

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 554
Education/Higher Education Committee Substitute Adopted 6/24/16
PROPOSED COMMITTEE SUBSTITUTE S554-PCS45542-TM-62

Short Title: School Building Leases.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL FLEXIBILITY TO LOCAL BOARDS OF
EDUCATION TO ENTER INTO LEASES FOR SCHOOL BUILDINGS AND SCHOOL
FACILITIES AND TO REQUIRE THE STATE BOARD OF EDUCATION TO MAKE
FAST-TRACK CHARTER SCHOOL REPLICATION DECISIONS WITHIN ONE
HUNDRED TWENTY DAYS.

The General Assembly of North Carolina enacts:

SECTION 1. 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-operating~~ 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) 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-operating~~ 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-guidelines~~ and G.S. 115C-521(c1) relating to science laboratory areas.

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

(b) Local boards of education 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-and~~ G.S. 115C-521(c1) relating to science laboratory areas.



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1 Construction, repair, or renovation work undertaken or contracted by a private developer is subject
2 to the requirements of Article 8 of Chapter 143 of the General Statutes. Contracts for new
3 construction and renovation that are subject to the bidding requirements of G.S. 143-129(a) and
4 which do not constitute continuing contracts for capital outlay must be approved by the board of
5 county commissioners.

6 (c) ~~Operational-Operating~~ leases and contracts entered into under this section are subject to
7 approval by the Local Government Commission under Article 8 of Chapter 159 of the General
8 Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and
9 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3)
10 have been met, only the five hundred thousand dollar (\$500,000) threshold shall apply."

11 **SECTION 2.** Article 37 of Chapter 115C of the General Statutes is amended by
12 adding new sections to read:

13 **"§ 115C-531.1. Capital leases of school buildings and school facilities.**

14 (a) Definitions. – The following definitions apply in this section:

15 (1) Capital lease. – A capital lease as defined by generally accepted accounting
16 principles.

17 (2) Private developer. – The entity with which the school board enters into a capital
18 lease or build-to-suit lease under the provisions of this section.

19 (b) Authorization. – Local boards of education may enter into capital leases of real or
20 personal property for use as school buildings or school facilities. The capital lease may relate to an
21 existing building or a new school building to be constructed. The term of any capital lease,
22 including any renewal periods, shall not exceed 40 years from the expected date that the local
23 board of education will take occupancy of the property that is the subject of a capital lease.
24 Subsections (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this
25 section.

26 (c) Construction, Repairs, and Renovation. – The provisions of G.S. 115C-530(b) apply to
27 a capital lease under this section. A capital lease entered into under this section may provide that
28 the private developer is responsible for providing, or contracting for, construction, repair, or
29 renovation work. Construction, repair, or renovation work undertaken or contracted by a private
30 developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes.
31 Construction, repair, or renovation work undertaken or contracted by the private developer
32 involving the estimated expenditure of three hundred thousand dollars (\$300,000) or more is
33 subject to the provisions of G.S. 115C-532.1 related to build-to-suit capital leases.

34 (d) Nonsubstitution Clause. – A capital lease shall not contain a nonsubstitution clause that
35 restricts the right of a local board to continue to provide a service or activity or to replace or
36 provide a substitute for any property financed or purchased by the capital lease.

37 (e) No Deficiency Judgment; No Pledge of Taxing Power. – No deficiency judgment may
38 be rendered against any local board of education or any unit of local government, as defined in
39 G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section,
40 and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any
41 moneys due under a contract authorized by this section. A capital lease shall state that it does not
42 constitute a pledge of the taxing power or full faith and credit of the local board of education or
43 board of county commissioners.

44 (f) Budgetary Accounting. – A capital lease entered into under this section shall be
45 considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided,
46 however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal
47 year, the appropriation of funds by the county for the payment of amounts due under the capital
48 lease shall be at the discretion of the board of county commissioners.

49 (g) Local Government Commission Approval. – Capital leases entered into under this
50 section are subject to approval by the Local Government Commission under Article 8 of Chapter
51 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2),

1 and 159-148(a)(3). For purposes of determining whether the standards set out in
2 G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar (\$500,000) threshold
3 applies.

4 (h) No Agreements on Student Assignment. – A capital lease may not contain any
5 provision with respect to the assignment of specific students or students from a specific area to
6 any specific school.

7 (i) Lien Laws Not Affected. – All laws relating to liens on private property apply to
8 private property interests in a capital lease project undertaken under this section.

9 (j) Public-Private Partnership Construction Contract Law Not Applicable. – The
10 provisions of G.S. 143-128.1C shall not apply to this section.

11 **"§ 115C-532.1. Additional provisions applicable to build-to-suit capital leases.**

12 (a) Definitions. – The definitions of G.S. 115C-531.1 apply in this section. In addition, for
13 the purposes of this section, the following definitions apply:

14 (1) Build-to-suit capital lease. – A capital lease that provides for the construction of
15 new facilities or the renovation of existing facilities by the private developer,
16 the cost of which is estimated to be greater than three hundred thousand dollars
17 (\$300,000).

18 (2) Prime contractor. – A contractor who contracts directly with the private
19 developer or the private developer's construction manager at risk, if any, for
20 construction, repair, or renovation work under this section.

21 (b) Applicability of Provisions of G.S. 115C-531.1. – All of the provisions of
22 G.S. 115C-531.1 apply in this section.

23 (c) Contract Provisions. – A build-to-suit capital lease may include contractual provisions
24 by the private developer regarding the provision of products, services, and guaranties related to a
25 facility that is the subject of a capital lease. A local board of education may also enter into a
26 separate agreement or series of related agreements regarding the provision of products, services,
27 and guaranties related to a facility that is the subject of a capital lease; provided all agreements are
28 approved by the board of county commissioners in connection with the approval of the
29 build-to-suit capital lease.

30 (d) Approval by Local Board of Education. – Before entering into a build-to-suit capital
31 lease pursuant to this section, the local board of education shall adopt a resolution as provided in
32 this subsection. Before adopting the resolution required by this subsection, the local board of
33 education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10
34 days in advance of the date of the meeting at which the action is contemplated and in a newspaper
35 having general circulation within the geographic area served by the local board of education. The
36 notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief
37 and general terms of the subject of the lease, the name of the other party to the lease, and an
38 indication of the board's intent to take action to authorize the lease at the indicated meeting. The
39 resolution shall provide the following:

40 (1) That entering into the build-to-suit capital lease for one or more specified
41 buildings or facilities is in the unit's best interests under all the circumstances.
42 In making this evaluation, the local board of education may consider the time,
43 cost, and quality of design, engineering, and construction, including the time
44 required to begin and the time required to complete a particular activity;
45 occupancy costs, including lease payments, life-cycle maintenance, repair, and
46 energy costs; and any other factors the board deems relevant.

47 (2) That the private developer is qualified to provide, either alone or in conjunction
48 with other identified and associated persons, the products and services called
49 for under the proposed capital lease and any related agreements. The local
50 board of education shall make this determination, taking into account any
51 factors the local board deems relevant, including the knowledge, skill, and

1 reputation of the provider and its associated persons, the goals and plans of
2 providers for utilization of minority business enterprises, and the costs to be
3 incurred by the local board of education.

4 (e) Submission to Board of County Commissioners. – The board shall submit the
5 resolution to the board of county commissioners as provided in this subsection. The board of
6 education shall forward its resolution to the board of county commissioners, together with any
7 supporting documentation relied on by the board of education in making the findings in the
8 resolution as the board of county commissioners may request. The board of county commissioners
9 shall review the resolution and supporting documentation and no later than 45 days after receiving
10 the resolution and the supporting documentation requested either affirm or reject the resolution of
11 the board of education. If the board of county commissioners rejects the resolution, the board of
12 education shall not enter into the lease.

13 (f) Additional Requirements Regarding Design Services. – All architectural, engineering,
14 and survey services shall be procured in accordance with the provisions of Article 3D of Chapter
15 143 of the General Statutes. Required design and engineering services shall be performed by an
16 engineer or a licensed architect to the extent permitted under G.S. 83A-13(b). Specifications for
17 any new school building shall be consistent with the requirements of G.S. 143-128(a). All
18 applicable requirements for the review or approval of design and specifications for school
19 buildings by the Department of Public Instruction and the Department of Insurance apply to
20 school buildings constructed, repaired, or renovated under a capital lease authorized under this
21 section.

22 (g) Additional Requirements Regarding Construction Services. – A private developer is
23 required to seek competition and minority business participation in connection with all
24 construction work under this section in accordance with the following provisions:

25 (1) A private developer shall either (i) solicit bids from prime contractors for all
26 construction work under this section or (ii) select a construction manager at risk
27 through a qualification-based process in which case the selected construction
28 manager at risk shall solicit bids from all of its prime contractors for all
29 construction work under this section.

30 (2) The private developer or its construction manager at risk may prequalify
31 contractors. The prequalification criteria, if any, shall be determined by the
32 local board of education and the private developer to address quality,
33 performance, the time specified in the bids for performance of the contract, the
34 cost of construction oversight, time for completion, capacity to perform, and
35 other factors deemed appropriate by the private developer and the local board of
36 education.

37 (3) A private developer and its construction manager at risk, if any, shall comply
38 with the requirements applicable to a public entity pursuant to G.S. 143-128.2,
39 and prime contractors shall comply with the provisions of G.S. 143-128.2
40 applicable to contractors, except the private developer and its construction
41 manager shall adopt the local board of education's minority participation goal.
42 The local board of education shall require the private developer to submit its
43 plan for compliance with G.S. 143-128.2 for approval by the local board of
44 education prior to the private developer soliciting bids under this subsection.

45 (4) A private developer or its construction manager at risk shall publicly advertise
46 at least 30 days in advance of the bid date in a newspaper having general
47 circulation within the geographic areas served by the local board of education,
48 shall open bids publicly, and shall award each contract to the lowest
49 responsible, responsive, and prequalified bidder, taking into consideration
50 quality, performance, the time specified in the bids for performance of the
51 contract, the cost of construction oversight, time for completion, compliance

1 with G.S. 143-128.2, and any other factors deemed appropriate by the private
2 developer and the local board of education and included in the bid solicitation.
3 A private developer or its construction manager at risk shall enter into the
4 construction contracts directly with the successful bidder. After the award of a
5 contract or contracts, the private developer or its construction manager at risk
6 and any contractor may negotiate and reach agreement with the successful
7 bidder on modifications to all aspects of the contract, including the time for
8 performance, the scope of the work, and the price to be paid.

9 (5) The local board of education, in its discretion, may require the private
10 developer to provide a performance and payment bond for construction work in
11 accordance with the provisions of Article 3 of Chapter 44A of the General
12 Statutes and may require the private developer to provide a bond or other
13 appropriate guarantee to cover any other guarantees, products, or services to be
14 provided by the private developer.

15 (h) Predevelopment Agreements with Private Developer Authorized. – Local boards of
16 education may enter into predevelopment agreements with a private developer in advance of
17 entering into a build-to-suit capital lease. Predevelopment agreements with private developers
18 shall be approved by the board of county commissioners. Predevelopment agreements may include
19 provisions for each of the following:

20 (1) Site selection, land acquisition, and site preparation, including such services as
21 wetlands delineation, archaeological review, and State and local government
22 land-use permitting.

23 (2) Building programming and design, including both architectural and engineering
24 services pursuant to subsection (d) of this section.

25 (i) Real Estate Transfer Authorized. – Notwithstanding any contrary provisions of law, a
26 city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell,
27 lease, or otherwise transfer real or personal property to any private developer for construction,
28 repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to
29 this section. The conveying unit may subject the property to any covenants, conditions, or
30 restrictions as the unit deems to be necessary to carry out the purposes of this section. The
31 disposition of property pursuant to this subsection is not subject to the requirements of
32 G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless
33 it is approved by the board of county commissioners.

34 (j) Additional Permitted Lease Terms. – In recognition of the potential economic and
35 technical utility of build-to-suit capital leases, which include in their scope combinations of
36 design, construction, operation, management, and maintenance responsibilities over prolonged
37 periods of time, and the potential desirability of a single point of responsibility for these matters in
38 connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions
39 imposing responsibility on the private developer or any identified affiliated entity for any of the
40 following matters:

41 (1) Site selection, land acquisition, and site preparation, including wetlands
42 delineation, archaeological review, and State and local government land-use
43 permitting.

44 (2) Facility programming, planning, and design, including both architectural and
45 engineering services.

46 (3) Qualification and prequalification of contractors and subcontractors.

47 (4) Construction and construction management.

48 (5) Financing.

49 (6) Facility maintenance and repairs.

50 (7) Energy usage guarantees.

- 1 (8) Transfer of ownership of the leased property to a local government entity at the
2 end of the lease term.
- 3 (9) Any other guaranties, products, and services as the local board of education
4 may determine.
- 5 (k) Letter of Credit. – A private developer shall provide an irrevocable letter of credit for
6 the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total
7 cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain
8 the letter of credit throughout the construction of the project and for the succeeding six-month
9 period.
- 10 (l) Public-Private Partnership Construction Contract Law Not Applicable. – The
11 provisions of G.S. 143-128.1C shall not apply to this section."

12 **SECTION 3.** G.S. 143-129(e) is amended by adding a new subdivision to read:

13 "(e) Exceptions. – The requirements of this Article do not apply to:

14 ...

15 (13) Build-to-suit capital leases with a private developer under G.S. 115C-532.1."

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

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

- 18 (1) The acquisition of real property for school purposes, including but not limited
19 to school sites, playgrounds, athletic fields, administrative headquarters, and
20 garages.
- 21 (2) The acquisition, construction, reconstruction, enlargement, renovation, or
22 replacement of buildings and other structures, including but not limited to
23 buildings for classrooms and laboratories, physical and vocational educational
24 purposes, libraries, auditoriums, gymnasiums, administrative offices, storage,
25 and vehicle maintenance.
- 26 (3) The acquisition or replacement of furniture and furnishings, instructional
27 apparatus, data-processing equipment, business machines, and similar items of
28 furnishings and equipment.
- 29 (4) The acquisition of school buses as additions to the fleet.
- 30 (5) The acquisition of activity buses and other motor vehicles.
- 31 (5a) Lease payments for leases entered into under G.S. 115C-530, 115C-531.1, or
32 115C-532.1.
- 33 (6) Such other objects of expenditure as may be assigned to the capital outlay fund
34 by the uniform budget format.

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

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

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

1 **SECTION 4.5.** If House Bill 242, 2015 Regular Session, becomes law, then Section 2
2 of that act reads as rewritten:

3 **"SECTION 2.** Section 6.5 of S.L. 2014-101 reads as rewritten:

4 **"SECTION 6.5.** Upon recommendations by the Office of Charter Schools and the Charter
5 Schools Advisory Board, the State Board of Education shall adopt a process and rules for
6 fast-track replication of high-quality charter schools currently operating in the State. The State
7 Board of Education shall not require a planning year for applicants selected through the fast-track
8 replication process. In addition to the requirements for charter applicants set forth in Part 6A of
9 Article 16 of Chapter 115C of the General Statutes, the fast-track replication process adopted by
10 the State Board of Education shall, at a minimum, require a board of directors of a charter school
11 to demonstrate one of the following in order to qualify for fast-track replication:

- 12 (1) A charter school in this State governed by the board of directors has student
13 academic outcomes that are comparable to the academic outcomes of students
14 in the local school administrative unit in which the charter school is located and
15 can provide three years of financially sound audits.
- 16 (2) The board of directors agrees to contract with an education management
17 organization or charter management organization that can demonstrate that it
18 can replicate high-quality charter schools in the State that have proven student
19 academic success and financial soundness.

20 The State Board of Education shall ensure that the rules for a fast-track replication process provide
21 that decisions by the State Board of Education on whether to grant a charter through the
22 replication process are completed in less than 120 days from the application submission date but in
23 no event later than October 15 of the year immediately preceding the year of the proposed school
24 opening. The State Board of Education shall adopt rules and procedures required by this section
25 within 90 days of the effective date of this act, and report to the Joint Legislative Education
26 Oversight Committee within 120 days of the effective date of this act. ""

27 **SECTION 5.** G.S. 105-164.14(c) reads as rewritten:

28 **"§ 105-164.14. Certain refunds authorized.**

29 ...

30 (c) Certain Governmental Entities. – A governmental entity listed in this subsection is
31 allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of
32 tangible personal property and services. Sales and use tax liability indirectly incurred by a
33 governmental entity on building materials, supplies, fixtures, and equipment that become a part of
34 or annexed to any building or structure that is owned or leased by the governmental entity and is
35 being erected, altered, or repaired for use by the governmental entity is considered a sales or use
36 tax liability incurred on direct purchases by the governmental entity for the purpose of this
37 subsection. The refund allowed under this subsection does not apply to purchases of electricity,
38 telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid
39 meal plan. A request for a refund must be in writing and must include any information and
40 documentation required by the Secretary. A request for a refund is due within six months after the
41 end of the governmental entity's fiscal year.

42 This subsection applies only to the following governmental entities:

43 ...

44 (27) A county with respect to facilities for public schools under a lease with a term
45 that equals or exceeds 10 years and that is either an operating, capital, or
46 build-to-suit lease."

47 **SECTION 6.** This act becomes effective July 1, 2016, and applies to contracts entered
48 into on or after that date.