



HOUSE BILL 600: School Construction Flexibility.

2017-2018 General Assembly

Committee:	House Finance	Date:	April 25, 2017
Introduced by:	Reps. J. Bell, Lewis, Brenden Jones, Goodman	Prepared by:	Greg Roney Committee Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 600 would allow certain local boards of education to use all funds allotted by the State Board of Education (except for those allotted for classroom teachers and teacher assistants) to be used to pay lease payments. The bill would also add additional requirements for local boards of education prior to entering into operating leases. Finally, the bill would make modifications to the Qualified Zone Academy Bond (QZAB) program regarding prioritization and conditions of use.

SECTIONS 1 and 3 – Use of Allotted Funds

CURRENT LAW: Under G.S. 115C-408, facilities requirements for local school administrative units (LEAs) are to be met by county governments. G.S. 115C-105.25 allows local boards of education to transfer funds between allotment categories with certain exceptions. Examples of these exceptions are: (i) funds for children with disabilities and career and technical education, which can be transferred only as allowed by federal law; (ii) funds cannot be transferred into the central office administration allotment category; (iii) funds cannot be transferred out of the teacher assistants allotment category; and (iv) Read to Achieve funds cannot be transferred.

BILL ANALYSIS: House Bill 600 would allow local boards of education of LEAs located in a development Tier I area to use any funds allotted by the State Board of Education (SBE), except classroom teacher and teacher assistant allotments, for lease payments for operating leases under G.S. 115C-530. The provision would specify that neither the State nor the SBE would be obligated to provide funds for any lease payments for any operating leases entered by a local board of education and that those leases would not be secured by the faith, credit, or taxing power of the State. The county in which the LEA is located would be responsible for payments for any operating leases entered into by the local board of education if amount of funds allotted by the SBE to the LEA are decreased at any time.

The lease payments for the operating leases would be a part of the appropriations from the local capital outlay fund.

SECTION 2 – Operating Leases

CURRENT LAW: Local boards of education can enter into leases of real or personal property for use as school buildings or school facilities. Leases that are for terms of less than 3 years are not subject to the approval of the board of county commissioners. Leases for terms of 3 years or longer are allowed if the following are met: (i) the budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation; (ii) an unencumbered balance remains in the appropriation that can pay in the current fiscal year the money obligated by the lease for that year; (iii) the leases are approved by the board of county commissioners; and (iv) any construction, repair, or renovation of the property is in compliance with energy guidelines.

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Local boards of education can enter into contracts for the construction, repair, or renovation of leased property if (i) the budget resolution includes money authorizing the obligation; (ii) an unencumbered balance remains in the appropriation that can pay in the current fiscal year the money obligated for that year; and (iii) the construction, repair, or renovation is in compliance with energy guidelines.

This repair work undertaken by a private contractor is subject to Article 8 of Chapter 143 of the General Statutes which sets out the procedure for public contracts. An operating lease is subject to approval by the Local Government Commission (LGC) to the extent that the lease satisfies one or more of the conditions relating to financing agreements requiring approval by the LGC. These conditions are (i) the agreement extends for at least 5 years, (ii) the agreement obligates the unit to pay sums of money to another, regardless of whether the payee is a party to the contract, or (iii) the agreement obligates the unit to payments of over \$500,000.

BILL ANALYSIS: House Bill 600 would change the term "operational lease" to "operating lease". The bill would require that operating leases entered into by local boards of education with private developers for new school buildings must be on a site owned by either the local board of education or the county and a ground lease must be entered with the private developer. For construction, repair, or renovation work, the private developer that was contracted with must select a general contractor through methods provided in Article 8 of Chapter 143 such as single prime bidding, design-build. The private developer must provide letters of credit or payment bond of 100% of the fees for any design and contracting services.

Local boards of education who pursue operating leases with private developers for school buildings or facilities must adopt resolutions for the reason for the operating lease and descriptions of the buildings being proposed. Local boards of education must issue a public notice of the question for the qualifications of private developers and evaluate their qualifications. A local board of education must select the private developer by considering (i) evidence of financial stability and experience; (ii) knowledge, skill, and reputation of the developer and statement of availability for the project and projected timeline; and (iii) goals and plans for the utilization of minority business enterprises.

After the evaluation of the private developers, the 3 most highly qualified developers must be ranked and if there are not 3 developers that are ranked, then the local board must solicit for developers again. If the second solicitation still does not result in 3, then the local board can negotiate with the highest-ranked developer.

This section would specify that if a local board of education that enters into an operating lease of real property for use as a school building or facilities, then the county may borrow money under the federal Qualified Zone Academy Bond program (described below) and the lease must be for at least 10 years.

SECTION 4 – QZAB Program

CURRENT LAW: In 1997, Congress created the qualified zone academy bonds (QZABS) to allow qualifying schools to raise funds for: (i) the rehabilitating or repairing the public school facility in which the academy is established; (ii) providing equipment for use at such academy; (iii) developing course materials for education to be provided at such academy; and (iv) training teachers and other school personnel in such academy. 26 U.S.C. 54E. The SBE is designated as the State agency in North Carolina for administering the QZAB program. As a result, the SBE must define the areas and schools eligible under federal law to participate; design an application process to solicit proposals; determine the eligibility of an applicant; and award the State's allocation of funds; establish the conditions of the use of the funds; and confirm that the terms of any QZAB bonds issued are consistent with federal law.

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G.S. 115C-489.6(a) specifically provides that among the conditions established by the SBE, the following must be included: (i) requiring that the bond proceeds only be used for the rehabilitation or repairing of the public school facility including wiring and other infrastructure improvements related to technology and related equipment.

BILL ANALYSIS: Section 4 of the bill directs that the application process must ensure that the bond proceeds are allocated to prioritize use in counties with greater economic distress which are the Tier I counties. In establishing the conditions for the use of the bonds, the SBE must require that the bond proceeds be used for any purpose allowed under 26 U.S.C. 54E for facilities under an operating lease described in the previous section.

EFFECTIVE DATE: Section 1 of the bill would become effective July 1, 2017. The remainder of the bill is effective when it becomes law. Section 2 of the bill applies to agreements, sites leased, and leases entered into on or after that date. Section 3 applies to appropriations made on or after that date and Section 4 applies to bond proceeds used on or after that date.

Drupti Chauhan with the Legislative Analysis Division substantially contributed to this summary.