

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE BILL 1098  
House Committee Substitute Favorable 6/15/04**

Short Title: State Health and Biotechnology Financing.

(Public)

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Sponsors:

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Referred to:

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May 17, 2004

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO  
2 FINANCE VITAL STATE FACILITIES FOR HEALTH CARE AND  
3 BIOTECHNOLOGY RESEARCH, TO SUPPORT REPAYMENT OF THE DEBT  
4 FROM THE HEALTH AND WELLNESS AND TOBACCO TRUST FUNDS,  
5 AND TO DIRECT THE STATE TREASURER TO STUDY THE POTENTIAL  
6 COSTS AND BENEFITS OF INNOVATIVE STATE FINANCING.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** In accordance with G.S. 142-83, this section authorizes the  
9 issuance or incurrence of special indebtedness in the following maximum aggregate  
10 principal amounts to finance the costs of acquiring, constructing, and equipping the  
11 following projects. The State, with the prior approval of the State Treasurer and the  
12 Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is  
13 authorized to issue or incur special indebtedness in order to provide funds to the State to  
14 be used, together with other available funds, to pay the cost of these projects.

- 15 (1) One hundred eighty million dollars (\$180,000,000) for a new cancer  
16 rehabilitation and treatment center, a nearby physicians' office  
17 building, and a walkway between the two, all to be located at the  
18 University of North Carolina Hospitals at Chapel Hill.
- 19 (2) Sixty million dollars (\$60,000,000) for the North Carolina  
20 Cardiovascular Diseases Institute at East Carolina University.
- 21 (3) Thirty-five million dollars (\$35,000,000) for a Bioinformatics Center  
22 at the University of North Carolina at Charlotte.
- 23 (4) Twenty-eight million dollars (\$28,000,000) for a stand-alone facility to  
24 house the new Pharmacy School program to be located at Elizabeth  
25 City State University, and interim temporary facilities to house the  
26 program during construction of the stand-alone facility.  
27

1 (5) Thirty-five million dollars (\$35,000,000) for a Center for Health  
2 Promotion and Partnerships at the University of North Carolina at  
3 Asheville.

4 **SECTION 2.** G.S. 147-86.30 reads as rewritten:

5 **"§ 147-86.30. Health and Wellness Trust Fund established.**

6 (a) Fund Established. – There is established the Health and Wellness Trust Fund  
7 in the Office of the State Treasurer ~~to that shall~~ be used to develop a comprehensive  
8 plan to finance programs and initiatives to improve the health and wellness of the  
9 people of North Carolina. As used in this Article, the term "Fund" means the Health and  
10 Wellness Trust Fund. It is the intent of the General Assembly that the funds provided  
11 pursuant to this Article to address the health needs of North Carolinians be used to  
12 supplement, not supplant, existing funding of health and wellness programs.

13 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the  
14 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer  
15 shall be the custodian of the Fund and shall invest its assets in accordance with  
16 G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund  
17 shall become part of the Fund. Any balance remaining in the Fund at the end of any  
18 fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.  
19 Payments from the Fund shall be made on the warrant of the chair of the Commission,  
20 pursuant to directives of the Commission. The Commission may expend moneys in the  
21 Fund only as provided in subsections (c) and (d) of this section.

22 ~~(c) Creation of Fund Reserve. – The Commission shall reserve, and shall not~~  
23 ~~expend, fifty percent (50%) of each annual payment allocated to the Health and~~  
24 ~~Wellness Trust Fund pursuant to G.S. 143-16.4 during years 2001 through 2025 to~~  
25 ~~create and build the Fund Reserve. During years 2001 through 2025, the Commission~~  
26 ~~may expend any investment earnings on the reserved funds. Beginning in year 2026,~~  
27 ~~and thereafter, the Commission shall not expend the reserved funds but may continue to~~  
28 ~~expend any investment earnings on the reserved funds.~~ Priority Use of Funds. – As soon  
29 as practicable after the beginning of each fiscal year, the State Treasurer must certify in  
30 writing to the chair of the Commission the estimated amount of debt service anticipated  
31 to be paid during the fiscal year for special indebtedness authorized by Senate Bill 1098,  
32 2003 General Assembly. The chair of the Commission must issue a warrant from the  
33 Fund to the General Fund for the lesser of (i) the amount certified by the Treasurer and  
34 (ii) all uncommitted moneys in the Fund as of the end of the previous fiscal year plus  
35 sixty percent (60%) of the Fund's receipts for the current fiscal year. As soon as  
36 practicable after issuing this warrant, the chair of the Commission must certify in  
37 writing to the chair of the Tobacco Trust Fund Commission created in G.S. 143-717 the  
38 amount, if any, by which the amount certified by the Treasurer exceeds the amount of  
39 the warrant.

40 (d) ~~Use of Nonreserved Remaining Funds. – The Commission may expend or~~  
41 ~~commit moneys in the Fund in a fiscal year only after the payment required by~~  
42 ~~subsection (c) of this section has been made. all of the annual payments for years 1998,~~  
43 ~~1999, and 2000 and may expend the remaining fifty percent (50%) portion of each~~  
44 ~~annual payment thereafter through the year 2025 that is not reserved pursuant to~~

1 subsection (e) of this section. Any unexpended or unencumbered portion of the  
2 nonreserved portion of each annual payment for years 2001 through 2025 that has not  
3 been expended or encumbered by the third June 30th following the date of the receipt of  
4 the payment shall be reserved pursuant to subsection (e) of this section. The  
5 Commission may expend any investment earnings on the nonreserved funds in the year  
6 in which the investment earnings are received by the Fund.

7 (e) Fund Purposes. – Moneys from the Fund may be used for any of the  
8 following purposes:

9 (1) To address the health needs of vulnerable and underserved populations  
10 in North Carolina.

11 (2) To fund programs and initiatives that include research, education,  
12 prevention, and treatment of health problems in North Carolina and to  
13 increase the capacity of communities to respond to the public's health  
14 needs.

15 (3) To develop a comprehensive, community-based plan with goals and  
16 objectives to improve the health and wellness of the people of North  
17 Carolina with a priority on preventing, reducing, and remedying the  
18 health effects of tobacco use and with an emphasis on reducing youth  
19 tobacco use. The plan shall include measurable health and wellness  
20 objectives and a proposed timetable for achieving these objectives. In  
21 developing the plan, the Commission shall consider all facets of  
22 health, including prevention, education, treatment, research, and  
23 related areas.

24 (f) Limit on Operating and Administrative Expenses. – No more than two and  
25 one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year  
26 beginning July 1 or a total sum of one million dollars (\$1,000,000), whichever is less,  
27 may be used each fiscal year for administrative and operating expenses of the  
28 Commission and its staff. All administrative expenses of the Commission shall be paid  
29 from the Fund."

30 **SECTION 3.** G.S. 143-719 reads as rewritten:

31 "**§ 143-719. Tobacco Trust Fund; creation; ~~investment~~investment; priority use.**

32 (a) Fund Established. – The Tobacco Trust Fund is established in the Office of  
33 the State Treasurer. The Fund shall be used to ~~provide financial assistance in accordance~~  
34 with for the purposes provided in this Article.

35 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the  
36 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer  
37 ~~shall be~~is the custodian of the Fund and shall invest the assets in accordance with  
38 G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund ~~shall~~  
39 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal  
40 year ~~shall be~~is carried forward in the Fund for the next succeeding fiscal year.  
41 Payments from the Fund shall be made on the warrant of the chair of the Commission,  
42 pursuant to the directives of the Commission.

43 (c) Priority Use of Funds. – The Commission shall not spend moneys in the Fund  
44 in accordance with G.S. 143-720 or G.S. 143-721 in a fiscal year until after the

1 requirements of this subsection have been satisfied. As soon as practicable each fiscal  
2 year after receiving the certification from the chair of the Health and Wellness Trust  
3 Fund Commission pursuant to G.S. 147-86.30, the chair of the Commission must issue a  
4 warrant in the certified amount, if any, from the Fund to the General Fund."

5 **SECTION 4.** Article 9 of Chapter 142 of the General Statutes is amended by  
6 adding a new section to read:

7 "**§ 142-95. RECOP indebtedness.**

8 (a) Authorization. – In addition to special indebtedness described in the  
9 preceding sections of this Article, the State may incur special indebtedness as described  
10 in this section to be called real estate certificates of participation (RECOP)  
11 indebtedness. RECOP indebtedness shall be incurred for the purposes and otherwise as  
12 prescribed in the preceding sections of this Article, with the exceptions and limitations  
13 provided in this section. All of the provisions of this Article apply to RECOP  
14 indebtedness except to the extent a provision of this section specifically conflicts with a  
15 provision in the preceding sections of this Article.

16 (b) Purposes. – In addition to the purposes provided in G.S. 142-83, RECOP  
17 indebtedness may be incurred to refund any indebtedness of the State. RECOP  
18 indebtedness may refund non-RECOP indebtedness to the same extent it may refund  
19 RECOP indebtedness in accordance with the preceding sections of this Article, except  
20 that the General Assembly must first enact legislation authorizing the incurrence of  
21 RECOP indebtedness for this purpose up to a specific maximum amount. The proceeds  
22 of RECOP indebtedness may not be used for operating expenses, start-up costs, or other  
23 items of working capital.

24 (c) Security. – In addition to the security authorized in G.S. 142-85(a), RECOP  
25 indebtedness may be secured by any property or interest in property of the State selected  
26 by the Director of the Budget in consultation with the State Treasurer and approved by  
27 the Council of State in accordance with this Article. Before selecting as security any  
28 property or interest in property not authorized in G.S. 142-85, the Director of the  
29 Budget must consult with the Joint Legislative Commission on Governmental  
30 Operations. This subsection supplements G.S. 142-85(a); all of the remaining provisions  
31 of G.S. 142-85 apply to RECOP indebtedness.

32 (d) Principal. – The entire principal amount may mature on a single date. No  
33 principal reduction is required prior to maturity.

34 (e) Interest. – Interest on RECOP indebtedness may be payable partly  
35 periodically and partly at maturity or earlier redemption, in the latter case with interest  
36 accruing and compounding at a stated interest rate.

37 (f) Additional State Property Law Exception. – Chapter 146 of the General  
38 Statutes does not apply to any sale of the State's interest in property securing RECOP  
39 indebtedness if the sales proceeds are used first to pay, or provide for the payment of, all  
40 or a portion of that RECOP indebtedness. The property law exceptions in  
41 G.S. 142-85(h) also apply to RECOP indebtedness."

42 **SECTION 5.(a)** Findings. – The General Assembly finds that there are  
43 circumstances in which the State may benefit from the use of innovative or flexible  
44 public financing tools not previously considered in North Carolina. In light of the value

1 of State property and its great potential for appreciation, financing vehicles may be  
2 developed that provide for a lower annual debt service in exchange for a larger payment  
3 when the debt matures. In the context of urgent State needs or temporary budget  
4 restrictions, the General Assembly finds that it may be in the best interest of the State to  
5 be able to take advantage of this type of financing option. In order for the General  
6 Assembly to make a policy decision on this issue, more economic and financial  
7 information is needed.

8         **SECTION 5.(b)** Study. – The State Treasurer shall study the effects of  
9 refunding State indebtedness or financing new State facilities with RECOP indebtedness  
10 as defined in G.S. 142-95. In evaluating the feasibility of incurring RECOP  
11 indebtedness and the surrounding policy issues, the State Treasurer shall evaluate all of  
12 the following:

- 13         (1) The overall net economic cost to the State in incurring RECOP  
14         indebtedness as compared to other forms of indebtedness.
- 15         (2) The relative annual debt service costs and final maturity payments of  
16         RECOP indebtedness as compared to other forms of indebtedness.
- 17         (3) The availability of alternative financing opportunities and their relative  
18         costs to the State.
- 19         (4) For refundings, whether the refunding would result in an economic  
20         gain, overall lower borrowing costs, or other benefits to the State.
- 21         (5) Factors that affect which circumstances might make RECOP financing  
22         more or less desirable.
- 23         (6) The impact on the State's credit rating of various debt options in  
24         various situations.
- 25         (7) Any other issues the State Treasurer considers relevant.

26         **SECTION 5.(c)** Report. – The State Treasurer shall report to the Joint  
27 Legislative Commission on Governmental Operations by February 1, 2005, the results  
28 of this study, including specific findings and recommendations.

29         **SECTION 6.** Sections 2 and 3 of this act become effective July 1, 2004. The  
30 remainder of this act is effective when it becomes law.