

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1429

Short Title: Wildlife Building Bonds.

(Public)

Sponsors: Representative C. Wilson.

Referred to: Finance.

June 3, 1996

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE FINANCING OF A NEW STATE
2 ADMINISTRATIVE OFFICE BUILDING TO BE USED BY THE WILDLIFE
3 RESOURCES COMMISSION BY THE INCURRENCE OF NOT IN EXCESS OF
4 FIVE MILLION TWO HUNDRED THOUSAND DOLLARS OF FINANCING
5 CONTRACT INDEBTEDNESS; AND AMENDING CERTAIN GENERAL LAWS.

6 The General Assembly of North Carolina enacts:

7 Section 1. The Department of Administration is authorized to construct and
8 equip a new State administrative office building in the City of Raleigh, North Carolina, to
9 be used by the Wildlife Resources Commission. The cost of constructing and equipping
10 the new State administrative office building shall be financed as provided in this act.

11 Sec. 2. Unless a different meaning is required by the context, the following
12 definitions shall apply throughout this act:

13 (1) "Certificates of participation" means certificates or other instruments
14 delivered by the special corporation as provided in this act evidencing
15 the assignment of proportionate and undivided interests in the rights to
16 receive installment payments to be made by the State pursuant to a
17 financing contract.

18 (2) "Certificates of participation indebtedness" means indebtedness
19 incurred by the State under a plan of finance in which the special
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- 1 corporation obtains funds through the delivery of certificates of
2 participation to pay the cost of the Project.
- 3 (3) " Cost" includes, without intending thereby to limit or restrict any
4 proper definition of this term in financing the cost of the Project as
5 authorized by this act:
- 6 a. The cost of acquiring, constructing, and equipping the Project,
7 including the acquisition of land, rights of way, easements,
8 franchises, equipment, furnishings, and other interests in real or
9 personal property acquired or used in connection with the
10 Project;
- 11 b. The cost of engineering, architectural, and other consulting
12 services as may be required;
- 13 c. Finance charges, reserves for debt service and interest prior to
14 and during construction and, if deemed advisable by the State
15 Treasurer, for a period not exceeding two years after the
16 estimated date of completion of construction;
- 17 d. Administrative expenses and charges;
- 18 e. The cost of bond insurance, investment contracts, credit and
19 liquidity facilities, interest rate swap agreements, financial and
20 legal consultants and related costs of the incurrence of special
21 indebtedness, to the extent and as determined by the State
22 Treasurer;
- 23 f. The cost of reimbursing the State for any payments made for any
24 cost described above; and
- 25 g. Any other costs and expenses necessary or incidental to the
26 purposes of this act.
- 27 (4) " Credit facility" means an agreement entered into by the State
28 Treasurer or the special corporation on behalf of the State with a bank,
29 savings and loan association, or other banking institution, and insurance
30 company, reinsurance company, surety company or other insurance
31 institution, a corporation, investment banking firm or other investment
32 institution, or any financial institution or other similar provider of a
33 credit facility, which provider may be located within or without the
34 United State of America, such agreement providing for prompt payment
35 of all or any part of the principal or purchase price (whether at maturity,
36 presentment or tender for purchase, redemption, or acceleration),
37 redemption premium, if any, and interest on any indebtedness in
38 consideration of the State agreeing to repay the provider of the credit
39 facility in accordance with the terms and provisions of such agreement.
- 40 (5) " Department of Administration" means the North Carolina Department
41 of Administration, created by Article 36 of Chapter 143 of the General
42 Statutes, or should the Department of Administration be abolished or
43 otherwise divested of its functions under this act, the public body

- 1 succeeding it in its principal functions, or upon which are conferred by
2 law the rights, powers, and duties given by this act to the Department of
3 Administration.
- 4 (6) " Financing contract" means an installment financing contract entered
5 into pursuant to the provisions of this act to finance the Project through
6 incurrence of (i) installment indebtedness or (ii) certificates of
7 participation indebtedness.
- 8 (7) " Fiscal year" means the fiscal year of the State beginning on July 1 of
9 one calendar year and ending on June 30 of the next calendar year.
- 10 (8) " Indebtedness" means, collectively, installment indebtedness and
11 certificates of participation indebtedness.
- 12 (9) " Installment indebtedness" means indebtedness incurred by the State
13 under a financing contract to pay the cost of the Project.
- 14 (10) " Par formula" means any provision or formula adopted by the State to
15 provide for the adjustment, from time to time, of the interest rate or rates
16 borne or provided for by any indebtedness, including:
- 17 a. A provision providing for such adjustment so that the
18 indebtedness in the open market would be as close to par as
19 possible;
- 20 b. A provision providing for such adjustment based upon a
21 percentage or percentages of a prime rate or base rate, which
22 percentage or percentages may vary or be applied for different
23 periods of time; or
- 24 c. Such other provision as the State Treasurer may determine to be
25 consistent with this act and will not materially and adversely
26 affect the financial position of the State and the marketing of
27 indebtedness at a reasonable interest cost to the State.
- 28 (11) " Project" means the (i) new State administrative office building and (ii)
29 equipment and furnishings related to the building all to be situated on
30 the Site and used by the Wildlife Resources Commission and to be
31 financed as provided for in this act.
- 32 (12) " Site" means the property located in the City of Raleigh, North
33 Carolina, on which the Project is to be constructed.
- 34 (13) " Special corporation" means the nonprofit corporation to be created
35 under Chapter 55A of the General Statutes if the determination is made
36 to incur certificates of participation indebtedness under this act.
- 37 (14) " State" means the State of North Carolina.
- 38 (15) " Wildlife Resources Commission" means the North Carolina Wildlife
39 Commission, created by Article 24 of Chapter 143 of the General
40 Statutes, or should the North Carolina Wildlife Resources Commission
41 be abolished or otherwise divested of its functions under this act, the
42 public body succeeding it in its principal functions, or upon which are

1 conferred by law the rights, powers, and duties given by this act to the
2 North Carolina Wildlife Resources Commission.

3 Sec. 3. The Department of Administration, by and with the approval of the
4 Council of State and State Treasurer as hereinafter provided, is authorized to execute and
5 deliver a financing contract and incur indebtedness in an amount not to exceed five
6 million two hundred thousand dollars (\$5,200,000) in order to finance the cost of the
7 Project; provided that the indebtedness may not exceed seventy-five percent (75%) of the
8 cost of the project, the value of the land shall not be included as part of the cost of the
9 project.

10 Sec. 4. No indebtedness may be incurred pursuant to this act unless, prior to
11 the execution of the financing contract, (i) the Council of State, by resolution, approves
12 the incurrence of the indebtedness and authorizes the (a) maturity or maximum maturity
13 and (b) interest rate or rates (or the equivalent thereof) or maximum interest rate and (ii)
14 the State Treasurer approves the incurrence of the indebtedness and all documentation
15 related thereto. The resolution of the Council of State shall include such other matters as
16 the Council of State may determine. In determining whether to approve the incurrence of
17 indebtedness, the State Treasurer may consider such factors as the State Treasurer deems
18 relevant in order to find and determine that (i) the amount of indebtedness incurred under
19 the financing contract is adequate and not excessive for the construction, acquisition, and
20 installation of the Project, (ii) the increase, if any, in State revenues necessary to pay the
21 sums to become due under the financing contract are not excessive, (iii) the indebtedness,
22 including the interest component or rate thereof, can be incurred on terms desirable to the
23 State, and (iv) in the case of certificates of participation indebtedness, the sale of
24 certificates of participation will not have an adverse affect upon any scheduled or
25 proposed sale of debt obligations by the State or any State agency or by any unit of local
26 government in the State.

27 Sec. 5. (a) In order to secure the repayment of moneys advanced pursuant to a
28 financing contract, a financing contract shall create a lien on or security interest in all or
29 any part of the Project or the Site.

30 (b) No deficiency judgment may be rendered against the State in any action for
31 breach of any obligation contained in a financing contract, and the taxing power of the
32 State may not be pledged directly or indirectly to secure any moneys due under a
33 financing contract. In the event that the General Assembly does not appropriate sums
34 sufficient to make payments required under a financing contract, the net proceeds
35 received from the sale or other disposition of the Project or the Site, or portion of the
36 Project or the Site, subject to the lien or security interest shall be applied to satisfy such
37 payment obligations in accordance with the deed of trust, security agreement, or other
38 documentation relating to such lien or security interest. Such net proceeds are hereby
39 deemed appropriated for the purpose of making such payments. Any net proceeds in
40 excess of the amount required to satisfy the obligations of the State under a financing
41 contract shall be paid to the State Treasurer for deposit to the General Fund of the State.

42 (c) No financing contract may contain a nonsubstitution clause that restricts the
43 right of the State to replace or provide a substitute for the Project.

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

4 (e) A financing contract may contain such provisions for protecting and
5 enforcing the rights and remedies of the lessor, seller, or other individual or entity
6 advancing moneys or providing financing under a financing contract as may be
7 reasonable and proper and not in violation of law, including covenants setting forth the
8 duties of the State in respect of the purposes to which the proceeds of indebtedness may
9 be applied, the disposition and application of the revenues of the State, the duties of the
10 State with respect to the Project and the Site, including, without limitation, the payment
11 of the costs of insurance and maintenance of the Project and the Site, the disposition of
12 any charges and collection of any revenues and administrative charges, and the custody,
13 safeguarding, investment, and application of all moneys.

14 (f) If the State Treasurer determines that it is in the best interest of the State,
15 the State Treasurer may arrange for the delivery of a credit facility to secure payments
16 under a financing contract. The State Treasurer may also provide that payments by the
17 State representing the interest component of the payments to be made under a financing
18 contract may be calculated based upon a variable interest rate.

19 (g) A financing contract providing for the incurrence of installment
20 indebtedness shall provide that income earned, if any, on the investment of moneys
21 advanced pursuant to the contract shall be used for the purposes of paying a portion of the
22 cost of the Project or paying a portion of the indebtedness evidenced by the contract, and
23 the income earned is hereby deemed appropriated for such purposes.

24 (h) A financing contract providing for the incurrence of installment
25 indebtedness may be entered into pursuant to a competitive bidding process or negotiated
26 process as may be determined by the State Treasurer.

27 Sec. 6. (a) The payment of amounts payable by the State under a financing
28 contract during any fiscal biennium or fiscal year shall be limited to funds appropriated
29 for that purpose by the General Assembly in its discretion. No provision of this act and
30 no financing contract shall be construed or interpreted as creating a pledge of the faith
31 and credit of the State within the meaning of any constitutional debt limitation.

32 (b) In addition to any other amounts that the General Assembly may, in its
33 discretion, appropriate to pay amounts due under a financing contract, the General
34 Assembly directs that the payments due under a financing contract shall be paid from
35 amounts appropriated to and deposited in the Wildlife Resources Fund pursuant to G.S.
36 143-250, as amended.

37 (c) In order to provide for the payment of amounts due under a financing contract
38 from amounts appropriated to and deposited in the Wildlife Resources Fund as described
39 in subsection (b) of this section, G.S. 143-250 reads as rewritten:

40 **"§ 143-250. Wildlife Resources Fund.**

41 (a) All moneys in the game and fish fund or any similar State fund when this
42 Article becomes effective shall be credited forthwith to a special fund in the office of the

1 State Treasurer, and the State Treasurer shall deposit all such moneys in said special
2 fund, which shall be known as the Wildlife Resources Fund.

3 (b) All unexpended appropriations made to the Department of Conservation and
4 Development, the Board of Conservation and Development, the Division of Game and
5 Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and
6 wildlife resources shall also be transferred to the Wildlife Resources Fund.

7 (c) Except as otherwise specifically provided by law, all moneys derived from
8 hunting, fishing, trapping, and related license fees, exclusive of commercial fishing
9 license fees, including the income received and accruing from the investment of license
10 revenues, and all funds thereafter received from whatever sources shall be deposited to
11 the credit of the Wildlife Resources Fund and made available to the Commission until
12 expended subject to the provisions of this Article. License revenues include the proceeds
13 from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease,
14 rental, or other granting of rights to real or personal property acquired or produced with
15 license revenues, and from federal aid project reimbursements to the extent that license
16 revenues originally funded the project for which the reimbursement is being made. For
17 purposes of this section, real property includes lands, buildings, minerals, energy
18 resources, timber, grazing rights, and animal products. Personal property includes
19 equipment, vehicles, machines, tools, and annual crops. The Wildlife Resources Fund
20 herein created shall be subject to the provisions of the Executive Budget Act, Chapter
21 143, Article 1 of the General Statutes of North Carolina as amended, and the provisions
22 of the General Statutes of North Carolina as amended, and the provisions of the
23 Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as
24 amended.

25 (d) All moneys credited to the Wildlife Resources Fund shall be made available to
26 carry out the intent and purposes of this Article in accordance with plans approved by the
27 North Carolina Wildlife Resources Commission, and all such funds are hereby
28 appropriated, reserved, set aside and made available until expended, for the enforcement
29 and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter
30 IV of the General Statutes of North Carolina. Statutes. Moneys credited to the Wildlife
31 Resources Fund, excluding moneys in the Wildlife Conservation Account in the Wildlife
32 Resources Fund, may be used, to the extent provided under House Bill 833, 1995 General
33 Assembly, AN ACT TO PROVIDE FOR THE FINANCING OF A NEW STATE
34 ADMINISTRATIVE OFFICE BUILDING TO BE USED BY THE WILDLIFE
35 RESOURCES COMMISSION, BY THE INCURRENCE OF NOT IN EXCESS OF
36 FIVE MILLION TWO HUNDRED THOUSAND DOLLARS OF FINANCING
37 CONTRACT INDEBTEDNESS; AND AMENDING CERTAIN GENERAL LAWS, to
38 make payment of all sums coming due under a financing contract entered into pursuant to
39 that act. The Wildlife Resources Commission shall report to the Joint Legislative
40 Commission on Governmental Operations before expending from the Wildlife Resources
41 Fund more than the amount authorized in the budget enacted by the General Assembly
42 for the fiscal period.

1 (e) In the event any uncertainty should arise as to the funds to be turned over to the
2 North Carolina Wildlife Resources Commission the Governor shall have full power and
3 authority to determine the matter and his recommendation shall be final and binding to all
4 parties concerned."

5 (d) The provisions of subsections (b) and (f) of this section may be amended from
6 time to time as the General Assembly may determine, and nothing in this act shall
7 prevent the General Assembly from directing that moneys appropriated and deposited to
8 the Wildlife Resources Fund be applied in a manner different from that set forth above, or
9 prevent the General Assembly from modifying, amending, or repealing any of the sources
10 of revenue that comprise the moneys deposited to the Wildlife Resources Fund.

11 (e) A financing contract entered into pursuant to this act shall incorporate a
12 statement which sets forth a description of the provisions of subsections (a) and (d) of
13 this section.

14 (f) Expenditures during each fiscal period from the Wildlife Resources Fund
15 shall be administered by the Wildlife Resources Commission in such a manner so as to
16 assure that sufficient amounts shall be available in the Wildlife Resources Fund to make
17 the required payments under a financing contract.

18 Sec. 7. (a) If certificates of participation indebtedness is proposed to be
19 incurred, the special corporation shall furnish to the State Treasurer such information and
20 documentation relating to the delivery and sale of the certificates of participation as the
21 State Treasurer may request.

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

28 (c) Certificates of participation may be delivered pursuant to a trust agreement
29 with a corporate trustee approved by the State Treasurer. The corporate trustee may be
30 any trust company or bank having the powers of a trust company within or without the
31 State. A trust agreement may (i) provide for security and pledges and assignments with
32 respect to the security as may be permitted under this act and further provide for the
33 enforcement of a lien or security interest as provided for by Section 5(a) and (ii) contain
34 such provisions for protecting and enforcing the rights and remedies of the owners of any
35 certificates of participation indebtedness incurred under the agreement as may be
36 reasonable and proper and not in violation of law, including covenants setting forth the
37 duties of the special corporation, the disposition and application of revenues or assets, the
38 disposition of any charges and collection of any revenues and administrative charges, and
39 the custody, safeguarding, investment, and application of all moneys. A trust agreement
40 shall provide that income earned, if any, on the investment of moneys held thereunder
41 shall be used for the purposes of paying a portion of the cost of the Project or paying a
42 portion of the indebtedness evidenced thereby, and the income earned is deemed
43 appropriated for those purposes. A trust agreement may set out the rights and remedies

1 of the owners of any certificates of participation indebtedness and of any trustee, and may
2 restrict the individual rights of action by the owners. In addition to the foregoing, a trust
3 agreement may contain any other provisions the State Treasurer considers reasonable and
4 proper for the security of the owners of any certificates of participation indebtedness.

5 Sec. 8. The State Treasurer may authorize, execute, obtain, or otherwise
6 provide for bond insurance, investment contracts, credit and liquidity facilities, interest
7 rate swap agreements, and any other related instruments and matters that the State
8 Treasurer considers desirable in connection with the incurrence of indebtedness.

9 Sec. 9. Indebtedness shall be exempt from all State, county, and municipal
10 taxation or assessment, direct or indirect, general or special, whether imposed for the
11 purpose of general revenue or otherwise, except for inheritance and gift taxes, income
12 taxes on the gain from the transfer of the indebtedness and franchise taxes. The interest
13 component of payments made under a financing contract, including the interest
14 component of certificates of participation, shall not be subject to taxation as income.

15 Sec. 10. The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the
16 General Statutes and any other laws, rules, or regulations of the State as relate to the
17 acquisition and construction of State property shall apply to the financing of the Project
18 through the use of indebtedness.

19 Sec. 11. The Department of Administration shall, pursuant to G.S. 143-
20 341(4)g., allocate land to the Wildlife Resources Commission for the site.

21 Sec. 12. (a) The foregoing sections of this act shall be deemed to provide an
22 additional and alternative method for the doing of the things authorized thereby and shall
23 be regarded as supplemental and additional to powers conferred by other laws and shall
24 not be regarded as in derogation of any powers now existing.

25 (b) References in this act to specific sections or Chapters of the General Statutes
26 are intended to be references to such sections or Chapters as they may be amended from
27 time to time by the General Assembly.

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

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

34 Sec. 13. This act is effective upon ratification.