

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE DRS15164-MC-106 (03/01)

Short Title: Debt Issuance Accountability Act: GA Approval. (Public)

Sponsors: Senator Tucker (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE ABILITY OF STATE AGENCIES OR STATE ENTITIES TO
3 ENTER INTO DEBT OR DEBT-LIKE ARRANGEMENTS OUTSIDE OF THE
4 PURVIEW OF THE GENERAL ASSEMBLY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 142 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 1A.

9 "Issuance Accountability.

10 "**§ 142-15.15. Findings.**

11 The General Assembly hereby finds as follows:

- 12 (1) From time to time, the General Assembly has authorized the State and State
13 entities to acquire or lease assets and has structured the acquisition or leasing
14 of those assets in ways that obligate the State to make payments similar to
15 the obligation of the State to make payments for borrowed money.
- 16 (2) Some of these arrangements have been made pursuant to specific legislative
17 authorization of the General Assembly, such as the financing of assets
18 pursuant to the State Capital Facilities Finance Act, the State Energy
19 Conservation Act, and the State and Local Government Revenue Bond Act,
20 while other arrangements have been entered pursuant to broader and more
21 general legislative authorization, such as general powers to lease property.
- 22 (3) Depending upon the terms, some arrangements may be treated as similar to
23 obligating the State to make payments for borrowed money and, therefore,
24 have an impact on the State's credit ratings, future debt affordability, the
25 ability to address budgetary shortfalls, the ability to enforce its contract
26 rights regarding the quality, durability, and performance of the assets
27 acquired, management of federal income tax compliance requirements,
28 management of federal securities law compliance, and on other matters of
29 State finances.
- 30 (4) Due to these consequences, the General Assembly enacts this act to set forth
31 limitations on the ability of State entities to enter into financing
32 arrangements that constitute State-supported financing arrangements in order
33 to assure that the General Assembly is involved in reviewing and authorizing
34 these transactions and that the transactions are properly managed by State
35 departments and officials.

36 "**§ 142-15.16. Definitions.**



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1 The following definitions apply in this Article:

2 (1) Financing arrangement. – An installment financing arrangement,
3 lease-purchase arrangement, arrangement under which funds are to be paid
4 in the future based upon the availability of an asset, or any similar
5 arrangement in the nature of financing having a term (including renewal
6 options) of greater than one year, in which a State entity agrees to make
7 payments to acquire or obtain a capital asset for a State entity. Any
8 arrangement that results in the identification of a portion of a lease payment,
9 installment payment, or similar scheduled payment as "interest" for purposes
10 of federal income taxation is a financing arrangement for purposes of this
11 Article; provided, however, that (i) a contractual provision that requires
12 interest charges for late or overdue payments shall not by themselves convert
13 a construction or procurement contract into a financing arrangement and (ii)
14 a contractual provision in a construction or purchase contract in which a
15 State entity will withhold or retain from amounts otherwise payable under
16 the contract a retainage until completion of construction, the resolution or
17 adjudication of disputes under the contract, the satisfaction of contract
18 provisions requiring that the property constructed or acquired meets
19 specified performance or quality standards, or similar contractual provisions
20 designed to protect the interests of the State under the contract, do not
21 convert an arrangement that otherwise does not constitute a financing
22 arrangement into a financing arrangement. The term does not include any of
23 the following:

24 a. A true operating lease.

25 b. Provisions in a construction or purchase contract in which payments
26 are to be made over an extended period of time in accordance with
27 the terms of the contract as construction is completed or assets are
28 delivered.

29 (2) State entity. – The State of North Carolina and every agency, authority,
30 institution, board, commission, bureau, council, department, division,
31 officer, or employee of the State. The term does not include counties,
32 municipal corporations, political subdivisions, local boards of education, or
33 other local public bodies.

34 (3) State-supported financing arrangement. – Any financing arrangement that
35 requires payments that are payable, whether directly or indirectly and
36 whether or not subject to the appropriation of funds for payment, by
37 payments from the General Fund, the Highway Fund, the Highway Trust
38 Fund, or other funds and accounts of the State that are funded from the
39 general revenues and other taxes and fees of the State or State entities. A
40 State-supported financing arrangement does not include a financing
41 arrangement where bonds or other obligations are issued or incurred to carry
42 out a financing program authorized by the General Assembly under which
43 the bonds or other obligations are payable from moneys derived from
44 specified, limited, nontax sources such as (i) loan payments made by a
45 non-State entity receiving the benefit of financing by a State entity
46 (including an "obligor" or "participating institution" within the meaning of
47 Chapter 159D of the General Statutes, a "public agency" or a "nonprofit
48 agency" within the meaning of Chapter 131A of the General Statutes, and
49 similar entities); (ii) revenues of a revenue-producing enterprise or activity
50 (such as "revenues" within the meaning of Part 4 and Part 16 of Chapter 116
51 of the General Statutes and "obligated resources" within the meaning of

1 Article 3 of Chapter 116D of the General Statutes); and (iii) loan payments
2 received, loans owned, and other assets of a State entity that are pledged to
3 secure bonds under programs to finance that type of assets and the associated
4 activities (such as mortgage loans under Chapter 122A of the General
5 Statutes and student loans under Article 23 of Chapter 116 of the General
6 Statutes).

7 **§ 142-15.17. No State-supported financing of certain assets without approval of the**
8 **General Assembly.**

9 No State entity shall enter into any State-supported financing arrangement with respect to
10 the acquisition of a capital asset having a value of five million dollars (\$5,000,000) or more
11 unless the General Assembly has enacted legislation expressly approving (i) the acquisition,
12 project, or undertaking to be financed and (ii) the use of the State-supported financing
13 arrangement. The legislation required by this section may be in the form of either an act that
14 refers to the specific asset or project and the manner of financing or an act that identifies a type
15 of asset or project and a maximum amount that may be financed or incurred for that type of
16 asset or project. Examples of references to a specific asset or project include "energy savings
17 projects" or "repairs and renovations of State-owned buildings."

18 **SECTION 2.** This act is effective when it becomes law and applies to financing
19 arrangements entered on or after that date.