

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

FILED SENATE  
Mar 29, 2017  
S.B. 511  
PRINCIPAL CLERK

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SENATE BILL DRS35227-MKx-141D\* (03/17)

Short Title: School Construction Flexibility. (Public)

Sponsors: Senators Meredith, Tillman, and Rabon (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE ADDITIONAL FLEXIBILITY TO LOCAL BOARDS OF  
3 EDUCATION TO ENTER INTO LEASES FOR SCHOOL BUILDINGS AND OTHER  
4 FACILITIES AND REVISE THE PROCEDURES FOR QUALIFIED ZONE ACADEMY  
5 BONDS.

6 The General Assembly of North Carolina enacts:

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

9 "(12) Notwithstanding G.S. 115C-408, funds allotted by the State Board of  
10 Education for noninstructional support personnel to a local school  
11 administrative unit may be used for the purpose of lease payments for leases  
12 entered into under G.S. 115C-530 by a local board of education of a local  
13 school administrative unit located in a county that, at the time the lease was  
14 entered into, was in a development tier one area, as defined in  
15 G.S. 143B-437.08. Nothing in this subdivision shall be construed to obligate  
16 either the State or the State Board of Education to provide funds for any  
17 lease payments for leases entered into under G.S. 115C-530 by a local board  
18 of education. Any leases entered into by a local board of education under  
19 G.S. 115C-530 shall not involve or be secured by the faith, credit, or taxing  
20 power of the State. If funds allotted by the State Board of Education to a  
21 local school administrative unit are decreased, the county in which the local  
22 school administrative unit is located shall be responsible for any lease  
23 payments for leases entered into under G.S. 115C-530 by the local board of  
24 education of the local school administrative unit."

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

26 "**§ 115C-530. ~~Operational~~Operating leases of school buildings and school facilities.**

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

33 (1) The budget resolution includes an appropriation authorizing the current  
34 fiscal year's portion of the obligation.



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1 (2) An unencumbered balance remains in the appropriation sufficient to pay in  
2 the current fiscal year the sums obligated by the lease for the current fiscal  
3 year.  
4 (3) The leases are approved by a resolution adopted by the board of county  
5 commissioners. If an ~~operational~~operating lease is approved by the board of  
6 county commissioners, in each year the county commissioners shall  
7 appropriate sufficient funds to meet the amounts to be paid during the fiscal  
8 year under the lease.  
9 (4) Any construction, repair, or renovation of the property is in compliance with  
10 the requirements of G.S. 115C-521(c) ~~relating to energy guidelines and (c1)~~.  
11 For purposes of this section, an ~~operational~~operating lease is defined according to generally  
12 accepted accounting principles and may be for new or existing buildings.

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

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

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

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

46 (b3) Before entering into a predevelopment or lease agreement to lease a school building  
47 or facility, the local board of education shall select the private developer on the basis of  
48 demonstrated competence and qualifications consistent with Article 3D of Chapter 143 of the  
49 General Statutes. Any private developer submitting qualifications shall submit and the local  
50 board of education shall consider the following:

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

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

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

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

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

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

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

48           The cost of acquiring or constructing a new building, or reconstructing, enlarging, or  
49           renovating an existing building, shall include the cost of all real property and interests in real  
50           property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and  
51           equipment necessary or useful in connection therewith; financing charges; the cost of plans,

1 specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or  
2 incidental to the construction, reconstruction, enlargement, or renovation.

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

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

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

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

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

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

1 appropriations made on or after that date. Section 4 of this act applies to bond proceeds used on  
2 or after that date.