

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 622
HOUSE BILL 1155

AN ACT TO CREATE THE PUBLIC SCHOOL BUILDING CAPITAL FUND TO ASSIST COUNTY GOVERNMENTS IN MEETING THEIR PUBLIC SCHOOL BUILDING CAPITAL NEEDS, TO CREATE THE CRITICAL SCHOOL FACILITY NEEDS FUND TO PROVIDE FUNDS FOR COUNTIES THAT HAVE THE GREATEST CRITICAL SCHOOL FACILITY NEEDS, TO CREATE A COMMISSION TO DETERMINE THE CRITICAL SCHOOL FACILITY NEEDS OF EACH COUNTY, TO REPEAL THE TAX ON INVENTORIES OF MANUFACTURERS, RETAILERS, AND WHOLESALERS, TO REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, TO INCREASE THE CORPORATE INCOME TAX, TO REQUIRE MOST EMPLOYERS TO REMIT WITHHOLDING TAXES ON A MONTHLY BASIS, TO REPEAL THE RETAILERS' DISCOUNT FOR PAYMENT OF SALES AND USE TAXES WHEN DUE, AND TO EARMARK ADDITIONAL LOCAL SALES AND USE TAX PROCEEDS FOR PUBLIC SCHOOL CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "School Facilities Finance Act of 1987".

Sec. 2. G.S. 105-275 is amended by adding two new subdivisions to read:

"(32) Inventories owned by manufacturers.

(33) Inventories owned by retail and wholesale merchants."

Sec. 3. G.S. 105-163.03 and G.S. 105-163.06 are repealed.

Sec. 4. G.S. 105-163.02 is amended by deleting subdivisions (1) through (7) and subdivisions (9) and (10) of that section.

Sec. 5. G.S. 105-277(i) is repealed.

Sec. 6. Effective January 1, 1989, G.S. 105-277A is rewritten to read:

"§ 105-277A. Reimbursement for exclusion of retailers' and wholesalers' inventories.—(a) The Secretary of Revenue shall reimburse taxing units for the property tax exclusion provided for retailers' and wholesalers' inventories as provided in this section. On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were taxed in 1987 by the county or city under this Subchapter. The list shall contain the value of the inventories taxed as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district or unit of government for which the county or city collected taxes in 1987 but whose tax rates

were not included in the rates listed for the county or city, and the value of the inventories taxed in that district or unit. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district or unit of government whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, district, or unit for eight years from 1980 through 1987.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall pay to each county its per capita share of the sum of thirteen million two hundred thirty thousand dollars (\$13,230,000) plus an amount equal to the greater of the following:

(1) The county's per capita share of the sum of thirty-nine million dollars (\$39,000,000); or

(2) The total of the county average rate multiplied by eighty percent (80%) of the value of the inventories owned by retailers and wholesalers that were taxed in 1987 by the county, plus the city average rate for each city in the county multiplied by eighty percent (80%) of the value of the inventories that were taxed in 1987 by the city plus the average rate for each special district or unit of government for which the county or a city in the county collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by eighty percent (80%) of the value of the inventories owned by retailers and wholesalers that were taxed in 1987 in the district or unit, minus two and one-half percent (2.5%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between September 1, 1987, and June 30, 1988, plus or minus the percentage of this sum that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, as soon as practicable after January 1, the Secretary of Revenue shall distribute to each county the amount it received the previous year.

In making the per capita calculations under this subsection, the Secretary shall use the most recent annual population estimates certified by the State Budget Officer.

Amounts allocated to a county under this section shall in turn be divided and distributed between the county and the taxing units located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this section. If a county or city fails to make a requested report within the time prescribed, the

Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(b) As used in this section, the term 'taxing unit' means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section.

(c) The Secretary of Revenue shall pay for the distribution required by this section and the cost of making the distribution as follows:

- (1) For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.
- (2) For distributions made in subsequent years, the Secretary shall charge the collections received by the Department under Division I of Article 4 of this Chapter with an amount equal to the amount distributed and the cost of making the distribution."

Sec. 7. Effective January 1, 1989, Article 12 of Chapter 105 of the General Statutes is amended by inserting a new section to read:

"§ 105-275.1. Reimbursement for exclusion of manufacturers' inventories.—(a) Initial Distribution. On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of all the inventories owned by manufacturers that were taxed in 1987 by the county or city under this Subchapter. The list shall contain the value of the inventories taxed as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district or unit of government for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories taxed in that district or unit. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall pay to each county and city an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories owned by manufacturers that were taxed in 1987 by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall also pay to each county and city an amount equal to the average rate, as provided below, for each special district or unit of government for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were taxed in 1987 in the district or unit.

The Secretary shall calculate an average rate for each county and city, and for each special district or unit of government whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, district, or unit for the eight years from 1980 through 1987.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for another special district or unit of government (either because the district or unit's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district or unit's average rate and the value of the inventories in the district or unit) shall be distributed among the districts and units in the county or city in accordance with regulations issued by the Local Government Commission. This distribution shall be made as soon as practicable after the city or county receives funds under this subsection.

(b) Subsequent Distributions. Thereafter, as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. As soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts and units of government for which the county or city collects tax an amount equal to the amount it distributed among such districts and units the previous year. This distribution shall be in accordance with regulations issued by the Local Government Commission.

(c) Use. Funds received by a county, city, special district, or other unit of government under this section may be used for any lawful purpose.

(d) 'City' Defined. As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall charge the collections received by the Department under Division I of Article 4 of Chapter 105 with an amount equal to the amount distributed and the cost of making the distribution."

Sec. 8. G.S. 105-130.3 reads as rewritten:

"§ **105-130.3. Corporations.**—Every corporation doing business in this State shall pay annually an income tax equivalent to ~~six percent (6%)~~ seven percent (7%) of its net income or the portion thereof allocated and apportioned to this State.

The net income or net loss of such corporation shall be the same as 'taxable income' as defined in the Code subject to the adjustments provided in G.S. 105-130.5.

If the entire business of the corporation is done within this State or if the corporation is not taxable in another state within the meaning of subsection (b) of G.S. 105-130.4, the tax shall be measured by the entire net income of the corporation for the income year.

If the business of the corporation is taxable both within and without this State, its entire net income or net loss shall be allocated and apportioned in accordance with the provisions of G.S. 105-130.4."

Sec. 9. G.S. 105-163.6(c1) reads as rewritten:

"(c1) Notwithstanding any of the other provisions of this section, every employer required to deduct and withhold under the provisions of G.S. 105-163.2 an average of ~~three thousand dollars (\$3,000)~~five hundred dollars (\$500.00) or more per month during the preceding calendar year (or during so much of such year as he paid wages) and every employer who begins paying wages during a calendar year and whose liability to deduct and withhold under G.S. 105-163.2 can reasonably be expected to average ~~three thousand dollars (\$3,000)~~five hundred dollars (\$500.00) or more per month in that calendar year, shall make returns and pay over to the Secretary each month the amounts required to be withheld under G.S. 105-163.2. Returns and payments to the Secretary by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were required to be withheld from the wages of employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month.

When an employer has become subject to the requirements of this subsection, he shall continue to make returns and payments to the Secretary on that basis. However, an employer required under the provisions of this subsection to file monthly returns who, in a later calendar year, is required to deduct and withhold under G.S. 105-163.2 an average of less than ~~three thousand dollars (\$3,000)~~five hundred dollars (\$500.00) per month may make application to the Secretary for authority to use the quarterly basis for filing and making payments. Such authority, when granted, shall be in writing, shall commence on a date set by the Secretary, and shall continue until the Secretary, in the exercise of his discretion, shall revoke it in writing, effective on a date set by him."

Sec. 10. G.S. 105-164.21 is repealed.

Sec. 11. G.S. 105-502(a) reads as rewritten:

"**§ 105-502. Use of additional tax revenue by counties.**—(a) ~~Except as provided by subsection (b) of this section, revenue received by a county under this Article shall be subject to the following restrictions:~~

- ~~(1) Sixty percent (60%) of the revenues received by the county during the first two fiscal years in which the tax is in effect;~~
- ~~(2) Fifty percent (50%) of the revenues received by the county during the next two fiscal years;~~
- ~~(3) Forty percent (40%) of the revenues received by the county during the next four fiscal years;~~
- ~~(4) Thirty percent (30%) of the revenues received by the county during the next two fiscal years; and~~
- ~~(5) Twenty percent (20%) of the revenues received by the county during the next fiscal year~~

Sixty percent (60%) of the revenue received by a county under this Article during the first 11 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes 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."

Sec. 12. Chapter 115C of the General Statutes is amended by adding a new Article to Subchapter IX to read:

"Article 38A.

"Public School Building Capital Fund.

"§ 115C-546.1. **Creation of Fund; administration.**—(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Beginning September 1, 1987, and each month thereafter through June 30, 1988, the Secretary of Revenue shall deposit with the State Treasurer in the Public School Building Capital Fund one-seventh (1/7) of the corporate income tax net collections received during the previous month by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. Beginning July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Public School Building Capital Fund an amount equal to two million five hundred thousand dollars (\$2,500,000) less than one-fourteenth (1/14) of the corporate income tax net collections received during the previous quarter by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management.

"§ 115C-546.2. **Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.**—(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Monies in the Fund shall be used for the construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings. As used in this section, 'public school buildings' only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for the construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings or for the purchase of land for public school buildings, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

(c) Monies in the Fund shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502, 105-494, or 105-487 may be used to meet the local matching requirement."

Sec. 13. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 34A.

"Critical School Facility Needs Fund.

"§ 115C-489.1. Creation of fund; administration.—(a) There is created the Critical School Facility Needs Fund.

(b) On or before January 15, 1988, the Secretary of Revenue shall estimate the amount of additional tax revenue that will be collected during the twelve months ending June 30, 1988, as a result of Section 9 of the School Facilities Finance Act of 1987. The Secretary shall, prior to February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund, an amount equal to that estimate. These funds shall be drawn from individual income tax net collections received by the Department of Revenue under Division II of Article 4 of Chapter 105 of the General Statutes.

The Secretary of Revenue shall, on or before February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of forty million dollars (\$40,000,000). These funds shall be drawn from sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes.

Effective July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of two million five hundred thousand dollars (\$2,500,000). These funds shall be drawn from the corporate income tax collections received by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.

All funds deposited in the Critical School Facility Needs Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the State Board of Education. Monies in the Fund shall be used only for the purposes specified in this Article.

"§ 115C-489.2. Grants from the fund.—(a) The board of education and the boards of county commissioners of the county in which the local school administrative unit is located in whole or in part shall apply jointly for a grant from the Fund to meet a particular critical need in the local school administrative unit. Grants may be made only for projects that meet the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3.

The application shall contain information on how the critical need for which funds are requested would be met and how much State money is required for the project. The application shall also include an analysis of the school facility needs of the county and a long-range plan for meeting those needs.

At the request of a board of county commissioners or a local board of education, the State Board of Education shall provide technical assistance in facility planning to a local school administrative unit and a county preparing an application for a grant from the Fund.

(b) The Commission on School Facility Needs shall make grants from the Fund to the counties which it determines, according to the following criteria, have the greatest critical school facility needs in relation to resources available to pay for school facility needs:

- (1) The critical school facility needs in the county, as determined by the Commission on School Facility Needs pursuant to G.S. 115C-489.4. (Until the Commission issues a final report on critical school facility

needs in the counties, the Commission shall use the preliminary report.)

- (2) Ability to pay as measured by:
 - a. the per pupil adjusted property tax base in the county. The per pupil adjusted property tax base in the county is the property tax base in the county adjusted using the sales tax assessment ratio study performed by the Department of Revenue, and
 - b. the per capita income of the county.
- (3) Any critical nonschool needs that may force the county to divert its resources from school facilities.

"§ 115C-489.3. Statewide school facility minimum standards.— (a) Prior to October 1, 1987, the State Board of Education shall develop and adopt interim statewide school facility minimum standards. These interim standards shall be used by the Commission on School Facility Needs to make its preliminary report on critical school facility needs in each county.

(b) Prior to June 1, 1988, the State Board of Education shall adopt statewide school facility minimum standards to define what constitutes adequate facilities, furniture, equipment, apparatus, and spaces. The State Board of Education shall provide a process for justifying deviations from the adopted standards. The State Board of Education shall report quarterly to the Joint Legislative Commission on Governmental Operations, until the standards are adopted, as to the Board's progress in developing standards. These standards shall be used by the Commission on School Facility Needs to make its final report on critical school facility needs in each county.

"§ 115C-489.4. Commission on School Facility Needs.—(a) There is created the Commission on School Facility Needs. The Commission shall be located administratively in the Department of Public Education but shall exercise all its prescribed statutory powers independently of the State Board of Education and the Department of Public Instruction.

The Commission shall consist of five members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121, one of whom shall serve as cochairman, and five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall serve as cochairman.

Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6.

The Department of Public Instruction shall provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work.

- (b)
 - (1) Prior to April 1, 1988, the Commission on School Facility Needs shall make a preliminary report to the State Board of Education and the

General Assembly on the amount of critical school facility needs in each county. The Commission shall use the interim statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3(a) in determining the amount of critical needs in each county.

- (2) Prior to March 1, 1989, the Commission on School Facility Needs shall make a final report to the State Board of Education and the General Assembly on the total amount of school facility needs in each county. This report shall include a determination of which needs are critical. The Commission shall use the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3(b) in determining the amount of needs and critical needs in each county.

(c) The State Board of Education shall allocate the sum of two hundred thousand dollars (\$200,000) from the Critical School Facility Needs Fund to the Commission on School Facility Needs for the work of the Commission."

Sec. 14. G.S. 115C-521(a) reads as rewritten:

"(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter."

Sec. 15. G.S. 120-123 is amended by adding a new subdivision to read:

"(51) The Commission on School Facility Needs, established by G.S. 115C-489.3."

Sec. 15.1. There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after August 1, 1987, and before June 30, 1988, pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall withhold from each county's share to be distributed an amount equal to three and three-tenths percent (3.3%) of that county's share. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A.

Sec. 16. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 17. Sections 2, 3, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 1988. Sections 6 and 7 of this act shall become effective January 1, 1989. Section 8 of this act is effective for taxable years beginning on or after January 1, 1987. Section 9 of this act shall become effective August 1, 1987, and applies to amounts withheld from an employee's wages on or after that date. Section 10 of this act shall become effective August 1, 1987, and applies to remittances

of sales and use taxes collected on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1987.