

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 469\*  
Committee Substitute Favorable 3/28/05

Short Title: Lease Purchase for School Warehouse.

(Public)

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Sponsors:

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Referred to:

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March 3, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO ALLOW A LOCAL SCHOOL ADMINISTRATIVE UNIT THAT  
3 OPERATES A CENTRAL KITCHEN TO ACQUIRE BY LEASE PURCHASE OR  
4 INSTALLMENT PURCHASE A WAREHOUSE FOR THE CENTRAL  
5 KITCHEN.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 160A-20 reads as rewritten:

8 "**§ 160A-20. Security interests.**

9 (a) Purchase. – A unit of local government may purchase, or finance or refinance  
10 the purchase of, real or personal property by installment contracts that create in some or  
11 all of the property purchased a security interest to secure payment of the purchase price  
12 to the seller or to an individual or entity advancing moneys or supplying financing for  
13 the purchase transaction.

14 (b) Improvements. – A unit of local government may finance or refinance the  
15 construction or repair of fixtures or improvements on real property by contracts that  
16 create in some or all of the fixtures or improvements, or in all or some portion of the  
17 property on which the fixtures or improvements are located, or in both, a security  
18 interest to secure repayment of moneys advanced or made available for the construction  
19 or repair.

20 (c) Accounts. – A unit of local government may use escrow accounts in  
21 connection with the advance funding of transactions authorized by this section, whereby  
22 the proceeds of the advance funding are invested pending disbursement. A unit of local  
23 government may also use other accounts, such as debt service payment accounts and  
24 debt service reserve accounts, to facilitate transactions authorized by this section. To  
25 secure transactions authorized by this section, a unit of local government may also  
26 create security interests in these accounts.

27 (d) Nonsubstitution. – No contract entered into under this section may contain a  
28 nonsubstitution clause that restricts the right of a unit of local government to:

29 (1) Continue to provide a service or activity; or

1           (2)     Replace or provide a substitute for any fixture, improvement, project,  
2                     or property financed, refinanced, or purchased pursuant to the contract.

3           (e)     Oversight. – A contract entered into under this section is subject to approval  
4 by the Local Government Commission under Article 8 of Chapter 159 of the General  
5 Statutes if it:

6           (1)     Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and  
7                     159-148(a)(3), or involves the construction or repair of fixtures or  
8                     improvements on real property; and

9           (2)     Is not exempted from the provisions of that Article by one of the  
10                    exemptions contained in G.S. 159-148(b).

11          (e1)    Public Hospitals. – A nonprofit entity operating or leasing a public hospital  
12 may enter into a contract pursuant to this section only if the nonprofit entity will have an  
13 ownership interest in the property being financed or refinanced, including a leasehold  
14 interest. The security interest granted in the property shall be only to the extent of the  
15 nonprofit entity's property interest. In addition, any contract entered into by a nonprofit  
16 entity operating or leasing a public hospital pursuant to this section is subject to the  
17 approval of the city, county, hospital district, or hospital authority that owns the  
18 hospital. Approval of the city, county, hospital district, or hospital authority may be  
19 withheld only under one or more of the following circumstances:

20          (1)     The contract would cause the city, county, hospital district, or hospital  
21                     authority to breach or violate any covenant in an existing financing  
22                     instrument entered into by the nonprofit entity.

23          (2)     The contract would restrict the ability of the city, county, hospital  
24                     district, or hospital authority to incur anticipated bank-eligible  
25                     indebtedness under federal tax laws.

26          (3)     The entering into of the contract would have a material, adverse  
27                     impact on the credit ratings of the city, county, hospital district, or  
28                     hospital authority or would otherwise materially interfere with an  
29                     anticipated financing by the nonprofit entity.

30          (f)     Limit of Security. – No deficiency judgment may be rendered against any  
31 unit of local government in any action for breach of a contractual obligation authorized  
32 by this section. The taxing power of a unit of local government is not and may not be  
33 pledged directly or indirectly to secure any moneys due under a contract authorized by  
34 this section.

35          (g)     Public Hearing. – Before entering into a contract under this section involving  
36 real property, a unit of local government shall hold a public hearing on the contract. A  
37 notice of the public hearing shall be published once at least 10 days before the date  
38 fixed for the hearing.

39          (h)     Local Government Defined. – As used in this section, the term "unit of local  
40 government" means any of the following:

41           (1)     A county.

42           (2)     A city.

43           (3)     A water and sewer authority created under Article 1 of Chapter 162A  
44                     of the General Statutes.

- 1 (3a) A metropolitan sewerage district created under Article 5 of Chapter  
2 162A of the General Statutes.
- 3 (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of  
4 the General Statutes.
- 5 (4) An airport authority whose situs is entirely within a county that has (i)  
6 a population of over 120,000 according to the most recent federal  
7 decennial census and (ii) an area of less than 200 square miles.
- 8 (5) An airport authority in a county in which there are two incorporated  
9 municipalities with a population of more than 65,000 according to the  
10 most recent federal decennial census.
- 11 (5a) An airport board or commission authorized by agreement between two  
12 cities pursuant to G.S. 63-56, one of which is located partially but not  
13 wholly in the county in which the jointly owned airport is located, and  
14 where the board or commission provided water and wastewater  
15 services off the airport premises before January 1, 1995, except that  
16 the authority granted by this subdivision may be exercised by such a  
17 board or commission with respect to water and wastewater systems or  
18 improvements only.
- 19 (5b) A local airport authority that was created pursuant to a local act of the  
20 General Assembly.
- 21 (6) A local school administrative unit whose board of education is  
22 authorized to levy a school tax.
- 23 (6a) Any other local school administrative unit, but only for the purpose of  
24 financing energy conservation measures acquired pursuant to Part 2 of  
25 Article 3B of Chapter 143 of the General Statutes.
- 26 (6b) A community college, but only for the purpose of financing energy  
27 conservation measures acquired pursuant to Part 2 of Article 3B of  
28 Chapter 143 of the General Statutes.
- 29 (6c) A local school administrative unit that operates a central kitchen, but  
30 only for the purpose of purchasing or financing the purchase of  
31 warehouse space for use with the central kitchen.
- 32 (7) An area mental health, developmental disabilities, and substance abuse  
33 authority, acting in accordance with G.S. 122C-147.
- 34 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 35 (9) Repealed by Session Laws 2001-414, s. 52, effective September 14,  
36 2001.
- 37 (10) A regional natural gas district, as defined by Article 28 of this Chapter.
- 38 (11) A regional public transportation authority or a regional transportation  
39 authority created pursuant to Article 26 or Article 27 of this Chapter.
- 40 (12) A nonprofit corporation or association operating or leasing a public  
41 hospital as defined in G.S. 159-39."

42 **SECTION 2.** G.S. 115C-441 is amended by adding the following new  
43 subsection to read:

1        "(c2) Installment Contracts for Financing Warehouse for Central Kitchen. – A local  
2 school administrative unit may enter into a contract under G.S. 160A-20, some portion  
3 or all of which is to be performed or paid in ensuing fiscal years, or both, to purchase or  
4 finance the purchase of warehouse space for a central kitchen, without the budget  
5 resolution including an appropriation for the entire obligation, provided:

6            (1) The budget resolution includes an appropriation authorizing the  
7 current fiscal year's portion of the obligation;

8            (2) An unencumbered balance remains in the appropriation sufficient to  
9 pay in the current fiscal year the sums obligated by the transaction for  
10 the current fiscal year; and

11           (3) The board of county commissioners approves the contract by adopting  
12 a resolution that binds the board of county commissioners to  
13 appropriate sufficient funds in ensuing fiscal years to meet the  
14 amounts to be paid under the contract in those years."

15        **SECTION 3.** This act is effective when it becomes law.