

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 137**

Short Title: Two-Thirds Bonds Act of 2011. (Public)

---

Sponsors: Representative Owens (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

---

Referred to: Finance.

---

February 21, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE TWO-THIRDS BONDS ACT OF 2011.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Short Title. – This act may be cited as the "Two-Thirds Bonds Act of 2011."

**SECTION 1.(b)** Findings and Determinations. – It is the intent and purpose of the General Assembly by this section to provide for the issuance of general obligation bonds or notes of the State in order to provide funds for the cost of State capital facilities.

**SECTION 1.(c)** Definitions. – The following definitions apply in this section unless the context otherwise requires:

(1) Bonds. – Bonds issued under this section.

(2) Cost. – The term includes all of the following:

- a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving State capital facilities, including the acquisition of land, rights-of-way, easements, franchises, equipment, machinery, furnishings, and other interests in real or personal property acquired or used in connection with a State capital facility.
- b. The cost of engineering, architectural, and other consulting services as may be required.
- c. Administrative expenses and charges.
- d. The cost of providing personnel to ensure effective project management.
- e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest rate swap agreements or other derivative products, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer.
- f. Finance charges, reserves for debt service, and other types of reserves required pursuant to the terms of any bond or note or related documents, interest before and during construction or acquisition of a State capital facility and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction or acquisition.



- 1 g. The cost of bond insurance, investment contracts, credit enhancement  
2 facilities and liquidity facilities, interest rate swap agreements or  
3 other derivative products, financial and legal consultants, and related  
4 costs of the incurrence or issuance of any bond or note.
- 5 h. The cost of reimbursing the State for any payments made for any cost  
6 described in this subdivision.
- 7 i. Any other costs and expenses necessary or incidental to the purposes  
8 of this section.
- 9 (3) Credit facility. – An agreement entered into by the State Treasurer on behalf  
10 of the State with a bank, savings and loan association or other banking  
11 institution, an insurance company, reinsurance company, surety company or  
12 other insurance institution, a corporation, investment banking firm or other  
13 investment institution, or any financial institution or other similar provider  
14 of a credit facility, which provider may be located within or without the  
15 United States, such agreement providing for prompt payment of all or any  
16 part of the principal or purchase price (whether at maturity, presentment or  
17 tender for purchase, redemption or acceleration), redemption premium, if  
18 any, and interest on any bonds or notes payable on demand or tender by the  
19 owner, in consideration of the State agreeing to repay the provider of the  
20 credit facility in accordance with the terms and provisions of such  
21 agreement.
- 22 (4) Notes. – Notes issued under this section.
- 23 (5) Par formula. – A provision or formula adopted by the State to provide for the  
24 adjustment, from time to time, of the interest rate or rates borne by any  
25 bonds or notes, including:
- 26 a. A provision providing for such adjustment so that the purchase price  
27 of such bonds or notes in the open market would be as close to par as  
28 possible.
- 29 b. A provision providing for such adjustment based upon a percentage  
30 or percentages of a prime rate or base rate, which percentage or  
31 percentages may vary or be applied for different periods of time.
- 32 c. Such other provision as the State Treasurer may determine to be  
33 consistent with this act and will not materially and adversely affect  
34 the financial position of the State and the marketing of bonds or notes  
35 at a reasonable interest cost to the State.
- 36 (6) State. – The State of North Carolina, including any State agency.
- 37 (7) State agency. – Any agency, institution, board, commission, bureau, council,  
38 department, division, officer, or employee of the State. The term does not  
39 include counties, municipal corporations, political subdivisions, local boards  
40 of education, or other local public bodies.

41 **SECTION 1.(d)** Authorization of Bonds and Notes. – The State Treasurer is  
42 authorized, by and with the consent of the Council of State, to issue and sell at one time or from  
43 time to time in the biennium ending June 30, 2013, general obligation bonds of the State to be  
44 designated "State of North Carolina General Obligation Bonds," with any additional  
45 designations as may be determined, or notes of the State, in the aggregate principal amount of  
46 one hundred thirty-eight million four hundred ninety-eight thousand five hundred sixty dollars  
47 (\$138,498,560), this amount being not in excess of two-thirds of the amount by which the  
48 State's outstanding indebtedness was reduced during the biennium ended June 30, 2011, for the  
49 purpose of providing funds, with any other available funds, for the purposes authorized by this  
50 section.

1 If the one hundred thirty-eight million four hundred ninety-eight thousand five  
2 hundred sixty dollars (\$138,498,560) maximum principal amount of bonds and notes  
3 authorized by this section shall be in excess of two-thirds of the amount by which the State's  
4 outstanding indebtedness shall have been reduced during the biennium ended June 30, 2011,  
5 then the maximum amount of bonds and notes authorized in this section is reduced by such  
6 excess.

7 **SECTION 1.(e)** Uses of Bond and Note Proceeds. – The proceeds of bonds and  
8 notes shall be used for financing the cost of State capital facilities as provided in this section.  
9 Any additional moneys which may be received by grant from the United States of America or  
10 any agency or department thereof or from any other source to aid in financing the cost of any  
11 State capital facilities authorized by this section may be placed by the State Treasurer in a  
12 separate fund or funds and shall be disbursed, to the extent permitted by the terms of the grant,  
13 without regard to any limitations imposed by this section.

14 The proceeds of bonds and notes may be used with any other moneys made  
15 available by the General Assembly for the cost of State capital facilities, including the proceeds  
16 of any other State bond issues, whether heretofore made available or which may be made  
17 available at the session of the General Assembly at which this section is ratified or any  
18 subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under  
19 the direction and supervision of the Director of the Budget. The funds provided by this section  
20 shall be disbursed for the purposes provided in this section upon warrants drawn on the State  
21 Treasurer by the State Controller, which warrants shall not be drawn until requisition has been  
22 approved by the Director of the Budget and which requisition shall be approved only after full  
23 compliance with the State Budget Act, Chapter 143C of the General Statutes.

24 The Office of State Budget and Management shall provide semiannual reports to the  
25 Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and  
26 House of Representatives Appropriation Committees, and the Fiscal Research Division on the  
27 expenditure of moneys authorized by this section. The reports shall continue until the  
28 completion of the projects provided for in this section.

29 **SECTION 1.(f)** Allocation of Proceeds. – The proceeds of bonds and notes shall be  
30 allocated and expended for paying the cost of the projects set forth in this subsection in the  
31 amounts set forth in this subsection. The projected allocation may be increased to reflect the  
32 availability of other funds, including contingency funds, income earned on the investment of  
33 bond and note proceeds, and the proceeds of any grants. The Director of the Budget may, when  
34 the Director determines it is in the best interest of the State to do so, use any excess funds, as  
35 determined by the Director, to increase the allocation of the project. The Office of State Budget  
36 and Management shall provide semiannual reports to the Joint Legislative Oversight  
37 Committee on Capital Improvements, the Chairs of the Senate and House of Representatives  
38 Appropriation Committees, and the Fiscal Research Division as to any changes in projects and  
39 allocations made under this subsection. The proceeds of bonds and notes shall be allocated and  
40 expended for paying the cost of the following projects in the following amounts:

- 41 (1) Twenty-three million four hundred ninety-eight thousand five hundred sixty  
42 dollars (\$23,498,560) to complete Phase One of the Highway Patrol Training  
43 Facility, Department of Crime Control and Public Safety.
- 44 (2) Fifteen million dollars (\$15,000,000) to complete the School of Aviation  
45 Complex at Elizabeth City State University.
- 46 (3) One hundred million dollars (\$100,000,000) to repair and renovate State  
47 facilities and related infrastructure. These proceeds shall be transferred to the  
48 Reserve for Repairs and Renovations.

49 **SECTION 1.(g)** Issuance of Bonds and Notes. –

- 50 (1) Terms and conditions. – Bonds or notes may bear a date or dates, may be  
51 serial or term bonds or notes, or any combination thereof, may mature in

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

12 (2) Signatures; form and denomination; registration. – Bonds or notes may be  
13 issued in certificated or uncertificated form. If issued in certificated form,  
14 bonds or notes shall be signed on behalf of the State by the Governor or shall  
15 bear the Governor's facsimile signature, shall be signed by the State  
16 Treasurer or shall bear the State Treasurer's facsimile signature, and shall  
17 bear the Great Seal of the State, or a facsimile of the Seal shall be impressed  
18 or imprinted thereon. If bonds or notes bear the facsimile signatures of the  
19 Governor and the State Treasurer, the bonds or notes shall also bear a  
20 manual signature which may be that of a bond registrar, trustee, paying  
21 agent, or designated assistant of the State Treasurer. Should any officer  
22 whose signature or facsimile signature appears on bonds or notes cease to be  
23 such officer before the delivery of the bonds or notes, the signature or  
24 facsimile signature shall nevertheless have the same validity for all purposes  
25 as if the officer had remained in office until delivery. Bonds or notes may  
26 bear the facsimile signatures of persons who at the actual time of the  
27 execution of the bonds or notes shall be the proper officers to sign any bond  
28 or note, although at the date of the bond or note such persons may not have  
29 been such officers. The form and denomination of bonds or notes, including  
30 the provisions with respect to registration of the bonds or notes and any  
31 system for their registration, shall be as the State Treasurer may determine in  
32 conformity with this section.

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

45 (4) Notes; repayment. –

46 a. By and with the consent of the Council of State, the State Treasurer  
47 is hereby authorized to borrow money and to execute and issue notes  
48 of the State for the same, but only in all of the following  
49 circumstances and under all of the following conditions:

- 1 1. For anticipating the sale of bonds, the issuance of which the  
2 Council of State has approved, if the State Treasurer  
3 considers it advisable to postpone the issuance of the bonds.
- 4 2. For the payment of interest on or any installment of principal  
5 of any bonds then outstanding, if there are not sufficient  
6 funds in the State treasury with which to pay the interest or  
7 installment of principal as they respectively become due.
- 8 3. For the renewal of any loan evidenced by notes authorized in  
9 this section.
- 10 4. For the purposes authorized in this section.
- 11 5. For refunding bonds or notes as authorized in this section.
- 12 b. Funds derived from the sale of bonds or notes may be used in the  
13 payment of any bond anticipation notes issued under this section.  
14 Funds provided by the General Assembly for the payment of interest  
15 on or principal of bonds shall be used in paying the interest on or  
16 principal of any notes and any renewals thereof, the proceeds of  
17 which shall have been used in paying interest on or principal of the  
18 bonds.
- 19 (5) Refunding bonds and notes. – By and with the consent of the Council of  
20 State, the State Treasurer is authorized to issue and sell refunding bonds and  
21 notes pursuant to the provisions of the State Refunding Bond Act for the  
22 purpose of refunding bonds or notes issued pursuant to this section. The  
23 refunding bonds and notes may be combined with any other issues of State  
24 bonds and notes similarly secured. Refunding bonds or notes may be issued  
25 at any time prior to the final maturity of the debt obligation to be refunded.  
26 The proceeds from the sale of any refunding bonds or notes shall be applied  
27 to the immediate payment and retirement of the bonds or notes being  
28 refunded or, if not required for the immediate payment of the bonds or notes  
29 being refunded, the proceeds shall be deposited in trust to provide for the  
30 payment and retirement of the bonds or notes being refunded and to pay any  
31 expenses incurred in connection with the refunding. Money in a trust fund  
32 may be invested in (i) direct obligations of the United States government, (ii)  
33 obligations the principal of and interest on which are guaranteed by the  
34 United States government, (iii) obligations of any agency or instrumentality  
35 of the United States government if the timely payment of principal and  
36 interest on the obligations is unconditionally guaranteed by the United States  
37 government, or (iv) certificates of deposit issued by a bank or trust company  
38 located in the State if the certificates are secured by a pledge of any of the  
39 obligations described in (i), (ii), or (iii) above having an aggregate market  
40 value, exclusive of accrued interest, equal at least to the principal amount of  
41 the certificates so secured. This section does not limit the duration of any  
42 deposit in trust for the retirement of bonds or notes being refunded but that  
43 have not matured and are not presently redeemable, or if presently  
44 redeemable, have not been called for redemption.
- 45 (6) Tax exemption. – Bonds and notes shall at all times be free from taxation by  
46 the State or any political subdivision or any of their agencies, excepting  
47 estate, inheritance or gift taxes, income taxes on the gain from the transfer of  
48 bonds or notes, and franchise taxes. The interest on bonds or notes is not  
49 subject to taxation as income.
- 50 (7) Investment eligibility. – Bonds and notes are securities in which all of the  
51 following may invest, including capital in their control or belonging to them:

1 public officers, agencies, and public bodies of the State and its political  
2 subdivisions, all insurance companies, trust companies, investment  
3 companies, banks, savings banks, savings and loan associations, credit  
4 unions, pension or retirement funds, other financial institutions engaged in  
5 business in the State, executors, administrators, trustees, and other  
6 fiduciaries. Bonds and notes are hereby made securities which may properly  
7 and legally be deposited with and received by any officer or agency of the  
8 State or political subdivision of the State for any purpose for which the  
9 deposit of bonds, notes, or obligations of the State or any political  
10 subdivision is now or may hereafter be authorized by law.

11 (8) Faith and credit. – The faith and credit and taxing power of the State are  
12 hereby pledged for the payment of the principal of and the interest on bonds  
13 and notes. The State expressly reserves the right to amend any provision of  
14 this section to the extent it does not impair any contractual right of a bond  
15 owner.

16 (9) Other agreements. – The State Treasurer may authorize, execute, obtain, or  
17 otherwise provide for bond insurance, investment contracts, credit and  
18 liquidity facilities, interest rate swap agreements and other derivative  
19 products, and any other related instruments and matters the State Treasurer  
20 determines are desirable in connection with issuance, incurrence, carrying,  
21 or securing of bonds or notes. The State Treasurer is authorized to employ  
22 and designate any financial consultants, underwriters, and bond attorneys to  
23 be associated with any bond or note issue under this section as the State  
24 Treasurer considers necessary.

25 **SECTION 1.(h)** Variable Rate Demand Bonds and Notes. – In fixing the details of  
26 bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

27 (1) Be made payable from time to time on demand or tender for purchase by the  
28 owner, if a credit facility supports the bonds or notes, unless the State  
29 Treasurer specifically determines that a credit facility is not required upon a  
30 finding and determination by the State Treasurer that the absence of a credit  
31 facility will not materially and adversely affect the financial position of the  
32 State and the marketing of the bonds or notes at a reasonable interest cost to  
33 the State;

34 (2) Be additionally supported by a credit facility;

35 (3) Be made subject to redemption or a mandatory tender for purchase prior to  
36 maturity;

37 (4) Bear interest at a rate or rates that may vary for any period of time, as may  
38 be provided in the proceedings providing for the issuance of the bonds or  
39 notes, including, without limitation, such variations as may be permitted  
40 pursuant to a par formula; and

41 (5) Be made the subject of a remarketing agreement whereby an attempt is made  
42 to remarket bonds or notes to new purchasers prior to their presentment for  
43 payment to the provider of the credit facility or to the State.

44 If the aggregate principal amount payable by the State under a credit facility is in  
45 excess of the aggregate principal amount of bonds or notes secured by the credit facility,  
46 whether as a result of the inclusion in the credit facility of a provision for the payment of  
47 interest for a limited period of time or the payment of a redemption premium or for any other  
48 reason, then the amount of authorized but unissued bonds or notes during the term of such  
49 credit facility shall not be less than the amount of such excess, unless the payment of such  
50 excess is otherwise provided for by agreement of the State executed by the State Treasurer.

51 **SECTION 1.(i)** Interpretation of section. –

- 1           (1)    Additional method. – The foregoing sections of this section shall be deemed  
2           to provide an additional and alternative method for the doing of the things  
3           authorized under it and shall be regarded as supplemental and additional to  
4           powers conferred by other laws, and shall not be regarded as in derogation of  
5           any powers now existing.
- 6           (2)    Statutory references. – References in this section to specific sections or  
7           Chapters of the General Statutes or to specific acts are intended to be  
8           references to such sections, Chapters, or acts as they may be amended from  
9           time to time by the General Assembly.
- 10          (3)    Broad construction. – This section, being necessary for the health and  
11          welfare of the people of the State, shall be broadly construed to effect the  
12          purposes thereof.
- 13          (4)    Inconsistent provisions. – Insofar as the provisions of this section are  
14          inconsistent with the provisions of any general, special, or local laws, or  
15          parts thereof, the provisions of this section shall be controlling.
- 16          (5)    Severability. – If any provision of this section or the application thereof to  
17          any person or circumstance is held invalid, such invalidity shall not affect  
18          other provisions or applications of the section that can be given effect  
19          without the invalid provision or application, and to this end the provisions of  
20          this section are declared to be severable.

21        **SECTION 2.** This act is effective when it becomes law.