

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H.B. 958
May 16, 2012
HOUSE PRINCIPAL CLERK

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HOUSE DRH60114-TMza-11 (03/30)

Short Title: NC Zoo Public-Private Ptshp. (Public)

Sponsors: Representatives Moffitt, Brawley, Murry, and R. Moore (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH
3 CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT
4 COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** Part 22 of Article 7 of Chapter 143B of the General Statutes
7 (North Carolina Zoological Park Council) is repealed.

8 **SECTION 1.(b)** Any assets of the Zoo Fund established under Part 22 of Article 7
9 of Chapter 143B of the General Statutes at the time of its repeal shall be administered by the
10 Department of Environment and Natural Resources under the management agreement provided
11 by G.S. 143-177 as amended by this act.

12 **SECTION 2.** Article 14 of Chapter 143 of the General Statutes reads as rewritten:

13 "Article 14.

14 "North Carolina Zoological Authority.

15 "**§ 143-177. Right to receive ~~gifts~~, gifts, operation, and transfer of Zoo.**

16 (a) Purpose; Management Agreement; Transfer of Zoo. – The North Carolina
17 Zoological Park (Zoo) maintains a diverse collection of plant and wildlife specimens in order to
18 study, conserve, and introduce to people the species of the world. The North Carolina
19 Department of Environment and Natural Resources is directed to enter into a management
20 agreement with the North Carolina Zoological Society, Inc., (Society) for a term not to exceed
21 25 years with options to renew at the end of each term, for the Society to maintain and operate
22 the Zoo. The management agreement shall require that the Zoo provide free admission to North
23 Carolina school students visiting the Zoo as part of an in-school tour group. The Society shall
24 carry out the following minimum duties with respect to the Zoo:

- 25 (1) Providing park and outreach operation.
26 (2) Planning for and implementation of maintenance and expansion.
27 (3) Providing construction, furnishings, and equipment.
28 (4) Maintaining high standards of animal welfare and husbandry.
29 (5) Carrying out research and practical conservation programs.
30 (6) Establishing and setting admission fees.
31 (7) Promoting public appreciation of animals and plants.
32 (8) Disseminating information about the Zoo and its programs.
33 (9) Developing effective public support.
34 (10) Soliciting financial and material support from various private sources within
35 and without the State of North Carolina.



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1 (11) Maintaining the highest possible standards in the Zoo's exhibits,
2 landscaping, and overall appearance.

3 (12) Maintaining Association of Zoos and Aquariums (AZA) accreditation.

4 (b) State Representation on Society Board. – As a condition of entering into the
5 agreement, the Society shall amend its articles of incorporation, bylaws, or other appropriate
6 corporate document to provide that the Secretary of the Department of Environment and
7 Natural Resources or that Secretary's designee and the Secretary of the Department of
8 Administration or that Secretary's designee shall serve on its board of directors ex officio.

9 (c) General Transfer Language. – As of January 1, 2013, all of the rights, privileges,
10 liabilities, and obligations of the North Carolina Zoological Park Council not inconsistent with
11 the provisions of this section shall, under the terms of the management agreement, be
12 transferred to and assumed by the board of directors of the Society.

13 (d) Governance of Zoo. – As of January 1, 2013, the Zoo and the zoological programs
14 established or maintained by the Zoo shall be governed by the Society under the general
15 direction of its board of directors.

16 (e) Personal Property Transfer. – To effect an orderly transition, the management
17 agreement shall detail the specific personal property of the State, both tangible and intangible,
18 that shall be transferred to the Society. The management agreement must also provide for
19 reversion of such personal property to the State or redirection by the State if the Society ceases
20 to exist, enters bankruptcy, terminates its management agreement with the State, or in any other
21 way is incapable of maintaining the Zoo. The Department of Environment and Natural
22 Resources shall transfer to the Society any personal property listed in the State asset inventory
23 that is necessary for the operation of the Zoo, including any relevant permits, registrations, and
24 licenses necessary, appropriate, or convenient to ownership. If any fee or other payment is
25 required to effectuate the transfer, the Society shall pay the fee or other payment or reimburse
26 the Department of Environment and Natural Resources for any expenditure in relation to the
27 transfer.

28 (f) Real Property Transfer. – All real property currently owned by the State and
29 allocated to the Zoo shall remain in title to the State. The State shall retain property control
30 over all State real property at the Zoo, except that the Society shall be afforded naming rights
31 on land or fixtures owned by the State.

32 (g) Annual Appropriations. – As a management fee to support operation of the Zoo, the
33 sum of ten million dollars (\$10,000,000) shall be appropriated annually by the State to the
34 Society under the terms of the management agreement until the end of its term; except for the
35 2012-2013 fiscal year, it shall be the sum of five million dollars (\$5,000,000) to annualize it to
36 the January 1, 2013, effective date of the transfer.

37 (h) Reserve for Repair and Renovation. – The Society shall be eligible for allocations
38 from the Reserve for Repair and Renovation to cover current deferred maintenance on State
39 property at the Zoo that as of January 1, 2012, totalled thirty million dollars (\$30,000,000). It is
40 the intent of the General Assembly that five million dollars (\$5,000,000) annually shall be
41 provided to the Society from the Reserve until a total of thirty million dollars (\$30,000,000) has
42 been satisfied. The allocation shall be administered by the the Department of Environment and
43 Natural Resources. As initial implementation of this subsection, for the 2012-2013 fiscal year,
44 the sum of five million dollars (\$5,000,000) is appropriated from the Reserve for Repair and
45 Renovation to the Department of Environment and Natural Resources and provided to the
46 Society to cover deferred maintenance on State property at the Zoo.

47 (i) Transition Costs. – The sum of three million two hundred thousand dollars
48 (\$3,200,000) for the 2012-2013 fiscal year is appropriated from the General Fund to the
49 Department of Environment and Natural Resources for transition expenses necessary to
50 implement this section.

1 (j) Audit. – The Society shall be subject to audit by the State Auditor and the
2 Performance Evaluation Division of the General Assembly.

3 (k) ~~In order to carry out the purposes of this Article, the Board is authorized Society~~
4 ~~may to acquire by gift or will, absolutely or in trust, from individuals, corporations, or any~~
5 ~~other source money or other property, or any interests in property, which may be retained, sold~~
6 ~~or otherwise used to promote the purposes of this Article. The use of gifts shall be subject to~~
7 ~~such limitations as may be imposed thereon by donors, notwithstanding any other provisions of~~
8 ~~this Article.~~

9 **"§ 143-177.1. North Carolina Zoological Park Fund.**

10 All gifts made to the ~~North Carolina Zoological Park Zoo~~ for the purposes of this Article
11 shall be exempt from every form of taxation including, but not by the way of limitation, ad
12 valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any
13 property acquired under the provisions of this Article shall be deposited in the North Carolina
14 State treasury and shall be credited to the ~~North Carolina Zoological Park Zoo.~~

15 **"§ 143-177.2. Cities and counties.**

16 Cities and counties are hereby authorized to expend funds derived from nontax sources and
17 to make gifts of surplus property, to assist in carrying out the purposes of this Article.

18 **"§ 143-177.3. Sources of funds.**

19 (a) It is the intent of this Article that the funds for the creation, establishment,
20 construction, operation and maintenance of the ~~North Carolina Zoological Park Zoo~~ shall be
21 obtained primarily from private sources; however, the ~~Council Society,~~ under the supervision
22 and approval and with the assistance of the Secretary of Environment and Natural ~~Resourees~~
23 ~~Resources,~~ is hereby authorized to receive and expend such funds as may from time to time
24 become available by appropriation or otherwise from the State of North Carolina; provided,
25 that the ~~North Carolina Zoological Park Council Society~~ shall not in any manner pledge the
26 faith and credit of the State of North Carolina for any of its purposes. Real property of the State
27 may not be pledged as collateral by the Society in any financing, nor may the annual
28 appropriation for operating expenses be pledged as security in any financing.

29 (b) ~~The Council with the approval of the Secretary of Environment and Natural~~
30 ~~Resources is authorized to establish and set admission fees which are reasonable and consistent~~
31 ~~with the purpose and function of the North Carolina Zoological Park.~~

32 **"§ 143-177.4. Capital improvement projects.**

33 (a) As provided in this subsection, for any capital improvement projects on State lands
34 or when any State funds are used, the State shall retain design and construction oversight in the
35 following manner:

36 (1) Capital projects over two million dollars. – The facility master plan and any
37 plans, specifications, construction schedules, and budgets for such projects
38 which are estimated to require the expenditure of over two million dollars
39 (\$2,000,000) are subject to approval by the Department of Environment and
40 Natural Resources and by the Department of Administration to ensure that
41 State standards are met.

42 (2) Capital projects of two million dollars or less. – The Society shall, with
43 respect to the design, construction, or renovation of buildings, utilities, and
44 other property developments of the Zoo requiring the expenditure of two
45 million dollars (\$2,000,000) or less, take the following actions:

46 a. Conduct the fee negotiations for all design contracts and supervise
47 the letting of all construction and design contracts.

48 b. Develop procedures governing the responsibilities of the Zoo to
49 perform the duties of the Department of Administration and the
50 Director or Office of State Construction under G.S. 133-1.1(d) and
51 G.S. 143-341(3).

- 1 c. Develop procedures and reasonable limitations governing the use of
2 open-end design agreements, subject to G.S. 143-64.34 and the
3 approval of the State Building Commission.
- 4 d. Use existing plans and specifications for construction projects, where
5 feasible. Prior to designing a project, the Society shall consult with
6 the Department of Administration on the availability of existing
7 plans and specifications and the feasibility of using them for a
8 project.
- 9 e. The Society shall use the standard contracts for design and
10 construction currently in use for State capital improvement projects
11 by the Office of State Construction of the Department of
12 Administration.
- 13 f. A contract may not be divided for the purpose of evading the
14 monetary limit under this subsection.
- 15 g. Notwithstanding any other provision of Chapter 143 of the General
16 Statutes, the Department of Administration shall not be the awarding
17 authority for contracts awarded pursuant to this subsection.
- 18 h. The Society shall report annually to the State Building Commission
19 the following:
- 20 1. A list of projects governed by this subsection.
21 2. The estimated cost of each project, along with the actual cost.
22 3. The name of each person awarded a contract under this
23 subsection.
24 4. Whether the person or business awarded a contract under this
25 subsection meets the definition of "minority business" or
26 "minority person" as defined in G.S. 143-128.2(g).

27 (b) The Society may choose to ask for review by the Department of Environment and
28 Natural Resources and by the Department of Administration of other capital improvement
29 projects or capital improvement projects not covered by subsection (a) of this section. No other
30 State approval or review is required of such projects, as State review and approval is not
31 required of capital improvement projects on Society-owned property where there is no State
32 funding of the project.

33 (c) The Society may enter into lease arrangements with the State to make capital
34 improvements on State-owned property. This subsection shall be implemented as provided in
35 the management agreement required by G.S. 143-177.

36 (d) The Society or Department of Environment and Natural Resources may request
37 State funding for capital improvement projects through the State's capital planning and
38 budgeting process.

39 (e) This subsection does not exempt any capital improvement project from review and
40 approval by the city or county having jurisdiction over the property as may be required by law.

41 (f) Notwithstanding the provisions of Chapter 143C of the General Statutes, the Society
42 may approve (i) expenditures to plan a capital improvement project of the Zoo, the planning for
43 which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital
44 improvement project of the Zoo that is to be funded and operated entirely with non-General
45 Fund money, or (iii) a change in the scope of any previously approved capital improvement
46 project of the Zoo, provided that both the project and change in scope are funded entirely with
47 non-General Fund money. The Society shall report any expenditure made pursuant to this
48 subsection to the Office of State Budget and Management and to the Joint Legislative
49 Commission on Governmental Operations."

50 **SECTION 3.** This act becomes effective January 1, 2013, except that the
51 Department of Environment and Natural Resources and the North Carolina Zoological Society,

- 1 Inc., may enter into the management agreement provided by G.S. 143-177, as amended by this
- 2 act, at any time prior to that date, and the Department of Environment and Natural Resources
- 3 may also act on any transitional requirements prior to that date.