

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH50544-LYx-319 (5/1)

Short Title: Affordable Housing Bonds Act of 2006. (Public)

Sponsors: Representatives Ross, Sherrill, Goforth, and Weiss (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE CRITICAL HOUSING NEEDS BY PROVIDING FUNDS FOR THE NORTH CAROLINA HOUSING TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. This act is entitled "The Affordable Housing Bonds Act of 2006."

SECTION 2. Authorization of bonds and notes. – Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Affordable Housing Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Affordable Housing Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred fifty million dollars (\$250,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act. No more than an aggregate amount of fifty million dollars (\$50,000,000) of bonds may be issued under this act before July1, 2007. No more than an aggregate amount of one hundred million dollars (\$100,000,000) of bonds may be issued under this act before July1, 2008. No more than an aggregate amount of one hundred fifty million dollars (\$150,000,000) of bonds may be issued under this act before July1, 2009. No more than an aggregate amount of two hundred million dollars (\$200,000,000) of bonds may be issued under this act before July1, 2010.

SECTION 3. Definitions. As used in this act, unless the context otherwise requires:

- 1 (1) "Bond rating" means the numerical rating of a unit of local
2 government developed by the NCMC. The rating formula is based on
3 100 being a theoretically "perfect" unit of local government and is an
4 assessment of the creditworthiness of the unit. Units of local
5 government with a rating below 75 or with no ratings have limited, if
6 any, access to the private markets for financing debt.
- 7 (2) "Bonds" means bonds issued under this act.
- 8 (3) "Credit facility" means an agreement entered into by the State
9 Treasurer on behalf of the State with a bank, savings and loan
10 association, or other banking institution, an insurance company,
11 reinsurance company, surety company, or other insurance institution, a
12 corporation, investment banking firm, or other investment institution,
13 or any financial institution or other similar provider of a credit facility,
14 which provider may be located within or without the United States of
15 America, such agreement providing for prompt payment of all or any
16 part of the principal or purchase price (whether at maturity,
17 presentment or tender for purchase, redemption, or acceleration),
18 redemption premium, if any, and interest on any bonds or notes
19 payable on demand or tender by the owner, in consideration of the
20 State agreeing to repay the provider of the credit facility in accordance
21 with the terms and provisions of such agreement.
- 22 (4) "NCMC" means the North Carolina Municipal Council, Inc., a
23 nonprofit North Carolina corporation which provides bond ratings, or
24 any successor thereto. In the event such corporation dissolves or no
25 longer performs the functions contemplated herein, such term shall
26 mean that comparable corporation designated by the State Treasurer.
- 27 (5) "Notes" means notes issued under this act.
- 28 (6) "Par formula" means any provision or formula adopted by the State to
29 provide for the adjustment, from time to time, of the interest rate or
30 rates borne by any bonds or notes, including:
- 31 a. A provision providing for such adjustment so that the purchase
32 price of such bonds or notes in the open market would be as
33 close to par as possible,
- 34 b. A provision providing for such adjustment based upon a
35 percentage or percentages of a prime rate or base rate, which
36 percentage or percentages may vary or be applied for different
37 periods of time, or
- 38 c. Such other provision as the State Treasurer may determine to be
39 consistent with this act and will not materially and adversely
40 affect the financial position of the State and the marketing of
41 bonds or notes at a reasonable interest cost to the State.
- 42 (7) "State" means the State of North Carolina.

43 **SECTION 4.** Use of bond proceeds. – The proceeds of the Affordable
44 Housing Bonds shall be used in the same manner as funds appropriated to the North

1 Carolina Housing Trust Fund established under G.S. 122E-3 with the condition that any
2 funds awarded to an entity other than a local government shall be in the form of a grant
3 rather than a loan.

4 **SECTION 5.** Allocation of proceeds. – The proceeds of Affordable Housing
5 Bonds and notes, including premium thereon, if any, except the proceeds of bonds the
6 issuance of which has been anticipated by bond anticipation notes or the proceeds of
7 refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be
8 designated "Affordable Housing Bonds Fund", which may include such appropriate
9 special accounts therein as may be determined by the State Treasurer and shall be
10 disbursed as provided in this act. Moneys in the Affordable Housing Bonds Fund shall
11 be allocated and expended as provided in this act.

12 Any additional moneys which may be received by means of a grant or grants
13 from the United States of America or any agency or department thereof or from any
14 other source for deposit to the Affordable Housing Bonds Fund may be placed in the
15 Affordable Housing Bonds Fund or in a separate account or fund and shall be disbursed,
16 to the extent permitted by the terms of the grant or grants, without regard to any
17 limitations imposed by this act.

18 Moneys in the Affordable Housing Bonds Fund or any separate affordable
19 housing fund or account established under this act may be invested from time to time by
20 the State Treasurer in the same manner permitted for investment of moneys belonging
21 to the State or held in the State treasury, except with respect to grant money to the
22 extent otherwise directed by the terms of the grant. Investment earnings, except
23 investment earnings with respect to grant moneys to the extent otherwise directed or
24 restricted by the terms of the grant, may be (i) credited to the Affordable Housing Bonds
25 Fund or any separate affordable housing fund or account established under this act, (ii)
26 used to pay debt service on the bonds authorized by this act, (iii) used to satisfy
27 compliance with applicable requirements of the federal tax law, or (iv) transferred to the
28 General Fund of the State.

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

40 **SECTION 6.** Election. – The question of the issuance of the bonds
41 authorized by this act shall be submitted to the qualified voters of the State at an
42 election to be held on the first Tuesday after the first Monday of November 2006. Any
43 other primary, election, or referendum validly called or scheduled by law at the time the
44 election on the bond question provided for in this section is held may be held as called

1 or scheduled. Notice of the election shall be given in the manner and at the times
2 required by G.S. 163-33(8). The election and the registration of voters therefor shall be
3 held under and in accordance with the general laws of the State. Absentee ballots shall
4 be authorized in the election.

5 The State Board of Elections shall reimburse the counties of the State for all
6 necessary expenses incurred in holding the election that are in addition to those that
7 would have otherwise been incurred, the same to be paid out of the Contingency and
8 Emergency Fund or other funds available to the State Board of Elections.

9 Ballots, voting systems authorized by Article 14 of Chapter 163 of the
10 General Statutes, or both may be used in accordance with rules prescribed by the State
11 Board of Elections. The bond questions to be used in the ballots or voting systems shall
12 be in substantially the following form:

13 " FOR AGAINST

14 the issuance of two hundred fifty million dollars (\$250,000,000) State of North Carolina
15 Affordable Housing Bonds constituting general obligation bonds of the State secured by
16 a pledge of the faith and credit and taxing power of the State for the purpose of
17 providing funds, with any other available funds, to make loans and grants to local
18 government units and for profit and nonprofit housing developers to pay all or a portion
19 of the cost of affordable housing projects."

20 If a majority of those voting on the bond question in the election vote in favor
21 of the issuance of the bonds, those bonds may be issued as provided in this act. If a
22 majority of those voting on the bond question in the election vote against the issuance of
23 the bonds, those bonds shall not be issued.

24 The results of the election shall be canvassed and declared as provided by law
25 for elections for State officers; the results of the election shall be certified by the State
26 Board of Elections to the Secretary of State, in the manner and at the time provided by
27 the general election laws of the State.

28 **SECTION 7.** Issuance of bonds and notes. (a) Terms and Conditions. –
29 Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any
30 combination thereof, may mature in such amounts and at such time or times, not
31 exceeding 40 years from their date or dates, may be payable at such place or places,
32 either within or without the United States of America, in such coin or currency of the
33 United States of America as at the time of payment is legal tender for payment of public
34 and private debts, may bear interest at such rate or rates, which may vary from time to
35 time, and may be made redeemable before maturity, at the option of the State or
36 otherwise as may be provided by the State, at such price or prices, including a price less
37 than or greater than the face amount of the bonds or notes, and under such terms and
38 conditions, all as may be determined by the State Treasurer, by and with the consent of
39 the Council of State.

40 **SECTION 7.(b)** Signatures; Form and Denomination; Registration. – Bonds
41 or notes may be issued in certificated or uncertificated form. If issued in certificated
42 form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear
43 the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear
44 the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a

1 facsimile of the Seal shall be impressed or imprinted thereon. If bonds or notes bear the
2 facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall
3 also bear a manual signature which may be that of a bond registrar, trustee, paying
4 agent, or designated assistant of the State Treasurer. Should any officer whose
5 signature or facsimile signature appears on bonds or notes cease to be such officer
6 before the delivery of the bonds or notes, the signature or facsimile signature shall
7 nevertheless have the same validity for all purposes as if the officer had remained in
8 office until delivery. Bonds or notes may bear the facsimile signatures of persons who
9 at the actual time of the execution of the bonds or notes shall be the proper officers to
10 sign any bond or note although at the date of the bond or note such persons may not
11 have been such officers. The form and denomination of bonds or notes, including the
12 provisions with respect to registration of the bonds or notes and any system for their
13 registration, shall be as the State Treasurer may determine in conformity with this act.

14 **SECTION 7.(c) Manner of Sale; Expenses.** – Subject to the approval by the
15 Council of State as to the manner in which bonds or notes shall be offered for sale,
16 whether at public or private sale, whether within or without the United States, and
17 whether by publishing notices in certain newspapers and financial journals, mailing
18 notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise,
19 the State Treasurer is authorized to sell bonds or notes at one time or from time to time
20 at any rate or rates of interest, which may vary from time to time, and at any price or
21 prices, including a price less than or greater than the face amount of the bonds or the
22 notes, as the State Treasurer may determine. All expenses incurred in the preparation,
23 sale, and issuance of bonds or notes shall be paid by the State Treasurer from the
24 proceeds of bonds or notes or other available moneys.

25 **SECTION 7.(d) Notes; Repayment.**

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

- 30 a. For anticipating the sale of bonds the issuance of which the
31 Council of State has approved, if the State Treasurer considers
32 it advisable to postpone the issuance of the bonds;
- 33 b. For the payment of interest on or any installment of principal of
34 any bonds then outstanding, if there are not sufficient funds in
35 the State treasury with which to pay the interest or installment
36 of principal as they respectively become due;
- 37 c. For the renewal of any loan evidenced by notes herein
38 authorized;
- 39 d. For the purposes authorized in this act; and
- 40 e. For refunding bonds or notes as herein authorized.

41 (2) Funds derived from the sale of bonds or notes may be used in the
42 payment of any bond anticipation notes issued under this act. Funds
43 provided by the General Assembly for the payment of interest on or
44 principal of bonds shall be used in paying the interest on or principal

1 of any notes and any renewals thereof, the proceeds of which shall
2 have been used in paying interest on or principal of the bonds.

3 **SECTION 7.(e)** Refunding Bonds and Notes. – By and with the consent of
4 the Council of State, the State Treasurer is authorized to issue and sell refunding bonds
5 and notes for the purpose of refunding bonds or notes issued pursuant to this act and to
6 pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes
7 may be combined with any other issues of State bonds and notes similarly secured.
8 Refunding bonds or notes may be issued at any time prior to the final maturity of the
9 debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or
10 notes shall be applied to the immediate payment and retirement of the bonds or notes
11 being refunded or, if not required for the immediate payment of the bonds or notes
12 being refunded, the proceeds shall be deposited in trust to provide for the payment and
13 retirement of the bonds or notes being refunded and to pay any expenses incurred in
14 connection with the refunding. Money in a trust fund may be invested in (i) direct
15 obligations of the United States government, (ii) obligations the principal of and interest
16 on which are guaranteed by the United States government, (iii) obligations of any
17 agency or instrumentality of the United States government if the timely payment of
18 principal and interest on the obligations is unconditionally guaranteed by the United
19 States government, or (iv) certificates of deposit issued by a bank or trust company
20 located in the State if the certificates are secured by a pledge of any of the obligations
21 described in (i), (ii), or (iii) above having an aggregate market value, exclusive of
22 accrued interest, equal at least to the principal amount of the certificates so secured.
23 This section does not limit the duration of any deposit in trust for the retirement of
24 bonds or notes being refunded but that have not matured and are not presently
25 redeemable, or if presently redeemable, have not been called for redemption.

26 **SECTION 7.(f)** Tax Exemption. – Bonds and notes shall at all times be free
27 from taxation by the State or any political subdivision or any of their agencies,
28 excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of
29 the securities, and franchise taxes. The interest on the bonds and notes is not subject to
30 taxation as income.

31 **SECTION 7.(g)** Investment Eligibility. – Bonds and notes are securities in
32 which all of the following may invest, including capital in their control or belonging to
33 them: public officers, agencies, and public bodies of the State and its political
34 subdivisions, all insurance companies, trust companies, investment companies, banks,
35 savings banks, savings and loan associations, credit unions, pension or retirement funds,
36 other financial institutions engaged in business in the State, executors, administrators,
37 trustees, and other fiduciaries. Bonds and notes are hereby made securities which may
38 properly and legally be deposited with and received by any officer or agency of the
39 State or political subdivision of the State for any purpose for which the deposit of
40 bonds, notes, or obligations of the State or any political subdivision is now or may
41 hereafter be authorized by law.

42 **SECTION 7.(h)** Faith and Credit. – The faith and credit and taxing power of
43 the State are hereby pledged for the payment of the principal of and the interest on
44 bonds and notes. In addition to the State's right to amend any provision of this act to the

1 extent it does not impair any contractual right of a bond owner, the State expressly
2 reserves the right to amend any provision of this act with respect to the making and
3 repayment of loans, the disposition of any repayments of loans, and any intercept
4 provisions relating to the failure of a local government unit to repay a loan, the bonds
5 not being secured in any respect by loans, any repayments thereof, or any intercept
6 provisions with respect thereto.

7 **SECTION 7.(i)** Minority business participation. – The goals set by
8 G.S. 143-128 for participation in projects by minority businesses apply to projects
9 funded by the proceeds of bonds or notes issued under this act. The Housing Finance
10 Authority shall monitor compliance with regard to projects funded by the proceeds of
11 bonds and notes and shall report to the General Assembly by January 1 of each year on
12 the participation by minority businesses in these projects.

13 The State Treasurer shall provide contracting opportunities for historically
14 underutilized businesses in providing professional services in connection with the
15 issuance of bonds and notes authorized by this act. As used in this subsection, the term
16 "historically underutilized business" means a business described in G.S. 143-48. The
17 State Treasurer shall strive to increase the amount of legal, financial, and other
18 professional services acquired by it from historically underutilized businesses. With the
19 assistance of the Office for Historically Underutilized Businesses in the Department of
20 Administration, the State Treasurer shall set objectives for contracting with these
21 businesses, identify and eliminate barriers or constraints that may restrict these
22 businesses from contracting with the State Treasurer, and develop a plan for meeting
23 these objectives. The State Treasurer shall report quarterly to the Office for Historically
24 Underutilized Businesses on its progress in carrying out the requirements of this
25 subsection.

26 **SECTION 7.(j)** Other agreements. – The State Treasurer may authorize,
27 execute, obtain, or otherwise provide for bond insurance, investment contracts, credit
28 and liquidity facilities, interest rate swap agreements and other derivative products, and
29 any other related instruments and matters the State Treasurer determines are desirable in
30 connection with the issuance of bonds or notes. The State Treasurer is authorized to
31 employ and designate any financial consultants, underwriters, and bond attorneys to be
32 associated with any bond issue under this act as the State Treasurer considers necessary.

33 **SECTION 8.** Variable rate demand bonds and notes. – In fixing the details
34 of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

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

1 (4) Bear interest at a rate or rates that may vary for any period of time, as
2 may be provided in the proceedings providing for the issuance of the
3 bonds or notes, including, without limitation, such variations as may
4 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 payable 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 **SECTION 9.** Interpretation of act. – (a) Additional Method. – The
18 foregoing sections of this act shall be deemed to provide an additional and alternative
19 method for the doing of the things authorized thereby and shall be regarded as
20 supplemental and additional to powers conferred by other laws, and shall not be
21 regarded as in derogation of any powers now existing.

22 **SECTION 9.(b)** Statutory References. – References in this act to specific
23 sections or Chapters of the General Statutes or to specific acts are intended to be
24 references to these sections, Chapters, or acts as they may be amended from time to
25 time by the General Assembly.

26 **SECTION 9.(c)** Broad Construction. – This act, being necessary for the
27 health and welfare of the people of the State, shall be broadly construed to effect the
28 purposes thereof.

29 **SECTION 9.(d)** Inconsistent Provisions. – Insofar as the provisions of this
30 act are inconsistent with the provisions of any general, special, or local laws, or parts
31 thereof, the provisions of this act shall be controlling.

32 **SECTION 9.(e)** Severability. – If any provision of this act or the application
33 thereof to any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without the invalid
35 provision or application, and to this end the provisions of this act are declared to be
36 severable.

37 **SECTION 10.** This act is effective when it becomes law.