

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 47
Second Edition Engrossed 2/25/94

Short Title: Prison Bond Act of 1994.

(Public)

Sponsors: Senators Sands, Winner of Buncombe, Kaplan; Hoyle, Martin of Pitt, Albertson, Gunter, Forrester, Hartsell, Blackmon, Folger, Marshall, Johnson, Allran, Gunter, and Perdue.

Referred to: Appropriations.

February 10, 1994

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ISSUANCE OF TWO HUNDRED MILLION
2 DOLLARS GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A
3 VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS,
4 WITH ANY OTHER AVAILABLE FUNDS, FOR STATE PRISON AND YOUTH
5 SERVICES FACILITIES.
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 "State
9 Prison and Youth Services Facilities Bond Act of 1994".

10 Sec. 2. Findings. The General Assembly finds that:

- 11 (1) Providing adequate and sufficient prison and youth services facilities
12 in North Carolina is of vital concern to the citizens of North Carolina
13 and the legislative, executive, and judicial branches of government.
14 (2) Notwithstanding significant new prison construction over the past
15 several years, additional prison construction is necessary to meet
16 constitutional standards, replace outmoded facilities, and add
17 additional prison capacity.
18 (3) Adding to the pressure on prison capacity are those young people who
19 are released from training school and recidivate to prison. It is
20 important that existing youth services facilities be renovated and new,
21 safe, and secure facilities constructed for at-risk and delinquent youth

1 to learn and practice life skills which are essential to responsible
2 citizenship.

3 (4) The actual cost of constructing prison facilities funded by the proceeds
4 of the bonds authorized by Chapter 935 of the 1989 Session Laws
5 averaged twenty-eight thousand seven hundred fifty dollars (\$28,750)
6 per bed provided. The average annual cost of operating prison
7 facilities during the 1992-93 fiscal year ranged from sixteen thousand
8 six hundred fourteen dollars (\$16,614) per bed for minimum custody
9 facilities to thirty-four thousand four hundred forty-one dollars
10 (\$34,441) per bed for maximum custody facilities.

11 (5) It is the intent of the General Assembly by this act to provide for a vote
12 of the people regarding the issuance of general obligation bonds of the
13 State in order to facilitate the payment of the capital costs required in
14 connection with providing additional, and improving existing, prison
15 and youth services facilities.

16 Sec. 3. Definitions. The following definitions apply in this act, unless the
17 context otherwise requires:

18 (1) Bonds. – Bonds issued under this act.

19 (2) Cost. – The term includes, without intending to limit or restrict any
20 proper definition of the term in financing the cost of State prison and
21 youth services facilities as authorized by this act:

22 a. The cost of constructing, reconstructing, enlarging, acquiring,
23 and improving facilities, and acquiring equipment and land
24 therefor,

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

27 c. Administrative expenses and charges,

28 d. Finance charges and interest prior to and during construction
29 and, if deemed advisable by the State Treasurer, for a period not
30 exceeding two years after the estimated date of completion of
31 construction,

32 e. The cost of bond insurance, investment contracts, credit
33 enhancement and liquidity facilities, interest-rate swap
34 agreements or other derivative products, financial and legal
35 consultants, and related costs of bond and note issuance, to the
36 extent and as determined by the State Treasurer,

37 f. The cost of reimbursing the State for any payments made for
38 any cost described above, and

39 g. Any other costs and expenses necessary or incidental to the
40 purposes of this act.

41 Allocations in this act of proceeds of bonds to the costs of a project or
42 undertaking in each case may include allocations to pay the costs set
43 forth in items c., d., e., f., and g. in connection with the issuance of
44 bonds for the project or undertaking.

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

15 (4) Notes. – Notes issued under this act.

16 (5) Par formula. – Any provision or formula adopted by the State to
17 provide for the adjustment, from time to time, of the interest rate or
18 rates borne by any bonds or notes, including:

- 19 a. A provision providing for such adjustment so that the purchase
20 price of such bonds or notes in the open market would be as
21 close to par as possible,
- 22 b. A provision providing for such adjustment based upon a
23 percentage or percentages of a prime rate or base rate, which
24 percentage or percentages may vary or be applied for different
25 periods of time, or
- 26 c. Such other provision as the State Treasurer may determine to be
27 consistent with this act and will not materially and adversely
28 affect the financial position of the State and the marketing of
29 bonds or notes at a reasonable interest cost to the State.

30 (6) State. – The State of North Carolina.

31 Sec. 4. Authorization of bonds and notes. Subject to a favorable vote of a
32 majority of the qualified voters of the State who vote on the question of issuing bonds in
33 the election held as provided in this act, the State Treasurer is authorized, by and with
34 the consent of the Council of State, to issue and sell, at one time or from time to time,
35 general obligation bonds of the State to be designated "State of North Carolina Prison
36 and Youth Services Facilities Bonds", with any additional designations as may be
37 determined to indicate the issuance of bonds from time to time, or notes of the State as
38 provided in this act, in an aggregate principal amount not exceeding two hundred
39 million dollars (\$200,000,000) for the purpose of providing funds, with any other
40 available funds, for the purposes authorized in this act.

41 Sec. 5. Uses of bond and note proceeds. The proceeds of bonds and notes
42 shall be used for the purposes of financing the cost of State prison facilities, under the
43 supervision of the Department of Correction, and youth services facilities, under the
44 supervision of the Department of Human Resources, including, without limitation, the

1 cost of constructing capital facilities, renovating or reconstructing existing facilities,
2 acquiring equipment related to these facilities, purchasing land, paying the costs of
3 issuance of bonds and notes, and paying contractual services necessary for the
4 completion of the purposes of this act. State prison facilities include capital facilities
5 for the Youthful Offenders Forestry Program, sometimes known as "Bridge",
6 established pursuant to Section 209 of Chapter 1014 of the 1985 Session Laws and
7 Section 156 of Chapter 738 of the 1987 Session Laws, and capital facilities for the
8 Intensive Motivational Program for Alternative Correctional Treatment, sometimes
9 known as "Impact".

10 The proceeds of bonds and notes, including premium thereon, if any, except
11 the proceeds of bonds the issuance of which has been anticipated by bond anticipation
12 notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer
13 in a special fund to be designated the "State Prison and Youth Services Facilities Bond
14 Fund", which may include any appropriate special accounts as may be determined by
15 the State Treasurer, and shall be disbursed as provided in this act.

16 Any additional moneys that may be received by means of a grant or grants
17 from the United States of America or any agency or department thereof or from any
18 other source to aid in financing the cost of any prison and youth services facilities
19 authorized by this act may be placed by the State Treasurer in the State Prison and
20 Youth Services Facilities Bond Fund or in a separate account or fund and shall be
21 disbursed, to the extent permitted by the terms of the grant or grants, without regard to
22 any limitations imposed by this act.

23 The proceeds of the bonds and notes may be used with any other moneys
24 made available by the General Assembly for the cost of State prison and youth services
25 facilities, including the proceeds of any other State bond issues, whether previously
26 made available or which may be made available at the session of the General Assembly
27 at which this act is ratified or any subsequent sessions. The proceeds of bonds and
28 notes shall be expended and disbursed under the direction and supervision of the
29 Director of the Budget. The funds provided by this act shall be disbursed for the
30 purposes provided in this act upon warrants drawn on the State Treasurer by the State
31 Controller, which warrants shall not be drawn until requisition has been approved by the
32 Director of the Budget and which requisition shall be approved only after full
33 compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General
34 Statutes.

35 The Office of State Construction of the Department of Administration with
36 respect to prison facilities and the Department of Human Resources with respect to
37 youth services facilities shall provide quarterly reports to the Joint Legislative
38 Commission on Governmental Operations, the Chairs of the House of Representatives
39 and Senate Appropriations Committees, and the Fiscal Research Division on the
40 expenditure of moneys from the State Prison and Youth Services Facilities Bond Fund.

41 Sec. 6. Allocation of proceeds. (a) Determination. Moneys in the State Prison and
42 Youth Services Facilities Bond Fund shall be allocated and expended for the purposes
43 set forth in this act, and the particular projects within these purposes and the projected
44 allocations therefor shall be determined by legislative action of the General Assembly in

1 1994 or any subsequent session. No bonds or notes shall be issued and no proceeds of
2 bonds and notes shall be allocated for the purposes provided in this act until the General
3 Assembly authorizes issuance of some or all of the bonds and notes and appropriates the
4 proceeds of the bonds and notes for specific projects within these purposes by separate
5 legislative action in addition to this act in 1994 or at any subsequent session.
6 Allocations to the costs of a capital improvement or undertaking in each case may
7 include allocations to pay the costs set forth in Section 3(2)c., d., e., f., and g. of this act
8 in connection with the issuance of bonds for that capital improvement or undertaking.

9 Nothing in this act or as a result of the approval of the bonds at the election
10 provided for in this act restricts the right of the General Assembly in 1994 or at a
11 subsequent session to:

- 12 (1) Establish a procedure whereby projected allocations set forth in
13 subsequent legislation may be increased or decreased to reflect the
14 availability of other funds, including, without limitation, contingency
15 funds, income earned on the investment of bond and notes proceeds,
16 and the proceeds of grants.
- 17 (2) Establish a contingency account and provide for an allocation of bond
18 proceeds to the account. The funds in the contingency account may be
19 used to pay the cost of projects, the costs of issuance of bonds and
20 notes, and increased project costs resulting from construction costs
21 exceeding projections, inflationary factors, and changes in projects and
22 allocations. The funds allocated to the contingency account shall be
23 placed by the State Treasurer in a separate account in the State Prison
24 and Youth Services Facilities Bond Fund and shall be disbursed in
25 accordance with the procedures established for disbursements from the
26 State Prison and Youth Services Facilities Bond Fund.
- 27 (3) Empower the Director of the Budget, when the Director determines it
28 is in the best interest of the State and the State prison and youth
29 services system to do so, to change the projects and allocations
30 therefor set forth in subsequent legislation, including, without
31 limitation, the power to change the type of project to be provided at a
32 particular institution, to increase or decrease the amount allocated to a
33 particular institution within the aggregate amount of funds available
34 under this act including the proceeds of any investment earnings, to
35 delete a project, to move a project from one institution to another
36 institution, and to add a replacement project, the Governor having the
37 right to consult with the Advisory Budget Commission and the Joint
38 Legislative Commission on Governmental Operations before taking
39 any of these actions.
- 40 (4) Empower the Office of State Construction of the Department of
41 Administration (i) to contract for and supervise all aspects of
42 administration, technical assistance, design, construction, or
43 demolition of prison facilities in order to implement the providing of
44 prison facilities under this act and (ii) subject to conditions specified

1 by the General Assembly, to use alternative delivery systems and
2 otherwise implement the providing of prison facilities under this act
3 without being subject to the requirements of the following statutes and
4 rules implementing those statutes: G.S. 143-128, 143-129, 143-131,
5 143-132, 143-134, 143-135.26, 143-408.1 through 143-408.7, 113A-1
6 through 113A-10, 113A-50 through 113A-66, and 133-1.1(g); except
7 that, of the proceeds of bonds and notes allocated for the construction
8 of prison facilities, the Office of State Construction of the Department
9 of Administration shall have a verifiable ten percent (10%) goal for
10 participation by minority businesses in accordance with G.S. 143-128.
11 As used in this section, the term "alternative delivery systems" means
12 systems that could expedite the delivery of prison facilities, such as
13 design-build or modular construction. All contracts for the design,
14 construction, or demolition of prison facilities shall include a penalty
15 for failure to complete the work by a specified date.

- 16 (5) Empower the Department of Human Resources to contract for and
17 supervise all aspects of administration, technical assistance, design,
18 construction, or demolition of youth services facilities in order to
19 implement the providing of youth services facilities under the
20 provisions of this act.

21 (b) Quarterly Reports. The Office of State Construction of the Department of
22 Administration with respect to prison facilities and the Department of Human Resources
23 with respect to youth services facilities shall provide quarterly reports to the Chairs of
24 the Appropriations Committee in the House of Representatives, the Chairs of the
25 Appropriations Committee and the Base Budget Committee in the Senate, the Joint
26 Legislative Commission on Governmental Operations, and the Fiscal Research Division
27 as to any changes in projects and allocations.

28 Sec. 7. Election. The question of the issuance of two hundred million dollars
29 (\$200,000,000) State of North Carolina Prison and Youth Services Facilities Bonds
30 authorized by this act shall be submitted to the qualified voters of the State at the
31 primary election in May 1994. Any other primary, election, or referendum validly
32 called or scheduled by law at the time the bond election provided for in this section is
33 held may be held as called or scheduled. Notice of the bond election shall be given by
34 publication twice in a newspaper or newspapers having general circulation in each
35 county in the State, the first notice to be published at least 20 days before the date on
36 which the registration books or records are closed and the second notice to be published
37 during this 20-day period, but in no event less than seven days before the date on which
38 the registration books or records are closed. The provisions of G.S. 163-33(8) relating
39 to the publication of notices of elections shall not apply to this bond election. The
40 election and the registration of voters therefor shall be held under and in accordance
41 with the general laws of the State. Absentee ballots shall be authorized in the election.

42 The State Board of Elections shall reimburse the counties of the State for all
43 necessary expenses incurred in holding the election which are in addition to those that

1 would have otherwise been incurred, these expenses to be paid out of the Contingency
2 and Emergency Fund or other funds available to the State Board of Elections.

3 Voting systems, ballots, or both may be used in accordance with Chapter 163
4 of the General Statutes. The question to be used in the voting systems and ballots shall
5 be in substantially the following form:

6 **"[] FOR [] AGAINST**

7 The issuance of two hundred million dollars (\$200,000,000) State of North
8 Carolina Prison and Youth Services Facilities Bonds constituting general obligation
9 bonds of the State secured by a pledge of the faith and credit and taxing power of the
10 State for the purpose of providing funds, with any other available funds, to pay the cost
11 of State prison and youth services facilities."

12 If a majority of those voting on the bond question in the election vote in favor
13 of the issuance of the bonds, the bonds may be issued as provided in this act. If a
14 majority of those voting on the bond question in the election vote against the issuance of
15 the bonds, the bonds shall not be issued.

16 The result of the election shall be canvassed and declared as provided by law
17 for elections for State officers; the result of the election shall be certified by the State
18 Board of Elections to the Secretary of State, in the manner and at the time provided by
19 the general election laws of the State.

20 Sec. 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes
21 may bear such date or dates, may be serial or term bonds or notes, or any combination
22 thereof, may mature in such amounts and at such time or times, not exceeding 40 years
23 from their date or dates, may be payable at such place or places, either within or without
24 the United States of America, in such coin or currency of the United States of America
25 as at the time of payment is legal tender for payment of public and private debts, may
26 bear interest at such rate or rates, which may vary from time to time, and may be made
27 redeemable before maturity, at the option of the State or otherwise as may be provided
28 by the State, at such price or prices, including a price less than the face amount of the
29 bonds or notes, and under such terms and conditions, all as may be determined by the
30 State Treasurer, by and with the consent of the Council of State.

31 (b) Signatures; Form and Denomination; Registration. Bonds or notes may be
32 issued as certificated or uncertificated obligations. If issued as certificated obligations,
33 bonds or notes shall be signed on behalf of the State by the Governor or shall bear the
34 Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the
35 State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a
36 facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the
37 facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall
38 also bear a manual signature which may be that of a bond registrar, trustee, paying
39 agent, or designated assistant of the State Treasurer. Should any officer whose
40 signature or facsimile signature appears on bonds or notes cease to be such officer
41 before the delivery of the bonds or notes, the signature or facsimile signature shall
42 nevertheless have the same validity for all purposes as if the officer had remained in
43 office until delivery, and bonds or notes may bear the facsimile signatures of persons
44 who at the actual time of the execution of the bonds or notes shall be the proper officers

1 to sign any bond or note although at the date of the bond or note such persons may not
2 have been such officers. The form and denomination of bonds or notes, including the
3 provisions with respect to registration of the bonds or notes and any system for their
4 registration, shall be as the State Treasurer may determine in conformity with this act,
5 except that nothing in this act shall prohibit the State Treasurer from proceeding, with
6 respect to the issuance and form of the bonds or notes, under the provisions of Chapter
7 159E of the General Statutes, the Registered Public Obligations Act, as well as under
8 this act.

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

20 (d) Notes; Repayment.

21 (1) By and with the consent of the Council of State, the State Treasurer is
22 authorized to borrow money and to execute and issue notes of the State
23 for the money, but only in the following circumstances and under the
24 following conditions:

- 25 a. For anticipating the sale of bonds to the issuance of which the
26 Council of State shall have given consent, if the State Treasurer
27 shall deem it advisable to postpone the issuance of the bonds;
- 28 b. For the payment of interest on or any installment of principal of
29 any bonds then outstanding, if there shall not be sufficient funds
30 in the State treasury with which to pay the interest or
31 installment of principal as they respectively become due;
- 32 c. For the renewal of any loan evidenced by notes authorized in
33 this act;
- 34 d. For the purposes authorized in this act; and
- 35 e. For refunding bonds or notes as authorized in this act.

36 (2) Funds derived from the sale of bonds or notes may be used in the
37 payment of any bond anticipation notes issued under this act. Funds
38 provided by the General Assembly for the payment of interest on or
39 principal of bonds shall be used in paying the interest on or principal
40 of any notes and any renewals thereof, the proceeds of which shall
41 have been used in paying interest on or principal of the bonds.

42 (e) Refunding Bonds and Notes. By and with the consent of the Council of
43 State, the State Treasurer is authorized to issue and sell refunding bonds and notes
44 pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding

1 bonds or notes issued pursuant to this act. The refunding bonds and notes may be
2 combined with any other issues of State bonds and notes similarly secured.

3 (f) Tax Exemption. Bonds and notes shall be exempt from all State, county,
4 and municipal taxation or assessment, direct or indirect, general or special, whether
5 imposed for the purpose of general revenue or otherwise, excluding inheritance and gift
6 taxes, income taxes on the gain from the transfer of bonds and notes, and franchise
7 taxes. The interest on bonds and notes shall not be subject to taxation as to income.

8 (g) Investment Eligibility. Bonds and notes are hereby made securities in
9 which all public officers, agencies, and public bodies of the State and its political
10 subdivisions, all insurance companies, trust companies, investment companies, banks,
11 savings banks, savings and loan associations, credit unions, pension or retirement funds,
12 other financial institutions engaged in business in the State, executors, administrators,
13 trustees, and other fiduciaries may properly and legally invest funds, including capital in
14 their control or belonging to them. Bonds and notes are hereby made securities which
15 may properly and legally be deposited with and received by any officer or agency of the
16 State or political subdivision of the State for any purpose for which the deposit of
17 bonds, notes, or obligations of the State or any political subdivision is now or may
18 hereafter be authorized by law.

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

21 Sec. 9. Variable interest rates. In fixing the details of bonds and notes, the
22 State Treasurer may provide that any of the bonds or notes may:

- 23 (1) Be made payable from time to time on demand or tender for purchase
24 by the owner thereof as long as a credit facility supports the bonds or
25 notes, unless the State Treasurer specifically determines that a credit
26 facility is not required upon a finding and determination by the State
27 Treasurer that the absence of a credit facility will not materially or
28 adversely affect the financial position of the State and the marketing of
29 the bonds or notes at a reasonable interest cost to the State;
- 30 (2) Be additionally supported by a credit facility;
- 31 (3) Be made subject to redemption or a mandatory tender for purchase
32 prior to maturity;
- 33 (4) Bear interest at a rate or rates that may vary for such period or periods
34 of time, all as may be provided in the proceedings providing for the
35 issuance of the bonds or notes, including, without limitation, such
36 variations as may be permitted pursuant to a par formula; and
- 37 (5) Be made the subject of a remarketing agreement whereby an attempt is
38 made to remarket bonds or notes to new purchasers prior to their
39 presentment for payment to the provider of the credit facility or to the
40 State.

41 If the aggregate principal amount repayable by the State under a credit facility
42 is in excess of the aggregate principal amount of bonds or notes secured by the credit
43 facility, whether as a result of the inclusion in the credit facility of a provision for the
44 payment of interest for a limited period of time or the payment of a redemption

1 premium or for any other reason, then the amount of authorized but unissued bonds or
2 notes during the term of such credit facility shall not be less than the amount of such
3 excess, unless the payment of such excess is otherwise provided for by agreement of the
4 State executed by the State Treasurer.

5 Sec. 10. Interpretation of act. (a) Additional Method. The foregoing sections of
6 this act shall be deemed to provide an additional and alternative method for the doing of
7 the things authorized thereby and shall be regarded as supplemental and additional to
8 powers conferred by other laws, and shall not be regarded as in derogation of any
9 powers now existing.

10 (b) Statutory References. References in this act to specific sections or Chapters
11 of the General Statutes or to specific acts are intended to be references to these sections,
12 Chapters, or acts as they may be amended from time to time by the General Assembly.

13 (c) Liberal Construction. This act, being necessary for the health and welfare of
14 the people of the State, shall be liberally construed to effect its purposes.

15 (d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent
16 with the provisions of any general laws, or parts thereof, the provisions of this act are
17 controlling.

18 (e) Severability. If any provision of this act or the application thereof to any
19 person or circumstance is held invalid, that invalidity shall not affect other provisions or
20 applications of the act which can be given effect without the invalid provision or
21 application, and to this end the provisions of this act are declared to be severable.

22 Sec. 11. Effective date. This act is effective upon ratification.