

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 620
Commerce Committee Substitute Adopted 4/21/03
Third Edition Engrossed 4/24/03
House Committee Substitute Favorable 5/21/03
Fifth Edition Engrossed 5/22/03

Short Title: Purchasing Flexibility for Schools.

(Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO GIVE LOCAL BOARDS OF EDUCATION ADDITIONAL
3 PURCHASING FLEXIBILITY AND TO ENCOURAGE THEM TO USE THE NC
4 E-PROCUREMENT SERVICE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 115C-522(a) reads as rewritten:

7 "(a) ~~Except as provided in G.S. 115C-522.1, it~~ It shall be the duty of local boards
8 of education to purchase or exchange all supplies, ~~equipment and materials in~~
9 ~~accordance with contracts made by or with the approval of the Department of~~
10 ~~Administration.~~ equipment, and materials, and these purchases shall be made in
11 accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may
12 be made from contracts made by the Department of Administration. Title to
13 instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the
14 current expense fund budget and purchased out of State funds, shall be taken in the
15 name of the local board of education which shall be responsible for the custody and
16 replacement: Provided, that no contracts shall be made by any local school
17 administrative unit for purchases unless provision has been made in the budget of the
18 unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases,
19 or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and
20 adequate funds are available to pay in the current fiscal year the sums obligated for the
21 current fiscal year, ~~and in order to protect the State purchase contractor, it is made the~~
22 ~~duty of the governing authorities of the local units to pay for these purchases promptly~~
23 ~~and in accordance with the terms of the contract of purchase year.~~ The State Board of
24 Education shall adopt rules regarding equipment standards for supplies, equipment, and
25 materials related to student transportation. The State Board may adopt guidelines for
26 any commodity that needs safety features. If a commodity that needs safety features is

1 available on statewide term contract, any guidelines adopted by the State Board must at
2 a minimum meet the safety standards of the statewide term contract.

3 (1) Where competition is available, local school administrative units may
4 utilize the:

5 a. E-Quote service of the NC E-Procurement system as one means
6 of solicitation in seeking informal bids for purchases subject to
7 the bidding requirements of G.S. 143-131; and

8 b. Division of Purchase and Contract's electronic Interactive
9 Purchasing System as one means of advertising formal bids on
10 purchases subject to the bidding requirements of G.S. 143-129
11 and applicable rules regarding advertising. This sub-subdivision
12 does not prohibit a local school administrative unit from using
13 other methods of advertising.

14 (2) In order to provide an efficient transition of purchasing procedures, the
15 Secretary of the Department of Administration and the local school
16 administrative units shall establish a local school administrative unit
17 purchasing user group. The user group shall be comprised of a
18 proportionate number of representatives from the Department of
19 Administration and local school administrative unit purchasing and
20 finance officers. The user group shall examine any issues that may
21 arise between the Department of Administration and local school
22 administrative units, including the new relationship between the
23 Department and the local school administrative units, the appropriate
24 exchange of information, the continued efficient use of
25 E-Procurement, appropriate bid procedures, and any other technical
26 assistance that may be necessary for the purchase of supplies and
27 materials."

28 **SECTION 2.** G.S. 115C-522.1 is repealed.

29 **SECTION 3.** G.S. 115C-249(g) is repealed.

30 **SECTION 4.** G.S. 115C-47(23) reads as rewritten:

31 "(23) To Purchase Equipment and Supplies. – Local boards shall contract for
32 equipment and supplies under G.S. ~~115C-522(a), 115C-522.1,~~
33 115C-522(a) and G.S.115C-528."

34 **SECTION 5.** G.S.115C-264 reads as rewritten:

35 **"§ 115C-264. Operation.**

36 In the operation of their public school food programs, the public schools shall
37 participate in the National School Lunch Program established by the federal
38 government. The program shall be under the jurisdiction of the Division of School Food
39 Services of the Department of Public Instruction and in accordance with federal
40 guidelines as established by the Child Nutrition Division of the United States
41 Department of Agriculture.

42 Each school may, with the approval of the local board of education, sell soft drinks
43 to students so long as soft drinks are not sold (i) during the lunch period, (ii) at

1 elementary schools, or (iii) contrary to the requirements of the National School Lunch
2 Program.

3 All school food services shall be operated on a nonprofit basis, and any earnings
4 therefrom over and above the cost of operation as defined herein shall be used to reduce
5 the cost of food, to serve better food, or to provide free or reduced-price lunches to
6 indigent children and for no other purpose. The term "cost of operation" shall be defined
7 as actual cost incurred in the purchase and preparation of food, the salaries of all
8 personnel directly engaged in providing food services, and the cost of nonfood supplies
9 as outlined under standards adopted by the State Board of Education. "Personnel" shall
10 be defined as food service supervisors or directors, bookkeepers directly engaged in
11 food service record keeping and those persons directly involved in preparing and
12 serving food: Provided, that food service personnel shall be paid from the funds of food
13 services only for services rendered in behalf of lunchroom services. Any cost incurred
14 in the provisions and maintenance of school food services over and beyond the cost of
15 operation shall be included in the budget request filed annually by local boards of
16 education with boards of county commissioners. It shall not be mandatory that the
17 provisions of ~~G.S. 115C-522(a) and 143-129~~ G.S. 143-129 be complied with in the
18 purchase of supplies and food for such school food services."

19 **SECTION 6.** G.S. 143-48(b) reads as rewritten:

20 "(b) Reporting. – Every governmental entity required by statute to use the services
21 of the Department of Administration in the purchase of goods and ~~services~~ services,
22 every local school administrative unit, and every private, nonprofit corporation other
23 than an institution of higher education or a hospital that receives an appropriation of five
24 hundred thousand dollars (\$500,000) or more during a fiscal year from the General
25 Assembly shall report to the department of Administration annually on what percentage
26 of its contract purchases of goods and services, through term contracts and open-market
27 contracts, were from minority-owned businesses, what percentage from female-owned
28 businesses, what percentage from disabled-owned businesses, what percentage from
29 disabled business enterprises and what percentage from nonprofit work centers for the
30 blind and the severely disabled. The same governmental entities shall include in their
31 reports what percentages of the contract bids for such purchases were from such
32 businesses. The Department of Administration shall provide instructions to the reporting
33 entities concerning the manner of reporting and the definitions of the businesses referred
34 to in this act, provided that, for the purposes of this act:

35 (1) Except as provided in subdivision (1a) of this ~~section~~, subsection, a
36 business in one of the categories above means one:

- 37 a. In which at least fifty-one percent (51%) of the business, or of
38 the stock in the case of a corporation, is owned by one or more
39 persons in the category; and
40 b. Of which the management and daily business operations are
41 controlled by one or more persons in the category who own it.

42 (1a) A "disabled business enterprise" means a nonprofit entity whose main
43 purpose is to provide ongoing habilitation, rehabilitation, independent
44 living, and competitive employment for persons who are handicapped

1 through supported employment sites or business operated to provide
2 training and employment and competitive wages.

3 (1b) A "nonprofit work center for the blind and the severely disabled"
4 means an agency:

5 a. Organized under the laws of the United States or this State,
6 operated in the interest of the blind and the severely disabled,
7 the net income of which agency does not inure in whole or in
8 part to the benefit of any shareholder or other individual;

9 b. In compliance with any applicable health and safety standard
10 prescribed by the United States Secretary of Labor; and

11 c. In the production of all commodities or provision of services,
12 employs during the current fiscal year severely handicapped
13 individuals for (i) a minimum of seventy-five percent (75%) of
14 the hours of direct labor required for the production of
15 commodities or provision of services, or (ii) in accordance with
16 the percentage of direct labor required under the terms and
17 conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the
18 production of commodities or provision of services, whichever
19 is less.

20 (2) A female or a disabled person is not a minority, unless the female or
21 disabled person is also a member of one of the minority groups
22 described in G.S. 143-128(2)a through d.

23 (3) A disabled person means a person with a handicapping condition as
24 defined in G.S. 168-1 or G.S. 168A-3."

25 **SECTION 7.** G.S. 143-48.3 reads as rewritten:

26 **"§ 143-48.3. Electronic procurement.**

27 ...

28 (b) The Department of Administration, in conjunction with the Office of the State
29 Controller and the Office of Information Technology Services may, upon request,
30 provide to all State agencies, universities, ~~local school administrative units, and the~~ and
31 community colleges, training in the use of the electronic procurement system.

32 ...

33 (d) This section does not otherwise modify existing law relating to procurement
34 between The University of North Carolina, UNC Health Care, ~~local school~~
35 ~~administrative units~~, community colleges, and the Department of Administration.

36 ...

37 (f) Any State ~~entity, local school administrative unit, entity~~ or community
38 college operating a functional electronic procurement system established prior to
39 September 1, 2001, may until May 1, 2003, continue to operate that system
40 independently or may opt into the North Carolina E-Procurement Service. Each entity
41 subject to this section shall notify the Information Resources Management Commission
42 by January 1, 2002, and annually thereafter, of its intent to participate in the North
43 Carolina E-Procurement Service."

44 **SECTION 8.** G.S. 143-49 reads as rewritten:

1 **"§ 143-49. Powers and duties of Secretary.**

2 The Secretary of Administration shall have power and authority, and it shall be his
3 duty, subject to the provisions of this Article:

4 ...

5 (6) To make available to nonprofit corporations operating charitable
6 hospitals, to local nonprofit community sheltered workshops or centers
7 that meet standards established by the Division of Vocational
8 Rehabilitation of the Department of Health and Human Services, to
9 private nonprofit agencies licensed or approved by the Department of
10 Health and Human Services as child placing agencies, residential
11 child-care facilities, private nonprofit rural, community, and migrant
12 health centers designated by the Office of Rural Health and Resource
13 Development, to private higher education institutions that are defined
14 as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local
15 school administrative units, governmental entities and other
16 subdivisions of the State and public agencies thereof in the expenditure
17 of public funds, the services of the Department of Administration in
18 the purchase of materials, supplies and equipment under such rules,
19 regulations and procedures as the Secretary of Administration may
20 adopt. In adopting rules and regulations any or all provisions of this
21 Article may be made applicable to such purchases and contracts made
22 through the Department of Administration, and in addition the rules
23 and regulations shall contain a requirement that payment for all such
24 purchases be made in accordance with the terms of the contract. Prior
25 to adopting rules and regulations under this subdivision, the Secretary
26 of Administration may consult with the Advisory Budget Commission.

27 ...

28 (8) To establish and maintain a procurement card program for use by State
29 agencies, community colleges, ~~nonexempted constituent institutions of~~
30 ~~The University of North Carolina, and local school administrative~~
31 ~~units and nonexempted constituent institutions of The University of~~
32 North Carolina. The Secretary of Administration may adopt temporary
33 rules for the implementation and operation of the program in
34 accordance with the payment policies of the State Controller, after
35 consultation with the Office of Information Technology Services.
36 These rules would include the establishment of appropriate order limits
37 that leverage the cost savings and efficiencies of the procurement card
38 program in conjunction with the fullest possible use of the North
39 Carolina E-Procurement Service. Prior to implementing the program,
40 the Secretary shall consult with the State Controller, the UNC General
41 Administration, the Community Colleges System Office, the State
42 Auditor, the Department of Public Instruction, a representative chosen
43 by the local school administrative units, and the Office of Information
44 Technology Services. The Secretary may periodically adjust the order

1 limit authorized in this section after consulting with the State
2 Controller, the UNC General Administration, the Community Colleges
3 System Office, the Department of Public Instruction, and the Office of
4 Information Technology Services."

5 **SECTION 9.** G.S. 143-53(a)(2) reads as rewritten:

6 **"§ 143-53. Rules.**

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

8 ...

9 (2) Prescribing the routine, including consistent contract language, for
10 securing bids on items that do not exceed the bid value benchmark
11 established under the provisions of G.S. 143-53.1 or G.S. 116-31.10.
12 The purchasing delegation for securing offers (excluding the special
13 responsibility constituent institutions of The University of North
14 Carolina), for each State department, institution, agency, ~~community~~
15 ~~college, and public school administrative unit and community college~~
16 shall be determined by the Director of the Division of Purchase and
17 Contract. For the State agencies this shall be done following the
18 Director's consultation with the State Budget Officer and the State
19 Auditor. The Director for the Division of Purchase and Contract may
20 set or lower the delegation, or raise the delegation upon written request
21 by the agency, after consideration of their overall capabilities,
22 including staff resources, purchasing compliance reviews, and audit
23 reports of the individual agency. The routine prescribed by the
24 Secretary shall include contract award protest procedures and
25 consistent requirements for advertising of solicitations for securing
26 offers issued by State departments, institutions, universities (including
27 the special responsibility constituent institutions of The University of
28 North Carolina), agencies, community colleges, and the public school
29 administrative units."

30 **SECTION 10.(a)** Use of NC E-Procurement Service by LEAs. – The State
31 encourages local school administrative units to use the NC E-Procurement Service
32 ('Service'). In order to facilitate use of the Service by school units, the State Board of
33 Education, in consultation with the Office of Information Technology Services, the
34 Division of Purchase and Contract, and the Service, shall establish standards for
35 determining when a local school administrative unit's purchasing process is
36 E-Procurement compliant. The Department of Public Instruction shall determine when
37 a local school administrative unit is E-Procurement compliant and shall notify the
38 Division of Purchase and Contract of the units certified within three days of the
39 certification.

40 **SECTION 10.(b)** Obligation of LEAs. – As of the date a local school
41 administrative unit is certified by the Department of Public Instruction as being
42 E-Procurement compliant, it must expend at least thirty percent (30%) of its remaining
43 unencumbered funds used to purchase supplies, equipment, materials, computer
44 software, and other tangible personal property during the fiscal year in which it is

1 certified through the NC E-Procurement Service. The unit must expend at least
2 thirty-five percent (35%) of its funds used to purchase supplies, equipment, materials,
3 computer software, and other tangible personal property during the fiscal year following
4 certification through the NC E-Procurement Service and forty percent (40%) during the
5 second fiscal year following certification. The State encourages the units to utilize the
6 NC E-Procurement Service to purchase at least fifty percent (50%) of their supplies,
7 equipment, materials, computer software, and other tangible personal property during
8 the fiscal year following certification and at least seventy percent (70%) of their
9 supplies, equipment, materials, computer software, and other tangible personal property
10 during the second fiscal year following certification.

11 **SECTION 10.(c)** Pilot Projects/Reporting. – To use the NC E-Procurement
12 Service, a local school administrative unit's current software purchasing system must be
13 interfaced with the NC E-Procurement Service system. All but two of the 117 local
14 school administrative units utilize one of two systems: ISIS by EMS or SunPac by
15 Sartox. To encourage local school administrative units to use the NC E-Procurement
16 Service, the Service will begin the interface process with four local school
17 administrative units – two of which use ISIS and two of which use SunPac. The four
18 pilot units will be the local school administrative units of Cabarrus County, Edgecombe
19 County, Guilford County, and Sampson County. The four pilot units must be certified
20 as being E-Procurement compliant on or before December 1, 2003.

21 The General Assembly finds that the timely implementation of the pilot
22 projects is critical to the statewide availability of E-Procurement to all local school
23 administrative units. Therefore, in order to monitor the progress of the interface
24 process, the Department of Public Instruction shall report to the Joint Legislative
25 Commission on Governmental Operations and the State Board of Education by
26 November 1, 2003, on the progress of the pilots and whether those local school
27 administrative units will be E-Procurement compliant by December 1, 2003.
28 Notwithstanding any other provision of law, if the State Board determines that the pilots
29 will not be E-Procurement compliant by the target date, it may establish an alternative
30 date after taking into consideration the State priority of prompt implementation. The
31 State Board shall notify the Joint Legislative Commission on Governmental Operations
32 of any action it takes in this matter.

33 **SECTION 10.(d)** Charlotte/Mecklenburg LEA and Wake County LEA. –
34 The local school administrative units of Charlotte/Mecklenburg and Wake County each
35 utilize a unique software purchasing system. NC E-Procurement Service must begin the
36 process of interfacing the Service's software system with these units' software system.
37 Charlotte/Mecklenburg and Wake County must be certified as E-Procurement compliant
38 on or before July 1, 2004.

39 **SECTION 10.(e)** Remainder of LEAs. – The remaining 111 local school
40 administrative units must be certified as being E-Procurement compliant by January 1,
41 2005. The NC E-Procurement Service will assist the units in interfacing their systems
42 and training their employees on a regional basis by the type of software the unit
43 currently uses.

1 **SECTION 11.** Nothing in this act shall be construed to limit the authority of
2 the Department of Administration to develop, implement, and monitor a pilot program
3 for reverse auctions for public school systems as provided in Section 3 of Chapter 107
4 of the 2002 Session Laws.

5 **SECTION 12.** Sections 1 through 8 of this act become effective for a local
6 school administrative unit when the unit is certified by the Department of Public
7 Instruction as being E-Procurement compliant, as provided in Section 9 of this act, or
8 April 1, 2004, whichever occurs first. The remainder of this act is effective when it
9 becomes law.