

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 867*

Short Title: UNC President's Adv. Comm. Recommendations-AB (Public)

Sponsors: Senators Boseman and Stevens.

Referred to: Education/Higher Education.

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT EFFICIENCIES WITHIN THE UNIVERSITY SYSTEM
AS RECOMMENDED BY THE PRESIDENT'S ADVISORY COMMITTEE ON
EFFICIENCY AND EFFECTIVENESS (PACE).

The General Assembly of North Carolina enacts:

**PART I. CAMPUSES MAY ESTABLISH BUILDING COMPONENT
STANDARDS**

SECTION 1. G. S. 133-3 reads as rewritten:

"(a) Except as provided in subsection (b) below, all ~~Architects~~ architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. Specifications may list one or more preferred brands as an alternate to the base bid in limited circumstances. Specifications containing a preferred brand alternate

1 under this section must identify the performance standards that support the preference.
2 Performance standards for the preference must be approved in advance by the owner in
3 an open meeting. Any alternate approved by the owner shall be approved only where (i)
4 the preferred alternate will provide cost savings, maintain or improve the functioning of
5 any process or system affected by the preferred item or items, or both, and (ii) a
6 justification identifying these criteria is made available in writing to the public.
7 Substitution of materials, items, or equipment of equal or equivalent design shall be
8 submitted to the architect or engineer for approval or disapproval; such approval or
9 disapproval shall be made by the architect or engineer prior to the opening of bids. The
10 purpose of this statute is to mandate and encourage free and open competition on public
11 contracts.

12 (b) Notwithstanding subsection (a) of this section, a constituent institution of The
13 University of North Carolina may establish construction specifications for building
14 components pursuant to the process specified in subsection (c) of this section.
15 Thereafter, without repeating the process, the constituent institution may specify the
16 components by brand name in construction bid documents when doing so will further
17 efficiency in the operation, maintenance, or upkeep of buildings.

18 (c) Prior to specifying a construction component by brand name pursuant to
19 subsection (b) of this section, the constituent institution shall conduct a public process in
20 which it (i) specifies in writing the performance and design characteristics required of
21 the building component, (ii) documents its justification for invoking this subsection, and
22 (iii) after complying with (i) and (ii), provides all suppliers an opportunity to propose
23 one or more products which will meet the performance and design characteristics
24 specified. The constituent institution must make its selection based on initial and life
25 cycle costs as well as quality and suitability for the designated use."

26 **PART II. INCREASE INFORMAL LIMIT FOR SMALL CONSTRUCTION**

27 **SECTION 2.** G.S. 44A-26(a) reads as rewritten:

28 "(a) When the total amount of construction contracts awarded for any one project
29 exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as
30 set forth in (1) and (2) is required by the contracting body from any contractor or
31 construction manager at risk with a contract more than fifty thousand dollars
32 ~~(\$50,000);~~(\$50,000); provided that, for The University of North Carolina and its
33 constituent institutions, a performance and payment bond is required in accordance with
34 this subsection if the total amount of construction contracts awarded for any one project
35 exceeds five hundred thousand dollars (\$500,000). In the discretion of the contracting
36 body, a performance and payment bond may be required on any construction contract as
37 follows:

- 38 (1) A performance bond in the amount of one hundred percent (100%) of
39 the construction contract amount, conditioned upon the faithful
40 performance of the contract in accordance with the plans,
41 specifications and conditions of the contract. Such bond shall be solely
42 for the protection of the contracting body that is constructing the
43 project.

- 1 (2) A payment bond in the amount of one hundred percent (100%) of the
2 construction contract amount, conditioned upon the prompt payment
3 for all labor or materials for which a contractor or subcontractor is
4 liable. The payment bond shall be solely for the protection of the
5 persons furnishing materials or performing labor for which a
6 contractor, subcontractor, or construction manager at risk is liable."

7 **SECTION 3.** G.S. 133-1.1(a) reads as rewritten:

8 "(a) In the interest of public health, safety and economy, every officer, board,
9 department, or commission charged with the duty of approving plans and specifications
10 or awarding or entering into contracts involving the expenditure of public funds in
11 excess of:

- 12 (1) Three hundred thousand dollars (\$300,000) for the repair of public
13 buildings where such repair does not include major structural change
14 in framing or foundation support systems, or five hundred thousand
15 dollars (\$500,000) for the repair of public buildings by The University
16 of North Carolina or its constituent institutions where such repair does
17 not include major structural change in framing or foundation support
18 systems.

- 19 (1a) One hundred thousand dollars (\$100,000) for the repair of public
20 buildings affecting life safety systems,

- 21 (2) One hundred thirty-five thousand dollars (\$135,000) for the repair of
22 public buildings where such repair includes major structural change in
23 framing or foundation support systems, or

- 24 (3) One hundred thirty-five thousand dollars (\$135,000) for the
25 construction of, or additions to, public buildings or State-owned and
26 operated utilities,

27 shall require that such plans and specifications be prepared by a registered architect, in
28 accordance with the provisions of Chapter 83A of the General Statutes, or by a
29 registered engineer, in accordance with the provisions of Chapter 89C of the General
30 Statutes, or by both architect and engineer, particularly qualified by training and
31 experience for the type of work involved, and that the North Carolina seal of such
32 architect or engineer together with the name and address of such architect or engineer,
33 or both, be placed on all these plans and specifications."

34 **SECTION 4.** G.S. 143-64.34(b) reads as rewritten:

35 "(b) A capital improvement project of The University of North Carolina under
36 G.S. 116-31.11 where the estimated expenditure of public money is less than ~~three~~
37 ~~hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) is
38 exempt from this Article if all of the following apply:

- 39 (1) The architectural, engineering, or surveying services to be rendered are
40 under an open-end design agreement.

- 41 (2) The open-end design agreement has been publicly announced.

- 42 (3) The open-end design agreement complies with procedures adopted by
43 the University and approved by the State Building Commission under
44 G.S. 116-31.11(a)(3)."

1 **SECTION 5.** G. S. 143-128(g) reads as rewritten:

2 "(g) Exceptions. – This section shall not apply to:

3 (1) The purchase and erection of prefabricated or relocatable buildings or
4 portions thereof, except that portion of the work which must be
5 performed at the construction site.

6 (2) The erection, construction, alteration, or repair of a building when the
7 cost thereof is three hundred thousand dollars (\$300,000) or less.

8 (3) The erection, construction, alteration, or repair of a building by The
9 University of North Carolina or its constituent institutions when the
10 cost thereof is five hundred thousand dollars (\$500,000) or less.

11 Notwithstanding the other provisions of this subsection, subsection (f1) of this
12 section shall apply to any erection, construction, alteration, or repair of a building by a
13 public entity."

14 **SECTION 6.** G.S. 143-129(a) reads as rewritten:

15 "(a) Bidding Required. – No construction or repair work requiring the estimated
16 expenditure of public money in an amount equal to or more than three hundred thousand
17 dollars (\$300,000) or purchase of apparatus, supplies, materials, or equipment requiring
18 an estimated expenditure of public money in an amount equal to or more than ninety
19 thousand dollars (\$90,000) may be performed, nor may any contract be awarded
20 therefor, by any board or governing body of the State, or of any institution of the State
21 government, or of any political subdivision of the State, unless the provisions of this
22 section are complied ~~with~~with; provided that The University of North Carolina and its
23 constituent institutions may award contracts for construction or repair work that requires
24 an estimated expenditure of less than five hundred thousand dollars (\$500,000) without
25 complying with the provisions of this section.

26 For purchases of apparatus, supplies, materials, or equipment, the governing body of
27 any political subdivision of the State may, subject to any restriction as to dollar amount,
28 or other conditions that the governing body elects to impose, delegate to the manager,
29 school superintendent, chief purchasing official, or other employee the authority to
30 award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any
31 person to whom authority is delegated under this subsection shall comply with the
32 requirements of this Article that would otherwise apply to the governing body."

33 **PART III. INCREASE FORCE ACCOUNT LIMITS**

34 **SECTION 7.** G.S. 143-135 reads as rewritten:

35 "**§ 143-135. Limitation of application of Article.**

36 Except for the provisions of G.S. 143-129 requiring bids for the purchase of
37 apparatus, supplies, materials or equipment, this Article shall not apply to construction
38 or repair work undertaken by the State or by subdivisions of the State of North Carolina
39 (i) when the work is performed by duly elected officers or agents using force account
40 qualified labor on the permanent payroll of the agency concerned and (ii) when either
41 the total cost of the project, including without limitation all direct and indirect costs of
42 labor, services, materials, supplies and equipment, does not exceed one hundred
43 twenty-five thousand dollars (\$125,000) or the total cost of labor on the project does not
44 exceed fifty thousand dollars ~~(\$50,000).~~(\$50,000); provided that, for The University of

1 North Carolina and its constituent institutions, force account qualified labor may be
2 used (i) when the work is performed by duly elected officers or agents using force
3 account qualified labor on the permanent payroll of the university and (ii) when either
4 the total cost of the project, including without limitation all direct and indirect costs of
5 labor, services, materials, supplies, and equipment, does not exceed two hundred
6 thousand dollars (\$200,000) or the total cost of labor on the project does not exceed one
7 hundred thousand dollars (\$100,000). This force account work shall be subject to the
8 approval of the Director of the Budget in the case of State agencies, of the responsible
9 commission, council, or board in the case of subdivisions of the State. Complete and
10 accurate records of the entire cost of such work, including without limitation, all direct
11 and indirect costs of labor, services, materials, supplies and equipment performed and
12 furnished in the prosecution and completion thereof, shall be maintained by such
13 agency, commission, council or board for the inspection by the general public.
14 Construction or repair work undertaken pursuant to this section shall not be divided for
15 the purposes of evading the provisions of this Article."

16 **PART IV. REPEAL AND MODIFY CERTAIN REPORTING REQUIREMENTS**

17 **SECTION 8.** G. S. 116-30.6 is repealed.

18 **SECTION 9.** G.S. 143-64.70(a) reads as rewritten:

19 "(a) By January 1 of each year, each State department, agency, and institution
20 shall make a detailed written report to the Office of State Budget and Management and
21 the Office of State Personnel on its utilization of personal services contracts that have an
22 annual expenditure greater than ~~five thousand dollars (\$5,000).~~ twenty-five thousand
23 dollars (\$25,000). The report by each State department, agency, and institution shall
24 include the following:

- 25 (1) ~~The total number of personal services contractors in service during the~~
26 ~~reporting period.~~ Identification of the department and employee
27 responsible for oversight of the performance of the contract.
28 (2) ~~The type, duration, status, and cost of each contract.~~ Vendor or
29 contractor name, object of expenditure description, contract award
30 amount, purchase order or contract number, purchase order start and
31 end date, source of funds, and amount disbursed during the fiscal year.
32 (3) ~~The number of contractors utilized per contract.~~
33 (4) ~~A description of the functions and projects requiring contractual~~
34 ~~services.~~
35 (5) ~~The number of contractors for each function or project.~~
36 (6) ~~Identification of the State employee responsible for oversight of the~~
37 ~~performance of each contract and the number of contractors reporting~~
38 ~~to each contract manager or supervisor.~~
39 (7) ~~The budget code, fund number, and expenditure account number from~~
40 ~~which the contract funds were disbursed."~~

41 **PART V. ELIMINATE REQUIREMENT FOR PRIOR APPROVAL OF AN**
42 **EMPLOYEE'S HOME AS THE EMPLOYEE'S DUTY STATION**

43 **SECTION 10.** G.S. 138-6(a)(1) reads as rewritten:

1 (a) Travel on official business by the officers and employees of State
2 departments, institutions and agencies which operate from funds deposited with the
3 State Treasurer shall be reimbursed at the following rates:

- 4 (1) For transportation by privately owned automobile, the business
5 standard mileage rate set by the Internal Revenue Service per mile of
6 travel and the actual cost of tolls paid. Any other law which sets a
7 mileage rate by referring to the rate set herein, instead establishes a
8 rate of twenty-five cents (25¢) per mile. No reimbursement shall be
9 made for the use of a personal car in commuting from an employee's
10 home to his duty station in connection with regularly scheduled work
11 hours. ~~Any designation of an employee's home as his duty station by a~~
12 ~~department head shall require prior approval by the Office of State~~
13 ~~Budget and Management on an annual basis."~~

14 **PART VI. AUXILIARY SERVICES**

15 **SECTION 11.** G.S. 143-64 reads as rewritten:

16 **"§ 143-64. Beverages contracts.**

17 Notwithstanding any other provision of law, local school administrative units,
18 community colleges, and constituent institutions of The University of North Carolina
19 shall competitively bid contracts that involve the sale of juice or bottled water.
20 ~~Contracts-Local school administrative units and community colleges shall bid contracts~~
21 ~~for the sale of juice and contracts for the sale of bottled water shall each be bid~~
22 ~~separately from each other and separately from any other contract, including contracts~~
23 ~~for other beverages or vending machine services. The local school administrative units,~~
24 ~~community colleges, and constituent institutions may set quality standards for these~~
25 ~~beverages, and these standards may be used to accept or reject a bid."~~

26 **PART VII. CONSTRUCTION AND LEASING**

27 **SECTION 12.** Article 1 of Chapter 116 of the General Statutes is amended
28 by adding a new section to read:

29 **"§ 116-31.12. Acquisition of real property by lease.**

30 Notwithstanding G.S. 143-341(4), the Board of Governors may authorize the
31 constituent institutions and the General Administration to acquire real property by lease
32 if the lease is for a term of not more than 10 years. The Board of Governors shall
33 establish a policy for acquiring an interest in real property for the use of The University
34 of North Carolina Health Care System by lease. This policy may delegate authorization
35 of the acquisition of real property by lease to the boards of trustees of the constituent
36 institutions or to the President of The University of North Carolina. The Board of
37 Governors shall submit all initial policies adopted pursuant to this section to the State
38 Property Office for review prior to adoption by the Board. Any subsequent changes to
39 these policies adopted by the Board of Governors shall be submitted to the State
40 Property Office for review. Any comments by the State Property Office shall be
41 submitted to the President of The University of North Carolina. After the acquisition of
42 an interest in real property by lease, The University of North Carolina shall promptly
43 file a report concerning the acquisition to the Secretary of Administration. Acquisitions
44 of an interest in real property by lease pursuant to this section shall not be subject to the

1 provisions of Article 36 of Chapter 143 of the General Statutes or to the provisions of
2 Article 6 of Chapter 146 of the General Statutes."

3 **SECTION 13.** G.S. 120-76.1(b) reads as rewritten:

4 "(b) Any agency, board, commission, or other entity required under
5 G.S. 120-76(8) or any other provision of law to consult with the Commission prior to
6 taking an action shall submit a detailed report of the action under consideration to the
7 Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division
8 of the General Assembly. If the Commission does not hold a meeting to hear the
9 consultation within 90 days of receiving the submission of the detailed report, the
10 consultation requirement is satisfied. With regard to capital improvement projects of
11 The University of North Carolina, if the Commission does not hold a meeting to hear
12 the consultation within 30 days of receiving the submission of the detailed report, the
13 consultation requirement of G.S. 120-76(8)e. is satisfied."

14 **SECTION 14.** G.S. 146-22 reads as rewritten:

15 **"§ 146-22. All acquisitions to be made by Department of Administration.**

16 Every acquisition of land on behalf of the State or any State agency, whether by
17 purchase, condemnation, lease, or rental, shall be made by the Department of
18 Administration and approved by the Governor and Council of State; provided that if the
19 proposed acquisition is a purchase of land with an appraised value of at least
20 twenty-five thousand dollars (\$25,000), and the acquisition is for other than a
21 transportation purpose, the acquisition may only be made after written notice to the
22 Joint Legislative Commission on Governmental Operations given to the Chairs of the
23 Commission at least 30 days prior to the acquisition, who shall forward a copy of the
24 notice to the members of the Commission within three days of their receipt of the
25 notice, and provided further, that acquisitions on behalf of the University of North
26 Carolina Health Care System shall be made in accordance with G.S. 116-37(i),
27 acquisitions on behalf of the University of North Carolina Hospitals at Chapel Hill shall
28 be made in accordance with G.S. 116-37(a)(4), acquisitions on behalf of the clinical
29 patient care programs of the School of Medicine of the University of North Carolina at
30 Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), ~~and~~ acquisitions on
31 behalf of the Medical Faculty Practice Plan of the East Carolina University School of
32 Medicine shall be made in accordance with ~~G.S. 116-40.6(d).~~ G.S. 116-40.6(d), and
33 acquisitions by lease on behalf of The University of North Carolina shall be made in
34 accordance with G.S. 116-31.12. In determining whether the appraised value is at least
35 twenty-five thousand dollars (\$25,000), the value of the property in fee simple shall be
36 used. The State may not purchase land as a tenant-in-common without consultation with
37 the Joint Legislative Commission on Governmental Operations if the appraised value of
38 the property in fee simple is at least twenty-five thousand dollars (\$25,000)."

39 **SECTION 15.** This act becomes effective July 1, 2007. Sections 2 through
40 6 of this act apply to construction projects for which bids or proposals are solicited on or
41 after that date. Section 7 of this act applies to construction or repair work commenced
42 on or after that date.