

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

1

SENATE BILL 25

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

Sponsors: Senators Jordan; Albertson, Harris, Hoyle, Martin of Pitt, Odom, Plyler, Purcell, Rand, Swindell, and Wellons.

Referred to: Finance.

February 1, 2001

A BILL TO BE ENTITLED

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

1 selected contractors constructing the Projects and to the special nonprofit corporation
2 for nominal consideration.

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

4 (1) Certificates of participation. – Certificates or other instruments
5 delivered by a special nonprofit corporation as provided in this section
6 evidencing the assignment of proportionate and undivided interests in
7 the rights to receive lease payments to be made by the State pursuant
8 to a lease-purchase agreement.

9 (2) Construction contract agreement. – A contract between the Department
10 of Correction and the selected contractors for construction of the
11 Projects, under which the selected contractors will be responsible for
12 arranging for and obtaining their own construction financing, which
13 will consist solely of private funds.

14 (3) Lease-purchase agreement. – A lease-purchase agreement entered into
15 pursuant to this section, under which the State will lease the Projects
16 from the special nonprofit corporation, with option to purchase.

17 (4) Projects. – Three close security correctional facilities providing up to
18 3,000 cells to be constructed by selected contractors, sold to the special
19 nonprofit corporation, and leased to the State pursuant to this section.

20 (5) Purchase agreement. – A contract under which the special nonprofit
21 corporation will purchase the Projects from the selected contractors.

22 (6) Selected contractors. – One or more private firms selected to construct
23 the Projects.

24 (7) Special nonprofit corporation. – A nonprofit corporation created under
25 Chapter 55A of the General Statutes and designated by the State
26 Treasurer for entering into the transactions contemplated by this
27 section.

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

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

1 ~~the contract which shall then be subject to the approval of the Council of State after~~
2 ~~consultation with the Joint Legislative Commission on Governmental Operations.~~ State.

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

16 (d) Approval of Lease-Purchase Agreement. – A lease-purchase agreement may
17 not be entered into pursuant to this section unless the following conditions are met
18 before the lease-purchase agreement is entered into: (i) the Council of State, by
19 resolution, approves the execution and delivery of the lease-purchase agreement, and
20 (ii) the State Treasurer approves the lease-purchase agreement and all other
21 documentation related to it, including any leasehold deed of trust or trust agreement in
22 connection with it. The resolution of the Council of State may include any matters the
23 Council of State determines. In determining whether to approve the lease-purchase
24 agreement, the State Treasurer may consider any factors as the State Treasurer considers
25 relevant in order to find and determine that all of the following 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.
43 (2) No deficiency judgment may be rendered against the State or any
44 agency, department, or commission of the State in any action for

1 breach of any obligation contained in the lease-purchase agreement or
2 any other related documentation, and the taxing power of the State or
3 any agency, department, or commission of the State is not and may not
4 be pledged to secure any moneys due under the lease-purchase
5 agreement.

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

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

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

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

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

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

38 (f) Faith and Credit Not Pledged. – The payment of amounts payable by the State
39 under the lease-purchase agreement and other related documentation during any fiscal
40 biennium or fiscal year is limited to funds appropriated for that purpose by the General
41 Assembly in its discretion. No provision of this section and no lease-purchase
42 agreement creates any pledge of the faith and credit of the State or any agency,
43 department, or commission of the State within the meaning of any constitutional debt
44 limitation.

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

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

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

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

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