

CHAPTER 09 - NORTH CAROLINA CAPITAL FACILITIES FINANCE AGENCY

SECTION .0100 - GENERAL PROVISIONS

20 NCAC 09 .0101 ORGANIZATION AND FUNCTIONS

(a) The North Carolina Capital Facilities Finance Agency operates within the Department of State Treasurer and is the State's agency charged with the duty of advising and assisting institutions of higher education in financing the construction and renovation of higher education facilities.

(b) The following is information about the North Carolina Capital Facilities Finance Agency:

- (1) the Administrative Officer is the Secretary-treasurer of the Agency;
- (2) the mailing address is 3200 Atlantic Avenue, Raleigh, North Carolina 27604; and
- (3) the office is located in the Longleaf Building, 3200 Atlantic Avenue, Raleigh, North Carolina 27604.

(c) The staff of the North Carolina Capital Facilities Finance Agency is provided by the State and Local Government Finance Division.

History Note: Authority G.S. 159D-38(e); 159D-39;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Amended Eff. November 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

20 NCAC 09 .0102 DEFINITIONS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context requires another meaning:

- (1) "Agency" is the North Carolina Capital Facilities Finance Agency or the Board of Directors thereof.
- (2) "Secretary-treasurer" is the Secretary-treasurer of the North Carolina Capital Facilities Finance Agency.

History Note: Authority G.S. 159D-37; 159D-39;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Amended Eff. November 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0200 - RULE-MAKING

20 NCAC 09 .0201 RULE-MAKING PROCEDURES

(a) 20 NCAC 1F .0100 shall govern the issuance of Rules by the agency.

(b) All correspondence shall be addressed to the Secretary-treasurer at the mailing address of the commission.

History Note: Authority G.S. 159D-5(1); 159D-39(17); 159D-39(19); 159D-41;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

20 NCAC 09 .0202 DECLARATORY RULES

(a) 20 NCAC 1F .0200 shall govern the issuance of declaratory rules by the agency.

(b) All correspondence shall be addressed to the Secretary-treasurer at the mailing address of the agency.

History Note: Authority G.S. 159D-5(1); 159D-39(17); 159D-39(19); 159D-41; Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988; Eff. March 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0300 - CONTESTED CASES

20 NCAC 09 .0301 CONTESTED CASE PROCEDURES

- (a) 20 NCAC 1F .0300 shall govern the hearings and decisions in contested cases.
- (b) All correspondence shall be directed to the Secretary-treasurer at the mailing address of the agency.

History Note: Authority G.S. 159D-39; Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988; Eff. March 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0400 - APPROVAL OF APPLICATION

20 NCAC 09 .0401 REQUESTS FOR ACTION

- (a) All requests for action shall be addressed to the Secretary-treasurer at the mailing address of the agency.
- (b) Each request for action shall include the following information:
 - (1) cover letter which includes:
 - (A) name and address of the institution of higher education,
 - (B) brief description of circumstances and action requested,
 - (C) statutory basis for request and for action;
 - (2) detailed description of circumstances and reasons for which action is requested;
 - (3) list of all persons (real and corporate) who may be beneficially or adversely affected by any action of the agency; and
 - (4) such other applicable material and information as requested by the Secretary-treasurer.
- (c) After receipt of a request, the Secretary-treasurer shall review the case. The Secretary-treasurer may require the petitioner to attend an informal conference with the staff of the agency. The Secretary-treasurer may require the filing of such additional information as he may consider valuable to the consideration of the issues. The Secretary-treasurer may invite the staff of the Local Government Commission to the preliminary informal conference to discuss financing of the project.
- (d) At a preliminary informal conference the following matters may be discussed:
 - (1) the nature and feasibility of the proposed project;
 - (2) the need for the project;
 - (3) the feasibility of financing the project;
 - (4) the institution's debt management policies and practices;
 - (5) the financial strengths and capabilities of the institution;
 - (6) any other matters relating to the institution, to the proposed project, or to the proposed financing or lease;
 - (7) the procedures for application of approval to be used in that case; and
 - (8) future requirements to finance the project including requirements inherent in the method of financing proposed, such as the costs and need for experts, and the special requirements of those experts.
- (e) The governing body of the institution shall adopt and file with the agency a resolution authorizing filing of the application to the agency.
- (f) The institution shall submit to the agency as a part of the application for approval all documents requested by the Secretary-treasurer.
- (g) At any time after the acceptance of the application, the application may be considered by the agency together with all applicable data available to the agency. The agency shall use the factors set forth in the Higher Educational

Facilities Finance Act and any other factors which in its opinion are applicable to the circumstances under consideration.

(h) The amount approved shall be considered the maximum amount of debt to be incurred.

(i) The Secretary-treasurer shall promptly provide a copy of the final decision to the applicant.

(j) The Secretary-treasurer shall promptly provide a copy of any decision of the Local Government Commission relevant to the project to the applicant.

(k) The agency may hold a public hearing on the application.

History Note: Authority G.S. 159D-41;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

20 NCAC 09 .0402 HEARING ON CONFORMANCE TO PRIOR APPROVALS

History Note: Authority G.S. 159D-41;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Expired Eff. February 1, 2018 pursuant to G.S. 150B-21.3A.

20 NCAC 09 .0403 APPLICATION TO AMEND PRIOR APPROVALS

(a) Whenever there is a substantial change in the economic environment or situation in which the participating institution operates, the governing board of the participating institution may make an application to amend a prior approval by the agency.

(b) An application to amend prior approvals shall be submitted in the same manner as required for initial approval plus such other additional items as the agency may request.

History Note: Authority G.S. 159D-41;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0500 - REVIEW CRITERIA

20 NCAC 09 .0501 GENERAL

In order for the Secretary-treasurer to recommend approval of a project, he must make certain findings. It is the purpose of this Section to specify the standards and criteria the Secretary-treasurer will use in making his findings.

History Note: Authority G.S. 159D-40;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

20 NCAC 09 .0502 JURISDICTIONAL FINDINGS

(a) Before making technical findings, the Secretary-treasurer shall make a finding that the project is eligible as defined by law.

(b) The Secretary-treasurer shall make findings on the criteria required for revenue bonds to be approved by the Local Government Commission in G.S. 159-86(b).

- (c) Unless the applicant has met his various burdens of proof, the Secretary-treasurer shall not make his required findings.
- (d) All findings shall be in writing and where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

History Note: Authority G.S. 159D-40;
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0600 - FEES

20 NCAC 09 .0601 COLLECTING FEES

- (a) Application fees shall be payable prior to a final request for approval or participation by the agency.
- (b) Annual fees shall be payable on the anniversary date of each financing so long as any of such obligations are outstanding and unpaid.

History Note: Authority G.S. 159D-39(17);
Temporary Adoption Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

20 NCAC 09 .0602 FEES AND EXPENSES

- (a) A non-refundable application fee is required of all institutions applying to the agency. The application fee is 0.1 percent (one tenth of one percent) of the par amount of the issue with a minimum fee of two thousand dollars (\$2,000), plus any and all fees charged by the Local Government Commission.
- (b) An annual fee of one thousand dollars (\$1,000) per year is required.
- (c) In addition to the fee set forth in this Rule, the agency shall bill the institution for all travel and subsistence incurred, and all material amounts of telephone, outside legal, outside financial consulting and postage expenses when paid by the state.
- (d) The agency shall not incur expenses other than in Paragraph (c) of this Rule without prior agreement of the applicant to reimburse the agency for all related costs.

History Note: Authority G.S. 159D-39(17);
Temporary Adoption Eff. September 30, 1987 for a Period of 153 Days to Expire on March 1, 1988;
Eff. March 1, 1988;
Amended Eff. January 1, 2011;
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