

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2335*
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Short Title: UNC Management Flexibility.

(Public)

Sponsors:

Referred to:

June 6, 1990

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT THE JOINT REPORT TO PROVIDE MANAGEMENT
2 INCENTIVES AND FLEXIBILITY FOR THE CONSTITUENT INSTITUTIONS
3 OF THE UNIVERSITY OF NORTH CAROLINA AND TO REQUIRE THE
4 CREATION AND ENHANCEMENT OF A PROGRAM OF PUBLIC SERVICE
5 AND TECHNICAL ASSISTANCE TO THE PUBLIC SCHOOLS.
6

7 Whereas, the 1989 General Assembly in Chapter 500 of the 1989 Session
8 Laws directed the Board of Governors and the Office of State Budget and Management
9 to review the need for management incentives and flexibility at the campus level in
10 order to achieve budget savings and increased efficiency of operations; and

11 Whereas, the work of the Board of Governors and the Office of State Budget
12 and Management has been completed in accordance with the legislative directive and a
13 joint report entitled, "Management Incentives and Flexibility," has been made to the
14 1989 General Assembly, 1990 Regular Session; and

15 Whereas, the 1989 General Assembly desires that the joint report be fully
16 implemented in phases beginning with the 1990-91 fiscal year; Now, therefore,
17 The General Assembly of North Carolina enacts:

18 Section 1. Budget Flexibility. (a) The following budgetary changes are
19 authorized effective July 1, 1990, and shall be reflected in the 1991-93 budget
20 presentations to the 1991 General Assembly and in the 1991-93 budget certifications to
21 the constituent institutions of The University of North Carolina:

- 1 (1) The existing budget purposes or programs of General Academic
2 Support, Student Services, Institutional Support, and Physical Plant
3 Operations shall be consolidated into a new purpose or program
4 entitled "General Institutional Support."
- 5 (2) Summary level objects of expenditure shall be used for budgetary
6 control purposes for the nonpersonnel accounts of Supplies and
7 Materials, Current Obligations, Utilities, Fixed Charges and Expenses,
8 Capital Outlay, and Library Books and Journals.
- 9 (3) Among the nonpersonnel objects of expenditure of Supplies and
10 Materials, Current Obligations, Fixed Charges and Expenses, and
11 Capital Outlay, budget adjustments may be authorized by the
12 constituent institutions within a single budget purpose or program
13 without prior approval from the Director of the Budget.
- 14 (4) Unspent utilities funds at the constituent institutions may be utilized to
15 fund utility and energy-savings projects through their operating
16 budgets, subject to the approval of the Director of the Budget.
- 17 (5) For budgetary reporting and accounting purposes, the constituent
18 institutions of The University of North Carolina shall continue to
19 provide expenditure data at such detailed levels as required by the
20 Director of the Budget. Presentation, control, and reporting of salary
21 and salary-related objects of expenditure shall be in accordance with
22 applicable statutes and the directives of the Director of the Budget.
- 23 (6) Detailed expenditure information for objects of expenditure for the
24 existing budget purposes of General Academic Support, Student
25 Services, Institutional Support, and Physical Plant Operations shall be
26 available to the Appropriations Committees of the General Assembly
27 on a regular basis.
- 28 (7) Funds from the "General Institutional Support" budget purpose or
29 program may be transferred into the "Regular Term Instruction" and
30 "Libraries" budget purpose or program. These transfers shall be
31 reported to the Board of Governors of The University of North
32 Carolina annually. Funds may not be transferred from the "Regular
33 Term Instruction" or "Libraries" budget purposes or program except in
34 accordance with the provisions of G.S. 143-23(a1).
- 35 (b) G.S. 116-36.3 is repealed.
- 36 (c) G.S. 116-36.1(g) reads as rewritten:
- 37 "(g) As used in this section, 'trust funds' means:
 - 38 (1) Moneys, or the proceeds of other forms of property, received by an
39 institution as gifts, devises, or bequests that are neither presumed nor
40 designated to be gifts, devises, or bequests to the endowment fund of
41 the institution;
 - 42 (2) Moneys received by an institution pursuant to grants from, or contracts
43 with, the United States government or any agency or instrumentality
44 thereof;

- 1 (3) Moneys received by an institution pursuant to grants from, or contracts
2 with, any State agencies, any political subdivisions of the State, any
3 other states or nations or political subdivisions thereof, or any private
4 entities whereby the institution undertakes, subject to terms and
5 conditions specified by the entity providing the moneys, to conduct
6 research, training or public service programs, or to provide financial
7 aid to students;
- 8 (4) Moneys collected by an institution to support extracurricular activities
9 of students of the institution;
- 10 (5) Moneys received from or for the operation by an institution of
11 activities established for the benefit of scholarship funds or student
12 activity programs;
- 13 (6) Moneys received from or for the operation by an institution of any of
14 its self-supporting auxiliary enterprises ~~except student auxiliary services~~
15 identified in G.S. 116-36.3, including institutional student auxiliary
16 enterprise funds for the operation of housing, food, health, and laundry
17 services;
- 18 (7) Moneys received by an institution in respect to fees and other
19 payments for services rendered by medical, dental or other health care
20 professionals under an organized practice plan approved by the
21 institution or under a contractual agreement between the institution and
22 a hospital or other health care ~~provider~~ provider;
- 23 (8) The net proceeds from the disposition effected pursuant to Chapter
24 146, Article 7, of any interest in real property owned by or under the
25 supervision and control of an institution if the interest in real property
26 had first been acquired by gift, devise, or bequest or through
27 expenditure of moneys defined in this subsection (g) as 'trust funds,'
28 except the net proceeds from the disposition of an interest in real
29 property first acquired by the institution through expenditure of
30 moneys received as a grant from a State ~~agency~~ agency;
- 31 (9) Moneys received from the operation and maintenance of institutional
32 forests and forest farmlands, provided, that such moneys shall be used,
33 when used, by the institution for support of forest-related research,
34 teaching, and public service programs."

35 Sec. 2. Overhead Receipts. (a) It is the intention of the General Assembly that
36 overhead receipts derived from reimbursement of indirect costs on contracts and grants
37 shall not continue to be budgeted as offsets to General Fund appropriations for current
38 operations of the constituent institutions of The University of North Carolina.

39 (b) The base or continuation budget requests of the constituent institutions of The
40 University of North Carolina presented to the 1991 General Assembly shall reflect a
41 phased reduction in such offsets during the 1991-93 biennium. For the 1991-92 fiscal
42 year this reduction shall lower the offset rate from thirty percent (30%) to twenty-five
43 percent (25%), and for the 1992-93 fiscal year this reduction shall lower the offset rate
44 from twenty-five percent (25%) to twenty percent (20%).

1 (c) At such time as the intention of the General Assembly with respect to
2 phaseout of such offsets has been implemented in the budgets of the constituent
3 institutions of The University of North Carolina, special fund codes for overhead
4 receipts shall be transferred to the category of institutional trust funds for budgetary and
5 accounting purposes.

6 Sec. 3. Purchasing Procedures. (a) G.S. 143-52 reads as rewritten:

7 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**
8 **bids; awarding of contracts.**

9 As feasible, the Secretary of Administration will compile and consolidate all such
10 estimates of supplies, materials, equipment and contractual services needed and required
11 by State departments, institutions and agencies to determine the total requirements of
12 any given commodity. Where such total requirements will involve an expenditure in
13 excess of ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the
14 provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed
15 as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper
16 of statewide circulation at least once and at least 10 days prior to the date designated for
17 opening of the bids and awarding of the contract: Provided, other methods of
18 advertisement may be adopted by the Secretary of Administration when such other
19 method is deemed more advantageous for certain items or commodities. Regardless of
20 the amount of the expenditure, under the competitive bidding procedure it shall be the
21 duty of the Secretary of Administration to solicit bids direct by mail from qualified
22 sources of supply. Except as otherwise provided under this Article, contracts for the
23 purchase of supplies, materials or equipment shall be based on competitive bids and
24 acceptance made of the lowest and best bid(s) most advantageous to the State as
25 determined upon consideration of the following criteria: prices offered; the quality of
26 the articles offered; the general reputation and performance capabilities of the bidders;
27 the substantial conformity with the specifications and other conditions set forth in the
28 request for bids; the suitability of the articles for the intended use; the personal or
29 related services needed; the transportation charges; the date or dates of delivery and
30 performance; and such other factor(s) deemed pertinent or peculiar to the purchase in
31 question, which if controlling shall be made a matter of record. Competitive bids on
32 such contracts shall be received in accordance with rules and regulations to be adopted
33 by the Secretary of Administration, which rules and regulations shall prescribe for the
34 manner, time and place for proper advertisement for such bids, the time and place when
35 bids will be received, the articles for which such bids are to be submitted and the
36 specifications prescribed for such articles, the number of the articles desired or the
37 duration of the proposed contract, and the amount, if any, of bonds or certified checks to
38 accompany the bids. Bids shall be publicly opened. Any and all bids received may be
39 rejected. Each and every bid conforming to the terms of the invitation, together with the
40 name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all
41 such records with the name of the successful bidder indicated thereon shall, after the
42 award of the contract, be open to public inspection. Provided, that trade secrets, test data
43 and similar proprietary information may remain confidential. A bond for the faithful
44 performance of any contract may be required of the successful bidder at bidder's

1 expense and in the discretion of the Secretary of Administration. After contracts have
2 been awarded, the Secretary of Administration shall certify to the departments,
3 institutions and agencies of the State government the sources of supply and the contract
4 price of the supplies, materials and equipment so contracted for. Prior to adopting other
5 methods of advertisement under this section, the Secretary of Administration may
6 consult with the Advisory Budget Commission. Prior to adopting rules and regulations
7 under this section, the Secretary of Administration may consult with the Advisory
8 Budget Commission."

9 (b) G.S. 143-53(2) reads as rewritten:

10 "(2) Prescribing routine for securing bids on items that do not exceed ~~five~~
11 ~~thousand dollars (\$5,000) in value~~ the bid value benchmark established
12 under the provisions of G.S. 143-53.1."

13 (c) Chapter 143 of the General Statutes is amended by adding a new section
14 to read:

15 **"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

16 On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52
17 with respect to competitive bid procedures and the bid value benchmark authorized by
18 G.S. 143-53(2) with respect to rule making by the Secretary of Administration for
19 competitive bidding shall be ten thousand dollars (\$10,000); provided, the Secretary of
20 Administration may, in his discretion, increase the benchmarks effective as of the
21 beginning of any fiscal biennium of the State commencing after June 30, 1992, in an
22 amount whose increase, expressed as a percentage, does not exceed the rise in the
23 Consumer Price Index during the fiscal biennium next preceding the effective date of
24 the benchmark increase."

25 (d) The Department of Administration, through the Division of Purchase and
26 Contract, and in consultation with the constituent institutions of The University of North
27 Carolina, shall undertake a review of existing purchasing procedures for the purpose of
28 making such modifications and consolidations of present procedures, consistent with
29 sound procurement policies, as may be needed to expedite the acquisition of supplies,
30 materials, and equipment required for the execution of research and other sponsored
31 projects.

32 (e) G.S. 143-56 reads as rewritten:

33 **"§ 143-56. Certain purchases excepted from provisions of Article.**

34 Unless as may otherwise be ordered by the Secretary of Administration, the
35 purchase of supplies, materials and equipment through the Secretary of Administration
36 shall be mandatory in the following cases:

37 (1) Published books, manuscripts, maps, pamphlets and periodicals.

38 (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat,
39 eggs, and others as may be classified by the Secretary of
40 Administration.

41 Purchase through the Secretary of Administration shall not be mandatory for a purchase
42 of supplies, materials or equipment for the General Assembly if the total expenditures is
43 less than ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the

1 provisions of G.S. 143-53.1 or for group purchases made by hospitals through a
2 competitive bidding purchasing program, as defined in G.S. 143-129.

3 All purchases of the above articles made directly by the departments, institutions and
4 agencies of the State government shall, whenever possible, be based on competitive
5 bids. Whenever an order is placed or contract awarded for such articles by any of the
6 departments, institutions and agencies of the State government, a copy of such order or
7 contract shall be forwarded to the Secretary of Administration and a record of the
8 competitive bids upon which it was based shall be retained for inspection and review."

9 Sec. 4. Sales and Use Taxes on Contract and Grant Purchases. G.S. 105-
10 164.14(b) reads as rewritten:

11 "(b) The Secretary of Revenue shall make refunds semiannually to hospitals not
12 operated for profit (including hospitals and medical accommodations operated by an
13 authority created under the Hospital Authorities Law, Article 2 of Chapter 131E),
14 educational institutions not operated for profit, churches, orphanages and other
15 charitable or religious institutions and organizations not operated for profit of sales and
16 use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions
17 and organizations on direct purchases of tangible personal property for use in carrying
18 on the work of such institutions or organizations. Sales and use tax liability indirectly
19 incurred by such institutions and organizations on building materials, supplies, fixtures
20 and equipment which shall become a part of or annexed to any building or structure
21 being erected, altered or repaired for such institutions and organizations for carrying on
22 their nonprofit activities shall be construed as sales or use tax liability incurred on direct
23 purchases by such institutions and organizations, and such institutions and organizations
24 may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also
25 make refunds semiannually to all other hospitals (not specifically excluded herein) of
26 sales and use tax paid by them on medicines and drugs purchased for use in carrying out
27 the work of such hospitals. This subsection does not apply to organizations,
28 corporations, and institutions that are owned and controlled by the United States, the
29 State, or a unit of local government, except hospital facilities created under Article 2 of
30 Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a
31 unit of local government that elect to receive semiannual refunds under this subsection
32 instead of annual refunds under subsection (c). In order to receive the refunds herein
33 provided for, such institutions and organizations shall file a written request for refund
34 covering the first six months of the calendar year on or before the fifteenth day of
35 October next following the close of said period, and shall file a written request for
36 refund covering the second six months of the calendar year on or before the fifteenth
37 day of April next following the close of that period. Such requests for refund shall be
38 substantiated by such proof as the Secretary of Revenue may require, and no refund
39 shall be made on applications not filed within the time allowed by this section and in
40 such manner as the Secretary may require. Notwithstanding the foregoing provisions
41 of this subsection, the constituent institutions of The University of North Carolina may
42 obtain in the manner prescribed by this Article the refund of sales and use tax paid by
43 them on or after January 1, 1992, for tangible personal property acquired by them
44 through the expenditure of contract and grant funds."

1 Sec. 5. Over-Realized Receipts. (a) G.S. 143-27 reads as rewritten:

2 **"§ 143-27. Appropriations to educational, charitable and correctional institutions**
3 **are in addition to receipts by them.**

4 All appropriations now or hereafter made to the educational institutions, and to the
5 charitable and correctional institutions, and to such other departments and agencies of
6 the State as receive moneys available for expenditure by them are declared to be in
7 addition to such receipts of said institutions, departments or agencies, and are to be
8 available as and to the extent that such receipts are insufficient to meet the costs
9 anticipated in the budget authorized by the General Assembly, of maintenance of such
10 institutions, departments, and agencies; Provided, however, that if the receipts, other
11 than gifts and grants that are unanticipated and are for a specific purpose only, collected
12 in a fiscal year by an institution, department, or agency exceed the receipts certified for
13 it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall
14 decrease the amount he allots to that institution, department, or agency from
15 appropriations from that Fund by the amount of the excess, unless the Director of the
16 Budget finds that the appropriations from that Fund are necessary to maintain the
17 function that generated the receipts at the level anticipated in the certified Budget Codes
18 for that Fund. Notwithstanding the foregoing provisions of this section, receipts within
19 The University of North Carolina realized in excess of budgeted levels shall be
20 available, up to a maximum of ten percent (10%) above budgeted levels, for each
21 Budget Code, in addition to appropriations, to support the operations generating such
22 receipts, as approved by the Director of the Budget.

23 The Office of State Budget and Management shall report to the Joint Legislative
24 Commission on Governmental Operations and to the Fiscal Research Division of the
25 Legislative Services Office within 30 days after the end of each quarter on expenditures
26 of receipts in excess of the amounts certified in General Fund Codes or Highway Fund
27 Codes that did not result in a corresponding reduced allotment from appropriations from
28 that Fund."

29 (b) Effective with the 1991-93 fiscal biennium, revenues from new or
30 increased course fees authorized by the Board of Governors of The University of North
31 Carolina and the associated expenditures shall be incorporated into the base or
32 continuation budget requests of the constituent institutions of The University of North
33 Carolina presented to the General Assembly. New or increased course fees approved by
34 the Board of Governors after the operating budget is approved by the General Assembly
35 may be budgeted with the approval of the Director of the Budget, but shall be
36 incorporated into the next base budget requests of the constituent institutions.

37 Sec. 6. Personnel Administration. The Office of State Personnel and The
38 University of North Carolina General Administration are directed to continue their
39 discussions in the areas of the appropriate classifications of positions between those
40 subject to the State Personnel Act (SPA) and those exempt from the State Personnel Act
41 (EPA), development of guidelines to facilitate these classifications, and the need for
42 campus flexibility in administering positions funded from contracts and grants.

1 Sec. 7. The Board of Governors of The University of North Carolina shall
2 adopt standards to create and enhance an organized program of public service and
3 technical assistance to the public schools. This program shall:

- 4 (1) Provide systematic access for public schools to consultation and advice
5 available from members of the faculties of the constituent institutions;
- 6 (2) Facilitate and encourage research in the public schools and the
7 application of the results of this research;
- 8 (3) Link the education faculties of the constituent institutions with public
9 school teachers and administrators through public service requirements
10 for the education faculties; and
- 11 (4) Create partnerships among all constituent institutions, their schools or
12 departments of education, and the maximum number of public schools
13 that could benefit from these partnerships.

14 Sec. 8. This act shall become effective July 1, 1990, except that G.S. 116-
15 36.1(g)(9) as added by Section 1(c) of this act shall become effective July 1, 1991, and
16 except that Section 5(a) of this act shall become effective July 1, 1991.