

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS75120-LB-179D (2/26)

Short Title: Higher Education Efficiency and Flexibility. (Public)

Sponsors: Senators Stevens and Tillman (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE EFFICIENCY AND FLEXIBILITY FOR THE NORTH CAROLINA
3 COMMUNITY COLLEGE SYSTEM AND THE UNIVERSITY OF NORTH
4 CAROLINA.

5 The General Assembly of North Carolina enacts:

6
7 PART 1. CAPITAL IMPROVEMENTS AT COMMUNITY COLLEGES

8 SECTION 1.1. G.S. 115D-9 reads as rewritten:

9 "§ 115D-9. Powers of State Board regarding certain fee negotiations, contracts, and
10 capital improvements.

11 (a) The expenditures of any State funds for any capital improvements of existing
12 institutions shall be subject to the prior approval of the State Board of Community Colleges and
13 the Governor. The expenditure of State funds at any institution herein authorized to be
14 approved by the State Board under G.S. 115D-4 shall be subject to the terms of the State
15 Budget Act unless specifically otherwise provided in this Chapter.

16 (b) Notwithstanding G.S. 143-341(3), the State Board of Community Colleges may,
17 with respect to design, construction, repair, or renovation of buildings, utilities, and other ~~State~~
18 ~~or non-State funded~~ State-funded property developments of the North Carolina Community
19 College System requiring the estimated expenditure of public money of ~~one million dollars~~
20 ~~(\$1,000,000)~~ four million dollars (\$4,000,000) or less:

- 21 (1) Conduct the fee negotiations for all design contracts and supervise the letting
22 of all construction and design contracts.
23 (2) Develop procedures governing the responsibilities of the North Carolina
24 Community College System and its community colleges to perform the
25 duties of the Department of Administration and the Director or Office of
26 State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).
27 (3) Use existing plans and specifications for construction projects, where
28 feasible. Prior to designing a project, the State Board shall consult with the
29 Department of Administration on the availability of existing plans and
30 specifications and the feasibility of using them for a project.

31 (c) The State Board may delegate its authority under subsection (b) of this section to a
32 community college if the community college is qualified under guidelines adopted by the State
33 Board and approved by the State Building Commission and the Director of the Budget.



1 (d) The North Carolina Community College System shall use the standard contracts for
2 design and construction currently in use for State capital improvement projects by the Office of
3 State Construction of the Department of Administration.

4 (e) A contract may not be divided for the purpose of evading the monetary limit under
5 this section.

6 (f) Notwithstanding any other provision of this Chapter, the Department of
7 Administration shall not be the awarding authority for contracts awarded under subsections (b)
8 or (c) of this section.

9 (g) The State Board shall annually report to the State Building Commission the
10 following:

11 (1) A list of projects governed by this section.

12 (2) The estimated cost of each project along with the actual cost.

13 (3) The name of each person awarded a contract under this section.

14 (4) Whether the person or business awarded a contract under this section meets
15 the definition of "minority business" or "minority person" as defined in
16 G.S. 143-128.2(g).

17 (h) The provisions of G.S. 143-341(3) shall not apply to a capital improvement project
18 funded with non-State funds if the State Board of Community Colleges determines that the
19 college has the expertise necessary to manage the project unless the assistance of the Office of
20 State Construction is requested."

21 **SECTION 1.2.** This Part is effective when it becomes law and applies to projects
22 initiated on or after that date.

23
24 **PART 2. CLARIFICATION REGARDING EQUIPMENT TITLED TO STATE BOARD OF**
25 **COMMUNITY COLLEGES**

26 **SECTION 2.1.** G.S. 115D-15 reads as rewritten:

27 **"§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.**

28 (a) The board of trustees of any institution organized under this Chapter may, with the
29 prior approval of the North Carolina Community Colleges System Office, convey a
30 right-of-way or easement for highway construction or for utility installations or modifications.
31 When in the opinion of the board of trustees the use of any other real property owned or held
32 by the board of trustees is unnecessary or undesirable for the purposes of the institution, the
33 board of trustees, subject to prior approval of the State Board of Community Colleges, may
34 sell, exchange, or lease the property. The board of trustees may dispose of any personal
35 property owned or held by the board of trustees without approval of the State Board of
36 Community Colleges. Personal property titled to the State Board of Community Colleges
37 consistent with G.S. 115D-14 and G.S. 115D-58.5 may be transferred to another community
38 college at no cost and without the approval of the State Board of Community Colleges or the
39 Department of Administration, Division of Surplus Property.

40 Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any
41 real or personal property under this subsection. Personal property also may be disposed of
42 under procedures adopted by the North Carolina Department of Administration. The proceeds
43 of any sale or lease shall be used for capital outlay purposes, except as provided in subsection
44 (b) of this section.

45"

46 **SECTION 2.2.** This Part becomes effective July 1, 2011.

47
48 **PART 3. GRANTING COMMUNITY COLLEGES ADDITIONAL FLEXIBILITY WITH**
49 **REGARD TO INVESTMENTS**

50 **SECTION 3.1.** G.S. 115D-58.6 reads as rewritten:

51 **"§ 115D-58.6. Investment of idle cash.**

1 (a) Definitions. – As used in this section the following definitions apply:

2 (1) "Cash balance" means the amount equal to all moneys received into
3 institutional fund accounts minus all expenses and withdrawals from those
4 accounts in an official depository of the institution as designated by the local
5 board of trustees consistent with G.S. 115D-58.7.

6 (2) "Official depository" means one or more banks, savings and loan
7 associations, or trust companies in North Carolina that a community college
8 board of trustees has designated consistent with G.S. 115D-58.7.

9 (a1) Deposits. – ~~The institution may deposit at interest or invest~~ all or part of the cash
10 balance of any fund in an official depository of the institution. ~~The institution shall manage~~
11 ~~investments subject to whatever restrictions and directions the board of trustees may impose.~~
12 ~~The institution shall have the power to purchase, sell, and exchange securities on behalf of the~~
13 ~~board of trustees. The investment program shall be so managed that investments and deposits~~
14 ~~can be converted into cash when needed.~~ Moneys may be deposited at interest in any official
15 depository of the institution in the form of certificates of deposit or such other forms of time
16 deposits as may be approved for county governments. In addition, moneys may be deposited in
17 the form of certificates of deposit as provided for a local government or public authority in
18 G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).

19 (b) ~~Moneys may be deposited at interest in any bank, savings and loan association or~~
20 ~~trust company in this State in the form of certificates of deposit or such other forms of time~~
21 ~~deposits as may be approved for county governments. In addition, moneys may be deposited in~~
22 ~~the form of certificates of deposit as provided for a local government or public authority in~~
23 ~~G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).~~

24 (e)(b) Investments. – The institution may invest all or part of the cash balance of any fund
25 in an official depository of the institution. The institution shall manage investments subject to
26 whatever restrictions and directions the board of trustees may impose. The institution shall have
27 the power to purchase, sell, and exchange securities on behalf of the board of trustees. The
28 investment program shall be so managed that investments and deposits can be converted into
29 cash when needed.

30 (1) ~~Moneys may~~ shall only be invested in the form of investments pursuant to
31 G.S. 159-30(c) to county governments ~~and no others~~ or in any form of
32 investment established or managed by an investment advisor who is
33 registered and in good standing with either the Securities and Exchange
34 Commission or the North Carolina Secretary of State, Securities Division,
35 and is a member of the Securities Investor Protection Corporation. Money in
36 endowment funds may be invested pursuant to G.S. 147-69.2. Provided,
37 however, the institution may elect to deposit at interest any local funds with
38 the State Treasurer for investment as special trust funds pursuant to the
39 provisions of G.S. 147-69.3, and the interest thereon shall accrue to the
40 institution as local funds.

41 (d) Investment

42 (2) The investment securities listed in G.S. 159-30(c) may be bought, sold, and
43 traded by private negotiation, and the institutions may pay all incidental
44 costs thereof and all reasonable costs of administering the investment and
45 deposit program from local funds. The institution shall be responsible for
46 their safekeeping and for keeping accurate investment accounts and records.

47 (e)(c) Interest earned on deposits and investments shall be credited to the fund whose cash
48 is deposited or invested. Cash of several funds may be combined for deposit or investment if
49 not otherwise prohibited by law; and when such joint deposits or investments are made, interest
50 earned shall be prorated and credited to the various funds on the basis of the amounts thereof
51 invested, figured according to an average periodic balance or some other sound accounting

1 principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of
2 the bond proceeds.

3 ~~(d)~~ Registered securities acquired for investment may be released from registration and
4 transferred by signature of the official designated by the board of ~~trustees.~~ trustees.

5 (e) The Board of Trustees shall appoint an Investment Committee which shall consist of
6 a minimum of three people who have sufficient financial background to review and evaluate
7 investment options. These individuals should have experience in institutional or retail
8 investment management with knowledge of fixed income and public equities. This committee
9 shall make recommendations to the Board on those investment options, as well as monitor the
10 performance of investments once made.

11 (f) The Board of Trustees shall discharge their duties with respect to the management
12 and investment of college funds as follows:

13 (1) Investment decisions shall be solely in the interest of the college, and the
14 students, faculty, and staff of the college.

15 (2) The investments shall be for the exclusive purpose of providing an adequate
16 return to the college.

17 (3) Investments shall be made with the care, skill, and caution under the
18 circumstances then prevailing which a prudent person acting in a like
19 capacity and familiar with those matters would use in the conduct of an
20 activity of like character and purpose.

21 (4) Investment decisions shall be made impartially, taking into account the best
22 interest of the college, with special attention to conflicts of interest or
23 potential conflicts of interest.

24 (5) Investments shall incur only costs that are appropriate and reasonable."

25 **SECTION 3.2.** G.S. 147-69.2 is amended by adding a new subdivision to read:

26 "(20) Institutional funds of the colleges of the North Carolina Community College
27 System."

28 **SECTION 3.3.** This Part becomes effective July 1, 2011.
29

30 PART 4. INCREASE THE LIMIT ON CONSTRUCTION PROJECTS THAT THE
31 UNIVERSITY OF NORTH CAROLINA AND THE NORTH CAROLINA COMMUNITY
32 COLLEGE SYSTEM MAY USE ITS EMPLOYEES TO COMPLETE

33 **SECTION 4.1.** G.S. 143-135 reads as rewritten:

34 "**§ 143-135. Limitation of application of Article.**

35 Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus,
36 supplies, materials or equipment, this Article shall not apply to construction or repair work
37 undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is
38 performed by duly elected officers or agents using force account qualified labor on the
39 permanent payroll of the agency concerned and (ii) when either the total cost of the project,
40 including without limitation all direct and indirect costs of labor, services, materials, supplies
41 and equipment, does not exceed one hundred twenty-five thousand dollars (\$125,000) or the
42 total cost of labor on the project does not exceed fifty thousand dollars (\$50,000); provided
43 that, for The University of North Carolina and its constituent institutions and for the North
44 Carolina Community College System and its institutions, force account qualified labor may be
45 used (i) when the work is performed by duly elected officers or agents using force account
46 qualified labor on the permanent payroll of the university and (ii) when either the total cost of
47 the project, including, without limitation, all direct and indirect costs of labor, services,
48 materials, supplies, and equipment, does not exceed ~~two hundred thousand dollars (\$200,000)~~
49 five hundred thousand dollars (\$500,000) or the total cost of labor on the project does not
50 exceed ~~one hundred thousand dollars (\$100,000), three hundred thousand dollars (\$300,000).~~
51 This force account work shall be subject to the approval of the Director of the Budget in the

1 case of State agencies, of the responsible commission, council, or board in the case of
2 subdivisions of the State. Complete and accurate records of the entire cost of such work,
3 including without limitation, all direct and indirect costs of labor, services, materials, supplies
4 and equipment performed and furnished in the prosecution and completion thereof, shall be
5 maintained by such agency, commission, council or board for the inspection by the general
6 public. Construction or repair work undertaken pursuant to this section shall not be divided for
7 the purposes of evading the provisions of this Article."

8 **SECTION 4.2.** This Part is effective when it becomes law.
9

10 PART 5. ALLOW THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS
11 TO APPROVE THE PLANNING, AUTHORIZATION, AND FUNDING OF CAPITAL
12 PROJECTS FROM NON-GENERAL FUND SOURCES

13 **SECTION 5.1.** G.S. 143C-8-12 reads as rewritten:

14 "**§ 143C-8-12. University system capital improvement projects from sources that are not**
15 **General Fund sources: approval of new project or change in scope of existing**
16 **project.**

17 Notwithstanding any other provision of this Chapter, ~~the Director of the Budget may, upon~~
18 ~~request of the Board of Governors of The University of North Carolina and after consultation~~
19 ~~with the Joint Legislative Commission on Governmental Operations, may~~ approve: (i)
20 expenditures to plan a capital improvement project of The University of North Carolina the
21 planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for
22 a capital improvement project of The University of North Carolina that is to be funded and
23 operated entirely with non-General Fund money, or (iii) a change in the scope of any
24 previously approved capital improvement project of The University of North Carolina provided
25 that both the project and change in scope are funded entirely with non-General Fund money.
26 The Board of Governors shall report any expenditure made pursuant to this section to the
27 Office of State Budget and Management and to the Joint Legislative Commission on
28 Governmental Operations."

29 **SECTION 5.2.** This Part is effective when it becomes law.
30

31 PART 6. AUTHORIZE THE UNIVERSITY OF NORTH CAROLINA BOARD OF
32 GOVERNORS TO ALLOCATE OR REALLOCATE FUNDS TO REPAIRS AND
33 RENOVATIONS PROJECTS; AND TO REQUIRE THAT ANY ALLOCATION OR
34 REALLOCATION BE REPORTED TO THE JOINT LEGISLATIVE COMMISSION ON
35 GOVERNMENTAL OPERATIONS WITHIN SIXTY DAYS

36 **SECTION 6.1.** G.S. 143C-4-3 is amended by adding a new subsection to read:

37 "(d) Board of Governors May Allocate Funds to Particular Projects. – Any funds in the
38 Reserve for Repairs and Renovations that are allocated to the Board of Governors of The
39 University of North Carolina may be allocated or reallocated by the Board for repairs and
40 renovations projects so long as (i) any project that receives an allocation or reallocation
41 satisfies the requirements of subsection (b) of this section unless the Board determines that
42 sufficient funds are not available from other sources and that conditions warrant General Fund
43 assistance and (ii) the allocation or reallocation is in accordance with guidelines developed in
44 The University of North Carolina Funding Allocation Model for Reserve for Repairs and
45 Renovations, as approved by the Board of Governors of The University of North Carolina. The
46 Board of Governors shall report to the Joint Legislative Commission on Governmental
47 Operations on the allocation or reallocation of funds pursuant to this section within 60 days of
48 any allocation or reallocation under this subsection."

49 **SECTION 6.2.** This Part becomes effective July 1, 2011.
50

1 PART 7. WAIVE THE REQUIREMENT FOR A CAPITAL PROJECT FEASIBILITY
2 DETERMINATION FOR CAPITAL PROJECTS OF THE UNIVERSITY OF NORTH
3 CAROLINA FOR WHICH ADVANCE PLANNING HAS NOT BEEN UNDERTAKEN

4 **SECTION 7.1.** G.S. 143C-3-3 reads as rewritten:

5 **"§ 143C-3-3. Budget requests from State agencies in the executive branch.**

6 ...

7 (c) Repairs and Renovations Funds Request. – In addition to any other information
8 requested by the Director, any State agency proposing to repair or renovate an existing facility
9 shall accompany that request with all of the following:

- 10 (1) A description of current deficiencies and proposed corrections with a review
11 and evaluation of that proposal prepared by the Department of
12 Administration.
- 13 (2) An estimate of project costs approved by the Department of Administration.
- 14 (3) A certification of project feasibility as described in
15 G.S. 143-341.G.S. 143-341, except that in the case of a project of The
16 University of North Carolina for which advance planning has not been
17 completed, the request may be submitted without this certification.
- 18 (4) An explanation of the method by which the repair or renovation is to be
19 financed.

20 (d) Capital Funds Request. – In addition to any other information requested by the
21 Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility,
22 (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing
23 facility to accommodate new or expanded uses shall accompany that request with all of the
24 following:

- 25 (1) An estimate of its space needs and other physical requirements, together
26 with a review and evaluation of that estimate prepared by the Department of
27 ~~Administration.~~Administration, except that in the case of a project of The
28 University of North Carolina for which advance planning has not been
29 completed, the estimate of space needs may be a preliminary estimate.
- 30 (2) An estimate of project costs and cash flow requirements approved by the
31 Department of Administration.
- 32 (3) A certification of project feasibility as described in
33 G.S. 143-341.G.S. 143-341, except that in the case of a project of The
34 University of North Carolina for which advance planning has not been
35 completed, the request may be submitted without this certification.
- 36 (4) An explanation of the method by which the acquisition, construction, or
37 rehabilitation is to be financed.
- 38 (5) An estimate of maintenance and operating costs, including personnel, for the
39 project, covering the first five years of operation.
- 40 (6) An estimate of revenues, if any, to be derived from the project, covering the
41 first five years of operation.

42 This subsection does not apply to requests for State resources for railroad, highway, or
43 bridge construction or renovation.

44 (e) Information Technology Request. – In addition to any other information requested
45 by the Director, any State agency requesting significant State resources, as defined by the
46 Director, for the purpose of acquiring or maintaining information technology shall accompany
47 that request with all of the following:

- 48 (1) A statement of its needs for information technology and related resources,
49 including expected improvements to programmatic or business operations,
50 together with a review and evaluation of that statement prepared by the State
51 Chief Information Officer.

- 1 (2) A statement setting forth the requirements for State resources, together with
2 an evaluation of those requirements by the State Chief Information Officer
3 that takes into consideration the State's current technology, the opportunities
4 for technology sharing, the requirements of Article 3D of Chapter 147 of the
5 General Statutes, and any other factors relevant to the analysis.
- 6 (3) A statement by the State Chief Information Officer that sets forth viable
7 alternatives, if any, for meeting the agency needs in an economical and
8 efficient manner.
- 9 (4) In the case of an acquisition, an explanation of the method by which the
10 acquisition is to be financed.

11 This subsection shall not apply to requests submitted by the General Assembly, the
12 Administrative Office of the Courts, or The University of North Carolina."

13 **SECTION 7.2.** G.S. 143-341(3)b1. reads as rewritten:

14 "**§ 143-341. Powers and duties of Department.**

15 The Department of Administration has the following powers and duties:

16 ...

- 17 (3) Architecture and Engineering:

18 ...

- 19 b1. To certify that a statement of needs pursuant to ~~G.S. 143C-3-3~~
20 G.S. 143C-3-3, other than for a project of The University of North
21 Carolina for which advance planning has not been completed, is
22 feasible. For purposes of this sub-subdivision, "feasible" means that
23 the proposed project is sufficiently defined in overall scope; building
24 program; site development; detailed design, construction, and
25 equipment budgets; and comprehensive project scheduling so as to
26 reasonably ensure that it may be completed with the amount of funds
27 requested. At the discretion of the General Assembly, advanced
28 planning funds may be appropriated in support of this certification.
29 This sub-subdivision shall not apply to requests for appropriations of
30 less than one hundred thousand dollars (\$100,000)."

31 **SECTION 7.3.** This Part becomes effective July 1, 2011.

32
33 PART 8. ALLOW CHANCELLORS OF CONSTITUENT INSTITUTIONS OF THE
34 UNIVERSITY OF NORTH CAROLINA TO APPROVE CERTAIN REPAIR AND
35 MAINTENANCE PROJECTS AND TO FUND THOSE PROJECTS WITH AVAILABLE
36 OPERATING FUNDS

37 **SECTION 8.1.** G.S. 116-13.1 reads as rewritten:

38 "**§ 116-13.1. Capital facilities; ~~reports; reports; chancellors may authorize certain repair~~**
39 **and maintenance projects.**

40 (a) The General Assembly finds that although The University of North Carolina is one
41 of the State's most valuable assets, the current facilities of the University have been allowed to
42 deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair
43 because of inadequate attention to maintenance. It is the intent of the General Assembly to
44 reverse this trend and to provide a mechanism to assure that the University's capital assets are
45 adequately maintained. The General Assembly commits to responsible stewardship of these
46 assets to protect their value over the years, as follows:

- 47 (1) The Board of Governors of The University of North Carolina shall require
48 each constituent and affiliated institution to monitor the condition of its
49 facilities and their needs or repair and renovation, and to assure that all
50 necessary maintenance is carried out within funds available.

1 (2) The Board of Governors shall report annually to the Joint Legislative
2 Commission on Governmental Operations and the Joint Legislative
3 Education Oversight Committee on the condition of the University's capital
4 facilities, the repair, renovation, and maintenance projects being undertaken,
5 and all needs for additional funding to maintain the facilities.

6 (3) It is the intent of the General Assembly to assure that adequate oversight,
7 funding, and accountability are continually provided so that the capital
8 facilities of the University are properly maintained to preserve the level of
9 excellence the citizens of this State deserve. To this end, the Joint
10 Legislative Education Oversight Committee shall report to the General
11 Assembly annually its recommendations for legislative changes to
12 implement this policy.

13 (b) Equity in University Improvements. – The Board of Governors of The University of
14 North Carolina shall continue to study and monitor any inequities in funding for capital
15 improvements and facilities needs which may still exist on North Carolina's Public Historically
16 Black Colleges and Universities and North Carolina's Historically American Indian University,
17 the University of North Carolina at Pembroke, beyond the funding of the projects provided for
18 in this act, and shall report annually to the Joint Legislative Commission on Governmental
19 Operations on any remaining inequities found, including recommendations as to how those
20 inequities should be addressed.

21 (c) Approval of Certain Repair and Maintenance Projects. – Notwithstanding
22 G.S. 143C-8-7, the chancellor of a constituent institution may approve the expenditure of
23 available operating funds in an amount not to exceed one million dollars (\$1,000,000) per
24 project for repairs to institution facilities, maintenance of those facilities, and related equipment
25 purchases. Funds contractually obligated to an approved project shall not revert at the end of
26 the fiscal year and will remain available to fund the completion of the project. Projects
27 approved pursuant to this subsection shall in all other respects accord with applicable laws
28 governing capital improvement projects."

29 **SECTION 8.2.** This Part is effective when it becomes law.

30
31 PART 9. AUTHORIZE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF
32 NORTH CAROLINA TO PERMIT CONSTITUENT INSTITUTIONS OF THE
33 UNIVERSITY TO SELF-PERFORM ENERGY CONSERVATION MEASURES; AND TO
34 AUTHORIZE ENERGY SAVINGS TO BE USED AS SECURITY FOR AND A SOURCE
35 OF REPAYMENT FOR DEBT ISSUED PURSUANT TO ARTICLE 3 OF CHAPTER 116D
36 OF THE GENERAL STATUTES

37 **SECTION 9.1.** Article 3B of Chapter 143 of the General Statutes is amended by
38 adding a new section to read:

39 "**§ 143-64.17L. Board of Governors may authorize energy conservation measures at**
40 **constituent institutions.**

41 (a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board
42 of Governors of The University of North Carolina may authorize a constituent institution to
43 implement an energy conservation measure without entering into a guaranteed energy savings
44 contract if both of the following are true:

45 (1) The Board of Governors finds that the energy savings resulting from the
46 implementation of the energy conservation measure will, according to the
47 energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or
48 exceed the total cost of implementing the measure. If the proposed
49 implementation will be financed with debt, then the energy savings analysis
50 must project sufficient energy savings to pay the debt service on any bonds

1 to be issued. As used in this subdivision, the term 'total cost' shall have the
2 same meaning as it does in G.S. 143-64.17B(d).

3 (2) The energy conservation measure is for an existing building or utility
4 system.

5 (b) Scope of Authority. – In implementing an energy conservation measure pursuant to
6 subsection (a) of this section, the Board of Governors may undertake or authorize a constituent
7 institution to undertake any action that (i) could be required of a qualified provider under a
8 guaranteed energy savings contract or (ii) is otherwise permissible under this Part.

9 (c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of
10 Governors may authorize the implementation of multiple energy conservation measures
11 simultaneously as part of a single project. When doing so, the findings required by subsection
12 (a) of this section may be made with respect to the project as a whole and need not be made
13 with respect to individual energy conservation measures. Similarly, the analyses required by
14 G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy
15 conservation measures.

16 (d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a
17 constituent institution implements an energy conservation measure through a guaranteed energy
18 savings contract, that contract shall accord in all respects with the requirements of this Part.

19 **SECTION 9.2.** Article 3B of Chapter 143 of the General Statutes is amended by
20 adding a new section to read:

21 "**§ 143-64.17M. Energy savings analysis required prior to implementation;**
22 **post-implementation analyses required.**

23 (a) Energy Savings Analysis Required Prior to Implementation. – Prior to
24 implementing an energy conservation measure pursuant to G.S. 143-64.17L, an energy savings
25 analysis shall be performed to validate the economic assumptions that purportedly support the
26 implementation of the measure. This analysis shall be performed by a third party selected by
27 the constituent institution and shall include an energy consumption analysis to develop a
28 baseline of previous costs of all utilities' energy consumption for the institution on the
29 assumption that the energy conservation measure was not undertaken. The completed analysis
30 shall be submitted to The University of North Carolina General Administration and to the State
31 Energy Office.

32 (b) Post-Implementation Analyses Required. – A constituent institution that implements
33 an energy conservation measure pursuant to G.S. 143-64.17L shall retain a third party to
34 perform an annual measurement and verification of energy savings resulting from the energy
35 conservation measure as compared to the baseline of previous costs set forth in the energy
36 savings analysis required by subsection (a) of this section. The third party shall annually
37 provide a reconciliation statement based upon the results of a preagreed upon measurement,
38 monitoring, and verification protocol which shall disclose any shortfall or surplus between the
39 estimated energy usage and operational savings set forth in the energy savings analysis required
40 by subsection (a) of this section and actual, not stipulated, energy usage and operational savings
41 incurred during a given year.

42 If a reconciliation statement reveals a shortfall in energy savings for a particular year, the
43 constituent institution shall be responsible for and shall pay the shortfall. However, the
44 institution shall not be held responsible for losses due to natural disasters or other emergencies.
45 Any surplus shall be retained by the institution and may be used in the same manner as any
46 other energy savings.

47 **SECTION 9.3.** G.S. 116-30.3B(b) reads as rewritten:

48 "(b) It is the intent of the General Assembly that appropriations to the Board of
49 Governors on behalf of a constituent institution not be reduced as a result of the institution's
50 realization of energy savings. Instead, the General Assembly intends that the amount of
51 appropriations be determined as if no energy savings had been realized. The Director of the

1 Budget shall not decrease the recommended continuation budget requirements for utilities for
2 constituent institutions by the amount of energy savings realized from implementing energy
3 conservation measures, including savings achieved through a guaranteed energy savings
4 contract."

5 **SECTION 9.4.** G.S. 143-64.17F(b) reads as rewritten:

6 "(b) The Department of Administration, in consultation with the Department of
7 Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of
8 guaranteed energy savings contracts; (ii) establishing time periods for consideration of
9 guaranteed energy savings contracts by the Office of State Budget and Management, the Office
10 of the State Treasurer, and the Council of State, and (iii) setting measurements and verification
11 criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to
12 this section, the Department shall consult with and obtain approval of those rules from the State
13 Treasurer. The rules adopted pursuant to this subsection shall not apply to energy conservation
14 measures implemented pursuant to G.S. 143-64.17L."

15 **SECTION 9.5.** G.S. 143-64.17H reads as rewritten:

16 "**§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State**
17 **governmental units.**

18 A State governmental unit that enters into a guaranteed energy savings contract or
19 implements an energy conservation measure pursuant to G.S. 143-64.17L must report either (i)
20 the contract and the terms of the contract ~~contract~~ or (ii) the implementation of the measure to
21 the State Energy Office of the Department of Commerce within 30 days of the date the contract
22 is entered into ~~into~~ or the measure is implemented. In addition, within 60 days after each
23 annual anniversary date of a guaranteed energy savings contract, the State governmental unit
24 must report the status of the contract to the State Energy Office, including any details required
25 by the State Energy Office. The State Energy Office shall compile the information for each
26 fiscal year and report it to the Joint Legislative Commission on Governmental Operations and
27 to the Local Government Commission annually by December 1. In compiling the information,
28 the State Energy Office shall include information on the energy savings expected to be realized
29 from a contract or implementation and shall evaluate whether expected savings have in fact
30 been realized."

31 **SECTION 9.6.** G.S. 142-63 reads as rewritten:

32 "**§ 142-63. Authorization of financing contract.**

33 Subject to the terms and conditions set forth in this Article, (i) a State governmental unit
34 that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and
35 financing it pursuant to this Article, (ii) a State governmental unit that has solicited a
36 guaranteed energy conservation measure pursuant to G.S. 143-64.17A or ~~G.S. 143-64.17B~~ or
37 G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is
38 authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing
39 contract to finance the costs of the energy conservation measure. The aggregate outstanding
40 amount payable by the State under financing contracts entered pursuant to this Article shall not
41 exceed five hundred million dollars (\$500,000,000) at any one time."

42 **SECTION 9.7.** G.S. 142-64(a) reads as rewritten:

43 "**§ 142-64. Procedure for incurrence or issuance of financing contract.**

44 (a) When a State governmental unit (i) is implementing an energy conservation
45 measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, or (ii) has
46 solicited a guaranteed energy conservation measure, the State governmental unit shall request
47 that the State Treasurer approve the State governmental unit's entering into a financing contract
48 to finance the cost of the energy conservation measure. In connection with the request, the State
49 governmental unit shall provide to the State Treasurer any information the State Treasurer
50 requests in order to evaluate the request. In the event that the State Treasurer determines that
51 financing efficiencies will be realized through the combining of financing contracts, then the

1 State Treasurer is authorized to execute and deliver, for and on behalf of the State of North
2 Carolina, subject to the terms and conditions set forth in this Article, a financing contract for
3 the purpose of financing the cost of the multiple energy conservation measures."

4 **SECTION 9.8.** G.S. 116D-22(3) reads as rewritten:

5 "(3) Obligated resources. – Any sources of income or receipts of the Board of
6 Governors or the institution at which a special obligation bond project is or
7 will be located that are designated by the Board as the security and source of
8 payment for bonds issued under this Article to finance a special obligation
9 bond project, including, without limitation, any of the following:

- 10 a. Rents, charges, or fees to be derived by the Board of Governors or
11 the institution from any activities conducted at the institution.
12 b. Earnings on the investment of the endowment fund of the institution
13 at which a special obligation project will be located, to the extent that
14 the use of the earnings will not violate any lawful condition placed
15 by the donor upon the part of the endowment fund that generates the
16 investment earnings.
17 c. Funds to be received under a contract or a grant agreement, including
18 "overhead costs reimbursement" under a grant agreement, entered
19 into by the Board of Governors or the institution to the extent the use
20 of the funds is not restricted by the terms of the contract or grant
21 agreement or the use of the funds as provided in this Article does not
22 violate the restriction.
23 d. Funds appropriated from the General Fund to the Board of Governors
24 on behalf of a constituent institution for utilities of the institution that
25 constitute energy savings as that term is defined in G.S. 143-64.17.

26 ~~Obligated~~ Except as provided in Sub-subdivision d. of this subdivision,
27 obligated resources do not include funds appropriated to the Board of
28 Governors or the institution from the General Fund by the General Assembly
29 from funds derived from general tax and other revenues of the State, and
30 obligated resources do not include tuition payment by students."

31 **SECTION 9.9.** This Part is effective when it becomes law.
32

33 **PART 10. INSTITUTIONAL EXPENDITURE BENCHMARKS**

34 **SECTION 10.1.(a)** G.S. 116-31.10 reads as rewritten:

35 **"§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

36 (a) Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for
37 a special responsibility constituent institution with regard to competitive bid procedures and the
38 bid value benchmark shall be an amount not greater than five hundred thousand dollars
39 (\$500,000). The Board shall set the benchmark for each institution from time to time. In setting
40 an institution's benchmark in accordance with this section, the Board shall consider the
41 institution's overall capabilities including staff resources, purchasing compliance reviews, and
42 audit reports. The Board shall also consult with the Director of the Division of Purchase and
43 Contract and the Director of the Budget prior to setting the benchmark.

44 (b) Each institution with an expenditure benchmark greater than two hundred fifty
45 thousand dollars (\$250,000) shall comply with this subsection for any purchase greater than
46 ~~two hundred fifty thousand dollars (\$250,000)~~ the institution's benchmark set by the Board but
47 not greater than five hundred thousand dollars (\$500,000). This institution shall submit to the
48 Division of Purchase and Contract for that Division's approval or other action deemed
49 necessary by the Division a copy of all offers received and the institution's recommendation of
50 award or other action. Notice of the Division's decision shall be sent to that institution. The

1 institution shall then proceed with the award of contract or other action recommended by the
2 Division."

3 **SECTION 10.2.(b)** This Part becomes effective October 1, 2011.
4

5 PART 11. IN THE PROCESS OF BIDDING COMMODITY CONTRACTS, ALLOW
6 COMPETITORS TO BID OPTIONAL ONE-YEAR CONTRACT RENEWALS FOR UP TO
7 TEN YEARS

8 **SECTION 11.1.(a)** G.S. 143-53(d) reads as rewritten:

9 "(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this
10 Article, The University of North Carolina may solicit bids for service contracts and commodity
11 contracts with a term of 10 years or less, including extensions and renewals, without the prior
12 approval of the State Purchasing Officer."

13 **SECTION 11.2.(b)** This Part is effective when it becomes law.
14

15 PART 12. ALLOW UNC TO ASSUME RESPONSIBILITY FOR THE QUALITY
16 ACCEPTANCE INSPECTION PROCESS

17 **SECTION 12.1.(a)** G.S. 143-60 reads as rewritten:

18 "**§ 143-60. Rules covering certain purposes.**

19 The Secretary of Administration may adopt, modify, or abrogate rules covering the
20 following purposes, in addition to those authorized elsewhere in this Article:

- 21 (1) Requiring reports by State departments, institutions, or agencies of stocks of
22 supplies and materials and equipment on hand and prescribing the form of
23 such reports.
- 24 (2) Prescribing the manner in which supplies, materials and equipment shall be
25 delivered, stored and distributed.
- 26 (3) Prescribing the manner of inspecting deliveries of supplies, materials and
27 equipment and making chemical and/or physical tests of samples submitted
28 with bids and samples of deliveries to determine whether deliveries have
29 been made in compliance with specifications. However, the provisions of
30 this subdivision shall not apply to the constituent institutions of The
31 University of North Carolina. The President of The University of North
32 Carolina shall issue regulations or guidelines for the conducting of quality
33 inspections by constituent institutions to ensure that deliveries have been
34 made in compliance with specifications.
- 35 (4) Prescribing the manner in which purchases shall be made in emergencies.
- 36 (5) Providing for such other matters as may be necessary to give effect to
37 foregoing rules and provisions of this Article.
- 38 (6) Prescribing the manner in which passenger vehicles shall be purchased.

39 Further, the Secretary of Administration may prescribe appropriate procedures necessary to
40 enable the State, its institutions and agencies, to obtain materials surplus or otherwise available
41 from federal, State or local governments or their disposal agencies."

42 **SECTION 12.2.(b)** This Part becomes effective October 1, 2011.
43

44 PART 13. ALLOW CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH
45 CAROLINA TO ESTABLISH BRAND NAME SPECIFICATIONS FOR BUILDING
46 COMPONENTS TO BE USED IN UNIVERSITY WORKS UNDER CERTAIN
47 CIRCUMSTANCES

48 **SECTION 13.1.** G.S. 133-3 reads as rewritten:

49 "**§ 133-3. Specifications to carry competitive items; substitution of materials.**

50 ~~All~~ (a) Generally. – Except as provided in subsection (b) of this section, architects,
51 engineers, designers, or draftsmen, when providing design services, or writing specifications,

1 directly or indirectly, for materials to be used in any city, county or State work, shall specify in
2 their plans the required performance and design characteristics of such materials. However,
3 when it is impossible or impractical to specify the required performance and design
4 characteristics for such materials, then the architect, engineer, designer or draftsman may use a
5 brand name specification so long as they cite three or more examples of items of equal design
6 or equivalent design, which would establish an acceptable range for items of equal or
7 equivalent design. The specifications shall state clearly that the cited examples are used only to
8 denote the quality standard of product desired and that they do not restrict bidders to a specific
9 brand, make, manufacturer or specific name; that they are used only to set forth and convey to
10 bidders the general style, type, character and quality of product desired; and that equivalent
11 products will be acceptable. Where it is impossible to specify performance and design
12 characteristics for such materials and impossible to cite three or more items due to the fact that
13 there are not that many items of similar or equivalent design in competition, then as many items
14 as are available shall be cited. On all city, county or State works, the maximum
15 interchangeability and compatibility of cited items shall be required. The brand of product used
16 on a city, county or State work shall not limit competitive bidding on future works.
17 Specifications may list one or more preferred brands as an alternate to the base bid in limited
18 circumstances. Specifications containing a preferred brand alternate under this section must
19 identify the performance standards that support the preference. Performance standards for the
20 preference must be approved in advance by the owner in an open meeting. Any alternate
21 approved by the owner shall be approved only where (i) the preferred alternate will provide
22 cost savings, maintain or improve the functioning of any process or system affected by the
23 preferred item or items, or both, and (ii) a justification identifying these criteria is made
24 available in writing to the public. Substitution of materials, items, or equipment of equal or
25 equivalent design shall be submitted to the architect or engineer for approval or disapproval;
26 such approval or disapproval shall be made by the architect or engineer prior to the opening of
27 bids. The purpose of this statute is to mandate and encourage free and open competition on
28 public contracts.

29 (b) Notwithstanding subsection (a) of this section, a constituent institution of The
30 University of North Carolina may establish brand-name specifications for building control
31 systems, fire alarm systems, building security systems, elevators, and critical utility systems if
32 it first does all of the following:

- 33 (1) Sets forth in writing and makes publicly available the performance and
34 design characteristics required of the building component.
- 35 (2) Sets forth in writing and makes publicly available the manner in which
36 adoption of the brand name specification will further efficiency in the
37 operation, maintenance, or upkeep of buildings.
- 38 (3) Provides all interested suppliers an opportunity to propose one or more
39 products which will meet the performance and design characteristics set
40 forth. The constituent institution shall make its selection based on initial and
41 life cycle costs as well as quality and suitability for the designated use.

42 (c) Once a constituent institution establishes a brand-name specification pursuant to
43 subsection (b) of this section, the constituent institution may, without repeating the process set
44 forth in that subsection, use the brand-name specification in construction bid documents when
45 doing so will further efficiency in the operation, maintenance, or upkeep of buildings."

46 **SECTION 13.2.** This Part is effective when it becomes law.
47

48 PART 14. ALLOW CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH
49 CAROLINA TO SELL OR TRANSFER SURPLUS PERSONAL PROPERTY OTHER
50 THAN MOTOR VEHICLES

1 SECTION 14.1. The title of Part 3 of Article 3A of Chapter 143 of the General
2 Statutes reads as rewritten:

3 "Part 3. ~~Public Agencies-Miscellaneous Provisions.~~"

4 SECTION 14.2. Article 3A of Chapter 143 of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 143-64.7. University of North Carolina exempted from application of Article.**

7 (a) Authority. – Notwithstanding any other provision of this Article, a constituent
8 institution of The University of North Carolina may transfer or sell all supplies, materials, and
9 equipment of the constituent institution that are surplus, obsolete, or unused. The Board of
10 Governors of The University of North Carolina may adopt rules to implement this authority.

11 (b) No Service Charge. – Notwithstanding any other provision of this Article, a
12 constituent institution of The University of North Carolina shall not be charged any service
13 charge or surcharge for any transfer or sale pursuant to this section.

14 (c) Use of Receipts. – All receipts from transfers or sales under this section of supplies,
15 materials, or equipment that were acquired with, or supported by, General Fund appropriations
16 shall, minus the actual costs of the sale, be remitted to the State Treasurer and credited to the
17 General Fund as nontax revenue.

18 (d) Exception. – This section does not apply to the sale or transfer of surplus motor
19 vehicles."

20 SECTION 14.3. This Part is effective when it becomes law.

21
22 PART 15. ALLOW NORTH CAROLINA STATE UNIVERSITY TO SELL TIMBER

23 SECTION 15.1. Part 1 of Article 3A of Chapter 143 of the General Statutes is
24 amended by adding a new section to read:

25 "**§ 143-64.06. North Carolina State University may sell timber.**

26 Notwithstanding any provision of this Part or Chapter 146 of the General Statutes to the
27 contrary, North Carolina State University is authorized and empowered to sell or transfer
28 timber without involvement by the State Surplus Property Agency and without being required
29 to pay any service charge or surcharge to the State Surplus Property Agency. The proceeds of
30 any sales or transfers under this section shall be used to support the management of, and
31 programming costs associated with, forest properties owned, allocated, or managed by North
32 Carolina State University."

33 SECTION 15.2. This Part is effective when it becomes law.

34
35 PART 16. ALLOW UNC CAMPUSES TO PURCHASE MOTOR VEHICLES
36 INDEPENDENT OF MOTOR FLEET MANAGEMENT

37 SECTION 16.1. G.S. 143-341(8)i. is amended by adding a new
38 sub-sub-subdivision to read:

39 "**§ 143-341. Powers and duties of Department.**

40 The Department of Administration has the following powers and duties:

41 ...
42 (8) General Services:

43 ...
44 i. To establish and operate a central motor pool and such subsidiary
45 related facilities as the Secretary may deem necessary, and to that
46 end:

47 ...
48 12. Notwithstanding the provisions of this subdivision, or any
49 rules adopted pursuant to this subdivision or Chapter, the
50 constituent institutions of The University of North Carolina
51 may, without the prior approval of the Department of

1 Administration, purchase motor vehicles to be used by
2 campus safety officers. The purchase of campus safety
3 vehicles shall be in accordance with regulations or guidelines
4 issued by the President of The University of North Carolina."

5 **SECTION 16.2.** This Part becomes effective December 1, 2011.
6

7 PART 17. RELATING TO INSTITUTIONAL TRUST FUNDS OF THE UNIVERSITY OF
8 NORTH CAROLINA AND FUNDS OF THE UNIVERSITY OF NORTH CAROLINA
9 HEALTH CARE SYSTEM

10 **SECTION 17.1.** G.S. 116-36.1 reads as rewritten:

11 **"§ 116-36.1. Regulation of institutional trust funds.**

12 (a) The Board is responsible for the custody and management of the trust funds of the
13 University of North Carolina and of each institution. The Board shall adopt uniform policies
14 and procedures applicable to the deposit, investment, and administration of these funds which
15 shall assure that the receipt and expenditure of such funds is properly authorized and that the
16 funds are appropriately accounted for. The Board may delegate authority, through the
17 president, to the respective chancellors of the institutions when such delegation is necessary or
18 prudent to enable the institution to function in a proper and expeditious manner.

19 (b) ~~Trust funds shall be deposited with the State Treasurer who shall hold them in trust~~
20 ~~in separate accounts in the name of the University of North Carolina and of each institution.~~
21 ~~The cash balances of these accounts may be pooled for investment purposes, but investment~~
22 ~~earnings shall be credited pro rata to each participating account. For purposes of distribution of~~
23 ~~investment earnings, all trust funds of an institution shall be deemed a single account.~~

24 (c) ~~Moneys deposited with the State Treasurer in trust fund accounts pursuant to this~~
25 ~~section, and investment earnings thereon, are available for expenditure by each institution~~
26 ~~without further authorization from the General Assembly.~~

27 (d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A
28 of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget
29 Act except for capital improvements projects which shall be authorized and executed in
30 accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

31 (e) Each institution shall submit such reports or other information concerning its trust
32 fund accounts as may be required by the ~~Director of the Budget.~~ Board.

33 (f) Trust funds or the investment income therefrom shall not take the place of State
34 appropriations or any part thereof, but any portion of these funds available for general
35 institutional purposes is appropriated and shall be used to supplement State appropriations to
36 the end that the institution may improve and increase its functions, may enlarge its areas of
37 service, and may become more useful to a greater number of people.

38 (g) As used in this section, "trust funds" means:

- 39 (1) Moneys, or the proceeds of other forms of property, received by an
40 institution as gifts, devises, or bequests that are neither presumed nor
41 designated to be gifts, devises, or bequests to the endowment fund of the
42 institution;
- 43 (2) Moneys received by an institution pursuant to grants from, or contracts with,
44 the United States government or any agency or instrumentality thereof;
- 45 (3) Moneys received by an institution pursuant to grants from, or contracts with,
46 any State agencies, any political subdivisions of the State, any other states or
47 nations or political subdivisions thereof, or any private entities whereby the
48 institution undertakes, subject to terms and conditions specified by the entity
49 providing the moneys, to conduct research, training or public service
50 programs, or to provide financial aid to students;

- 1 (4) Moneys collected by an institution to support extracurricular activities of
2 students of the institution;
- 3 (5) Moneys received from or for the operation by an institution of activities
4 established for the benefit of scholarship funds or student activity programs;
- 5 (6) Moneys received from or for the operation by an institution of any of its
6 self-supporting auxiliary enterprises, including institutional student auxiliary
7 enterprise funds for the operation of housing, food, health, and laundry
8 services;
- 9 (7) Moneys received by an institution in respect to fees and other payments for
10 services rendered by medical, dental or other health care professionals under
11 an organized practice plan approved by the institution or under a contractual
12 agreement between the institution and a hospital or other health care
13 provider;
- 14 (8) The net proceeds from the disposition effected pursuant to Chapter 146,
15 Article 7, of any interest in real property owned by or under the supervision
16 and control of an institution if the interest in real property had first been
17 acquired by gift, devise, or bequest or through expenditure of moneys
18 defined in this subsection ~~(g)~~ as "trust funds," except the net proceeds from
19 the disposition of an interest in real property first acquired by the institution
20 through expenditure of moneys received as a grant from a State agency;
- 21 (9) Moneys received from the operation and maintenance of institutional forests
22 and forest farmlands, provided, that such moneys shall be used, when used,
23 by the institution for support of forest-related research, teaching, and public
24 service programs;
- 25 (10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and
26 o.;
- 27 (11) Moneys deposited to the State Education Assistance Authority Fund
28 pursuant to G.S. 116-209.3.

29 (h) ~~Notwithstanding the provisions of subsection (b) of this section, the Board may~~
30 ~~designate as the official depository of the funds identified in subsection (g)(7) of this section~~
31 ~~one or more banks or trust companies in this State. The amount of funds on deposit in an~~
32 ~~official depository shall be fully secured by deposit insurance, surety bonds, or investment~~
33 ~~securities of such nature, in such amounts, and in such manner as is prescribed by the State~~
34 ~~Treasurer for the security of public deposits generally. The available cash balance of funds~~
35 ~~deposited pursuant to this subsection shall be invested in interest-bearing deposits and~~
36 ~~investments so that the rate of return equals that realized from the investment of State funds~~
37 ~~generally. The Board may authorize, through the President, that the chancellors may deposit or~~
38 ~~invest each institution's available trust fund cash balances in interest-bearing accounts and other~~
39 ~~investments as may be authorized by the Board in the exercise of its sound discretion, without~~
40 ~~regard to any statute or rule of law relating to the investment of funds by fiduciaries.~~

41 (i) The cash balances on hand as of June 30, 1978, and all future receipts accruing
42 thereafter, of funds identified in this section are hereby appropriated to the use of the University
43 of North Carolina and its constituent institutions."

44 **SECTION 17.2.** G.S. 116-37(e) reads as rewritten:

45 "(e) Finances. – The University of North Carolina Health Care System shall be subject to
46 the provisions of the State Budget Act, except for trust funds as provided in G.S. 116-36.1 and
47 G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be
48 responsible for all aspects of budget preparation, budget execution, and expenditure reporting.
49 All operating funds of the University of North Carolina Health Care System may be budgeted
50 and disbursed through special fund codes, maintaining separate auditable accounts for the
51 University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of

1 the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the
2 University of North Carolina Health Care System may be deposited directly to the special fund
3 codes, and except for General Fund appropriations, all receipts of the University of North
4 Carolina Hospitals at Chapel Hill may be invested pursuant to ~~G.S. 147-69.2(b3)-~~
5 G.S. 116-37.2(h). General Fund appropriations for support of the University of North Carolina
6 Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose,
7 "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be
8 transferable to a special fund operating code as receipts."

9 **SECTION 17.3.** G.S. 116-37.2 reads as rewritten:

10 **"§ 116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.**

11 (a) As used in this section, "funds" means:

- 12 (1) Moneys, or the proceeds of other forms of property, received by the
13 University of North Carolina Hospitals at Chapel Hill as gifts, devises, or
14 bequests.
- 15 (2) Moneys received by the University of North Carolina Hospitals at Chapel
16 Hill pursuant to grants from, or contracts with, the United States government
17 or any agency or instrumentality thereof.
- 18 (3) Moneys received by the University of North Carolina Hospitals at Chapel
19 Hill pursuant to grants from, or contracts with, any State agencies, any
20 political subdivisions of the State, any other states or nations or political
21 subdivisions thereof, or any private entities whereby the University of North
22 Carolina Hospitals at Chapel Hill undertakes, subject to terms and conditions
23 specified by the entity providing the moneys, to conduct research, training,
24 or public service programs.
- 25 (4) Moneys received from or for the operation by the University of North
26 Carolina Hospitals at Chapel Hill of any of its self-supporting auxiliary
27 enterprises, including the Liability Insurance Trust Fund.
- 28 (5) Moneys received by the University of North Carolina Hospitals at Chapel
29 Hill in respect to fees and other payments for services it renders in its
30 hospital and/or clinical operations.
- 31 (5a) Moneys received by the University of North Carolina Hospitals at Chapel
32 Hill in respect to borrowings for capital equipment or construction projects
33 to further services it renders in either or both of its hospital or clinical
34 operations.
- 35 (6) The net proceeds from the disposition effected pursuant to Article 7 of
36 Chapter 146 of the General Statutes of any interest in real property owned by
37 or under the supervision and control of the University of North Carolina
38 Hospitals at Chapel Hill if the interest in real property had first been
39 acquired by gift, devise, or bequest or through expenditure of moneys
40 defined in this subsection, except the net proceeds from the disposition of an
41 interest in real property first acquired by the University of North Hospitals at
42 Chapel Hill through expenditure of moneys received as a grant from a State
43 agency.

44 (b) The Board of Directors of the University of North Carolina Health Care System, as
45 established in G.S. 116-37(b), is responsible for the custody and management of the funds of
46 the University of North Carolina Hospitals at Chapel Hill. The Board shall adopt uniform
47 policies and procedures applicable to the deposit, investment, and administration of these
48 funds, which shall assure that the receipt and expenditure of such funds is properly authorized
49 and that the funds are appropriately accounted for. The Board may delegate authority, through
50 the Chief Executive Officer of the University of North Carolina Health Care System to the
51 President of the University of North Carolina Hospitals at Chapel Hill, when such delegation is

1 necessary or prudent to enable the University of North Carolina Hospitals at Chapel Hill to
2 function in a proper and expeditious manner.

3 (c) Funds under this section ~~shall be deposited with the State Treasurer who shall hold~~
4 ~~them in trust in the name of the University of North Carolina Hospitals at Chapel Hill.~~

5 (d) ~~Funds deposited with the State Treasurer in an account pursuant to this section, and~~
6 ~~investment earnings thereon, thereon~~ are available for expenditure by the University of North
7 Carolina Hospitals at Chapel Hill without further authorization from the General Assembly.

8 (e) Funds under this section are subject to the oversight of the State Auditor pursuant to
9 Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the
10 ~~Executive State Budget Act~~ except for capital improvements projects, which shall be
11 authorized and executed in accordance with ~~G.S. 143-18.1~~, G.S. 143C-8-8 and G.S. 143C-8-9.

12 (f) The University of North Carolina Hospitals at Chapel Hill shall submit such reports
13 or other information concerning its fund accounts under this section as may be required by the
14 ~~Director of the Budget~~, Board of Directors of the University of North Carolina Health Care
15 System.

16 (g) Funds under this section, or the investment income therefrom, shall not take the
17 place of State appropriations or any part thereof, but any portion of these funds available for
18 general institutional purposes shall be used to supplement State appropriations to the end that
19 the University of North Carolina Hospitals at Chapel Hill may improve and increase their
20 functions, may enlarge their areas of service, and may become more useful to a greater number
21 of people.

22 (h) ~~Notwithstanding the provisions of subsection (c) of this section, the Board may~~
23 ~~designate as the official depository of the funds identified in subdivisions (a)(4), (a)(5), and~~
24 ~~(a)(6) of this section one or more banks or trust companies in this State for any investments~~
25 ~~authorized by G.S. 147-69.2(b3).~~ The Board of Directors of the University of North Carolina
26 Health Care System may deposit or invest the funds under this section in interest-bearing
27 accounts and other investments in the exercise of its sound discretion, without regard to any
28 statute or rule of law relating to the investment of funds by fiduciaries."

29 **SECTION 17.4.** This Part becomes effective July 1, 2011.

30
31 **PART 18. ALL EMPLOYEES OF THE UNIVERSITY OF NORTH CAROLINA ARE**
32 **EXEMPT FROM THE STATE PERSONNEL ACT AND SUBJECT TO THE DIRECT**
33 **AUTHORITY OF THE BOARD OF GOVERNORS**

34 **SECTION 18.1.** G.S. 116-11(5) and (5b) read as rewritten:

35 **"§ 116-11. Powers and duties generally.**

36 The powers and duties of the Board of Governors shall include the following:

37 ...

38 (5) The Board of Governors shall adopt policies concerning the terms and
39 conditions of employment of employees of The University of North
40 Carolina, including employee compensation, benefits, work and office hours,
41 holidays, leave, disability benefits, temporary and supplemental pay for
42 injured employees, position classification, appraisals, service and incentive
43 awards, grievances, discipline, and any other human resources policy the
44 Board deems appropriate to promote the recruitment and retention of
45 capable, diligent, and effective employees. Employees of The University of
46 North Carolina are deemed State employees who are exempt from the State
47 Personnel Act, but subject to the provisions of Articles 6 and 7 of Chapter
48 126 of the General Statutes.

49 ~~The Board of Governors shall, on recommendation of the President and of~~
50 ~~the appropriate institutional chancellor, appoint and fix the compensation of~~

1 all vice chancellors, senior academic and administrative officers and persons
2 having permanent tenure.

3 ...

4 (5b) ~~The Board of Governors may by resolution provide that, until July 1, 1998,~~
5 ~~every president, vice president, and other administrative officer of the~~
6 ~~University whom it elects and who is not subject to Chapter 126 of the~~
7 ~~General Statutes, and every chancellor, vice chancellor, senior academic~~
8 ~~officer, senior administrative officer, and faculty member who serves a~~
9 ~~constituent institution or agency of the University and who is not subject to~~
10 ~~Chapter 126 of the General Statutes, shall retire on July 1 coincident with or~~
11 ~~next following his seventieth birthday, unless continued in service on a~~
12 ~~year to year basis in accordance with regulations adopted by the Board of~~
13 ~~Governors.~~

14"

15 **SECTION 18.2.** G.S. 116-14 reads as rewritten:

16 "**§ 116-14. President and staff.**

17 (a) The Board shall elect a President of the University of North Carolina. The President
18 shall be the chief administrative officer of the University.

19 (b) The President shall be assisted by such professional staff members as may be
20 deemed necessary to carry out the provisions of this Article, who shall be elected by the Board
21 on nomination of the President. The Board shall fix the compensation of the staff members it
22 elects. These staff members shall include a senior vice-president and such other vice-presidents
23 and officers as may be deemed desirable. Provision shall be made for persons of high
24 competence and strong professional experience in such areas as academic affairs, public service
25 programs, business and financial affairs, institutional studies and long-range planning, student
26 affairs, research, legal affairs, health affairs and institutional development, and for State and
27 federal programs administered by the Board. ~~In addition, the President shall be assisted by such~~
28 ~~other employees as may be needed to carry out the provisions of this Article, who shall be~~
29 ~~subject to the provisions of Chapter 126 of the General Statutes.~~ The staff complement shall be
30 established by the Board on recommendation of the President to insure that there are persons on
31 the staff who have the professional competence and experience to carry out the duties assigned
32 and to insure that there are persons on the staff who are familiar with the problems and
33 capabilities of all of the principal types of institutions represented in the system. Subject to
34 approval by the Board, the President may establish and abolish employment positions within
35 the staff complement authorized by this subsection in the manner of and under the conditions
36 prescribed by G.S. 116-30.4 for special responsibility constituent institutions.

37 (b1) The President shall receive General Fund appropriations made by the General
38 Assembly for continuing operations of The University of North Carolina that are administered
39 by the President and the President's staff complement established pursuant to G.S. 116-14(b) in
40 the form of a single sum to Budget Code 16010 of The University of North Carolina in the
41 manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to
42 the foregoing appropriations, shall have the same duties and responsibilities that are prescribed
43 by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The
44 President may establish procedures for transferring funds from Budget Code 16010 to the
45 constituent institutions for nonrecurring expenditures. The President may identify funds for
46 capital improvement projects from Budget Code 16010, and the capital improvement projects
47 may be established following the procedures set out in G.S. 143C-8-8 and G.S. 143C-8-9.

48 (b2) The President, in consultation with the State Auditor ~~and the Director of the Office~~
49 ~~of State Personnel, Auditor,~~ shall ascertain that the management staff and internal financial
50 controls are in place and continue in place to successfully administer the additional authority

1 authorized under G.S. 116-14(b1) and G.S. 116-30.3(e). All actions taken by the President
2 pursuant to G.S. 116-14(b1) and G.S. 116-30.3(e) are subject to audit by the State Auditor.

3 (c) The President, with the approval of the Board, shall appoint an advisory committee
4 composed of representative presidents of the private colleges and universities and may appoint
5 such additional advisory committees as are deemed necessary or desirable."

6 **SECTION 18.3.** G.S. 116-30.1 reads as rewritten:

7 "**§ 116-30.1. Special responsibility constituent institutions.**

8 The Board of Governors of The University of North Carolina, acting on recommendation
9 made by the President of The University of North Carolina after consultation by him with the
10 State Auditor, may designate one or more constituent institutions of The University as special
11 responsibility constituent institutions. That designation shall be based on an express finding by
12 the Board of Governors that each institution to be so designated has the management staff and
13 internal financial controls that will enable it to administer competently and responsibly all
14 additional management authority and discretion to be delegated to it. The Board of Governors,
15 on recommendation of the President, shall adopt rules prescribing management staffing
16 standards and internal financial controls and safeguards, including the lack of any significant
17 findings in the annual financial audit by the State Auditor's Office, that must be met by a
18 constituent institution before it may be designated a special responsibility constituent institution
19 and must be maintained in order for it to retain that designation. These rules shall not be
20 designed to prohibit participation by a constituent institution because of its size. These rules
21 shall establish procedures for the President and his staff to review the annual financial audit
22 reports, special reports, electronic data processing reports, performance reports, management
23 letters, or any other report issued by the State Auditor's Office for each special responsibility
24 constituent institution. The President shall take immediate action regarding reported
25 weaknesses in the internal control structure, deficiencies in the accounting records, and
26 noncompliance with rules and regulations. In any instance where significant findings are
27 identified, the President shall notify the Chancellor of the particular special responsibility
28 constituent institution that the institution must make satisfactory progress in resolving the
29 findings, as determined by the President of The University, after consultation with the State
30 Auditor, within a three-month period commencing with the date of receipt of the published
31 financial audit report, any other audit report, or management letter. If satisfactory progress is
32 not made within a three-month period, the President of The University shall recommend to the
33 Board of Governors at its next meeting that the designation of the particular institution as a
34 special responsibility constituent institution be terminated until such time as the exceptions are
35 resolved to the satisfaction of the President of The University of North Carolina, after
36 consultation with the State Auditor. However, once the designation as a special responsibility
37 constituent institution has been withdrawn by the Board of Governors, reinstatement may not
38 be effective until the beginning of the following fiscal year at the earliest. Any actions taken by
39 the Board of Governors with respect to withdrawal or reinstatement of an institution's status as
40 a special responsibility constituent institution shall be reported immediately to the Joint
41 Legislative Education Oversight Committee.

42 The rules established under this section shall include review by the President, after
43 consultation with the State Auditor, ~~the Director of the Office of State Personnel, Auditor,~~ and
44 the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a
45 constituent institution has the management staff and internal financial controls to administer the
46 additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and
47 consultation must take place no less frequently than once each biennium."

48 **SECTION 18.4.** G.S. 116-30.4 reads as rewritten:

49 "**§ 116-30.4. Position management.**

50 The Chancellor of a special responsibility constituent institution, when he finds that to do
51 so would help to maintain and advance the programs and services of the institution, may

1 establish and abolish positions, acting in accordance with policies adopted by the Board of
2 Governors, with:

- 3 ~~(1) State Personnel policies and procedures if these positions are subject to the~~
4 ~~State Personnel Act and if the institution is operating under the terms of a~~
5 ~~Performance Agreement or a Decentralization Agreement authorized under~~
6 ~~Chapter 126 of the General Statutes; or~~
7 ~~(2) Policies and procedures of the Board of Governors if these positions are~~
8 ~~exempt from the State Personnel Act.~~

9 ~~The results achieved by establishing and abolishing positions pursuant to the conditions set~~
10 ~~forth in subdivision (1) of this section shall be subject to postauditing by the Office of State~~
11 ~~Personnel. Implementation of personnel actions shall be subject to the availability of funds~~
12 ~~within the institution's current budget to fund the full annualized costs of these actions."~~

13 **SECTION 18.5.** G.S. 126-5(c1)(9) reads as rewritten:

14 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
15 Chapter shall not apply to:

16 ...

- 17 (9) Employees whose salaries terms and conditions of employment are fixed
18 under the authority vested in the Board of Governors of The University of
19 North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and
20 116-14 under Chapter 116 of the General Statutes."

21 **SECTION 18.6.** G.S. 126-19 reads as rewritten:

22 "**§ 126-19. Equal employment opportunity plans; reports; maintenance of services by**
23 **State Personnel Director.**

24 (a) Each member of the Council of State under G.S. 143A-11, each of the principal
25 departments enumerated in G.S. 143B-6, The University of North Carolina, the judicial branch,
26 and the legislative branch, shall develop and submit an Equal Employment Opportunity plan
27 which shall include goals and programs that provide positive measures to assure equitable and
28 fair representation of North Carolina's citizens. The plans developed by the judicial ~~branch and~~
29 branch, by the Legislative Services Office on behalf of the legislative ~~branch-branch~~, and by the
30 Board of Governors on behalf of The University of North Carolina, shall be submitted to the
31 General Assembly on or before June 1 of each year. All other such plans shall be submitted to
32 the State Personnel Director for review and approval on or before March 1, of each year.

33 (b) The State Personnel Commission shall submit a report to the General Assembly
34 concerning the status of Equal Employment Opportunity plans and programs for all State
35 ~~departments, agencies, universities, departments and agencies~~ which are required by this
36 Chapter to report to the State Personnel Director, on or before June 1 of each year. If any plan
37 has been disapproved, the report shall contain reasons for disapproval. The status report
38 submitted to the General Assembly by the State Personnel Director and the plans submitted to
39 the General Assembly by the judicial branch and the Legislative Services Office on behalf of
40 the legislative branch shall contain the total number of persons employed in each job category,
41 the race, sex, salary, and other demographics relative to persons hired and promoted during the
42 reporting period, analysis of the data, and an indication as to which goals were achieved.

43 (c) The State Personnel Director shall at least maintain current services of Equal
44 Employment Opportunity technical assistance, training, oversight, monitoring, evaluation,
45 support programs, and reporting to assure that State government's work force at all
46 occupational levels reflect North Carolina's population. To the extent reasonably possible, these
47 services shall be provided by qualified personnel who have continuous experience in the field
48 of Equal Employment Opportunity and affirmative action and who are sensitive to
49 circumstances and experiences of individuals from diverse backgrounds and cultures, and
50 recognize that efficient and effective government requires the talents, skills, and abilities of all
51 available human resources."

1 **SECTION 18.7.** This Part becomes effective January 1, 2012.

2
3 PART 19. PERMANENTLY EXEMPT PARTICIPANTS IN THE UNIVERSITY OF NORTH
4 CAROLINA PHASED RETIREMENT PROGRAM FROM THE RESTRICTIONS ON
5 RETURNING TO WORK

6 **SECTION 19.1.** Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21
7 of S.L. 2006-66 and by Section 26.22 of S.L. 2009-451, reads as rewritten:

8 "**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1,
9 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to
10 participants in The University of North Carolina Phased Retirement ~~Program until the earlier of~~
11 ~~August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the~~
12 ~~Internal Revenue Service. Program.~~ The remainder of this section becomes effective June 30,
13 2005."

14 **SECTION 19.2.** G.S. 135-1(20) reads as rewritten:

15 "(20) "Retirement" ~~means~~ means, for members who are not participants in The
16 University of North Carolina Phased Retirement Program, the termination of
17 employment and the complete separation from active service with no intent
18 or agreement, express or implied, to return to service. A retirement
19 allowance under the provisions of this Chapter may only be granted upon
20 retirement of a member. In order for a member's retirement to become
21 effective in any month, the member must render no service, including
22 part-time, temporary, substitute, or contractor service, at any time during the
23 six months immediately following the effective date of retirement. For
24 purposes of this subdivision, service as a member of a school board or as an
25 unpaid bona fide volunteer in a local school administrative unit shall not be
26 considered service. Notwithstanding the foregoing, for members who are
27 participants in The University of North Carolina Phased Retirement
28 Program, "retirement" means entry into the Phased Retirement Program with
29 a retirement allowance granted under this Chapter."

30 **SECTION 19.3.** This Part becomes effective July 1, 2011.

31
32 PART 20. REDUCE THE REQUIRED BREAK IN SERVICE FOR RETIREES OF THE
33 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO RETURN TO
34 WORK WITHOUT LOSING RETIREMENT BENEFITS

35 **SECTION 20.1.** G.S. 135-1 is amended by adding a new subdivision to read:

36 "(18a) "Qualifying period" means three months as to members who retire with their
37 last 12 months of service as employees of The University of North Carolina
38 or any of its constituent institutions and return to service as employees of
39 The University of North Carolina or any of its constituent institutions, and
40 means six months as to any other member."

41 **SECTION 20.2.** G.S. 135-1(20) reads as rewritten:

42 "(20) "Retirement" means the termination of employment and the complete
43 separation from active service with no intent or agreement, express or
44 implied, to return to service. A retirement allowance under the provisions of
45 this Chapter may only be granted upon retirement of a member. In order for
46 a member's retirement to become effective in any month, the member must
47 render no service, including part-time, temporary, substitute, or contractor
48 service, at any time during the ~~six months~~ qualifying period immediately
49 following the effective date of retirement. For purposes of his subdivision,
50 service as a member of a school board or as an unpaid bona fide volunteer in
51 a local school administrative unit shall not be considered service."

SECTION 20.3. G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12 month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision who retired on or before June 1, 2009, regardless of age or years of creditable service, or who retires on or after July 1, 2009, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; and who has been retired ~~at least six months for~~ at least as long as the qualifying period as defined by G.S. 135-1(18a) and has not been employed in any capacity with a State-supported community college or a State-supported university ~~for at least six months during the qualifying period as defined by G.S. 135-1(18a)~~ immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek as a nursing instructor in a certified nursing program for a maximum period of three years.

In order for a retired nursing instructor to be rehired, the community college or university must certify to the Teachers' and State Employees' Retirement System that it has a shortage of qualified nursing instructors, and must:

1. Make a good faith effort to fill positions with qualified nursing instructors who are not retirees;
2. Post the vacancy or vacancies for at least two months;
3. Solicit applications through local newspapers, other media, and nursing education programs; and
4. Determine that there is an insufficient number of eligible applicants for the advertised position or positions.

1 The North Carolina Community College System and The
2 University of North Carolina shall certify to the Retirement System
3 that a beneficiary is employed to teach as a nursing instructor with a
4 State-supported community college or a State-supported university
5 under the provisions of this sub-subdivision."

6 **SECTION 20.4.** This Part becomes effective July 1, 2011.
7

8 PART 21. PROVIDE FOR VESTING RECIPROCITY BETWEEN THE STATE AND
9 LOCAL EMPLOYEES' RETIREMENT SYSTEMS AND THE OPTIONAL RETIREMENT
10 PROGRAM FOR STATE INSTITUTIONS OF HIGHER LEARNING

11 **SECTION 21.1.** G.S. 135-5.1(b)(5) reads as rewritten:

12 "(5) If any participant in the Optional Retirement Program having less than five
13 years ~~coverage under the Optional Retirement Program~~ of total membership
14 service under any combination of the Teachers' and State Employees'
15 Retirement System, the Local Governmental Employees' Retirement System,
16 the Consolidated Judicial Retirement System, or the Optional Retirement
17 Program leaves the employ of The University of North Carolina and either
18 retires or commences employment with an employer not having a retirement
19 program with the same company underwriting the participant's annuity
20 contract, regardless of whether the annuity contract is held by the
21 participant, a trust, or the Retirement System, the participant's interest in the
22 Optional Retirement Program attributable to contributions of The University
23 of North Carolina shall be forfeited and shall either (i) be refunded to The
24 University of North Carolina and forthwith paid by it to the Retirement
25 System and credited to the pension accumulation fund or (ii) be paid directly
26 to the Retirement System and credited to the pension accumulation fund."

27 **SECTION 21.2.** This Part becomes effective July 1, 2011.
28

29 PART 22. ENABLE THE UNC HEALTH CARE SYSTEM TO OFFER THE OPTIONAL
30 RETIREMENT PROGRAM (ORP) AS A RETIREMENT OPTION

31 **SECTION 22.1.** G.S. 135-5.1(a) reads as rewritten:

32 "(a) An Optional Retirement Program provided for in this section is authorized and
33 established and shall be implemented by the Board of Governors of The University of North
34 Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity
35 contracts, which may be both fixed and variable contracts or a combination thereof, or financed
36 through the establishment of a trust, for the benefit of participants in the Program. Participation
37 in the Optional Retirement Program shall be limited to University personnel who are eligible
38 for membership in the Teachers' and State Employees' Retirement Program and who are:

39 ...
40 (5) Employees of the University of North Carolina Health Care System, subject
41 to rules for eligibility and participation as may be adopted by the Board of
42 Governors in the Optional Retirement Program plan document."

43 **SECTION 22.2.** This Part becomes effective July 1, 2011.

44 **SECTION 23.** This act is effective as provided herein.