

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2335*
Committee Substitute Favorable 7/6/90

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:

- 22 (1) The existing budget purposes or programs of General Academic
23 Support, Student Services, Institutional Support, and Physical Plant

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

1 other states or nations or political subdivisions thereof, or any private
2 entities whereby the institution undertakes, subject to terms and
3 conditions specified by the entity providing the moneys, to conduct
4 research, training or public service programs, or to provide financial
5 aid to students;

6 (4) Moneys collected by an institution to support extracurricular activities
7 of students of the institution;

8 (5) Moneys received from or for the operation by an institution of
9 activities established for the benefit of scholarship funds or student
10 activity programs;

11 (6) Moneys received from or for the operation by an institution of any of
12 its self-supporting auxiliary enterprises ~~except student auxiliary services~~
13 identified in G.S. 116-36.3, including institutional student auxiliary
14 enterprise funds for the operation of housing, food, health, and laundry
15 services;

16 (7) Moneys received by an institution in respect to fees and other
17 payments for services rendered by medical, dental or other health care
18 professionals under an organized practice plan approved by the
19 institution or under a contractual agreement between the institution and
20 a hospital or other health care ~~provider~~ provider;

21 (8) The net proceeds from the disposition effected pursuant to Chapter
22 146, Article 7, of any interest in real property owned by or under the
23 supervision and control of an institution if the interest in real property
24 had first been acquired by gift, devise, or bequest or through
25 expenditure of moneys defined in this subsection (g) as 'trust funds,'
26 except the net proceeds from the disposition of an interest in real
27 property first acquired by the institution through expenditure of
28 moneys received as a grant from a State ~~agency~~ agency;

29 (9) Moneys received from the operation and maintenance of institutional
30 forests and forest farmlands, provided, that such moneys shall be used,
31 when used, by the institution for support of forest-related research,
32 teaching, and public service programs."

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

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

43 (c) At such time as the intention of the General Assembly with respect to
44 phaseout of such offsets has been implemented in the budgets of the constituent

1 institutions of The University of North Carolina, special fund codes for overhead
2 receipts shall be transferred to the category of institutional trust funds for budgetary and
3 accounting purposes.

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

5 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;
6 bids; awarding of contracts.**

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

1 institutions and agencies of the State government the sources of supply and the contract
2 price of the supplies, materials and equipment so contracted for. Prior to adopting other
3 methods of advertisement under this section, the Secretary of Administration may
4 consult with the Advisory Budget Commission. Prior to adopting rules and regulations
5 under this section, the Secretary of Administration may consult with the Advisory
6 Budget Commission."

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

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

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

13 **"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

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

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

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

31 **"§ 143-56. Certain purchases excepted from provisions of Article.**

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

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

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

39 Purchase through the Secretary of Administration shall not be mandatory for a purchase
40 of supplies, materials or equipment for the General Assembly if the total expenditures is
41 less than ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the
42 provisions of G.S. 143-53.1 or for group purchases made by hospitals through a
43 competitive bidding purchasing program, as defined in G.S. 143-129.

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

7 Sec. 4. Sales and Use Taxes on Contract and Grant Purchases. G.S. 105-
8 164.14(b) reads as rewritten:

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

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

1 **"§ 143-27. Appropriations to educational, charitable and correctional institutions**
2 **are in addition to receipts by them.**

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

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

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

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

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

- 1 (1) Provide systematic access for public schools to consultation and advice
2 available from members of the faculties of the constituent institutions;
3 (2) Facilitate and encourage research in the public schools and the
4 application of the results of this research;
5 (3) Link the education faculties of the constituent institutions with public
6 school teachers and administrators through public service requirements
7 for the education faculties; and
8 (4) Create partnerships among all constituent institutions, their schools or
9 departments of education, and the maximum number of public schools
10 that could benefit from these partnerships.
11 Sec. 8. This act shall become effective July 1, 1990.