

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS35188-LB-182A (3/26)

Short Title: School Construction/Repair Flexibility. (Public)

Sponsors: Senators Garrou; and Horton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW FLEXIBILITY IN SCHOOL CONSTRUCTION AND REPAIR
CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Lease-purchase and installment purchase contracts. – A board of education may, as provided by this section, enter into installment-purchase contracts granting a purchase money security interest in the premises or a lease-purchase contract with private for-profit or nonprofit firms for the construction of schools to be used and operated by the board. The contract shall be for a term not to exceed 20 years.

An installment-purchase agreement or a lease-purchase agreement may not be entered into pursuant to this section unless the following conditions are met before the lease-purchase agreement is entered into: (i) the superintendent approves the execution and delivery of the lease-purchase or installment purchase agreement, and (ii) the attorney for the board of education approves the lease-purchase or installment purchase agreement and all other documentation related to it, including any leasehold deed of trust or trust agreement in connection with it. In determining whether to approve the lease-purchase or installment purchase agreement, the superintendent and attorney may consider any factors as they consider relevant in order to find and determine that all of the following conditions are met:

- (1) The amount to be paid under the lease-purchase or installment purchase agreement is adequate and not excessive for the purpose of paying the cost of the projects.
- (2) The sums to become due under the lease-purchase or installment purchase agreement are not excessive.
- (3) The lease-purchase or installment purchase agreement can be entered into on terms desirable to the board of education.

- 1 (4) The lease-purchase or installment purchase agreement will not have an
2 adverse effect on any scheduled or proposed sale of obligations of the
3 county.

4 **SECTION 2.** A lease-purchase or installment purchase agreement under this
5 act is a continuing contract for capital outlay as provided by G.S. 115C-411(c1) and
6 shall be approved in accordance with the provisions of that section. A lease-purchase or
7 installment purchase agreement under this act shall be awarded by competitive bids as
8 set forth in G.S. 143-129.

9 **SECTION 3.** G.S. 143-129 is amended by adding a new subsection to read:

10 "(b1) Prequalified bidders; solicited bid list. – Notwithstanding the other
11 subsections of this section, a board of education ("Board") may prequalify a limited
12 number of contractors for a school facility construction, rebuilding, or renovation
13 contract ("contract" and "project") and solicit bids from some or all of those prequalified
14 contractors. The Board must attempt to prequalify and solicit sealed bids from at least
15 five contractors and may not award a contract pursuant to this section unless it receives
16 at least three bids from the group of prequalified contractors. The Board may prequalify
17 only single prime contractors pursuant to this section.

18 The Board shall award the contract or contracts to the lowest responsible bidder or
19 bidders, taking into consideration quality, performance, and the time specified in the
20 bids for the performance of the project. Notwithstanding the first paragraph of this
21 section, if the Board does not receive three or more proposals, it may again seek
22 proposals for the project pursuant to this section and may award the contract to the
23 lowest responsible bidder, even if only one proposal is received.

24 In prequalifying a contractor for purposes of this section, the Board may consider the
25 contractor's relevant experience on the type of project to be bid, ability to meet the
26 project schedule, financial strength, and the contractor's failure to perform satisfactorily
27 on past projects or a current project. The Board's consideration of these factors shall be
28 based upon objective information provided in the public record of the prequalification
29 process. The Board must notify a disqualified bidder at least seven days prior to the
30 opening of bids."

31 **SECTION 4.** G.S. 143-128(a1) is amended by adding a new subdivision to
32 read:

33 "(6) Design-build contracting. – Notwithstanding G.S. 143-128, 143-129,
34 and 143-132, the Board may use the design-build method of
35 construction as follows:

36 a. The Board must seek to prequalify and solicit at least five
37 design-build teams to bid on the project and must receive sealed
38 proposals from at least three of those teams. The request for
39 proposals must contain a design criteria package that defines the
40 project scope, including preliminary design and performance
41 specifications, in a manner sufficient to allow the bidders to
42 respond. This package should be developed by an architect.

43 b. The Board shall interview at least three of the design-build
44 teams that submit proposals. The Board shall award the contract

1 to the best qualified team, taking into account the time of
2 completion of the project and the cost of the project as the
3 major factors.

4 c. Facilities constructed may be turnkey projects, including all
5 materials, equipment, and supplies normally associated with
6 school programs."

7 **SECTION 5.** Other methods. – Nothing in this act limits the Board's use of
8 any method of contracting already authorized by law under Articles 3D and 8 of
9 Chapter 143 of the General Statutes.

10 **SECTION 6.** Financing. – Schools constructed under this act may be
11 financed with private activity bonds as authorized by law.

12 **SECTION 7.** Minority business participation. – G.S. 143-128.2 applies to
13 the construction of projects authorized in this act.

14 **SECTION 8.** This act is effective when it becomes law.