

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 369

Short Title: Capital Improvements Bond.

(Public)

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Sponsors: Representative Rhyne.

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Referred to: Appropriations.

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March 28, 1991

A BILL TO BE ENTITLED

1  
2 AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF FORTY  
3 MILLION DOLLARS BONDS OF THE STATE TO PROVIDE FUNDS, WITH  
4 ANY OTHER AVAILABLE FUNDS, FOR STATE BUILDINGS AND  
5 FACILITIES, SUCH AUTHORIZED BONDS TO BE ISSUED WITHOUT AN  
6 ELECTION DURING THE YEAR ENDED JUNE 30, 1992, IN AN AMOUNT  
7 NOT IN EXCESS OF SUCH AUTHORIZED AMOUNT AND NOT IN EXCESS  
8 OF TWO-THIRDS OF THE AMOUNT BY WHICH THE STATE'S  
9 OUTSTANDING INDEBTEDNESS SHALL HAVE BEEN REDUCED DURING  
10 THE 1988-90 BIENNIUM.

11 The General Assembly of North Carolina enacts:

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

14 Sec. 2. **Findings and determinations.** It is the intent and purpose of the  
15 General Assembly by this act to provide for the issuance of general obligation bonds of  
16 the State in order to facilitate the payment of the capital costs required in connection  
17 with providing State facilities.

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

20 (1) "Bonds" means the bonds issued under this act.

21 (2) "Cost" means, without intending thereby to limit or restrict any proper  
22 definition of such word in financing the cost of State facilities as  
23 authorized by this act,

- 1 a. The cost of constructing, reconstructing, enlarging, acquiring  
2 and improving facilities, and acquiring equipment and land  
3 therefor,
- 4 b. The cost of engineering, architectural and other consulting  
5 services as may be required,
- 6 c. Administrative expenses and charges,
- 7 d. The cost of bond insurance, investment contracts, credit  
8 enhancement and liquidity facilities, interest-rate swap  
9 agreements, financial and legal consultants and related costs of  
10 bond and note issuance, to the extent and as determined by the  
11 State Treasurer, and
- 12 e. Any other costs and expenses necessary or incidental to the  
13 purposes of this act.

14 (3) "Credit facility" means an agreement entered into by the State  
15 Treasurer on behalf of the State with a bank, savings and loan  
16 association or other banking institution, an insurance company,  
17 reinsurance company, surety company or other insurance institution, a  
18 corporation, investment banking firm or other investment institution,  
19 or any financial institution or other similar provider of a credit facility,  
20 which provider may be located within or without the United States of  
21 America, such agreement providing for prompt payment of all or any  
22 part of the principal or purchase price (whether at maturity,  
23 presentment or tender for purchase, redemption or acceleration),  
24 redemption premium, if any, and interest on any bonds or notes  
25 payable on demand or tender by the owner, in consideration of the  
26 State agreeing to repay the provider of the credit facility in accordance  
27 with the terms and provisions of such agreement.

28 (4) "Notes" means the notes issued under this act.

29 (5) "Par formula" means any provision or formula adopted by the State to  
30 provide for the adjustment, from time to time, of the interest rate or  
31 rates borne by any bonds or notes, including:

- 32 a. A provision providing for such adjustment so that the purchase  
33 price of such bonds or notes in the open market would be as  
34 close to par as possible,
- 35 b. A provision providing for such adjustment based upon a  
36 percentage or percentages of a prime rate or base rate, which  
37 percentage or percentages may vary or be applied for different  
38 periods of time, or
- 39 c. Such other provision as the State Treasurer may determine to be  
40 consistent with this act and will not materially and adversely  
41 affect the financial position of the State and the marketing of  
42 bonds or notes at a reasonable interest cost to the State.

43 Sec. 4. **Authorization of bonds and notes.** The State Treasurer is hereby  
44 authorized, by and with the consent of the Council of State as herein provided, to issue

1 and sell at one time or from time to time in the year ending June 30, 1992, general  
2 obligation bonds of the State to be designated "State of North Carolina Capital  
3 Improvement Bonds" or notes of the State as herein provided, in an aggregate principal  
4 amount not to exceed forty million dollars (\$40,000,000), said amount not being in  
5 excess of two-thirds of the amount by which the State's outstanding indebtedness was  
6 reduced during the biennium ended June 30, 1990, for the purpose of providing funds,  
7 with any other available funds, for the uses authorized in this act.

8 If the forty million dollars (\$40,000,000) maximum principal amount of  
9 bonds and notes herein authorized shall be in excess of two-thirds of the amount by  
10 which the State's outstanding indebtedness shall have been reduced during the biennium  
11 ended June 30, 1990, and the amount of bonds and notes issued hereunder shall on that  
12 account be less than forty million dollars (\$40,000,000), the difference between the  
13 proceeds of said bonds and notes and the forty million dollars (\$40,000,000) aggregate  
14 bond proceeds set forth above may be made up from other available sources or the costs  
15 of the authorized uses may be reduced.

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

22 The proceeds of bonds and notes, including premium thereon, if any, except  
23 the proceeds of bonds the issuance of which has been anticipated by bond anticipation  
24 notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer  
25 in a special fund to be designated the "State Facilities Legislative Bond Fund of 1991"  
26 and shall be disbursed as herein provided.

27 Any additional moneys which may be received by means of a grant or grants  
28 from the United States of America or any agency or department thereof or from any  
29 other source to aid in financing the cost of any facilities authorized by this act may be  
30 placed by the State Treasurer in the State Facilities Legislative Bond Fund of 1991 or in  
31 a separate fund and shall be disbursed, to the extent permitted by the terms of such grant  
32 or grants, without regard to any limitations imposed by this act.

33 The proceeds of bonds and notes may be used with any other moneys made  
34 available by the General Assembly for the cost of State facilities, including the proceeds  
35 of any other State bond issues, whether heretofore made available or which may be  
36 made available at the session of the General Assembly at which this act is ratified or any  
37 subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed  
38 under the direction and supervision of the Director of the Budget. The funds provided  
39 by this act shall be disbursed for the purposes provided in this act upon warrants drawn  
40 on the State Treasurer by the State Comptroller, which warrants shall not be drawn until  
41 requisition has been approved by the Director of the Budget and which requisition shall  
42 be approved only after full compliance with the Executive Budget Act, Article 1 of  
43 Chapter 143 of the General Statutes, as it may be amended from time to time.

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

Sec. 6. Allocation of proceeds.

(1) **Descriptions, projected allocations.** The proceeds of bonds and notes shall be allocated and expended for paying the cost of facilities, to the extent and as provided in this act and subject to change as herein provided, as follows:

<u>Project Description</u>	<u>Projected Allocation</u>
Contingencies	Total \$40,000,000

(2) **Increases in projected allocations.** 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.

(3) **Contingency funds.** The amount allocated for contingencies set forth above shall be placed by the State Treasurer in a special account in the State Facilities Legislative Bond Fund of 1991 to be designated the "State Facilities Contingency Account." The funds in the State Facilities Contingency Account shall be disbursed in accordance with the procedures herein established for disbursements from the State Facilities Legislative Bond Fund of 1991. The funds in the State Facilities Contingency Account shall be expended for paying the cost of projects, including, without limitation, the costs of issuance of bonds and notes, increased project costs resulting from construction costs exceeding projected costs, inflationary factors and changes in projects and allocations.

(4) **Administration.** The office of the Department of Administration. Of the funds allocated under the provisions of this act for the construction of facilities, the Office of State Budget and Management shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of facilities funded by this act shall include a penalty for failure to complete the work by a specified date.

(5) **Changes.** The Director of the Budget is empowered, 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, to use the excess funds to increase the amount allocated to a particular institution within the aggregate amount of funds available under this act including the proceeds of any investment earnings. Prior to taking

1 any action under this subsection, the Governor may consult with the  
2 Advisory Budget Commission.

- 3 (6) **Quarterly reports.** The Office of State Budget and Management shall  
4 provide quarterly reports to the Chairman of the Appropriations  
5 Committee and the Base Budget Committee in the Senate, the  
6 Chairman of the Appropriations Committee in the House, the Joint  
7 Legislative Commission on Governmental Operations, and the Fiscal  
8 Research Division as to any changes in projects and allocations made  
9 under this section.

10 Sec. 7. Issuance of bonds and notes.

- 11 (1) **Terms and conditions.** Bonds or notes may bear such date or dates,  
12 may be serial or term bonds or notes, or any combination thereof, may  
13 mature in such amounts and at such time or times, not exceeding 40  
14 years from their date or dates, may be payable at such place or places,  
15 either within or without the United States of America, in such coin or  
16 currency of the United States of America as at the time of payment is  
17 legal tender for payment of public and private debts, may bear interest  
18 at such rate or rates, which may vary from time to time, and may be  
19 made redeemable before maturity, at the option of the State or  
20 otherwise as may be provided by the State, at such price or prices,  
21 including a price less than the face amount of the bonds or notes, and  
22 under such terms and conditions, all as may be determined by the State  
23 Treasurer, by and with the consent of the Council of State.

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

1 Treasurer may determine in conformity with this act; provided,  
2 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  
4 notes, under the provisions of Chapter 159E of the General Statutes,  
5 the Registered Public Obligations Act, as said Chapter may be  
6 amended from time to time, as well as under this act.

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

- 20 (4) Notes; repayment.

- 21 a. By and with the consent of the Council of State, the State  
22 Treasurer is hereby authorized to borrow money, and to execute  
23 and issue notes of the State for the same, but only in the  
24 following circumstances and under the following conditions:  
25 1. For anticipating the sale of bonds to the issuance of  
26 which the Council of State shall have given consent, if  
27 the State Treasurer shall deem it advisable to postpone  
28 the issuance of the bonds;  
29 2. For the payment of interest on or any installment of  
30 principal of any bonds then outstanding, if there shall not  
31 be sufficient funds in the State treasury with which to  
32 pay the interest or installment of principal as they  
33 respectively become due;  
34 3. For the renewal of any loan evidenced by notes herein  
35 authorized;  
36 4. For the providing of facilities as herein authorized; and  
37 5. For refunding bonds or notes as herein authorized.  
38 b. Funds derived from the sale of bonds or notes may be used in  
39 the payment of any bond anticipation notes issued under this  
40 act. Funds provided by the General Assembly for the payment  
41 of interest on or principal of bonds shall be used in paying the  
42 interest on or principal of any notes and any renewals thereof,  
43 the proceeds of which shall have been used in paying interest on  
44 or principal of the bonds.

- 1 (5) **Refunding bonds and notes.** By and with the consent of the Council  
2 of State, the State Treasurer is authorized to issue and sell refunding  
3 bonds and notes pursuant to the provisions of the State Refunding  
4 Bond Act, as it may be amended from time to time, for the purpose of  
5 refunding bonds or notes issued pursuant to this act. The refunding  
6 bonds and notes may be combined with any other issues of State bonds  
7 and notes similarly secured.
- 8 (6) **Tax exemption.** Bonds and notes and their transfer (including any  
9 profit made on the sale thereof) shall be exempt from all State, county  
10 and municipal taxation or assessment, direct or indirect, general or  
11 special, whether imposed for the purpose of general revenue or  
12 otherwise, excluding inheritance and gift taxes. The interest on bonds  
13 and notes shall not be subject to taxation as to income, nor shall the  
14 bonds and notes be subject to taxation when constituting a part of the  
15 surplus of any bank, trust company or other corporation.
- 16 (7) **Investment eligibility.** Bonds and notes are hereby made securities in  
17 which all public officers, agencies and public bodies of the State and  
18 its political subdivisions, all insurance companies, trust companies,  
19 investment companies, banks, savings banks, savings and loan  
20 associations, credit unions, pension or retirement funds, other financial  
21 institutions engaged in business in the State, executors, administrators,  
22 trustees and other fiduciaries may properly and legally invest funds,  
23 including capital in their control or belonging to them. Bonds and  
24 notes are hereby made securities which may properly and legally be  
25 deposited with and received by any officer or agency of the State or  
26 political subdivision of the State for any purpose for which the deposit  
27 of bonds, notes or obligations of the State or any political subdivision  
28 is now or may hereafter be authorized by law.
- 29 (8) **Faith and credit.** The faith and credit and taxing power of the State  
30 are hereby pledged for the payment of the principal of and the interest  
31 on bonds and notes.

32 Sec. 8. **Variable interest rates.** In fixing the details of bonds and notes, the  
33 State Treasurer may provide that any of the bonds or notes may:

- 34 (1) Be made payable from time to time on demand or tender for purchase  
35 by the owner thereof provided a credit facility supports the bonds or  
36 notes, unless the State Treasurer specifically determines that a credit  
37 facility is not required upon a finding and determination by the State  
38 Treasurer that the absence of a credit facility will not materially and  
39 adversely affect the financial position of the State and the marketing of  
40 the bonds or notes at a reasonable interest cost to the State;
- 41 (2) Be additionally supported by credit facility;
- 42 (3) Be made subject to redemption or a mandatory tender for purchase  
43 prior to maturity;

- 1 (4) Bear interest at a rate or rates that may vary for such period or periods  
2 of time, all as may be provided in the proceedings providing for the  
3 issuance of the bonds or notes, including, without limitation, such  
4 variations as may be permitted pursuant to a par formula; and  
5 (5) Be made the subject of a remarketing agreement whereby an attempt is  
6 made to remarket bonds or notes to new purchasers prior to their  
7 presentment for payment to the provider of the credit facility or to the  
8 State.

9 If the aggregate principal amount repayable by the State under a credit facility  
10 is in excess of the aggregate principal amount of bonds or notes secured by the credit  
11 facility, whether as a result of the inclusion in the credit facility of a provision for the  
12 payment of interest for a limited period of time or the payment of a redemption  
13 premium or for any other reason, then the amount of authorized but unissued bonds or  
14 notes during the term of such credit facility shall not be less than the amount of such  
15 excess, unless the payment of such excess is otherwise provided for by agreement of the  
16 State executed by the State Treasurer.

17 Sec. 9. Interpretation of act.

18 (a) **Additional method.** The foregoing sections of this act shall be deemed to  
19 provide an additional and alternative method for the doing of the things authorized  
20 thereby and shall be regarded as supplemental and additional to powers conferred by  
21 other laws, and shall not be regarded as in derogation of any powers now existing.

22 (b) **Liberal construction.** This act, being necessary for the health and welfare of  
23 the people of the State, shall be liberally construed to effect the purposes thereof.

24 (c) **Inconsistent provisions.** Insofar as the provisions of this act are inconsistent  
25 with the provisions of any general laws, or parts thereof, the provisions of this act shall  
26 be controlling.

27 (d) **Severability.** If any provision of this act or the application thereof to any  
28 person or circumstance is held invalid, such invalidity shall not affect other provisions  
29 or applications of the act which can be given effect without the invalid provision or  
30 application, and to this end the provisions of this act are declared to be severable.

31 Sec. 10. This act is effective upon ratification.