

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 195*

Short Title: Two-Thirds Bond Bill.

(Public)

Sponsors: Representative Hall.

Referred to: Finance.

February 13, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF SEVENTY-THREE MILLION DOLLARS BONDS OR NOTES OF THE STATE TO PROVIDE FUNDS, WITH OTHER AVAILABLE FUNDS, FOR THE CONSTRUCTION, ACQUISITION AND EQUIPPING OF CAPITAL IMPROVEMENTS FOR THE STATE AND ITS DEPARTMENTS AND AGENCIES, SUCH AUTHORIZED BONDS OR NOTES TO BE ISSUED WITHOUT AN ELECTION DURING THE BIENNIUM ENDED JUNE 30, 1991, IN AN AMOUNT NOT IN EXCESS OF SUCH AUTHORIZED AMOUNT AND NOT IN EXCESS OF TWO-THIRDS OF THE AMOUNT BY WHICH THE STATE'S OUTSTANDING INDEBTEDNESS SHALL HAVE BEEN REDUCED DURING THE 1987-89 BIENNIUM.

The General Assembly of North Carolina enacts:

Section 1. **Short Title.** This act shall be known and may be cited as the "Capital Improvement Legislative Bond Act of 1989."

Sec. 2. **Authorization of bonds and notes.** The State Treasurer is hereby authorized, by and with the consent of the Council of State as herein provided, to issue and sell at one time or from time to time in the biennium ending June 30, 1991, bonds of the State to be designated "State of North Carolina Capital Improvement Bonds"(the "bonds"), or notes of the State as herein provided (the "notes"), in an aggregate principal amount not to exceed seventy-three million dollars (\$73,000,000), said amount not being in excess of two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30, 1989, for the purpose of providing funds, together with any other funds made available therefore, for the

1 construction, acquisition and equipping of a State office building, State laboratory
2 facilities, State park and recreational facilities, facilities for the State Ports Authority at
3 Wilmington and Morehead City and low-level radioactive waste facilities for use by the
4 State and other users, including, without limitation, as to any of the foregoing projects,
5 such reconstruction and renovation, such acquisition of land and the providing of such
6 other related capital structures and facilities as may be necessary or desirable for the
7 following projects:

8 Building for the Department of Revenue	\$36,000,000
9 Agronomics laboratory for the	
10 Department of Agriculture	7,100,000
11 Park and recreational facilities	10,000,000
12 State Ports Authority facilities	11,900,000
13 Low-level radioactive waste facilities	8,000,000.

14 If the seventy-three million dollars (\$73,000,000) maximum principal amount
15 of bonds and notes herein authorized shall be in excess of two-thirds of the amount by
16 which the State's outstanding indebtedness shall have been reduced during the biennium
17 ended June 30, 1989, and the amount of bonds and notes issued hereunder shall on that
18 account be less than seventy-three million dollars (\$73,000,000), the difference between
19 the proceeds of said bonds and notes and the seventy-three million dollars
20 (\$73,000,000) aggregate bond proceeds set forth above may be made up from the
21 Contingency and Emergency Fund of the State. In lieu of an allocation from the
22 Contingency and Emergency Fund, or together with any partial allocation from said
23 Fund, the Director of the Budget may reduce the amount authorized herein for any
24 purpose and transfer the amount of such reduction to another project listed in this
25 section to make up any such difference.

26 The Director of the Budget is also authorized and empowered to make
27 transfers and changes from completed projects for which bonds are authorized by this
28 act and appropriations are made by law to other projects authorized by this act and to
29 provide changes as necessary to permit completion of the projects as described in this
30 act.

31 The proceeds of bonds and notes are hereby appropriated for the projects as
32 provided in this section, which appropriations shall be in addition to all other
33 appropriations heretofore made or which may be made at the session of the General
34 Assembly at which this act is ratified, and shall be expended and disbursed under the
35 direction and supervision of the Director of the Budget.

36 The projects must be so planned that their estimated costs will be within such
37 limits that will allow the purchase of all needed equipment and provide drives, walks,
38 grading and connections to all needed utilities so that when completed the projects may
39 be fully utilized without requiring additional State funds. The proceeds of bonds and
40 notes may be used to reimburse the State for any expenditures heretofore or hereafter
41 made by the State for any project as advances in contemplation of reimbursement from
42 the proceeds of such bonds and notes.

43 **Sec. 3. Disbursement of proceeds.** The funds appropriated by Section 2 of
44 this act shall be disbursed for the purposes provided in this act upon warrants drawn by

1 the State Controller, which warrants shall not be drawn for any State department or
2 agency until requisition has been approved by the Director of the Budget and which
3 requisition shall be approved only after full compliance with the Executive Budget Act,
4 Article 1 of Chapter 143 of the General Statutes, as it may be amended from time to
5 time. Any additional moneys which may be received by means of a grant or grants
6 from the United States of America or any agency or department thereof or from any
7 other source to aid in financing the cost of the project may be placed by the State
8 Treasurer in the same fund or in a separate fund and, to the extent permitted by the
9 terms of such grant or grants, shall be disbursed in the same manner and for the
10 purposes mentioned in this act.

11 **Sec. 4. Unexpended balance.** Subject to any transfers and changes between
12 appropriations for projects as permitted in Section 2 of this act, the appropriations made
13 in this act shall be expended only for the projects described in Section 2 of this act, and
14 any unexpended balance of such appropriation shall revert to the General Fund of the
15 State on June 30, 1992, or upon such later date, if any, as the State Controller may
16 determine, or upon completion of the projects if prior to June 30, 1993, or such later
17 date.

18 **Sec. 5. Issuance of bonds and notes. (a) Terms and conditions.** The bonds
19 or notes shall bear such date or dates, shall be serial or term bonds or notes, shall mature
20 in such amounts and at such times, not exceeding 40 years from their date or dates, shall
21 be payable at such place or places, either within or without the United States of
22 America, in such coin or currency of the United States of America as at the time of
23 payment is legal tender for payment of public and private debts, shall bear interest at
24 such rate or rates, which may vary from time to time, and may be made redeemable
25 before maturity, at the option of the State or otherwise as may be provided by the State,
26 at such price or prices and under such terms and conditions, all as may be fixed by the
27 State Treasurer with the consent of the Council of State.

28 **(b) Signatures; form and denomination; registration.** The bonds or notes may
29 be issued as certificated or uncertificated obligations. If issued as certificated
30 obligations, the bonds or notes shall be signed on behalf of the State by the Governor or
31 shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his
32 facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall
33 be impressed or imprinted thereon. If the bonds or notes shall bear the facsimile
34 signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a
35 manual signature which may be that of a bond registrar, trustee, paying agent or
36 designated assistant of the State Treasurer. Should any officer whose signature or
37 facsimile signature appears on any bonds or notes cease to be such officer before the
38 delivery of the bonds or notes, such signature or facsimile signature shall nevertheless
39 have the same validity for all purposes as if the officer had remained in office until
40 delivery and any bond or note may bear the facsimile signatures of such persons who at
41 the actual time of the execution of such bond or note shall be the proper officers to sign
42 any bond or note although at the date of such bond or note such persons may not have
43 been such officers. The form and denomination of the bonds or notes, including the
44 provisions with respect to registration of the bonds or notes and any system for their

1 registration, shall be as the State Treasurer may determine in conformity with this act;
2 provided, however, that nothing in this act shall prohibit the State Treasurer from
3 proceeding, with respect to the issuance and form of the bonds or notes, under the
4 provisions of the Registered Public Obligations Act, as it may be amended from time to
5 time, as well as this act.

6 (c) **Manner of sale; expenses.** Subject to determination by the Council of State
7 as to the manner in which the bonds or notes shall be offered for sale, whether at public
8 or private sale and whether within or without the United States of America and whether
9 by publishing notices in certain newspapers and financial journals, mailing notices,
10 inviting bids by correspondence, negotiating contracts of purchase or otherwise, the
11 State Treasurer is authorized to sell the bonds or notes at one time or from time to time
12 at such price as the State Treasurer may determine to be in the best interests of the State,
13 including a price less than the face amount of the bonds or notes. All expenses incurred
14 in the preparation, sale and issuance of bonds or notes shall be paid by the State
15 Treasurer from the proceeds of any such bonds or notes or any other available moneys.

16 Nothing in this act shall restrict the use of any bond or note proceeds in
17 payment of the cost of any bond insurance or bond credit and liquidity facilities
18 employed in connection with such bonds or notes, including without limitation, letters
19 of credit, lines of credit and standby bond purchase agreements.

20 (d) Notes; repayment.

21 (1) By and with the consent of the Council of State, the State Treasurer is
22 hereby authorized to borrow money at such rate or rates of interest, which may vary
23 from time to time, as the State Treasurer may determine to be in the best interests of the
24 State, and to execute and issue notes of the State for the same, but only in the following
25 circumstances and under the following conditions: (i) for anticipating the sale of any
26 bonds to the issuance of which the Council of State shall have given consent, if the State
27 Treasurer shall deem it advisable to postpone the issuance of such bonds; (ii) for the
28 payment of interest upon or any installment of principal of any of the bonds or notes
29 then outstanding, if there shall not be sufficient funds in the State Treasury with which
30 to pay the interest or installment of principal as they respectively become due; (iii) for
31 the renewal of any loan evidenced by notes herein authorized; (iv) for the construction,
32 acquisition and equipping of any project as herein authorized; and (v) for refunding any
33 bonds or notes as herein provided.

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

41 (e) **Refunding bonds and notes.** By and with the consent of the Council of
42 State, the State Treasurer is authorized to issue and sell, pursuant to the provisions of
43 the State Refunding Act, as it may be amended from time to time, bonds or notes for the
44 purpose of refunding any bonds or notes issued pursuant to this act. Such refunding

1 bonds or notes may be combined with other issues of State bonds or notes similarly
2 secured.

3 (f) **Tax exemption.** All of the bonds and notes authorized by this act and
4 their transfer (including any profit made on the sale thereof) shall be exempt from all
5 State, county and municipal taxation or assessment, direct or indirect, general or special,
6 whether imposed for the purpose of general revenue or otherwise, excluding inheritance
7 and gift taxes, and the interest on the bonds and notes shall not be subject to taxation as
8 to income, nor shall the bonds or notes be subject to taxation when constituting a part of
9 the surplus of any bank, trust company or other corporation.

10 (g) **Investment eligibility.** Bonds or notes issued under the provisions of
11 this act are hereby made securities in which all public officers, agencies and public
12 bodies of the State and its political subdivisions, all insurance companies, trust
13 companies, investment companies, banks, savings banks, building and loan associations,
14 credit unions, pension or retirement funds, other financial institutions engaged in
15 business in the State, executors, administrators, trustees and other fiduciaries may
16 properly and legally invest funds, including capital in their control or belonging to them.
17 Such bonds or notes are hereby made securities which may properly and legally be
18 deposited with and received by any officer or agency of the State or political
19 subdivision of the State for any purpose for which the deposit of bonds, notes or
20 obligations of the State or any political subdivision is now or may hereafter be
21 authorized by law.

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

25 Sec. 6. **Variable interest rates.** In fixing the details of bonds or notes, the
26 State Treasurer may provide that any of the bonds or notes (i) may be made payable
27 from time to time on demand or tender for purchase by the owner thereof provided a
28 Credit Facility (as defined in this section) supports such bonds or notes, unless the State
29 Treasurer specifically determines that a Credit Facility is not required upon a finding
30 and determination by the State Treasurer that the absence of a Credit Facility will not
31 materially and adversely affect the financial position of the State and the marketing of
32 the bonds or notes at a reasonable interest cost to the State; (ii) may be additionally
33 supported by a Credit Facility; (iii) may be made subject to redemption prior to maturity
34 with such variations as may be permitted in connection with a Par Formula (as defined
35 in this section); (iv) may bear interest at a rate or rates that may vary for such period or
36 periods of time, all as may be provided in the proceedings providing for the issuance of
37 such bonds or notes, including, without limitation, such variations as may be permitted
38 pursuant to a Par Formula; and (v) may be made the subject of a remarketing agreement
39 whereby an attempt is made to remarket the bonds or notes to new purchasers prior to
40 their presentment for payment to the provider of the Credit Facility or to the State. As
41 used in this section, the following terms shall have the following meanings:

42 "Credit Facility" means an agreement entered into by the State Treasurer on
43 behalf of the State with a bank, savings and loan association or other banking
44 institution, an insurance company, reinsurance company, surety company or other

1 insurance institution, a corporation, investment banking firm or other investment
2 institution, or any financial institution providing for prompt payment of all or any part
3 of the principal (whether at maturity, presentment or tender for purchase, redemption or
4 acceleration), redemption premium, if any, and interest on any bonds or notes payable
5 on demand or tender by the owner, in consideration of the State agreeing to repay the
6 provider of such Credit Facility in accordance with the terms and provisions of such
7 agreement; the provider of any Credit Facility may be located either within or without
8 the United States of America.

9 "Par Formula" shall mean any provision or formula adopted by the State to
10 provide for the adjustment, from time to time, of the interest rate or rates borne by any
11 bonds or notes, including:

12 (a) A provision providing for such adjustment so that the purchase price of such
13 bonds or notes in the open market would be as close to par as possible,

14 (b) A provision providing for such adjustment based upon a percentage or
15 percentages of a prime rate or base rate, which percentage or percentages may vary or
16 be applied for different periods of time, or

17 (c) Such other provision as the State Treasurer may determine to be consistent
18 with this act and will not materially and adversely affect the financial position of the
19 State and the marketing of the bonds or notes at a reasonable interest cost to the State.

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

28 **Sec. 7. Capital improvement bond fund of 1989.** The proceeds of sale of
29 the bonds and the notes herein authorized, including premium thereon, if any, except the
30 proceeds of bonds or notes the issuance of which has been anticipated by notes and the
31 proceeds of which are to be used to retire such notes, shall be placed by the State
32 Treasurer in a special fund known as the "Capital Improvement Bond Fund of 1989" and
33 shall be disbursed as herein provided.

34 **Sec. 8. Interpretation of act.** (a) The foregoing sections of this act shall be
35 deemed to provide an additional and alternative method for the doing of the things
36 authorized thereby and shall be regarded as supplemental and additional to powers
37 conferred by other laws, and shall not be regarded as in derogation of any powers now
38 existing.

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

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

43 (d) If any provision of this act or the application thereof to any person or
44 circumstance is held invalid, such invalidity shall not affect other provisions or

1 applications of the act which can be given effect without the invalid provision or
2 application, and to this end the provisions of this act are declared to be severable.

3 Sec. 9. **Effective date.** This act is effective upon ratification.