

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE DRS35200-MH-55 (02/12)

Short Title: School Building Leasing Reform. (Public)

Sponsors: Senators Meredith, Curtis, and Tillman (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.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 115C-530 reads as rewritten:

7 "§ 115C-530. **Operational-Operating leases of school buildings and school facilities.**

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

- 14 (1) The budget resolution includes an appropriation authorizing the current  
15 fiscal year's portion of the obligation.
- 16 (2) An unencumbered balance remains in the appropriation sufficient to pay in  
17 the current fiscal year the sums obligated by the lease for the current fiscal  
18 year.
- 19 (3) The leases are approved by a resolution adopted by the board of county  
20 commissioners. If an ~~operational-operating~~ lease is approved by the board of  
21 county commissioners, in each year the county commissioners shall  
22 appropriate sufficient funds to meet the amounts to be paid during the fiscal  
23 year under the lease.
- 24 (4) Any construction, repair, or renovation of the property is in compliance with  
25 the requirements of G.S. 115C-521(c) relating to energy guidelines.

26 For purposes of this section, an ~~operational-operating~~ lease is defined according to generally  
27 accepted accounting principles and may be for new or existing buildings. Any lease entered  
28 into pursuant to this section shall not be subject to the requirements of G.S. 143-128.1B.

29 (b) Local boards of education may enter into contracts for the construction, repair, or  
30 renovation of leased property if (i) the budget resolution includes an appropriation authorizing  
31 the obligation, (ii) an unencumbered balance remains in the appropriation sufficient to pay in  
32 the current fiscal year the sums obligated by the transaction for the current fiscal year, and (iii)  
33 the construction, repair, or renovation is in compliance with the requirements of  
34 G.S. 115C-521(c) relating to energy guidelines. Construction, repair, or renovation work  
35 undertaken or contracted by a private developer is subject to the requirements of Article 8 of  
36 Chapter 143 of the General Statutes. Contracts for new construction and renovation that are



1 subject to the bidding requirements of G.S. 143-129(a) and which do not constitute continuing  
2 contracts for capital outlay must be approved by the board of county commissioners.

3 (b1) Approval by Local Board of Education. – A local board of education, before  
4 entering into an operating lease pursuant to this section, shall adopt a resolution as provided in  
5 this subsection. Before adopting the resolution, the local board of education shall publish a  
6 notice of its intent to enter into an operating lease at least 10 days in advance of the date of the  
7 meeting at which the action is contemplated and in a newspaper having general circulation  
8 within the geographic area served by the local board of education. The notice shall include, at a  
9 minimum, the date, time, and place of the meeting, a description in brief and general terms of  
10 the subject of the lease, the name of the other party to the lease, and an indication of the board's  
11 intent to take action to authorize the lease at the indicated meeting. The resolution shall provide  
12 the following:

13 (1) That entering into the operating lease for one or more specified buildings or  
14 facilities is in the local school administrative unit's best interests under all  
15 the circumstances. In making this evaluation, the local board of education  
16 may consider the time, cost, and quality of design, engineering, and  
17 construction, including the time required to commence and the time required  
18 to complete a particular activity; occupancy costs, including lease payments,  
19 life cycle maintenance, repair, and energy costs; and any other factors the  
20 board deems relevant.

21 (2) That the private developer is qualified to provide, either alone or in  
22 conjunction with other identified and associated persons, the products and  
23 services called for under the proposed operating lease and any related  
24 agreements. The local board of education shall make this determination  
25 taking into account any factors the local board of education deems relevant,  
26 including the knowledge, skill, and reputation of the provider and its  
27 associated persons, the goals and plans of providers for utilization of  
28 minority business enterprises, and the costs to be incurred by the local board  
29 of education.

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

36 **SECTION 2.** Section 3 of Session Law 2006-232, as rewritten by Section 1 of  
37 Session Law 2011-234, reads as rewritten:

38 "**SECTION 3.** This act is effective when it becomes law and is ~~repealed effective July 1,~~  
39 ~~2015-law.~~"

40 **SECTION 3.** G.S. 105-164.14 reads as rewritten:  
41 "**§ 105-164.14. Certain refunds authorized.**

42 ...  
43 (c) Certain Governmental or Other Entities. – A governmental or other entity listed in  
44 this subsection is allowed an annual refund of sales and use taxes paid by it under this Article  
45 on direct purchases of tangible personal property and services, other than electricity,  
46 telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred  
47 by a governmental or other entity on building materials, supplies, fixtures, and equipment that  
48 become a part of or annexed to any building or structure that is owned or leased by the  
49 governmental or other entity and is being erected, altered, or repaired for use by the  
50 governmental or other entity is considered a sales or use tax liability incurred on direct  
51 purchases by the governmental or other entity for the purpose of this subsection. A request for a

1 refund must be in writing and must include any information and documentation required by the  
 2 Secretary. A request for a refund is due within six months after the end of the governmental or  
 3 other entity's fiscal year.

4 This subsection applies only to the following governmental entities:

5 ...

6 (27) A private developer of a school leased to a county or a local board of  
 7 education under an operating, capital, or build-to-suit lease, the term of  
 8 which equals or exceeds 10 years.

9 ...."

10 **SECTION 4.** G.S. 115C-426(f) reads as rewritten:

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

- 12 (1) The acquisition of real property for school purposes, including but not  
 13 limited to school sites, playgrounds, athletic fields, administrative  
 14 headquarters, and garages.
- 15 (2) The acquisition, construction, reconstruction, enlargement, renovation, or  
 16 replacement of buildings and other structures, including but not limited to  
 17 buildings for classrooms and laboratories, physical and vocational  
 18 educational purposes, libraries, auditoriums, gymnasiums, administrative  
 19 offices, storage, and vehicle maintenance.
- 20 (3) The acquisition or replacement of furniture and furnishings, instructional  
 21 apparatus, data-processing equipment, business machines, and similar items  
 22 of furnishings and equipment.
- 23 (4) The acquisition of school buses as additions to the fleet.
- 24 (5) The acquisition of activity buses and other motor vehicles.
- 25 (6) Lease payments for leases entered into under G.S. 115C-530 or  
 26 G.S. 115C-531.
- 27 ~~(6)~~(7) Such other objects of expenditure as may be assigned to the capital outlay  
 28 fund by the uniform budget format.

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

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

40 Appropriations in the capital outlay fund shall be funded by revenues made available for  
 41 capital outlay purposes by the State Board of Education and the board of county  
 42 commissioners, supplemental taxes levied by or on behalf of the local school administrative  
 43 unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital  
 44 assets, the proceeds of claims against fire and casualty insurance policies, and other sources.  
 45 Appropriations for the purposes set forth in subdivision (f)(6) of this section may be funded  
 46 from staff and operational savings achieved through the consolidation of existing school  
 47 facilities into new or renovated facilities leased from a private developer under G.S. 115C-530  
 48 or G.S. 115C-531."

49 **SECTION 5.** This act becomes effective July 1, 2015.