

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 862

Short Title: UNC Contracts Negotiations.

(Public)

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Sponsors: Senators Lee, Winner, and Garwood.

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Referred to: Judiciary.

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April 15, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF  
2 NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND  
3 CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES  
4 BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE  
5 AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR  
6 CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE  
7 UNIVERSITY OF NORTH CAROLINA.  
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9 The General Assembly of North Carolina enacts:

10 Section 1. Article 1 of Chapter 116 of the General Statutes is amended by  
11 adding two new sections to read:

12 "**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

13 Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a  
14 special responsibility constituent institution with regard to competitive bid procedures  
15 and the bid value benchmark shall be an amount not greater than two hundred fifty  
16 thousand dollars (\$250,000). The Board shall set the benchmark for each institution from  
17 time to time. In setting an institution's benchmark in accordance with this section, the  
18 Board shall consider the institution's overall capabilities including staff resources,  
19 purchasing compliance reviews, and audit reports. The Board shall also consult with the

1 Director of the Division of Purchase and Contract and the Director of the Budget prior to  
2 setting the benchmark.

3 **"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and**  
4 **capital improvements.**

5 (a) With regard to buildings at The University of North Carolina, the Board shall  
6 conduct the fee negotiations and supervise the letting of all contracts for the design,  
7 construction, or renovation for the following:

8 (1) Open-end design agreements.

9 (2) Individual projects if the project costs three hundred thousand dollars  
10 (\$300,000) or less and is designed under the terms of an open-end  
11 design agreement.

12 (3) Minor individual capital improvements projects costing five hundred  
13 thousand dollars (\$500,000) or less.

14 (b) The Board may delegate its authority under subsection (a) of this section to the  
15 affected constituent institution if the institution is qualified under university procedures  
16 approved by the State Building Commission.

17 (c) All duties and responsibilities of the Department of Administration set forth in  
18 G.S. 143-341(3) are delegated to the Board for capital improvements projects of The  
19 University of North Carolina costing one million dollars (\$1,000,000) or less.

20 The Board of Governors shall determine, in consultation with the State Building  
21 Commission and the Director of the Budget, the extent to which this authority may be  
22 further delegated to the constituent institutions."

23 Section 2. G.S. 143-52 reads as rewritten:

24 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**  
25 **bids; awarding of contracts.**

26 As feasible, the Secretary of Administration will compile and consolidate all such  
27 estimates of supplies, materials, printing, equipment and contractual services needed and  
28 required by State departments, institutions and agencies to determine the total  
29 requirements of any given commodity. Where such total requirements will involve an  
30 expenditure in excess of the expenditure benchmark established under the provisions of  
31 G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter  
32 provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide~~  
33 circulation—widely distributed in this State or through electronic means, or both, as  
34 determined by the Secretary to be most advantageous, at least once and at least 10 days  
35 prior to the date designated for opening. ~~opening of the bids and awarding of the contract:~~  
36 Provided, other methods of advertisement may be adopted by the Secretary of Administration  
37 when such other method is deemed more advantageous for certain items or commodities.  
38 Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be  
39 the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of  
40 supply.—Except as otherwise provided under this Article, contracts for the purchase of  
41 supplies, materials or equipment shall be based on competitive bids and acceptance made  
42 of the lowest and best bid(s) most advantageous to the State as determined upon  
43 consideration of the following criteria: prices offered; the quality of the articles offered;

1 the general reputation and performance capabilities of the bidders; the substantial  
2 conformity with the specifications and other conditions set forth in the request for bids;  
3 the suitability of the articles for the intended use; the personal or related services needed;  
4 the transportation charges; the date or dates of delivery and performance; and such other  
5 factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling  
6 shall be made a matter of record. Competitive bids on such contracts shall be received in  
7 accordance with rules and regulations to be adopted by the Secretary of Administration,  
8 which rules and regulations shall prescribe for the manner, time and place for proper  
9 advertisement for such bids, the time and place when bids will be received, the articles  
10 for which such bids are to be submitted and the specifications prescribed for such articles,  
11 the number of the articles desired or the duration of the proposed contract, and the  
12 amount, if any, of bonds or certified checks to accompany the bids. Bids shall be  
13 publicly opened. Any and all bids received may be rejected. Each and every bid  
14 conforming to the terms of the invitation, together with the name of the bidder, shall be  
15 tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the~~  
16 ~~successful bidder indicated thereon shall, after the award of the contract, be open to public~~  
17 ~~inspection, and that tabulation shall become public record in accordance with the rules~~  
18 adopted by the Secretary. All contract information shall be made a matter of public  
19 record after the award of contract. Provided, that trade secrets, test data and similar  
20 proprietary information may remain confidential. A bond for the faithful performance of  
21 any contract may be required of the successful bidder at bidder's expense and in the  
22 discretion of the Secretary of Administration. After contracts have been awarded, the  
23 Secretary of Administration shall certify to the departments, institutions and agencies of  
24 the State government the sources of supply and the contract price of the supplies,  
25 materials and equipment so contracted for. Prior to adopting other methods of  
26 advertisement under this section, the Secretary of Administration may consult with the  
27 Advisory Budget Commission. Prior to adopting rules and regulations under this section,  
28 the Secretary of Administration may consult with the Advisory Budget Commission."

29 Section 3. G.S. 143-53(a) reads as rewritten:

30 "(a) The Secretary of Administration may adopt rules governing the following:

- 31 (1) Prescribing the routine and procedures to be followed in canvassing bids  
32 and awarding contracts, and for reviewing decisions made pursuant  
33 thereto, and the decision of the reviewing body shall be the final  
34 administrative review.
- 35 (2) Prescribing ~~routine~~ routine, including consistent contract language, for  
36 securing bids on items that do not exceed the bid value benchmark  
37 established under the provisions of G.S. ~~143-53.1~~ 143-53.1 or G.S. 116-  
38 31.10.

39 The purchasing delegation for securing offers, (excluding the special  
40 responsibility constituent institutions of The University of North  
41 Carolina), for each State department, institution, agency, community  
42 college, and public school administrative unit shall be determined by the  
43 Director of the Division of Purchase and Contract. For the State

1 agencies this shall be done following the Director's consultation with the  
2 State Budget Officer and the State Auditor. The Director for the  
3 Division of Purchase and Contract may set or lower the delegation, or  
4 raise the delegation upon written request by the agency, after  
5 consideration of their overall capabilities, including staff resources,  
6 purchasing compliance reviews, and audit reports of the individual  
7 agency. The routine prescribed by the Secretary shall include contract  
8 award protest procedures and consistent requirements for advertising of  
9 solicitations for securing offers issued by State departments, institutions,  
10 universities (including the special responsibility constituent institutions  
11 of The University of North Carolina), agencies, community colleges,  
12 and the public school administrative units.

- 13 (3) Defining contractual services for the purposes of G.S. 143-49(3)-143-  
14 49(3) and G.S. 143-49(5).
- 15 (4) Prescribing items and quantities, and conditions and procedures,  
16 governing the acquisition of goods and services which may be delegated  
17 to departments, institutions and agencies, notwithstanding any other  
18 provisions of this Article.
- 19 (5) Prescribing conditions under which purchases and contracts for the  
20 purchase, rental or lease of equipment, materials, supplies or services  
21 may be entered into by means other than competitive bidding.
- 22 (6) Prescribing conditions under which partial, progressive and multiple  
23 awards may be made.
- 24 (7) Prescribing conditions and procedures governing the purchase of used  
25 equipment, materials and supplies.
- 26 (8) Providing conditions under which bids may be rejected in whole or in  
27 part.
- 28 (9) Prescribing conditions under which information submitted by bidders or  
29 suppliers may be considered proprietary or confidential.
- 30 (10) Prescribing procedures for making purchases under programs involving  
31 participation by two or more levels or agencies of government, or  
32 otherwise with funds other than State-appropriated.
- 33 (11) Prescribing procedures to encourage the purchase of North Carolina  
34 farm products, and products of North Carolina manufacturing  
35 enterprises.
- 36 (12) Repealed by Session Laws 1987, c. 827, s. 216."

37 Section 4. G.S. 143-53.1 reads as rewritten:

38 **"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

39 On and after July 1, ~~1990, 1997~~, the ~~expenditure benchmark procedures~~ prescribed by  
40 G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark  
41 authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the  
42 Secretary of Administration for competitive bidding shall be ~~ten thousand dollars (\$10,000);~~  
43 no more than twenty-five thousand dollars (\$25,000); provided, the Secretary of

1 Administration may, in his or her discretion, increase the benchmarks effective as of the  
2 beginning of any fiscal biennium of the State commencing after June 30, ~~1992, 1999~~, in  
3 an amount whose increase, expressed as a percentage, does not exceed the rise in the  
4 Consumer Price Index during the fiscal biennium next preceding the effective date of the  
5 benchmark increase. For a special responsibility constituent institution of The University  
6 of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand~~  
7 ~~dollars (\$35,000)~~ as provided in G.S. 116-31.10."

8 Section 5. G.S. 143-341(3) reads as rewritten:

9 "(3) Architecture and Engineering:

- 10 a. To examine and approve all plans and specifications for the  
11 construction or renovation of:
- 12 1. All State buildings; and
  - 13 2. All community college buildings requiring the estimated  
14 expenditure for construction or repair work for which  
15 public bidding is required under G.S. 143-129  
16 prior to the awarding of a contract for such work; and to examine  
17 and approve all changes in those plans and specifications made  
18 after the contract for such work has been awarded.
- 19 b. To prepare preliminary studies and cost estimates and otherwise  
20 to assist all agencies in the preparation of requests for  
21 appropriations for the construction or renovation of all State  
22 buildings.
- 23 c. To supervise the letting of all contracts for the design,  
24 construction or renovation of all State buildings and all  
25 community college buildings whose plans and specifications  
26 must be examined and approved under a.2. of this ~~subdivision~~  
27 subdivision, except as provided in G.S. 116-31.11.
- 28 d. To supervise and inspect all work done and materials used in the  
29 construction or renovation of all State buildings and all  
30 community college buildings whose plans and specifications  
31 must be examined and approved under a.2. of this subdivision;  
32 and no such work may be accepted by the State or by any State  
33 agency until it has been approved by the Department.
- 34 e. With respect to capital improvements projects of The University  
35 of North Carolina, all duties and responsibilities of the  
36 Department set forth in subdivision (3) of this section, are  
37 delegated to the Board of Governors of The University of North  
38 Carolina to the extent provided by G.S. 116-31.11(c)."

39 Section 6. G.S. 143-64.32 reads as rewritten:

40 "**§ 143-64.32. Written exemption of particular contracts.**

41 Units of local government or the North Carolina Department of Transportation may in  
42 writing exempt particular projects from the provisions of ~~the act~~ this Article in the case of:

- 1 (a) ~~proposed~~ Proposed projects where an estimated professional fee is in an  
2 amount less than thirty thousand dollars (\$30,000), or  
3 (b) ~~other~~ Other particular projects exempted in the sole discretion of the  
4 Department of Transportation or the unit of local government, stating  
5 the reasons therefor and the circumstances attendant thereto."

6 Section 7. G.S. 143-64.34 reads as rewritten:

7 **"§ 143-64.34. Exemption of certain State Capital Improvement Projects.**

8 State Capital Improvement Projects under the jurisdiction of the State Building  
9 Commission where the estimated expenditure of public money is less than ~~fifty thousand~~  
10 ~~dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) are exempt from the provisions  
11 of this Article. Further, with respect to capital improvement projects for The University  
12 of North Carolina, including its constituent institutions and the North Carolina School of  
13 Science and Mathematics, individual projects having estimated expenditures of public  
14 money of three hundred thousand dollars (\$300,000) or less are exempt from the  
15 provisions of this Article provided that the architectural, engineering, and surveying  
16 services to be rendered are included under the provisions of an open-end design  
17 agreement that has been publicly announced."

18 Section 8. G.S. 143-3.3 is amended by adding a new subsection to read:

19 "(k) Payroll Deduction for University of North Carolina System Employees to Pay  
20 for Discretionary Privileges of University Service. – Subject to rules adopted by the State  
21 Controller, if a constituent institution of The University of North Carolina approves a  
22 payroll deduction plan under this subsection, an employee of the constituent institution  
23 may authorize, in writing, the periodic deduction from the employee's salary or wages  
24 paid for employment by the constituent institution, of one or more designated lump sums  
25 to be applied to the cost of corresponding discretionary privileges available at employee  
26 expense from the employing institution. Discretionary privileges from the employing  
27 institution that may be paid for through this subsection include parking privileges,  
28 athletic passes, use of recreational facilities, admission to campus concert series, and  
29 access to other institutionally hosted or provided entertainments, events, and facilities."

30 Section 9. The Office of State Budget and Management shall evaluate the  
31 process and quality of construction completed under G.S. 116-31.11 as enacted by this  
32 act. The evaluation shall include an analysis of the time required to complete projects,  
33 project savings or costs, necessary increases or decreases in staffing, if any, any other  
34 benefits or detriments regarding the delegation of authority under G.S. 116-31.11;  
35 recommendations regarding the continuance of the delegated powers, their continuance  
36 with modifications, their expansion, or their discontinuance. The Office of State Budget  
37 and Management shall report its findings and recommendations to the Board of  
38 Governors of The University of North Carolina and to the General Assembly by April 15,  
39 2001.

40 Section 10. The Office of State Budget and Management shall evaluate the  
41 effectiveness and efficiency of the increase of the purchasing benchmark and its  
42 delegation to the special responsibility constituent institutions under G.S. 116-31.10 and  
43 other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation the Office of

1 State Budget and Management shall consider such factors as costs of goods and services  
2 purchased, administrative costs, effective time for completion of the purchasing process,  
3 agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office  
4 of State Budget and Management shall report its findings and recommendations to the  
5 General Assembly by April 15, 2001.

6 Section 11. This act is effective when it becomes law. G.S. 116-31.11(c), as  
7 enacted by Section 1 of this act, shall expire July 1, 2001.