

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1761*

Short Title: Financing Parks, Recreation, and Heritage. (Public)

Sponsors: Representatives Gibson, Hackney, Allen, McComas (Primary Sponsors);
Hunter, Insko, Weiss, and Womble.

Referred to: Finance.

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE TO USE FINANCING CONTRACTS IN
ACQUIRING PROPERTY THROUGH THE PARKS AND RECREATION
TRUST FUND AND THE NATURAL HERITAGE TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113 of the General Statutes is amended by adding a
new Article to read:

"Article 5B.

"Financing Contracts for Parks, Recreation, and Natural Heritage.

"§ 113-77.15. Purpose.

The State is authorized to enter into financing contracts as provided in this Article
for the following purposes:

- (1) To finance the cost of capital projects for the State Parks System,
repairs and renovations of park facilities, and land acquisition for the
State Parks System, pursuant to G.S. 113-44.15(b)(1).
- (2) To finance the costs of acquiring land for parks, recreation, and
preservation of natural heritage pursuant to G.S. 113-77.9(b).

"§ 113-77.16. Definitions.

The following definitions apply in this Article:

- (1) Certificates of participation. – Certificates or other instruments
delivered by a special corporation as provided in this Article
evidencing the assignment of proportionate and undivided interests in
the rights to receive installment payments to be made by the State
pursuant to a financing contract.
- (2) Cost. – The term includes all of the following, without limiting or
restricting any proper definition of this term in financing the cost of a
project as authorized by this Article:

- 1 a. The cost of acquiring, constructing, and equipping a project,
2 including the acquisition of rights-of-way, easements,
3 franchises, equipment, furnishings, and other interests in real or
4 personal property acquired or used in connection with the
5 project.
- 6 b. The cost of engineering, architectural, and other consulting
7 services as may be required.
- 8 c. Finance charges, reserves for installment payments and interest
9 prior to and during construction and, if considered advisable by
10 the State Treasurer, for a period not exceeding two years after
11 the estimated date of completion of construction.
- 12 d. Administrative expenses and charges.
- 13 e. The cost of bond insurance, credit and liquidity facilities,
14 interest rate swap and other derivative agreements, financial and
15 legal consultants, and related costs of financing the project or
16 delivering and selling certificates of participation, to the extent
17 and as determined by the State Treasurer.
- 18 f. The cost of reimbursing the State for any payments made for
19 any cost described above.
- 20 g. Any other costs and expenses necessary or incidental to the
21 purposes of this Article.
- 22 (3) Credit facility. – An agreement that meets both of the following
23 conditions:
- 24 a. It is entered into by the State with a bank, savings and loan
25 association, or other banking institution, an insurance company,
26 reinsurance company, surety company or other insurance
27 institution, a corporation, investment banking firm or other
28 investment institution, or any financial institution or other
29 similar provider of a credit facility, which provider may be
30 located within or without the United States of America.
- 31 b. It provides for prompt payment of all or any part of the
32 principal or purchase price (whether at maturity, presentment or
33 tender for purchase, redemption, or acceleration), redemption
34 premium, if any, and interest with respect to any financing
35 contract or certificates of participation in consideration of the
36 State agreeing to repay the provider of the credit facility in
37 accordance with the terms and provisions of the agreement.
- 38 (4) Department of Administration. – The North Carolina Department of
39 Administration, created by Article 36 of Chapter 143 of the General
40 Statutes, or should the Department of Administration be abolished or
41 otherwise divested of its functions under this Article, the public body
42 succeeding it in its principal functions, or upon which are conferred by
43 law the rights, powers, and duties given by this Article to the
44 Department of Administration.

- 1 (5) Financing contract. – An installment financing contract entered into
2 pursuant to the provisions of this Article to finance the cost of a
3 project.
- 4 (6) Project. – Any of the following:
5 a. Capital projects for the State Parks System, repairs and
6 renovations of park facilities, and land acquisition for the State
7 Parks System, authorized by G.S. 113-44.15(b)(1).
8 b. Land acquisition for parks, recreation, and preservation of
9 natural heritage pursuant to G.S. 113-77.9(b).
- 10 (7) Special corporation. – A nonprofit corporation created under Chapter
11 55A of the General Statutes or a successor statute for the purpose of
12 delivering any certificates of participation provided by this Article.
- 13 (8) State. – The State of North Carolina.

14 **"§ 113-77.17. Authorization of financing contracts.**

15 (a) The State, with the prior approval of the Council of State and the State
16 Treasurer as provided in this Article, is authorized to execute and deliver financing
17 contracts in order to provide funds to the Department of Administration and the
18 Department of Environment and Natural Resources to be used, together with any other
19 available funds, to pay the costs of projects. The aggregate annual principal and interest
20 payments to be made in any year on financing contracts entered into pursuant to this
21 Article may not exceed ten million dollars (\$10,000,000).

22 **"§ 113-77.18. Approval required.**

23 (a) A financing contract may not be entered into pursuant to this Article unless
24 prior to entering into the financing contract the following conditions are met:

- 25 (1) The Council of State, by resolution, approves the execution and
26 delivery of the financing contract, which resolution shall set forth all
27 of the following:
28 a. The not to exceed term or final maturity of the financing
29 contract.
30 b. The not to exceed interest rate or rates (or the equivalent
31 thereof) with respect to the financing contract.
32 c. The appropriate officers of the State to execute and deliver the
33 financing contract and all other documentation relating to it.
34 d. Any other matters as the Council of State may determine.
35 (2) The State Treasurer approves the financing contract and all other
36 documentation related to it, including any deed of trust, security
37 agreement, trust agreement, derivative agreement, or credit facility.

38 (b) In determining whether to approve a financing contract, the State Treasurer
39 may consider any factors the State Treasurer considers relevant in order to find and
40 determine all of the following:

- 41 (1) The principal amount to be advanced to the State under the financing
42 contract is adequate and not excessive for the purpose of paying the
43 cost of the project.

- 1 (2) The increase, if any, in State revenues necessary to pay the sums to
2 become due under the financing contract is not excessive.
- 3 (3) The financing contract can be entered into on terms desirable to the
4 State.
- 5 (4) In the case of delivery of certificates of participation, the sale of
6 certificates of participation will not have an adverse effect upon any
7 scheduled or proposed sale of obligations of the State or any State
8 agency or of any unit of local government in the State.

9 **"§ 113-77.19. Security.**

10 (a) In order to secure the performance by the State of its obligations under a
11 financing contract, the State may grant a lien on, or security interest in, all or any part of
12 the project financed, the land upon which the project is or will be located, or both.

13 (b) No deficiency judgment may be rendered against the State or any agency,
14 department, or commission of the State in any action for breach of any obligation
15 contained in a financing contract entered into under this Article or contained in any
16 other related documentation, and the taxing power of the State or any agency,
17 department, or commission of the State is not and may not be pledged directly or
18 indirectly to secure any moneys due under a financing contract authorized by this
19 Article. In the event that the General Assembly does not appropriate funds sufficient to
20 make payments required under the financing contract, the net proceeds received from
21 the sale, lease, or other disposition of the project or the site, or a portion of the project or
22 the site, subject to a lien or security interest created pursuant to subsection (a) of this
23 section shall be applied to satisfy the payment obligations in accordance with the deed
24 of trust, security agreement, or other documentation creating the lien or security interest.
25 These net proceeds are appropriated for the purpose of making these payments. Any net
26 proceeds in excess of the amount required to satisfy the obligations of the State under a
27 financing contract or any other related documentation shall be paid to the State
28 Treasurer for deposit to the Parks and Recreation Trust Fund established pursuant to
29 G.S. 113-44.15, the Natural Heritage Trust Fund established pursuant to G.S. 113-77.7,
30 the General Fund, or any combination of these, as appropriate, based on the source of
31 payments made under the financing contract secured by the property disposed of, as
32 conclusively determined by the Secretary of the Department of Environment and
33 Natural Resources.

34 (c) A financing contract shall not contain a nonsubstitution clause that restricts
35 the right of the State to (i) continue to provide a service or conduct an activity or (ii)
36 replace or provide a substitute for a project financed pursuant to this Article.

37 (d) A financing contract may include provisions requesting the Governor to
38 submit in the Governor's budget proposal, or any amendments or supplements to the
39 budget proposal, appropriations necessary to make the payments required under the
40 financing contract.

41 (e) A financing contract may contain any provisions for protecting and enforcing
42 the rights and remedies of the entity advancing moneys or providing funds under the
43 financing contract as may be reasonable, proper, and not in violation of law, including
44 covenants setting forth the duties of the State in respect of the purposes to which the

1 funds advanced under the financing contract may be applied and the duties of the State
2 with respect to a project, including, without limitation, provisions relating to insuring
3 and maintaining the project and to the custody, safeguarding, investment, and
4 application of moneys.

5 (f) The interest component of the installment payments to be made under a
6 financing contract may be calculated based upon a fixed or variable interest rate or rates
7 as determined by the State Treasurer.

8 (g) If the State Treasurer determines that it is in the best interest of the State, the
9 State may enter into, or arrange for the delivery of, a credit facility to secure payment of
10 the installment payments under a financing contract or to secure payment of the
11 purchase price of any certificates of participation delivered as provided in this Article.

12 (h) The entity entering into a financing contract with the State and any other
13 professionals providing services relating to the financing contract, including, without
14 limitation, the provider of any credit facility and the underwriter or placement agent for
15 any certificates of participation, shall be selected by the State Treasurer.

16 **"§ 113-77.20. Source of repayment.**

17 (a) The payment of amounts payable by the State under a financing contract and
18 other related documentation during any fiscal biennium or fiscal year shall be limited to
19 funds appropriated for that purpose by the General Assembly in its discretion. No
20 provision of this Article and no financing contract shall be construed or interpreted as
21 creating a pledge of the faith and credit of the State or any agency, department, or
22 commission of the State within the meaning of any constitutional debt limitation.

23 (b) It is the intent of the General Assembly that the payments due under a
24 financing contract and any other related documentation shall be made from amounts
25 appropriated to and deposited in, pursuant to G.S. 105-228.30(b), the Parks and
26 Recreation Trust Fund and the Natural Heritage Trust Fund, including investment
27 earnings on these amounts, in each case to the extent the funds may be lawfully applied
28 for this purpose. In the event that funds appropriated to and deposited in the Parks and
29 Recreation Trust Fund and the Natural Heritage Trust Fund, including investment
30 earnings on these amounts, are not sufficient to make these payments, the General
31 Assembly is not obligated to appropriate additional funds necessary to make these
32 payments. The General Assembly may, however, in its discretion, appropriate the
33 additional funds.

34 (c) A financing contract entered into pursuant to this Article shall incorporate a
35 statement that sets forth a description of the provisions of subsections (a) and (b) of this
36 section.

37 (d) Expenditures during each fiscal biennium or fiscal year from the Parks and
38 Recreation Trust Fund and the Natural Heritage Trust Fund shall be administered by the
39 Department of Environment and Natural Resources in such a manner so as to assure that
40 sufficient amounts shall be available in the Parks and Recreation Trust Fund and the
41 Natural Heritage Trust Fund to make the required payments under financing contracts
42 and any other related documentation.

43 **"§ 113-77.21. Certificates of participation.**

1 (a) If certificates of participation are delivered pursuant to this Article, a special
2 corporation shall be created for the purpose of entering into a financing contract and
3 executing and delivering certificates of participation. A single special corporation may
4 be used for one or more certificates of participation financings pursuant to this Article.
5 The special corporation shall furnish to the State Treasurer any information and
6 documentation relating to the delivery and sale of the certificates of participation that
7 the State Treasurer requests.

8 (b) Certificates of participation may be sold by the State Treasurer in the manner,
9 either at public or private sale, and for any price or prices that the State Treasurer
10 determines to be in the best interest of the State and to effect the purposes of this
11 Article, except that the sale must be approved by the special corporation. Interest
12 payable with respect to certificates of participation shall accrue at the rate or rates
13 determined by the State Treasurer with the approval of the special corporation.

14 (c) Certificates of participation may be delivered pursuant to a trust agreement or
15 similar instrument with a corporate trustee approved by the State Treasurer. The
16 corporate trustee may be any trust company or bank having the powers of a trust
17 company within or without the State. A trust agreement may (i) provide for security and
18 pledges and assignments with respect to the security as may be permitted under this
19 Article and further provide for the enforcement of any lien or security interest created
20 pursuant to G.S. 113-77.19(a), and (ii) contain any provisions for protecting and
21 enforcing the rights and remedies of the owners of any certificates of participation, not
22 inconsistent with the provisions of this Article, that the State Treasurer considers
23 appropriate.

24 **"§ 113-77.22. Insurance; other agreements.**

25 The State Treasurer may authorize, execute, obtain, or otherwise provide for bond
26 insurance, credit facilities, liquidity facilities, interest rate swap or other derivative
27 agreements, and any other related instruments that the State Treasurer considers
28 desirable in connection with the financing of a project as provided in this Article.

29 **"§ 113-77.23. Tax exemption.**

30 A financing contract entered into under this Article and any certificates of
31 participation relating to it are exempt from taxation by the State or any political
32 subdivision or any of their agencies, excepting estate, inheritance or gift taxes, income
33 taxes on the gain from the transfer of the financing contract or certificates of
34 participation, and franchise taxes. The interest component of the installment payments
35 made by the State under the financing contract, including the interest component of any
36 certificates of participation, is not subject to taxation as income.

37 **"§ 113-77.24. Procurement of capital facilities.**

38 The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General
39 Statutes and all other laws and rules of the State that relate to the acquisition and
40 construction of State property apply to the financing of projects through the use of
41 financing contracts pursuant to this Article."

42 **SECTION 2.(a)** The foregoing sections of this act provide an additional and
43 alternative method for the doing of the things authorized by the act, are supplemental

1 and additional to powers conferred by other laws, and do not derogate any powers now
2 existing.

3 **SECTION 2.(b)** References in this act to specific sections or Chapters of the
4 General Statutes are intended to be references to those sections or Chapters as amended
5 and as they may be amended from time to time by the General Assembly.

6 **SECTION 2.(c)** This act, being necessary for the health and welfare of the
7 people of the State, shall be liberally construed to effect its purposes.

8 **SECTION 2.(d)** If any provision of this act or its application is held invalid,
9 the invalidity does not affect other provisions or applications of this act that can be
10 given effect without the invalid provisions or application, and to this end the provisions
11 of this act are severable.

12 **SECTION 3.** This act is effective when it becomes law.