

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 600

Short Title: School Construction Flexibility. (Public)

Sponsors: Representatives J. Bell, Lewis, Brenden Jones, and Goodman (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Education - K-12

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL FLEXIBILITY TO LOCAL BOARDS OF EDUCATION TO ENTER INTO LEASES FOR SCHOOL BUILDINGS AND OTHER FACILITIES AND REVISE THE PROCEDURES FOR QUALIFIED ZONE ACADEMY BONDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-105.25(b) is amended by adding a new subdivision to read:

"(12) Notwithstanding G.S. 115C-408, funds allotted by the State Board of Education, for any purpose, except for funds allotted to the classroom teacher allotment category and the teacher assistant allotment category, may be used for the purpose of lease payments for leases entered into under G.S. 115C-530 by a local board of education of a local school administrative unit located in a county that, at the time the lease was entered into, was in a development tier one area, as defined in G.S. 143B-437.08. Nothing in this subdivision shall be construed to obligate either the State or the State Board of Education to provide funds for any lease payments for leases entered into under G.S. 115C-530 by a local board of education. Any leases entered into by a local board of education under G.S. 115C-530 shall not involve or be secured by the faith, credit, or taxing power of the State. If funds allotted by the State Board of Education to a local school administrative unit are decreased, the county in which the local school administrative unit is located shall be responsible for any lease payments for leases entered into under G.S. 115C-530 by the local board of education of the local school administrative unit."

SECTION 2. G.S. 115C-530 reads as rewritten:

"§ 115C-530. ~~Operational~~**Operating** leases of school buildings and school facilities.

(a) Local boards of education may enter into operational leases of real or personal property for use as school buildings or school facilities. ~~Operational~~**Operating** leases for terms of less than three years shall not be subject to the approval of the board of county commissioners. ~~Operational~~**Operating** leases for terms of three years or longer, including periods that may be added to the original term through the exercise of options to renew or extend, are permitted if all of the following conditions are met:



- 1 (1) The budget resolution includes an appropriation authorizing the current
2 fiscal year's portion of the obligation.
- 3 (2) An unencumbered balance remains in the appropriation sufficient to pay in
4 the current fiscal year the sums obligated by the lease for the current fiscal
5 year.
- 6 (3) The leases are approved by a resolution adopted by the board of county
7 commissioners. If an ~~operational~~operating lease is approved by the board of
8 county commissioners, in each year the county commissioners shall
9 appropriate sufficient funds to meet the amounts to be paid during the fiscal
10 year under the lease.
- 11 (4) Any construction, repair, or renovation of the property is in compliance with
12 the requirements of G.S. 115C-521(c) ~~relating to energy guidelines and (c1).~~

13 For purposes of this section, an ~~operational~~operating lease is defined according to generally
14 accepted accounting principles and may be for new or existing buildings.

15 (a1) In addition to meeting the requirements of subsection (a) of this section, an
16 operating lease entered into by a local board of education with a private developer for a new
17 school building shall be on a site owned either by the local board of education or the county
18 containing the proposed site. The local board of education or the county that owns the site shall
19 enter into a ground lease with the private developer for the purposes of facilitating the
20 construction of the new building.

21 (b) Local boards of education may enter into contracts for the construction, repair, or
22 renovation of leased property if (i) the budget resolution includes an appropriation authorizing
23 the obligation, (ii) an unencumbered balance remains in the appropriation sufficient to pay in
24 the current fiscal year the sums obligated by the transaction for the current fiscal year, and (iii)
25 the construction, repair, or renovation is in compliance with the requirements of
26 G.S. 115C-521(c) ~~relating to energy guidelines and (c1).~~ Construction, repair, or renovation
27 work undertaken or contracted by a private developer is subject to the requirements of Article 8
28 of Chapter 143 of the General Statutes. A private developer undertaking or contracted with for
29 construction, repair, or renovation work shall select a general contractor through one of the
30 methods listed under G.S. 143-128(a1)(1) through G.S. 143-128(a1)(7). Payment bond
31 requirements shall be in accordance with the selected contracting method. In addition, the
32 private developer shall provide letters of credit or a payment bond in an amount equal to one
33 hundred percent (100%) of the fees for any design and contracting services. Contracts for new
34 construction and renovation that are subject to the bidding requirements of G.S. 143-129(a) and
35 which do not constitute continuing contracts for capital outlay must be approved by the board
36 of county commissioners.

37 (b1) A local board of education that determines it is in the local school administrative
38 unit's best interests to pursue an operating lease with a private developer for one or more school
39 buildings or facilities in the unit shall adopt a resolution justifying entering into an operating
40 lease agreement along with a description of the school building or school buildings being
41 pursued.

42 (b2) After adoption of the resolution under subsection (b1) of this section, the local board
43 of education shall issue a public notice of the request for qualifications of private developers
44 and evaluate the qualifications of the private developers. The notice shall be published in a
45 newspaper having general circulation within the county in which the local school
46 administrative unit of the local board of education is located. The notice shall be published a
47 minimum of 30 days prior to evaluating the proposals received.

48 (b3) Before entering into a predevelopment or lease agreement to lease a school building
49 or facility, the local board of education shall select the private developer on the basis of
50 demonstrated competence and qualifications consistent with Article 3D of Chapter 143 of the

1 General Statutes. Any private developer submitting qualifications shall submit and the local
2 board of education shall consider the following:

- 3 (1) Evidence of financial stability. However, "trade secrets" as that term is
4 defined in G.S. 66-152(3) shall be exempt from disclosure under Chapter
5 132 of the General Statutes.
- 6 (2) Experience with similar projects.
- 7 (3) The knowledge, skill, and reputation of the developer and his or her
8 associated persons.
- 9 (4) Statement of availability to undertake the project and projected time line for
10 project completion.
- 11 (5) The goals and plans of providers for utilization of minority business
12 enterprises.
- 13 (6) Any other information required by the local board of education.

14 Following evaluation of the qualifications of the private developers, the three most highly
15 qualified developers shall be ranked. If after the solicitation for developers, not as many as
16 three responses have been received from qualified developers, the local board of education
17 shall again solicit for developers. If as a result of such second solicitation not as many as three
18 responses are received, the local board of education may then begin negotiations with the
19 highest-ranked private developer under G.S. 143-64.31, even though fewer than three responses
20 were received. If the local board of education deems it appropriate, the local board may invite
21 some or all responders to interview with the local board.

22 (c) ~~Operational~~Operating leases and contracts entered into under this section are
23 subject to approval by the Local Government Commission under Article 8 of Chapter 159 of
24 the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2),
25 and 159-148(a)(3). For purposes of determining whether the standards set out in
26 G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold
27 shall apply.

28 (d) If a local board of education enters into an operating lease of real property for use as
29 a school building or for school facilities, then the county may borrow money for a purpose
30 allowed pursuant to 26 U.S.C. § 54E(d)(3) with respect to the building or facilities. The
31 operating lease shall be for a period of at least 10 years."

32 **SECTION 3.** G.S. 115C-426(f) reads as rewritten:

33 "(f) The capital outlay fund shall include appropriations for:

- 34 (1) The acquisition of real property for school purposes, including but not
35 limited to school sites, playgrounds, athletic fields, administrative
36 headquarters, and garages.
- 37 (2) The acquisition, construction, reconstruction, enlargement, renovation, or
38 replacement of buildings and other structures, including but not limited to
39 buildings for classrooms and laboratories, physical and vocational
40 educational purposes, libraries, auditoriums, gymnasiums, administrative
41 offices, storage, and vehicle maintenance.
- 42 (3) The acquisition or replacement of furniture and furnishings, instructional
43 apparatus, data-processing equipment, business machines, and similar items
44 of furnishings and equipment.
- 45 (4) The acquisition of school buses as additions to the fleet.
- 46 (5) The acquisition of activity buses and other motor vehicles.
- 47 (5a) Lease payments for leases entered into pursuant to G.S. 115C-530.
- 48 (6) Such other objects of expenditure as may be assigned to the capital outlay
49 fund by the uniform budget format.

50 The cost of acquiring or constructing a new building, or reconstructing, enlarging, or
51 renovating an existing building, shall include the cost of all real property and interests in real

1 property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and
2 equipment necessary or useful in connection therewith; financing charges; the cost of plans,
3 specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or
4 incidental to the construction, reconstruction, enlargement, or renovation.

5 No contract for the purchase of a site shall be executed nor any funds expended therefor
6 without the approval of the board of county commissioners as to the amount to be spent for the
7 site; and in case of a disagreement between a board of education and a board of county
8 commissioners as to the amount to be spent for the site, the procedure provided in
9 G.S. 115C-431 shall, insofar as the same may be applicable, be used to settle the disagreement.

10 Appropriations in the capital outlay fund shall be funded by revenues made available for
11 capital outlay purposes by the State Board of Education and the board of county
12 commissioners, supplemental taxes levied by or on behalf of the local school administrative
13 unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital
14 assets, the proceeds of claims against fire and casualty insurance policies, funds allotted by the
15 State Board of Education for any purpose, except for funds allotted to the classroom teacher
16 allotment category and the teacher assistant allotment category, used for the purpose of lease
17 payments as provided in G.S. 115C-105.25(b)(12), and other sources."

18 **SECTION 4.** G.S. 115C-489.6(a) reads as rewritten:

19 "(a) QZAB Program. – The State Board of Education is designated the State education
20 agency responsible for administering the qualified zone academy bond program in North
21 Carolina for the purposes of 26 U.S.C. § 54E. The State Board of Education shall perform all
22 activities required to implement and carry out the qualified zone activity bond program in
23 North Carolina. Those activities include:

- 24 (1) Defining those areas and schools that are eligible under federal law to
25 participate in the qualified zone academy bond program in North Carolina.
- 26 (2) Designing an application process under which proposals may be solicited
27 from qualified zone academies. The application process shall ensure that
28 bond proceeds are allocated so as to prioritize use in counties having greater
29 economic distress, as ranked pursuant to G.S. 143B-437.08. The application
30 shall include a requirement for any information necessary to enable the
31 Board to accomplish the prioritization and efficient use of the bond
32 proceeds.
- 33 (3) Determining the eligibility of an applicant to be a participating qualified
34 zone academy.
- 35 (4) Awarding the State's allocation of total funds among selected applicants and
36 establishing conditions upon the usage of the allocation. These conditions
37 must include:
 - 38 a. Requiring that the bond proceeds be ~~used~~-used, (i) with respect to
39 facilities under an operating lease defined in G.S. 115C-530, for any
40 purpose allowed pursuant to 26 U.S.C. § 54E(d)(3), or (ii) with
41 respect to any other facility, only for rehabilitating or repairing the
42 public school facility in which the qualified zone academy is located,
43 which may include (i)-wiring and other infrastructure improvements
44 related to providing technology and (ii)may include equipment
45 related to the rehabilitation or repair, but not personal computers or
46 similar technology equipment.
 - 47 b. Conditions designed to assure that the allocation is used in a timely
48 manner.
- 49 (5) Confirming that the terms of any qualified zone academy bonds issued in
50 accordance with this program are consistent with the terms of the federal
51 program."

1 **SECTION 5.** Section 1 of this act becomes effective July 1, 2017. The remainder
2 of this act is effective when it becomes law. Section 2 of this act applies to agreements, sites
3 leased, and leases entered into on or after that date. Section 3 of this act applies to
4 appropriations made on or after that date. Section 4 of this act applies to bond proceeds used on
5 or after that date.