

The University of North Carolina Policy on Acquisition of Real Property by Lease

In its November 2006 report to the Board of Governors, the President's Advisory Committee on Efficiency and Effectiveness (PACE) recognized that "the need to lease space is growing, especially as more campuses do greater and more complex research" and that "extending leasing authority as currently granted under GS 116-37 to all campuses would render the process timelier and more efficient" suggesting that this legislative relief could reduce process times from approximately nine to four months. The PACE working group explained that delays in the current leasing process not only cost administrative time and effort but that opportunity costs also exist. If research grant funding is predicated on obtaining necessary office space and the campus cannot lease the space in time, it may very well lose the grant.

These conclusions echoed the findings of the Huron Consulting Group in their 2004 report, "Enhancing the Ability of North Carolina's Public Research Universities to Contribute to State Economic Development." This report emphasized that efficient processes must support research programs, noting that "speed and adaptability are essential to success in a competitive environment. As opportunities arise in the research marketplace, researchers and institutions must have the ability to react quickly, and to respond to those opportunities in a manner that will create competitive advantage."

At the request of the Board of Governors, the General Assembly and Governor produced the needed legislative authority in Section 9 of Session Law 2007-322 titled: AN ACT TO IMPLEMENT EFFICIENCIES WITHIN THE UNIVERSITY SYSTEM AND STATE GOVERNMENT AS RECOMMENDED BY THE PRESIDENT'S ADVISORY COMMITTEE ON EFFICIENCY AND EFFECTIVENESS (PACE) or as it is often called, the "PACE bill" which states:

**SECTION 9.** *Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:*

**"§ 116-31.12. Acquisition of real property by lease.**

*Notwithstanding G.S. 143-341(4), the Board of Governors may authorize the constituent institutions and the General Administration to acquire real property by lease if the lease is for a term of not more than 10 years. The Board of Governors shall establish a policy for acquiring an interest in real property for the use of The University of North Carolina and its constituent institutions by lease. This policy may delegate authorization of the acquisition of real property by lease to the boards of trustees of the constituent institutions or to the President of The University of North Carolina. The Board of Governors shall submit all initial policies adopted pursuant to this section to the State Property Office for review prior to adoption by the Board. Any subsequent changes to these policies adopted by the Board of Governors shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the President of The University of North Carolina. After the acquisition of an interest in real property by lease, The University of North Carolina shall promptly file a report concerning the acquisition to the Secretary of Administration. Acquisitions of an interest in real property by lease pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or to the provisions of Article 6 of Chapter 146 of the General Statutes."*

North Carolina General Statute Section 116-31.12 gives the Board of Governors of the University of North Carolina the authority to authorize the constituent institutions and the General Administration of the University of North Carolina to acquire real property by lease if the lease is for a term of not more than 10 years. Further, the statute directs the Board of Governors to establish a policy by which this leasing authorization may be further delegated to the boards of trustees of the constituent institutions or to the President of the University of North Carolina.

The proposed policy delegates leasing responsibility consistent with G.S. 116-31.12 to a 'designated' constituent institution based on capability that has been affirmed by the constituent institution, confirmed and recommended by the President, and approved by the Board of Governors. Unless leasing authority is designated or exercised on behalf of the constituent

institution by the President, a constituent institution would continue to use the North Carolina Department of Administration's State Property Office for its real property transactions.

It is recommended that the Committee on Budget and Finance approve the proposed policy to enable compliance with, and the utilization of, the acquisition of real property by lease flexibility as permitted by North Carolina General Statute Section 116-31.12.

If approved and pursuant to the Board of Governors' guidelines, it is further recommended that the policy be presented to the Board at its January 2011 meeting for final consideration.

## **Policy on Acquisition of Real Property by Lease**

### **I. Authority**

N.C. Gen. Stat. § 116-31.12 (hereinafter G.S.) delegates to the Board of Governors of the University of North Carolina the authority to authorize the constituent institutions and the University of North Carolina General Administration to acquire real property by lease if the lease is for a term of not more than ten (10) years. Further, the statute directs the Board of Governors to establish a policy by which this leasing authorization may be further delegated to the boards of trustees of the constituent institutions or to the President of the University of North Carolina.

### **II. Policy**

- A. The Board of Governors may delegate to the President of the University of North Carolina authority consistent with G.S. 116-31.12 to acquire real property by lease if the lease term is for a term of not more than 10 years. The President's authority may be exercised on behalf of General Administration, its affiliates or the constituent institutions in the President's discretion.
- B. Upon request by the Board of Trustees of a constituent institution and with the recommendation of the President, the Board of Governors may delegate to the Board of Trustees of a constituent institution authority consistent with G.S. 116-31.12 to acquire real property by lease if the lease term is for a term of not more than 10 years.
- C. The Vice President for Finance, in consultation with General Counsel, shall establish the process by which a constituent institution may request delegated authority consistent with G.S. 116-31.12. The minimum criteria a constituent institution must meet to receive authorization from the Board of Governor's shall be:
  - 1. The constituent institution has performed a written, comprehensive self-assessment that demonstrates it has the administrative, technical, and support resources necessary to properly carry out the delegated authority.
  - 2. The chancellor has certified in writing that the constituent institution has the administrative, technical, and support resources necessary to properly carry out the delegated authority.
  - 3. The constituent institution has a properly constituted and active campus property review committee comprised of individuals with sufficient technical

expertise, strategic perspective and executive authority to perform the duties required herein.

4. The constituent institution has an individual on staff with substantial experience in managing commercial real estate transactions and the chancellor has designated that individual as the campus property officer.
  5. The constituent institution has appropriate and sufficient technical and professional staff with demonstrated capability in the development, evaluation and execution of commercial leasing transactions.
  6. An assessment team, assembled and led by the Vice President for Finance, has reviewed the constituent institution's self-assessment, has performed an on-site capabilities appraisal that confirms the institution's self-assessment, and has recommended delegation to the President.
- D. Upon recommendation of the President of the University of North Carolina, for good cause and consistent with G.S. 116-31.12, the Board of Governors may revoke or suspend the authority of a constituent institution or take other remedial action as the Board deems necessary and appropriate, pending a review of any reported noncompliance with this policy and the associated regulations. The Vice President for Finance, in consultation with the General Counsel, shall establish the process by which such reports shall be investigated and for the implementation of any revocation or suspension. Once authority has been revoked pursuant to this policy, all future lease transactions for the institution involved shall be completed in accordance with Chapter 146 of the General Statutes of North Carolina and any delegations issued in accordance therewith.