

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**H**

**1**

**HOUSE BILL 2335\***

Short Title: UNC Management Flexibility.

(Public)

---

Sponsors: Representatives Miller; Barnes and Hackney.

---

Referred to: Education.

---

June 6, 1990

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE JOINT REPORT TO PROVIDE MANAGEMENT  
INCENTIVES AND FLEXIBILITY FOR THE CONSTITUENT INSTITUTIONS  
OF THE UNIVERSITY OF NORTH CAROLINA.

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."

- 1 (2) Summary level objects of expenditure shall be used for budgetary  
2 control purposes for the nonpersonnel accounts of Supplies and  
3 Materials, Current Obligations, Utilities, Fixed Charges and Expenses,  
4 Capital Outlay, and Library Books and Journals.
- 5 (3) Among the nonpersonnel objects of expenditure of Supplies and  
6 Materials, Current Obligations, Fixed Charges and Expenses, and  
7 Capital Outlay, budget adjustments may be authorized by the  
8 constituent institutions within a single budget purpose or program  
9 without prior approval from the Director of the Budget.
- 10 (4) Unspent utilities funds at the constituent institutions may be utilized to  
11 fund utility and energy-savings projects through their operating  
12 budgets, subject to the approval of the Director of the Budget.
- 13 (5) For budgetary reporting and accounting purposes, the constituent  
14 institutions of The University of North Carolina shall continue to  
15 provide expenditure data at such detailed levels as required by the  
16 Director of the Budget. Presentation, control, and reporting of salary  
17 and salary-related objects of expenditure shall be in accordance with  
18 applicable statutes and the directives of the Director of the Budget.
- 19 (b) G.S. 116-36.3 is repealed.
- 20 (c) G.S. 116-36.1(g) reads as rewritten:
- 21 "(g) As used in this section, 'trust funds' means:
- 22 (1) Moneys, or the proceeds of other forms of property, received by an  
23 institution as gifts, devises, or bequests that are neither presumed nor  
24 designated to be gifts, devises, or bequests to the endowment fund of  
25 the institution;
- 26 (2) Moneys received by an institution pursuant to grants from, or contracts  
27 with, the United States government or any agency or instrumentality  
28 thereof;
- 29 (3) Moneys received by an institution pursuant to grants from, or contracts  
30 with, any State agencies, any political subdivisions of the State, any  
31 other states or nations or political subdivisions thereof, or any private  
32 entities whereby the institution undertakes, subject to terms and  
33 conditions specified by the entity providing the moneys, to conduct  
34 research, training or public service programs, or to provide financial  
35 aid to students;
- 36 (4) Moneys collected by an institution to support extracurricular activities  
37 of students of the institution;
- 38 (5) Moneys received from or for the operation by an institution of  
39 activities established for the benefit of scholarship funds or student  
40 activity programs;
- 41 (6) Moneys received from or for the operation by an institution of any of  
42 its self-supporting auxiliary enterprises ~~except student auxiliary services~~  
43 ~~identified in G.S. 116-36.3, including institutional student auxiliary~~

1            enterprise funds for the operation of housing, food, health, and laundry  
 2            services;

3            (7) Moneys received by an institution in respect to fees and other  
 4            payments for services rendered by medical, dental or other health care  
 5            professionals under an organized practice plan approved by the  
 6            institution or under a contractual agreement between the institution and  
 7            a hospital or other health care ~~provider-~~provider;

8            (8) The net proceeds from the disposition effected pursuant to Chapter  
 9            146, Article 7, of any interest in real property owned by or under the  
 10            supervision and control of an institution if the interest in real property  
 11            had first been acquired by gift, devise, or bequest or through  
 12            expenditure of moneys defined in this subsection (g) as 'trust funds,'  
 13            except the net proceeds from the disposition of an interest in real  
 14            property first acquired by the institution through expenditure of  
 15            moneys received as a grant from a State ~~agency-~~agency;

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

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

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

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

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

36            **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**  
 37            **bids; awarding of contracts.**

38            As feasible, the Secretary of Administration will compile and consolidate all such  
 39            estimates of supplies, materials, equipment and contractual services needed and required  
 40            by State departments, institutions and agencies to determine the total requirements of  
 41            any given commodity. Where such total requirements will involve an expenditure in  
 42            excess of ~~five thousand dollars (\$5,000)~~ the expenditure benchmark established under the  
 43            provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed  
 44            as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper

1 of statewide circulation at least once and at least 10 days prior to the date designated for  
2 opening of the bids and awarding of the contract: Provided, other methods of  
3 advertisement may be adopted by the Secretary of Administration when such other  
4 method is deemed more advantageous for certain items or commodities. Regardless of  
5 the amount of the expenditure, under the competitive bidding procedure it shall be the  
6 duty of the Secretary of Administration to solicit bids direct by mail from qualified  
7 sources of supply. Except as otherwise provided under this Article, contracts for the  
8 purchase of supplies, materials or equipment shall be based on competitive bids and  
9 acceptance made of the lowest and best bid(s) most advantageous to the State as  
10 determined upon consideration of the following criteria: prices offered; the quality of  
11 the articles offered; the general reputation and performance capabilities of the bidders;  
12 the substantial conformity with the specifications and other conditions set forth in the  
13 request for bids; the suitability of the articles for the intended use; the personal or  
14 related services needed; the transportation charges; the date or dates of delivery and  
15 performance; and such other factor(s) deemed pertinent or peculiar to the purchase in  
16 question, which if controlling shall be made a matter of record. Competitive bids on  
17 such contracts shall be received in accordance with rules and regulations to be adopted  
18 by the Secretary of Administration, which rules and regulations shall prescribe for the  
19 manner, time and place for proper advertisement for such bids, the time and place when  
20 bids will be received, the articles for which such bids are to be submitted and the  
21 specifications prescribed for such articles, the number of the articles desired or the  
22 duration of the proposed contract, and the amount, if any, of bonds or certified checks to  
23 accompany the bids. Bids shall be publicly opened. Any and all bids received may be  
24 rejected. Each and every bid conforming to the terms of the invitation, together with the  
25 name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all  
26 such records with the name of the successful bidder indicated thereon shall, after the  
27 award of the contract, be open to public inspection. Provided, that trade secrets, test data  
28 and similar proprietary information may remain confidential. A bond for the faithful  
29 performance of any contract may be required of the successful bidder at bidder's  
30 expense and in the discretion of the Secretary of Administration. After contracts have  
31 been awarded, the Secretary of Administration shall certify to the departments,  
32 institutions and agencies of the State government the sources of supply and the contract  
33 price of the supplies, materials and equipment so contracted for. Prior to adopting other  
34 methods of advertisement under this section, the Secretary of Administration may  
35 consult with the Advisory Budget Commission. Prior to adopting rules and regulations  
36 under this section, the Secretary of Administration may consult with the Advisory  
37 Budget Commission."

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

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

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

44 "**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

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

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

17            Sec. 4. Sales and Use Taxes on Contract and Grant Purchases. G.S. 105-  
18 164.14(b) reads as rewritten:

19        "(b) The Secretary of Revenue shall make refunds semiannually to hospitals not  
20 operated for profit (including hospitals and medical accommodations operated by an  
21 authority created under the Hospital Authorities Law, Article 2 of Chapter 131E),  
22 educational institutions not operated for profit, churches, orphanages and other  
23 charitable or religious institutions and organizations not operated for profit of sales and  
24 use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions  
25 and organizations on direct purchases of tangible personal property for use in carrying  
26 on the work of such institutions or organizations. Sales and use tax liability indirectly  
27 incurred by such institutions and organizations on building materials, supplies, fixtures  
28 and equipment which shall become a part of or annexed to any building or structure  
29 being erected, altered or repaired for such institutions and organizations for carrying on  
30 their nonprofit activities shall be construed as sales or use tax liability incurred on direct  
31 purchases by such institutions and organizations, and such institutions and organizations  
32 may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also  
33 make refunds semiannually to all other hospitals (not specifically excluded herein) of  
34 sales and use tax paid by them on medicines and drugs purchased for use in carrying out  
35 the work of such hospitals. This subsection does not apply to organizations,  
36 corporations, and institutions that are owned and controlled by the United States, the  
37 State, or a unit of local government, except hospital facilities created under Article 2 of  
38 Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a  
39 unit of local government that elect to receive semiannual refunds under this subsection  
40 instead of annual refunds under subsection (c). In order to receive the refunds herein  
41 provided for, such institutions and organizations shall file a written request for refund  
42 covering the first six months of the calendar year on or before the fifteenth day of  
43 October next following the close of said period, and shall file a written request for  
44 refund covering the second six months of the calendar year on or before the fifteenth

1 day of April next following the close of that period. Such requests for refund shall be  
2 substantiated by such proof as the Secretary of Revenue may require, and no refund  
3 shall be made on applications not filed within the time allowed by this section and in  
4 such manner as the Secretary may require. Notwithstanding the foregoing provisions  
5 of this subsection, the constituent institutions of The University of North Carolina may  
6 obtain in the manner prescribed by this Article the refund of sales and use tax paid by  
7 them on or after January 1, 1992, for tangible personal property acquired by them  
8 through the expenditure of contract and grant funds."

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

10 **"§ 143-27. Appropriations to educational, charitable and correctional institutions**  
11 **are in addition to receipts by them.**

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

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

36 (b) Effective with the 1991-93 fiscal biennium, revenues from new or  
37 increased course fees authorized by the Board of Governors of The University of North  
38 Carolina and the associated expenditures may be incorporated into the base or  
39 continuation budget requests of the constituent institutions of The University of North  
40 Carolina presented to the General Assembly.

41 Sec. 6. Personnel Administration. The Office of State Personnel and The  
42 University of North Carolina General Administration are directed to continue their  
43 discussions in the areas of the appropriate classifications of positions between those  
44 subject to the State Personnel Act (SPA) and those exempt from the State Personnel Act

- 1 (EPA), development of guidelines to facilitate these classifications, and the need for
- 2 campus flexibility in administering positions funded from contracts and grants.
- 3           Sec. 7. This act shall become effective July 1, 1990.