

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 936  
HOUSE BILL 2335

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

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

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

Whereas, the 1989 General Assembly desires that the joint report be fully implemented in phases beginning with the 1990-91 fiscal year; Now, therefore,

The General Assembly of North Carolina enacts:

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

- (1) The existing budget purposes or programs of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be consolidated into a new purpose or program entitled "General Institutional Support."
- (2) Summary level objects of expenditure shall be used for budgetary control purposes for the nonpersonnel accounts of Supplies and Materials, Current Obligations, Utilities, Fixed Charges and Expenses, Capital Outlay, and Library Books and Journals.
- (3) Among the nonpersonnel objects of expenditure of Supplies and Materials, Current Obligations, Fixed Charges and Expenses, and Capital Outlay, budget adjustments may be authorized by the constituent institutions within a single budget purpose or program without prior approval from the Director of the Budget.

- (4) Unspent utilities funds at the constituent institutions may be utilized to fund utility and energy-savings projects through their operating budgets, subject to the approval of the Director of the Budget.
  - (5) For budgetary reporting and accounting purposes, the constituent institutions of The University of North Carolina shall continue to provide expenditure data at such detailed levels as required by the Director of the Budget. Presentation, control, and reporting of salary and salary-related objects of expenditure shall be in accordance with applicable statutes and the directives of the Director of the Budget.
  - (6) Detailed expenditure information for objects of expenditure for the existing budget purposes of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be available to the Appropriations Committees of the General Assembly on a regular basis.
  - (7) Funds from the "General Institutional Support" budget purpose or program may be transferred into the "Regular Term Instruction" and "Libraries" budget purpose or program. These transfers shall be reported to the Board of Governors of The University of North Carolina annually. Funds may not be transferred from the "Regular Term Instruction" or "Libraries" budget purposes or program except in accordance with the provisions of G.S. 143-23(a1).
- (b) G.S. 116-36.3 is repealed.
- (c) G.S. 116-36.1(g) reads as rewritten:
- "(g) As used in this section, 'trust funds' means:
- (1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;
  - (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;
  - (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
  - (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
  - (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises ~~except student auxiliary services identified in G.S. 116-36.3~~, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care ~~provider~~ provider;
- (8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as 'trust funds,' except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State ~~agency~~ agency;
- (9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs."

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

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

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

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

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

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in

excess of ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

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

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

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

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

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

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

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

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

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

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

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

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

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

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E),

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

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

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

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall

decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 16th day of July, 1990.