

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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PRINCIPAL CLERK

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SENATE BILL DRS35223-MQ-97

Short Title: School Lease Payments-Use of Lottery Funds. (Public)

Sponsors: Senators Sawyer and Tillman (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TIER THREE COUNTIES ELIGIBLE FOR THE NEEDS-BASED
3 PUBLIC SCHOOL CAPITAL FUND AND TO AUTHORIZE COUNTIES TO USE
4 FUNDS FROM THE PUBLIC SCHOOL BUILDING CAPITAL FUND FOR NEW
5 CONSTRUCTION LEASES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Section 5.3(d) of S.L. 2017-57, as amended by Section 5.3 of S.L.
8 2018-5, reads as rewritten:

9 **"SECTION 5.3.(d)** It is the intent of the General Assembly to increase the amount of North
10 Carolina Education Lottery net lottery revenue collected that is dedicated to assist local
11 governments in meeting local school capital needs from sixteen and nine-tenths percent (16.9%)
12 of net lottery revenue collected in the 2016-2017 fiscal year to forty percent (40%) of net lottery
13 revenue collected no later than the 2028-2029 fiscal year. To that end, there is created the
14 Needs-Based Public School Capital Fund as an interest-bearing, nonreverting special fund in the
15 Department of Public Instruction. The State Treasurer shall be the custodian of the Needs-Based
16 Public School Capital Fund and shall invest its assets in accordance with the provisions of
17 G.S. 147-69.2 and G.S. 147-69.3. The Needs-Based Public School Capital Fund shall be used to
18 award grants to counties ~~designated as a development tier one area or a development tier two~~
19 ~~area, as defined by G.S. 143B-437.08,~~ to assist with their critical public school building capital
20 needs. The Superintendent of Public Instruction shall award grants to counties in accordance with
21 the following priorities:

- 22 (1) Counties designated as development tier one areas.
23 (2) Counties with greater need and less ability to generate sales tax and property
24 tax revenue.
25 (3) Counties with a high debt-to-tax revenue ratio.
26 (4) The extent to which a project will address critical deficiencies in adequately
27 serving the current and future student population."

28 **SECTION 2.** Section 5.3(e) of S.L. 2017-57, as amended by Section 1.1(a) of S.L.
29 2017-187, Section 1.1 of S.L. 2017-212, Section 5.3 of S.L. 2018-5, and Section 3A.1(a) of S.L.
30 2018-80, reads as rewritten:

31 **"SECTION 5.3.(e)** Grant funds awarded under this section shall be subject to a matching
32 requirement from the recipient county as follows:

- 33 (1) For a county designated as a development tier one area, the grant shall not
34 exceed three dollars (\$3.00) in grant funds for every one dollar (\$1.00)
35 provided by the county. Grant funds awarded to a county designated as a



1 development tier one area shall not exceed fifteen million dollars
2 (\$15,000,000).

- 3 (2) For a county designated as a development tier two or tier three area, the grant
4 shall not exceed one dollar (\$1.00) for every one dollar (\$1.00) in grant funds
5 provided by the county. Grant funds awarded to a county designated as a tier
6 two area shall not exceed ten million dollars (\$10,000,000).

7 Grant funds shall be used for the construction of new school buildings only. Grant funds shall
8 not be used for real property acquisition. Grant funds shall be disbursed in a series of payments
9 based on the progress of the project. To obtain a payment, the grantee shall submit a request for
10 payment along with documentation of the expenditures for which the payment is requested and
11 evidence that the matching requirement contained in subsection (b) of this section has been met.
12 Grant funds shall not be awarded to any county that has received an aggregate amount exceeding
13 eight million seven hundred fifty thousand dollars (\$8,750,000) in funds from the Public School
14 Building Capital Fund from the 2012-2013 fiscal year to the 2016-2017 fiscal year. No county
15 may receive grant funds under this section more than once every five years. No portion of grant
16 funds may be used to acquire a Leadership in Energy and Environmental Design (LEED)
17 certification. For fiscal year 2018-2019, for the purposes of this section, a county shall be
18 considered to be designated as a development tier one area if (i) it was so designated by the
19 Department of Commerce in 2017 or 2018 and (ii) the county filed a grant application under this
20 section in 2017."

21 **SECTION 3.** G.S. 115C-546.2 reads as rewritten:

22 **"§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund;
23 matching requirements.**

24 (a) Repealed by Session Laws 2013-316, s. 2.4(b), effective July 23, 2013, and Session
25 Laws 2017-206, s. 7(a), effective August 30, 2017.

26 (b) Counties shall use monies previously credited to the Fund by the Secretary of
27 Revenue pursuant to G.S. 115C-546.1(b) for capital outlay projects including the planning,
28 construction, reconstruction, enlargement, improvement, repair, or renovation of public school
29 buildings and for the purchase of land for public school buildings; for equipment to implement a
30 local school technology plan; or for both. Monies used to implement a local school technology
31 plan shall be transferred to the State School Technology Fund and allocated by that Fund to the
32 local school administrative unit for equipment.

33 As used in this section, "public school buildings" only includes facilities for individual
34 schools that are used for instructional and related purposes and does not include centralized
35 administration, maintenance, or other facilities.

36 In the event a county finds that it does not need all or part of the funds allocated to it for
37 capital outlay projects including the planning, construction, reconstruction, enlargement,
38 improvement, repair, or renovation of public school buildings, for the purchase of land for public
39 school buildings, or for equipment to implement a local school technology plan, the unneeded
40 funds allocated to that county may be used to retire any indebtedness incurred by the county for
41 public school facilities.

42 In the event a county finds that its public school building needs and its school technology
43 needs can be met in a more timely fashion through the allocation of financial resources previously
44 allocated for purposes other than school building needs or school technology needs and not
45 restricted for use in meeting public school building needs or school technology needs, the county
46 commissioners may, with the concurrence of the affected local Board of Education, use those
47 financial resources to meet school building needs and school technology needs and may allocate
48 the funds it receives under this Article for purposes other than school building needs or school
49 technology needs to the extent that financial resources were redirected from such purposes. The
50 concurrence described herein shall be secured in advance of the allocation of the previously

1 unrestricted financial resources and shall be on a form prescribed by the Local Government
2 Commission.

3 (c) Monies in the Fund previously credited to the Fund by the Secretary of Revenue
4 pursuant to G.S. 115C-546.1(b) allocated for capital projects shall be matched on the basis of one
5 dollar of local funds for every three dollars of State funds. Such monies in the Fund transferred
6 to the State Technology Fund do not require a local match.

7 Revenue received from local sales and use taxes that is restricted for public school capital
8 outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local
9 matching requirement. Funds expended by a county after July 1, 1986, for land acquisition,
10 engineering fees, architectural fees, or other directly related costs for a public school building
11 capital project that was not completed prior to July 1, 1987, may be used to meet the local match
12 requirement.

13 (d) If funds are appropriated from the Education Lottery Fund to the Public School
14 Building Capital Fund, such funds shall be allocated for school capital construction projects on
15 a per average daily membership basis according to the average daily membership for the budget
16 year as determined and certified by the State Board of Education.

17 (1), (2) Repealed by Session Laws 2013-360, s. 6.11(b), effective July 1, 2013.

18 (3) No county shall have to provide matching funds required under subsection (c)
19 of this section.

20 (4) A county may use monies in this Fund to pay for school construction projects
21 in local school administrative units and to retire indebtedness incurred for
22 school construction projects.

23 (5) A county may not use monies in this Fund to pay for school technology needs.

24 (6) A county may use monies in this Fund for lease agreements that meet the
25 criteria provided in subsection (g) of this section.

26 (e) The State Board of Education may use up to one million five hundred thousand dollars
27 (\$1,500,000) each year of monies in the Fund to support positions in the Department of Public
28 Instruction's Support Services Division.

29 (f) If a county has received a grant fund award from the Needs-Based Public School
30 Capital Fund, that county shall be ineligible to receive allocations from the Public School
31 Building Capital Fund for a period of five years from the date the grant funds were awarded.

32 (g) In addition to the purposes provided in this section, a county may utilize monies in
33 this Fund to enter into a lease agreement for the construction of new school facilities if all of the
34 following criteria are met:

35 (1) Ownership of the subject property on which the leased school is constructed
36 shall be retained by the county.

37 (2) The lease agreement shall include a repairs and maintenance provision that
38 requires the landlord to bear the entire expense of all repairs, maintenance,
39 alterations, or improvements to the basic structure, fixtures, appurtenances,
40 and grounds of the subject property for the term of the lease.

41 (3) The lease agreement shall be for a term of at least 15 years and no more than
42 25 years.

43 (4) A county that has entered into a lease agreement shall provide a copy of the
44 lease agreement to the Department of Public Instruction.

45 For the purposes of this subsection, the term "lease agreement" shall include any ancillary
46 agreements or predevelopment agreements entered into in anticipation of or in accordance with
47 a lease. A lease agreement entered into pursuant to this subsection shall be subject to the
48 requirements of Article 8 of Chapter 159 of the General Statutes. In determining whether the
49 lease agreement is necessary or expedient, pursuant to G.S. 159-151(a)(1) and
50 G.S. 159-151(b)(1), the Local Government Commission may consider any other relevant
51 construction and financing methods available to the county."

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SECTION 4. This act is effective when it becomes law.