



# HOUSE BILL 97: 2015 Appropriations Act

2015-2016 General Assembly

<b>Committee:</b>	House Finance, if favorable, Appropriations, if favorable, Pensions and Retirement	<b>Date:</b>	May 18, 2015
<b>Introduced by:</b>	Reps. Dollar, L. Johnson, McGrady, Lambeth	<b>Prepared by:</b>	Finance Team
<b>Analysis of:</b>	PCS to First Edition H97-CSMCxfr-16		Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 97 contains several finance-related provisions.*

**Part I: Income Tax Changes**

- *It would extend for 4 years the research and development credit.*
- *It would extend the renewable energy credit as follows:*
  - *2 years for solar projects*
  - *4 years for non-solar projects*
- *It would reestablish a modified historic rehabilitation credit, effective for expenses incurred on or after January 1, 2015. This is the same credit passed by the House in HB 152, which is currently in the Senate Ways and Means Committee.*
- *It would allow taxpayers to claim a deduction for medical expenses to the extent those expenses are deductible at the federal level and if the expenses are incurred by a person age 65 or older. This provision is effective for taxable years beginning on or after January 1, 2015.*

**Part II: Sales Tax Changes**

- *It would extend for 4 years the following sales tax preferences for motorsports teams:*
  - *Sales tax refund on aviation fuel.*
  - *50% sales tax refund on tangible personal property, other than tires and accessories, that comprises any part of a professional motorsports vehicle.*
  - *Sales tax exemption on service contracts on items for which a professional motorsports team may receive a sales tax refund. It would also clarify that the exemption for service contracts applies to purchases by a "related member" of a racing team.*
- *It would create an additional sales tax exemption for datacenter equipment and electricity, similar to the current exemption, but broader in scope of equipment covered, if \$75M is invested over a 5-year period, effective July 1, 2015. This is the same provision that was passed in the House in HB 117, which is currently in Senate Finance.*
- *It would create a new exemption from the sales tax on service contracts for a qualifying aircraft or jet engine if the service contract is sold by the manufacturer of the aircraft or jet engine, effective July 1, 2017.*

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## Part III: Motor Fuel Tax Changes

- *It would reduce the motor fuel tax rate from 36¢ to 33¢ on all motor fuel, except for diesel, effective January 1, 2016.*

## Part IV: Economic Development

- *It would require the Department of Commerce to use \$500,000 from the Utility Account for the establishment of a work-based experience pilot program at a qualifying cooperative innovative high school. The funds may also be used for capital improvements and renovations at the school or to purchase applied technology equipment for the purpose of facilitating the implementation of the pilot program. The Department would also be required to study expansion of the program statewide.*

## Part V: Bond Authorization

- *It would authorize the issuance of 2/3's general obligation bonds in the amount of up to \$269,525,200 for the financing of a health sciences building at ASU, an engineering building at NCSU, a new science building at UNC-Charlotte, a DHHS medical examiner facility at WFU, and Phase 1 of the Highway Patrol Training Academy, provided that the projects are not otherwise authorized by May 31, 2016, to be financed with general obligation debt approved by voters.*

## Part VI: Fee Provisions

- *The bill includes \$2,294,750 in General Fund fee increases for the biennium; \$133,800,000 and \$291,400,000 in Highway Fund fee increases for the 2015-2016 and 2016-2017 fiscal years, respectively; and \$5,200,000 and \$8,300,000 in losses to the Highway Trust Fund for the 2015-2016 and 2016-2017 fiscal years, respectively. The fee provisions are described in more detail on the chart distributed with this summary.*

## **Part I. Income Tax Changes**

### **EXTEND RESEARCH & DEVELOPMENT CREDIT**

**BILL ANALYSIS:** Section 1.1 would extend the research and development credit for four years. The credit was originally enacted in 2004 with a 2009 sunset. In 2008, it was extended to 2014. In 2013, it was extended to 2016.

**CURRENT LAW:** In 2004, the General Assembly enacted this credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act on January 1, 2006. A taxpayer that has qualified North Carolina research expenses or North Carolina university research expenses is allowed a credit. The taxpayer must satisfy Article 3J requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, the taxpayer's environmental record, and overdue tax debts.

The credit amount varies. For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses. Specifically, the rate is 3.25% for small businesses and for research and development conducted in a development tier one area. For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

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The credit is allowed against the franchise tax or the income tax and may not exceed 50% of the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against the tax. Any unused portion of the credit may be carried forward for 15 years.

## EXTEND RENEWABLE ENERGY CREDIT

**BILL ANALYSIS:** Section 1.2 would extend the renewable energy credit for solar projects for two years and for all other projects for four years.<sup>1</sup>

**CURRENT LAW:** North Carolina allows a tax credit for investing in renewable energy property equal to 35% of the cost of the property with a maximum based upon the type of property serviced (*See table below*). The credit applies to the following machinery and equipment or real property:

- Biomass equipment that uses renewable biomass resources<sup>2</sup> for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane using agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials.
- Combined heat and power system property.<sup>3</sup>
- Geothermal heat pumps and geothermal equipment.
- Hydroelectric generators.
- Solar energy equipment.
- Wind equipment.

In the case of renewable energy property that services a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The credit may be taken against the franchise tax, the income tax, or the gross premiums tax. The taxpayer must elect the tax against which the credit will be claimed when the credit is taken. The election is binding, and any carryforwards of the credit must be taken against the same tax.

The renewable energy tax credit has the following limitations and conditions:

- The renewable energy tax credit may not exceed 50% of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.
- A taxpayer that claims any other credit allowed with respect to renewable energy property may not take the renewable energy tax credit with respect to the same property.

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<sup>1</sup> S.L. 2015-11 (Renewable Energy Safe Harbor; SB 372) became law on April 30 and extends the credit until January 1, 2017, for taxpayers that meet certain requirements. The extension proposed in H97 does not conflict with SB 372, but would render its provisions unnecessary because SB 372 contains a more limited sunset extension than the extension in H97. To qualify for the extension of the credit under SB 372, a taxpayer must show that the construction of the project is partially constructed as of January 1, 2016. The amount of the partial construction is based on the anticipated capacity of the proposed project. For projects that will have less than 65 megawatts of capacity, the project must be 80% complete by January 1, 2016. For projects that will have 65 megawatts of capacity or more, the project must be 50% complete by January 1, 2016.

<sup>2</sup> Renewable biomass resources are organic matters produced by terrestrial and aquatic plants and animals, such as standing vegetation, forestry and agricultural residues, landfill wastes, animal wastes, and spent pulping liquor.

<sup>3</sup> Combined heat and power equipment produces heat and electricity simultaneously. The paper and pulp industry is the primary State industry that uses combined heat and power equipment.

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- A taxpayer may not take the renewable energy tax credit if the taxpayer leases the property from another person, unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.

TYPE OF PROPERTY	MAXIMUM CREDIT
Non-residential property.	\$2,500,000 per installation.
Residential property – Solar energy equipment for domestic water heating. The act clarifies that the credit also applies to solar energy equipment for pool heating.	\$1,400 per dwelling unit.
Residential property – Solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.	\$3,500 per dwelling unit.
Residential property – Geothermal heat pumps and equipment.	\$8,400 per installation.
Residential property – All other renewable energy property for residential purposes.	\$10,500 per installation.

## HISTORIC PRESERVATION CREDIT

**BILL ANALYSIS:** Section 1.3 would reestablish a modified version of the historic rehabilitation tax credit after the sunset of the former Article 3D tax credits. The new historic rehabilitation tax credits would appear as Article 3L, titled Historic Rehabilitation Tax Credits Investment Program.

- **Income-Producing Property.** – The credit for rehabilitating income-producing historic structure is the sum of the amounts listed below with a cap of \$4,500,000. The project must qualify for the federal historic rehabilitation tax credit under IRC §47. The federal credit only applies to income-producing property, effectively limiting the tax credit to commercial buildings or portions of buildings used for commercial purposes.
  - 15% of expenses from \$0 to \$10 million.
  - 10% of expenses from \$10 million to \$20 million.
  - 5% of expenses from \$0 to \$20 million if the certified historic structure is located in a development tier 1 or 2 area.
  - 5% of expenses from \$0 to \$20 million if the certified historic structure is located on an eligible targeted investment site (i.e., site that was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility; is a certified historic structure; and has been at least 65% vacant for a period of at least 2 years).

The credit for rehabilitating income-producing historic structures may be allocated by pass-through entities (e.g., partnerships and S corporations) among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity is at least 40% of the credit allocated to that owner. Normally, federal and State rules require allocation of tax items by pass-through entities to meet certain tests to prevent owners from taking a disproportionate share of tax benefits.

- **Non-Income-Producing Property.** – The credit for rehabilitating non-income-producing historic structures is 15% of the expense if the expense exceeds \$10,000 but the tax credit cannot exceed

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\$22,500. The tax credit for non-income-producing property applies where the federal credit is not allowed and may apply to personal residences assuming the property meets the other requirements.

The tax credit is nonrefundable. The credit may be elected to apply against franchise tax, individual and corporate income taxes, or gross premiums tax.

The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process and may adopt a schedule of fees for providing any certifications.

The Department of Revenue must include in the economic incentives report the following information itemized by taxpayer:

- Number of taxpayers that took the credits.
- Amount of rehabilitation expenses with respect to which credits were taken.
- Total cost to the General Fund of the credits taken.
- For all taxpayers, total amount of tax credits claimed and the total amount of tax credits taken against current taxes, by type of tax, during the relevant tax year.
- For all taxpayers, total amount of tax credits carried forward, by type of tax.

**CURRENT LAW:** Article 3D of Chapter 105, titled Historic Rehabilitation Tax Credits, provided a tax credit for rehabilitating income-producing historic structures and a tax credit for rehabilitating non-income-producing historic structures. Article 3D expired for rehabilitation expenditures incurred on or after January 1, 2015. The former Historic Rehabilitation Tax Credits were very similar to the tax credits proposed in this bill. However, the former credits were not capped and had a higher credit percentage.

Article 3H of Chapter 105, titled Mill Rehabilitation Tax Credit, provided a tax credit for income-producing rehabilitated mill property and a tax credit for non-income-producing rehabilitated mill property. Article 3H expired for rehabilitation projects for which an application for an eligibility certification is submitted on or after January 1, 2015. Rehabilitation projects with an eligibility certification remain eligible for the Mill Rehabilitation Tax Credit. The Mill Rehabilitation Tax Credit could not be claimed for the same project as the former Historic Rehabilitation Tax Credit under Article 3D. The Mill Rehabilitation Tax Credit had a higher credit percentage (as high as 40%) than the former Historic Rehabilitation Tax Credit – making the Mill Rehabilitation Tax Credit more valuable assuming a project qualified.

**EFFECTIVE DATE:** The tax credits would apply to rehabilitation expenditures incurred on or after January 1, 2015 and sunsets for rehabilitation expenditures incurred on or after January 1, 2021. Subsection (b) of this section would sunset the Mill Rehabilitation Tax Credit under Article 3H effective January 1, 2023 by expiring any eligibility certifications issued before January 1, 2015.

## **SENIOR TAX DEDUCTION FOR MEDICAL EXPENSES**

**BILL ANALYSIS:** **Section 1.4** would allow an itemized deduction for medical expenses in the amount allowed as a deduction for medical expenses under section 213 of the Internal Revenue Code for that taxable year to the extent the medical expenses are incurred for a person who has attained the age of 65 before the close of the taxpayer's taxable year.

**CURRENT LAW:**

**Federal Income Tax Treatment of Medical Expenses.** – Section §213 of the IRC allows as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his or her spouse, or a dependent, to the extent that such expenses exceed a specified percent of adjusted gross income. A taxpayer who is under age 65 may deduct only the amount of medical and dental expenses that exceeds 10% of AGI; for a taxpayer who is 65 or over, the threshold is 7.5% through the end of 2016, at which point it reverts to 10%. Medical expenses include "costs of diagnosis, cure, mitigation, treatment, or prevention of disease, and the costs for treatments affecting any part or function of the body."<sup>4</sup> Medical expenses also include premiums for insurance that cover expenses of medical care, transportation to get medical care, amounts paid for qualified long-term care services and limited amounts paid for a qualified long-term care insurance contract.

**North Carolina Tax Treatment of Medical Expenses.** – Beginning with tax year 2014, North Carolina tax law was changed and medical and dental expenses were no longer allowable income tax deductions on North Carolina individual income tax returns. Currently, a taxpayer who itemizes may only deduct mortgage expenses and property taxes, with a cap of \$20,000, and unlimited charitable contributions.

**EFFECTIVE DATE:** The deduction would be effective for taxable years beginning on or after January 1, 2015.

## **Part II. Sales Tax Changes**

### **EXTEND SALES TAX PREFERENCES FOR MOTORSPORTS**

**BILL ANALYSIS:** Sections 2.1 and 2.2 would extend for 4 years the sales tax preferences for motorsports teams. This section would also clarify that the sales tax exemption for service contracts on items purchased by a motorsports team also applies to purchases by a "related member" of a racing team to make the language consistent with the treatment of sales tax refunds.

#### **CURRENT LAW:**

**Sales Tax Refund on Aviation Fuel.** – Originally enacted in 2005, an annual sales and use tax refund is available to a professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team. The amount of the refund is equal to the amount of sales and use tax paid on aviation fuel used to travel to or from a motorsports event in this State, from this State to a motorsports event in another State, or to this State from a motorsports event in another State. For the purposes of the refund, a 'motorsports event' includes a motorsports race, a motorsports sponsor event, and motorsports testing. This refund is currently scheduled to expire January 1, 2016.

**50% Sales Tax Refund on Tangible Personal Property.** – A professional motorsports racing team or a related member of a team is entitled to a sales tax refund for purchases of professional motor racing vehicle component parts, other than tires or accessories. The amount of the refund is equal to 50% of the sales and use tax paid. A professional motorsports racing team is a racing team (1) operated for profit (2) that obtains the majority of its revenue from sponsorship of the racing team and prize money and (3) that competes in at least 66% of the races per season sponsored by a motorsports sanctioning body. This refund is currently scheduled to expire January 1, 2016.

**Sales Tax Exemption on Service Contracts.** – Under current law, a service contract on an item purchased by a professional motorsports racing team that is eligible for a sales tax refund is exempt from sales and use tax. By extending the sales tax refund for four years, above, it effectively extends the sales tax exemption for service contracts on those items.

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<sup>4</sup> IRS Publication 502.

## SALES TAX EXEMPTION FOR DATACENTER INFRASTRUCTURE

**BILL ANALYSIS:** Section 2.3 would create an additional sales tax exemption for datacenter equipment and electricity, similar but broader in scope of equipment covered, if \$75M is invested over a 5-year period.

**CURRENT LAW:** Under current law, datacenters receive the following tax benefits for certain purchases if certain conditions are met:

- G.S. 105-187.51C imposes a privilege tax, in lieu of a sales tax, on certain equipment and machinery purchased by an eligible data center. The rate of tax is 1% of the sales price of the equipment and machinery, capped at \$80 per article. To qualify, a taxpayer must invest \$150M in a tier one area datacenter or \$225 million in a tier 2 or 3 area datacenter over a five-year period. The benefit applies to a second datacenter in which \$75M is invested as well. This provision is scheduled to expire July 1, 2015.
- G.S. 105-164.13(55) exempts an eligible Internet data center from sales tax on electricity and on certain business property located and used at the data center, if \$250M is invested over a 5-year period.<sup>5</sup>

## EXEMPT SERVICE CONTRACTS ON AIRCRAFT FROM SALES TAX

**BILL ANALYSIS:** Section 2.4 would exempt from sales tax service contracts on a qualifying aircraft or qualifying jet engine if the service contract is sold by the manufacturer of the aircraft or jet engine. A qualifying aircraft is defined as an aircraft with a maximum take-off weight of more than 10,000 pounds but not in excess of 20,000 pounds; a qualifying jet engine is an engine certified under Part 33 of Title 14 of the Code of Federal Regulations.

**CURRENT LAW:** S.L. 2013-316 expanded the sales tax base to include the sales price of a service contract. A service contract is defined as a warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the seller agrees to maintain or repair tangible personal property. Service contracts on the following items are exempt:

- An item exempt from tax under the sales tax Article, other than a motor vehicle exempt from tax.
- A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.
- An item purchased by a professional motorsports racing team for which the team may receive a sales tax refund under G.S. 105-164.14A(5).
- An item subject to tax under Article 5F of Chapter 105 of the General Statutes.

**EFFECTIVE DATE:** This section would become effective July 1, 2017, and apply to sales made on or after that date.

## Part III. Motor Fuels Tax Change

**BILL ANALYSIS:** Section 3.1 would reduce from 36¢ to 33¢ per gallon the motor fuel tax on all motor fuel, except for diesel, for the period January 1, 2016, through January 1, 2017. Beginning January 1, 2017, the rate of 33¢ would be adjusted by the formula established in S.L. 2015-2.

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<sup>5</sup>To be an eligible Internet data center under G.S. 105-164.13 or an eligible data center under G.S. 105-187.51C, a facility must meet certain use, location, wage, and employee insurance benefits.

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## CURRENT LAW:

**Rate.** – A motor fuel<sup>6</sup> excise tax is imposed on all motor fuels sold, distributed, or used in the State.<sup>7</sup> The chart below shows what the rate is scheduled to be pursuant to S.L. 2015-2 compared to the proposed rate under this bill:

Period	Rate Under Current Law, as enacted by S.L. 2015-2	Proposed Rate Under H97
April 1, 2015 – December 31, 2015	36 cpg	36 cpg
January 1, 2016 – June 30, 2016	35 cpg	33 cpg
July 1, 2016 – December 31, 2016	34 cpg	33 cpg
January 1, 2017 –	34 cpg * percentage	33 cpg * percentage

Beginning January 1, 2017, the motor fuels tax rate will be 34 cpg multiplied by a percentage. The percentage is 100% plus or minus the sum of the following:

- The percentage change in population multiplied by 75%.
- The percentage change in the Consumer Price Index for all Urban Consumers multiplied by 25%. The "Consumer Price Index for All Urban Consumers" means the United States city average for energy index released by the Bureau of Labor Statistics.

**Base Period.** – S.L. 2015-2 also changed the period upon which the motor fuels tax rate is determined. Under prior law, the rate was set twice a year.<sup>8</sup> Under the new law, the rate will be determined once a year, using a 12-month base period that runs from October 1 to September 30, with a new rate going into effect on the following January 1.

**Distribution of Revenue.** – The revenue generated by the motor fuel tax is distributed as follows<sup>9</sup>: One-half cent of the excise tax on each gallon of gas is distributed to funds for underground tank storage cleanup water and air quality. The remaining excise tax revenue is allocated as follows:

- 75% to the Highway Fund and used for maintenance, transit, rail, State Highway Patrol, DMV, some secondary road improvement, Powell Bill distribution to local governments, and some other administrative needs. G.S. 105-449.126 credits 1/6 of 1% of this amount annually to the Wildlife Resources Fund to be used for the boating and water safety activities described in G.S. 75A-3(c).
- 25% to the Highway Trust Fund and used for construction of the intrastate system, some secondary road improvement, and Powell Bill distribution to local governments.

## Part IV. Economic Development

**BILL ANALYSIS:** Section 4.1 of the bill would require the Department of Commerce to use \$500,000 from the Utility Account to establish a pilot program with a qualifying cooperative innovative high school for the purpose of establishing a statewide system to further educational program where high school students take classes developed in collaboration with eligible industries and graduate with an applicable associates degree. The funds may also be used for capital improvements and renovations at the school or to purchase applied technology equipment for the purpose of facilitating the

<sup>6</sup> Motor fuel is defined as gasoline, diesel fuel, and blended fuel (G.S. 105-449.60(31)).

<sup>7</sup> The current rates in surrounding states are: South Carolina -16¢ per gallon; Virginia - 19.88¢ per gallon, and Tennessee - 20¢ per gallon.

<sup>8</sup> Under prior law, the rate that went into effect on January 1 was based on the prior six-month period from April to September, and the rate that went into effect on July 1 was based on the prior six-month period from October to March.

<sup>9</sup> G.S. 105-449.125.



implementation of the pilot program. The Department would also be required to study expansion of the program statewide.

For purposes of the pilot program, a *qualifying* school is a cooperative innovative high school (i) to be operated in a local board of education, owned or leased facility pursuant to a location waiver; (ii) in a tier 1 area; (iii) with \$300,000 in equipment or support from an eligible industry; and (iv) with at least 50% local match to business investment.

**CURRENT LAW:** A cooperative innovative high school<sup>10</sup> is a high school approved by the State Board of Education and the applicable governing Board that meets the following criteria:

- It has no more than 100 students per grade level.
- It partners with an institution of higher education to enable students to concurrently obtain a high school diploma and begin or complete an associate degree program, master a certificate or vocational program, or earn up to two years of college credit within five years.
- It is located on the campus of the partner institution of higher education, unless the governing Board or the local board of trustees for a private North Carolina college specifically waives the requirement through adoption of a formal resolution.

### Part V. Bond Authorization

**BILL ANALYSIS:** Section 5.1 would authorize the issuance of 2/3's general obligation bonds in the amount of up to \$269,525,200 for the financing of the following capital projects, provided that the listed projects are not otherwise authorized by May 31, 2016, to be financed with general obligation debt approved by voters.

Health Sciences building at ASU.....	\$70,782,000
Engineering building at NCSU.....	\$65,100,000
Science building at UNC-Charlotte.....	\$90,000,000
DHHS medical examiner facility at WFU.....	\$12,976,000
Phase 1 of the Highway Patrol Training Academy.....	\$30,667,200

**CURRENT LAW:** General obligation bond indebtedness is secured by the faith and credit and taxing power of the State. As a general rule, general obligation bond indebtedness must be approved by the voters. However, under Article V, Sec. 3(a)(f)<sup>11</sup> of the North Carolina Constitution, the State may issue non-voted general obligation bonds in an amount not to exceed 2/3 of the amount by which it reduced its outstanding general obligation debt in the preceding biennium.

### Part VI. Fee Provisions

The bill includes \$2,294,750 in General Fund fee increases, \$133,800,000 in Highway Fund fee increases, and \$5,200,000 in losses to the Highway Trust Fund. For fiscal year 2016-2017, there are \$291,400,000 in Highway Fund fee increases and \$8,300,000 in losses to the Highway Trust fund.

<sup>10</sup>G.S.115C-238.50A.

<sup>11</sup> "Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

...  
(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium."