

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1477
RATIFIED BILL

AN ACT TO PROVIDE FOR A NEW, SUSTAINABLY DESIGNED, STATE OFFICE BUILDING AND WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE USED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED THIRTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS, AND TO PROVIDE FOR A NEW EASTERN WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE ADMINISTERED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS.

The General Assembly of North Carolina enacts:

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

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

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

- (1) "Certificates of participation" means certificates or other instruments delivered by a special corporation as provided in this act evidencing the assignment of proportionate and undivided interests in the rights to receive installment payments to be made by the State pursuant to a financing contract.
- (2) "Cost" includes all of the following, without limiting or restricting any proper definition of this term in financing the cost of a Project as authorized by this act:
 - a. The cost of acquiring, constructing, and equipping the Project, including the acquisition of rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with the Project.
 - b. The cost of engineering, architectural, and other consulting services as may be required.
 - c. Finance charges, reserves for installment payments and interest prior to and during construction and, if considered advisable by

- the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.
- d. Administrative expenses and charges.
 - e. The cost of bond insurance, credit and liquidity facilities, interest rate swap agreements, financial and legal consultants, and related costs of financing the Project or delivering and selling certificates of participation, to the extent and as determined by the State Treasurer.
 - f. The cost of reimbursing the State for any payments made for any cost described above.
 - g. Any other costs and expenses necessary or incidental to the purposes of this act.
- (3) "Credit facility" means an agreement that:
- a. Is entered into by 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 similar provider of a credit facility, which provider may be located within or without the United States of America; and
 - b. Provides 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 with respect to any financing contract or certificates of participation in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.
- (4) "Department of Administration" means the North Carolina Department of Administration, created by Article 36 of Chapter 143 of the General Statutes, or should the Department of Administration be abolished or otherwise divested of its functions under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this act to the Department of Administration.
- (5) "Eastern Wildlife Education Center Project" means the (i) new State wildlife education center to be located in Currituck County, and related parking facilities, and (ii) equipment and furnishings related to the center and parking facilities.
- (6) "Financing contract" means an installment financing contract entered into pursuant to the provisions of this act to finance the cost of a Project.
- (7) "Office Project" means the (i) new State administrative office building and wildlife education center to be located in Raleigh, and related parking facilities, and (ii) equipment and furnishings related to the building, center, and parking facilities.
- (8) "Project" means the Eastern Wildlife Education Center Project, the Office Project, or both.
- (9) "Special corporation" means a nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of delivering any certificates of participation provided by this act.
- (10) "State" means the State of North Carolina.
- (11) "Sustainably designed facility" means a building and surrounding environs designed using features that are energy efficient, incorporate reuseable and renewable resources, provide natural lighting, are nontoxic, require low maintenance, are congruent with the natural

characteristics of the site, and cause minimum adverse impact to the environment.

- (12) "Wildlife Resources Commission" means the North Carolina Wildlife Commission, created by Article 24 of Chapter 143 of the General Statutes, or should the North Carolina Wildlife Resources Commission be abolished or otherwise divested of its functions under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this act to the North Carolina Wildlife Resources Commission.

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

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

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

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

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

- (1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the Project.
- (2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract is not excessive.
- (3) The financing contract can be entered into on terms desirable to the State.
- (4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency or of any unit of local government in the State.

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

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

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

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

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

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

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

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

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

Section 6.(b) It is the intent of the General Assembly that the payments due under a financing contract and any other related documentation shall be made from amounts appropriated to and deposited in the Wildlife Resources Fund pursuant to G.S. 143-250 and from funds appropriated to and deposited in the Wildlife Endowment Fund

pursuant to G.S. 143-250.1, including investment earnings on these amounts, in each case to the extent the funds may be lawfully applied for this purpose. In the event that funds appropriated to and deposited in the Wildlife Resources Fund and the Wildlife Endowment Fund, including investment earnings on such amounts, are not sufficient to make these payments, the General Assembly is not obligated to appropriate additional funds necessary to make these payments. The General Assembly may, however, in its discretion, appropriate the additional funds.

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

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

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

Section 7.(b) Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this act, except that the sale must be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

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

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

Section 9. Tax Exemption. – A financing contract entered into under this act and any certificates of participation relating to it are 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, except for inheritance, estate, and gift taxes, income taxes on the gain from the transfer of the financing contract or certificates of participation, and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income.

Section 10. Public Contracts. – The provisions of Articles 3 (Purchase and Contracts), 3B (Energy Conservation in Public Facilities), 3C (Contracts to Obtain Consultant Services), 3D (Procurement of Architectural, Engineering, and Surveying Services), and 8 (Public Contracts) of Chapter 143 of the General Statutes and any other laws, rules, or regulations of the State as relate to the acquisition and construction of

State property apply to a Project. It is the intent of the General Assembly that the Office Project should be a sustainably designed facility.

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

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

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

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

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

In the General Assembly read three times and ratified this the 12th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000