

Changes Affecting Higher Education

Robert P. Joyce

IN A 1971 SPECIAL SESSION called for that purpose, the General Assembly overhauled the structure for operating the state's four-year institutions of higher education. It merged ten separate degree-granting institutions into the existing six-campus University of North Carolina (UNC) and placed all sixteen under one unified Board of Governors. To that board, the General Assembly gave the complete governing authority for the sixteen-campus university.

Over the years, many have come to see this centralized system of administration as a key element of the university's strength—one informed body with the authority to respond definitively to regional and institutional pressures for new programs or for redistribution of resources. Other people have come to view the centralized system as an unnecessarily rigid structure insufficiently responsive to the unique needs and opportunities of the individual institutions.

In the 2001 session, a proposal to study the thirty-year-old governing structure aroused strong reaction and controversy. All four living former governors of the state spoke out publicly against it, expressing the conviction that the current structure best served the state and that a proposal for study could become an irresistible first step in a process of devolution. In the end, the General Assembly did establish a commission to conduct the study. It was the year's biggest story involving higher education litigation.

The Board of Governors and the Sixteen-Campus System

The call for a study of the governance structure of the university coincided with the filing of a lawsuit that challenged as unconstitutional some of the provisions for selecting the members of the Board of Governors.¹ G.S. 116-6 sets out a procedure by which the House of Representatives and the Senate elect board members as terms expire. The statute previously provided that of the sixteen members elected every two years, at least two must be women, at least two others must be members of a minority race, and at least two others must be members of the political party to which the largest minority of members of the legislature belong. Prevailing legal opinion indicated that some or all of these set-aside provisions for female, racial minority, and political minority seats on the board would not survive the legal challenge embodied in the lawsuit. In response, the General Assembly enacted SL 2001-503 (H 1144), amending G.S. 116-6 to eliminate the set-aside provisions. This legislation also amends G.S. 116-7 to eliminate the statute's direction that the legislature, in electing members, is to "tak[e] into consideration the need for representation on the Board by the different races, sexes, and political parties" and substitutes a direction that "[m]embers shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding

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1. Chapter 116, Section 6 of the North Carolina General Statutes (hereinafter G.S.).

of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity."

The bill changing the selection criteria for the Board of Governors was passed on the final day of the session. In public debate and in debate within the legislative halls, it was associated with the bill calling for a study of the sixteen-campus governing structure. Should there be such a study? If so, exactly what should the subject matter of the study be? How quickly should the study be concluded?

These questions were answered on the final day of the session as well, with the enactment of SL 2001-491 (S 166), which creates the UNC Board of Governors Study Commission. The commission is to consist of five members appointed by the Speaker of the House and five appointed by the President Pro Tempore of the Senate. The commission is to "study the method of election or appointment of members of the Board of Governors, the length of members' terms, the number of terms a member may serve, and the size of the Board of Governors. As part of the study, the Commission may examine the governing boards of other states' institutions of higher education."² The commission is to make its report to the 2003 session of the General Assembly.

Only time will tell whether the study is the first step toward major change in the system of governance of the sixteen-campus university.

Appropriations and Salaries

The University of North Carolina Current Operations

The Current Operations and Capital Improvements Appropriations Act of 2001 [SL 2001-424 (H 1040)] (the budget act) appropriates to The University of North Carolina Board of Governors—for the operation of all UNC campuses and hospitals—\$1,789,335,775 for fiscal 2001–2002 and \$1,797,720,830 for fiscal 2002–2003. In the budget act of 1999, the comparable figures for the two years of the 1999–2001 biennium were \$1,644,244,323 and \$1,656,863,227.

Community Colleges Current Operations

The budget act appropriates to the Community Colleges System Office \$643,695,459 for fiscal 2001–2002 and \$643,195,459 for fiscal 2002–2003. In the budget act of 1999, the comparable figures for the two years of the 1999–2001 biennium were \$579,803,851 and \$591,015,693.

In addition, the budget act (in Section 30.5) appropriates from the Employment Security Commission Training and Employment Account (created in 1999 and found at G.S. 96-6.1) to the System Office \$28,054,298 for fiscal 2001–2002 for equipment and specified industrial training programs, including the New and Expanding Industry Program. The budget act amends G.S. 96-6.1 to change the schedules by which employers must make contributions to the Training and Employment Account and to extend the sunset on G.S. 96-6.1 from January 1, 2002, to January 1, 2006. An additional \$7,013,574 is appropriated from the account to the North Carolina Employment Security Commission for the costs of collecting and administering the training and reemployment contribution and for enhanced reemployment services. Finally, Section 30.2 of the budget act allows the governor to transfer funds from any agency or program funded from the General Fund to the New and Expanding Industry Program to supplement the needs of that program in 2001–2003.

Capital Improvements

The General Assembly in 2001 made no direct appropriations for capital improvements; in 2000, the voters of the state had approved the issuance of bonds in the amount of \$2.5 billion for UNC and \$600 million for the community college system. That bond issuance supports a list of construction projects found in SL 2000-3 (S 912). This year's budget act, in Section 31.9, deletes from that 2000 list a \$9.17-million allocation for Comprehensive Renovation and Conversion for Information Technology and Data Processing at UNC Chapel Hill and substitutes for it an Information and Technology Office Facility at the same cost. SL 2001-463 (S 968) lists projects on ten UNC campuses approved for construction with funds other than General Fund appropriations, such as gifts or self-liquidating indebtedness. The total cost is \$204 million. The single largest approval is for a \$44-million parking and student-support project at UNC Chapel Hill.

2. SL 2001-491 (S 166).

Salaries

For community colleges, Section 32.11 of the budget act allocates funds for salary increases of \$625 per employee. The State Board of Community Colleges was charged with establishing guidelines for distributing the increases to employees, with the flexibility to use any excess funds for merit increases. For UNC, Section 32.12 similarly allocates increases of \$625 per employee, with the Board of Governors to adopt rules for distributing excess funds, including for merit increases. UNC employees subject to the State Personnel Act received a flat \$625 per person.

Public School Teacher Assistant Scholarship Fund

The budget act, in Section 31.5, adds a new G.S. 116-209.35 to establish the Teacher Assistant Scholarship Fund to provide scholarships to public school teacher assistants who are pursuing college degrees to become teachers. To be eligible, an applicant must be employed as a teacher assistant full-time, be enrolled in a degree program at an institution of higher education in North Carolina, and be a resident of North Carolina. The Board of Governors is authorized to adopt needed rules. Of funds appropriated to the Board of Governors, \$1 million is to be allocated to the State Education Assistance Authority for the fund.

Major Construction Law Changes

SL 2001-496 (S 914) works great changes in many aspects of the law governing public construction, including construction by community colleges and the university. See the article by Frayda Bluestein in this issue for a complete discussion.

Community College Governance

Budget Flexibility

The budget act provides, in Section 30.1, that a community college may use all state funds allocated to it (except for Literacy Funds and Funds for New and Expanding Industries) for any authorized purpose that is consistent with the college's Institutional Effectiveness Plan. Each college is to include in its plan a section on how funding flexibility allows the college to meet the demands of the local community and to maintain a presence in all previously funded categorical programs. No more than 2 percent systemwide may be transferred

from faculty salaries without the approval of the State Board of Community Colleges. In addition, Section 30.7 collapses several specified funding categories into one account for Institutional and Academic Support.

Property Disposal

G.S. 115D-15(a) has required that a board of trustees must get the prior approval of the State Board of Community Colleges before selling, exchanging, or leasing any real or personal property. SL 2001-82 (H 410) amends the statute so that it now requires that the college get such prior approval only with respect to *real* property. It may dispose of *personal* property without prior approval, and it may convey a right-of-way or easement for highway construction or utility easement with approval of the Community College System Office, not the state board. A provision in the amended law specifies that Article 12 ("Sale and Disposition of Property") of G.S. Chapter 160A applies to the college's disposition of real or personal property.

Capital Budget Development

G.S. 115D-54(b)(4) spells out the procedure for a college to request appropriations for capital outlays and to attain approval of its capital budget. The procedure formerly called for the budget request to be submitted first to the tax-levying authority (meaning, generally, the county commissioners) for their approval or disapproval, then to the college's board of trustees, and then to the State Board of Community Colleges. As amended, the statute clarifies that it is the trustees who are to submit the proposal to the tax-levying authority and, after approval by that authority, it is the trustees who are to submit the budget to the state board. This statute, and G.S. 115D-55(b), are amended to specify that the state board is to designate a date for submission of the budgets for approval.

Granting Security Interests to Federal Agencies

G.S. 115D-58.1 authorizes the boards of trustees of community colleges to accept federal grants and to enter into contracts with the federal government in carrying out the grants. SL 2001-211 (H 938) amends the statute to provide that in the case of a grant from the Economic Development Administration, the board may grant a security interest to the administration in any real property or equipment purchased with the grant.

Umstead Act

G.S. 66-58, generally known as the Umstead Act, makes it unlawful for state agencies to engage in the sale of merchandise in competition with private businesses. The statute contains a number of exceptions, such as the exception for sales at campus stores by public postsecondary educational institutions. SL 2001-368 (S 531) adds a new exception providing that it is not a violation of the Umstead Act for a community college to permit the use of its personnel or facilities in support of or by a private business enterprise located on the college campus or in the service area of the college for (1) product testing services, (2) videoconferencing services provided to the public for occasional use, or (3) small business incubators (meaning sites for new business ventures that are in need of the support and assistance of the college and that would likely fail without that support). A new G.S. 115D-20(12) adds to the statutory list of powers of boards of trustees the power to authorize such use of college personnel or facilities. For the Umstead Act exception to apply, the trustees must have approved the specific use.

Aid for Maintenance of Plant

Generally speaking, counties are responsible for bearing the financial burden of building and maintaining the physical facilities of the community colleges located within them. G.S. 115D-31.2 provides that if a community college has an out-of-county student head count served on the main campus of the college in excess of 50 percent of the total student head count, then the State Board of Community Colleges is to provide some financial assistance for maintenance of that college's physical facilities. The budget act, in Section 30.13, amends that statute to specify that each college that qualifies for these funds is to receive a pro rata amount of the funds appropriated for the purpose.

Audit Standards

SL 2001-111 (H 386) adds new G.S. 115D-5(m) directing the State Board of Community Colleges to require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges.

Fuel Tax Relief

SL 2001-427 (H 232) amends G.S. 105-449.88 to add to the list of items to which the excise tax on motor fuel does not apply fuel sold to a community college for its own use.

UNC Governance

In addition to the changes described above with respect to selection of the Board of Governors, several other changes related to UNC governance were enacted.

Budget and Management Flexibility

Section 31.11 of the budget act enacts a new Part 3A ("Management Flexibility for Special Responsibility Constituent Institutions") of G.S. Chapter 116, new G.S. 116-40.20 through -40.23. The new provisions authorize the UNC Board of Governors to authorize for any special responsibility constituent institution within the university the following elements of "management flexibility": (1) the trustees of the institution may, on recommendation of the chancellor, appoint and fix the salaries of all vice-chancellors, senior academic and administrative officers, and all employees with tenure; (2) the trustees may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs without regard to whether an emergency situation exists; and (3) the trustees are to establish policies and rules governing information technology and telecommunications at the institution, including security, software standards, hardware standards, consulting and contracting, and disaster recovery standards. Section 31.11 calls for a campus with the new management flexibility to report to the Board of Governors and the Joint Legislative Education Oversight Committee on any of the newly authorized policies that are adopted before the policies are implemented. The policies become effective at the next meeting of the trustees that is held more than thirty days after the submission of the report.

The same provision in the budget act directs the Joint Legislative Education Oversight Committee to study the issue of whether management flexibility for special responsibility constituent institutions should be expanded to include personnel, property, and purchasing responsibilities.

G.S. 116-30.2 and -30.3 give substantial flexibility in spending to UNC constituent institutions. Section 31.6 of the budget act provides that, despite that flexibility, neither the UNC General Administration nor any of the institutions are to expend General Fund moneys appropriated by the budget act nor General Fund current operations appropriations credit balances remaining at the end of any fiscal year to modify budget reductions imposed by the budget act.

Establishment of Additional Degree Programs

Section 31.10 of the budget act amends G.S. 116-74.21(b) to raise from nine to twelve the permitted number of master of school administration degree programs operated within the UNC constituent institutions and to direct that the three new programs be located at North Carolina Agricultural and Technical State University, North Carolina Central University, and the University of North Carolina at Pembroke. Section 31.10 also directs the Board of Governors to study the feasibility of establishing a school of pharmacy at Elizabeth City State University and schools of dentistry and engineering at East Carolina University.

School of Science and Mathematics Budget Flexibility

SL 2001-449 (S 879) adds new G.S. 116-030.2(b) authorizing the UNC Board of Governors to designate the North Carolina School of Science and Mathematics as a special responsibility constituent institution and to make it eligible for the budget flexibility provisions that come with that designation.

Overhead Receipts Report

Section 31.14 of the budget act directs the UNC Board of Governors to report to the Joint Legislative Education Oversight Committee annually on the amount of overhead receipts for the university and the use of those receipts.

Surplus Property

Section 31.8 of the budget act directs the UNC Board of Governors and the Department of Administration to develop guidelines and methods to expedite the disposition of surplus property by the university.

Arena Authority Conflicts

Part 4 of Article 20 of G.S. Chapter 160A authorizes the General Assembly to create facility authorities to own and operate arenas, coliseums, or other buildings for sports, entertainment, or cultural activities. SL 2001-311 (S 690) amends G.S. 160A-480.3(g) to require that the chancellor of the main campus of a UNC constituent institution located in the same county with the facility must, if he is a member, officer, or employee of the facility authority, disclose any interest that he may have in any contract with the facility authority. It is not a violation for the chancellor to participate in discussion

or vote on a matter where the matter relates to the interest of the constituent institution.

UNC Police Jurisdiction

G.S. 116-40.5 authorizes the boards of trustees of UNC constituent institutions to establish campus law enforcement agencies. SL 2001-397 (H 972) adds a new subsection (d) providing that the boards of trustees of institutions with such agencies may enter into joint agreements with one another to extend the law enforcement authority of their campus police officers into each other's campuses.

Teacher Academy Development Programs

G.S. 116-30.01(a) directs the North Carolina Teacher Academy Board of Trustees to establish a statewide network of high-quality, integrated, comprehensive, collaborative, and substantial professional development for teachers. Section 28.28 of SL 2001-424 (S 1005) adds a requirement that the network is to include professional development programs that focus on teaching strategies for teachers assigned to at-risk schools. The new provisions also direct the Teacher Academy to use at least 10 percent of its budget for the 2001-2002 fiscal year to deliver programs for teachers assigned to small classes in kindergarten through fifth grade.

North Carolina Progress Board

Section 31.12 of the budget act, in amending G.S. 143B-372.1 through -372.3, makes several changes in the administration of the North Carolina Progress Board. The board has been located administratively at North Carolina State University; the amended statute provides that it may be located at any UNC institution to which it is invited. The amended statute provides that the board is to exercise its powers independently of the institution at which it resides. The amended statute raises the board's membership from twenty-one to twenty-four, adding an additional member of the Senate, an additional member of the House, and an additional member elected by the board itself. The executive director has been appointed by the chancellor of North Carolina State University; the amended statute provides that the appointment is to be made by the governor. The amended statute encourages the development of Regional Progress Boards modeled after the statewide board. Finally, the amended statute specifies that the board may engage in consulting activities and that

members or employees of the board may receive reasonable fees for consulting work.

Education Cabinet

G.S. 116C-1(b) provides that the North Carolina Education Cabinet is to consist of the governor, the UNC President, the State Superintendent of Public Instruction, and the President of the Community Colleges System. SL 2001-123 (S 735) amends the statute to add the President of North Carolina Independent Colleges and Universities.

Public School Professional Employee Development Programs Review

G.S. 115C-12(26) has required the State Board of Education, in cooperation with the UNC Board of Governors, to identify and make recommendations regarding meaningful professional development programs for professional public school employees. The budget act, in Section 31.4, rewrites the statute so that it now directs the State Board of Education to (1) identify local needs for professional development for public school employees and recommend strategies, with the strategies being research-based, proven in practice, and designed for data-driven evaluation; and (2) to determine annually whether the programs for professional development provided by the UNC Center for School Leadership Development address the needs of the state and are using strategies recommended by the State Board of Education. Section 31.4 also amends G.S. 116-11(12a) to direct the Board of Governors to submit annually to the State Board of Education a written report that uses data to assess and evaluate the effectiveness of the programs of the center. Finally, Section 31.4 also directs the Joint Legislative Education Oversight Committee to hire an independent consultant to study the programs of the center and related issues and make a report to the committee in 2002.

Students and Academic Programs

Tuition

Section 10 of SL 2001-395 (S 61) (the continuing appropriations bill passed to fund operations of state government after the end of the fiscal year and before a full budget bill could be enacted) directed the UNC Board of Governors to increase tuition 9 percent above the rates charged for 2000–2001, to keep in place differ-

entials previously adopted for graduate and professional schools, and to keep in place campus-initiated tuition increases approved by the Board of Governors for 2000–2001. Section 10 also directed the State Board of Community Colleges to raise tuition for community college students enrolled in curriculum programs by \$3.50 per credit hour for up to sixteen credit hours per semester.

UNC Admissions Study

SL 2001-312 (H 1246) directs the UNC Board of Governors (in cooperation with the State Board of Education and the State Board of Community Colleges) to study the measures used by UNC institutions in making admissions decisions, remediation placement decisions, and advanced placement decisions. The study is to consider whether to eliminate, continue, or change the emphasis placed on the Scholastic Aptitude Test and the ACT Assessment as mandatory admission measures. The study is also to review incorporating the state's testing program into admission and placement decisions. A final report is due to the Joint Legislative Education Oversight Committee by December 1, 2003.

Youth Attending Community Colleges

SL 2001-312 (H 1246) adds new G.S. 115D-1.1 authorizing a student under age sixteen to enroll in a community college if (1) the college determines, based on criteria established by the State Board of Community Colleges, that the student is intellectually gifted and sufficiently mature; and (2) the enrollment is approved by the student's school system, nonpublic school, home schooling instructor, or charter school. This provision expires September 1, 2004.

Community College Apprenticeship Training

Section 30.10 of the budget act transfers the Bureau of Training Initiatives funded by the Worker Training Trust Fund from the Department of Labor to the community college system. The Department of Labor's apprenticeship program is transferred to the community college system as well.

Student Employees

G.S. 95-25.5 sets rules for employment of youth in particular age categories. SL 2001-312 (H 1246) adds a new provision to that statute specifying that youths who are enrolled in a college or community college may be employed by the institution—provided

the employment is not hazardous—without regard to the otherwise applicable rules.

UNC Student Parking

G.S. 116-44.4(d) authorizes each UNC Board of Trustees to set aside parking lots and other parking facilities on its campus. SL 2001-336 (S 627) adds to that statute a requirement that before a permit to park is issued to a student, that student must provide the name of the student's insurance carrier, the insurance policy number, and a certificate that the car is insured at levels required by the state financial responsibility law.

Reciprocal Out-of-State Tuition Waiver Program

The budget act, in Section 31.2, authorizes the Board of Governors to establish a pilot program for participation in the Southern Regional Education Board's Academic Common Market. Under that program, students in participating states may attend programs at public universities in other participating states if those programs are not available in the students' home states and may pay the in-state tuition rate. In the pilot program, the Board of Governors is to select for participation graduate programs that are not likely to be available in other participating states and to permit graduate students from participating states to attend those programs at UNC campuses at North Carolina in-state tuition rates. The pilot program established under this authorization is to terminate July 1, 2005.

Community College Student Financial Aid

SL 2001-229 (H 431) amends and codifies as new G.S. 115D-40.1 provisions for community college student financial aid that were previously found in the 1999 budget act (SL 1999-237). Those provisions establish the Need-Based Assistance Program, expressing the intent of the General Assembly to make financial aid funds available to the neediest students who are not eligible for other financial aid programs that fully cover the required educational expenses of these students. The new statute provides that, notwithstanding this intent, up to 10 percent of funds appropriated for Financial Aid Assistance for Community Colleges may be allocated to students who do not qualify for need-based assistance but who enroll in low-enrollment programs that prepare students for high-demand occupations.

Aid to Students Attending Private Colleges and Medical Schools

For a number of years, the General Assembly has provided funds to private colleges in North Carolina that enroll North Carolina undergraduate students. The funds provided have been of two types. First, there has been a payment to the private college of an amount per student for each North Carolina undergraduate enrolled, with that amount to be placed in a separate, identifiable account in the college's budget and to be used to provide scholarship funds for needy North Carolina students. Second, there has been separate payment to the college of a specific amount per student, to be credited directly against that student's obligation to the college. In 2000–2001, the amount of the first payment was \$1,100 per student and the amount of the second payment was \$1,800. The budget act for 2001–2002 (in Section 31.1) keeps the payments at the same levels, but it codifies the provisions for the payments—which were previously found in the budget acts year to year—in new G.S. 116-21.1 through -21.4.

Similarly, the General Assembly has for a number of years provided for payments to Wake Forest University and to Duke University for each North Carolina resident attending their medical schools. The payments per student for 2000–2001 were \$8,000 for Wake Forest and \$5,000 for Duke. The budget act for 2001–2002 keeps the payments at the same level, but it also codifies the provisions for the payments, previously found year-to-year in the budget acts, in new G.S. 116-21.5.

Provisions Related to Employees

Optional Retirement Systems

State employees, public school employees, most university employees, and employees of the state's community colleges participate in the Teachers' and State Employees' Retirement System of North Carolina. In the university, administrators and faculty with the rank of instructor or above are eligible to forgo participation in the state retirement system and participate instead in an Optional Retirement System implemented by the Board of Governors. Section 32.27 of the budget act extends that eligibility to employees of the university appointed by either the Board of Governors on recommendation of the UNC President or by the Board of Trustees upon recommendation of one of the chan-

cellors. It also extends eligibility to field faculty of the Cooperative Agriculture Extension Service and to tenure-track faculty in North Carolina State University agriculture research programs.

Section 32.24 of the budget act adds new G.S. 135-5.4 creating a similar Optional Retirement System for community college presidents.

Section 32.24A creates an Optional Retirement Program Study Commission to examine the feasibility and desirability of expanding the optional retirement systems to cover all university employees who are exempt from the State Personnel Act and all community college employees.

Community College Faculty Contracts

The General Assembly, in Section 30.6 of the budget bill, expresses its finding that standardization of the term of contracts of community college faculty members will provide the legislature with the data necessary to make informed decisions regarding faculty salaries

and funding for the summer term; it directs the State Board of Community Colleges to convert all faculty contracts to nine-month contracts covering the fall and spring semesters. Supplemental contracts for the summer term may be used for faculty members employed more than nine months.

Community College Faculty Salary Study

Section 30.8 of the budget act directs the Joint Legislative Education Oversight Committee to study discrepancies in community college faculty salaries to determine why salaries at some colleges are above the state average and others are well below it.

UNC Legal Services

Section 23.4 of the budget act directs the Board of Governors to reimburse the Department of Justice for two Attorney II positions to provide legal representation to the University of North Carolina System. ■

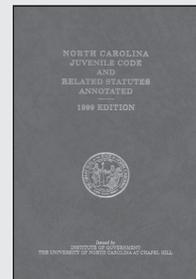
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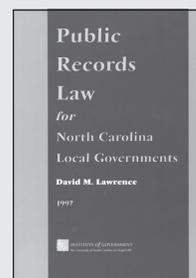
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