

House Select Committee on Public School Construction Funding



**REPORT TO THE 2007
GENERAL ASSEMBLY OF NORTH CAROLINA**

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

THE REPORT IS ALSO AVAILABLE ON-LINE:
<http://www.ncleg.net/LegLibrary/>

TABLE OF CONTENTS

Letter of Transmittal	i
Committee Membership	ii
Committee Proceedings	1
Committee Recommendation and Legislative Proposals	11
1. AN ACT TO AUTHORIZE COUNTIES TO LEVY ONE-HALF CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTIES.....	13
2. AN ACT TO EXTEND THE EARMARKING OF A PORTION OF THE PROCEEDS OF THE FIRST AND SECOND ONE-HALF CENT LOCAL SALES AND USE TAXES FOR AN ADDITIONAL TEN YEARS.	19
3. AN ACT TO EXCLUDE FROM PROPERTY TAX REAL AND PERSONAL PROPERTY THAT IS SUBJECT TO A CAPITAL LEASE WITH A LOCAL SCHOOL ADMINISTRATIVE UNIT.....	23
4. AN ACT TO STREAMLINE THE PROCESS FOR APPROVAL OF SCHOOL FACILITY CONSTRUCTION AND RENOVATION PLANS.....	27
5. AN ACT ALLOWING A SALES AND USE TAX EXEMPTION FOR LOCAL SCHOOL ADMINISTRATIVE UNITS AND REENACTING THE SALES AND USE TAX REFUND FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.....	33

APPENDICES

- A. Committee Authorization
- B. Committee Agendas



HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION FUNDING
State Legislative Building
Raleigh, North Carolina 27603

January 24, 2007

TO THE MEMBERS OF THE 2007 GENERAL ASSEMBLY:

The House Select Committee on Public School Construction Funding submits to you for your consideration its report.

Respectfully Submitted,

Rep. Douglas Y. Yongue, Chair

2005-2006

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING

MEMBERSHIP

Rep. Douglas Y. Yongue, Chair
Rep. Linda P. Johnson, Vice-Chair
Rep. Earl Jones, Vice-Chair
Rep. Marvin W. Lucas, Vice-Chair
Rep. Martha B. Alexander
Rep. Jeff Barnhart
Rep. Larry Bell
Rep. Becky Carney
Rep. Linda Coleman
Rep. Bob England, M.D.
Rep. Dale R. Folwell
Rep. Bruce Goforth
Rep. Larry D. Hall
Rep. Julia C. Howard
Rep. Edd Nye
Rep. Garland E. Pierce
Rep. William L. Wainwright
Rep. Roger West
Rep. W.A. (Winkie) Wilkins
Rep. Arthur Williams
Rep. Michael H. Wray

Staff:

Katie Stanley, Committee Clerk

Cindy Avrette, Staff Attorney

Y. Canaan Huie, Staff Attorney

Adam Levinson, Fiscal Analyst

COMMITTEE PROCEEDINGS

The House Select Committee on Public School Construction Funding met four times after the adjournment of the 2006 Regular Session of the 2005 General Assembly on July 28, 2006. *Appendix B* contains a copy of the Committee's agenda for each meeting. The Committee studied a number of issues relating to public school construction funding, including the public school facilities needs in the State, current sources of funding for public school construction in North Carolina and other states, the approval process for construction of new public schools, the recommendations of the Debt Affordability Advisory Committee, the effect of adequate public facilities ordinances and impact fees, and the costs of alternative types of construction.

PUBLIC SCHOOL FACILITIES NEEDS

North Carolina law (G.S. 115C-521) requires local boards of education to submit their plans for meeting long-range school facilities needs to the State Board of Education every five years. The Department of Public Instruction facilitates this quintennial survey and compiles the results in a report. The Department of Public Instruction issued its most recent report in 2006 and found that the 115 local education agencies (LEAs) had combined facility needs over the next five years of over \$9.72 billion. The report noted that every LEA had at least \$1 million in facility needs and that eleven LEAs¹ each had facility needs in excess of \$200 million. The figures include needs for new schools (\$4.268 billion), renovations to existing buildings (\$2.273 billion), additions to existing building (\$2.242 billion), furnishings and equipment (\$754 million), and land (\$191 million). These needs represent a substantial increase in public school facilities needs since the last quintennial survey in 2000, which found needs of \$6.98 billion.

EXISTING SOURCES OF FUNDING FOR SCHOOL FACILITIES NEEDS

At its first meeting on October 26, the Committee examined numerous sources of funding for public school construction. The Committee looked at recurring State sources of

¹ Wake County -- \$1.447 billion; Mecklenburg County -- \$910 million; Guilford County -- \$475 million; Gaston County -- \$417 million; Durham County -- \$348 million; Forsyth County -- \$313 million; Onslow County -- \$253 million; Union County -- \$232 million; Wayne County -- \$219 million; Johnston County -- \$218 million; and Cabarrus County -- \$211 million.

funding, recurring local sources of funding that are generally available throughout the State, recurring local sources of funding that are available only to a limited number of localities, one-time or occasional sources of funding that are available from the State or local governments, and financing options that can provide school districts with alternative means of providing for public school facilities needs. These various sources of funding are outlined below.

Recurring Sources of State Funding. For the most part, the provision of public school facilities is a local responsibility in North Carolina. The State, on the other hand, is generally responsible for the operating expenses associated with public education. However, there are several recurring sources of State aid for public school construction purposes. The Public School Building Capital Fund is funded by corporate income tax receipts and lottery proceeds. The Public School Building Capital Fund serves as the conduit for transferring both of these sources of funds from the State to school districts, but the allocation formulas are different depending on the source of the funding.

Beginning in 1987, the State began to earmark the proceeds derived from one-half percentage point of the corporate income tax receipts for the Public School Building Capital Fund. The amount of this earmarking has risen and fallen over the years in conjunction with corporate income tax receipts. The amounts in the Fund derived from corporate income tax receipts are allocated to all LEAs based on the average daily memberships (ADM) of the agencies. The State funds allocated to a LEA that are not used in a given year accrue to the benefit of that LEA. State funds derived from corporate income tax receipts require a 1/3 local match and may be used for a variety of construction purposes or school technology needs.

In 2005, the General Assembly authorized the North Carolina Education Lottery, a portion of the proceeds of which are earmarked for public school construction purposes. Forty percent of the net proceeds of the lottery² are distributed to the Public School Building Capital Fund for school construction purposes. The funds derived from lottery proceeds are treated differently from funds derived from corporate income tax receipts. Sixty-five percent of these

² Under State law, the net proceeds of the lottery (after all winnings and administrative expenses are covered) must total at least 35% of the gross revenues of the lottery.

funds are distributed to the LEAs based solely on ADM. The remaining thirty-five percent of these funds are distributed to the LEAs that are located in counties that have an effective property tax rate³ higher than the State average effective property tax rate. As with corporate income tax receipts, an amount allocated to a LEA that is not used in a given year accrues to the benefit of that LEA. Unlike with funds derived from corporate income tax receipts, the funds derived from lottery proceeds do not require a local match and may not be used for school technology needs. With the funds derived from lottery proceeds there is an additional restriction that the funds may not be used to retire indebtedness incurred for school construction purposes before January 1, 2003.

Recurring Sources of Local Funding Generally Available. Currently counties have several sources of recurring funding that may be used for financing public school construction. The following sources are available in all counties throughout the State.

- Property taxes. All counties are authorized to levy property taxes to provide for public schools without any limitation as to the rate or amount of tax imposed. Property taxes represent the single largest source of revenue for county governments. On average, property taxes account for roughly 70% of a county's tax revenue and between 38% and 55% of a county's budget⁴. Nominal and effective tax rates in the State vary significantly from county to county. Nominal tax rates range from a low of 0.26% in Dare County (effective tax rate of 0.2154%) to a high of 1.1% in Scotland County (effective tax rate of 1.005%).
- Supplemental School Taxes. All counties are currently authorized to levy supplemental school taxes in the county as a whole or in a particular district in the county for the support of public schools⁵. Supplemental school taxes are essentially additional property taxes which may be used for the support of public schools only. The tax rate is limited to a maximum rate of 0.5% (0.6% if the LEA or district has a population of at

³ The effective tax rate takes into account not only the nominal tax rate but the change in the fair market value in the county since the last revaluation.

⁴ The difference in percentages is due to the fact that counties have additional sources of revenue, such as fees and State and federal aid.

⁵ If these taxes are levied in a district only, they may be used only for schools within that district.

least 100,000). The local board of education may petition the board of county commissioners to levy the additional tax, which requires voter approval.

- Local Sales and Use Taxes. All counties are authorized to levy local sales and use taxes at a rate of 2.5%⁶. The taxes must be imposed in one increment of 1% and three subsequent increments of ½% each. The tax proceeds are shared with the municipalities in the county based on one of two formulas chosen by the county, one of which is based on relative populations and the other of which is based on relative assessed property values. A portion of the county proceeds from each of the first two ½% levies must be used for public school capital outlay purposes. For the first ½% levy, the county must use at least 30% of its portion of the proceeds for public school capital outlay purposes⁷. For the second ½% levy, the county must use at least 60% of its portion of the proceeds for public school capital outlay purposes. There is nothing that would prevent a county from using a greater share of its sales and use tax proceeds for these purposes.

Recurring Source of Local Funding Available in Certain Areas Only. Certain counties in the State have authority to enact different types of tax or fee legislation. In North Carolina, counties are considered subunits of the State and therefore have only the authority specifically granted to them by the State. The revenue options discussed in this section have been approved in local legislation for certain areas only.

- Excise Tax on Conveyances. Excise taxes on conveyances are known by a number of names, including deed stamp taxes and land transfer taxes. The State currently has an excise tax on conveyances equal to 0.2% of the value of the interest in land transferred. The counties collect this tax and retain one-half of the proceeds. In addition, seven counties⁸ have received authorization from the General Assembly to levy a local excise

⁶ Several counties have been authorized by the General Assembly to impose an additional local sales and use tax. Currently, only Mecklenburg County imposes an additional sales and use tax. That tax rate is limited to ½% and the proceeds of that levy may be used for public transportation purposes only.

⁷ For the first five years for which the tax is in effect, the county is required to use 40% of its proceeds for public school capital outlay purposes. All counties have now had the tax in effect for over five years and therefore are now subject to the 30% requirement.

⁸ Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, and Washington. Although authorized, the tax has never been levied in Washington County.

tax on conveyances. Although there are some differences among the local acts authorizing the taxes, all of those acts set the tax rate at 1% and require that the proceeds be spent on capital needs. No new local excise taxes on conveyances have been approved since 1989.

- Impact Fees. Impact fees are imposed by a jurisdiction to offset the costs of growth in the jurisdiction. An impact fee is structured so that each new housing unit pays a proportionate share of the costs of new infrastructure necessitated by the growth. To date, only three counties⁹ have been authorized to levy impact fees. For counties, impact fees are imposed to offset not only the costs of additional school facilities, but other infrastructure needs such as water and sewer and parks and recreation facilities. No new impact fees have been authorized since 1991.
- School Districts Levying Property Taxes. There are three local school administrative units¹⁰ that are allowed to levy and collect their own property taxes. Each of those school districts received that authority under a local act. In addition, due to a provision of the North Carolina Constitution, the districts were granted the power to levy property taxes only after approval by the voters in the district.

One-Time or Occasional Sources of Funding. From time to time, the State or local governments will provide non-recurring sources of funding for public school construction. Although this could take the form of a special appropriation from the State, this non-recurring infusion of funds generally comes as the result of the issuance of State or local general obligation bonds or local special indebtedness.

- General Obligation Bonds. General obligation bonds are a pledge of the full faith and credit and taxing power of an entity. This means that the jurisdiction pledges to repay the indebtedness from any source of funds available to it and to raise taxes, if need be, to cover this repayment. General obligation bonds may only be issued if approved by the voters. In addition, before a local government may issue general obligation bonds, the Local Government Commission must approve the issuance.

⁹ Catawba, Chatham, and Orange. In addition, 22 municipalities have been authorized to impose impact fees.

¹⁰ Mooresville, Roanoke Rapids, and Weldon.

The State has issued general obligation bonds twice in the last 35 years to provide for public school facilities. In 1973, the General Assembly and the voters approved the issuance of \$300 million of general obligation bonds for school construction purposes. In 1996, the General Assembly and the voters approved the issuance of \$1.8 billion of general obligation bonds for school construction purposes.

In addition, local governments have made extensive use of general obligation debt to finance public school capital outlay projects. Since 1995, 74 of 93 local bond referenda for public school capital outlay projects have passed (almost an 80% passage rate). These referenda have authorized the issuance of over \$7.19 billion of local general obligation bonds. In 2006, five of six local general obligation bond referenda were approved (totaling over \$1.42 billion)¹¹.

- Special Indebtedness. Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that may be secured only by an interest in the property being acquired or improved. There is no pledge of the State's or local government's faith and credit or taxing power to secure the debt. Thus, voter approval is not necessary for the borrowing. If the State or local government defaulted on its repayments, no deficiency judgment could be rendered against the entity, but the property that serves as security could be disposed of to generate funds to satisfy the debt. The State or local government could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the entity's credit rating.

All counties currently have the authority to acquire or improve real property for school facilities. Subject to approval of the Local Government Commission, counties may issue special indebtedness to acquire and improve real property for these purposes.

Alternative Financing Options. In addition to the funding options listed above, local school administrative units have the option of entering into two types of financing arrangements to

¹¹ Wake County -- \$970 million; Forsyth County -- \$250 million; Union County -- \$184.5 million; Lenoir County -- \$50 million; and Hoke County -- \$20 million. A \$45 million bond referendum in Franklin County was defeated.

provide for public school facilities. Local school administrative units are currently allowed to enter into either operating or capital leases to provide for school facilities. As a practical matter, an operating lease or a capital lease will generally require the local school administrative unit to receive the approval of both the board of county commissioners and the Local Government Commission before entering into the lease.

APPROVAL PROCESS FOR PUBLIC SCHOOL CONSTRUCTION

The Committee looked at the approval process related to new school construction plans. In addition to the Department of Public Instruction, the Department of Transportation, the Department of Environment and Natural Resources, and the Department of Insurance all play a role in evaluating construction plans for new schools. The Department of Transportation evaluates plans to determine their effect on local traffic patterns and to evaluate the potential of providing other safe routes (such as sidewalks and bike paths) to schools. The Department of Environment and Natural Resources first evaluates projects as it would any other large project for the effects of sediment run-off during construction. In addition, the DENR may conduct further permitting or review based on the specific location where the school is to be located¹². The Department of Insurance has a duty to inspect any building to be owned by a city, county, or school district before construction begins to determine if the plans are in accord with fire safety standards if the building is in excess of 10,000 square feet. In all, the approval process for public school construction plans often spans months before construction may begin.

DEBT AFFORDABILITY

The Committee heard from the State Treasurer's Office about the work of the Debt Affordability Advisory Committee. In 2004, the General Assembly created a Debt Affordability Advisory Committee to annually advise the Governor and the General Assembly on the estimated debt capacity of the State for the upcoming 10 fiscal years. The Committee must undertake an annual debt affordability study and establish guidelines for evaluating the State's debt burden. The Committee consists of the State Treasurer, the Secretary of Revenue, the State Budget Officer, the State Auditor, the State Controller, and four members of the

¹² For example, if the building would impact wetlands or if the school will not be part of a public water system.

public – two appointed by the President Pro Tempore of the Senate and two appointed by the Speaker of the House of Representatives. The State Treasurer serves as the chair of the Committee and the Committee meets upon the call of the chair. The Committee must report its findings and recommendations to the Governor, the General Assembly, and the Fiscal Research Division by February 1 of each year.

The study compiled by the Debt Affordability Advisory Committee evaluates the State's current and projected debt burden using indicators such as tax-supported debt to personal income, debt per capita, debt service to tax revenue, and rapidity of principal repayment ratios. The study recognizes that debt capacity is a limited and scarce resource and that an evaluation of the State's debt position can help policymakers evaluate the long-term impact of financing decisions and assist in prioritizing capital spending.

In 2006, the Debt Affordability Advisory Committee released a report recommending that the State issue no more than \$214.4 million in State tax-supported debt in each of the following five fiscal years. In 2006, the General Assembly authorized the issuance of a total of \$719.2 million of State debt over the following four fiscal years¹³, using much of the then estimated debt capacity. The Debt Affordability Advisory Committee is expect to release new recommendations by February 1 based on updated information.

ADEQUATE PUBLIC FACILITIES ORDINANCE AND IMPACT FEES

The Committee heard a presentation regarding the legal status of adequate public facilities ordinances (APFO) and impact fees in North Carolina and their economic impacts.

An APFO is a growth management technique implemented by a local government to affect the timing of additional residential development. Under an APFO, a community must define the types of services to which the APFO applies and determine the level of service that the community wishes to provide. The community must then determine whether that level of services will be available once the new development is fully operational. If the service level is adequate, the development is approved. If the service level is inadequate, the development is either stalled or, in some cases, a fee or land dedication is required. Under an impact fee, a

¹³ The timing of the debt authorizations were specified in the authorizations so that the issuance of the debt would be spread out over those four years to comply with the Committee's recommendations.

community must determine the impact of a proposed development on community services and assess a fee against the development to cover all or a portion of the increased governmental costs associated with the development.

It is clear under North Carolina law that local governments do not have independent authority to levy impact fees; they must be specifically authorized by the General Assembly¹⁴. The legal authority to enact an APFO in North Carolina is unclear as the issue has never been specifically addressed by the courts. Because an APFO will usually result in the payment of a 'voluntary' fee or in delayed development (when it is found that the service level is insufficient), there is cause for concern. The General Assembly has provided for specific procedures for a local government to impose a development moratorium. The courts have ruled that the counties do not have authority to impose a mandatory fee absent legislative approval. Unless the procedures specified by the General Assembly for declaring a development moratorium are met, one could argue that an APFO violates current law¹⁵.

Economic research suggests that impact fees and APFOs often have some unintended consequences. First, research suggests that the costs of impact fees and APFOs are borne by homebuyers and sellers of undeveloped land – generally not by the developers themselves. Second, the average increase in the price of a home after an impact fee is imposed is greater than the amount of the fee. Third, by slowing additional development, impact fees and APFOs often put upward pressure on the prices of existing housing, thereby benefiting existing homeowners and increasing the local government's property tax base.

DIFFERENT METHODS OF PROVIDING FOR SCHOOL FACILITIES

The Committee looked at different types of construction methods that can be used to provide for 'new' school facilities. These include new construction, renovation or additions to existing school facilities, converting existing structures into school facilities, and the use of mobile facilities. The Committee learned that all of these methods of providing for additional pupil space are used, particularly in the larger and faster-growing districts. The Committee learned that new construction and adaptive re-use often have similar cost structures. While

¹⁴ *Durham Land Owners Association v. County of Durham*, 360 N.C. 532 (2006).

¹⁵ Cabarrus County has been given specific authority to enact an APFO in local legislation.

renovation and mobile construction are often cheaper, there may be special issues with respect to those types of projects that make them less desirable¹⁶.

¹⁶ For example, school buildings designed in the 1940's or 1950's may not reflect the security needs of today's schools. There may be no good way of renovating the existing structure without significantly increasing costs to the level that new construction would be more cost-efficient.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The House Select Committee on Public School Construction Funding finds that needs with respect to public school facilities are great and critical; and, therefore, strongly and unanimously recommends that the General Assembly authorize the issuance of general obligation bonds to provide grants for public school capital outlay purposes. The authorization of general obligation bonds for these purposes is the top priority of the Committee during the 2007 Regular Session of the 2007 General Assembly. The Committee is mindful of the State's judicious use of debt financing and of potential competing interests for the State's debt capacity. In addition, the Committee is aware that the Debt Affordability Advisory Committee will issue new recommendations with respect to debt capacity in February 2007, and for these reasons, the Committee does not recommend a specific dollar amount for the general obligation bond authorization at this time. The Committee does recommend that the General Assembly, at the start of the 2007 Regular Session, introduce legislation to authorize a statewide public school bond referendum at the earliest possible date. The Committee further recommends approval of the legislation for the statewide school bond referendum prior to the conclusion of the 2007 Regular Session of the 2007 General Assembly.

In addition, the Committee makes five other recommendations for legislation intended to provide additional flexibility to counties and school districts for addressing their critical school facility needs. Each proposal is followed by an explanation.

1. Local Option Sales Tax for Education.
2. Extend Local Sales Tax Earmarking for Schools.
3. Property Tax - School Capital Leases.
4. Streamline School Construction Approval.
5. LEA Sales Tax Refund and Exemption.

LEGISLATIVE PROPOSAL 1

LOCAL OPTION SALES TAX FOR EDUCATION

LEGISLATIVE PROPOSAL 1

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING
TO THE 2007 GENERAL ASSEMBLY

**AN ACT TO AUTHORIZE COUNTIES TO LEVY ONE-HALF CENT LOCAL
SALES AND USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY
PURPOSES, IF APPROVED BY THE VOTERS OF THE COUNTIES**

SHORT TITLE: Local Option Sales Tax for Education.

SPONSORS:

BRIEF OVERVIEW: This bill would authorize counties to levy an additional ½¢ local sales and use tax, if approved by the voters, the proceeds of which could be used for public school capital outlay purposes only.

EFFECTIVE DATE: When it becomes law.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

BILL DRAFT 2007-LYxz-19 [v.3] (1/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/16/2007 5:12:19 PM

Short Title: Local Option Sales Tax for Education. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE COUNTIES TO LEVY ONE-HALF CENT LOCAL SALES AND
USE TAXES FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES, IF APPROVED
BY THE VOTERS OF THE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 105 of the General Statutes is amended by
adding a new Article to read:

"Article 46.

"Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax.

"§ 105-535. Short title.

This Article is the Fourth One-Half Cent (1/2¢) Local Government Sales and Use Tax Act.

"§ 105-536. Limitations.

This Article applies only to counties that levy the first one-cent (1¢) local sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"§ 105-537. Levy.

(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Vote. – The board of commissioners of a county may, by resolution, direct the county board of elections to conduct an advisory referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

' FOR AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public school capital outlay purposes.'

"§ 105-538. Administration.

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"§ 105-539. Distribution and use.

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the monthly distribution.

(b) Use. – Counties may use the proceeds of a tax levied under this Article only for public school capital outlay purposes as defined in G.S. 115C-426(f) and to retire indebtedness incurred by the counties for these purposes on or after January 1, 2003."

SECTION 2. A tax levied under Article 46 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 46 of Chapter 105 of the General Statutes.

SECTION 3. G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute a portion of the net use tax proceeds collected under this section to counties and cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, ~~and 4444~~, 45, and 46 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~105-501, 105-510, 105-520, 105-531, and 105-539 do not apply to tax proceeds distributed under this section."

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



DRAFT 2007-LYxz-19: Local Option Sales Tax for Education

BILL ANALYSIS

Committee:	House Select Committee on Public School Construction Funding	Date:	January 7, 2007
Introduced by:		Summary by:	Y. Canaan Huie
Version:	2007-LYxz-19[v.3]		Committee Counsel

SUMMARY: *This bill would authorize counties to levy one-half cent local sales and use taxes, if approved by a referendum of the voters of the county. The proceeds of the tax are to be used only for public school capital outlay purposes.*

CURRENT LAW: The General Assembly has previously authorized the levy of three one-half cent local sales and use taxes, in addition to a one-cent local sales and use tax authorized in 1971. Previous local sales taxes have given the local governments the option of holding an advisory referendum before imposing the tax. If the referendum failed, the county was not allowed to levy the tax. The county also had the option of levying the tax without a referendum, so long as a referendum had not failed.

All counties in North Carolina currently levy local sales taxes at a rate of at least 2.5%.

BILL ANALYSIS: This bill would authorize all counties to hold referenda on the issue of whether to levy additional one-half cent local sales taxes to be used only for public school capital outlay purposes only, including the repayment of indebtedness incurred for that purpose after January 1, 2003. The taxes would be administered in the same manner as the current first one-half cent local sales tax in Article 39 of the General Statute except that they would not apply to the sales price of food that is currently exempt from tax, the proceeds would not be shared with cities, the proceeds would be distributed based on the point of origin, and voter approval would be required before the tax could be levied.

EFFECTIVE DATE: This bill would become effective when it became law.

2007-LYxz-19e1-SMLY-LYxz-19

LEGISLATIVE PROPOSAL 2

EXTEND LOCAL SALES TAX EARMARKING FOR SCHOOLS

LEGISLATIVE PROPOSAL 2

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING
TO THE 2007 GENERAL ASSEMBLY

**AN ACT TO EXTEND THE EARMARKING OF A PORTION OF THE
PROCEEDS OF THE FIRST AND SECOND ONE-HALF CENT LOCAL SALES
AND USE TAXES FOR AN ADDITIONAL TEN YEARS.**

SHORT TITLE: Extend Local Sales Tax Earmarking for Schools.

SPONSORS:

BRIEF OVERVIEW: This bill would extend the time period by ten years during which counties are required to devote a specified percentage of the first and second ½¢ local sales and use taxes for public school capital outlay purposes.

EFFECTIVE DATE: When it becomes law.

A copy of the proposed legislation and bill analysis begin on the next page

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

H

D

BILL DRAFT 2007-LYz-20 [v.3] (1/4)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/16/2007 5:16:01 PM**

Short Title: Extend Local Sales Tax Earmarking for Schools. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE EARMARKING OF A PORTION OF THE PROCEEDS OF THE
FIRST AND SECOND ONE-HALF CENT LOCAL SALES AND USE TAXES FOR AN
ADDITIONAL TEN YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-487(a) reads as rewritten:

"(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next ~~23~~33 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

SECTION 2. G.S. 105-502(a) reads as rewritten:

"(a) Sixty percent (60%) of the revenue received by a county under this Article during the first ~~25~~35 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

SECTION 3. This act is effective when it becomes law.



DRAFT 2007-LYz-20: Extend Local Sales Tax Earmarking for Schools

BILL ANALYSIS

Committee:	House Select Committee on Public School Construction Funding	Date:	January 7, 2007
Introduced by:		Summary by:	Y. Canaan Huie
Version:	2007-LYz-20 [v.3]		Committee Counsel

SUMMARY: *This bill would extend the earmarking for public school capital outlay of a portion of the local sales and use tax proceeds by an additional ten years. This bill would become effective when it became law.*

CURRENT LAW: There are four Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax and Articles 40, 42, and 44 authorize additional one-half-cent taxes. Article 40 and Article 42 provide that the county is required to use a percentage of the tax revenue for public school capital outlay purposes, including retirement of outstanding debt. The earmarking in Article 40, enacted in 1983, was for the first ten fiscal years the tax was in effect and the earmarking in Article 42, enacted in 1986, was for the first eleven years that the tax was in effect. In 1993, the earmarking was extended for an additional five years for both Articles. In 1998, the earmarkings were extended by 13 and 9 years respectively for Articles 40 and 42. Most counties enacted the first half-cent tax under Article 40 in 1983 and the second half-cent tax under Article 42 in 1986, so the earmarkings would expired in 2011.

If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission to authorize it to use the money for any public purposes. In making its decision, the Commission must consider not only the public school capital needs but also the other capital needs of the county.

BILL ANALYSIS: This bill would extend the time periods under Articles 40 and 42 by ten years, so that the earmarking would continue to the year 2021. For these additional years, counties would be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40)¹⁷ and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes.

EFFECTIVE DATE: This act would become effective when it became law.

2007-LYz-20e1-SMLY-LYz-20

¹⁷ In 1985, the General Assembly exempted Burke County from the restriction that it use a percentage of the first half-cent local sales tax for public school capital outlay purposes. This exemption would remain in effect.

LEGISLATIVE PROPOSAL 3

PROPERTY TAX - SCHOOL CAPITAL LEASES

LEGISLATIVE PROPOSAL 3

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING
TO THE 2007 GENERAL ASSEMBLY

**AN ACT TO EXCLUDE FROM PROPERTY TAX REAL AND PERSONAL
PROPERTY THAT IS SUBJECT TO A CAPITAL LEASE WITH A LOCAL
SCHOOL ADMINISTRATIVE UNIT.**

SHORT TITLE: Property Tax - School Capital Leases.

SPONSORS:

BRIEF OVERVIEW: This bill would clarify that real and tangible personal property that is subject to a capital lease and used as a school facility is excluded from property tax.

EFFECTIVE DATE: For taxes imposed for taxable years beginning on or after July 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

BILL DRAFT 2007-LYz-17 [v.2] (1/3)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/4/2007 5:35:01 PM

Short Title: Property Tax - School Capital Leases. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO EXCLUDE FROM PROPERTY TAX REAL AND PERSONAL PROPERTY
THAT IS SUBJECT TO A CAPITAL LEASE WITH A LOCAL SCHOOL
ADMINISTRATIVE UNIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:

"§ 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:

...

(43) Real or tangible personal property that is subject to a capital lease pursuant to G.S. 115C-531."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2007.



DRAFT 2007-LYz-17: Property Tax -- School Capital Leases

BILL ANALYSIS

Committee:	House Select Committee on Public School Construction Funding	Date:	January 7, 2007
Introduced by:		Summary by:	Y. Canaan Huie Committee Counsel
Version:	2007-LYz-17 [v.2]		

SUMMARY: *This bill would exclude from property tax real or tangible personal property that is subject to a capital lease and is used as a public school facility.*

CURRENT LAW: In 2006, the General Assembly authorized local school administrative units to enter into capital leases to provide for school facilities. Capital leases differ from operating leases in several respects. In general, a capital lease is one that is considered to have the economic characteristics of ownership. To determine whether a lease is a capital lease or an operating lease, one must look at a number of different provisions in the lease. Under generally accepted accounting principles, a capital lease is a non-cancelable contract satisfying one or more of the following conditions:

- Legal title to the property is transferred to the lessee.
- The lease contains bargain or nominal purchase options.
- The lease term equals or exceeds 75% of the asset's useful life.
- The present value of the minimum lease payments equals or exceeds 90% of the asset's fair market value.

Generally, property owned by a unit of local government is not subject to property tax. In this case, because the local school administrative unit does not own the property that is the subject of the capital lease, that property would be subject to the property tax.

BILL ANALYSIS: This bill would exclude from the property tax property that is subject to a capital lease and is used as a public school facility.

EFFECTIVE DATE: This bill would be effective when it became law.

2007-LYz-17e1-SMLY-LYz-17

LEGISLATIVE PROPOSAL 4

STREAMLINE SCHOOL CONSTRUCTION APPROVAL

LEGISLATIVE PROPOSAL 4

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING
TO THE 2007 GENERAL ASSEMBLY

AN ACT TO STREAMLINE THE PROCESS FOR APPROVAL OF SCHOOL FACILITY CONSTRUCTION AND RENOVATION PLANS.

SHORT TITLE: Streamline School Construction Approval

SPONSORS:

BRIEF OVERVIEW: This bill would raise the size threshold with respect to local governments building plans that must receive the approval of the Commissioner of Insurance before construction may begin and would simplify the Department of Transportation review of school construction and renovation plans.

EFFECTIVE DATE: This bill would become effective October 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

H

D

BILL DRAFT 2007-LYz-21 [v.3] (1/4)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/9/2007 7:44:07 AM**

Short Title: Streamline School Construction Approval.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO STREAMLINE THE PROCESS FOR APPROVAL OF SCHOOL FACILITY
CONSTRUCTION AND RENOVATION PLANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-31-40(b) reads as rewritten:

"(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising ~~10,000~~20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents."

SECTION 2. G.S. 136-18(29a) reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

...

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new ~~school, school or~~ school, school or relocating a school, ~~or expanding an existing school, request from provide the Department with notice of the proposed development. Upon request of the entity,~~ the Department shall provide a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed ~~60~~30 days. This subdivision shall not be construed to require the public

or private entities planning schools to meet the recommendations made by the Department."

SECTION 3. This act becomes effective October 1, 2007.



DRAFT 2007-LYz-21: Streamline School Construction Approval

BILL ANALYSIS

Committee:	House Select Committee on Public School Construction Funding	Date:	January 7, 2007
Introduced by:		Summary by:	Y. Canaan Huie
Version:	2007-LYz-21[v.3]		Committee Counsel

SUMMARY: *This bill would increase the building size threshold for local government buildings whose plans require approval by the Commissioner of Insurance before construction may begin. In addition, this bill would make submitting new school plans to the Department of Transportation optional. This bill would become effective October 1, 2007.*

CURRENT LAW: For a building in excess of 10,000 square feet, a county, city, or school district must submit plans to the Commissioner of Insurance prior to beginning construction of the facility. The Commissioner has the duty of reviewing those plans with respect to compliance with fire safety standards. The Commissioner has 30 days to complete the review, but may extend this period by 30 days if necessary.

For all new school construction, relocation, and renovation projects, the public or private entity responsible for the project must request from the Department of Transportation a written evaluation and recommendations regarding the compliance of proposed access points to criteria developed by the Department. The Department must provide the evaluation and recommendations within 60 days of receiving the request, but the entity responsible for the school project is not required to act on the evaluation and recommendations.

BILL ANALYSIS: This bill would increase the size threshold at which local governments must submit building plans to the Commissioner of Insurance for review from 10,000 square feet to 20,000 square feet.

In addition, this bill would change the requirements related to the Department of Transportation. Under this bill, the entity responsible for the development would be required to notify the Department of Transportation of proposed plans. The entity would have the option of requesting a review, but would not be required to do so. Upon request, the Department would provide the evaluation and recommendation within 30 days rather than 60 days. As before, the entity requesting the review would have no duty to act upon the evaluation and recommendations.

EFFECTIVE DATE: This bill would become effective October 1, 2007.

LEGISLATIVE PROPOSAL 5

LEA SALES TAX REFUND AND EXEMPTION

LEGISLATIVE PROPOSAL 5

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
FUNDING
TO THE 2007 GENERAL ASSEMBLY

**AN ACT ALLOWING A SALES AND USE TAX EXEMPTION FOR LOCAL
SCHOOL ADMINISTRATIVE UNITS AND REENACTING THE SALES AND
USE TAX REFUND FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.**

SHORT TITLE: LEA Sales Tax Refund and Exemption

SPONSORS:

BRIEF OVERVIEW: This bill would allow for an exemption from the sales and use tax for purchases made by a local school administrative unit and would re-enact the sales and use tax refund for local school administrative units.

EFFECTIVE DATE: Most provisions of this bill would become effective July 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

BILL DRAFT 2007-LYz-30 [v.1] (1/16)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/16/2007 5:24:29 PM

Short Title: LEA Sales Tax Refund and Exemption. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT ALLOWING A SALES AND USE TAX EXEMPTION FOR LOCAL SCHOOL ADMINISTRATIVE UNITS AND REENACTING THE SALES AND USE TAX REFUND FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"§ 105-164.13. **Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Items subject to sales and use tax under G.S. 105-164.4, other than electricity and telecommunications service, if all of the following conditions are met:

- a. The items are purchased by a local school administrative unit for its own use and in accordance with G.S. 105-164.29B.
- b. The items are purchased pursuant to a valid purchase order issued by the local school administrative unit that contains the exemption number of the unit and a description of the property purchased or the items purchased are paid for with a check, electronic deposit, credit card, procurement card, or credit account of the local school administrative unit.
- c. For all purchases other than by a purchase order issued by the local school administrative unit, the unit must provide to or have on file with the retailer the unit's exemption number."

SECTION 2. Part 5 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

§ 105-164.29B. Local school administrative unit exemption process.

(a) Application. – To be eligible for the exemption provided in G.S. 105-164.13(54), a local school administrative unit must obtain from the Department a sales tax exemption number. The application for exemption must be in the form required by the Secretary, be signed by the

unit's finance officer, and contain any information required by the Secretary. The Secretary must assign a sales tax exemption number to a local school administrative unit that submits a proper application.

(b) Liability. – A local school administrative unit that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid."

SECTION 3. G.S. 105-164.14(c)(2b) and (2c) are reenacted.

SECTION 4. G.S. 105-164.44H is repealed.

SECTION 5. Section 7.51(c) of S.L. 2005-276 reads as rewritten:

~~"SECTION 7.51.(c) Subsection (b) of this section becomes effective July 1, 2006. Notwithstanding the provisions of G.S. 105-164.44H, for the 2006-2007 fiscal year, the amount transferred to the State Public School Fund each quarter shall equal one fourth of the amount refunded under G.S. 105-164.4(e)(2b) and (2c) during the 2005-2006 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The remainder of this This section becomes effective July 1, 2005, and applies to sales made on or after that date."~~

SECTION 6. G.S. 105-467(b) reads as rewritten:

~~"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holiday contained in G.S. 105-164.13C, and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."~~

SECTION 7. Sections 1, 3, 4, and 6 of this act become effective July 1, 2007, and apply to purchases made on or after that date. The remainder of this act is effective when it becomes law.



DRAFT 2007-LYz-30: LEA Sales Tax Exemption and Refund

BILL ANALYSIS

Committee:	House Select Committee on Public School Construction Funding	Date:	January 7, 2007
Introduced by:		Summary by:	Y. Canaan Huie
Version:	2006-LYz-6[v.1]		Committee Counsel

SUMMARY: *This bill would provide for an exemption from sales and use tax and a refund provision for local school administrative units. Most parts of the bill would become effective July 1, 2007.*

CURRENT LAW: Local school administrative units are liable for sales and use tax on purchases made by the unit. Many units of local government, such as counties and cities, are exempt from the sales and use tax on most purchases.

BILL ANALYSIS: This bill would allow for an exemption from the sales and use tax for items purchased by a local school administrative unit and would reinstate the refund provisions repealed by the General Assembly in 2005¹⁸. This exemption and refund is modeled after the exemption and refund for State agencies.

In 2003, the General Assembly changed the sales and use tax refund process for State agencies to an exemption for State agencies. To qualify for the exemption, the items must be purchased by a State agency and the purchase must meet one of the following conditions:

- The items are purchased pursuant to a purchase order of the State agency that contains the exemption number of the agency and a description of the items purchased.
- The items purchased are paid for by a State-issued check, electronic deposit, credit card, procurement card, or credit account of a State agency and the agency provides to or has on file with the retailer the agency's exemption number.

That act incorporated all of the various payment and purchase mechanisms where accounting system controls are in place to verify purchases and prevent possible misuse of the agency's sales tax exemption by its employees. The only type of direct purchases not included within this exemption is employee expense reimbursements.

The sales tax exemption applies only to direct purchases of tangible personal property. State agencies must still apply for refunds of local taxes paid on indirect purchases of building materials, supplies, fixtures, and equipment that become a part of a structure owned or leased by the State.

A State agency is liable for items purchased with its exemption number that it does not use. The liability include not only the tax that should have been paid on the items purchased, but also interest calculated from the date the tax would otherwise have been paid.

To be eligible for the sales and use tax exemption, a State agency must obtain from the Department of Revenue a sales tax exemption number through an application process.

¹⁸ With the exemption process in place, the refund provisions would primarily apply to items purchased indirectly by a local school administrative unit, such as building materials.

In addition, this bill would repeal an automatic transfer of funds to the State Public School Fund that was enacted in 2005 when the local school administrative unit refund provision was repealed.

EFFECTIVE DATE: Most provisions of the act would become effective July 1, 2007.

BACKGROUND: In 2005, the General Assembly repealed the provisions allowing local school administrative units to receive a refund of sales and use taxes paid. It redirected estimated State sales tax revenues refundable to LEAs to the State Public School Fund for allotment through State position, dollar, and categorical allotments. The effect of that provision was to funnel all State monies for public education through the budgetary process by eliminating the State monies going directly to LEAs through the refund process.

The provision accomplishes that redirection in three steps:

- It repealed the ability of individual LEAs to obtain an annual refund of the State and local sales and use tax monies paid, effective July 1, 2005, and applicable to sales made on or after that date.¹⁹ LEAs had had the ability to request an annual refund of State and local sales and use taxes paid since July 1, 1998.²⁰ The provision also repealed the ability of school board cooperatives to obtain a refund; they have had the ability to request annual refunds since July 1, 2003.²¹ The LEAs were able to obtain a refund for sales and use taxes paid by them during the fiscal year 2004-05.
- For fiscal year 2006-07, the provision directs the Secretary of Revenue to transfer quarterly a calculated amount from the State sales and use tax net collections to the State Public School Fund. The quarterly amount will be equal to one-fourth of the amount refunded to LEAs and school board cooperatives²² during the 2005-06 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The Fiscal Research Division estimated the total amount of this annual earmarking at \$33,000,000.²³
- For subsequent fiscal years, the provision directs the Secretary to transfer quarterly an amount equal to one-fourth of the amount refunded to LEAs and school board cooperatives during the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year.

¹⁹ The intent of the legislation, as reflected by the Committee Report, was to repeal the ability of school boards to obtain a refund of State sales and use taxes paid, not State and local. It is anticipated that a provision will be introduced in the 2006 legislative session to reinstate the refund of local sales and use taxes.

²⁰ S.L. 1998-212.

²¹ S.L. 2003-431.

²² S.L. 2003-345 corrected a statutory reference made in this provision of the act.

²³ This dollar amount reflects the amount of State sales and use taxes paid by LEAs, not the local sales and use taxes paid by them.

APPENDIX A

AUTHORIZATION

James B. Black
Speaker



Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on Public School Construction (hereinafter "Select Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6 and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Section 2. The Select Committee shall be composed of the twenty two members listed below and appointed by the Speaker of the House of Representatives.

Representative Doug Yongue, Chair
Representative Martha Alexander
Representative Lucy Allen
Representative Jeff Barnhart
Representative Larry M. Bell
Representative Becky Carney
Representative Linda Coleman
Representative Bob England
Representative Dale Folwell
Representative Bruce Goforth
Representative Larry Hall
Representative Julia Howard
Representative Linda Johnson, Vice-Chair
Representative Earl Jones, Vice-Chair
Representative Marvin Lucas, Vice-Chair
Representative Edd Nye
Representative Garland Pierce
Representative William Wainwright
Representative Roger West
Representative Winkie Wilkins
Representative Arthur Williams
Representative Michael Wray

Section 3. The Select Committee shall examine the present system of local financing for school facilities and shall study alternative options for financing local school construction, renovation, repair, and maintenance. The Select Committee may study and consider public-private partnerships for school construction and facility ownership, sale lease-back arrangements, private and commercial financing arrangements, design standards for school facilities that may facilitate alternative financing

techniques, alternative local revenue sources for financing school facilities, the use of real estate investment trusts, State and local construction bond pools, and any other financing issues.

Section 4. The Select Committee shall meet upon the call of its Chair. A quorum of the Select Committee shall be a majority of its members, including the Chair.

Section 5. Members of the Select Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1. The expenses of the Select Committee including per diem, subsistence, travel allowances for Select Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Select Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Select Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 6. The members of the Select Committee serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives shall fill vacancies and may dissolve the Select Committee at any time.

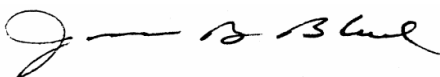
Section 7. The Legislative Services Officer shall assign professional and clerical staff to assist the Select Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Select Committee.

Section 8. The Select Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Select Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Section 9. The Select Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Select Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Select Committee may submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before January 23, 2007, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Select Committee shall terminate on January 23, 2007, or upon the filing of its final report, whichever occurs first.

Effective this 28th day of September, 2006.



James B. Black, Speaker

Revised 12-12-06 to add Representative Larry M. Bell to the committee.

APPENDIX B

COMMITTEE MEETING AGENDAS

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
AGENDA

Thursday, October 26, 2006
Room 544, Legislative Office Building
10:00 a.m.

- I. Welcome and Introductions**
Rep. Doug Yongue
- II. Explanation of Committee Charge**
Rep. Doug Yongue
- III. Glossary of Relevant Terms**
Steve Taynton and Ben Matthews, Department of Public Instruction
- IV. Public School Construction Funding Options**
Canaan Huie, Legislative Drafting Division
- V. Lunch Break**
- VI. Explanation of Public Schools Facility Needs Survey**
Steve Taynton, Department of Public Instruction
- VII. Experiences of Counties and Local School Administrative Units**
- Jim Blackburn, North Carolina Association of County Commissioners
 - Mike Burriss, Wake County Public School System
 - Brown Hendrix, Hoke County Public Schools

Future Meeting Dates: Tuesday, November 21, 2006; Wednesday, December 13, 2006; Tuesday, January 9, 2007. All meetings begin at 10 a.m. and are scheduled to end by 3:00 p.m.

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
AGENDA

Wednesday, December 13, 2006
Room 1027, Legislative Building
9:00 a.m.

- I. Welcoming Remarks**
Rep. Doug Yongue
- II. Approval of the Minutes from October 26**
- III. Other Agencies Participation in the School Construction Approval Process**
- Robin Smith, Assistant Secretary of Environment and Natural Resources
 - Wayne Goodwin, Assistant Commissioner of Insurance
 - Kevin Lacey, State Traffic Engineer, Department of Transportation
 - Tom Norman, Director of Bicycle and Pedestrian Division, Department of Transportation
- IV. State and Local Debt Affordability**
Vance Holloman, Deputy State Treasurer
- V. Adequate Public Facilities Ordinances and Impact Fees**
Dustin Read, Esq., Center for Real Estate, UNC- Charlotte
- VI. Lunch Break**
- VII. Comparison of Spending Levels**
Alex Hess, School of Government
- VIII. Comparison of State Funding Methods**
Canaan Huie, Legislative Drafting Division
- IX. Costs of Alternative Types of Construction**
Guy Chamberlain, Charlotte-Mecklenburg Schools
- X. Experiences of Local School Administrative Units**
- Leanne Winner, North Carolina School Boards Association
 - Tim Kinlaw, Cumberland County Public School System
 - Anna McGinnis, Dare County Schools

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION
AGENDA

Tuesday, January 9, 2007
Room 544, Legislative Office Building
10:00 a.m.

I. Welcoming Remarks

Rep. Doug Yongue

II. Approval of the Minutes from December 13

III. Presentation of the Draft Report

Canaan Huie, Legislative Drafting Division

- Executive Summary
- Legislative Proposal 1, *Local Development Options.*
- Legislative Proposal 2, *Local Option Sales Tax for Education*
- Legislative Proposal 3, *Extend Local Sales Tax Earmarking for Schools*
- Legislative Proposal 4, *Property Tax – School Capital Leases*
- Legislative Proposal 5, *Streamline School Construction Approval*
- Legislative Proposal 6, *LEA Sales Tax Refund and Exemption*

IV. Committee Discussion

V. Adjournment

HOUSE SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION FUNDING
AGENDA

Tuesday, January 23, 2007
Room 544, Legislative Office Building
2:00 p.m.

- I. Welcoming Remarks**
Rep. Doug Yongue
- II. Approval of the Minutes from January 9**
- III. Review of Changes to the Draft Report**
Canaan Huie, Legislative Drafting Division
- IV. Committee Discussion and Action**
- V. Adjournment**