

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 933
HOUSE BILL 2245

AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF SEVENTY-FIVE MILLION DOLLARS BONDS OF THE STATE TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE PRISON FACILITIES, SUCH AUTHORIZED BONDS 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, AND TO RAISE THE PRISON POPULATION CAP.

The General Assembly of North Carolina enacts:

Section 1. **Short title.** This act shall be known and may be cited as the "Prison Facilities Legislative Bond Act of 1990."

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 additional prison facilities.

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 prison facilities as authorized by this act,
 - a. The cost of constructing, reconstructing, enlarging, acquiring and improving prison 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, 1991, general obligation bonds of the State to be designated "State of North Carolina Capital Improvement Bonds" or notes of the State as herein provided, in an aggregate principal amount not to exceed seventy-five million dollars (\$75,000,000), 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, with any other available funds, for the uses authorized in this act.

If the seventy-five million dollars (\$75,000,000) 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, 1989, and the amount of bonds and notes issued hereunder shall on that account be less than seventy-five million dollars (\$75,000,000), the difference between the proceeds of said bonds and notes and the seventy-five million dollars (\$75,000,000)

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 prison facilities, under the supervision of the Department of Correction, as herein provided, including, without limitation, the cost of constructing capital facilities, renovating or reconstructing existing facilities, acquiring equipment related thereto, purchasing land, paying costs of issuance of bonds and notes and paying contractual services necessary for the completion of the purposes of this act.

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 Prison Facilities Legislative Bond Fund of 1990" and shall be disbursed as herein provided.

Any additional moneys which may be received by means of a grant or grants 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 prison facilities authorized by this act may be placed by the State Treasurer in the State Prison Facilities Legislative Bond Fund of 1990 or in a separate fund and shall be disbursed, to the extent permitted by the terms of such grant or grants, 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 prison 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, 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 Prison Facilities Legislative Bond Fund of 1990.

Sec. 6. Allocation of proceeds.

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

<u>Project Description</u>	<u>Custodial Level</u>	<u>Beds</u>	<u>Projected Allocation</u>
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Caswell Correctional Center	Medium	104	\$ 3,456,536
Columbus Correctional Center	Medium	104	3,087,200
Pender Correctional Center	Medium	208	4,610,628
Western Institution	Close	480	28,724,300
Burke Youth Center	Minimum	100	2,782,956
Randolph Correctional Center	Medium	208	6,239,363
Montgomery Correctional Center	Medium	104	4,227,592
N.C. Correctional Institution for Women (A & B Dormitory Replacement)	Medium	208	3,720,110
Anson or Lenoir Correctional Institution	Medium	520	16,625,417
Contingencies			<u>1,525,898</u>
		Total	\$75,000,000

The project listed as "Anson or Lenoir Correctional Institution" shall be constructed in Anson County, unless the County of Lenoir in a timely fashion makes sufficient land available to the State for the project at no cost to the State, and the land is found suitable by the Director of the Budget, in which case the Director of the Budget may locate the project in Lenoir County.

- (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 Prison Facilities Legislative Bond Fund of 1990 to be designated the "State Prison Facilities Contingency Account." The funds in the State Prison Facilities Contingency Account shall be disbursed in accordance with the procedures herein established for disbursements from the State Prison Facilities Legislative Bond Fund of 1990. The funds in the State Prison 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 State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of prison facilities in order to implement the providing of prison facilities under the provisions of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113-66, 133-1.1(b), 133-1.1(g) and 143-408.1; provided, however, of the funds allocated under the provisions of this act for the construction of prison 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 prison facilities shall include a penalty for failure to complete the work by a specified date. In implementing the providing of prison facilities under the provisions of this act, the Office of State Budget and Management shall endeavor to contract for and supervise the administration, technical assistance, design, construction and demolition of prison facilities such that, of the projects described in subsection (1), prison facilities providing at least 1,556 beds shall be completed and placed in service within 12 months of the date that bonds are issued pursuant to this act.
- (5) **Changes.** The Director of the Budget is empowered, when the Director determines it is in the best interest of the State and the State prison system 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 size of that project or increase the size of any other project itemized in this section, or 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 any action under this subsection, the Governor may consult with the Advisory Budget Commission.
- (6) **Quarterly reports.** The Office of State Budget and Management shall provide quarterly reports to the Chairman of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, 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 said Chapter may be amended from time to time, 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 providing of prison facilities as herein authorized; 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, as it may be amended from time to time, 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 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) **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.

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

(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. 10. Effective November 1, 1990, G.S. 148-4.1 reads as rewritten:

"§ 148-4.1. Release of inmates.

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection (c) and (e), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~18,715-19,324~~ for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~18,715-19,324~~.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~18,715-19,324~~, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~18,715~~19,324, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving.

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~18,715~~19,324.

(g) In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

Sec. 11. Effective June 30, 1991, G.S. 148-4.1(d) as amended by Section 10 of this act reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~19,324~~20,435 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~19,324~~20,435.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~19,324~~20,435, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 12. Effective July 1, 1991, G.S. 148-4.1(e) as amended by Section 10 of this act reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~19,324~~20,435, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 13. Effective July 1, 1991, G.S. 148-4.1(f) as amended by Section 10 of this act reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to

be paroled under this section so long as the prison population does not exceed ~~19,324~~
20,435."

Sec. 14. The Secretary of Correction may advance or delay the effective date of Sections 10 through 13 of this act by not more than 45 days from the dates provided in this act, based on the availability or lack thereof of prison space.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1990.