

1 of time, and the potential desirability of a single point of responsibility for these matters in
2 connection with build-to-suit capital leases, any build-to-suit capital lease may include
3 provisions imposing responsibility on the private developer or any identified affiliated entity
4 for any of the following matters:

- 5 (1) Site selection, land acquisition, and site preparation, including wetlands
6 delineation, archaeological review, and State and local government land-use
7 permitting.
- 8 (2) Facility programming, planning, and design, including both architectural and
9 engineering services.
- 10 (3) Qualification and prequalification of contractors and subcontractors.
- 11 (4) Construction and construction management.
- 12 (5) Financing.
- 13 (6) Facility maintenance and repairs.
- 14 (7) Energy usage guaranties.
- 15 (8) Transfer of ownership of the leased property to Union County at the end of
16 the lease term.
- 17 (9) Any other guaranties, products, and services the Board of Commissioners
18 deem appropriate.

19 **SECTION 4.** The Board of Commissioners may enter into predevelopment
20 agreements with a private developer in advance of entering into a build-to-suit capital lease.
21 Predevelopment agreements may include, without limitation, provisions for each of the
22 following: (i) site selection, land acquisition, and site preparation, including services such as
23 wetlands delineation, archaeological review, and State and local government land-use
24 permitting; and (ii) building programming and design, including both architectural and
25 engineering services.

26 **SECTION 5.** Notwithstanding any provisions of law to the contrary, the Board of
27 Commissioners may, pursuant to the provisions of G.S. 160A-267, and without limitation as to
28 value of the interest conveyed or the consideration received, sell, lease, or otherwise transfer
29 real or personal property to any private developer for construction, repair, or renovation of the
30 facilities subject to a build-to-suit capital lease. The Board of Commissioners may subject the
31 property to any covenants, conditions, or restrictions it deems necessary to carry out the
32 purposes of this act. The facilities subject to a build-to-suit capital lease may be constructed on
33 real property owned by Union County or real property owned by the private developer.

34 **SECTION 6.** A build-to-suit capital lease shall also be subject to the following
35 requirements:

- 36 (1) The lease shall not contain a nonsubstitution clause that restricts the right of
37 the Board of Commissioners to continue to provide a service or activity or to
38 replace or provide a substitute for any property financed or purchased by the
39 capital lease.
- 40 (2) No deficiency judgment may be rendered against Union County or the Board
41 of Commissioners in any action for breach of a contractual obligation in a
42 lease authorized by this act, and the taxing power of Union County is not
43 and may not be pledged directly or indirectly to secure any moneys due
44 under a lease authorized by this act. A build-to-suit capital lease shall state
45 that it does not constitute a pledge of the taxing power or full faith and credit
46 of the Board of Commissioners.
- 47 (3) A build-to-suit capital lease entered into pursuant to this act is subject to
48 approval by the Local Government Commission under Article 8 of Chapter
49 159 of the General Statutes if it meets the standards provided in
50 G.S. 159-148(a)(2) and G.S. 159-148(a)(3). For purposes of determining

1 whether the standards provided in G.S. 159-148(a)(3) have been met, only
2 the five hundred thousand dollar (\$500,000) threshold shall apply.

- 3 (4) The Board of Commissioners, in its discretion, may require the private
4 developer to provide a performance and payment bond for construction work
5 in accordance with the provisions of Article 3 of Chapter 44A of the General
6 Statutes and may require the private developer to provide a bond or other
7 appropriate guaranty to cover any other guaranties, products, or services to
8 be provided by the private developer. In addition, the Board of
9 Commissioners may require that the private developer (i) provide an
10 irrevocable letter of credit for the benefit of laborers and materialmen in an
11 amount not less than five percent (5%) of the total cost of the improvements
12 that are the subject of the build-to-suit capital lease; and (ii) maintain the
13 letter of credit throughout the construction of the project and for the
14 succeeding six-month period.

15 **SECTION 7.** Union County shall request proposals from and interview at least five
16 design-build teams, design-build-operate teams, or private developers, as appropriate, that have
17 submitted proposals for a project authorized under the provisions of this act. If five proposals
18 are not received and the project has been publicly advertised for a minimum of 30 days, the
19 County may proceed with the proposal or proposals received. If it determines to proceed, the
20 Board of Commissioners shall award the contract to the best qualified contractor or private
21 developer for the project as deemed by the Board of Commissioners, in its sole discretion, to be
22 in the county's best interests under all the circumstances, taking into account (i) the knowledge,
23 skill, and reputation of the contractor or private developer and its associated persons; (ii) the
24 time, cost, and quality of design, engineering, and construction, including the time required to
25 begin and the time required to complete a particular activity; (iii) occupancy costs, including
26 lease payments, life-cycle maintenance, repair, and energy costs; (iv) any other factors and
27 information set forth in the request for proposals that the county determines to have a material
28 bearing on the ability to evaluate any proposal; and (v) any other factors the Board of
29 Commissioners deems relevant.

30 **SECTION 8.** This act is effective when it becomes law and expires five years after
31 the effective date.