

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 617

Short Title: No Competition by Public Bus.

(Public)

Sponsors: Representatives Sherrill; and Cole.

Referred to: Commerce.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT PUBLICLY OWNED AND OPERATED BUSES MAY
3 NOT COMPETE WITH THE PRIVATE SECTOR.

Whereas, public school buses are purchased with tax revenue, are insured under the State's program of self-insurance, use motor fuel that is exempt from the per gallon motor fuel excise tax, are exempt from local property taxes, and are driven by individuals who are trained at State expense; and

Whereas, public school activity buses enjoy many of these same advantages; and

Whereas, other buses owned by local governments, such as those used by local parks and recreation departments, are purchased with tax revenue, are insured at taxpayer expense, and use fuel for which the local government receives a refund; and

Whereas, private sector businesses that provide transportation services do not enjoy any of these tax, insurance, and driver training advantages; and

Whereas, because of these differences in private sector transportation businesses and public transportation services, it would be unfair to allow publicly owned and operated buses to compete against private sector businesses in providing transportation services; Now, therefore,

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 66-58 reads as rewritten:

6 "§ 66-58. Sale of merchandise or services by governmental units.

1 (a) Except as may be provided in this section, it shall be unlawful for any unit,
2 department or agency of the State government, or any division or subdivision of any such
3 unit, department or agency, or any individual employee or employees of any such unit,
4 department or agency in his, or her, or their capacity as employee or employees thereof,
5 to engage directly or indirectly in the sale of goods, wares or merchandise in competition
6 with citizens of the State, or to engage in the operation of restaurants, cafeterias or other
7 eating places in any building owned by or leased in the name of the State, or to maintain
8 service establishments for the rendering of services to the public ordinarily and
9 customarily rendered by private enterprises, or to provide transportation services, or to
10 contract with any person, firm or corporation for the operation or rendering of any such
11 businesses or services on behalf of any such unit, department or agency, or to purchase
12 for or sell to any person, firm or corporation any article of merchandise in competition
13 with private enterprise. The leasing or subleasing of space in any building owned, leased
14 or operated by any unit, department or agency or division or subdivision thereof of the
15 State for the purpose of operating or rendering of any of the businesses or services herein
16 referred to is hereby prohibited.

17 (b) The provisions of subsection (a) of this section shall not apply to:

- 18 (1) Counties and ~~municipalities~~ municipalities with respect to sales and
19 services other than transportation services.
- 20 (2) The Department of Human Resources, the Department of
21 Environment, Health, and Natural Resources, or the Department of
22 Agriculture for the sale of serums, vaccines, and other like products.
- 23 (3) The Department of Administration, except that said agency shall not
24 exceed the authority granted in the act creating the agency.
- 25 (4) The State hospitals for the insane.
- 26 (5) The Department of Human Resources.
- 27 (6) The North Carolina School for the Blind at Raleigh.
- 28 (7) The North Carolina Schools for the Deaf.
- 29 (8) The Greater University of North Carolina with regard to its utilities
30 and other services now operated by it nor to the sale of articles
31 produced incident to the operation of instructional departments,
32 articles incident to educational research, articles of merchandise
33 incident to classroom work, meals, books, or to articles of
34 merchandise not exceeding twenty-five cents (25¢) in value when
35 sold to members of the educational staff or staff auxiliary to
36 education or to duly enrolled students or occasionally to immediate
37 members of the families of members of the educational staff or of
38 duly enrolled students nor to the sale of meals or merchandise to
39 persons attending meetings or conventions as invited guests nor to
40 the operation by the University of North Carolina of an inn or hotel
41 and dining and other facilities usually connected with a hotel or inn,
42 nor to the hospital and Medical School of the University of North
43 Carolina, nor to the Coliseum of North Carolina State College, and

1 the other schools and colleges for higher education maintained or
2 supported by the State, nor to the comprehensive student health
3 services or the comprehensive student infirmaries maintained by the
4 constituent institutions of the University of North Carolina.

5 (9) The Department of Environment, Health, and Natural Resources,
6 except that said Department shall not construct, maintain, operate or
7 lease a hotel or tourist inn in any park over which it has jurisdiction.
8 The North Carolina Wildlife Resources Commission may sell
9 wildlife memorabilia as a service to members of the public interested
10 in wildlife conservation.

11 (10) Child-caring institutions or orphanages receiving State aid.

12 (11) Highlands School in Macon County.

13 (12) The North Carolina State Fair.

14 (13) Rural electric memberships corporations.

15 (13a) State Farm Operations Commission.

16 (13b) The Department of Agriculture with regard to its lessees at farmers'
17 markets operated by the Department.

18 (13c) The Western North Carolina Agricultural Center.

19 (14) Nothing herein contained shall be construed to prohibit the
20 engagement in any of the activities described in subsection (a)
21 hereof by a firm, corporation or person who or which is a lessee of
22 space only of the State of North Carolina or any of its departments or
23 agencies; provided such leases shall be awarded by the Department
24 of Administration to the highest bidder, as provided by law in the
25 case of State contracts and which lease shall be for a term of not less
26 than one year and not more than five years.

27 (15) The State Department of Correction is authorized to purchase and
28 install automobile license tag plant equipment for the purpose of
29 manufacturing license tags for the State and local governments and
30 for such other purposes as the Department may direct.

31 The Commissioner of Motor Vehicles, or such other authority as
32 may exercise the authority to purchase automobile license tags is hereby
33 directed to purchase from, and to contract with, the State Department of
34 Correction for the State automobile license tag requirements from year
35 to year.

36 The price to be paid to the State Department of Correction for
37 such tags shall be fixed and agreed upon by the Governor, the State
38 Department of Correction, and the Motor Vehicle Commissioner, or
39 such authority as may be authorized to purchase such supplies.

40 (16) Laundry services performed by the Department of Correction may be
41 provided only for agencies and instrumentalities of the State which are
42 supported by State funds and for county or municipally controlled and
43 supported hospitals presently being served by the Department of

1 Correction, or for which services have been contracted or applied for in
2 writing, as of May 22, 1973. In addition to the prior sentence, laundry
3 services performed by the Department of Correction may be provided
4 for the Governor Morehead School and the North Carolina School for
5 the Deaf.

6 Such services shall be limited to wet-washing, drying and ironing of
7 flatwear or flat goods such as towels, sheets and bedding, linens and
8 those uniforms prescribed for wear by such institutions and further
9 limited to only flat goods or apparel owned, distributed or controlled
10 entirely by such institutions and shall not include processing by any dry-
11 cleaning methods; provided, however, those garments and items
12 presently being serviced by wet-washing, drying and ironing may in the
13 future, at the election of the Department of Correction, be processed by
14 a dry-cleaning method.

- 15 (17) The North Carolina Global TransPark Authority or a lessee of the
16 Authority.
- 17 (18) The activities and products of private enterprise carried on or
18 manufactured within a State prison facility pursuant to G.S. 148-70.
- 19 (c) The provisions of subsection (a) shall not prohibit:
- 20 (1) The sale of products of experiment stations or test farms.
- 21 (2) The sale of learned journals, works of art, books or publications of the
22 Department of Cultural Resources or other agencies, or the Supreme
23 Court Reports or Session Laws of the General Assembly.
- 24 (3) The business operation of endowment funds established for the purpose
25 of producing income for educational purposes; for purposes of this
26 section, the phrase 'operation of endowment funds' shall include the
27 operation by public postsecondary educational institutions of campus
28 stores, the profits from which are used exclusively for awarding
29 scholarships to defray the expenses of students attending the institution;
30 provided, that the operation of such stores must be approved by the
31 board of trustees of the institution, and the merchandise sold shall be
32 limited to educational materials and supplies, gift items and
33 miscellaneous personal-use articles. Provided further that sales at
34 campus stores are limited to employees of the institution and members
35 of their immediate families, to duly enrolled students of the campus at
36 which a campus store is located and their immediate families, to duly
37 enrolled students of other campuses of the University of North Carolina
38 other than the campus at which the campus store is located, to other
39 campus stores and to other persons who are on campus other than for
40 the purpose of purchasing merchandise from campus stores. It is the
41 intent of this subdivision that campus stores be established and operated
42 for the purpose of assuring the availability of merchandise described in
43 this Article for sale to persons enumerated herein and not for the

- 1 purpose of competing with stores operated in the communities
2 surrounding the campuses of the University of North Carolina.
- 3 (4) The operation of lunch counters by the Department of Human
4 Resources as blind enterprises of the type operated on January 1, 1951,
5 in State buildings in the City of Raleigh.
- 6 (5) The operation of a snack bar and cafeteria in the State Legislative
7 Building.
- 8 (6) The maintenance by the prison system authorities of eating and sleeping
9 facilities at units of the State prison system for prisoners and for
10 members of the prison staff while on duty, or the maintenance by the
11 highway system authorities of eating and sleeping facilities for working
12 crews on highway construction or maintenance when actually engaged
13 in such work on parts of the highway system.
- 14 (7) The operation by penal, correctional or facilities operated by the
15 Department of Human Resources or by the State Department of
16 Agriculture, of dining rooms for the inmates or clients or members of
17 the staff while on duty and for the accommodation of persons visiting
18 such inmates or clients, and other bona fide visitors.
- 19 (8) The sale by the Department of Agriculture of livestock, poultry and
20 publications in keeping with its present livestock and farm program.
- 21 (9) The operation by the public schools of school cafeterias.
- 22 (9a) The use of a public school bus or public school activity bus for a
23 purpose allowed under G.S. 115C-242 or the use of a public school
24 activity bus for a purpose authorized by G.S. 115C-247.
- 25 (10) Sale by any State correctional or other institution of farm, dairy,
26 livestock or poultry products raised or produced by it in its normal
27 operations as authorized by the act creating it.
- 28 (11) The sale of textbooks, library books, forms, bulletins, and instructional
29 supplies by the State Board of Education, State Department of Public
30 Instruction, and local school authorities.
- 31 (12) The sale of North Carolina flags by or through the auspices of the
32 Department of Administration, to the citizens of North Carolina.
- 33 (13) The operation by the Department of Correction of forestry management
34 programs on State-owned lands, including the sale on the open market
35 of timber cut as a part of such management program.
- 36 (14) The operation by the Department of Correction of facilities to
37 manufacture and produce traffic and street name signs for use on the
38 public streets and highways of the State.
- 39 (15) The operation by the Department of Correction of facilities to
40 manufacture and produce paint for use on the public streets and
41 highways of the State.
- 42 (16) The performance by the Department of Transportation of dredging
43 services for a unit of local government.

- 1 (17) The sale by the State Board of Elections to political committees and
2 candidate committees of computer software designed by or for the State
3 Board of Elections to provide a uniform system of electronic filing of
4 the campaign finance reports required by Article 22A of Chapter 163 of
5 the General Statutes and to facilitate the State Board's monitoring of
6 compliance with that Article. This computer software for electronic
7 filing of campaign finance reports shall not exceed a cost of one
8 hundred dollars (\$100.00) to any political committee or candidate
9 committee without the State Board of Elections first notifying in writing
10 the Joint Legislative Commission on Governmental Operations.
- 11 (18) The operation by a county or municipal corporation of any of the
12 following:
- 13 a. A transportation system that has regular routes.
14 b. A transportation service provided as part of another service or
15 activity of the county or municipal corporation, such as the
16 transportation of individuals to a public activity center.
- 17 (d) A department, agency or educational unit named in subsection (b) shall not
18 perform any of the prohibited acts for or on behalf of any other department, agency or
19 educational unit.
- 20 (e) Any person, whether employee of the State of North Carolina or not, who shall
21 violate, or participate in the violation of this section, shall be guilty of a Class 1
22 misdemeanor.
- 23 (f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the
24 Department of Correction of facilities for the manufacture of any product or the
25 providing of any service pursuant to G.S. 148-70 not regulated by the provisions of
26 subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial
27 review by the General Assembly, at the beginning of each fiscal year commencing after
28 October 1, 1975. The Department of Correction shall file with the Director of the Budget
29 quarterly reports detailing prison enterprise operations in such a format as shall be
30 required by the Director of the Budget.
- 31 (g) The North Carolina School of Science and Mathematics may engage in any of
32 the activities permitted by G.S. 66-58(b)(8) and (c)(3)."
- 33 Section 2. This act is effective when it becomes law.