

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 760
SENATE BILL 930

AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF FORTY-FIVE MILLION DOLLARS BONDS OF THE STATE TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE CAPITAL FACILITIES, SUCH AUTHORIZED BONDS TO BE ISSUED WITHOUT AN ELECTION DURING THE BIENNIUM ENDED JUNE 30, 1993, IN AN AMOUNT NOT IN EXCESS OF THIS AUTHORIZED AMOUNT AND NOT IN EXCESS OF TWO-THIRDS OF THE AMOUNT BY WHICH THE STATE'S OUTSTANDING INDEBTEDNESS WILL HAVE BEEN REDUCED DURING THE 1989-91 BIENNIUM.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known and may be cited as the "Capital Facilities Legislative Bond Act of 1991."

Sec. 2. Findings and determinations. It is the intent and purpose of the General Assembly by this act to provide for the issuance of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing State capital facilities as described in section 6, including capital facilities accomplishing State purposes to be provided through grants as herein provided.

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

- (1) "Bonds" means the 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 capital facilities as authorized by this act,
 - a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring and improving capital 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 the 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. 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, 1993, general obligation bonds of the State to be designated "State of North Carolina Capital Improvement Bonds, Series 199_," or notes of the State as herein provided, in an aggregate principal amount not to exceed forty-five million dollars (\$45,000,000), this amount being not in excess of two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30, 1991, for the purpose of providing funds, with any other available funds, for the uses authorized in this act.

If the forty-five million dollars (\$45,000,000) maximum principal amount of bonds and notes herein authorized shall be in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 1991, and the amount of bonds and notes issued hereunder shall on that

account be less than forty-five million dollars (\$45,000,000), the difference between the proceeds of the bonds and notes and the forty-five million dollars (\$45,000,000) aggregate bond proceeds set forth above may be made up from other available sources or the costs of the authorized uses may be reduced.

Sec. 5. Uses of bond and note proceeds. The proceeds of bonds and notes shall be used for financing the cost of State capital facilities as herein provided, including, without limitation, the cost of constructing capital facilities, renovating, repairing or reconstructing existing buildings, utilities, and other capital facilities, acquiring equipment related thereto, purchasing land, making grants as herein provided, paying costs of issuance of bonds and notes and paying contractual services necessary for the completion of the purposes of this act.

Except as herein otherwise provided, 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 Capital Facilities Legislative Bond Fund of 1991" and shall be disbursed as herein provided.

Any additional moneys which may be received by grant 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 capital facilities authorized by this act may be placed by the State Treasurer in the State Capital Facilities Legislative Bond Fund of 1991 or in a separate fund and shall be disbursed, to the extent permitted by the terms of the grant, 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 capital 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.

The Office of State Budget and Management shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys from the State Capital Facilities Legislative Bond Fund of 1991. The reports shall continue until the completion of the projects provided for in the State Capital Facilities Legislative Bond Fund of 1991.

Sec. 6. Allocation of proceeds. The proceeds of bonds and notes shall be allocated and expended for paying the cost of State capital facilities and making grants to the extent and as provided in this act and subject to change as herein provided, as follows:

<u>Department and Project</u>	<u>Projected Allocation</u>
Department of Administration	
1. New Central Heat Plant (restores 1990-91 funds)	\$ 6,594,500
2. Mall Improvements - Sidewalk Completion and Landscaping	675,000
Department of Human Resources	
1. Murdoch Center-Parkview Cottage Renovation (restores 1990-91 funds)	1,400,000
2. John Umstead - Alum Sludge Treatment Facility	1,100,000
3. Black Mountain Center – Renovations (restores previously appropriated funds)	1,300,000
4. Secretary's Office – Headstart Bonds Account (Grant equivalent to one modular classroom or renovations to existing facilities.)	1,600,000
Department of Crime Control and Public Safety	
1. Replace Underground Storage Tanks to comply with EPA requirements (National Guard)	92,000
2. Goldsboro Armory - Total Requirements (restores 90-91 funds)	2,800,800
	Federal Funds 2,057,300
	Local Funds 371,750
	State Appropriation 371,750
3. Clinton Armory - Total Requirements (restores 90-91 funds)	2,608,500
	Federal Funds 1,884,200
	Local Funds 362,150
	State Appropriation 362,150
Department of Environment, Health, and Natural Resources	
1. Water Resources Development Projects	2,055,000
2. Park Repair and Maintenance Projects	2,000,000
Office of State Budget	
1. Reserve for Repairs and Renovations	8,299,600
University of North Carolina Board of Governors	
1. Reserve for Repairs/Renovations	14,300,000
General Assembly	
1. Buildings/Office Repairs,	

Renovations, Equipment, and Furnishings	4,600,000
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Department of Cultural Resources

1. Fort Fisher/Highway 421 Erosion Control Matching Funds	<u>250,000</u>
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GRAND TOTAL	\$ 45,000,000
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Allocations made pursuant to this section to the Department of Crime Control and Public Safety for the Armory at Goldsboro and the Armory at Clinton are contingent upon federal matching funds being available. If federal matching funds do not become available by July 1, 1992, such allocations shall be transferred to the Office of State Budget and placed in the Reserve for Repairs and Renovations.

It is one of the purposes of this act to provide support, by the issuance of bonds to make grants, together with support to be provided by the federal government as herein mentioned, in order to facilitate the payment of certain capital costs required in providing new and improving existing facilities to be used by entities providing services under the "Headstart" program, a program delivering comprehensive health, educational, nutritional, social and other services to economically disadvantaged children, primarily children who have not reached the age of compulsory school attendance. The proceeds of bonds and notes issued to make Headstart grants shall be used for the purpose of providing a grant by the State, together with other available funds, to local private nonprofit corporations and public agencies administering Headstart programs for the payment of the cost of acquiring, constructing, reconstructing, renovating, equipping and improving classroom facilities for the existing Headstart programs, including, without limitation, the acquisition of land. The contribution to be made by the State shall be made only to nonprofit corporations and public agencies receiving monies from the federal government under the federal Headstart program. The contribution by the State shall be made pursuant to agreements between the State by the Department of Human Resources and the nonprofit corporations or pursuant to rules and regulations of the Department of Human Resources having application to public agencies. The agreements and the rules and regulations shall contain provisions necessary to assure that the proceeds of the bonds and notes are applied for the accomplishment of public purposes only, within the meaning of Article V, Section 2(7) of the North Carolina Constitution, including, without limitation, provisions to assure that facilities provided or improved shall be used in connection with the Headstart program and further shall contain provisions to assure compliance with G.S. 143-6.1. In entering into agreements with nonprofit corporations or promulgating rules and regulations having application to public agencies, the Department of Human Resources shall incorporate requirements including the following:

- (1) Title to real property shall vest in the nonprofit corporations, the public agency, the county wherein the facilities are located, or in another public agency.
- (2) If State funds are to be used in connection with the construction of facilities to be owned by a nonprofit corporation, the nonprofit corporation must comply with the applicable provision of Article 8 of Chapter 143 of the General Statutes of North Carolina concerning public bidding for construction and acquisition of equipment.
- (3) State funds shall be provided at the sole discretion of the Secretary of the Department of Human Resources following a review of applications. The applications are to document the need for additional classroom space or equipment to meet Headstart needs. The documentation shall state why funds are needed; shall identify companion sources of funding; contain the endorsement of the county in which the proposed project is or will be located; identify the specific activities to be achieved including a schedule of events; and contain a description of the anticipated impact in the community.
- (4) Each of the 44 existing Headstart programs in the State shall receive no more than \$36,364 from the proceeds of bonds and notes issued for Headstart purposes.

The General Assembly may change from time to time any of the foregoing requirements. The proceeds of bonds and notes issued for Headstart purposes, 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 account to be designated "Headstart Bonds Account" to be established in the State Capital Facilities Legislative Bond Fund of 1991. Moneys in the Headstart Bonds Account shall be used for the purposes set forth in this act.

Projected allocations set forth above may be increased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants.

The Director of the Budget may, when the Director determines it is in the best interest of the State to do so, and if the cost of a particular project is less than the projected allocation, use the excess funds to increase the size of that project or to increase the size of any other project itemized in this section, except for the Headstart grant program, or to increase the amount allocated to a particular institution within the aggregate amount of funds available under this section including the proceeds of any investment earnings. Prior to taking any action under this subdivision, the Director of the Budget may consult with the Advisory Budget Commission.

The Office of State Budget and Management shall provide quarterly reports to the Chairs of the Appropriations Committee and the Base Budget Committee in the Senate, the Chair of the Appropriations Committee in the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations made under this section.

Sec. 7. Issuance of bonds and notes.

- (1) 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.
- (2) 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 well as under this act.
- (3) 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.

- (4) Notes; repayment.
 - a. 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:
 - 1. 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;
 - 2. 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;
 - 3. For the renewal of any loan evidenced by notes herein authorized;
 - 4. For the purposes authorized in this act; and
 - 5. For refunding bonds or notes as herein authorized.
 - b. 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.
- (5) 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 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.
- (6) 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.

- (7) 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.
- (8) 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.

Sec. 8. 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. 9. 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) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

(c) 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.

(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. 9.1. Section 236 of Chapter 689 of the 1991 Session Laws is amended by deleting the following:

"General Assembly

1. Buildings/Office Repairs and Renovations 4,600,000"

and substituting the following:

"General Assembly

1. Buildings/Office Repairs, Renovations, Equipment,
and Furnishings 4,600,000".

Sec. 10. Effective date. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives