



LEGISLATIVE REPORT

THE UNIVERSITY OF NORTH CAROLINA

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Office of State Governmental Affairs

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Overview

The 2001 Session of the North Carolina General Assembly opened under a fiscal cloud and adjourned under one more than 10 months later. It was the General Assembly's longest session ever. Of 2,587 bills introduced, 563 were passed and ratified, including several that are important to the University and its service to the state. Efforts to manage the impact of the downward spiraling economy on the state's budget overshadowed the session.

Short-term, the most significant legislation for the University centered on the budget and new spending authority. Responding positively to the University's highest budget priority – ensuring student access to higher education -- the General Assembly fully funded enrollment growth in traditional on-campus and new distance learning programs, and authorized construction of 22 new facilities financed by \$204 million in non-appropriated revenues.

Long-term, the most beneficial to the University and the state could prove to be extensive new flexibility in selecting construction methods for public buildings, options sought by local and state agencies for decades in an on-again, off-again campaign. That flexibility will help the University deliver on its pledge to deliver \$2.5 billion in new construction on time and on budget.

When the General Assembly convened on January 24, 2001, the national economy was in free fall and state government was faced with a widening gap between revenues and authorized spending. On February 8, the Governor declared a budget emergency. The state's revenue shortfall for the fiscal year, estimated at \$330 million just a few weeks before, was then projected at \$635.3 million, and \$156 million more had to be found for the Medicaid program. State government was faced with a possible \$791.3 million shortfall, and the economy was still skidding.

Governor Easley escrowed \$1 billion from the state's savings reserve, unspent Hurricane Floyd funds, retirement fund contributions, and potential agency reversions – including \$32 million from the University – to ensure that the state could balance its budget at year's end. Most of the money was needed. When the state's books were closed on June 30, the revenue shortfall stood at \$820 million.

On the morning of February 15, Senate and House Appropriations co-chairs set the 2001-2003 biennial budget planning process in motion, instructing committees to take a "modified zero-based budgeting approach." Zeroed out, agency programs in 16 specified areas initially funded since 1996 were to be reviewed; funding restoration would depend on proven need. Budget flexibility was among UNC programs targeted for review.

The Joint Appropriations Subcommittee on Education chose to go further and take the zero-based approach with 91 UNC programs initially funded since 1991, five years longer than the co-chairs had required. Ten subcommittee hearings between March 27

and April 4 focused on UNC budget issues. Hearings on identified zero-based programs reviews in all education sectors – K-12, community colleges, and the University -- occupied the subcommittee for nine weeks.

For legislators and agencies alike, the budget development process was extraordinarily tedious and troublesome – and, for a time, seemingly never-ending -- as legislators sought to meet growing needs with declining revenues. The most tedious work involved defense of the 91 programs identified for “modified zero-based” review. Numerous persons involved in those programs on the campuses, recipients of the programs’ services across the state, and UNC system leaders appeared before the subcommittee to appeal for restoration of program budgets. Dr. Gretchen Bataille, Senior Vice President for Academic Affairs, spoke for many presenters when she told the Joint Appropriations Subcommittee on Education:

“... many of us feel as if we are being asked the question no mother can answer – which of your children do you love the best?”

“These programs are all part of the UNC family, and in difficult budget times we will do what families do when faced with similar dilemmas, scrimp a bit here, cut out what we can live without for a time, and always hold together what is important – the delivery of programs and services to the state in our classrooms, our gardens, our laboratories and hospitals, our extension sites, and through service to the many businesses in the state.

“It will be far better to ask us to tighten our belts than to eliminate vital services that may, in the end, cause us to lose important federal support and, more importantly, result in an inability to serve the citizens of the state.”

The plea for flexibility in managing necessary cuts was a recurring theme by University presenters.

After a series of continuation budget adjustments, including inter-agency transfers, Appropriation co-chairs set \$1,804,923,800 as the starting point for drafting the 2001-2002 University budget. Drafters contemplated up to \$125 million in UNC budget cuts. In the end, through a series of reductions, reallocations, and \$1 billion in revenue enhancements over the biennium, the General Assembly approved a \$1,799,779,678 University budget as part of the total state General Fund budget of \$14.4 billion for FY 2001-2002.

From the \$1,804,923,800 base line, legislators provided \$64 million to fund expansions (primarily in enrollment), \$10 million for salary increases, and \$6 million in operating funds for new facilities. Offsetting those increases were \$48 million in budget reductions and \$31 million in tuition increases.

Legislators responded positively to the University’s appeal to minimize adverse impacts on classroom instruction. Programmatic and non-personnel reductions accounted for \$30

million of the \$48 million pared from the budget; non-personnel cuts included such things as contractual services, travel, furniture and equipment purchases, membership dues, equipment leases, and cellular phone operations. Campuses were allowed to identify the 475 non-teaching support positions eliminated to make up the remaining \$18 million cut.

In summary, the University just about held its earlier ground in the legislature's FY 2001-2002 budget.

In addition to continuation budget cuts mandated by the General Assembly summarized above, the University has sustained two other hits to its state appropriations in the past year. Both were ordered by the governor to offset declining revenues. The first was a \$32 million reversion (slightly less than 2 percent of the University's General Fund appropriation) to help balance state government's FY 2000-2001 budget. The second, a \$43.9 million reduction in spending authority equal to 2.7 percent of the University's General Fund appropriation, came in September, just days after the General Assembly had enacted the 2001-2003 biennial budget. It was an early effort to keep the state's FY 2001-2002 budget in balance.

Revenue shortfall continues to worry state officials and \$125 million appropriated to renovate or repair state facilities during FY 2001-2002 has not been released for expenditure; \$57.5 million of that sum is earmarked for renovations and repairs to University buildings.

While the state's fiscal condition was the principal headline maker during the 2001 legislative session, many other topics were important to the University.

Construction flexibility

SB 914, Public Construction Law Changes, brought to a head the decades-long debate over construction methods. The basic question was a simple one: whether single-prime (with one contractor responsible to the public owner for all phases of work) or multi-prime (with separate contractors responsible for different phases) was most efficient and economical for taxpayers, who foot the bills for most public buildings. Most general contractors and public agencies have wanted the single-prime option, but many subcontractors felt disadvantaged by the single-prime method (arguing they were squeezed out by general contractors), and, with strong lobbies back home in legislative districts, their views prevailed in Raleigh.

A wave of new construction across the state, anchored by \$2.5 billion in voter-approved work on University campuses and \$600 million on community college campuses, brought the issue back to the forefront. After a three-month battle, drawn out by the continuing skirmish with subcontractors and negotiations to ensure minority contractors fair competition for public work, SB 914 passed both houses of the General Assembly with overwhelming margins.

Public owners now may choose from among a range of construction methods, including single prime, the option best suited for each project, and successful contractors must prove they made substantial efforts to meet the state's minority participation goals if they fail to meet those goals. Another provision in the bill raises the University's download cap from \$500,000 to \$2 million, below which University construction projects may be exempted from State Construction Office review.

The legislation was supported by a large consortium of public agencies, including the University and state associations of cities, counties, hospitals, the community colleges, school boards, architects, and engineers.

Non-appropriated capital

Faced with deep budget cuts forced by declining revenues, many legislators were slow to warm to SB 968, which initially sought authority for almost \$300 million in new UNC construction financed from non-appropriated sources available to the campuses. Limiting projects to those ready for bid this fiscal year reduced the overall cost to \$204 million and won broad support among legislators and heavily favorable votes in both House and Senate.

More than 45 percent of the money to finance that construction derives from gifts (private contributions) and grants; 33 percent from housing receipts, parking operations and other auxiliary enterprises; and 22 percent from student fees. Approved were 22 projects on the following 10 campuses: ASU, ECU, NC A&T, NCCU, NCSU, UNC-CH, UNCC, UNCG, WCU, and WSSU.

None of the projects will be operated with General Fund monies. Historically, 40 percent of the University's buildings have been constructed with non-appropriated funds; 60 percent have been built with state funds.

Management flexibility

Special responsibility constituent institutions were granted, by special provision in SB 1005, additional management flexibility in three areas. (1) Upon recommendation of the Chancellor, an institution's Board of Trustees may appoint and fix the compensation of vice chancellors, senior academic and administrative officers, and persons having permanent tenure at the institution consistent with policies adopted by the Board of Governors. (2) The Board of Trustees may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs consistent with actions of the General Assembly. (3) The Board of Trustees may establish policies and rules governing information technology and telecommunications at the institution subject to review by the Office of Information Technology Services.

The Joint Legislative Education Oversight Committee will study requests for additional management flexibility in personnel, purchasing, and property acquisition systems.

Board of Governors; membership categories

HB 1144, signed into law on December 19, almost two weeks after the 2001 legislative session ended, eliminates membership categories for the political minority party, women, and the minority race. Categories were the subject of a lawsuit in the federal courts. The Attorney General and the University's own senior counsel had advised the Board that the lawsuit could not be successfully defended, and the Board asked the General Assembly for the change. A provision requiring appointment of a special commission to study how members are selected, the number of members, length of terms, and length of services was removed from the bill and included in HB 166, the Studies Act.

Conflict of interest

HB 115 substantially rewrites and clarifies state law prohibiting public officers or employees from benefiting from public contracts in which they may be involved in negotiating or administering.

NCSSM budget flexibility

SB 879 granted the N.C. School of Science and Math flexibility in managing its budget similar to that previously held by the constituent universities. The legislation allows the school to retain and expend account balances which heretofore would have reverted to the General Fund, approximately \$150,000 annually. Reluctant to surrender General Fund revenue in any amount, legislators saw the sum as an important boost for an institution they have kept on a tight budget for years.

Academic Common Market

By special provision in SB 1005, the General Assembly authorized the Board of Governors to establish a four-year pilot program for participation in the Southern Regional Education Board's Academic Common Market. The University will select for participation those graduate programs likely to be unique or not readily available in other ACM participating states. Through the ACM, students in participating states may enroll in programs not available in their home state but offered by public universities in other participating states at the resident tuition rate.

Teacher preparation

SB 1005, through special provisions, enhances opportunities for persons seeking to obtain public school teacher licensure by establishing a scholarship fund for persons employed as teacher assistants and by making financial assistance available to persons enrolled in teacher education programs through distance education.

Surplus property guidelines

The Board of Governors is directed, through special provision in SB 1005, to work with the Department of Administration to develop guidelines for expediting disposition of the University's surplus property. The Board will define surplus state properties covered by the guidelines and make recommendations to the General Assembly regarding disposal costs, use of receipts, and legislation needed to implement the changes.

Procurement

HB 231, the Technical Corrections Act directs the Department of Administration and the Office of the State Controller, in conjunction with the University and other agencies to collaborate in developing electronic or digital procurement standards. The legislation exempts UNC Chapel Hill and N.C. State from participation in an electronic procurement system until May 1, 2003, but requires that they continue to work with the N.C. E-Procurement Service as that system evolves and ensure that their proposed procurement systems are compatible with the N.C. E-Procurement Service. A procurement card program will be established and maintained for non-exempt constituent institutions and other state agencies. The Secretary of Administration may adopt rules and adjust order limits to ensure fullest use of the N.C. E-Procurement Service.

Limitations on use of state aircraft

By special provision in SB 1005, the General Assembly placed new limits on use of aircraft operated or maintained by state agencies. No airplane or helicopter operated or maintained with state funds may be used to transport any member of a board or commission to or from a meeting of the board or commission to which that member is appointed unless the member is an elected official or head of a principal state department who serves on the board or commission by virtue of his or her office, the member is traveling with another who serves on the board or commission by virtue of his or her office, is traveling to a destination for official state business other than a meeting of a board of commission, or the Director of the Office of State Budget and Management has approved use of the aircraft as an exceptional circumstance.

The OSBM director is required to report to the appropriations chair of House and Senate annually on December 31 the number of exceptions allowed for the year.

Campus police jurisdiction

Legislation clarified campus police responsibilities in two troubling jurisdictional issues and authorized constituent institutions to enter into mutual assistance agreements with other constituent institutions. HB 752 authorized UNC Greensboro to regulate, with city approval, parking on certain city streets. HB 972 gave campus police jurisdiction on public roads passing through or immediately adjoining the campus and authorized campus Boards of Trustees to enter into mutual aid agreements with Boards of Trustees at other constituent institutions for law enforcement purposes, authority long exercised by municipal and county law enforcement agencies but not previously granted to universities.

Student parking permits

SB 627 requires enrolled UNC students to provide proof of automobile liability insurance before obtaining campus parking permits. Students must provide the name of the insurer and policy number, and certify that liability coverage meets or exceeds insurance levels required by North Carolina law. The law applies to cars registered in North Carolina as well as other states. Sen. Bob Shaw of Greensboro initiated the legislation after his vehicle was damaged in an accident involving an uninsured, non-resident student.

Non-immigrant aliens

HB 1324 conforms state law applying to state and local government retirement systems to federal law by requiring that certain Visa holders (non-immigrant aliens) who are teachers or are otherwise employed by state and local governments be offered retirement benefits on the same basis as U.S. citizens.

Biological agents registry

Legislators pushed through the General Assembly three bills to help the state prepare for and respond to terrorists' attacks, should they occur here in the future. One, HB 1472, directly affects the University. Passed at the urging of Attorney General Roy Cooper, the law requires the Department of Health and Human Services to establish and administer a registry of biological agents that could be employed in terrorists' attacks and are maintained in the state. The bill was drafted by a task force of University scientists, hospital representatives, and others affiliated with laboratories where such materials might be utilized, generally for research purposes. The registry is necessary, Cooper

said, because law enforcement agencies do not know where such materials are retained, which could severely hamper an investigation into a future attack. University personnel were enlisted in the drafting process to guard against unintended consequences that might interfere with legitimate research.

HB 1468 and HB 1471 establish criminal penalties for making or using certain weapons of mass destruction and provide funds for bio-terrorism defense, training, and response.

Progress Board

The General Assembly, through special provision in SB 1005, located the N.C. Progress Board, a 24-member independent board appointed by the Governor, President Pro Tempore of the Senate, and Speaker of the House, administratively under the Board of Governors and authorized the BOG to locate Progress Board offices at any constituent institution which formally invites it.

Turfgrass research funds

HB 688 appropriates to the Board of Governors for allocation to N.C. State University \$600,000 in each fiscal year this biennium to support research initiatives at the Center for Turfgrass Environmental Research and Education. The revenue derives from a sales tax on fertilizers and seed sold for non-farm use.

NOTE: This appropriation is not included in the comparative budget analysis in Section 2 of this report.

Chinqua-Penn funds transferred to foundation

SB 1005, by special provision, directs the transfer of all "Friends of Chinqua-Penn" funds and gift shop funds on deposit with the University to the Chinqua-Penn Foundation, Inc.

Other legislation

HB 169 (Adams) and SB 1288 (Kinnaird) UNC BOG Student Member Vote. Both ended the session in the Senate Rules Committee. HB 169 passed the House and is, therefore, eligible for the Short Session.

HB 1272 (Tolson) (Energy Conservation/Pilot Program) requires state agencies to use life-cycle cost analysis in design and renovation of state buildings, and to implement a pilot program to evaluate cost savings. The Board of Governors must select at least four buildings to participate in the pilot.

HB 338 (Technical Corrections) requires the State Treasurer to place the proceeds of University improvement general obligation bonds in a special fund designated the "University Improvement Bonds Fund."

Likely to see again:

-- Another run on UNC overhead receipts. In this session the House proposed tapping UNC-CH and NCSU overhead receipts for \$3.6 million with \$3.1 million earmarked for the University's seven focused growth institutions and \$500,000 for a photonics research consortium. The Senate balked and overhead receipts survived the conference committee intact.

Overhead receipts became the principal source for funding amendments during House floor debate on the budget. Rep. Mickey Michaux' successful amendment favoring the focused growth institutions touched off the longest debate – almost 2 hours. He won by 11 votes (65-54). Rep. Marge Carpenter's attempt to take \$5 million from overhead receipts to enhance services to K-12 students with disabilities failed, but only after extended debate.

As a result, the General Assembly directed the Board of Governors to report annually the amount and use of overhead receipts at all campuses. Unless a plan is developed for use of overhead receipts that enjoys widespread legislative support, those monies likely will remain target number one for any legislator looking for money.

-- Another effort to shift a greater share of the tuition load to non-resident students. Rep. Cary Allred tried that this session and failed in committee but succeeded on the House floor. Allred's amendment to SB 61 would have shifted the entire \$30.8 million tuition hike to non-resident students. The budget conference committee rejected it. So easy was his argument to sell – no legislator wants to levy a charge on his or her constituents if it can be passed on to someone else – that Allred, who likes amending things, is likely to try again.

-- Elimination of required reversions through use of budget flexibility is a sore subject with some legislators. A clear, widely accepted plan for funds realized through budget flexibility (such as the purchase of essential items, thereby reducing requests for General Fund appropriations) will be essential in keeping those topic out of Appropriations debates next session.

Reports

Legislation adopted during the long session requires the University to submit 14 new reports to various legislative committees and state agencies, almost doubling in one

session the number previously mandated. Altogether, 27 reports are due in the next three calendar years.

Added to the list this session are required reports on: policy changes relating to management flexibility; utilization of personal services contracts; teacher assistant scholarships awarded; amount and use of overhead receipts; surplus property guidelines and methods of disposition; measures used in campus decisions on admissions, placement, and advanced placement; the feasibility of establishing new pharmacy, dental, and engineering schools; the feasibility of constructing a new athletic stadium at Fayetteville State University; professional development programs for public school teachers; and use of funds for teacher preparation programs offered through distance education.

Studies

Twenty-two studies of issues directly affecting or otherwise important to the University were mandated or authorized. The Board of Governors was asked to perform five far-reaching studies. Five other studies were assigned to the Joint Legislative Education Oversight Committee (JLEOC), five to the Legislative Research Commission (LRC), and seven to special commissions or state agencies.

The BOG will study:

Admissions, placement, and advance placement measures and decisions.

The feasibility of

- * a school of pharmacy at ECSU
- * a school of dentistry at ECU
- * schools of engineering at ECU, WCU, and UNCA
- * a new athletic stadium at FSU.

Assigned to the JLEOC were the following issues:

Management flexibility for University personnel, property, and purchasing
Higher education residency requirements
Tuition for non-citizen immigrant students
Science, math, and technology education
Professional development for public school professionals

Assigned to the LRC were:

Payment of costs incurred by UNC for municipal service
State purchasing and procurement flexibility and decentralization
Establishing a state energy program
Government tort claims
Construction contracts

The Board of Governors Study Commission was created to study and make recommendations regarding how members are selected, the number of members, length of terms, and number of terms that may be served. The 10-member commission will be appointed by the President Pro Tempore of the Senate and the Speaker of the House and will report its findings and recommendations to the 2003 General Assembly.

The Optional Retirement Program Study Commission was created to study whether the Optional Retirement Program should be expanded to include all EPA personnel.

The Advisory Commission on Military Affairs was authorized to study ways to improve educational opportunities for military personnel.

The Office of State Budget and Management was assigned to study the state's motor fleet management and the feasibility of privatizing it. The state Controller was asked to take a look at the state's financial business infrastructure. The Joint Select Committee on Information Technology was asked to consider personal privacy and security issues in electronic commerce. Four state agencies were asked to work together in reviewing use of outside IT contractors and the cost of outsourcing some functions.

BOG non-budget legislative priorities

- *Procurement Card
- *Campus Police Jurisdiction
- *Campus Police Mutual Assistance
- **Tort claims
- **Competitive faculty issues
- **Equity in retirement
- ***Partial subsidy for dependent health care
- ***Expanded tuition waiver program
- ***In-state tuition for active duty military personnel, dependents

- * Enacted into law
- ** Selected for study
- *** Consideration deferred due to budgetary conditions

The longest session

The 2001 General Assembly adjournment on Thursday, December 6, 2001 -- 317 calendar days after the opening gavel. It was the longest session in the state's history. Members introduced 2,587 bills (1,478 by the 120 members of the House and 1,109 by the 50 members of the Senate); 563 were ratified.

Next session

The General Assembly will convene its biennial Short Session in Raleigh at noon on Monday, May 27, 2002.