



2017-2018 General Assembly

SENATE BILL 99: Appropriations Act of 2018, Sec. 38.8: Allow Cities to Use Revenues for Public Education

Committee:		Date:	July 13, 2018
Introduced by:		Prepared by:	Trina Griffin Staff Attorney
Analysis of:	Sec. 38.8 of S.L. 2018-5		

OVERVIEW: *Sec. 38.8 of S.L. 2018-5, as amended by Sec. 11.1 of S.L. 2018-97, authorizes, but does not require, cities to levy property taxes to supplement funding for elementary and secondary public education that benefits the residents of the city and to appropriate those revenues, in addition to any other unrestricted revenues,¹for that purpose.*

This section became effective July 1, 2018, and applies to revenues derived from taxes levied on or after that date.

CURRENT LAW: Cities may levy property taxes for any of the purposes listed in G.S. [160A-209\(c\)](#) up to a combined rate of \$1.50 per \$100.00 of appraised value of property subject to taxation. The statute lists over 30 stated purposes, including ambulance services, animal control, beach erosion, community development, elections, fire protection, housing, hospitals, public transportation, solid waste, streets, and water resources, to name a few. A city may exceed this rate by holding a referendum. Under current law, cities are not authorized to use property tax revenue for schools or for public education.

BILL ANALYSIS:

Authorization. – This section authorizes, but does not require, cities to levy property taxes to supplement funding for elementary and secondary public education that benefits residents of the city. Cities may appropriate funds to "public schools," which are defined to include schools under the control of a local board of education, charter schools, innovative schools, laboratory schools, and regional schools, and may earmark those funds for specific uses at particular schools.

Procedurally, if a public school is under the control of a local board of education, then the appropriation for that school would be made to the local board of education of the local school administrative unit. For a school that is not under the control of a local board, the appropriation would be made directly to the school.

Use of Funds. – A city may appropriate funds to a school located inside or outside the city limits, but the use of funds must ultimately benefit the residents of the city. To accomplish this objective, the statute limits the use of funds as follows:

For a public school located *inside* the city limits, the funds may be made as a lump sum to each school or on a per pupil basis and may be used for the following:

- Capital expenses

¹ Unrestricted revenues would include proceeds derived from the tax on the short-term lease or rental of vehicles, the tax on short-term heavy equipment rentals, animal taxes, the city portion of the first two cents of the local sales and use tax, amounts distributed to cities from beer and wine taxes and the State sales tax on utilities.

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- Current operating expenses
- Other specific uses directed by the city

These purposes include entering into operational or financing leases for real property or mobile classroom units for use as school facilities or for payments on loans for facilities, equipment, or operations. However, these funds may not be used to purchase land, school facilities, or mobile classrooms. Moreover, any contract or lease must include a statement that it does not constitute an indebtedness or obligation of the municipality.

For a public school located *outside* the city limits, the funds may be used on a per pupil basis for students attending that school who are residents of the city for the following:

- Current operating expenses
- Other specific uses directed by the city

In other words, a city may not use property tax revenues for capital expenses outside the city limits.

Cities are afforded fairly broad flexibility under these provisions; there is no requirement that a municipality apportion the funding proportionally among schools inside the city limits versus outside the city limits or among types of schools, such as traditional schools versus charter schools.

For more information, the School of Government has authored a blog post on this legislation, which can be found [here](#).

EFFECTIVE DATE: This section became effective July 1, 2018, and applies to revenues derived from taxes levied on or after that date.

BACKGROUND: As background regarding the rationale for creating a distinction between permissible expenditures inside a city's limits versus outside a city's limits, there is case law interpreting certain constitutional limits on tax expenditures. Article V, Section 2 of the North Carolina Constitution states, "*The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.*" With respect to a municipality's power to tax, the "public purpose" doctrine has been interpreted to mean that the power must be exercised for the benefit, welfare, and protection of its inhabitants and must involve a reasonable connection with the convenience and necessity of the municipality whose aid is being extended. In other words, the citizens being taxed by their local government must benefit, whether directly or indirectly, from tax expenditures made by that local government. Thus, when tax revenues are expended outside the territorial jurisdiction from which they were levied, it raises a potential issue.

In cases that have involved a local government constructing facilities or providing services outside the jurisdiction, the courts have tended to focus on the benefit to the unit's citizens rather than the location of the facility or program. The North Carolina courts have upheld city support of an armory located outside the city (*Morgan v. Town of Spindale*, 254 N.C. 304); city support of a city-county library, even when some city funds were spent outside the city (*Jamison v. City of Charlotte*, 239 N.C. 682); and one county's payment of three-fourths of the cost of a bridge connecting it to a neighboring county, even though most of the bridge was in the neighboring county (*Martin County v. Wachovia Bank & Trust Co.*, 178 N.C. 26). In each case, the court determined that the actual benefit to the citizens of the taxing unit justified the extraterritorial expenditure.

In light of this constitutional jurisprudence, the authority given to cities under this section to expend tax revenues outside the jurisdiction is limited by the specific requirement that it benefit residents of the city through distribution on a per pupil basis, who are residents of the city, and that it not be used for capital expenditures.