



SENATE BILL 733: UNC Capital Projects/Grace for CCRC.

2019-2020 General Assembly

Committee: House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House **Date:** June 17, 2020

Introduced by: Sens. Newton, Gunn **Prepared by:** Cindy Avrette

Analysis of: PCS to First Edition **Staff Attorney**

S733-CSRbx-38

OVERVIEW: *The House PCS for Senate Bill 733 would do two things:*

- *It would authorize the financing and construction of listed capital improvement projects by the constituent institutions of The University of North Carolina. The projects will be financed through revenue bonds, special obligation bonds, and other funds available to the institutions, excluding tuition and appropriations from the General Fund.*
- *It would direct the Department of Revenue to forgive a sales tax assessment imposed on a continuing care retirement facility for failure to collect and remit sales tax on taxable transactions. The relief would apply to assessments attributable to the failure to collect sales tax on items subject to State and local sales and use tax sold for a period beginning before January 1, 2021.*

PART I. UNC CAPITAL PROJECTS

Part I of the House PCS for Senate Bill 733 would authorize two campuses of The University of North Carolina (UNC) to finance and construct capital improvement projects. The proposed indebtedness authorized under this bill is not a debt of the State.

UNC is authorized to change, with approval of the Director of the Budget, the means of finance and increase or decrease the cost of the project. UNC can issue debt plus an additional 5% of the total cost of the project, including any increase authorized by the Director of the Budget, to cover the cost of debt issuance.

The table below lists the projects.

Campus	Project	Amount
University of North Carolina at Chapel Hill	Morehead Chemistry Laboratory HVAC Upgrades	22,000,000
University of North Carolina at Chapel Hill	Campus-Wide Life Safety Upgrades – Phase 1	\$6,500,000
Western Carolina University	Lower Campus Residence Halls Phase 2 ¹	20,000,000

¹ S.L. 2019-124 authorized Western Carolina University to finance \$60M to construct Lower Campus Residence Halls.

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	TOTAL	\$48,500,000

CURRENT LAW: Under Article 8 of the State Budget Act, no State agency may expend funds for the construction or renovation of a capital improvement project unless authorized to do so by the General Assembly. The Board of Governors of The University of North Carolina may approve expenditures for projects that are to be funded entirely with non-General Fund money. However, under Article 3 of Chapter 116D, the General Assembly must approve the issuance of special obligation bonds for UNC projects.

There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina:

- Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, and parking decks. The projects may be for the educational institutions, the University of North Carolina Health Care System, the University of North Carolina General Administration, and The University of North Carolina Hospitals at Chapel Hill. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.
- Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable from any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, excluding tuition payments and appropriations from the General Fund. Examples of sources of income or receipts would include rents, charges, fees, earnings on investments of endowment funds, or overhead receipts. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The project must be approved by both the board of trustees of the recipient institution and the General Assembly. The General Assembly must also approve the maximum aggregate principal amount for the project. The bonds are not payable from tax revenues.

PART II. GRACE FOR CCRC

The Department of Revenue has imposed an assessment against at least one Continuing Care Retirement Community (CCRC) for failure to collect sales tax on items subject to the State and local sales and use tax sold to guests and residents who do not reside in a nursing home or assisted living unit. Examples of retail sales that would be taxable include prepared food, alcohol, medical supplies and equipment, laundry services, and repair, maintenance, and installation services. Some CCRCs have expressed confusion over the proper application of the current sales tax statutes. In view of that confusion, Part II of the House PCS for Senate Bill 733 would authorize the Department of Revenue to forgive any assessment of sales or use tax against a CCRC for failure to collect sales tax on items subject to sales tax for any period prior to January 1, 2021, if all the following conditions are met:

- The CCRC is registered as a retailer.
- The CCRC remitted all the sales and use taxes it did collect.

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- The assessment is based on the failure to collect sales tax on items subject to State and local sales and use tax sold to guests or residents of a CCRC who do not reside in a nursing home or assistant living unit.
- The CCRC has not been informed by the Department to collect sales tax in the circumstance that is the basis of the assessment through a prior audit, a Private Letter Ruling, or other specific written guidance.
- The CCRC requests the forgiveness granted by this statute in writing by August 1, 2020 if the CCRC received a proposed assessment dated prior to June 1, 2020. A CCRC that received a proposed assessment after June 1, 2020 must request the forgiveness granted by this statute no later than 45 days from the date of the notice of the proposed assessment.

CURRENT LAW: The sales and use tax applies to the retail sale of tangible personal property unless the transaction is exempt from tax. Unless otherwise exempt, the tax applies regardless of who the seller is, who the purchaser is, where or how the transaction occurred, or how the product is used. There is no sales tax exemption for items sold by a provider of continuing care services to its residents.

The sales and use tax applies only to those services upon which the tax is statutorily imposed under G.S. 105-164.4. The General Assembly has not imposed the sales tax on healthcare service.

BACKGROUND: A continuing care retirement community provides various levels of care within one community to older adults. Typically, there are three levels of care: independent living, assisted living, and skilled nursing care. CCRCs are generally described as "a collection of apartments, town homes, or cottages, and include common activity areas such as a library, activity and craft rooms, a restaurant-like dining room, an assisted living facility, and a nursing home. Other amenities often include banking services, convenience stores, a golf course, walking trails, gardens, swimming pool, fitness center, beauty/barber shops, and guest accommodations."²

The Department of Revenue provided Private Letter Rulings (PLR) to taxpayers who requested it in 2003 and 2007 on the applicability of sales tax to meals and food provided to residents of a retirement community. In both PLRs, the Department affirmed that the retirement community was a retailer of these taxable items sold to residents of the independent living level of care. The retirement community is not a retailer when it provides these items to residents of its assisted living level of care and skilled nursing care level of care. This application of the sales tax law mirrors the application of the income tax medical expense deduction as it applies to fees paid by residents to CCRCs: up to 100% of the fees imposed for assisted living and skilled nursing care may be deductible while only a small portion of the fees imposed for independent living may be deductible.

² <https://files.nc.gov/doi/documents/continuing-care-retirement-communities/2019-ccrc-reference-guide.pdf>