

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH10462-MDz-122A* (02/23)

Short Title: Enhance Oversight of Certain Capital Projects.

(Public)

Sponsors: Representative Arp.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE LEGISLATIVE OVERSIGHT OF CERTAIN LEASES; TO ENSURE THAT ESTIMATES OF OPERATING AND MAINTENANCE COSTS ARE CENTRAL TO THE STATE CAPITAL PROJECT PLANNING PROCESS; TO REQUIRE A PRELIMINARY SIX-YEAR CAPITAL IMPROVEMENTS PLAN; AND TO REQUIRE GREATER OVERSIGHT OF CAPITAL IMPROVEMENT NEEDS CRITERIA; AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON CAPITAL IMPROVEMENTS.

The General Assembly of North Carolina enacts:

PART I. INCREASE LEGISLATIVE OVERSIGHT OF CERTAIN LEASES

SECTION 1.(a) G.S. 146-25 reads as rewritten:

"§ 146-25. Leases and rentals.

(a) General Procedure. – If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be leased or rented for the use of the State or of any State agency, the Department shall proceed to negotiate with the owners for the lease or rental of such property. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State for approval or disapproval.

(b) Leases Exceeding 30-Year Terms. – The Department of Administration shall not enter into a lease of real property for a period of more than 30 years, or a renewal of a lease of real property if the renewal would make the total term of the lease exceed 30 years, unless specifically authorized to do so by the General Assembly. The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations at least 30 days prior to entering or renewing such a lease and shall include a copy of the legislation authorizing the lease or lease renewal in the report."

SECTION 1.(b) G.S. 146-29 reads as rewritten:

"§ 146-29. Procedure for sale, lease, or rental.

(a) General Procedure. – If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G.S. 146-74 through 146-78.



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1 (b) Limitations on Certain Leases. – The Department of Administration shall not enter into
2 a lease or lease renewal of the following types unless specifically authorized to do so by the
3 General Assembly:

4 (1) A lease of real property for a period of more than 30 years, or a renewal of a
5 lease of real property if the renewal would make the total term of the lease
6 exceed 30 years.

7 (2) A lease of real property, or a renewal of a lease of real property, for any term if
8 both of the following conditions are satisfied:

9 a. State personnel or State functions would need to be relocated as a result
10 of the lease or renewal.

11 b. The agency to which the property is currently allocated possesses
12 insufficient operating funds to cover the cost of both the relocation and
13 the ongoing provision of State functions affected by the relocation.

14 (c) Reporting Required. – The Department of Administration shall report to the Joint
15 Legislative Commission on Governmental Operations at least 30 days prior to entering or
16 renewing any lease described in subdivision (b)(1) of this section or any lease or renewal that will
17 require the relocation of State personnel or State functions. The report shall include all of the
18 following:

19 (1) If the lease or lease renewal will require State personnel or State functions to be
20 relocated, a statement of the legislation authorizing the lease or lease renewal or
21 a detailed statement of the operating funds that will be used to cover the cost of
22 both the relocation and the ongoing provision of State functions affected by the
23 relocation, as applicable.

24 (2) If the lease or lease renewal will have a term of more than 30 years, a statement
25 of the legislation authorizing the lease or lease renewal."

26 **SECTION 1.(c)** G.S. 146-29.1 is amended by adding a new subsection to read:

27 "(h) Any lease or rental entered into pursuant to this section shall be subject to the
28 requirements and limitations of G.S. 146-29."

29 **SECTION 1.(d)** G.S. 146-29.2 is amended by adding a new subsection to read:

30 "(g) Any lease or rental entered into pursuant to this section shall be subject to the
31 requirements and limitations of G.S. 146-29."

32 **SECTION 1.(e)** G.S. 146-32 reads as rewritten:

33 **"§ 146-32. Exemptions as to leases, etc.**

34 (a) The Governor, acting with the approval of the Council of State, may adopt rules and
35 regulations:

36 (1) Exempting from any or all of the requirements of this Subchapter such classes
37 of lease, rental, easement, and right-of-way transactions as he deems advisable;
38 and

39 (2) Authorizing any State agency to enter into and/or approve those classes of
40 transactions exempted by such rules and regulations from the requirements of
41 this Chapter.

42 (3) No rule or regulation adopted under this section may exempt from the
43 provisions of G.S. 146-25.1 any class of lease or rental which has a duration of
44 more than 21 days, unless the class of lease or rental:

45 a. Is a lease or rental necessitated by a fire, flood, or other disaster that
46 forces the agency seeking the new lease or rental to cease use of real
47 property;

48 b. Is a lease or rental necessitated because an agency had intended to move
49 to new or renovated real property that was not completed when planned,
50 but a lease or rental exempted under this subparagraph may not be for a
51 period of more than six months; or

1 c. Is a lease or rental which requires a unique location or a location that
2 adjoins or is in close proximity to an existing rental location.

3 (b) No rule or regulation adopted pursuant to subsection (a) of this section may exempt
4 any lease from the provisions of G.S. 146-25(b) or 146-29(b) or (c)."

5
6 **PART II. ENSURE THAT ESTIMATES OF OPERATING AND MAINTENANCE COSTS**
7 **ARE CENTRAL TO THE STATE CAPITAL PROJECT PLANNING PROCESS**

8 **SECTION 2.(a)** G.S. 143C-8-4 reads as rewritten:

9 **"§ 143C-8-4. Agency capital improvement needs estimates.**

10 ...

11 (c) Real Property and New Construction or Facility Rehabilitation Needs Estimate. – The
12 second part of the capital improvement needs estimates shall include only proposals for real
13 property acquisition and projects involving construction of new facilities or rehabilitation of
14 existing facilities to accommodate uses for which the existing facilities were not originally
15 designed. Each project included in this part shall be justified by reference to the needs evaluation
16 criteria established by the Office of State Budget and Management pursuant to
17 G.S. 143C-8-3.G.S. 143C-8-3 and shall include the information required by G.S. 143C-3-3(d)(5).

18 For capital projects of The University of North Carolina and its constituent institutions, the
19 Office of State Budget and Management shall utilize the needs evaluation information approved
20 by the Board of Governors of The University of North Carolina developed pursuant to ~~G.S.~~
21 ~~116-11(9).G.S. 116-11(9)~~ and shall include the information required by G.S. 143C-3-3(d)(5)."

22 **SECTION 2.(b)** G.S. 143C-8-5 reads as rewritten:

23 **"§ 143C-8-5. Six-year capital improvements plan.**

24 ...

25 (c) Real Property Acquisition, New Construction, or Facility Rehabilitations. – The second
26 part of the capital improvement plan shall set forth an integrated schedule for real property
27 acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the
28 Director of the Budget, should be initiated within each year of the six-year planning period. The
29 plan shall contain for each project (i) estimates of real property acquisition, and construction or
30 rehabilitation ~~costs~~, (ii) a means of financing the ~~project, and project,~~ (iii) an estimated
31 schedule for the completion of the ~~project, project,~~ and (iv) an estimate of maintenance and
32 operating costs, including personnel, for the project, covering the first five years of operation.
33 Where the means of financing would involve direct or indirect debt service obligations, a schedule
34 of those obligations shall be presented."

35 **SECTION 2.(c)** G.S. 143C-8-6 reads as rewritten:

36 **"§ 143C-8-6. Recommendations for capital improvements set forth in the Recommended**
37 **State Budget.**

38 ...

39 (e) Other Capital Projects in the Budget Support Document. – The Budget Support
40 Document shall contain for each capital project recommended in accordance with subsection (d)
41 of this section: (i) a detailed project description and justification, (ii) a detailed estimate of
42 acquisition, planning, design, site development, construction, contingency and other related costs,
43 (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated
44 schedule for the completion of the project, ~~(v) an estimate of maintenance and operating costs,~~
45 ~~including personnel, for the project, covering the first five years of operation,~~ ~~(vi)~~(v) an estimate
46 of revenues, if any, likely to be derived from the project, covering the first five years of operation,
47 and ~~(vii)~~(vi) an explanation of the means of financing.

48 (f) All Recommended Capital Projects. – The Director of the Budget shall ensure that
49 recommendations in the Recommended State Budget for repairs and renovations of existing
50 facilities, real property acquisition, new construction, or rehabilitation of existing facilities include
51 all of the following information:

- 1 (1) An estimate of maintenance and operating costs, including personnel, for the
2 project, covering the first five years of operation. If no increase in these
3 expenditures is anticipated because the recommended project would replace an
4 existing facility, then the level of expenditures for the previous five years of
5 operation shall be included instead.
6 (2) A recommended funding source for the operating costs identified pursuant to
7 subdivision (1) of this subsection."
8

9 **PART III. REQUIRE A PRELIMINARY SIX-YEAR CAPITAL IMPROVEMENTS PLAN**

10 **SECTION 3.** No later than October 1, 2016, the Director of the Budget shall prepare
11 and transmit to the General Assembly a preliminary six-year capital improvement plan that
12 complies with the requirements of G.S. 143C-8-5, as amended by Section 2(b) of this act, and
13 G.S. 143C-8-3(b), as enacted by Section 4 of this act. This plan shall be in addition to any other
14 six-year capital improvement plan required by G.S. 143C-8-5.
15

16 **PART IV. REQUIRE GREATER OVERSIGHT OF CAPITAL IMPROVEMENT NEEDS**
17 **CRITERIA**

18 **SECTION 4.** G.S. 143C-8-3 reads as rewritten:

19 "**§ 143C-8-3. Capital improvement needs criteria.**

20 (a) Criteria. – The Office of State Budget and Management shall develop a weighted list of
21 factors that may be used to evaluate the need for capital improvement projects. The list shall
22 include all of the following:

- 23 (1) Preservation, adequacy and use of existing facilities.
24 (2) Health and safety considerations.
25 (3) Operational efficiencies.
26 (4) Projected demand for governmental services.

27 (b) Reporting. – The Office of State Budget and Management shall include the following
28 in each six-year capital improvement plan submitted to the General Assembly pursuant to
29 G.S. 143C-8-5:

- 30 (1) The list of factors developed pursuant to subsection (a) of this section.
31 (2) The most recent results of applying the factors developed pursuant to
32 subsection (a) of this section to capital funds requests from State agencies."
33

34 **PART V. EFFECTIVE DATE**

35 **SECTION 5.** This act is effective when it becomes law and applies to leases entered
36 into or renewed, and to budgets recommended by the Director of the Budget, on or after that date.