

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 802
Committee Substitute Favorable 4/24/03

Short Title: Purchasing Flexibility for Schools.

(Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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 G.S. 115C-522.1 is repealed.

SECTION 3. G.S. 115C-47(23) reads as rewritten:

1 "(23) To Purchase Equipment and Supplies. – Local boards shall contract for
2 equipment and supplies under G.S. ~~115C-522(a), 115C-522.1,~~
3 115C-522(a) and 115C-528."

4 **SECTION 4.** G.S. 115C-264 reads as rewritten:

5 "**§ 115C-264. Operation.**

6 In the operation of their public school food programs, the public schools shall
7 participate in the National School Lunch Program established by the federal
8 government. The program shall be under the jurisdiction of the Division of School Food
9 Services of the Department of Public Instruction and in accordance with federal
10 guidelines as established by the Child Nutrition Division of the United States
11 Department of Agriculture.

12 Each school may, with the approval of the local board of education, sell soft drinks
13 to students so long as soft drinks are not sold (i) during the lunch period, (ii) at
14 elementary schools, or (iii) contrary to the requirements of the National School Lunch
15 Program.

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

32 **SECTION 4.1.** G.S. 143-48(b) reads as rewritten:

33 "(b) Reporting. – Every governmental entity required by statute to use the services
34 of the Department of Administration in the purchase of goods and ~~services~~ services,
35 every local school administrative unit, and every private, nonprofit corporation other
36 than an institution of higher education or a hospital that receives an appropriation of five
37 hundred thousand dollars (\$500,000) or more during a fiscal year from the General
38 Assembly shall report to the department of Administration annually on what percentage
39 of its contract purchases of goods and services, through term contracts and open-market
40 contracts, were from minority-owned businesses, what percentage from female-owned
41 businesses, what percentage from disabled-owned businesses, what percentage from
42 disabled business enterprises and what percentage from nonprofit work centers for the
43 blind and the severely disabled. The same governmental entities shall include in their
44 reports what percentages of the contract bids for such purchases were from such

1 businesses. The Department of Administration shall provide instructions to the reporting
2 entities concerning the manner of reporting and the definitions of the businesses referred
3 to in this act, provided that, for the purposes of this act:

- 4 (1) Except as provided in subdivision (1a) of this section, a business in
5 one of the categories above means one:
6 a. In which at least fifty-one percent (51%) of the business, or of
7 the stock in the case of a corporation, is owned by one or more
8 persons in the category; and
9 b. Of which the management and daily business operations are
10 controlled by one or more persons in the category who own it.
11 (1a) A "disabled business enterprise" means a nonprofit entity whose main
12 purpose is to provide ongoing habilitation, rehabilitation, independent
13 living, and competitive employment for persons who are handicapped
14 through supported employment sites or business operated to provide
15 training and employment and competitive wages.
16 (1b) A "nonprofit work center for the blind and the severely disabled"
17 means an agency:
18 a. Organized under the laws of the United States or this State,
19 operated in the interest of the blind and the severely disabled,
20 the net income of which agency does not inure in whole or in
21 part to the benefit of any shareholder or other individual;
22 b. In compliance with any applicable health and safety standard
23 prescribed by the United States Secretary of Labor; and
24 c. In the production of all commodities or provision of services,
25 employs during the current fiscal year severely handicapped
26 individuals for (i) a minimum of seventy-five percent (75%) of
27 the hours of direct labor required for the production of
28 commodities or provision of services, or (ii) in accordance with
29 the percentage of direct labor required under the terms and
30 conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the
31 production of commodities or provision of services, whichever
32 is less.
33 (2) A female or a disabled person is not a minority, unless the female or
34 disabled person is also a member of one of the minority groups
35 described in G.S. 143-128(2)a through d.
36 (3) A disabled person means a person with a handicapping condition as
37 defined in G.S. 168-1 or G.S. 168A-3."

38 **SECTION 5.** G.S. 143-48.3 reads as rewritten:

39 **"§ 143-48.3. Electronic procurement.**

40 ...

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

1 ...
2 (d) This section does not otherwise modify existing law relating to procurement
3 between The University of North Carolina, UNC Health Care, ~~local school~~
4 ~~administrative units~~, community colleges, and the Department of Administration.

5 ...
6 (f) Any State ~~entity, local school administrative unit, entity~~ or community
7 college operating a functional electronic procurement system established prior to
8 September 1, 2001, may until May 1, 2003, continue to operate that system
9 independently or may opt into the North Carolina E-Procurement Service. Each entity
10 subject to this section shall notify the Information Resources Management Commission
11 by January 1, 2002, and annually thereafter, of its intent to participate in the North
12 Carolina E-Procurement Service."

13 **SECTION 6.** G.S. 143-49 reads as rewritten:

14 **"§ 143-49. Powers and duties of Secretary.**

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

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

40 ...
41 (8) To establish and maintain a procurement card program for use by State
42 agencies, community colleges, ~~nonexempted constituent institutions of~~
43 ~~The University of North Carolina, and local school administrative~~
44 units and nonexempted constituent institutions of The University of

1 North Carolina. The Secretary of Administration may adopt temporary
2 rules for the implementation and operation of the program in
3 accordance with the payment policies of the State Controller, after
4 consultation with the Office of Information Technology Services.
5 These rules would include the establishment of appropriate order limits
6 that leverage the cost savings and efficiencies of the procurement card
7 program in conjunction with the fullest possible use of the North
8 Carolina E-Procurement Service. Prior to implementing the program,
9 the Secretary shall consult with the State Controller, the UNC General
10 Administration, the Community Colleges System Office, the State
11 Auditor, the Department of Public Instruction, a representative chosen
12 by the local school administrative units, and the Office of Information
13 Technology Services. The Secretary may periodically adjust the order
14 limit authorized in this section after consulting with the State
15 Controller, the UNC General Administration, the Community Colleges
16 System Office, the Department of Public Instruction, and the Office of
17 Information Technology Services."

18 **SECTION 7.** G.S. 143-53(a)(2) reads as rewritten:

19 **"§ 143-53. Rules.**

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

21 ...

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

1 **SECTION 8.(a)** Encourage Use of NC E-Procurement Service by LEAs. –
2 The State encourages local school administrative units to use the NC E-Procurement
3 Service.

4 **SECTION 8.(b)** Certification of E-Procurement Compliance. – The Office
5 of Information Technology Services must certify that a local school administrative unit
6 is E-procurement compliant when the unit's current software purchasing system is
7 adequately interfaced with the NC E-Procurement Service system and the unit's
8 employees involved in the purchasing process have been properly trained in the use of
9 the Service. The Office of Information Technology Services, in consultation with the
10 Department of Public Instruction and the NC E-Procurement Service, may establish the
11 standards that must be met for certification. The Office of Information Technology
12 Services must notify the Department of Administration of the units certified within three
13 days of the certification.

14 **SECTION 8.(c)** Pilot Projects. – To use the NC E-Procurement Service, a
15 local school administrative unit's current software purchasing system must be interfaced
16 with the NC E-Procurement Service system. All but two of the 117 local school
17 administrative units utilize one of two systems: ISIS by EMS or SunPac by Sartox. To
18 encourage local school administrative units to use the NC E-Procurement Service, the
19 Service will begin the interface process with four local school administrative units – two
20 of which use ISIS and two of which use SunPac. The four pilot units will be the local
21 school administrative units of Cabarrus County, Edgecombe County, Guilford County,
22 and Sampson County. The four pilot units must be certified as being E-procurement
23 compliant on or before October 1, 2003.

24 **SECTION 8.(d)** Charlotte/Mecklenburg LEA and Wake County LEA. – The
25 local school administrative units of Charlotte/Mecklenburg and Wake County each
26 utilize a unique software purchasing system. NC E-Procurement Service must begin the
27 process of interfacing the Service's software system with these units' software system.
28 Charlotte/Mecklenburg and Wake County must be certified as E-procurement compliant
29 on or before July 1, 2004.

30 **SECTION 8.(e)** Remainder of LEAs. – The remaining 111 local school
31 administrative units must be certified as being E-procurement compliant by January 1,
32 2005. The NC E-Procurement Service will assist the units in interfacing their systems
33 and training their employees on a regional basis by the type of software the unit
34 currently uses.

35 **SECTION 8.(f)** Obligation of LEAs. – As of the date a local school
36 administrative unit is certified by the Office of Information Technology Services as
37 being E-procurement compliant, it must expend at least thirty percent (30%) of its
38 remaining unencumbered funds used to purchase supplies, equipment, materials,
39 computer software, and other tangible personal property during the fiscal year in which
40 it is certified through the NC E-Procurement Service. The unit must expend at least
41 thirty-five percent (35%) of its funds used to purchase supplies, equipment, materials,
42 computer software, and other tangible personal property during the fiscal year following
43 certification through the NC E-Procurement Service and forty percent (40%) during the
44 second fiscal year following certification. The State encourages the units to utilize the

1 NC E-Procurement Service to purchase at least fifty percent (50%) of their supplies,
2 equipment, materials, computer software, and other tangible personal property during
3 the fiscal year following certification and at least seventy percent (70%) of their
4 supplies, equipment, materials, computer software, and other tangible personal property
5 during the second fiscal year following certification.

6 **SECTION 9.** Nothing in this act shall be construed to limit the authority of
7 the Department of Administration to develop, implement, and monitor a pilot program
8 for reverse auctions for public school systems as provided in Section 3 of Chapter 107
9 of the 2002 Session Laws.

10 **SECTION 10.** Sections 1 through 7 of this act become effective for a local
11 school administrative unit when the unit is certified by the Office of Information
12 Technology Services as being E-procurement compliant, as provided in Section 8 of this
13 act, or April 1, 2004, whichever occurs first. The remainder of this act is effective when
14 it becomes law.