer or employee having

1 such interest therein shall not participate on behalf of the Agency in the authorization of  
2 any such contract. Other provisions of law notwithstanding, failure to take any or all  
3 actions necessary to carry out the purposes of this section shall not affect the validity of  
4 any bonds, notes or loan obligations issued pursuant to the provisions of this Chapter.

5 **"§ 159H-23. Alternative method.**

6 The foregoing sections of this Chapter shall be deemed to provide an additional and  
7 alternative method for the doing of the things authorized thereby and shall be regarded  
8 as supplemental and additional to powers conferred by other laws, and shall not be  
9 regarded as in derogation of any powers now existing.

10 **"§ 159H-24. Liberal construction.**

11 This Chapter, being necessary for the health and welfare of the people of the State,  
12 shall be liberally construed to effect the purposes thereof.

13 **"§ 159H-25. Inconsistent laws inapplicable.**

14 Insofar as the provisions of this Chapter are inconsistent with the provisions of any  
15 general or special laws, or parts thereof, the provisions of this Chapter shall be  
16 controlling."

17 Sec. 1.1. G.S. 159-148(b) reads as rewritten:

18 "(b) This Article shall not apply to:

- 19 (1) Contracts between a unit of local government and the State of North  
20 Carolina or the United States of America (or any agency of either)  
21 entered into as a condition to the making of grants or loans to the unit  
22 of local government.
- 23 (2) Contracts for the purchase, lease, or lease with option to purchase of  
24 motor vehicles or voting machines.
- 25 (3) Loan obligations entered into by a city or a county pursuant to the  
26 North Carolina Municipal and County Pooled Capital Projects  
27 Financing Act, Chapter 159H of the General Statutes."

28 Sec. 1.2. G.S. 105-198 reads as rewritten:

29 **"§ 105-198. Intangible personal property.**

30 The intangible personal properties enumerated and defined in this Article or  
31 schedule are hereby classified under authority of Sec. 2(2), Article V of the  
32 Constitution, and the taxes levied thereon are for the benefit of the State ~~and the for~~  
33 ~~distribution to~~ political subdivisions of the State ~~as hereinafter provided and said taxes so~~  
34 ~~levied for the benefit of the political subdivisions of the State are levied for and on behalf of~~  
35 ~~said political subdivisions of the State to the same extent and manner as if said levies were~~  
36 ~~made by the governing authorities of the said subdivisions for distribution therein as~~  
37 hereinafter provided. Banks or banking associations, trust companies or any  
38 combination of such facilities or services shall be subject to the provisions of this  
39 Article for taxable years beginning on and after January 1, 1974."

40 Sec. 1.3. G.S. 105-213(a) reads as rewritten:

41 **"§ 105-213. Separate records by counties; disposition and distribution of taxes**  
42 **collected; purpose of tax.**

43 (a) The Secretary of Revenue shall keep a separate record by counties of the  
44 taxes collected under the provisions of this Article and shall, as soon as practicable after

1 the close of each fiscal year, certify to the State Disbursing Officer and to the State  
2 Treasurer the amount of such taxes to be distributed to each county and municipality in  
3 the State. The State Disbursing Officer shall thereupon issue a warrant on the State  
4 Treasurer to each county and municipality in the amount so certified.

5 In determining the amount to be distributed, the Secretary shall deduct from the net  
6 amount of taxes collected under this Article, which is the total amount collected less  
7 refunds, the cost to the State for the preceding fiscal year to:

- 8 (1) Collect and administer the taxes levied under this Article;
- 9 (2) Perform the duties imposed upon the Department of Revenue by  
10 Article 15 of this Chapter;
- 11 (3) Operate the Property Tax Commission; and
- 12 (4) Operate a training program in property tax appraisal and assessment  
13 administration by the Institute of Government.

14 The Secretary shall allocate the net amount of taxes collected under this Article, less  
15 the deductions enumerated above, to the counties according to the county in which the  
16 taxes were collected. The Secretary shall then increase the amount allocable to each  
17 county by a sum equal to forty percent (40%) of the amount of tax on accounts  
18 receivable allocated to the county on the basis of collections. The amounts so allocated  
19 to each county shall in turn be divided between the county and all municipalities therein  
20 in proportion to the total amount of ad valorem taxes levied by each during the fiscal  
21 year preceding such distribution. For the purpose of computing the distribution of the  
22 intangibles tax to any county and the municipalities located therein for any year with  
23 respect to which the property valuation of a public service company is the subject of an  
24 appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of  
25 federal law, and the Department of Revenue is restrained by operation of law or by a  
26 court of competent jurisdiction from certifying such valuation to the county and  
27 municipalities therein, the Department shall use the last property valuation of such  
28 public service company which has been so certified in order to determine the ad  
29 valorem tax levies applicable to such public service company in the county and the  
30 municipalities therein.

31 It shall be the duty of the chairman of the board of county commissioners of each  
32 county and the mayor of each municipality therein to report to the Secretary of Revenue  
33 such information as he may request for his guidance in making said allotments. In the  
34 event any county or municipality fails to make such report within the time prescribed,  
35 the Secretary of Revenue may disregard such defaulting unit in making said allotments.  
36 The amounts so allocated to each county and municipality shall be distributed and used  
37 by said county or municipality in proportion to other property tax levies made for the  
38 various funds and activities of the taxing unit receiving said allotment; provided,  
39 however, that a county or municipality may, without regard to any requirement as to  
40 proportionality, use amounts so allocated and amounts allocated under G.S. 105-213.1  
41 and distributed to the county or municipality to secure its obligation under a loan  
42 obligation entered into pursuant to the North Carolina Municipal and County Pooled  
43 Capital Projects Financing Act, Chapter 159H of the General Statutes."

44 Sec. 1.4. G.S. 150B-1(d) reads as rewritten:



1       "(d) The following are specifically exempted from the provisions of this Chapter: the  
2 Administrative Rules Review Commission, the Employment Security Commission, the  
3 Industrial Commission, the North Carolina Municipal Pooled Capital Projects Financing  
4 Agency and the North Carolina County Pooled Capital Projects Financing Agency, the  
5 Occupational Safety and Health Review Board in all actions that do not involve  
6 agricultural employers, and the Utilities Commission.

7       The North Carolina National Guard is exempt from the provisions of this Chapter in  
8 exercising its court-martial jurisdiction.

9       The Department of Human Resources is exempt from this Chapter in exercising its  
10 authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the  
11 General Statutes.

12       The Department of Correction is exempt from the provisions of this Chapter, except  
13 for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

14       Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.  
15 Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this  
16 Chapter do not apply to the Department of Transportation.

17       Article 4 of this Chapter, governing judicial review of final administrative decisions,  
18 shall apply to The University of North Carolina and its constituent or affiliated boards,  
19 agencies, and institutions, but The University of North Carolina and its constituent or  
20 affiliated boards, agencies, and institutions are specifically exempted from the  
21 remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the  
22 State Banking Commission, the Commissioner of Banks, the Savings and Loan Division  
23 of the Department of Commerce, and the Credit Union Division of the Department of  
24 Commerce.

25       Article 3 of this Chapter shall not apply to agencies governed by the provisions of  
26 Article 3A of this Chapter, as set out in G.S. 150B-38(a).

27       Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste  
28 Management Board in administering the provisions of G.S. 104E-6.2.

29       Article 2 of this Chapter shall not apply to the North Carolina Low-Level  
30 Radioactive Waste Management Authority in administering the provisions of G.S.  
31 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the  
32 North Carolina Low-Level Radioactive Waste Management Authority in administering  
33 the provisions of G.S. 104G-9, 104G-10, and 104G-11."

34       Sec. 1.5. G.S. 120-123 is amended by adding two new subdivisions to read:

35       "(53a) The North Carolina Municipal Pooled Capital Projects Financing  
36       Agency, as established by G.S. 159H-4.

37       (53b) The North Carolina County Pooled Capital Projects Financing Agency,  
38       as established by G.S. 159H-5."

39       Sec. 1.6. G.S. 159-13(b) reads as rewritten:

40       "(b) The following directions and limitations shall bind the governing board in  
41 adopting the budget ordinance:

42       (1) The full amount estimated by the finance officer to be required for  
43 debt service during the budget year shall be appropriated.

44       (2) The full amount of any deficit in each fund shall be appropriated.

- 1 (3) A contingency appropriation shall not exceed five percent (5%) of the  
2 total of all other appropriations in the same fund, except there is no  
3 limit on contingency appropriations for public assistance programs  
4 required by Chapter 108A. Each expenditure to be charged against a  
5 contingency appropriation shall be authorized by resolution of the  
6 governing board, which resolution shall be deemed an amendment to  
7 the budget ordinance setting up an appropriation for the object of  
8 expenditure authorized. The governing board may authorize the budget  
9 officer to authorize expenditures from contingency appropriations  
10 subject to such limitations and procedures as it may prescribe. Any  
11 such expenditures shall be reported to the board at its next regular  
12 meeting and recorded in the minutes.
- 13 (4) No appropriation may be made that would require the levy of a tax in  
14 excess of any constitutional or statutory limitation, or expenditures of  
15 revenues for purposes not permitted by law.
- 16 (5) The total of all appropriations for purposes which require voter  
17 approval for expenditure of property tax funds under Article V, Sec.  
18 2(5), of the Constitution shall not exceed the total of all estimated  
19 revenues other than the property tax (not including such revenues  
20 required by law to be spent for specific purposes) and property taxes  
21 levied for such purposes pursuant to a vote of the people.
- 22 (6) The estimated percentage of collection of property taxes shall not be  
23 greater than the percentage of the levy actually realized in cash as of  
24 June 30 during the preceding fiscal year.
- 25 (7) Estimated revenues shall include only those revenues reasonably  
26 expected to be realized in the budget year, including amounts to be  
27 realized from collections of taxes levied in prior fiscal years.
- 28 (8) Repealed by Session Laws 1975, c. 514, s. 6.
- 29 (9) Appropriations made to a school administrative unit by a county may  
30 not be reduced after the budget ordinance is adopted, unless the board  
31 of education of the administrative unit agrees by resolution to a  
32 reduction, or unless a general reduction in county expenditures is  
33 required because of prevailing economic conditions.
- 34 (10) Appropriations made to another fund from a fund established to  
35 account for property taxes levied pursuant to a vote of the people may  
36 not exceed the amount of revenues other than the property tax  
37 available to the fund, except for appropriations from such a fund to an  
38 appropriate account in a capital reserve fund.
- 39 (11) Repealed by Session Laws 1975, c. 514, s. 6.
- 40 (12) Repealed by Session Laws 1981, c. 685, s. 4.
- 41 (13) No appropriation of the proceeds of a bond issue may be made from  
42 the capital project fund account established to account for the proceeds  
43 of the bond issue except (i) for the purpose for which the bonds were  
44 issued, (ii) to the appropriate debt service fund, or (iii) to an account

1 within a capital reserve fund consistent with the purposes for which the  
2 bonds were issued. The total of other appropriations made to another  
3 fund from such a capital project fund account may not exceed the  
4 amount of revenues other than bond proceeds available to the account.

5 (14) No appropriation may be made from a utility or public service  
6 enterprise fund to any other fund than the appropriate debt service fund  
7 unless the total of all other appropriations in the fund equal or exceed  
8 the amount that will be required during the fiscal year, as shown by the  
9 budget ordinance, to meet operating expenses, capital outlay, and debt  
10 service on outstanding utility or enterprise bonds or notes.

11 (15) Sufficient funds to meet the amounts to be paid during the fiscal year  
12 under continuing contracts previously entered into shall be  
13 appropriated- unless the contract reserves to the governing board the  
14 right to limit or not to make the appropriation.

15 (16) The sum of estimated net revenues and appropriated fund balance in  
16 each fund shall be equal to appropriations in that fund. Appropriated  
17 fund balance in a fund shall not exceed the sum of cash and  
18 investments minus the sum of liabilities, encumbrances, and deferred  
19 revenues arising from cash receipts, as those figures stand at the close  
20 of the fiscal year next preceding the budget year.

21 (17) No appropriations may be made from a county reappraisal reserve  
22 fund except for the purposes for which the fund was established.

23 (18) No appropriation may be made from a service district fund to any  
24 other fund except (i) to the appropriate debt service fund or (ii) to an  
25 appropriate account in a capital reserve fund unless the district has  
26 been abolished.

27 (19) No appropriation of the proceeds of a debt instrument may be made  
28 from the capital project fund account established to account for such  
29 proceeds except for the purpose for which such debt instrument was  
30 issued. The total of other appropriations made to another fund from  
31 such a capital project fund account may not exceed the amount of  
32 revenues other than debt instrument proceeds available to the account.

33 Notwithstanding subdivisions (9), (10), (12), (14), (17), or (18) of this subsection,  
34 any fund may contain an appropriation to another fund to cover the cost of (i) levying  
35 and collecting the taxes and other revenues allocated to the fund, and (ii) building  
36 maintenance and other general overhead and administrative expenses properly allocable  
37 to functions or activities financed from the fund."

38 Sec. 2. If any provisions of this act or the application thereof to any person or  
39 circumstance is held invalid, such invalidity shall not affect other provisions or  
40 applications of this act which can be given effect without the invalid provision or  
41 application, and to this end the provisions of this act are declared to be severable.

42 Sec. 2.1. Nothing in this act shall be construed to obligate the General  
43 Assembly to appropriate funds to implement the provisions of this act.

44 Sec. 3. This act is effective upon ratification.