

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1477

Finance Committee Substitute Adopted 6/13/00

Short Title: Finance New Wildlife Centers.

(Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

1
2 **AN ACT TO PROVIDE FOR A NEW, SUSTAINABLY DESIGNED, STATE OFFICE**
3 **BUILDING AND WILDLIFE EDUCATION CENTER WITH RELATED**
4 **PARKING FACILITIES, TO BE USED BY THE WILDLIFE RESOURCES**
5 **COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT**
6 **IN A PRINCIPAL AMOUNT NOT TO EXCEED THIRTEEN MILLION FIVE**
7 **HUNDRED THOUSAND DOLLARS, AND TO PROVIDE FOR A NEW**
8 **EASTERN WILDLIFE EDUCATION CENTER WITH RELATED PARKING**
9 **FACILITIES, TO BE ADMINISTERED BY THE WILDLIFE RESOURCES**
10 **COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT**
11 **IN A PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS.**

12 The General Assembly of North Carolina enacts:

13 Section 1. Authorization of Projects. – (a) Raleigh Wildlife Center. – The
14 Department of Administration is authorized to acquire, construct, and equip a new State
15 administrative office building and wildlife education center, and related parking facilities,
16 to be located on the Centennial Campus of North Carolina State University at Raleigh, in
17 the City of Raleigh, North Carolina, to be used by the Wildlife Resources Commission.
18 Title to these facilities shall be held in the name of the State. The cost of acquiring,
19 constructing, and equipping these facilities shall be financed as provided in this act.

1 Section 1.(b) Eastern Wildlife Education Center. – The Department of
2 Administration is authorized to acquire, construct, and equip a new State wildlife
3 education center, and related parking facilities, to be located in Currituck County and to
4 be administered by the Wildlife Resources Commission. Title to these facilities shall be
5 held in the name of the State. The cost of acquiring, constructing, and equipping these
6 facilities shall be financed as provided in this act.

7 Section 2. Definitions. – Unless a different meaning is required by the context,
8 the following definitions apply in this act:

9 (1) "Certificates of participation" means certificates or other instruments
10 delivered by a special corporation as provided in this act evidencing the
11 assignment of proportionate and undivided interests in the rights to
12 receive installment payments to be made by the State pursuant to a
13 financing contract.

14 (2) "Cost" includes all of the following, without limiting or restricting any
15 proper definition of this term in financing the cost of a Project as
16 authorized by this act:

17 a. The cost of acquiring, constructing, and equipping the Project,
18 including the acquisition of rights-of-way, easements, franchises,
19 equipment, furnishings, and other interests in real or personal
20 property acquired or used in connection with the Project.

21 b. The cost of engineering, architectural, and other consulting
22 services as may be required.

23 c. Finance charges, reserves for installment payments and interest
24 prior to and during construction and, if considered advisable by
25 the State Treasurer, for a period not exceeding two years after the
26 estimated date of completion of construction.

27 d. Administrative expenses and charges.

28 e. The cost of bond insurance, credit and liquidity facilities, interest
29 rate swap agreements, financial and legal consultants, and related
30 costs of financing the Project or delivering and selling certificates
31 of participation, to the extent and as determined by the State
32 Treasurer.

33 f. The cost of reimbursing the State for any payments made for any
34 cost described above.

35 g. Any other costs and expenses necessary or incidental to the
36 purposes of this act.

37 (3) "Credit facility" means an agreement that:

38 a. Is entered into by the State with a bank, savings and loan
39 association, or other banking institution, an insurance company,
40 reinsurance company, surety company or other insurance
41 institution, a corporation, investment banking firm or other
42 investment institution, or any financial institution or other similar

1 provider of a credit facility, which provider may be located
2 within or without the United States of America; and

3 b. Provides for prompt payment of all or any part of the principal or
4 purchase price (whether at maturity, presentment or tender for
5 purchase, redemption, or acceleration), redemption premium, if
6 any, and interest with respect to any financing contract or
7 certificates of participation in consideration of the State agreeing
8 to repay the provider of the credit facility in accordance with the
9 terms and provisions of the agreement.

10 (4) "Department of Administration" means the North Carolina Department
11 of Administration, created by Article 36 of Chapter 143 of the General
12 Statutes, or should the Department of Administration be abolished or
13 otherwise divested of its functions under this act, the public body
14 succeeding it in its principal functions, or upon which are conferred by
15 law the rights, powers, and duties given by this act to the Department of
16 Administration.

17 (5) "Eastern Wildlife Education Center Project" means the (i) new State
18 wildlife education center to be located in Currituck County, and related
19 parking facilities, and (ii) equipment and furnishings related to the
20 center and parking facilities.

21 (6) "Financing contract" means an installment financing contract entered
22 into pursuant to the provisions of this act to finance the cost of a Project.

23 (7) "Office Project" means the (i) new State administrative office building
24 and wildlife education center to be located in Raleigh, and related
25 parking facilities, and (ii) equipment and furnishings related to the
26 building, center, and parking facilities.

27 (8) "Project" means the Eastern Wildlife Education Center Project, the
28 Office Project, or both.

29 (9) "Special corporation" means a nonprofit corporation created under
30 Chapter 55A of the General Statutes for the purpose of delivering any
31 certificates of participation provided by this act.

32 (10) "State" means the State of North Carolina.

33 (11) "Sustainably designed facility" means a building and surrounding
34 environs designed using features that are energy efficient, incorporate
35 reuseable and renewable resources, provide natural lighting, are
36 nontoxic, require low maintenance, are congruent with the natural
37 characteristics of the site, and cause minimum adverse impact to the
38 environment.

39 (12) "Wildlife Resources Commission" means the North Carolina Wildlife
40 Commission, created by Article 24 of Chapter 143 of the General
41 Statutes, or should the North Carolina Wildlife Resources Commission
42 be abolished or otherwise divested of its functions under this act, the
43 public body succeeding it in its principal functions, or upon which are

1 conferred by law the rights, powers, and duties given by this act to the
2 North Carolina Wildlife Resources Commission.

3 Section 3. Authorization of Financing Contracts. – (a) The State, with the prior
4 approval of the Council of State and the State Treasurer as provided in this act, is
5 authorized to execute and deliver a financing contract in a principal amount not to exceed
6 thirteen million five hundred thousand dollars (\$13,500,000) in order to provide funds to
7 the Department of Administration and the Wildlife Resources Commission to be used,
8 together with any other available funds, to pay the cost of the Office Project.

9 Section 3.(b) The State, with the prior approval of the Council of State and the
10 State Treasurer as provided in this act, is authorized to execute and deliver a financing
11 contract in a principal amount not to exceed four million dollars (\$4,000,000) in order to
12 provide funds to the Department of Administration and the Wildlife Resources
13 Commission to be used, together with any other available funds, to pay the cost of the
14 Eastern Wildlife Education Center Project.

15 Section 3.(c) If the State determines that it is in its best interest to do so, the State
16 may enter into one financing contract to finance both of the Projects described in
17 subsections (a) and (b) of this section. The principal amount of the financing contract
18 shall not, however, exceed seventeen million five hundred thousand dollars
19 (\$17,500,000).

20 Section 4. Approval Required. – (a) A financing contract may not be entered into
21 pursuant to this act unless prior to entering into the financing contract (1) the Council of
22 State, by resolution, approves the execution and delivery of the financing contract, which
23 resolution shall set forth (i) the not to exceed term or final maturity of the financing
24 contract, (ii) the not to exceed interest rate or rates (or the equivalent thereof) with respect
25 to the financing contract, and (iii) the appropriate officers of the State to execute and
26 deliver the financing contract and all other documentation relating to it, and (2) the State
27 Treasurer approves the financing contract and all other documentation related to it,
28 including any deed of trust, security agreement, trust agreement, or credit facility. The
29 resolution of the Council of State shall include any other matters as the Council of State
30 may determine.

31 Section 4.(b) In determining whether to approve a financing contract, the State
32 Treasurer may consider any factors the State Treasurer considers relevant in order to find
33 and determine all of the following:

- 34 (1) The principal amount to be advanced to the State under the financing
35 contract is adequate and not excessive for the purpose of paying the cost
36 of the Project.
- 37 (2) The increase, if any, in State revenues necessary to pay the sums to
38 become due under the financing contract is not excessive.
- 39 (3) The financing contract can be entered into on terms desirable to the
40 State.
- 41 (4) In the case of delivery of certificates of participation, the sale of
42 certificates of participation will not have an adverse effect upon any

1 scheduled or proposed sale of obligations of the State or any State
2 agency or of any unit of local government in the State.

3 Section 5. Security. – (a) In order to secure the performance by the State of its
4 obligations under a financing contract, the State may grant a lien on, or security interest
5 in, all or any part of the Project or the land upon which the Project is or will be located.

6 Section 5.(b) No deficiency judgment may be rendered against the State or any
7 agency, department, or commission of the State in any action for breach of any obligation
8 contained in a financing contract entered into under this act or contained in any other
9 related documentation, and the taxing power of the State or any agency, department, or
10 commission of the State is not and may not be pledged directly or indirectly to secure any
11 moneys due under a financing contract authorized by this act. In the event that the
12 General Assembly does not appropriate funds sufficient to make payments required under
13 the financing contract, the net proceeds received from the sale, lease, or other disposition
14 of the Project or the site, or a portion of the Project or the site, subject to a lien or security
15 interest created pursuant to subsection (a) of this section shall be applied to satisfy the
16 payment obligations in accordance with the deed of trust, security agreement, or other
17 documentation creating the lien or security interest. These net proceeds are appropriated
18 for the purpose of making these payments. Any net proceeds in excess of the amount
19 required to satisfy the obligations of the State under a financing contract or any other
20 related documentation shall be paid to the State Treasurer for deposit to the General Fund
21 of the State.

22 Section 5.(c) A financing contract shall not contain a nonsubstitution clause
23 that restricts the right of the State to replace or provide a substitute for the Project.

24 Section 5.(d) A financing contract may include provisions requesting the
25 Governor to submit in the Governor's budget proposal, or any amendments or
26 supplements to the budget proposal, appropriations necessary to make the payments
27 required under the financing contract.

28 Section 5.(e) A financing contract may contain any provisions for protecting
29 and enforcing the rights and remedies of the entity advancing moneys or providing funds
30 under the financing contract as may be reasonable, proper, and not in violation of law,
31 including covenants setting forth the duties of the State in respect of the purposes to
32 which the funds advanced under the financing contract may be applied and the duties of
33 the State with respect to the Project, including, without limitation, provisions relating to
34 insuring and maintaining the Project and to the custody, safeguarding, investment, and
35 application of moneys.

36 Section 5.(f) The interest component of the installment payments to be made
37 under a financing contract may be calculated based upon a fixed or variable interest rate
38 or rates as determined by the State Treasurer.

39 Section 5.(g) If the State Treasurer determines that it is in the best interest of
40 the State, the State may enter into, or arrange for the delivery of, a credit facility to secure
41 payment of the installment payments under a financing contract or to secure payment of
42 the purchase price of any certificates of participation delivered as provided in this act.

1 Section 5.(h) The entity entering into a financing contract with the State and
2 any other professionals providing services relating to the financing contract, including,
3 without limitation, the provider of any credit facility and the underwriter or placement
4 agent for any certificates of participation, shall be selected by the State Treasurer
5 pursuant to a competitive bidding process or negotiated process as determined by the
6 State Treasurer.

7 Section 6. Source of Repayment. – (a) The payment of amounts payable by the
8 State under a financing contract and other related documentation during any fiscal
9 biennium or fiscal year shall be limited to funds appropriated for that purpose by the
10 General Assembly in its discretion. No provision of this act and no financing contract
11 shall be construed or interpreted as creating a pledge of the faith and credit of the State or
12 any agency, department, or commission of the State within the meaning of any
13 constitutional debt limitation.

14 Section 6.(b) It is the intent of the General Assembly that the payments due
15 under a financing contract and any other related documentation shall be made from
16 amounts appropriated to and deposited in the Wildlife Resources Fund pursuant to G.S.
17 143-250 and from funds appropriated to and deposited in the Wildlife Endowment Fund
18 pursuant to G.S. 143-250.1, including investment earnings on these amounts, in each case
19 to the extent the funds may be lawfully applied for this purpose. In the event that funds
20 appropriated to and deposited in the Wildlife Resources Fund and the Wildlife
21 Endowment Fund, including investment earnings on such amounts, are not sufficient to
22 make these payments, the General Assembly is not obligated to appropriate additional
23 funds necessary to make these payments. The General Assembly may, however, in its
24 discretion, appropriate the additional funds.

25 Section 6.(c) A financing contract entered into pursuant to this act shall
26 incorporate a statement which sets forth a description of the provisions of subsections (a)
27 and (b) of this section.

28 Section 6.(d) Expenditures during each fiscal biennium or fiscal year from the
29 Wildlife Resources Fund and the Wildlife Endowment Fund shall be administered by the
30 Wildlife Resources Commission in such a manner so as to assure that sufficient amounts
31 shall be available in the Wildlife Resources Fund and the Wildlife Endowment Fund to
32 make the required payments under a financing contract and any other related
33 documentation.

34 Section 7. Certificates of Participation. – (a) If certificates of participation are
35 delivered pursuant to this act, a special corporation shall be created for the purpose of
36 entering into a financing contract and executing and delivering certificates of
37 participation. The special corporation shall furnish to the State Treasurer any information
38 and documentation relating to the delivery and sale of the certificates of participation that
39 the State Treasurer requests.

40 Section 7.(b) Certificates of participation may be sold by the State Treasurer in
41 the manner, either at public or private sale, and for any price or prices that the State
42 Treasurer determines to be in the best interest of the State and to effect the purposes of
43 this act, except that the sale must be approved by the special corporation. Interest

1 payable with respect to certificates of participation shall accrue at the rate or rates
2 determined by the State Treasurer with the approval of the special corporation.

3 Section 7.(c) Certificates of participation may be delivered pursuant to a trust
4 agreement with a corporate trustee approved by the State Treasurer. The corporate
5 trustee may be any trust company or bank having the powers of a trust company within or
6 without the State. A trust agreement may (i) provide for security and pledges and
7 assignments with respect to the security as may be permitted under this act and further
8 provide for the enforcement of any lien or security interest created pursuant to Section
9 5(a) of this act, and (ii) contain any provisions for protecting and enforcing the rights and
10 remedies of the owners of any certificates of participation as may be reasonable, proper,
11 and not in violation of law, as determined by the State Treasurer.

12 Section 8. Insurance. – The State Treasurer may authorize, execute, obtain, or
13 otherwise provide for bond insurance, credit facilities, interest rate swap agreements, and
14 any other related instruments that the State Treasurer considers desirable in connection
15 with the financing of a Project as provided in this act.

16 Section 9. Tax Exemption. – A financing contract entered into under this act
17 and any certificates of participation relating to it are exempt from all State, county, and
18 municipal taxation or assessment, direct or indirect, general or special, whether imposed
19 for the purpose of general revenue or otherwise, except for inheritance, estate, and gift
20 taxes, income taxes on the gain from the transfer of the financing contract or certificates
21 of participation, and franchise taxes. The interest component of the installment payments
22 made by the State under the financing contract, including the interest component of any
23 certificates of participation, is not subject to taxation as income.

24 Section 10. Public Contracts. – The provisions of Articles 3 (Purchase and
25 Contracts), 3B (Energy Conservation in Public Facilities), 3C (Contracts to Obtain
26 Consultant Services), 3D (Procurement of Architectural, Engineering, and Surveying
27 Services), and 8 (Public Contracts) of Chapter 143 of the General Statutes and any other
28 laws, rules, or regulations of the State as relate to the acquisition and construction of
29 State property apply to a Project. It is the intent of the General Assembly that the Office
30 Project should be a sustainably designed facility.

31 Section 11. Interpretation of Act. – (a) The foregoing sections of this act
32 provide an additional and alternative method for the doing of the things authorized by the
33 act, are supplemental and additional to powers conferred by other laws, and do not
34 derogate any powers now existing.

35 Section 11.(b) References in this act to specific sections or Chapters of the
36 General Statutes are intended to be references to those sections or Chapters as amended
37 and as they may be amended from time to time by the General Assembly.

38 Section 11.(c) This act, being necessary for the health and welfare of the
39 people of the State, shall be liberally construed to effect its purposes.

40 Section 11.(d) If any provision of this act or its application is held invalid, the
41 invalidity does not affect other provisions or applications of this act that can be given
42 effect without the invalid provisions or application, and to this end the provisions of this
43 act are severable.

1 Section 12. Effective Date. – This act is effective when it becomes law.