

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-124
SENATE BILL 1556

AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE HIGHER
EDUCATION FACILITIES FINANCE ACT TO PRIVATE ELEMENTARY AND
SECONDARY SCHOOL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 115E of the General Statutes reads as rewritten:

"Chapter 115E.

Higher-Private Educational Facilities Finance Act."

Section 2. G.S. 115E-1 reads as rewritten:

"§ 115E-1. Short title.

This Chapter shall be known, and may be cited, as the 'Higher-Private Educational Facilities Finance Act."

Section 3. G.S. 115E-2 reads as rewritten:

"§ 115E-2. Legislative findings.

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions ~~of~~ for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Chapter to provide a measure of assistance and an alternative method to enable private institutions ~~of~~ for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures ~~which~~ that are needed to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the manner provided herein.

It is hereby further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students."

Section 4. G.S. 115E-3 reads as rewritten:

"§ 115E-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Agency" means the North Carolina Educational Facilities Finance Agency created by this Chapter, or, should said agency be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the agency.
- (2) "Cost", as applied to any project or any portion thereof financed under the provisions of this Chapter, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution ~~for higher education~~ for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred ~~earlier than five years prior to the effective date of this Chapter.~~ before November 25, 1981.
- (3) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher ~~education~~.

education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education, an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility ~~which~~ that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

- (4) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution ~~for higher education~~ or any other lawfully pledged security of a participating ~~institution for higher education~~ institution.
- (4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination thereof.
- (5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.
- (6) "Participating ~~institution for higher education~~ institution" means an institution for higher education or an institution for elementary and secondary education that, ~~which~~, pursuant to the provisions of this Chapter, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Chapter.
- (7) "State" means the State of North Carolina."

Section 5. G.S. 115E-5 reads as rewritten:

"§ 115E-5. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating ~~institutions of higher education, institutions,~~ persons, firms, corporations, governmental agencies and others and including credit enhancement agreements;
- (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency;
- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project;
- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received therefrom whether such securities are initially acquired by the agency or a participating ~~institution for higher education, institution,~~ and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources;
- (6) To pledge or assign the revenues and receipts from any project and any loan agreement, agreement of sale or lease of the loan repayments, purchase price payments, rent and income received thereunder;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution ~~for higher education~~ for the acquisition of any federally guaranteed securities and to issue revenue refunding bonds;
- (8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for such purpose;
- (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants

and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor;

- (11) To conduct studies and surveys respecting the need for projects and their location, financing and construction;
- (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;
- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the agency deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution ~~for higher education~~ to finance or refinance the cost of any project;
- (15) To make loans to any participating institution ~~for higher education~~ for the cost of a project in accordance with an agreement between the agency and the participating ~~institution for higher education;~~ institution;
- (16) To make loans to a participating institution ~~for higher education~~ to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by such participating institutions ~~for higher education~~ for the cost of a project;
- (17) To charge and to apportion among participating institutions ~~for higher education~~ its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Chapter;
- (18) To adopt an official seal and alter the same at pleasure; and
- (19) To do all other things necessary or convenient to carry out the purposes of this ~~chapter.~~ Chapter."

Section 6. G.S. 115E-6 reads as rewritten:

"§ 115E-6. Criteria and requirements.

In undertaking any project pursuant to this Chapter, the agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the agency as to its compliance with such criteria and requirements shall be final and conclusive:

- (1) No project shall be sold or leased nor any loan made to any institution for higher education or any institution for elementary and secondary education ~~which~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities

as may be imposed under the agreement of sale or lease or loan agreement;

- (2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the project at the expense of the participating ~~institution for higher education;~~ institution;
- (3) The public facilities, including utilities, and public services necessary for the project will be made available; and
- (4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin."

Section 7. G.S. 115E-7 reads as rewritten:

"§ 115E-7. Procedural requirements.

Any institution for higher education or any institution for elementary and secondary education may submit to the agency, and the agency may consider, a proposal for financing a project using such forms and following such instructions as may be prescribed by the agency. Such proposal shall set forth the type and location of the project and may include other information and data available to the institution for higher education or the institution for elementary and secondary education respecting the project and the extent to which such project conforms to the criteria and requirements set forth in this Chapter. The agency may request the institution for higher education or the institution for elementary and secondary education to provide additional information and data respecting the project. The agency is authorized to make or cause to be made such investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the institution for higher education or the institution for elementary and secondary education, the extent to which the project otherwise conforms to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter."

Section 8. G.S. 115E-8 reads as rewritten:

"§ 115E-8. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

The agency may sell or lease any project to a participating institution ~~for higher education~~ for operation and maintenance or lend money to any participating institution ~~for higher education~~ in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

- (1) The participating institution ~~for higher education~~ shall, at its own expense, operate, repair and maintain the project covered by such agreement;

- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased thereunder or with respect to which the loan was made;
- (3) The participating institution ~~for higher education~~ shall pay all other costs incurred by the agency in connection with the providing of the project covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;
- (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the agency in connection with the project covered by any such agreement ~~shall be~~ are retired or provision for such retirement ~~shall be~~ is made; and
- (5) The obligation of the participating institution ~~for higher education~~ to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution ~~for higher education~~ until the bonds have been retired or provision has been made for such retirement.

~~Where~~ If the agency has acquired a possessory or ownership interest in any project ~~which~~ it has undertaken on behalf of a participating ~~institution for higher education~~ institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in such project to such participating institution ~~for higher education~~ upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project."

Section 9. G.S. 115E-9 reads as rewritten:

"§ 115E-9. Construction contracts.

If the agency ~~shall determine~~ determines that the purposes of this ~~chapter~~ Chapter will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution ~~for higher education~~ upon a negotiated basis as determined by the agency. The agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The agency may by written contract engage the services of the participating institution ~~for higher education~~ in the construction of such project and may provide in any such contract that such participating ~~institution for higher education~~, institution, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an

independent contractor for, the agency for the performance of the functions described therein, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project directly by such participating ~~institution for higher education, institution,~~ the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the agency. Any such contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating ~~institution for higher education~~ for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract."

Section 10. G.S. 115E-13(a) reads as rewritten:

"(a) The agency is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section thereof, and to contract with any participating institution ~~for higher education~~ for the use thereof. The agency may require that the participating institution ~~for higher education~~ shall operate, repair or maintain such project and shall bear the cost thereof and other costs of the agency in connection therewith, all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under such agreement or contract."

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Approved 1:11 p.m. this 27th day of August, 1998