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SENATE DRS75135-LE-31B (02/06)

Short Title: Counties Responsible for School Construction.

(Public)

Sponsors: Senators Hunt, Apodaca, and Brunstetter (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING COUNTIES TO ASSUME RESPONSIBILITY FOR
3 CONSTRUCTION, IMPROVEMENT, OWNERSHIP, AND ACQUISITION OF PUBLIC
4 SCHOOL PROPERTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 153A of the General Statutes is amended by adding a new
7 section to read:

8 "**§ 153A-158.1A. Authority to assume responsibility for construction, improvement,**
9 **ownership, and acquisition of public school property.**

10 (a) Scope. – This section applies only in a county that elects by resolution to assume
11 responsibility for some or all of owning, siting, acquiring, constructing, equipping, expanding,
12 improving, repairing, and renovating property for use by a named school administrative unit
13 located wholly within the county but only to the extent and under the terms and conditions
14 specified in the board of county commissioners' resolution. If such election is made, that school
15 administrative unit shall no longer exercise such power for any construction, improvement,
16 ownership, or acquisition of any property for which the county has made that election; the
17 election may, however, leave the school administrative unit with responsibility for equipment
18 and for maintenance and repairs in categories or amounts named in the resolution.

19 Any responsibility for school property transferred by resolution pursuant to this section
20 shall be for a minimum period of 10 years, renewable by subsequent resolution of the board of
21 commissioners in 10-year increments.

22 (b) Construction or Improvement by County. – A county may by resolution elect to
23 construct, equip, expand, improve, repair, renovate, or otherwise make available property for
24 use by a school administrative unit within the county. The county shall consult the board of
25 education in the siting, design, construction, equipping, expansion, improvement, or renovation
26 of the property.

27 (c) Ownership of School Property. – A county may by resolution provide that any
28 interest in real property or school capital funds presently held by the board of education shall
29 vest in the county. A county may also by resolution provide that any interest in real property or
30 school capital funds acquired for the use of a school administrative unit in the future shall vest
31 in the county. A copy of any such resolution shall be certified by the clerk of the board of
32 commissioners and sent to the clerk of the board of education. The board of education shall,
33 within 30 days of entry of the resolution, execute any documents or deeds necessary to
34 effectuate the transfer under the exact terms set forth in the resolution. The county shall pay the
35 costs of executing the documents or deeds and effectuating the transfer.



As used in this section:

(1) Interest in real property includes, but is not limited to, (i) fixtures, (ii) leaseholds, and (iii) other capital assets.

(2) School capital funds includes, but is not limited to, all or part of (i) funds appropriated to the school capital outlay fund and (ii) funds allocated for school capital from the Public School Building Capital Fund to the county or to local school administrative units located wholly within that county in accordance with G.S. 115C-546.2(a) and (d).

(d) Insurance of Public School Property. – For school property affected by a resolution entered pursuant to this section, a county may elect to (i) leave current risk management programs operated by the school board in place, (ii) secure insurance from the system of insurance operated by the State Board of Education pursuant to Article 38 of Chapter 115C of the General Statutes, (iii) secure insurance from other sources, or (iv) utilize any combination of these options.

Moneys paid to a county pursuant to contracts of insurance against loss of capital assets through fire or casualty shall be used to repair or replace the damaged asset or if the asset is not repaired or replaced, placed to the credit of the county capital outlay fund for public schools for appropriation at some future time.

(e) Liability. – A county shall not be liable for the acts or omissions of school employees in or on school property owned, acquired, leased, or improved by the county by a resolution entered pursuant to this section.

(f) Use of School Property. – Any interest in school property, whether real or personal, acquired by a county under the provisions of this section shall be conclusively presumed to be for the exclusive use by the school administrative unit for public school purposes to the same extent as if the property were owned by the school administrative unit. Therefore, property acquired by a county from a board of education under the provisions of the act shall not constitute the exercise of eminent domain power and shall not otherwise entitle the board of education or school administrative unit to any funds or other consideration for any property so acquired by or transferred to the county.

For school property affected by a resolution entered pursuant to this section, the board of education shall continue to have the exclusive authority to determine whether and when such school property is unnecessary or undesirable for public school purposes, in which event the board of education shall so inform the county board of commissioners. The county shall then either (i) dispose of the property and use the proceeds to reduce the county's bonded indebtedness for schools or for school capital outlay purposes or (ii) use the property for nonschool purposes and use an amount negotiated by the two boards as the fair market value of the property to reduce the county's bonded indebtedness for schools or for school capital outlay purposes."

SECTION 2. G.S. 115C-207(2) reads as rewritten:

"§ 115C-207. Authority and responsibility of local boards of education.

Every local board of education that uses State funds to implement programs under this Article shall:

(1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.

(1a) Develop policies and programs designed to encourage the use of community-based academic booster organizations, which may be known as Community Achievement Network – Developing Our Educational Resources (CAN DOER) organizations, to provide tutoring and other appropriate services to encourage and support student academic achievement.

- (1b) Develop policies and/or procedures for approving the use of volunteer organizations and for approving the use of individual volunteers.
- (1c) Develop policies and/or procedures designed to make information available to parents and students about what tutoring and other academic support services are available to students in the community or through school volunteers or other community organizations.
- (2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education. If a county has assumed ownership of school property pursuant to G.S. 153A-158.2, the local board of education shall permit the use of that property by nonschool groups, only as authorized by the county commissioners.
- (3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education may provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education using State funds to implement a community schools program under this Article may enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of these State funds."

SECTION 3. G.S. 115C-426 reads as rewritten:

"§ 115C-426. Uniform budget format.

...

(f) The Except as otherwise provided in subsection (f1) of this section, the capital outlay fund shall include appropriations for:

- (1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.
- (2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.
- (3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.
- (4) The acquisition of school buses as additions to the fleet.
- (5) The acquisition of activity buses and other motor vehicles.
- (6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans, specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

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

6 Appropriations in the capital outlay fund shall be funded by revenues made available for
7 capital outlay purposes by the State Board of Education and the board of county
8 commissioners, supplemental taxes levied by or on behalf of the local school administrative
9 unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital
10 assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

11 (f1) To the extent that a county has assumed responsibility for the ownership,
12 acquisition, construction, and improvement of school property pursuant to G.S. 153A-158.2,
13 the capital outlay shall not include appropriations for those purposes.

14"

15 **SECTION 4.** G.S. 115C-431 reads as rewritten:

16 **"§ 115C-431. Procedure for resolution of dispute between board of education and board**
17 **of county commissioners.**

18 (a) If the board of education determines that the amount of money appropriated to the
19 local current expense fund, or the capital outlay fund, or both, by the board of county
20 commissioners is not ~~sufficient~~-sufficient, when added to the moneys appropriated by the
21 county for school capital projects for which the county has assumed responsibility pursuant to
22 G.S. 153A-158.1A, to support a system of free public schools, the chairman of the board of
23 education and the chairman of the board of county commissioners shall arrange a joint meeting
24 of the two boards to be held within seven days after the day of the county commissioners'
25 decision on the school appropriations.

26 Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a
27 mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the
28 joint meeting and shall act as a neutral facilitator of disclosures of factual information,
29 statements of positions and contentions, and efforts to negotiate an agreement settling the
30 boards' differences.

31 At the joint meeting, the entire school budget shall be considered carefully and judiciously,
32 and the two boards shall make a good-faith attempt to resolve the differences that have arisen
33 between them.

34 ...

35 (f) This section shall not apply to a county's election to assume responsibility for the
36 construction, improvement, ownership, and acquisition of school property responsibility
37 pursuant to G.S. 153A-158.1A."

38 **SECTION 5.** G.S. 115C-517 reads as rewritten:

39 **"§ 115C-517. Acquisition of sites.**

40 Local boards of education or boards of county commissioners acting pursuant to
41 G.S. 153A-158.1 or G.S. 153A-158.1A may acquire suitable sites for schoolhouses or other
42 school facilities either within or without the local school administrative unit; but no school may
43 be operated by a local school administrative unit outside its own boundaries, although other
44 school facilities such as repair shops, may be operated outside the boundaries of the local
45 school administrative unit. Whenever any such board of education is unable to acquire or
46 enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a
47 parking area or access road suitable for school buses or for other school facilities by gift or
48 purchase, condemnation proceedings to acquire same may be instituted by such board under the
49 provisions of Chapter 40A of the General Statutes, and the determination of the local board of
50 education of the land necessary for such purposes shall be conclusive. A board of county
51 commissioners may acquire such property pursuant to G.S. 153A-158.1 or G.S. 153-158.1A."

SECTION 6. G.S. 115C-519 reads as rewritten:

"§ 115C-519. Deeds to property.

All deeds to school property owned by a local board of education shall, after registration, be delivered to the superintendent of the local school administrative unit in which the property is ~~located~~ located, and ~~he the superintendent~~ shall provide a safe place for preserving all such deeds. All deeds to school property owned by a county shall, after registration, be delivered to the clerk of board of county commissioners, and the clerk shall provide a safe place for preserving all such deeds."

SECTION 7. G.S. 115C-521 reads as rewritten:

"§ 115C-521. Erection of school buildings.

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter.

In developing these plans, local boards of education shall consider the costs and feasibility of renovating old school buildings instead of replacing them. For school facilities for which a county has assumed responsibility pursuant to G.S. 153A-158.1A, the county shall provide the local board of education with information necessary for this consideration.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, except those for which the county has assumed responsibility pursuant to G.S. 153A-158.1A, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the operation of the school, relocatable or mobile classroom units, whether built on the lot or ~~not, which not~~. If the county has assumed responsibility pursuant to G.S. 153A-158.1A for providing such classrooms, the county may acquire these units. These units and method of use shall meet the approval of the School Planning Division of the State Board of Education, Education and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education or boards of county commissioners and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is ~~done~~ done, or if the county has assumed responsibility pursuant to G.S. 153A-158.1A for such activities, under the control and direction of, and by contract with the county. If a board of education or a board of county commissioners is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State

1 Superintendent and the State Superintendent submits to the North Carolina Historical
2 Commission an analysis that compares the costs and feasibility of building the new building
3 and of renovating the existing building and that clearly indicates the desirability of building the
4 new building. No board of education or board of county commissioners shall invest any money
5 in any new building until it has (i) developed plans based upon a consideration of the State
6 Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and
7 comments, and (iii) reviewed the plans based upon a consideration of the comments it receives
8 from the State Board. No local board of education or board of county commissioners shall
9 contract for more money than is made available for the erection of a new building. However,
10 this subsection shall not be construed so as to prevent boards of education from investing any
11 money in buildings that are being constructed pursuant to a continuing contract of construction
12 as provided for in G.S. 115C-441(c). All contracts for buildings shall be in writing and all
13 buildings shall be inspected, received, and approved by the local superintendent and the
14 architect before full payment is made therefor. Nothing in this subsection shall prohibit boards
15 of education from repairing and altering buildings with the help of janitors and other regular
16 employees of the board.

17 In the design and construction of new school buildings and in the renovation of existing
18 school buildings that are required to be designed by an architect or engineer under
19 G.S. 133-1.1, the local board of education or the board of county commissioners shall
20 participate in the planning and review process of the Energy Guidelines for School Design and
21 Construction that are developed and maintained by the Department of Public Instruction and
22 shall adopt local energy-use goals for building design and operation that take into account local
23 conditions in an effort to reduce the impact of operation costs on local and State budgets. In the
24 design and construction of new school facilities and in the repair and renovation of existing
25 school facilities, the local board of education or the board of county commissioners shall
26 consider the placement and design of windows to use the climate of North Carolina for both
27 light and ventilation in case of power shortages. A local board shall also consider the
28 installation of solar energy systems in the school facilities whenever practicable.

29 In the case of any school buildings erected, repaired, or equipped with any money loaned or
30 granted by the State to any local school administrative unit, no board of education or board of
31 county commissioners, if the county has assumed responsibility pursuant to G.S. 153A-158.1A
32 for such activities, shall invest any money until it has (i) developed plans based upon a
33 consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State
34 Board for its review and comments, and (iii) reviewed the plans based upon a consideration of
35 the comments it receives from the State Board.

36 (c1) No local board of education or board of county commissioners shall apply for a
37 certificate of occupancy for any new middle or high school building until the plans for the
38 science laboratory areas of the building have been reviewed and approved to meet accepted
39 safety standards for school science laboratories and related preparation rooms and stockrooms.
40 The review and approval of the plans may be done by the State Board of Education or by any
41 other entity that is licensed or authorized by the State Board to do so.

42 (d) Local boards of education shall make no contract for the erection of any school
43 building unless the site upon which it is located is owned in fee simple by the board: Provided,
44 that the board of education of a local school administrative unit, with the approval of the board
45 of county commissioners, may appropriate funds to aid in the establishment of a school facility
46 and the operation thereof in an adjoining local school administrative unit when a written
47 agreement between the boards of education of the administrative units involved has been
48 reached and the same recorded in the minutes of the boards, whereby children from the
49 administrative unit making the appropriations shall be entitled to attend the school so
50 established.

1 In all cases where title to property has been vested in the trustees of a special charter district
2 which has been abolished and has not been reorganized, title to the property shall be vested in
3 the local board of education of the county embracing the former special charter district.

4 (e) The State Board of Education shall establish within the Department of Public
5 Instruction a central clearinghouse for access by local boards of education or boards of county
6 commissioners that may want to use a prototype design in the construction of school facilities.
7 The State Board shall compile necessary publications and a computer database to distribute
8 information on prototype designs to local school administrative ~~units~~ units and to counties that
9 have assumed responsibility for construction of school facilities pursuant to G.S. 153A-158.1A.
10 All architects and engineers registered in North Carolina may submit plans for inclusion in the
11 computer database and these plans may be accessed by any person. The original architect of
12 record or engineer of record shall retain ownership and liability for a prototype design. The
13 State Board may adopt rules it considers necessary to implement this subsection."

14 **SECTION 8.** G.S. 115C-524 reads as rewritten:

15 **"§ 115C-524. Repair of school property; use of buildings for other than school purposes.**

16 (a) Repair of school buildings is subject to the provisions of G.S. 115C-521(c) and (d).

17 (b) It shall be the duty of local boards of education and tax-levying authorities, in order
18 to safeguard the investment made in public schools, to keep all school buildings in good repair
19 to the end that all public school property shall be taken care of and be at all times in proper
20 condition for use. It shall be the duty of all principals, teachers, and janitors to report to their
21 respective boards of education immediately any unsanitary condition, damage to school
22 property, or needed repair. All principals, teachers, and janitors shall be held responsible for the
23 safekeeping of the buildings during the school session and all breakage and damage shall be
24 repaired by those responsible for same, and where any principal or teacher shall permit damage
25 to the public school buildings by lack of proper discipline of pupils, such principal or teacher
26 shall be held responsible for such damage: Provided, principals and teachers shall not be held
27 responsible for damage that they could not have prevented by reasonable supervision in the
28 performance of their duties.

29 Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education
30 may adopt rules and regulations under which they may enter into agreements permitting
31 non-school groups to use school real and personal property, except for school buses, for other
32 than school purposes so long as such use is consistent with the proper preservation and care of
33 the public school property. If a county has assumed ownership of school property pursuant to
34 G.S. 153A-158.2, the local board of education shall permit the use of that property by
35 nonschool groups, only as authorized by the county commissioners. No liability shall attach to
36 any board of education, individually or collectively, or any board of commissioners,
37 individually or collectively, for personal injury suffered by reason of the use of such school
38 property pursuant to such agreements."

39 **SECTION 9.** G.S. 115C-526 reads as rewritten:

40 **"§ 115C-526. Reward for information leading to arrest of persons damaging school**
41 **property.**

42 Local boards of education and counties are authorized and empowered to offer and pay
43 rewards in an amount not exceeding three hundred dollars (\$300.00) for information leading to
44 the arrest and conviction of any persons who willfully deface, damage, destroy or commit acts
45 of vandalism or larceny of, the property belonging to the public school system or the county
46 under the jurisdiction of and administered by any local board of education."

47 **SECTION 10.** G.S. 115C-530 reads as rewritten:

48 **"§ 115C-530. Operational leases of school buildings and school facilities.**

49 (a) Local boards of education or counties acting pursuant to G.S. 153A-158.1A may
50 enter into operational leases of real or personal property for use as school buildings or school
51 facilities. Operational leases entered into by local boards of education for terms of less than

three years shall not be subject to the approval of the board of county commissioners. Operational leases entered into by local boards of education 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) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation.
- (2) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the lease for the current fiscal year.
- (3) The leases are approved by a resolution adopted by the board of county commissioners. If an operational lease is approved by the board of county commissioners, in each year the county commissioners shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the lease.
- (4) Any construction, repair, or renovation of the property is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines.

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

(b) Local boards of education or counties acting pursuant to G.S. 153A-158.1A may enter into contracts for the construction, repair, or renovation of leased property if (i) the budget resolution includes an appropriation authorizing the obligation, (ii) an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year, and (iii) the construction, repair, or renovation is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines. Construction, repair, or renovation work undertaken or contracted by a private developer is subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Contracts for new construction and renovation entered into by a local board of education that are subject to the bidding requirements of G.S. 143-129(a) and which do not constitute continuing contracts for capital outlay must be approved by the board of county commissioners.

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

SECTION 11. G.S. 115C-533 reads as rewritten:

"§ 115C-533. Duty of State Board to operate insurance system.

The State Board shall have the duty to manage and operate a system of insurance for public school property. The State Board shall make this insurance available to counties for school property owned by counties under the same terms and conditions as if the school administrative unit had owned such property."

SECTION 12. G.S. 115C-534(a) reads as rewritten:

"§ 115C-534. Duty to insure property.

(a) The board of every local school administrative unit in the public school system of this State, State or the county commissioners if the county has ownership of a school building, in order to safeguard the investment made in public schools, shall:

- (1) Insure and keep insured to the extent of not less than seventy-five percent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage.
- (2) Insure and keep insured adequately the equipment and contents of said building."

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SECTION 13. This act is effective when it becomes law.