

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 192**

Short Title: Affordable Housing Bonds Act of 2007. (Public)

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Sponsors: Representatives Ross, Goforth, Earle, J. Harrell (Primary Sponsors); Alexander, Coates, Cole, Coleman, Faison, Farmer-Butterfield, Fisher, Harrison, Insko, Luebke, McLawhorn, Pierce, Rapp, Tarleton, Underhill, Wainwright, Weiss, Womble, and Wray.

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Referred to: Finance.

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February 15, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS  
2 OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF  
3 THE STATE, TO ADDRESS STATEWIDE CRITICAL HOUSING NEEDS BY  
4 PROVIDING FUNDS FOR THE NORTH CAROLINA HOUSING TRUST FUND.  
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** This act is entitled "The Affordable Housing Bonds Act of  
8 2007."

9 **SECTION 2.** Authorization of bonds and notes. – Subject to a favorable  
10 vote of a majority of the qualified voters of the State who vote on the question of  
11 issuing Affordable Housing Bonds in the election called and held as provided in this act,  
12 the State Treasurer is hereby authorized, by and with the consent of the Council of  
13 State, to issue and sell, at one time or from time to time, general obligation bonds of the  
14 State to be designated "State of North Carolina Affordable Housing Bonds", with any  
15 additional designations as may be determined to indicate the issuance of bonds from  
16 time to time, or notes of the State as provided in this act, in an aggregate principal  
17 amount not exceeding two hundred fifty million dollars (\$250,000,000) for the purpose  
18 of providing funds, with any other available funds, for the purposes authorized in this  
19 act. No more than an aggregate amount of fifty million dollars (\$50,000,000) of bonds  
20 may be issued under this act before July 1, 2009. No more than an aggregate amount of  
21 one hundred million dollars (\$100,000,000) of bonds may be issued under this act  
22 before July 1, 2010. No more than an aggregate amount of one hundred fifty million  
23 dollars (\$150,000,000) of bonds may be issued under this act before July 1, 2011. No  
24 more than an aggregate amount of two hundred million dollars (\$200,000,000) of bonds  
25 may be issued under this act before July 1, 2012.

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

- 3           (1) "Bonds" means bonds issued under this act.  
4           (2) "Credit facility" means an agreement entered into by the State  
5 Treasurer on behalf of the State with a bank, savings and loan  
6 association, or other banking institution, an insurance company,  
7 reinsurance company, surety company, or other insurance institution, a  
8 corporation, investment banking firm, or other investment institution,  
9 or any financial institution or other similar provider of a credit facility,  
10 which provider may be located within or without the United States of  
11 America, such agreement providing for prompt payment of all or any  
12 part of the principal or purchase price (whether at maturity,  
13 presentment or tender for purchase, redemption, or acceleration),  
14 redemption premium, if any, and interest on any bonds or notes  
15 payable on demand or tender by the owner, in consideration of the  
16 State agreeing to repay the provider of the credit facility in accordance  
17 with the terms and provisions of such agreement.  
18           (3) "Notes" means notes issued under this act.  
19           (4) "Par formula" means any provision or formula adopted by the State to  
20 provide for the adjustment, from time to time, of the interest rate or  
21 rates borne by any bonds or notes, including:  
22           a. A provision providing for such adjustment so that the purchase  
23 price of such bonds or notes in the open market would be as  
24 close to par as possible,  
25           b. A provision providing for such adjustment based upon a  
26 percentage or percentages of a prime rate or base rate, which  
27 percentage or percentages may vary or be applied for different  
28 periods of time, or  
29           c. Such other provision as the State Treasurer may determine to be  
30 consistent with this act and will not materially and adversely  
31 affect the financial position of the State and the marketing of  
32 bonds or notes at a reasonable interest cost to the State.  
33           (5) "State" means the State of North Carolina.

34           **SECTION 4.** Use of bond proceeds. – The proceeds net after issuance  
35 expenses of the Affordable Housing Bonds shall be used in the same manner as funds  
36 appropriated to the North Carolina Housing Trust Fund established under G.S. 122E-3,  
37 provided although grants or loans may be made to local government applicants, only  
38 grants may be made to entities other than local governments.

39           **SECTION 5.** Allocation of proceeds. – The net proceeds net after issuance  
40 expenses of Affordable Housing Bonds and notes, including premium thereon, if any,  
41 except the proceeds of bonds the issuance of which has been anticipated by bond  
42 anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the  
43 State Treasurer in a special fund to be designated "Affordable Housing Bonds Fund",  
44 which may include such appropriate special accounts therein as may be determined by

1 the State Treasurer and shall be disbursed as provided in this act. Moneys in the  
2 Affordable Housing Bonds Fund shall be allocated and expended as provided in this act.

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

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

20 The proceeds of bonds and notes may be used with any other moneys made  
21 available by the General Assembly for making grants and loans authorized by this act,  
22 including the proceeds of any other State bond issues, whether heretofore made  
23 available or which may be made available at the session of the General Assembly at  
24 which this act is ratified or any subsequent sessions. The proceeds of bonds and notes  
25 shall be expended and disbursed under the direction and supervision of the Director of  
26 the Budget. The funds provided by this act shall be disbursed for the purposes provided  
27 in this act upon warrants drawn on the State Treasurer by the State Controller, which  
28 warrants shall not be drawn until requisition has been approved by the Director of the  
29 Budget and which requisition shall be approved only after full compliance with the  
30 State Budget Act, Chapter 143C of the General Statutes.

31 If it is determined by the Council of State after hearing a recommendation  
32 from the Director of the Budget that the interest on bonds or notes issued under this act  
33 should be exempt from federal income taxation, additional timing, procedural, and other  
34 limitations on the use of proceeds, such as maximum loan rates and terms, loan  
35 proceeds investment restrictions, and loan repayment use restrictions, may be imposed  
36 with respect to the use of proceeds.

37 **SECTION 6.** Election. – The question of the issuance of the bonds  
38 authorized by this act shall be submitted to the qualified voters of the State at an  
39 election to be held on the first Tuesday after the first Monday of November 2008. Any  
40 other primary, election, or referendum validly called or scheduled by law at the time the  
41 election on the bond question provided for in this section is held may be held as called  
42 or scheduled. Notice of the election shall be given in the manner and at the times  
43 required by G.S. 163-33(8). The election and the registration of voters therefor shall be

1 held under and in accordance with the general laws of the State. Absentee ballots shall  
2 be authorized in the election.

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

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

11  FOR  AGAINST

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

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

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

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

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, incurrence, carrying, or securing of bonds or notes.  
31 Subject to the provisions of subsection (i) of this section, the State Treasurer is  
32 authorized to employ and designate any financial consultants, underwriters, and bond  
33 attorneys to be associated with any bond issue under this act as the State Treasurer  
34 considers necessary.

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

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

- 1           (3) Be made subject to redemption or a mandatory tender for purchase  
2           prior to maturity;
- 3           (4) Bear interest at a rate or rates that may vary for any period of time, as  
4           may be provided in the proceedings providing for the issuance of the  
5           bonds or notes, including, without limitation, such variations as may  
6           be permitted pursuant to a par formula; and
- 7           (5) Be made the subject of a remarketing agreement whereby an attempt is  
8           made to remarket bonds or notes to new purchasers prior to their  
9           presentment for payment to the provider of the credit facility or to the  
10          State.

11           If the aggregate principal amount payable by the State under a credit facility  
12 is in excess of the aggregate principal amount of bonds or notes secured by the credit  
13 facility, whether as a result of the inclusion in the credit facility of a provision for the  
14 payment of interest for a limited period of time or the payment of a redemption  
15 premium or for any other reason, then the amount of authorized but unissued bonds or  
16 notes during the term of such credit facility shall not be less than the amount of such  
17 excess, unless the payment of such excess is otherwise provided for by agreement of the  
18 State executed by the State Treasurer.

19           **SECTION 9.** Interpretation of act. – (a) Additional Method. – The  
20 foregoing sections of this act shall be deemed to provide an additional and alternative  
21 method for the doing of the things authorized thereby and shall be regarded as  
22 supplemental and additional to powers conferred by other laws, and shall not be  
23 regarded as in derogation of any powers now existing.

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

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

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

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

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