

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2287\*  
Committee Substitute Favorable 7/4/90

Short Title: Corrections Bonds.

(Public)

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Sponsors:

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Referred to:

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June 4, 1990

A BILL TO BE ENTITLED

1  
2 AN ACT TO AUTHORIZE A BOND REFERENDUM ON THE ISSUANCE OF TWO  
3 HUNDRED MILLION DOLLARS GENERAL OBLIGATION BONDS OF THE  
4 STATE, TO BE VOTED ON BY THE QUALIFIED VOTERS OF THE STATE,  
5 TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE  
6 PRISON AND YOUTH SERVICES FACILITIES.

7 The General Assembly of North Carolina enacts:

8 Section 1. **Short Title.** This act shall be known and may be cited as the  
9 "State Prison and Youth Services Facilities Bond Act."

10 Sec. 2. Sec. 2. **Findings and Determinations.** It is hereby found and  
11 determined as follows:

- 12 (1) Providing adequate and sufficient prison and youth services facilities  
13 in North Carolina is of vital concern to the citizens of North Carolina  
14 and the legislative, executive, and judicial branches of government;
- 15 (2) Notwithstanding significant new prison construction over the past  
16 several years, additional prison construction is necessary to meet  
17 constitutional standards, replace outmoded facilities and to add  
18 additional prison capacity;
- 19 (3) Adding to the pressure on prison capacity are those young people who  
20 are released from training school and recidivate to prison. It is  
21 important that existing youth services facilities be renovated and new,  
22 safe and secure facilities constructed for at-risk and delinquent youth

- 1 to learn and practice life skills which are essential to responsible  
2 citizenship; and
- 3 (4) It is the intent and purpose of the General Assembly by this act to  
4 provide for a vote of the people regarding the issuance of general  
5 obligation bonds of the State in order to facilitate the payment of the  
6 capital costs required in connection with providing additional and  
7 improving existing prison and youth services facilities.
- 8 Sec. 3. **Definitions.** As used in this act, unless the context otherwise  
9 requires:
- 10 (1) 'Bonds' means bonds issued under this act.
- 11 (2) 'Cost' means, without intending thereby to limit or restrict any proper  
12 definition of such word in financing the cost of State prison and youth  
13 services facilities as authorized by this act,
- 14 a. The cost of constructing, reconstructing, enlarging, acquiring  
15 and improving facilities, and acquiring equipment and land  
16 therefor,
- 17 b. The cost of engineering, architectural and other consulting  
18 services as may be required,
- 19 c. Administrative expenses and charges,
- 20 d. The cost of bond insurance, investment contracts, credit  
21 enhancement and liquidity facilities, interest-rate swap  
22 agreements, financial and legal consultants and related costs of  
23 bond and note issuance, to the extent and as determined by the  
24 State Treasurer, and
- 25 e. Any other costs and expenses necessary or incidental to the  
26 purposes of this act.
- 27 (3) 'Credit facility' means an agreement entered into by the State  
28 Treasurer on behalf of the State with a bank, savings and loan  
29 association or other banking institution, an insurance company,  
30 reinsurance company, surety company or other insurance institution, a  
31 corporation, investment banking firm or other investment institution,  
32 or any financial institution or other similar provider of a credit facility,  
33 which provider may be located within or without the United States of  
34 America, such agreement providing for prompt payment of all or any  
35 part of the principal or purchase price (whether at maturity,  
36 presentment or tender for purchase, redemption or acceleration),  
37 redemption premium, if any, and interest on any bonds or notes  
38 payable on demand or tender by the owner, in consideration of the  
39 State agreeing to repay the provider of the credit facility in accordance  
40 with the terms and provisions of such agreement.
- 41 (4) 'Notes' means notes issued under this act.
- 42 (5) 'Par formula' means any provision or formula adopted by the State to  
43 provide for the adjustment, from time to time, of the interest rate or  
44 rates borne by any bonds or notes, including:

- 1 a. A provision providing for such adjustment so that the purchase  
2 price of such bonds or notes in the open market would be as  
3 close to par as possible,
- 4 b. A provision providing for such adjustment based upon a  
5 percentage or percentages of a prime rate or base rate, which  
6 percentage or percentages may vary or be applied for different  
7 periods of time, or
- 8 c. Such other provision as the State Treasurer may determine to be  
9 consistent with this act and will not materially and adversely  
10 affect the financial position of the State and the marketing of  
11 bonds or notes at a reasonable interest cost to the State.

12 **Sec. 4. Authorization of Bonds and Notes.** Subject to a favorable vote of a  
13 majority of the qualified voters of the State who vote on the question of issuing bonds in  
14 the election called and held as hereinafter provided, the State Treasurer is hereby  
15 authorized, by and with the consent of the Council of State, to issue and sell, at one time  
16 or from time to time, general obligation bonds of the State to be designated "State of  
17 North Carolina Prison and Youth Services Facilities Bonds", with such additional  
18 designations as may be determined to indicate the issuance of bonds from time to time,  
19 or notes of the State as herein provided, in an aggregate principal amount not exceeding  
20 two hundred million dollars (\$200,000,000) for the purpose of providing funds, with  
21 any other available funds, for the purposes authorized in this act.

22 **Sec. 5. Uses of Bond and Note Proceeds.** The proceeds of bonds and notes  
23 shall be used for the purposes of financing the cost of State prison facilities, under the  
24 supervision of the Department of Correction, and youth services facilities, under the  
25 supervision of the Department of Human Resources, including, without limitation, the  
26 cost of constructing capital facilities, renovating or reconstructing existing facilities,  
27 acquiring equipment related thereto, purchasing land, paying costs of issuance of bonds  
28 and notes and paying contractual services necessary for the completion of the purposes  
29 of this act. State prison facilities shall also include capital facilities for the Youthful  
30 Offenders Forestry Program, sometimes known as "Bridge," established pursuant to  
31 Chapter 738, 1987 Session Laws, and capital facilities for the Intensive Motivational  
32 Program for Alternative Correctional Treatment, sometimes known as "Impact".

33 The proceeds of bonds and notes, including premium thereon, if any, except  
34 the proceeds of bonds the issuance of which has been anticipated by bond anticipation  
35 notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer  
36 in a special fund to be designated the "State Prison and Youth Services Facilities Bond  
37 Fund" and shall be disbursed as herein provided.

38 Any additional moneys which may be received by means of a grant or grants  
39 from the United States of America or any agency or department thereof or from any  
40 other source to aid in financing the cost of any prison and youth services facilities  
41 authorized by this act may be placed by the State Treasurer in the State Prison and  
42 Youth Services Facilities Bond Fund or in a separate fund and, shall be disbursed, to the  
43 extent permitted by the terms of such grant or grants, without regard to any limitations  
44 imposed by this act.

1           The proceeds of bonds and notes may be used with any other moneys made  
2 available by the General Assembly for the cost of State prison and youth services  
3 facilities, including the proceeds of any other State bond issues, whether heretofore  
4 made available or which may be made available at the session of the General Assembly  
5 at which this act is ratified or any subsequent sessions. The proceeds of bonds and  
6 notes shall be expended and disbursed under the direction and supervision of the  
7 Director of the Budget. The funds provided by this act shall be disbursed for the  
8 purposes provided in this act upon warrants drawn on the State Treasurer by the State  
9 Comptroller, which warrants shall not be drawn until requisition has been approved by  
10 the Director of the Budget and which requisition shall be approved only after full  
11 compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General  
12 Statutes, as it may be amended from time to time.

13           The Office of State Budget and Management in respect of prison facilities  
14 and the Department of Human Resources in respect of youth services facilities shall  
15 provide quarterly reports to the Joint Legislative Commission on Governmental  
16 Operations, the Chairpersons of the Senate and House Appropriation Committees, and  
17 the Fiscal Research Division on the expenditure of moneys from the State Prison and  
18 Youth Services Facilities Bond Fund.

19       **Sec. 6. Allocation of Proceeds. (a) Determination.** The proceeds of bonds and  
20 notes shall be allocated and expended for the purposes of paying the cost of prison and  
21 youth services facilities as provided in this act, the particular projects within such  
22 purposes and the projected allocations therefor to be determined by legislative action of  
23 the General Assembly at the 1991 session or any subsequent session. Nothing in this  
24 act or as a result of the approval of the bonds at the election herein provided for shall be  
25 deemed to restrict the right of the General Assembly at the 1991 session or at a  
26 subsequent session to:

- 27           (1) Establish a procedure whereby projected allocations set forth in  
28           subsequent legislation may be increased or decreased to reflect the  
29           availability of other funds, including, without limitation, contingency  
30           funds, income earned on the investment of bond and notes proceeds  
31           and the proceeds of grants.
- 32           (2) Establish a contingency account and to provide for an allocation of  
33           bond proceeds thereto. The funds in such contingency account may be  
34           used to pay the cost of projects, the costs of issuance of bonds and  
35           notes, and increased project costs resulting from construction costs  
36           exceeding projections, inflationary factors and changes in projects and  
37           allocations. The funds allocated to the contingency account shall be  
38           placed by the State Treasurer in a separate account in the State Prison  
39           and Youth Services Facilities Bond Fund shall be disbursed in  
40           accordance with the procedures herein established for disbursements  
41           from the State Prison and Youth Facilities Bond Fund.
- 42           (3) Empower the Director of the Budget, when the Director determines it  
43           is in the best interest of the State and the State prison and youth  
44           services system to do so, to change the projects and allocations

1 therefor set forth in subsequent legislation, including, without  
2 limitation, the power to change the type of project to be provided at a  
3 particular institution, to increase or decrease the amount allocated to a  
4 particular institutions within the aggregate amount of funds available  
5 under this act including the proceeds of any investment earnings, to  
6 delete a project, to move a project from one institution to another  
7 institution and to add a replacement project, the Governor having the  
8 right to consult with the Advisory Budget Commission prior to taking  
9 any such action.

10 (4) Empower the Office of State Budget and Management to contract for  
11 and supervise all aspects of administration, technical assistance,  
12 design, construction or demolition of prison facilities in order to  
13 implement the providing of prison facilities under the provisions of  
14 this act without being subject to the requirements of the following  
15 statutes and rules implementing those statutes: G.S. 143-135.26(1),  
16 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10  
17 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113-  
18 66, 133-1.1(b), 133-1.1(g) and 143-408.1; provided, however, of the  
19 funds allocated under the provisions of this act for the construction of  
20 prison facilities, the Office of State Budget and Management shall  
21 have a verifiable ten percent (10%) goal for participation by minority  
22 and women-owned businesses. All contracts for the design,  
23 construction, or demolition of prison facilities shall include a penalty  
24 for failure to complete the work by a specified date.

25 (5) Empower the Department of Human Resources to contract for and  
26 supervise all aspects of administration, technical assistance, design,  
27 construction or demolition of youth services facilities in order to  
28 implement the providing of youth services facilities under the  
29 provisions of this act.

30 (b) **Quarterly Reports.** The Office of State Budget and Management in respect  
31 to prison facilities and the Department of Human Resources in respect to youth services  
32 facilities shall provide quarterly reports to the Chairman of the Appropriations  
33 Committee and the Base Budget Committee in the Senate, the Chairman of the  
34 Appropriations Committee in the House, the Joint Legislative Commission on  
35 Governmental Operations, and the Fiscal Research Division as to any changes in  
36 projects and allocations.

37 **Sec. 7. Election.** The question of the issuance of two hundred million  
38 dollars (\$200,000,000) State of North Carolina Prison and Youth Services Facilities  
39 bonds authorized by this act shall be submitted to the qualified voters of the State at an  
40 election to be held on Tuesday, November 6, 1990. Any other primary, election or  
41 referendum validly called or scheduled by law at the time the bond election provided for  
42 in this section is held may be held as called or scheduled. Notice of the bond election  
43 shall be given by publication twice in a newspaper or newspapers having general  
44 circulation in each county in the State, and the election and the registration of voters

1 therefor shall be held under and in accordance with the general laws of the State.  
2 Absentee ballots shall be authorized in the election.

3           The State Board of Elections shall reimburse the counties of the State for all  
4 necessary expenses incurred in holding the election which are in addition to those which  
5 would have otherwise been incurred, the same to be paid out of the Contingency and  
6 Emergency Fund.

7           Voting machines may be used in accordance with the rules and regulations  
8 prescribed by the State Board of Elections. The State Board of Elections may also  
9 cause to be printed and distributed, to the extent necessary, ballots for use in the  
10 election. The question to be used in the voting machines and ballots shall be in  
11 substantially the following form:

12           "For the issuance of two hundred million dollars (\$200,000,000) State of  
13 North Carolina Prison and Youth Services Facilities Bonds constituting  
14 general obligation bonds of the State secured by a pledge of the faith and  
15 credit and taxing power of the State for the purpose of providing funds,  
16 with any other available funds, for paying the cost of State prison and  
17 youth services facilities.

18           Against the issuance of two hundred million dollars (\$200,000,000) State  
19 of North Carolina Prison and Youth Services Facilities Bonds constituting  
20 general obligation bonds of the State secured by a pledge of the faith and  
21 credit and taxing power of the State for the purpose of providing funds,  
22 with any other available funds, for paying the cost of State prison and  
23 youth services facilities."

24           If a majority of those voting thereon in the election shall vote in favor of the  
25 issuance of the bonds, the bonds may be issued as herein provided. If a majority of  
26 those voting thereon in the election shall vote against the issuance of the bonds, the  
27 bonds shall not be issued.

28           The result of the election shall be canvassed and declared as provided by law  
29 for the holding of elections for State officers and the result thereof certified by the State  
30 Board of Elections to the Secretary of State, in the manner and at the time provided by  
31 the general election laws of the State.

32           **Sec. 8. Issuance of Bonds and Notes. (a) Terms and Conditions.** Bonds or  
33 notes may bear such date or dates, may be serial or term bonds or notes, or any  
34 combination thereof, may mature in such amounts and at such time or times, not  
35 exceeding 40 years from their date or dates, may be payable at such place or places,  
36 either within or without the United States of America, in such coin or currency of the  
37 United States of America as at the time of payment is legal tender for payment of public  
38 and private debts, may bear interest at such rate or rates, which may vary from time to  
39 time, and may be made redeemable before maturity, at the option of the State or  
40 otherwise as may be provided by the State, at such price or prices, including a price less  
41 than the face amount of the bonds or notes, and under such terms and conditions, all as  
42 may be determined by the State Treasurer, by and with the consent of the Council of  
43 State.

1       (b) **Signatures; Form and Denomination; Registration.** Bonds or notes may  
2 be issued as certificated or uncertificated obligations. If issued as certificated  
3 obligations, bonds or notes shall be signed on behalf of the State by the Governor or  
4 shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his  
5 facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall  
6 be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the  
7 Governor and the State Treasurer, the bonds or notes shall also bear a manual signature  
8 which may be that of a bond registrar, trustee, paying agent or designated assistant of  
9 the State Treasurer. Should any officer whose signature or facsimile signature appears  
10 on bonds or notes cease to be such officer before the delivery of the bonds or notes, the  
11 signature or facsimile signature shall nevertheless have the same validity for all  
12 purposes as if the officer had remained in office until delivery and bonds or notes may  
13 bear the facsimile signatures of persons who at the actual time of the execution of the  
14 bonds or notes shall be the proper officers to sign any bond or note although at the date  
15 of the bond or note such persons may not have been such officers. The form and  
16 denomination of bonds or notes, including the provisions with respect to registration of  
17 the bonds or notes and any system for their registration, shall be as the State Treasurer  
18 may determine in conformity with this act; provided, however, that nothing in this act  
19 shall prohibit the State Treasurer from proceeding, with respect to the issuance and form  
20 of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the  
21 Registered Public Obligations Act, as said Chapter may be amended from time to time,  
22 as well as under this act.

23       (c) **Manner of Sale; Expenses.** Subject to determination by the Council of State  
24 as to the manner in which bonds or notes shall be offered for sale, whether at public or  
25 private sale, whether within or without the United States of America and whether by  
26 publishing notices in certain newspapers and financial journals, mailing notices, inviting  
27 bids by correspondence, negotiating contracts of purchase or otherwise, the State  
28 Treasurer is authorized to sell bonds or notes at one time or from time to time at such  
29 rate or rates of interest, which may vary from time to time, and at such price or prices,  
30 including a price less than the face amount of the bonds or notes, as the State Treasurer  
31 may determine. All expenses incurred in the preparation, sale and issuance of bonds or  
32 notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other  
33 available moneys.

34       (d) **Notes; Repayment.**

35           (1) By and with the consent of the Council of State, the State Treasurer is  
36 hereby authorized to borrow money and to execute and issue notes of  
37 the State for the same, but only in the following circumstances and  
38 under the following conditions:

- 39           a. For anticipating the sale of bonds to the issuance of which the  
40           Council of State shall have given consent, if the State Treasurer  
41           shall deem it advisable to postpone the issuance of the bonds;  
42           b. For the payment of interest on or any installment of principal of  
43           any bonds then outstanding, if there shall not be sufficient funds

1 in the State treasury with which to pay the interest or  
2 installment of principal as they respectively become due;

3 c. For the renewal of any loan evidenced by notes herein  
4 authorized;

5 d. For the providing of prison and youth services facilities as  
6 herein authorized; and

7 e. For refunding bonds or notes as herein authorized.

8 (2) Funds derived from the sale of bonds or notes may be used in the  
9 payment of any bond anticipation notes issued under this act. Funds  
10 provided by the General Assembly for the payment of interest on or  
11 principal of bonds shall be used in paying the interest on or principal  
12 of any notes and any renewals thereof, the proceeds of which shall  
13 have been used in paying interest on or principal of the bonds.

14 (e) **Refunding Bonds and Notes.** By and with the consent of the Council of  
15 State, the State Treasurer is authorized to issue and sell refunding bonds and notes  
16 pursuant to the provisions of the State Refunding Bond Act, as it may be amended from  
17 time to time, for the purpose of refunding bonds or notes issued pursuant to this act.  
18 The refunding bonds and notes may be combined with any other issues of State bonds  
19 and notes similarly secured.

20 (f) **Tax Exemption.** Bonds and notes and their transfer (including any profit  
21 made on the sale thereof) shall be exempt from all State, county and municipal taxation  
22 or assessment, direct or indirect, general or special, whether imposed for the purpose of  
23 general revenue or otherwise, excluding inheritance and gift taxes. The interest on  
24 bonds and notes shall not be subject to taxation as to income, nor shall the bonds and  
25 notes be subject to taxation when constituting a part of the surplus of any bank, trust  
26 company or other corporation.

27 (g) **Investment Eligibility.** Bonds and notes are hereby made securities in  
28 which all public officers, agencies and public bodies of the State and its political  
29 subdivisions, all insurance companies, trust companies, investment companies, banks,  
30 savings banks, savings and loan associations, credit unions, pension or retirement funds,  
31 other financial institutions engaged in business in the State, executors, administrators,  
32 trustees and other fiduciaries may properly and legally invest funds, including capital in  
33 their control or belonging to them. Bonds and notes are hereby made securities which  
34 may properly and legally be deposited with and received by any officer or agency of the  
35 State or political subdivision of the State for any purpose for which the deposit of  
36 bonds, notes or obligations of the State or any political subdivision is now or may  
37 hereafter be authorized by law.

38 (h) **Faith and Credit.** The faith and credit and taxing power of the State are  
39 hereby pledged for the payment of the principal of and the interest on bonds and notes.

40 (i) **Date of Issuance or Sale.** No bonds or notes may be issued or sold under  
41 this act prior to the beginning of the 1991-92 fiscal year.

42 Sec. 9. **Variable Interest Rates.** In fixing the details of bonds and notes, the  
43 State Treasurer may provide that any of the bonds or notes may:



- 1 (1) Be made payable from time to time on demand or tender for purchase  
2 by the owner thereof provided a credit facility supports the bonds or  
3 notes, unless the State Treasurer specifically determines that a credit  
4 facility is not required upon a finding and determination by the State  
5 Treasurer that the absence of a credit facility will not materially and  
6 adversely affect the financial position of the State and the marketing of  
7 the bonds or notes at a reasonable interest cost to the State;
- 8 (2) Be additionally supported by a credit facility;
- 9 (3) Be made subject to redemption or a mandatory tender for purchase  
10 prior to maturity;
- 11 (4) Bear interest at a rate or rates that may vary for such period or periods  
12 of time, all as may be provided in the proceedings providing for the  
13 issuance of the bonds or notes, including, without limitation, such  
14 variations as may be permitted pursuant to a par formula; and
- 15 (5) Be made the subject of a remarketing agreement whereby an attempt is  
16 made to remarket bonds or notes to new purchasers prior to their  
17 presentment for payment to the provider of the credit facility or to the  
18 State.

19 If the aggregate principal amount repayable by the State under a credit facility  
20 is in excess of the aggregate principal amount of bonds or notes secured by the credit  
21 facility, whether as a result of the inclusion in the credit facility of a provision for the  
22 payment of interest for a limited period of time or the payment of a redemption  
23 premium or for any other reason, then the amount of authorized but unissued bonds or  
24 notes during the term of such credit facility shall not be less than the amount of such  
25 excess, unless the payment of such excess is otherwise provided for by agreement of the  
26 State executed by the State Treasurer.

27 **Sec. 10. Interpretation of Act. (a) Additional Method.** The foregoing sections  
28 of this act shall be deemed to provide an additional and alternative method for the doing  
29 of the things authorized thereby and shall be regarded as supplemental and additional to  
30 powers conferred by other laws, and shall not be regarded as in derogation of any  
31 powers now existing.

32 (b) **Liberal Construction.** This act, being necessary for the health and welfare  
33 of the people of the State, shall be liberally construed to effect the purposes thereof.

34 (c) **Inconsistent Provisions.** Insofar as the provisions of this act are inconsistent  
35 with the provisions of any general laws, or parts thereof, the provisions of this act shall  
36 be controlling.

37 (d) **Severability.** In any provision of this act or the application thereof to any  
38 person or circumstance is held invalid, such invalidity shall not affect other provisions  
39 or applications of the act which can be given effect without the invalid provision or  
40 application, and to this end the provisions of this act are declared to be severable.

41 **Sec. 11.** This act is effective upon ratification.