

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1556  
Finance Committee Substitute Adopted 7/14/98

Short Title: Amend Education Finance Act.

(Public)

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Sponsors:

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Referred to:

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June 1, 1998

1 A BILL TO BE ENTITLED  
2 AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE HIGHER  
3 EDUCATION FACILITIES FINANCE ACT TO PRIVATE ELEMENTARY AND  
4 SECONDARY SCHOOL FACILITIES.

5 The General Assembly of North Carolina enacts:

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

7 "CHAPTER 115E.

8 **HIGHER-PRIVATE EDUCATIONAL FACILITIES FINANCE ACT."**

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

10 "§ 115E-1. Short title.

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

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

14 "§ 115E-2. Legislative findings.

15 It is hereby declared that for the benefit of the people of the State of North Carolina,  
16 the increase of their commerce, welfare and prosperity and the improvement of their  
17 health and living conditions it is essential that they be given the fullest opportunity to  
18 learn and to develop their intellectual capacities; that it is essential for institutions ~~of~~ for  
19 higher education and institutions for elementary and secondary education within the State

1 to be able to construct and renovate facilities to assist its citizens in achieving the fullest  
2 development of their intellectual capacities; and that it is the purpose of this Chapter to  
3 provide a measure of assistance and an alternative method to enable private institutions of  
4 for higher education and institutions for elementary and secondary education in the State  
5 to provide the facilities and the structures ~~which~~ that are needed to accomplish the  
6 purposes of this Chapter, all to the public benefit and good, to the extent and in the  
7 manner provided herein.

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

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

15 **"§ 115E-3. Definitions.**

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

- 18 (1) "Agency" means the North Carolina Educational Facilities Finance  
19 Agency created by this Chapter, or, should said agency be abolished or  
20 otherwise divested of its functions under this Chapter, the public body  
21 succeeding it in its principal functions, or upon which are conferred by  
22 law the rights, powers and duties given by this Chapter to the agency.
- 23 (2) " Cost", as applied to any project or any portion thereof financed under  
24 the provisions of this Chapter, means all or any part of the cost of  
25 construction, acquisition, alteration, enlargement, reconstruction and  
26 remodeling of a project, including all lands, structures, real or personal  
27 property, rights, rights-of-way, franchises, easements and interests  
28 acquired or used for or in connection with a project, the cost of  
29 demolishing or removing any buildings or structures on land so  
30 acquired, including the cost of acquiring any lands to which such  
31 buildings or structures may be moved, the cost of all machinery and  
32 equipment, financing charges, interest prior to and during construction  
33 and, if deemed advisable by the agency, for a period not exceeding two  
34 years after the estimated date of completion of construction, the cost of  
35 engineering and architectural surveys, plans and specifications, the cost  
36 of consulting and legal services and other expenses necessary or  
37 incident to determining the feasibility or practicability of constructing or  
38 equipping a project, the cost of administrative and other expenses  
39 necessary or incident to the construction or acquisition of a project and  
40 the financing of the construction or acquisition thereof, including  
41 reasonable provision for working capital and a reserve for debt service,  
42 and the cost of reimbursing any participating institution ~~for higher~~  
43 ~~education~~ for any payments made for any cost described above or the

1 refinancing of any cost described above, including any evidence of  
2 indebtedness incurred to finance such cost; provided, however, that no  
3 payment shall be reimbursed or any cost or indebtedness be refinanced  
4 if such payment was made or such cost or indebtedness was incurred  
5 ~~earlier than five years prior to the effective date of this Chapter.~~ before  
6 November 25, 1981.

7 (3) " Project" means any one or more buildings, structures, improvements,  
8 additions, extensions, enlargements or other facilities for use primarily  
9 as a dormitory or other housing facility, including housing facilities for  
10 student nurses, a dining hall and other food preparation and food service  
11 facilities, student union, administration building, academic building,  
12 library, laboratory, research facility, classroom, athletic facility, health  
13 care facility, laundry facility, and maintenance, storage or utility facility  
14 and other structures or facilities related thereto or required or useful for  
15 the instruction of students or the conducting of research or the operation  
16 of an institution for higher ~~education,~~ education or an institution for  
17 elementary and secondary education, including parking and other  
18 facilities or structures essential or convenient for the orderly conduct of  
19 such ~~institution for higher education,~~ an institution, or any combination of  
20 the foregoing, and shall also include landscaping, site preparation,  
21 furniture, equipment and machinery and other similar items necessary or  
22 convenient for the operation of an institution for higher education or an  
23 institution for elementary and secondary education or a particular  
24 facility, building or structure thereof in the manner for which its use is  
25 intended but shall not include such items as books, fuel, supplies or  
26 other items the costs of which are customarily deemed to result in a  
27 current operating charge, and shall not include any facility used or to be  
28 used for sectarian instruction or as a place of religious worship nor any  
29 facility ~~which~~ that is used or to be used primarily in connection with any  
30 part of the program of a school or department of divinity for any  
31 religious denomination.

32 (4) " Bonds" or "notes" means the revenue bonds or bond anticipation notes,  
33 respectively, authorized to be issued by the agency under this Chapter,  
34 including revenue refunding bonds, notwithstanding that the same may  
35 be secured by a deed of trust or the full faith and credit of a participating  
36 institution for higher ~~education~~ or any other lawfully pledged security of a  
37 participating ~~institution for higher education.~~ institution.

38 (4a) "Institution for elementary and secondary education" means a nonprofit  
39 institution within the State of North Carolina authorized by law and  
40 engaged or to be engaged in the providing of kindergarten, elementary,  
41 or secondary education, or any combination thereof.

1 (5) " Institution for higher education" means a nonprofit private  
2 educational institution within the State of North Carolina authorized by  
3 law to provide a program of education beyond the high school level.

4 (6) "~~Participating institution for higher education~~" institution" means an  
5 institution for higher education or an institution for elementary and  
6 secondary education that, which, pursuant to the provisions of this  
7 Chapter, undertakes the financing, refinancing, acquiring, constructing,  
8 equipping, providing, owning, repairing, maintaining, extending,  
9 improving, rehabilitating, renovating or furnishing of a project or  
10 undertakes the refunding or refinancing of obligations or of a deed of  
11 trust or a mortgage or of advances as provided in this Chapter.

12 (7) " State" means the State of North Carolina."

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

14 **"§ 115E-5. General powers.**

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

18 (1) To make and execute contracts and agreements necessary or incidental  
19 to the exercise of its powers and duties under this Chapter, including  
20 loan agreements and agreements of sale or leases with, mortgages and  
21 deeds of trust and conveyances to participating ~~institutions of higher~~  
22 ~~education,~~ institutions, persons, firms, corporations, governmental  
23 agencies and others and including credit enhancement agreements;

24 (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for  
25 the acquisition of any property, real or personal, improved or  
26 unimproved, including interests in land in fee or less than fee for any  
27 project, upon such terms and at such cost as shall be agreed upon by the  
28 owner and the agency;

29 (3) To arrange or contract with any county, city, town or other political  
30 subdivision or instrumentality of the State for the opening or closing of  
31 streets or for the furnishing of utility or other services to any project;

32 (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a  
33 deed of trust in, or otherwise dispose of, or to grant options for any such  
34 purposes with respect to, any real or personal property or interest  
35 therein;

36 (5) To pledge or assign any money, purchase price payments, rents, loan  
37 repayments, charges, fees or other revenues, including any federally  
38 guaranteed securities and moneys received therefrom whether such  
39 securities are initially acquired by the agency or a participating  
40 ~~institution for higher education,~~ institution, and any proceeds derived by  
41 the agency from sales of property, insurance, condemnation awards or  
42 other sources;

- 1 (6) To pledge or assign the revenues and receipts from any project and any  
2 loan agreement, agreement of sale or lease of the loan repayments,  
3 purchase price payments, rent and income received thereunder;
- 4 (7) To borrow money as herein provided to carry out and effectuate its  
5 corporate purposes and to issue in evidence thereof bonds and notes for  
6 the purpose of providing funds to pay all or any part of the cost of any  
7 project, to lend money to any participating institution ~~for higher education~~  
8 for the acquisition of any federally guaranteed securities and to issue  
9 revenue refunding bonds;
- 10 (8) To finance, refinance, acquire, construct, equip, provide, operate, own,  
11 repair, maintain, extend, improve, rehabilitate, renovate and furnish any  
12 project and to pay all or any part of the cost thereof from the proceeds of  
13 bonds or notes or from any contribution, gift or donation or other funds  
14 available to the agency for such purpose;
- 15 (9) To fix, revise, charge and collect or cause to be fixed, revised, charged  
16 and collected purchase price payments, rents, loan repayments, fees,  
17 rates and charges for the use of, or services rendered by, any project;
- 18 (10) To employ fiscal consultants, consulting engineers, architects, attorneys,  
19 feasibility consultants, appraisers and such other consultants and  
20 employees as may be required in the judgment of the agency and to fix  
21 and pay their compensation from funds available to the agency therefor;
- 22 (11) To conduct studies and surveys respecting the need for projects and  
23 their location, financing and construction;
- 24 (12) To apply for, accept, receive and agree to and comply with the terms  
25 and conditions governing grants, loans, advances, contributions, interest  
26 subsidies and other aid with respect to any project from federal and  
27 State agencies or instrumentalities;
- 28 (13) To sue and be sued in its own name, plead and be impleaded;
- 29 (14) To acquire and enter into commitments to acquire any federally  
30 guaranteed security or federally insured mortgage note and to pledge or  
31 otherwise use any such federally guaranteed security or federally  
32 insured mortgage note in such manner as the agency deems in its best  
33 interest to secure or otherwise provide a source of repayment on any of  
34 its bonds or notes issued on behalf of any participating institution ~~for~~  
35 ~~higher education~~ to finance or refinance the cost of any project;
- 36 (15) To make loans to any participating institution ~~for higher education~~ for the  
37 cost of a project in accordance with an agreement between the agency  
38 and the participating ~~institution for higher education~~; institution;
- 39 (16) To make loans to a participating institution ~~for higher education~~ to refund  
40 outstanding loans, obligations, deeds of trust or advances issued, made  
41 or given by such participating institutions ~~for higher education~~ for the  
42 cost of a project;

- 1 (17) To charge and to apportion among participating institutions ~~for higher~~  
2 ~~education~~ its administrative costs and expenses incurred in the exercise  
3 of its powers and duties conferred by this Chapter;  
4 (18) To adopt an official seal and alter the same at pleasure; and  
5 (19) To do all other things necessary or convenient to carry out the purposes  
6 of this ~~chapter~~ Chapter."

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

8 **"§ 115E-6. Criteria and requirements.**

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

- 13 (1) No project shall be sold or leased nor any loan made to any institution  
14 for higher education or any institution for elementary and secondary  
15 education ~~which~~ that is not financially responsible and capable of  
16 fulfilling its obligations, including its obligations under an agreement of  
17 sale or lease or a loan agreement to make purchase price payments, to  
18 pay rent, to make loan repayments, to operate, repair and maintain at its  
19 own expense the project and to discharge such other responsibilities as  
20 may be imposed under the agreement of sale or lease or loan agreement;  
21 (2) Adequate provision shall be made for the payment of the principal of  
22 and the interest on the bonds and any necessary reserves therefor and for  
23 the operation, repair and maintenance of the project at the expense of  
24 the participating ~~institution for higher education;~~ institution;  
25 (3) The public facilities, including utilities, and public services necessary  
26 for the project will be made available; and  
27 (4) The projects shall be operated to serve and benefit the public and there  
28 shall be no discrimination against any person based on race, creed, color  
29 or national origin."

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

31 **"§ 115E-7. Procedural requirements.**

32 Any institution for higher education or any institution for elementary and secondary  
33 education may submit to the agency, and the agency may consider, a proposal for  
34 financing a project using such forms and following such instructions as may be  
35 prescribed by the agency. Such proposal shall set forth the type and location of the  
36 project and may include other information and data available to the institution for higher  
37 education or the institution for elementary and secondary education respecting the project  
38 and the extent to which such project conforms to the criteria and requirements set forth in  
39 this Chapter. The agency may request the institution for higher education or the  
40 institution for elementary and secondary education to provide additional information and  
41 data respecting the project. The agency is authorized to make or cause to be made such  
42 investigation, surveys, studies, reports and reviews as in its judgment are necessary and  
43 desirable to determine the feasibility and desirability of the project, the extent to which

1 the project will contribute to the health and welfare of the area in which it will be located,  
2 the powers, experience, background, financial condition, record of service and capability  
3 of the management of the institution for higher education or the institution for elementary  
4 and secondary education, the extent to which the project otherwise conforms to the  
5 criteria and requirements of this Chapter, and such other factors as may be deemed  
6 relevant or convenient in carrying out the purposes of this Chapter."

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

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

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

- 16 (1) The participating institution ~~for higher education~~ shall, at its own  
17 expense, operate, repair and maintain the project covered by such  
18 agreement;
- 19 (2) The purchase price payments to be made under the agreement of sale,  
20 the rent payable under the agreement of lease or the loan repayments  
21 under the loan agreement shall in the aggregate be not less than an  
22 amount sufficient to pay all of the interest, principal and any redemption  
23 premium on the bonds or notes issued by the agency to pay the cost of  
24 the project sold or leased thereunder or with respect to which the loan  
25 was made;
- 26 (3) The participating institution ~~for higher education~~ shall pay all other costs  
27 incurred by the agency in connection with the providing of the project  
28 covered by any such agreement, except such costs as may be paid out of  
29 the proceeds of bonds or notes or otherwise, including, but without  
30 limitation, insurance costs, the cost of administering the resolution  
31 authorizing the issuance of, or any trust agreement securing, such bonds  
32 or notes and the fees and expenses of trustees, paying agents, attorneys,  
33 consultants and others;
- 34 (4) The loan agreement or the agreement of sale or lease shall terminate not  
35 earlier than the date on which all such bonds and all other obligations  
36 incurred by the agency in connection with the project covered by any  
37 such agreement ~~shall be~~ are retired or provision for such retirement ~~shall~~  
38 be is made; and
- 39 (5) The obligation of the participating institution ~~for higher education~~ to  
40 make loan repayments or purchase price payments or to pay rent shall  
41 not be subject to cancellation, termination or abatement by the  
42 participating institution ~~for higher education~~ until the bonds have been  
43 retired or provision has been made for such retirement.

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

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

8       "**§ 115E-9. Construction contracts.**

9       If the agency ~~shall determine~~ determines that the purposes of this ~~chapter~~ Chapter will  
10 be more effectively served, the agency in its discretion may award or cause to be awarded  
11 contracts for the construction of any project on behalf of a participating institution ~~for~~  
12 ~~higher education~~ upon a negotiated basis as determined by the agency. The agency shall  
13 prescribe such bid security requirements and other procedures in connection with the  
14 award of such contracts as in its judgment shall protect the public interest. The agency  
15 may by written contract engage the services of the participating institution ~~for higher~~  
16 ~~education~~ in the construction of such project and may provide in any such contract that  
17 such participating ~~institution for higher education~~, institution, subject to such conditions and  
18 requirements consistent with the provisions of this Chapter as shall be prescribed in such  
19 contract, may act as an agent of, or an independent contractor for, the agency for the  
20 performance of the functions described therein, including the acquisition of the site and  
21 other real property for such project, the preparation of plans, specifications and contract  
22 documents, the award of construction and other contracts upon a competitive or  
23 negotiated basis, the construction of such project directly by such participating ~~institution~~  
24 ~~for higher education~~, institution, the inspection and supervision of construction, the  
25 employment of engineers, architects, builders and other contractors and the provision of  
26 money to pay the cost thereof pending reimbursement by the agency. Any such contract  
27 may provide that the agency may, out of proceeds of bonds or notes, make advances to or  
28 reimburse the participating institution ~~for higher education~~ for its costs incurred in the  
29 performance of such functions, and shall set forth the supporting documents required to  
30 be submitted to the agency and the reviews, examinations and audits that shall be  
31 required in connection therewith to assure compliance with the provisions of this Chapter  
32 and such contract."

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

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

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