

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**HOUSE BILL 749\***

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

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Sponsors: Representatives Glazier, McLawhorn, Rapp (Primary Sponsors);  
Alexander, Faison, Harrison, and Insko.

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Referred to: Education, if favorable, Ways and Means.

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March 15, 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 ~~All~~ 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

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

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

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

## 27 **PART II. INCREASE INFORMAL LIMIT FOR SMALL CONSTRUCTION**

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

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

- 39 (1) A performance bond in the amount of one hundred percent (100%) of  
40 the construction contract amount, conditioned upon the faithful  
41 performance of the contract in accordance with the plans,  
42 specifications and conditions of the contract. Such bond shall be solely  
43 for the protection of the contracting body that is constructing the  
44 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.