

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 935
HOUSE BILL 2287

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

The General Assembly of North Carolina enacts:

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

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

- (1) Providing adequate and sufficient prison and youth services facilities in North Carolina is of vital concern to the citizens of North Carolina and the legislative, executive, and judicial branches of government;
- (2) Notwithstanding significant new prison construction over the past several years, additional prison construction is necessary to meet constitutional standards, replace outmoded facilities and to add additional prison capacity;
- (3) Adding to the pressure on prison capacity are those young people who are released from training school and recidivate to prison. It is important that existing youth services facilities be renovated and new, safe and secure facilities constructed for at-risk and delinquent youth to learn and practice life skills which are essential to responsible citizenship; and
- (4) It is the intent and purpose of the General Assembly by this act to provide for a vote of the people regarding the issuance of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing additional and improving existing prison and youth services facilities.

Sec. 3. **Definitions.** As used in this act, unless the context otherwise requires:

- (1) 'Bonds' means bonds issued under this act.
- (2) 'Cost' means, without intending thereby to limit or restrict any proper definition of such word in financing the cost of State prison and youth services facilities as authorized by this act,

- a. The cost of constructing, reconstructing, enlarging, acquiring and improving facilities, and acquiring equipment and land therefor,
 - b. The cost of engineering, architectural and other consulting services as may be required,
 - c. Administrative expenses and charges,
 - d. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer, and
 - e. Any other costs and expenses necessary or incidental to the purposes of this act.
- (3) 'Credit facility' means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (4) 'Notes' means notes issued under this act.
- (5) 'Par formula' means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
- a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

Sec. 4. **Authorization of Bonds and Notes.** Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing bonds in

the election called and held as hereinafter provided, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Prison and Youth Services Facilities Bonds", with such additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as herein provided, in an aggregate principal amount not exceeding two hundred million dollars (\$200,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

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

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

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

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

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

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

- (1) Establish a procedure whereby projected allocations set forth in subsequent legislation may be increased or decreased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and notes proceeds and the proceeds of grants.
- (2) Establish a contingency account and to provide for an allocation of bond proceeds thereto. The funds in such contingency account may be used to pay the cost of projects, the costs of issuance of bonds and notes, and increased project costs resulting from construction costs exceeding projections, inflationary factors and changes in projects and allocations. The funds allocated to the contingency account shall be placed by the State Treasurer in a separate account in the State Prison and Youth Services Facilities Bond Fund and shall be disbursed in accordance with the procedures herein established for disbursements from the State Prison and Youth Facilities Bond Fund.
- (3) Empower the Director of the Budget, when the Director determines it is in the best interest of the State and the State prison and youth services system to do so, to change the projects and allocations therefor set forth in subsequent legislation, including, without limitation, the power to change the type of project to be provided at a particular institution, to increase or decrease the amount allocated to a particular institution within the aggregate amount of funds available under this act including the proceeds of any investment earnings, to delete a project, to move a project from one institution to another institution and to add a replacement project, the Governor having the right to consult with the Advisory Budget Commission prior to taking any such action.
- (4) Empower the Office of State Budget and Management to contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of prison facilities in order to

implement the providing of prison facilities under the provisions of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113-66, 133-1.1(b), 133-1.1(g) and 143-408.1; provided, however, of the funds allocated under the provisions of this act for the construction of prison facilities, the Office of State Budget and Management shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of prison facilities shall include a penalty for failure to complete the work by a specified date.

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

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

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

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

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

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

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

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

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

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

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may

bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as said Chapter may be amended from time to time, as well as under this act.

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

(d) Notes; Repayment.

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

- a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
- b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
- c. For the renewal of any loan evidenced by notes herein authorized;
- d. For the providing of prison and youth services facilities as herein authorized; and
- e. For refunding bonds or notes as herein authorized.

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

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

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

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

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

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

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

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the

issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

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

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

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

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

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

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.