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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.