

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-57
SENATE BILL 257**

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**EDUCATION LOTTERY FUNDS / CHANGES TO REVENUE ALLOCATIONS
NEEDS-BASED PUBLIC SCHOOL CAPITAL FUND**

SECTION 5.3.(a) The appropriations made from the Education Lottery Fund for the 2017-2019 fiscal biennium are as follows:

	FY 2017-2018	FY 2018-2019
Noninstructional Support Personnel	\$383,888,897	\$385,914,455
Prekindergarten Program	78,252,110	78,252,110
Public School Building Capital Fund	100,000,000	100,000,000
Needs-Based Public School Capital Fund	30,000,000	75,000,000
Scholarships for Needy Students	30,450,000	30,450,000
UNC Need-Based Financial Aid	10,744,733	10,744,733
LEA Transportation	43,277,192	1,386,090
TOTAL APPROPRIATION	\$676,612,932	\$681,747,388

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SECTION 5.3.(d) It is the intent of the General Assembly to increase the amount of North Carolina Education Lottery net lottery revenue collected that is dedicated to assist local governments in meeting local school capital needs from sixteen and nine-tenths percent (16.9%) of net lottery revenue collected in the 2016-2017 fiscal year to forty percent (40%) of net lottery revenue collected no later than the 2028-2029 fiscal year. To that end, there is created the Needs-Based Public School Capital Fund to be administered by the Superintendent of Public Instruction. The Needs-Based Public School Capital Fund shall be used to award grants to counties designated as a development tier one area or a development tier two area, as defined by G.S. 143B-437.08, to assist with their critical public school building capital needs. The Superintendent of Public Instruction shall award grants to counties in accordance with the following priorities:

- (1) Counties designated as development tier one areas.
- (2) Counties with greater need and less ability to generate sales tax and property tax revenue.
- (3) Counties with a high debt-to-tax revenue ratio.
- (4) The extent to which a project will address critical deficiencies in adequately serving the current and future student population.

SECTION 5.3.(e) Grant funds awarded under this section shall be subject to a matching requirement from the recipient county as follows:

- (1) For a county designated as a development tier one area, the grant shall not exceed three dollars (\$3.00) in grant funds for every one dollar (\$1.00) provided by the county. Grant funds awarded to a tier one county shall not exceed fifteen million dollars (\$15,000,000).

- (2) For a county designated as a development tier two area, the grant shall not exceed one dollar (\$1.00) for every one dollar (\$1.00) in grant funds provided by the county. Grant funds awarded to a tier two county shall not exceed ten million dollars (\$10,000,000).

Grant funds shall be used for new capital projects only. Grant funds shall not be used for real property acquisition or for operational lease agreements. Notwithstanding subdivision (2) of this subsection, grant funds shall only be awarded to development tier one counties until the 2020-2021 fiscal year. Grant funds shall not be awarded to any county that has received over eight million seven hundred fifty thousand dollars (\$8,750,000) in funds from the Public School Building Capital Fund from the 2012-2013 fiscal year to the 2016-2017 fiscal year.

SECTION 5.3.(f) G.S. 115C-546.2 is amended by adding a new subsection to read:

"(f) If a county has received a grant fund award from the Needs-Based Public School Capital Fund, that county shall be ineligible to receive allocations from the Public School Building Capital Fund for a period of five years from the date the grant funds were awarded."

SECTION 5.3.(g) On or before April 1 of each year, a grant recipient shall submit to the Superintendent of Public Instruction an annual report for the preceding year that describes the progress of the project for which the grant was received. The grant recipient shall submit a final report to the State Superintendent of Public Instruction within three months of the completion of the project.

SECTION 5.3.(h) On or before May 1 of each year, the Superintendent of Public Instruction shall submit a report to the chairs of the Senate Appropriations Committee on Education/Higher Education, the chairs of the House Appropriations Committee on Education, and the Fiscal Research Division. The report shall contain at least all of the following information for the fiscal year:

- (1) Number and description of projects awarded.
- (2) Total cost of each project and amount supported by the Needs-Based Public School Capital Fund.
- (3) Projections for local school administrative unit capital needs for the next 30 years, based upon present conditions and estimated demographic changes.
- (4) Any legislative recommendations for improving the Needs-Based Public School Capital Fund program.

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HB 528 (Session Law 2017-197) added the following:

SECTION 1.2. If Senate Bill 257, 2017 Regular Session, becomes law, then Section 5.3 of that act is amended by adding a new subsection to read:

"SECTION 5.3.(i) The Joint Legislative Commission on Governmental Operations shall appoint a committee to study the Needs-Based Public School Capital Fund program established in this section. The study committee shall consider at least all of the following:

- (1) Obstacles to counties' ability to participate in or achieve maximum benefit from the program.
- (2) Potential uses of program funds, such as lease agreements and public-private partnerships, to facilitate participation and school capital construction.

The study committee shall submit a report and any recommendations to the Joint Legislative Commission on Governmental Operations on or before February 1, 2018."

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-212
SENATE BILL 582**

AN ACT (I) TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS TO
THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2017 AND TO RELATED
LEGISLATION AND (II) TO MAKE AGENCY TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.1. Section 5.3(e) of S.L. 2017-57 reads as rewritten:

"SECTION 5.3.(e) Grant funds awarded under this section shall be subject to a matching requirement from the recipient county as follows:

- (1) For a county designated as a development tier one area, the grant shall not exceed three dollars (\$3.00) in grant funds for every one dollar (\$1.00) provided by the county. Grant funds awarded to a tier one county shall not exceed fifteen million dollars (\$15,000,000).
- (2) For a county designated as a development tier two area, the grant shall not exceed one dollar (\$1.00) for every one dollar (\$1.00) in grant funds provided by the county. Grant funds awarded to a tier two county shall not exceed ten million dollars (\$10,000,000).

Grant funds shall be used for the construction of new capital projects ~~school buildings~~ only. Grant funds shall not be used for real property acquisition or for operational lease agreements. Notwithstanding subdivision (2) of this subsection, grant funds shall only be awarded to development tier one counties until the 2020-2021 fiscal year. Grant funds shall not be awarded to any county that has received over eight million seven hundred fifty thousand dollars (\$8,750,000) in funds from the Public School Building Capital Fund from the 2012-2013 fiscal year to the 2016-2017 fiscal year."

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-5
SENATE BILL 99**

...

NEEDS-BASED SCHOOL CAPITAL AND LOTTERY CHANGES

SECTION 5.3.(a) Section 5.3 of S.L. 2017-57, as amended by Section 1.1(a) of S.L. 2017-187 and Section 1.1 of S.L. 2017-212, reads as rewritten:

"SECTION 5.3.(a) The appropriations made from the Education Lottery Fund for the 2017-2019 fiscal biennium are as follows:

	FY 2017-2018	FY 2018-2019
Noninstructional Support Personnel	\$383,888,897	\$385,914,455
Prekindergarten Program	78,252,110	78,252,110
Public School Building Capital Fund	100,000,000	100,000,000
Needs-Based Public School Capital Fund	30,000,000	75,000,000 <u>117,320,354</u>
Scholarships for Needy Students	30,450,000	30,450,000
UNC Need-Based Financial Aid	10,744,733	10,744,733
LEA Transportation	43,277,192	1,386,090 <u>2,386,090</u>
TOTAL APPROPRIATION	\$676,612,932	\$681,747,388 <u>\$744,067,742</u>

...

"SECTION 5.3.(d) It is the intent of the General Assembly to increase the amount of North Carolina Education Lottery net lottery revenue collected that is dedicated to assist local governments in meeting local school capital needs from sixteen and nine-tenths percent (16.9%) of net lottery revenue collected in the 2016-2017 fiscal year to forty percent (40%) of net lottery revenue collected no later than the 2028-2029 fiscal year. To that end, there is created the Needs-Based Public School Capital Fund ~~to be administered by the Superintendent as an interest-bearing, nonreverting special fund in the Department of Public Instruction. The State Treasurer shall be the custodian of the Needs-Based Public School Capital Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.~~ The Needs-Based Public School Capital Fund shall be used to award grants to counties designated as a development tier one area or a development tier two area, as defined by G.S. 143B-437.08, to assist with their critical public school building capital needs. The Superintendent of Public Instruction shall award grants to counties in accordance with the following priorities:

- (1) Counties designated as development tier one areas.
- (2) Counties with greater need and less ability to generate sales tax and property tax revenue.
- (3) Counties with a high debt-to-tax revenue ratio.
- (4) The extent to which a project will address critical deficiencies in adequately serving the current and future student population.

"SECTION 5.3.(e) Grant funds awarded under this section shall be subject to a matching requirement from the recipient county as follows:

- (1) For a county designated as a development tier one area, the grant shall not exceed three dollars (\$3.00) in grant funds for every one dollar (\$1.00) provided by the county. Grant funds awarded to a county designated as a

development tier one county area shall not exceed fifteen million dollars (\$15,000,000).

- (2) For a county designated as a development tier two area, the grant shall not exceed one dollar (\$1.00) for every one dollar (\$1.00) in grant funds provided by the county. Grant funds awarded to a county designated as a tier two county area shall not exceed ten million dollars (\$10,000,000).

Grant funds shall be used for the construction of new school buildings only. Grant funds shall not be used for real property acquisition or for operational lease agreements, except that grant funds may be used for projects when a pre-development agreement for an operation lease was entered into on or before June 30, 2017. Notwithstanding subdivision (2) of this subsection, grant funds shall only be awarded to development tier one counties until the 2020-2021 fiscal year. acquisition. Grant funds shall be disbursed in a series of payments based on the progress of the project. To obtain a payment, the grantee shall submit a request for payment along with documentation of the expenditures for which the payment is requested and evidence that the matching requirement contained in subsection (b) of this section has been met. Grant funds shall not be awarded to any county that has received over an aggregate amount exceeding eight million seven hundred fifty thousand dollars (\$8,750,000) in funds from the Public School Building Capital Fund from the 2012-2013 fiscal year to the 2016-2017 fiscal year. No county may receive grant funds under this section more than once every five years. No portion of grant funds may be used to acquire a Leadership in Energy and Environmental Design (LEED) certification.

"SECTION 5.3.(e1) A county receiving grant funds pursuant to this section shall enter into an agreement with the Department of Public Instruction detailing the use of grant funds. The agreement shall contain at least all of the following:

- (1) A requirement that the grantee seek planning assistance and plan review from the School Planning Section of the Department of Public Instruction.
- (2) A progress payment provision governing disbursements to the county for the duration of the school construction project based upon the construction progress and documentation satisfactory to the Department that the matching requirement in subsection (e) of this section has been met.
- (3) A provision requiring periodic reports to the Department of Public Instruction on the use of disbursed grant funds and the progress of the school construction project.
- (4) A requirement that matching funds paid by the county pursuant to this section must be derived from non-State and nonfederal funds.

"SECTION 5.3.(e2) Notwithstanding the new construction requirement in subsection (e) of this section, a county may utilize grant funds for a lease agreement if all of the following criteria are met:

- (1) Ownership of the subject property on which the leased school is constructed shall be retained by the county.
- (2) The lease agreement shall include a repairs and maintenance provision that requires the landlord to bear the entire expense of all repairs, maintenance, alterations, or improvements to the basic structure, fixtures, appurtenances, and grounds of the subject property for the term of the lease.
- (3) The lease agreement shall be for a term of at least 15 years and no more than 25 years.
- (4) In lieu of the progress payment requirement provided in subsection (e) of this section, a county that has entered into a lease agreement shall provide a copy of the lease agreement to the Department and shall be periodically reimbursed upon submission of documentation satisfactory to the Department that the matching requirement of this section has been met.

For the purposes of this section, the term "lease agreement" shall include any ancillary agreements or predevelopment agreements entered into in anticipation of or in accordance with a lease. A lease agreement entered into pursuant to this subsection shall be subject to the requirements of Article 8 of Chapter 159 of the General Statutes. In determining whether the lease agreement is necessary or expedient pursuant to G.S. 159-151(a)(1) and G.S. 159-151(b)(1), the Local Government Commission may consider any other relevant construction and financing methods available to the county."

SECTION 5.3.(b) G.S. 18C-164 reads as rewritten:

"§ 18C-164. Transfer of net revenues.

...

(b2) The Office of State Budget and Management shall transfer any net revenues remaining in the Education Lottery Fund after the appropriations made pursuant to subsection (b1) of this section to the Education Lottery Reserve Fund, a special revenue fund, necessary to maintain a minimum balance of ~~twenty five million dollars (\$25,000,000)~~ in an amount equal to five percent (5%) of net revenue credited to the Education Lottery Fund from the State Lottery Fund during the previous fiscal year.

(b3) Any net revenues remaining after appropriation pursuant to subsection (b1) of this section and transfer pursuant to subsection (b2) of this section are hereby appropriated to the Needs-Based Public School Capital Fund.

(b4) Notwithstanding subsection (b2) of this section, the minimum balance of the Education Lottery Reserve Fund may be less than ~~twenty five million dollars (\$25,000,000)~~ the amount equal to five percent (5%) of net revenue credited to the Education Lottery Fund from the State Lottery Fund during the previous fiscal year if funds are necessary to meet the amount of net revenues appropriated pursuant to subsection (b1) of this section.

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SECTION 5.3.(d) Net revenues transferred from the State Lottery Fund in excess of the amounts appropriated from the Education Lottery Fund in the 2016-2017 fiscal year shall be considered net revenue credited to the Education Lottery Fund in the 2017-2018 fiscal year.

SECTION 5.3.(e) G.S. 147-69.2(a) is amended by adding a new subdivision to read: "(17l) The Needs-Based Public School Capital Fund."

SECTION 5.3.(f) Subsection (a) of this section applies to lease agreements entered into on or after the effective date of this act.

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END