

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 25
Finance Committee Substitute Adopted 4/5/01

Short Title: Lease-Purchase up to Three Prisons-AB.

(Public)

Sponsors:

Referred to:

February 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE STATE'S AUTHORITY TO LEASE-PURCHASE
3 THREE CLOSE SECURITY CORRECTIONAL FACILITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 148-37(b1) is recodified as G.S. 148-37.2 and reads as
6 rewritten:

7 "**§ 148-37.2. Lease-purchase of three facilities.**

8 (a) Authorization. – The Secretary of Correction ~~may~~ may, as provided in this
9 section, enter contracts with private for-profit or nonprofit firms for the construction of
10 three close security correctional facilities totaling up to 3,000 cells to be operated by the
11 Department pursuant to a lease that contains a schedule for purchase of the facilities
12 over a period of up to 20 years.

13 The State, with the prior approval of the General Assembly, the Council of State,
14 and the State Treasurer as provided in this section, is authorized to execute and deliver
15 one or more lease-purchase agreements with a special nonprofit corporation providing
16 for the lease-purchase by the State of the Projects from the special nonprofit corporation
17 in connection with and under an arrangement whereby certificates of participation are
18 sold and delivered by the special nonprofit corporation in order to provide funds to pay
19 the purchase price of the Projects. The Projects will be constructed by selected
20 contractors designated to the special nonprofit corporation by the State Property Office
21 of the Department of Administration in consultation with the Department of Correction.
22 The selected contractors will be responsible for arranging for and obtaining their own
23 construction financing, which will consist solely of private funds. The Projects will be
24 sold to the special nonprofit corporation, with the purchase price paid by the special
25 nonprofit corporation from the proceeds of the certificates of participation. The State
26 may lease the real property upon which the Projects will be located, if owned by the
27 State, to the selected contractors constructing the Projects and to the special nonprofit
28 corporation for nominal consideration.

29 (b) Definitions. – The following definitions apply in this section:

- 1 (1) Certificates of participation. – Certificates or other instruments
2 delivered by a special nonprofit corporation as provided in this section
3 evidencing the assignment of proportionate and undivided interests in
4 the rights to receive lease payments to be made by the State pursuant
5 to a lease-purchase agreement.
- 6 (2) Construction contract agreement. – A contract between the Department
7 of Correction and the selected contractors for construction of the
8 Projects, under which the selected contractors will be responsible for
9 arranging for and obtaining their own construction financing, which
10 will consist solely of private funds.
- 11 (3) Lease-purchase agreement. – A lease-purchase agreement entered into
12 pursuant to this section, under which the State will lease the Projects
13 from the special nonprofit corporation, with option to purchase.
- 14 (4) Projects. – Three close security correctional facilities providing up to
15 3,000 cells to be constructed by selected contractors, sold to the special
16 nonprofit corporation, and leased to the State pursuant to this section.
- 17 (5) Purchase agreement. – A contract under which the special nonprofit
18 corporation will purchase the Projects from the selected contractors.
- 19 (6) Selected contractors. – One or more private firms selected to construct
20 the Projects.
- 21 (7) Special nonprofit corporation. – A nonprofit corporation created under
22 Chapter 55A of the General Statutes and designated by the State
23 Treasurer for entering into the transactions contemplated by this
24 section.

25 (c) Request for Proposals. – The Secretary of Correction may issue a request for
26 proposals to private firms for the private firms to construct the Projects for the
27 construction of such facilities in accordance with plans and specifications developed by
28 the Department of Correction and reviewed by the Office of State Construction. The
29 request for proposals shall provide for the option of bidding-proposing on one or more
30 of the facilities, and shall require each bidder-proposer to provide a separate bid
31 proposal on a single facility of up to 1,000 cells. It is the intent of the General Assembly
32 that the State may decide to accept proposals for only one, for two, or for all three
33 facilities.

34 The Secretary of Correction, in consultation with the Chairs of the Joint Legislative
35 Corrections and Crime Control Oversight Committee and the Chairs of the Senate and
36 House Appropriations Subcommittees on Justice and Public Safety, Correction shall
37 make recommendations to the State Property Office of the Department of
38 Administration on the final award decision. The Department of Correction and the State
39 Property Office of the Department of Administration shall consult with the Joint
40 Legislative Commission on Governmental Operations before making the final award
41 decision. The Department of Administration shall make the final award decision, and
42 the contract which shall then be subject to the approval of the Council of State after
43 consultation with the Joint Legislative Commission on Governmental Operations.State.

1 The Department of Correction will enter into a construction contract agreement with
2 the selected contractors for the construction of the Projects. The special nonprofit
3 corporation will enter into a purchase agreement with the selected contractors for the
4 sale of the constructed Projects to the special nonprofit corporation. The Department of
5 Correction shall furnish plans and specifications for review by the State Construction
6 Office. Construction contract agreements entered into under this section ~~Contracts made~~
7 ~~under the authority of this subsection shall provide that the Department of Correction~~
8 ~~shall furnish the plans and specifications for these correctional facilities to the Office of~~
9 ~~State Construction for its review and that and~~ the Office of State Construction shall
10 inspect and review each ~~project-facility~~ during construction to ensure and determine
11 jointly that the ~~project-facility~~ is suitable for use as a correctional facility and for future
12 acquisition by the State. The Department of Correction may contract with a design
13 consortium for construction administration services.

14 (d) Approval of Lease-Purchase Agreement. – A lease-purchase agreement may
15 not be entered into pursuant to this section unless the following conditions are met
16 before the lease-purchase agreement is entered into: (i) the Council of State, by
17 resolution, approves the execution and delivery of the lease-purchase agreement, and
18 (ii) the General Assembly, by legislation, approves the execution and delivery of the
19 lease-purchase agreement, and (iii) the State Treasurer approves the lease-purchase
20 agreement and all other documentation related to it, including any leasehold deed of
21 trust or trust agreement in connection with it. The resolution of the Council of State may
22 include any matters the Council of State determines. In determining whether to approve
23 the lease-purchase agreement, the State Treasurer may consider any factors as the State
24 Treasurer considers relevant in order to find and determine that all of the following
25 conditions are met:

- 26 (1) The principal amount to be financed under the lease-purchase
27 agreement is adequate and not excessive for the purpose of paying the
28 cost of the Projects.
29 (2) The increase, if any, in State revenues necessary to pay the sums to
30 become due under the lease-purchase agreement is not excessive.
31 (3) The lease-purchase agreement can be entered into on terms desirable
32 to the State.
33 (4) The sale of certificates of participation will not have an adverse effect
34 on any scheduled or proposed sale of obligations of the State or any
35 State agency or of any unit of local government in the State.

36 (e) Terms and Conditions. – The following provisions apply to a lease-purchase
37 agreement entered into under this section:

- 38 (1) In order to secure the performance by the State of its obligations under
39 the lease-purchase agreement, the lease-purchase agreement may
40 require the eviction of the State from the occupancy of one or more of
41 the Projects in the event that the State breaches its obligations and
42 agreements under the lease-purchase agreement.

- 1 (2) No deficiency judgment may be rendered against the State or any
2 agency, department, or commission of the State in any action for
3 breach of any obligation contained in the lease-purchase agreement or
4 any other related documentation, and the taxing power of the State or
5 any agency, department, or commission of the State is not and may not
6 be pledged to secure any moneys due under the lease-purchase
7 agreement.
- 8 (3) The lease-purchase agreement shall not contain a nonsubstitution
9 clause that restricts the right of the State to replace or provide a
10 substitute for the Projects.
- 11 (4) The lease-purchase agreement may include provisions requesting the
12 Governor to submit in the Governor's budget proposal, or any
13 amendments or supplements to it, appropriations necessary to make
14 the payments required under the lease-purchase agreement.
- 15 (5) The lease-purchase agreement may contain any provisions for
16 protecting and enforcing the rights and remedies of the special
17 nonprofit corporation that are reasonable and proper and not in
18 violation of law, including covenants setting forth the duties of the
19 State with respect to the Projects, which may include provisions
20 relating to insuring, operating, and maintaining the Projects and the
21 custody, safeguarding, investment, and application of moneys.
- 22 (6) The lease-purchase agreement may designate the lease payments to be
23 paid by the State under it to be 'principal components' and 'interest
24 components.' Any interest component of the lease payments may be
25 calculated based upon a fixed or variable interest rate or rates as
26 determined by the State Treasurer.
- 27 (7) The lease-purchase agreement may be entered into by the State, and
28 certificates of participation may be delivered by the special nonprofit
29 corporation, at any time, including at times prior to the delivery of the
30 Projects to the special nonprofit corporation for purchase, and the
31 related delivery of occupancy of the Projects to the State by the special
32 nonprofit corporation. The costs incurred in connection with the
33 preparation of the lease-purchase agreement and related documents
34 and the delivery of the certificates of participation may be paid from
35 the proceeds of the certificates of participation.
- 36 (8) The State is authorized to agree in the lease-purchase agreement to
37 indemnify the special corporation and its directors and agents for any
38 liabilities that arise to the special corporation or directors or agents on
39 account of their participation in the activities contemplated by this act.
- 40 (f) Faith and Credit Not Pledged. – The payment of amounts payable by the State
41 under the lease-purchase agreement and other related documentation during any fiscal
42 biennium or fiscal year is limited to funds appropriated for that purpose by the General
43 Assembly in its discretion. No provision of this section and no lease-purchase

1 agreement creates any pledge of the faith and credit of the State or any agency,
2 department, or commission of the State within the meaning of any constitutional debt
3 limitation.

4 (g) Certificates of Participation. – The State may cooperate as necessary to
5 effectuate the delivery by the special nonprofit corporation of tax-exempt certificates of
6 participation, including participating in the preparation of offering documents, the filing
7 of required tax forms and agreeing to comply with restrictions on the use of the Projects
8 as required in order for the interest component of the lease payments to be tax-exempt.
9 Disclosures and compliance with other federal law requirements by the special
10 nonprofit corporation shall be under the direction of the State Treasurer. Certificates of
11 participation may be sold at the direction of the State Treasurer in the manner, either at
12 public or private sale, and for any price or prices that the State Treasurer determines to
13 be in the best interest of the State and to effect the purposes of this section. Interest
14 payable with respect to certificates of participation shall accrue at the rate or rates
15 determined by the State Treasurer with the approval of the special nonprofit
16 corporation.

17 Certificates of participation may be delivered pursuant to a trust agreement with a
18 corporate trustee approved by the State Treasurer. The corporate trustee may be any
19 trust company or bank having the powers of a trust company within or without the State.
20 A trust agreement may (i) provide for security and pledges and assignments with respect
21 to the security as may be permitted under this section and further provide for the
22 enforcement of any lien or security interest created pursuant to this section, and (ii)
23 contain any provisions for protecting and enforcing the rights and remedies of the
24 owners of any certificates of participation that are reasonable and proper and not in
25 violation of law as determined by the State Treasurer. The State Treasurer shall
26 designate the professionals providing legal or financial services relating to the
27 lease-purchase agreement and the delivery of certificates of participation, including the
28 provider of any credit facility and the underwriter or placement agent for any
29 certificates of participation.

30 (h) Tax Exemption. – The lease-purchase agreement and any certificates of
31 participation relating to it shall at all times be free from taxation by the State or any
32 political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes,
33 income taxes on the gain from the transfer of the lease-purchase agreement and
34 certificates of participation, and franchise taxes. The interest component of the lease
35 payments made by the State under the lease-purchase agreement, including the interest
36 payable with respect to any certificates of participation, is not subject to taxation as
37 income."

38 **SECTION 2.** This act, being necessary for the health and welfare of the
39 people of the State, shall be liberally construed to effect its purposes.

40 **SECTION 3.** G.S. 105-275(39) reads as rewritten:

41 **"§ 105-275. Property classified and excluded from the tax base.**

1 The following classes of property are hereby designated special classes under
2 authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be
3 listed, appraised, assessed, or taxed:

4 ...

5 (39) Real and personal property that is: (i) owned by a nonprofit
6 corporation organized upon the request of a State or local government
7 unit for the sole purpose of financing projects for public use, (ii) leased
8 to a unit of State or local government whose property is exempt from
9 taxation under G.S. 105-278.1, and (iii) used in whole or in part for a
10 public purpose by ~~such~~the unit of State or local government. If only
11 part of the property is used for a public purpose, only that part is
12 ~~exempt~~excluded from the tax. This subdivision ~~shall~~does not apply if
13 any distributions are made to members, officers, or directors of the
14 nonprofit corporation.

15"

16 **SECTION 4.** This act is effective when it becomes law.