

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 897

Short Title: Bonds for State Ports.

(Public)

Sponsors: Senator Block.

Referred to: Finance.

May 13, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ISSUANCE OF TWENTY-FIVE MILLION
2 DOLLARS IN GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT
3 TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE
4 FUNDS FOR FACILITIES AND MAINTENANCE OF THE NORTH CAROLINA
5 STATE PORTS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Short Title. This act shall be known and may be cited as the
9 "State Port Facilities Bond Act".

10 Sec. 2. Definitions. As used in this act, unless the context otherwise
11 requires:

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

13 (2) " Cost" means, without intending thereby to limit or restrict any proper
14 definition of such word in financing the cost of facilities or purposes
15 authorized by this act:

16 a. The cost of constructing, reconstructing, enlarging, acquiring
17 and improving facilities, and acquiring equipment and land
18 therefor,

19 b. The cost of engineering, architectural and other consulting
20 services as may be required,

21 c. Administrative expenses and charges,

22 d. The cost of bond insurance, investment contracts, credit
23 enhancement and liquidity facilities, interest-rate swap
24 agreements, financial and legal consultants and related costs of

1 bond and note issuance, to the extent and as determined by the
2 State Treasurer, and

3 e. Any other costs and expenses necessary or incidental to the
4 purposes of this act.

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

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

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

23 a. A provision providing for such adjustment so that the purchase
24 price of such bonds or notes in the open market would be as
25 close to par as possible,

26 b. A provision providing for such adjustment based upon a
27 percentage or percentages of a prime rate or base rate, which
28 percentage or percentages may vary or be applied for different
29 periods of time, or

30 c. Such other provision as the State Treasurer may determine to be
31 consistent with this act and will not materially and adversely
32 affect the financial position of the State and the marketing of
33 bonds or notes at a reasonable interest cost to the State.

34 Sec. 3. State Ports Bonds. (a) Findings and determination. It is the intent and
35 purpose of the General Assembly by this act to provide for the issuance of general
36 obligation bonds of the State in order to facilitate the payment of the capital costs
37 required in providing and improving existing State ports.

38 (b) Authorization of bonds and notes. Subject to a favorable vote of a majority
39 of the qualified voters of the State who vote on the question of issuing State ports bonds
40 in the election called and held as hereinafter provided, the State Treasurer is hereby
41 authorized, by and with the consent of the Council of State, to issue and sell, at one time
42 or from time to time, general obligation bonds of the State to be designated "State of
43 North Carolina State Ports Bonds", with such additional designations as may be
44 determined to indicate the issuance of bonds from time to time, or notes of the State as

1 herein provided, in an aggregate principal amount not exceeding twenty-five million
2 dollars (\$25,000,000) for the purpose of providing funds, with any other available
3 funds, for the purposes authorized in this act.

4 (c) Uses of bond and note proceeds. The proceeds of State ports bonds and notes
5 shall be used for the purposes of financing the cost of capital facilities at the State ports
6 and for maintenance of existing capital facilities at the State ports.

7 (d) Allocation of proceeds. The proceeds of State ports bonds and notes,
8 including premium thereon, if any, except the proceeds of bonds the issuance of which
9 has been anticipated by bond anticipation notes or the proceeds of refunding bonds or
10 notes, shall be placed by the State Treasurer in a special account to be designated "State
11 Ports Bonds Account" to be established in the "State General Purpose Bond
12 Fund" hereinafter mentioned. Moneys in the State Ports Bonds Account shall be used
13 for the purposes set forth in this section, and the particular projects within such purposes
14 to be financed in whole or in part from the proceeds shall be determined from time to
15 time by the North Carolina State Ports Authority created in G.S. 143B-452. In
16 determining the particular projects to be financed, the North Carolina State Ports
17 Authority shall develop criteria to establish a priority system under which State ports
18 projects shall be financed with the proceeds of State ports bonds and notes. The criteria
19 shall include such factors as the North Carolina State Ports Authority shall deem
20 appropriate in order to forward the purposes of this act to provide efficient and
21 productive ports facilities throughout North Carolina. Such criteria shall include the
22 impact of the proposed project on economic development, the impact of the proposed
23 project on the environment, the cost of the proposed project, and the amount of
24 financing from other sources available therefor.

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

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

43 Sec. 4. Uses of Bond and Note Proceeds. The proceeds of bonds and notes,
44 including premium thereon, if any, except the proceeds of bonds the issuance of which

1 has been anticipated by bond anticipation notes or the proceeds of refunding bonds or
2 notes, shall be placed by the State Treasurer in the appropriate special account in a
3 special fund to be designated the "State General Purposes Bond Fund" and shall be
4 disbursed as herein provided.

5 Sec. 5. Election. The questions of the issuance of twenty-five million dollars
6 (\$25,000,000) State of North Carolina State Ports Bonds authorized by this act shall be
7 submitted to the qualified voters of the State at an election to be held on Tuesday,
8 November 5, 1991.

9 Any other primary, election, or referendum validly called or scheduled by law
10 at the time the election on the bond questions provided for in this section is held may be
11 held as called or scheduled. Notice of the election on the bond questions shall be given
12 by publication twice in a newspaper or newspapers having general circulation in each
13 county in the State, and the election and the registration of voters therefor shall be held
14 under and in accordance with the general laws of the State. Absentee ballots shall be
15 authorized in the election.

16 The State Board of Elections shall reimburse the counties of the State for all
17 necessary expenses incurred in holding the election which are in addition to those which
18 would have otherwise been incurred, the same to be paid out of the Contingency and
19 Emergency Fund.

20 Voting machines may be used in accordance with the rules and regulations
21 prescribed by the State Board of Elections. The State Board of Elections may also
22 cause to be printed and distributed, to the extent necessary, ballots for use in the
23 election. The bond questions to be used in the voting machines and any ballots shall be
24 in substantially the following forms:

25 "[] FOR the issuance of twenty-five million dollars (\$25,000,000) State of
26 North Carolina State Ports Bonds constituting general obligation bonds
27 of the State secured by a pledge of the faith and credit and taxing
28 power of the State for the purpose of providing funds, with any other
29 available funds, for paying the cost of capital facilities and
30 maintenance of capital facilities at State ports.

31 [] AGAINST the issuance of twenty-five million dollars (\$25,000,000)
32 State of North Carolina State Ports Bonds constituting general
33 obligation bonds of the State secured by a pledge of the faith and credit
34 and taxing power of the State for the purpose of providing funds, with
35 any other available funds, for paying the cost of capital facilities and
36 maintenance of capital facilities at State ports."

37 If a majority of those voting on a bond question in the election shall vote in
38 favor of the issuance of the bonds described in the question, such bonds may be issued
39 as herein provided. If a majority of those voting on a bond question in the election shall
40 vote against the issuance of the bonds described in the question, such bonds shall not be
41 issued.

42 The results of the election shall be canvassed and declared as provided by law
43 for the holding of elections for State officers and the results thereof certified by the

1 State Board of Elections to the Secretary of State, in the manner and at the time
2 provided by the general election laws of the State.

3 Sec. 6. Issuance of Bonds and Notes. (a) Terms and conditions. Bonds or notes
4 may bear such date or dates, may be serial or term bonds or notes, or any combination
5 thereof, may mature in such amounts and at such time or times, not exceeding 40 years
6 from their date or dates, may be payable at such place or places, either within or without
7 the United States of America, in such coin or currency of the United States of America
8 as at the time of payment is legal tender for payment of public and private debts, may
9 bear interest at such rate or rates, which may vary from time to time, and may be made
10 redeemable before maturity, at the option of the State or otherwise as may be provided
11 by the State, at such price or prices, including a price less than the face amount of the
12 bonds or notes, and under such terms and conditions, all as may be determined by the
13 State Treasurer, by and with the consent of the Council of State.

14 (b) Signatures; form and denomination; registration. Bonds or notes may be
15 issued as certificated or uncertificated obligations. If issued as certificated obligations,
16 bonds or notes shall be signed on behalf of the State by the Governor or shall bear his
17 facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile
18 signature, and shall bear the Great Seal of the State or a facsimile thereof shall be
19 impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the
20 Governor and the State Treasurer, the bonds or notes shall also bear a manual signature
21 which may be that of a bond registrar, trustee, paying agent, or designated assistant of
22 the State Treasurer. Should any officer whose signature or facsimile signature appears
23 on bonds or notes cease to be such officer before the delivery of the bonds or notes, the
24 signature or facsimile signature shall nevertheless have the same validity for all
25 purposes as if the officer had remained in office until delivery and bonds or notes may
26 bear the facsimile signatures of persons who at the actual time of the execution of the
27 bonds or notes shall be the proper officers to sign any bond or note although at the date
28 of the bond or note such persons may not have been such officers. The form and
29 denomination of bonds or notes, including the provisions with respect to registration of
30 the bonds or notes and any system for their registration, shall be as the State Treasurer
31 may determine in conformity with this act; provided, however, that nothing in this act
32 shall prohibit the State Treasurer from proceeding, with respect to the issuance and form
33 of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the
34 Registered Public Obligations Act, as said Chapter may be amended from time to time,
35 as well as under this act.

36 (c) Manner of sale; expenses. Subject to determination by the Council of State as
37 to the manner in which bonds or notes shall be offered for sale, whether at public or
38 private sale, whether within or without the United States of America and whether by
39 publishing notices in certain newspapers and financial journals, mailing notices, inviting
40 bids by correspondence, negotiating contracts of purchase or otherwise, the State
41 Treasurer is authorized to sell bonds or notes at one time or from time to time at such
42 rate or rates of interest, which may vary from time to time, and at such price or prices,
43 including a price less than the face amount of the bonds or notes, as the State Treasurer
44 may determine. All expenses incurred in the preparation, sale and issuance of bonds or

1 notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other
2 available moneys.

3 (d) Notes; repayment.

4 (1) By and with the consent of the Council of State, the State Treasurer is
5 hereby authorized to borrow money and to execute and issue notes of
6 the State for the same, but only in the following circumstances and
7 under the following conditions:

8 a. For anticipating the sale of bonds to the issuance of which the
9 Council of State shall have given consent, if the State Treasurer
10 shall deem it advisable to postpone the issuance of the bonds;

11 b. For the payment of interest on or any installment of principal of
12 any bonds then outstanding, if there shall not be sufficient funds
13 in the State treasury with which to pay the interest or
14 installment of principal as they respectively become due;

15 c. For the renewal of any loan evidenced by notes herein
16 authorized;

17 d. For the purposes authorized in this act; and

18 e. For refunding bonds or notes as herein authorized.

19 (2) Funds derived from the sale of bonds or notes may be used in the
20 payment of any bond anticipation notes issued under this act. Funds
21 provided by the General Assembly for the payment of interest on or
22 principal of bonds shall be used in paying the interest on or principal
23 of any notes and any renewals thereof, the proceeds of which shall
24 have been used in paying interest on or principal of the bonds.

25 (e) Refunding bonds and notes. By and with the consent of the Council of
26 State, the State Treasurer is authorized to issue and sell refunding bonds and notes
27 pursuant to the provisions of the State Refunding Bond Act, as it may be amended from
28 time to time, for the purpose of refunding bonds or notes issued pursuant to this act.
29 The refunding bonds and notes may be combined with any other issues of State bonds
30 and notes similarly secured.

31 (f) Tax exemption. Bonds and notes and their transfer (including any profit
32 made on the sale thereof) shall be exempt from all State, county and municipal taxation
33 or assessment, direct or indirect, general or special, whether imposed for the purpose of
34 general revenue or otherwise, excluding inheritance and gift taxes. The interest on
35 bonds and notes shall not be subject to taxation as to income, nor shall the bonds and
36 notes be subject to taxation when constituting a part of the surplus of any bank, trust
37 company, or other corporation.

38 (g) Investment eligibility. Bonds and notes are hereby made securities in
39 which all public officers, agencies and public bodies of the State and its political
40 subdivisions, all insurance companies, trust companies, investment companies, banks,
41 savings banks, savings and loan associations, credit unions, pension or retirement funds,
42 other financial institutions engaged in business in the State, executors, administrators,
43 trustees and other fiduciaries may properly and legally invest funds, including capital in
44 their control or belonging to them. Bonds and notes are hereby made securities which

1 may properly and legally be deposited with and received by any officer or agency of the
2 State or political subdivision of the State for any purpose for which the deposit of
3 bonds, notes or obligations of the State or any political subdivision is now or may
4 hereafter be authorized by law.

5 (h) Faith and credit. The faith and credit and taxing power of the State are
6 hereby pledged for the payment of the principal of and the interest on bonds and notes.

7 Sec. 7. Variable Interest Rates. In fixing the details of bonds and notes, the
8 State Treasurer may provide that any of the bonds or notes may:

- 9 (1) Be made payable from time to time on demand or tender for purchase
10 by the owner thereof provided a credit facility supports the bonds or
11 notes, unless the State Treasurer specifically determines that a credit
12 facility is not required upon a finding and determination by the State
13 Treasurer that the absence of a credit facility will not materially and
14 adversely affect the financial position of the State and the marketing of
15 the bonds or notes at a reasonable interest cost to the State;
- 16 (2) Be additionally supported by a credit facility;
- 17 (3) Be made subject to redemption or a mandatory tender for purchase
18 prior to maturity;
- 19 (4) Bear interest at a rate or rates that may vary for such period or periods
20 of time, all as may be provided in the proceedings providing for the
21 issuance of the bonds or notes, including, without limitation, such
22 variations as may be permitted pursuant to a par formula; and
- 23 (5) Be made the subject of a remarketing agreement whereby an attempt is
24 made to remarket bonds or notes to new purchasers prior to their
25 presentment for payment to the provider of the credit facility or to the
26 State.

27 If the aggregate principal amount repayable by the State under a credit facility
28 is in excess of the aggregate principal amount of bonds or notes secured by the credit
29 facility, whether as a result of the inclusion in the credit facility of a provision for the
30 payment of interest for a limited period of time or the payment of a redemption
31 premium or for any other reason, then the amount of authorized but unissued bonds or
32 notes during the term of such credit facility shall not be less than the amount of such
33 excess, unless the payment of such excess is otherwise provided for by agreement of the
34 State executed by the State Treasurer.

35 Sec. 8. Interpretation of Act. (a) Additional method. The foregoing sections of
36 this act shall be deemed to provide an additional and alternative method for the doing of
37 the things authorized thereby and shall be regarded as supplemental and additional to
38 powers conferred by other laws, and shall not be regarded as in derogation of any
39 powers now existing.

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

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

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

5 Sec. 9. This act is effective upon ratification.