

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-84
SENATE BILL 25**

AN ACT TO CLARIFY THE STATE'S AUTHORITY TO LEASE-PURCHASE
THREE CLOSE SECURITY CORRECTIONAL FACILITIES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

- (1) Certificates of participation. – Certificates or other instruments delivered by a special nonprofit corporation as provided in this section evidencing the assignment of proportionate and undivided interests in the rights to receive lease payments to be made by the State pursuant to a lease-purchase agreement.
- (2) Construction contract agreement. – A contract between the Department of Correction and the selected contractors for construction of the Projects, under which the selected contractors will be responsible for arranging for and obtaining their own construction financing, which will consist solely of private funds.
- (3) Lease-purchase agreement. – A lease-purchase agreement entered into pursuant to this section, under which the State will lease the Projects from the special nonprofit corporation, with option to purchase.
- (4) Projects. – Three close security correctional facilities providing up to 3,000 cells to be constructed by selected contractors, sold to the special nonprofit corporation, and leased to the State pursuant to this section.

- (5) Purchase agreement. – A contract under which the special nonprofit corporation will purchase the Projects from the selected contractors.
- (6) Selected contractors. – One or more private firms selected to construct the Projects.
- (7) Special nonprofit corporation. – A nonprofit corporation created under Chapter 55A of the General Statutes and designated by the State Treasurer for entering into the transactions contemplated by this section.

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

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

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

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

- (1) The principal amount to be financed under the lease-purchase agreement is adequate and not excessive for the purpose of paying the cost of the Projects.
- (2) The increase, if any, in State revenues necessary to pay the sums to become due under the lease-purchase agreement is not excessive.

(3) The lease-purchase agreement can be entered into on terms desirable to the State.

(4) The sale of certificates of participation will not have an adverse effect on any scheduled or proposed sale of obligations of the State or any State agency or of any unit of local government in the State.

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

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

(2) No deficiency judgment may be rendered against the State or any agency, department, or commission of the State in any action for breach of any obligation contained in the lease-purchase agreement or any other related documentation, and the taxing power of the State or any agency, department, or commission of the State is not and may not be pledged to secure any moneys due under the lease-purchase agreement.

(3) The lease-purchase agreement shall not contain a nonsubstitution clause that restricts the right of the State to replace or provide a substitute for the Projects.

(4) The lease-purchase agreement may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the lease-purchase agreement.

(5) The lease-purchase agreement may contain any provisions for protecting and enforcing the rights and remedies of the special nonprofit corporation that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the State with respect to the Projects, which may include provisions relating to insuring, operating, and maintaining the Projects and the custody, safeguarding, investment, and application of moneys.

(6) The lease-purchase agreement may designate the lease payments to be paid by the State under it to be 'principal components' and 'interest components.' Any interest component of the lease payments may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(7) The lease-purchase agreement may be entered into by the State, and certificates of participation may be delivered by the special nonprofit corporation, at any time, including at times prior to the delivery of the Projects to the special nonprofit corporation for purchase, and the related delivery of occupancy of the Projects to the State by the special nonprofit corporation. The costs incurred in connection with the preparation of the lease-purchase agreement and related documents and the delivery of the certificates of participation may be paid from the proceeds of the certificates of participation.

(8) The State is authorized to agree in the lease-purchase agreement to indemnify the special corporation and its directors and agents for any liabilities that arise to the special corporation or directors or agents on account of their participation in the activities contemplated by this act.

(f) Faith and Credit Not Pledged. – The payment of amounts payable by the State under the lease-purchase agreement and other related documentation during any fiscal biennium or fiscal year is limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this section and no lease-purchase

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

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

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

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

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

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

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

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

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

...."
SECTION 4. G.S. 55A-3-07 reads as rewritten:

"§ 55A-3-07. **Certain corporations subject to Public Records Act and Open Meetings Law.**

~~Any corporation of the following corporations organized under this Chapter under the terms of any consent decree and final judgment in any civil action calling on a state officer to create the corporation, for the purposes of receipt and distribution of funds allocated to the State of North Carolina to provide economic impact assistance on account of one industry, is subject to the Public Records Act (Chapter 132 of the General Statutes) and the Open Meetings Law (Article 33C of Chapter 143 of the General Statutes).~~ Statutes):

- (1) A corporation organized under the terms of any consent decree and final judgment in any civil action calling on a state officer to create the corporation, for the purposes of receipt and distribution of funds allocated to the State of North Carolina to provide economic impact assistance on account of one industry.
- (2) A corporation organized upon the request of the State for the sole purpose of financing projects for public use."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 9:56 a.m. this 17th day of May, 2001