

Statutory Changes Related to Higher Education

by Robert P. Joyce

THE GENERAL ASSEMBLY IN 1998 enacted no sweeping changes in statutes affecting the sixteen constituent institutions that make up The University of North Carolina (UNC) or the state's community college system. For the university, the greatest change involved a restructuring of the governance of the UNC-Chapel Hill and East Carolina University (ECU) health care systems. For community colleges, the emphasis was on budgeting and spending flexibility. This article presents a narrative summary of these legislative changes and their impact on higher education.

Appropriations and Salaries

UNC Current Operations

In even-year sessions, the General Assembly makes modifications to the appropriations made in the previous odd-year session for the second year of the budget biennium. The 1997 Appropriations Act appropriated a total of \$1,455,260,484 from the General Fund to UNC for state fiscal year 1998-99. The 1998 Appropriations Act, SL 1998-212 (S 1366), adjusts UNC's 1998-99 appropriations by increasing some items and making minor reductions in others. The largest funding increase, \$72,892,894 for university instructional programs, constitutes the bulk of the net \$77,095,453 in increased funding for 1998-99.

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Community Colleges Current Operations

The appropriation for current operations for the state's community colleges made in 1997 for 1998-99 totaled \$517,690,484. The 1998 Appropriations Act, SL 1998-212, adds \$47,851,373 to that total. Of that increase, \$21 million is for an equipment reserve.

Capital Improvements

UNC

The 1998 Appropriations Act appropriates a total of \$112,534,500 to the UNC Board of Governors for capital improvements. See Table 1.

SL 1998-212 directs the board of governors to contract with a private consulting firm to assess the additional capital needs of the UNC constituent institutions for the next ten years and to develop a detailed plan for making funding allocations and for guiding the General Assembly in making capital spending decisions.

Community Colleges

SL 1998-212 appropriates \$7.5 million for additional capital improvements at community colleges for 1998-99. These capital projects are (1) a laboratory and administration building at the Center for Applied Textile Technology (\$2 million), (2) a Yadkin County satellite for Surry Community College (\$1.5 million), (3) a Franklin County satellite for Vance/Granville Community College (\$1 million), (4) improvements at Blue Ridge Community College (\$2 million), and (5) a model early childhood education center at Fayetteville Technical Community College (\$3 million).

Salaries

Section 14 of SL 1998-153 (S 879) provides funds for salary increases—the average increase being 3 percent—for UNC employees who are not subject to the State Personnel Act (primarily, faculty members), to be distributed according to rules adopted by the board of governors. UNC employees who are subject to the State Personnel Act received a combination cost-of-living salary increase (1 percent across-the-board) and “career growth recognition award” (averaging 2 percent). Teaching employees of the North Carolina School of Science and Mathematics received an average 6.5 percent salary increase comparable to that received by public school teachers.

Section 13 of SL 1998-153 provides funds for community college employees (full-time and part-time) to receive an average salary increase of 3 percent, to be distributed to employees according to rules adopted by the State Board of Community Colleges.

Each UNC and community college employee also received a one-time payment equal to 1 percent of his or her annual salary.

UNC Governance

Health Care System Creation and Administration

Effective November 1, 1998, Section 11.8 of SL 1998-212 amends Chapter 116-37 of the North Carolina General Statutes (hereinafter G.S.) to abolish the board of directors of the University of North Carolina Hospitals at Chapel Hill and to establish in its stead a board of directors of the University of North Carolina Health Care System. Like the old board, the new board will have authority over the UNC Hospitals at Chapel Hill but will, in addition, have authority over the clinical patient care programs operated by the School of Medicine of UNC at Chapel Hill. The new UNC Health Care System will provide patient care, facilitate the education of physicians and other health care providers, conduct research, and render other services designed to promote the health and well-being of North Carolinians.

UNC Health Care System Board of Directors

The new UNC Health Care System Board of Directors contains six ex officio members: the UNC system president (or her designee); the chief executive officer of the UNC Health Care System; two administrative offic-

ers of UNC at Chapel Hill, designated by the chancellor; and two members of the UNC at Chapel Hill School of Medicine, designated by the dean. Two others will be ex officio members if they are not otherwise members: the president of the University of North Carolina Hospitals at Chapel Hill; and the dean of the School of Medicine.

In addition, between nine and twenty-one individuals will be appointed as at-large members. At-large board members will be members of the business and professional public who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina. Appointments will be made by the UNC president and subject to ratification by the board of governors from a list of nominees put forward by the directors of the UNC Health Care System. Board members will serve for four-year terms.

The board of directors of the UNC Health Care System is authorized to exercise such authority and adopt such regulations as it deems necessary and appropriate for its patient care and other responsibilities, so long as its actions are not inconsistent with policies of the UNC Board of Governors. It may permit the UNC Hospitals at Chapel Hill and the clinical patient care programs operated by the School of Medicine to contract separately in their individual capacities, and it may enter into formal agreements with UNC at Chapel Hill with respect to providing clinical experience for students and for providing maintenance and supporting services.

The board of directors, in cooperation with the chancellor of UNC at Chapel Hill, must identify two qualified individuals, either of whom is capable to serve in the combined capacity of chief executive officer of the UNC Health Care System and vice-chancellor for medical affairs of UNC at Chapel Hill. The board then forwards these two names to the UNC president, who nominates one (if she finds one or both qualified) to the UNC Board of Governors, which selects the individual. The chief executive officer then nominates to the board of directors an individual to be the administrative head of the UNC Hospitals at Chapel Hill (with the title of president). The board of directors chooses the president, and the president then serves at the pleasure of the chief executive officer.

In general, employees of the UNC Health Care System will be exempt from many provisions of the State Personnel Act, and the board of directors will have broad authority for fixing the terms and conditions of their em-

Table 1. UNC Capital Projects with Direct Appropriation Funding

UNC Board of Governors	
Technology Infrastructure—Multiphase Systemwide Upgrade Project	\$10,875,000
Appalachian State University	
Rankin Science Building Addition and Renovation	\$ 6,276,500
East Carolina University	
Science Lab and Technology Building—Site Development ...	\$ 3,200,000
Multipurpose Center—Matching Funds	\$ 2,000,000
Elizabeth City State University	
Fine Arts Building—Complete Construction	\$ 948,600
Fayetteville State University	
Fine Arts Building—Site Development	\$ 1,000,000
North Carolina A & T State University	
Campus Security Improvements	\$ 1,450,000
General Classroom/Lab Building/Complex No. 1	\$ 3,000,000
North Carolina Central University	
Health and Safety Repairs and Renovations	\$ 2,000,000
North Carolina School of the Arts	
Basic Education Complex—Planning	\$ 800,000
Filmmaking Office/Classroom Postproduction Complex	\$ 300,000
North Carolina State University	
Toxicology Building—Construction	\$13,806,100
Advanced Planning—Engineering Instructional Facility	\$ 5,000,000
Upfit and Equip CMAST Building	\$ 2,400,000
Undergraduate Teaching Laboratories—Planning	\$ 4,500,000
College of Veterinary Medicine—Planning for Addition	\$ 2,000,000
Polk House Funds to Relocate	\$ 200,000
UNC—Asheville	
Justice Center Gymnasium—Partial Renovation	\$ 500,000
Highsmith Center—Renovation and Addition	\$ 1,000,000
UNC—Chapel Hill	
R.B. House Library—Renovation	\$ 9,332,700
Paul Green Theater—Completion	\$ 1,000,000
Medical Biomolecular Research Complex—	
Matching Funds to Begin Construction	\$ 6,000,000
Memorial Hall—Planning for Additional Renovations	\$ 1,000,000
UNC—Charlotte	
Academic Facilities/Humanities—Site Development and Construction	\$12,000,000
UNC—Greensboro	
Science Instructional Building—Site Development	\$ 3,850,000
UNC—Pembroke	
Regional Center for Economic, Professional, and Community Development	\$ 700,000
UNC—Wilmington	
School of Education Building—Planning	\$ 1,775,000
Western Carolina University	
Fine Arts Center—Site Development	\$ 2,500,000
Winston-Salem State University	
Computer Science Facility—Planning	\$ 700,000
UNC—General Administration	
Reserve for Land Acquisition (all campuses)	\$ 4,750,000
Institute of Government Knapp Building—Addition and Renovation	\$ 6,570,600
UNC—Public Television	
Conversion to Digital TV—Advanced Planning	\$ 1,100,000

ployment. Specifically, the State Personnel Act provisions governing salaries, promotion, leave, grievances, and disciplinary action will not apply, and the board of directors will have authority to establish compensation and position classification plans for employees and to adopt rules governing leave, workers' compensation, working conditions, hours of work, service and incentive awards, discipline and discharge, grievance, and any other matters. Employees of the UNC Health Care System will not enjoy the same level of job security that employees of the UNC Hospitals at Chapel Hill have enjoyed.

East Carolina University Medical Faculty Practice Plan

SL 1998-212 also adds a new section, G.S. 116-40.6, establishing rules regarding personnel actions, purchasing, and contracting by the East Carolina University Medical Faculty Practice Plan. The ECU personnel provisions are very similar to those enacted for the new UNC Health Care System, as are the purchasing and contracting provisions.

Purchasing and Contracting

Parallel provisions create exemptions for the UNC Health Care System and the ECU Medical Faculty Practice Plan from rules and procedures governing purchasing, control and disposition of property, and design and administration of construction projects.¹ The UNC board of directors and the ECU board of trustees are responsible for establishing policies to replace those that would otherwise apply. Policies for purchasing must be submitted to the Division of Purchase and Contract

1. N.C. GEN. STAT. § 116-37(h), (i), and (j) and § 116-40.6(c), (d), and (e) (hereinafter G.S.).

for review, and comments by that division must be submitted to the chief executive officer at UNC, to the chancellor at ECU, and to the university system president. Policies regarding acquisition and disposal of real property must be submitted to the State Property Office for review, and comments from that office are to be submitted in the same manner as the purchasing policies. The statutes specifically provide that they do not authorize acquisition of property by condemnation, and they do not authorize the board to encumber property. Policies regarding the design, construction, and renovation of buildings and other facilities must be submitted to the Office of State Construction, and comments from that office must be submitted in that same manner as the policies described above. The new provisions do not appear to exempt these entities from the competitive bidding requirements in Article 8 of G.S. Chapter 143 for construction or repair projects.

Retaining Funds That Otherwise Would Revert

At the end of each fiscal year, agencies of the state to which appropriations are made by the General Assembly normally must return to the state's General Fund any appropriated funds that have not been spent. The return of unspent funds is known as a reversion. In 1991 the General Assembly enacted G.S. 115C-30.3, which allows each UNC institution to retain a portion of its unspent funds for use on expenditures that will not impose additional financial obligations on the state. The portion that may be retained has been changed by the General Assembly over time. As the law stood before the enactment of the 1998 Appropriations Act, each constituent institution that reverts at least 2 percent of its appropriation may retain the amount above 2 percent (up to a maximum of 2.5 percent) and one-half of the 2 percent reversion. Section 11 of SL 1998-212 amends G.S. 115C-30.3 to provide that each institution may, beginning with the 1998-99 fiscal year, retain the entire 2 percent reversion, but each institution must use half of these funds for technology infrastructure development in accordance with the Board of Governors' Plan for Technology Development.

SL 1998-212 further amends G.S. 115C-30.3, beginning with the 1999-2000 fiscal year, to provide simply that each institution will retain its reversion up to 2.5 percent and that the retained funds may be used for any purpose that will not impose additional financial obligations on the state.

NCSU Centennial Campus

G.S. 116-36.5 creates a special continuing and nonreverting trust fund, composed of proceeds from the lease or rental of Centennial Campus property, for the further development of the Centennial Campus of North Carolina State University (NCSU). SL 1998-159 (H 1737) amends that statute and G.S. 116-198.34 to clearly define what property constitutes the Centennial Campus and is thus subject to trust fund provisions and benefits. As amended, the statutes define two parcels of land that are included in the Centennial Campus and provide further that the UNC Board of Governors may designate other property to be part of the campus, whether or not that other property is contiguous to other parts of the campus. Among the areas specifically included are the property upon which are located the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program. As amended, G.S. 116-198.34 provides that, notwithstanding other provisions of law, a lease or easement of Centennial Campus facilities for a period of ten years or less does not require the approval of the governor or the Council of State.

School Administrator Training Programs

Two provisions in SL 1998-212 make changes in training programs operated by UNC for public school administrators.

The first (in Section 11.13) amends G.S. 116-74.21(b) to raise from eight to nine the permitted number of school administrator training programs that may be operated within the UNC system.

The second (in Section 11.12) amends G.S. 116-11, adding a provision directing the UNC Board of Governors to create a board of directors for the UNC Center for School Leadership Development. The board of governors will determine the powers and duties of the board of directors. Section 11.12 also directs the board of governors to report to the Joint Legislative Education Oversight Committee on any statutory or other organizational changes needed to ensure oversight and coordination of the programs of the center. It also moves the Model Teacher Consortium funded in the Department of Public Instruction to the UNC Board of Governors in order that the consortium be included in the center.

UNC Application Pool

Section 11.9 of SL 1998-212 directs the UNC Board of Governors to create a system that provides for the sharing among the constituent institutions of se-

lected admissions applications from North Carolina residents. The expressed intent of the statute is to increase the number of North Carolina high school graduates who participate in higher education by providing information about applicants to other schools as well as by providing information to applicants about alternative higher education opportunities.

UNC Distance Learning Tracking

Section 11.7 of SL 1998-212 directs the UNC Board of Governors to track the funds spent in various degree-related courses provided at away-from-campus sites by UNC constituent institutions and to report to the General Assembly by May 1, 2000, on the costs and quality of various off-campus course delivery systems, including comparisons to the costs and quality of delivery of similar on-campus courses.

East Carolina University Funds

Section 11.6 of SL 1998-212 allocates an additional \$1.5 million to East Carolina University in recognition of its designation as a Doctoral II University. These funds may be used for additional faculty, increases in faculty salaries, increases in the number of graduate student tuition remissions, and other enhancements required to meet the needs of a Doctoral II institution.

Student Aid and Tuition

Section 11.3 of SL 1998-212 increases from \$750 to \$900 the amount that the state pays per full-time equivalent, North Carolina undergraduate student enrolled in a North Carolina private college. These funds are used by the state's private colleges to provide financial assistance to needy North Carolina students. The statute also increases from \$1,450 to \$1,600 the amount that is granted to each full-time North Carolina undergraduate student attending a private college in North Carolina. These funds may not be used for the benefit of prisoners.

Section 11.2 of SL 1998-212 revises the wording that limits the amount available to any individual recipient of a scholarship under the Incentive Scholarship Program for Native Americans. As reworded, the maximum amount of the scholarship is \$3,000 a year, but the actual amount granted to an individual is figured after all other need-based grants for which the individual is eligible have been included in the individual's financial aid package. The maximum amount of the award may not exceed the cost-of-attendance budget used to calculate financial aid less other need-based aid received.

Community College Governance

Financial Flexibility

Three acts passed in the 1998 session of the General Assembly have the goal of increasing the financial flexibility of community colleges in conducting their affairs.

Authority to Enter Lease-Purchase and Installment-Purchase Contracts

For a number of years, many kinds of governmental units have had the authority to enter lease-purchase and installment-purchase contracts. Community colleges have lacked the statutory authority. SL 1998-111 (H 1369) amends G.S. 115D-5 and 115D-20 and adds a new G.S. 115D-15 specifically to provide this authority. If a contract is for more than \$100,000 or for a term of more than three years, it is subject to review and approval by the State Board of Community Colleges (if state funds will be used to pay the college's obligations under the contract) or by the local board of county commissioners (if local funds will be used).²

Authority to Purchase off State Contract

G.S. 115D-58.5 provides that community colleges must make purchases of supplies, equipment, and materials by contracts made by or with the approval of the Purchase and Contract Division of the Department of Administration. SL 1998-68 (H 1368) amends that statute and adds a new G.S. 115D-58.14 permitting a community college to purchase the same supplies, equipment, or materials other than pursuant to the state contracts if the purchase price (including cost of delivery) is less than the cost under the state contract and the cost does not exceed a certain bid value benchmark established by statute (currently, \$25,000).

Use of Proceeds of Sale of Property

G.S. 115D-15 provides that when a community college sells, exchanges, or leases real or personal property, it must use the proceeds for capital outlay purposes. SL 1998-72 (H 1541) amends that statute to provide that if the property involved was donated to the community college to support a particular educational purpose, the college may use the proceeds of a sale or

2. For a fuller discussion of SL 1998-111, see the article "New Procedures for School and College Construction, Purchasing, and Sales," also in this issue of *School Law Bulletin*.

lease according to the terms of the donation, rather than just for capital outlay.

Budget Matters

Several provisions in the 1998 Appropriations Act relate directly to the budgets of community colleges.

Budget Stability

Section 10.4 of SL 1998-212 provides that a community college that experiences a decline in enrollment for the 1998–99 fiscal year will not receive a decrease in the funds it receives from the State Board of Community Colleges based on full-time equivalent enrollment (FTE) until the enrollment decline exceeds 3 percent. Any decrease in funding is matched only to the enrollment decline in excess of 3 percent. A community college that experiences an increase in enrollment for the 1998–99 fiscal year will not receive an increase in FTE-based funds until its enrollment increase exceeds 2 percent, at which time the funding increase will be matched only to the enrollment increase over 2 percent.

Budget Study

Section 10.1 of SL 1998-212 directs the State Board of Community Colleges to contract with an outside consultant to (1) review the community college capital allocation process and recommend modifications to make the process more equitable and (2) study performance budget measures and recommend options for allocating community college funds on a performance budget basis.

Equipment Reserve Fund

Section 10.2 of SL 1998-212 amends G.S. 115D-31 to add a provision specifying that funds appropriated to the State Board of Community Colleges for the Equipment Reserve Fund will be allocated to community colleges in accordance with the equipment allocation formula for the fiscal period. The college may spend the funds only in accordance with an equipment acquisition plan developed by the college and approved by the state board. Unspent funds do not revert but remain available for expenditure in accordance with the plan.

Accountability and Reports

Several provisions in SL 1998-212 relate directly to the General Assembly's concern for accountability and reporting regarding community college programs.

Enhanced Review

In Section 10.5 of SL 1998-212, the General Assembly expresses its conclusion that "the current annual program review standards are not adequate to ensure that programs are meeting the needs of students, employers, and the general public." The statute orders the State Board of Community Colleges to develop standards that establish appropriate levels of performance based on sound methodological practices.

Reporting Obligations

In Section 10.8 of SL 1998-212, the General Assembly directs community colleges to comply with the annual reporting requirements of the State Board of Community Colleges and directs that board to develop a plan to improve the timeliness and accuracy of the data reported to it. The plan must include the withholding of state funds from a college that is not in compliance.

Plan for a Management Information System

Section 10.6 of SL 1998-212 directs the State Board of Community Colleges to develop a plan for an efficient technology and management information system, designed to support planning, evaluation, communication, resource management, full-time student equivalent reporting, and decision-making processes.

Program Oversight

Section 10.7 of SL 1998-212 expresses the goal of the General Assembly "to increase the number of qualified high school students participating in cooperative high school education programs that are provided by local community colleges through cost-effective programs that do not duplicate high school Advanced Placement courses that are currently being offered or that could feasibly be offered." The statute directs the State Board of Community Colleges to work with the State Board of Education to create a task force to recommend changes necessary to improve the success and accountability of such programs.

Section 10.10 of SL 1998-212 directs the State Board of Community Colleges to study hospitality and tourism job training offered by community colleges and to cooperate with the UNC Board of Governors, the State Board of Education, and the Department of Commerce to improve cooperative efforts among those public entities toward enhancing hospitality and tourism job training in the state.

Tuition

Section 10.9 of SL 1998-212 directs the Joint Legislative Educational Oversight Committee to study community college tuition in light of recent proposals intended to maximize the opportunities for North Carolina residents to continue their education after high school and in light of federal "Hope Scholarships." Section 10.12 expresses the intent of the General Assembly to provide a tuition waiver ("to the extent that funds are appropriated expressly for that purpose") for up to two years to deserving students who graduate from a North Carolina high school and are enrolled full time in a North Carolina community college within six months of graduation.

New Anson-Union College

Section 10.13 of SL 1998-212 directs the county commissioners of Anson and Union counties to develop and submit to the State Board of Community Colleges a contract for establishing a new multicampus community college to serve the two counties, or a proposal for separate community colleges to serve the two counties, or another proposal for providing community college access for citizens of the two counties. If the commissions do not jointly submit a proposal by February 1, 1999, the state board must employ an independent consultant to study the issue and to report to the House and Senate Appropriations Committees by May 1, 1999. ■