

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 958
PROPOSED COMMITTEE SUBSTITUTE H958-PCS30650-TM-31

Short Title: NC Zoo Public-Private Ptshp.

(Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 22 of Article 7 of Chapter 143B of the General Statutes (North Carolina Zoological Park Council) is repealed.

SECTION 1.(b) Any assets of the Zoo Fund established under Part 22 of Article 7 of Chapter 143B of the General Statutes at the time of its repeal shall be administered by the Department of Environment and Natural Resources to improve State property at the North Carolina Zoological Park.

SECTION 2. Article 14 of Chapter 143 of the General Statutes reads as rewritten:

"Article 14.

"North Carolina Zoological ~~Authority~~ Park.

"§ 143-177. Operation and transfer of Zoo; Right-right to receive gifts.

(a) Purpose; Management Agreement; Transfer of Zoo. – The North Carolina Zoological Park (Zoo) maintains a diverse collection of plant and wildlife specimens in order to study, conserve, and introduce to people the species of the world. The North Carolina Department of Environment and Natural Resources is directed to enter into a management agreement with the North Carolina Zoological Society, Inc., (Society) for a term not to exceed 25 years with options to renew at the end of each term, for the Society to operate the Zoo. The management agreement shall require that the Zoo provide free admission to North Carolina school students visiting the Zoo as part of an in-school tour group. The Society shall carry out the following minimum duties with respect to the Zoo:

- (1) Providing park and outreach operation.
- (2) Planning for and implementation of maintenance and expansion.
- (3) Providing construction, furnishings, and equipment.
- (4) Maintaining high standards of animal welfare and husbandry.
- (5) Carrying out research and practical conservation programs.
- (6) Establishing and setting admission fees.
- (7) Promoting public appreciation of animals and plants.
- (8) Disseminating information about the Zoo and its programs.
- (9) Developing effective public support.



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1 (10) Soliciting financial and material support from various private sources within
2 and without the State of North Carolina.

3 (11) Maintaining the highest possible standards in the Zoo's exhibits,
4 landscaping, and overall appearance.

5 (12) Maintaining Association of Zoos and Aquariums (AZA) accreditation.

6 (b) State Representation on Society Board. – As a condition of entering into the
7 agreement, the Society shall amend its articles of incorporation, bylaws, or other appropriate
8 corporate document to provide that the maximum size of the Society's board shall be 25
9 members and to provide that the following people shall be voting members of the Society's
10 board:

11 (1) The Secretary of the Department of Environment and Natural Resources or
12 that Secretary's designee serving ex officio.

13 (2) The Secretary of the Department of Administration or that Secretary's
14 designee serving ex officio.

15 (3) Two people appointed by the General Assembly, one upon recommendation
16 of the President Pro Tempore of the Senate and one upon recommendation
17 of the Speaker of the House of Representatives.

18 (c) General Transfer Language. – As of January 1, 2013, all of the rights, privileges,
19 liabilities, and obligations of the North Carolina Zoological Park Council not inconsistent with
20 the provisions of this section shall, under the terms of the management agreement, be
21 transferred to and assumed by the board of directors of the Society.

22 (d) Governance of Zoo. – As of January 1, 2013, the Zoo and the zoological programs
23 established or maintained by the Zoo shall be governed by the Society under the general
24 direction of its board of directors.

25 (e) Personal Property Transfer. – To effect an orderly transition, the management
26 agreement shall detail the specific personal property of the State, both tangible and intangible,
27 that shall be transferred to the Society. The management agreement must also provide for
28 reversion of such personal property to the State or redirection by the State if the Society ceases
29 to exist, enters bankruptcy, terminates its management agreement with the State, or in any other
30 way is incapable of maintaining the Zoo. The Department of Environment and Natural
31 Resources shall transfer to the Society any personal property listed in the State asset inventory
32 that is necessary for the operation of the Zoo, including any relevant permits, registrations, and
33 licenses necessary, appropriate, or convenient to ownership. If any fee or other payment is
34 required to effectuate the transfer, the Society shall pay the fee or other payment or reimburse
35 the Department of Environment and Natural Resources for any expenditure in relation to the
36 transfer.

37 (f) Real Property Transfer. – All real property currently owned by the State and
38 allocated to the Zoo shall remain in title to the State. The State shall retain property control
39 over all State real property at the Zoo, except that the Society shall be afforded naming rights
40 on land or fixtures owned by the State.

41 (g) Annual Appropriations by the State. – As a management fee to support operation of
42 the Zoo, the sum of ten million dollars (\$10,000,000) shall be appropriated annually by the
43 State to the Society under the terms of the management agreement until the end of its term,
44 except for the 2012-2013 fiscal year. For the 2012-2013 fiscal year, the sum of five million
45 dollars (\$5,000,000) shall be appropriated to annualize it to the January 1, 2013, effective date
46 of the transfer.

47 (h) Annual Expenditure by the Society. – The management agreement shall require that
48 the Society spend the sum of four million dollars (\$4,000,000) annually on the operation and
49 capital improvements at the Zoo from the Society's funds, excluding all funds received from the
50 State and excluding admission fees.

1 (i) Annual Reports Required. – The Society shall make the following annual reports to
2 the Office of State Budget and Management and to the Joint Legislative Commission on
3 Governmental Operations:

4 (1) Actual and proposed budget.

5 (2) Report on operations.

6 (3) Financial statements.

7 (j) Reserve for Repair and Renovation. – The Society shall be eligible for allocations
8 from the Reserve for Repair and Renovation to cover current deferred maintenance on State
9 property at the Zoo that as of January 1, 2012, totaled thirty million dollars (\$30,000,000). It is
10 the intent of the General Assembly that five million dollars (\$5,000,000) annually shall be
11 provided to the Society from the Reserve until a total of thirty million dollars (\$30,000,000) has
12 been satisfied. The allocation shall be administered by the Department of Environment and
13 Natural Resources. As initial implementation of this subsection, for the 2012-2013 fiscal year,
14 the sum of five million dollars (\$5,000,000) is allocated from the Reserve for Repair and
15 Renovation to the Department of Environment and Natural Resources and provided to the
16 Society to cover deferred maintenance on State property at the Zoo.

17 (k) Transition Costs. – The sum of three million two hundred thousand dollars
18 (\$3,200,000) for the 2012-2013 fiscal year is appropriated from the General Fund to the
19 Department of Environment and Natural Resources for transition expenses necessary to
20 implement this section.

21 (l) Audit. – The Society shall be subject to audit by the State Auditor and the Program
22 Evaluation Division of the General Assembly.

23 (m) Management Agreement Subject to Prior Approval of State Treasurer. – The
24 management agreement is subject to the prior approval of the State Treasurer with regard to
25 issues that might impact the tax-exempt status of outstanding debt issued by the State for Zoo
26 facilities, including the tax-exempt status of the Society. The Society shall provide evidence
27 satisfactory to the Secretary of the Department of Environment and Natural Resources and the
28 State Treasurer that the Society is recognized as exempt under section 501(c)(3) of the Internal
29 Revenue Code prior to the effective date of the management agreement and upon request at
30 other times.

31 (n) Further Conditions on Management Agreement. – The management agreement must
32 contain the following terms:

33 (1) An acknowledgement that a portion of the facilities at the Zoo were financed
34 by the State through the issuance of bonds the interest on which is exempt
35 from income taxation under the Internal Revenue Code as a result of the
36 characterization of such bonds as "governmental bonds" and not "private
37 activity bonds" and such characterization depends in part on the management
38 agreement being treated as a qualified management agreement under
39 applicable requirements (Qualified Management Agreement).

40 (2) A covenant by the Society not to take any action that will cause the
41 management agreement to cease to be treated as a Qualified Management
42 Agreement.

43 (3) A covenant by the Society that as of each January 1 and upon request at
44 other times to provide the State Treasurer a report on the current status of
45 financial matters under the management agreement and any related
46 agreements which might impact the tax-exempt status of outstanding debt
47 issued by the State for Zoo facilities.

48 (o) Certain Arrangements Subject to Prior Approval of State Treasurer. – If any entity
49 other than the Society will have any property rights or contractual rights to the use of property
50 at the Zoo, including naming rights, the right to operate concessions or rights under similar
51 arrangements, whether through the management agreement or otherwise, then the proposed

1 agreement or arrangement providing for such rights is subject to the prior approval of the State
2 Treasurer with regard to issues that might impact the tax-exempt status of outstanding debt
3 issued by the State for Zoo facilities.

4 (p) ~~In order to carry out the purposes of this Article, the Board is authorized Society~~
5 ~~may to~~ acquire by gift or will, absolutely or in trust, from individuals, corporations, or any
6 other source money or other property, or any interests in property, which may be retained, sold
7 or otherwise used to promote the purposes of this Article. The use of gifts shall be subject to
8 such limitations as may be imposed thereon by donors, notwithstanding any other provisions of
9 this Article.

10 **"§ 143-177.1. North Carolina Zoological Park Fund.**

11 ~~All gifts made to the North Carolina Zoological Park for the purposes of this Article shall~~
12 ~~be exempt from every form of taxation including, but not by the way of limitation, ad valorem,~~
13 ~~intangible, gift, inheritance and income taxation. Proceeds from the sale of any property~~
14 ~~acquired under the provisions of this Article shall be deposited in the North Carolina State~~
15 ~~treasury and shall be credited to the North Carolina Zoological Park.~~

16 **"§ 143-177.2. Cities and counties.**

17 Cities and counties are hereby authorized to expend funds derived from nontax sources and
18 to make gifts of surplus property, to assist in carrying out the purposes of this Article.

19 **"§ 143-177.3. Sources of funds.**

20 (a) It is the intent of this Article that the funds for the creation, establishment,
21 construction, operation and maintenance of the ~~North Carolina Zoological Park Zoo~~ shall be
22 obtained primarily from private sources; however, the ~~Council Society~~, under the supervision
23 and approval and with the assistance of the Secretary of Environment and Natural ~~Resources~~
24 ~~Resources~~, is hereby authorized to receive and expend such funds as may from time to time
25 become available by appropriation or otherwise from the State of North Carolina; provided,
26 that the ~~North Carolina Zoological Park Council Society~~ shall not in any manner pledge the
27 faith and credit of the State of North Carolina for any of its purposes. Real property of the State
28 may not be pledged as collateral by the Society in any financing, nor may the annual
29 appropriation for operating expenses be pledged as security in any financing.

30 (b) ~~The Council with the approval of the Secretary of Environment and Natural~~
31 ~~Resources is authorized to establish and set admission fees which are reasonable and consistent~~
32 ~~with the purpose and function of the North Carolina Zoological Park.~~

33 **"§ 143-177.4. Maintenance and capital improvement projects.**

34 (a) Department of Administration Authority Over Building Maintenance and
35 Construction. – Notwithstanding any other provision of law, the Department of Administration
36 is authorized, without approval of the Council of State, to grant rights of entry, ground leases,
37 and easements, as appropriate, for the Society to conduct construction, renovation, and repair
38 projects on State land at the Zoo. Such projects shall have plan review, inspection, and
39 acceptance on behalf of the State by the State Construction Office. The Department of
40 Administration may enter into separate project review and construction management
41 agreements with the Society governing the detailed processes and procedures relating to each
42 project undertaken by the Society on State land at the Zoo. All construction, renovation, and
43 repair projects shall become the sole property of the State upon final completion and
44 acceptance.

45 (b) Approval of Facility Master Plan. – The Department of Environment and Natural
46 Resources and the Department of Administration shall approve a facility master plan before the
47 Society begins any capital improvement projects on State lands or uses any State funds for
48 capital improvement projects. The Department of Environment and Natural Resources may
49 authorize the Society to conduct some projects by type, such as small repairs approved by the
50 Department of Administration, in the management agreement. The Department of

1 Administration may also authorize the Society to conduct some projects by type, such as
2 emergency repairs, under the building maintenance and construction agreement.

3 (c) The Society or Department of Environment and Natural Resources may request
4 State funding for capital improvement projects through the State's capital planning and
5 budgeting process."

6 **SECTION 3.** This act becomes effective January 1, 2013, except that the
7 Department of Environment and Natural Resources and the North Carolina Zoological Society,
8 Inc., may enter into the management agreement provided by G.S. 143-177, as amended by this
9 act, at any time prior to that date; the Department of Environment and Natural Resources may
10 also act on any transitional requirements prior to that date; the Department of Administration
11 and the North Carolina Zoological Society, Inc., may enter into the building maintenance and
12 construction agreement provided by G.S. 143-177.4 at any time prior to that date; and the
13 Department of Administration may also act on any transitional requirements prior to that date.