

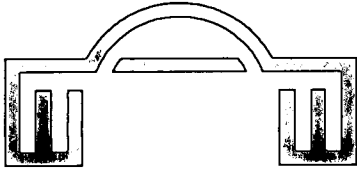


THE STATEWIDE UNC BOARD OF GOVERNORS

*Its Selection, Powers, and
Relationship to the 16 Local
Campus Boards of Trustees*



A REPORT BY THE NORTH CAROLINA CENTER FOR PUBLIC POLICY RESEARCH



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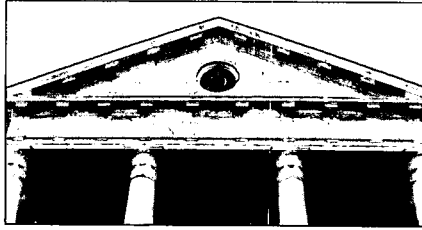
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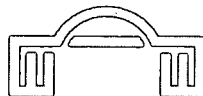
The Statewide UNC Board of Governors:

ITS SELECTION, POWERS, AND RELATIONSHIP TO THE 16 LOCAL CAMPUS BOARDS OF TRUSTEES

July 2006

By Ran Coble, Sam Watts, and Joanne Scharer

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**The Statewide UNC Board of Governors: Its Selection, Powers,
and Relationship to the 16 Local Campus Boards of Trustees**

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Executive Summary

To prepare this report, the Center conducted several hundred interviews — with legislators, university administrators, faculty, students, higher education leaders nationally and in North Carolina, and especially with current and former members of the University of North Carolina Board of Governors and with both winning and losing candidates for the Board. We visited almost all of the 16 campuses in the University of North Carolina system. We also attended almost every Board of Governors meeting over the last five years and had five chancellors of UNC institutions speak to our Board of Directors. We reviewed all state statutes and Constitutional provisions pertaining to higher education, as well as the University *Code* and administrative manuals governing local campuses. Many of those statutes and Constitutional and code provisions are reprinted in this report. We also conducted a comprehensive analysis of governance of higher education in other states, building on our previous report on all 50 states' systems of higher education governance. Finally, we sent our draft report to more than 250 reviewers in North Carolina and across the country, inviting their comments and criticisms. Over an eight-month period, we then responded to their criticisms and comments with changes, additions, deletions, or clarifications. We believe this has resulted in a report that is factual, fair, and a lasting contribution to the field of higher education policy analysis.

This report opens with a brief history of the UNC Board of Governors. For a more complete history, see the first report in this four-part series, entitled

Reorganizing Higher Education in North Carolina: What History Tells Us About Our Future.

This report then analyzes the selection of the Board of Governors by the North Carolina legislature. We are one of only two states whose central higher education governing board is chosen by the legislature. We examine North Carolina's statutory design and how the process actually works in practice. We also examine ways other states select higher education boards — by gubernatorial appointment, public election, or screening panels — as well as the selection process for the 16 local campus boards of trustees in North Carolina.

Our research next turns to the composition of the Board of Governors. We provide a list of everyone who has ever served on the Board since 1972, and analyze the legislature's record in electing women, minorities, and members of the minority political party to the Board. We also examine geographical balance on the Board, as well as student representation.

Next, the report examines the powers of the Board of Governors. This section builds on the second report in our four-part series, entitled *Governance and Coordination of Public Higher Education in All 50 States*, which compared the powers of all higher education governing boards and agencies in all 50 states. Here, we focus particularly on powers the UNC Board of Governors has but which are sometimes overridden or second-guessed by the legislature, such as its powers over the 16 campus budgets and the power to set tuition and fees. Then we examine powers the Board has not yet fully utilized, such as its power for master planning to develop

The Center's First Report:
*Reorganizing Higher Education in
North Carolina: What History Tells Us About Our Future*

In this 74-page report published in 1999, the Center recounts how the UNC Board of Governors was created by the 1971 N.C. General Assembly. The Higher Education Reorganization Act was the result of an intense legislative struggle that pitted then-Governor Robert W. Scott against leaders and key supporters of the six-campus Consolidated University of North Carolina.

Under the 1971 legislation, 10 campuses were added to the system, local campus Boards of Trustees were retained, and a new 32-member UNC Board of Governors was created to govern the system. This Board has the power to submit a unified budget for all 16 campuses, approve academic programs, and elect the system President and the 16 campus chancellors.

Legislators at the time sought relief from the pressure of competing demands for funding of higher educational institutions, while University leaders wanted to shield their campuses from interference by politicians. Much of the legislative debate focused on the size, composition, and powers of a proposed governing board for all public universities in North Carolina. Supporters of restructuring argued that such a board was needed to develop a statewide plan for higher education, to end harmful competition among campuses, to deal with inequities in funding among the campuses, and to eliminate duplication in higher education programs.

Opponents argued that restructuring would reverse the success achieved by the University of North

Carolina (particularly at UNC-Chapel Hill) and would not improve the allocation of resources and programs among the state's public colleges and universities. Other concerns included whether the state's regional universities, as well as the state's five historically black universities, would gain or lose under a revamped system; whether a new system would prevent each campus from running to the legislature independently for funds; and whether election of the Board of Governors by the legislature was the best way to achieve a representative, independent board.

Many of the issues discussed during that time still resonate in public debate over higher education today, including the following:

(1) How to handle booming enrollment — In the 1960s and the 1970s, the state faced a record surge in enrollment from the Baby Boom, which led state legislators to add 10 campuses to the existing six-university system. Similarly, an estimated 48,000 additional students — the children and grandchildren of the Baby Boomers — are expected by 2008. In 2000, the legislature and the public approved a \$3.1 billion bond issue for a multi-year building plan for public universities and community colleges.

(2) How to achieve equity in funding among the 16 campuses — The University system includes schools as large as N.C. State University with 30,148 students and as small as the N.C. School for the Arts in Winston-Salem with 829 students. Funding equity is a long-term issue for the system, and it means

“a long-range plan for a coordinated system of higher education.” Next, we discuss the University's desire for more control over building projects, purchasing and contracting, personnel, and budgeting. And, we look at how the University is treated differently from other state agencies in these areas and its successes and failures with this flexibility.

A major section of the report follows on the allocation of powers between the statewide Board of Governors and the 16 local campus boards of trustees. North Carolina is one of only two states where the powers of campus boards of trustees are not spelled out in state statutes but left to the discretion of the statewide board.

In this section, we examine the delegations of power in *The Code* by the Board of Governors to the campus boards of trustees and the roles of these local boards.

We focus particularly on five areas of contention in this allocation of powers — questions of equity in funding for the 16 campuses, lobbying of the legislature by the campuses in concert with or in conflict with the Board of Governors, intercollegiate athletics, admissions standards and goals, and special treatment for research universities.

Finally, the Center makes 11 recommendations designed to improve governance of public universities in North Carolina. These recommendations are based di-

different things to different schools. For fast-growing schools such as UNC-Charlotte, it may mean funds to meet enrollment demands, whereas for historically black schools such as N.C. A&T State University in Greensboro, it may mean catch-up funds for decades of racial segregation.

(3) How to improve access to higher education for minorities, especially at the state's five historically black universities and the University of North Carolina at Pembroke, a school with roots in providing higher education for Native Americans — One of the first issues faced by the original UNC Board of Governors was racial desegregation. In 1973, a federal district court ordered the system to increase enrollment of black students, upgrade academic programs, and increase funding at the historically black universities. Recent state budgets contained \$20 million to meet repair and renovation needs at the five historically black universities, as well as UNC-Pembroke. The state budget also has included additional funding for a Biomedical/Biotechnology Research Institute at N.C. Central University in Durham.

(4) How to prevent each campus from running independently to the legislature for funds or changes in law — Part of the impetus for the 1971 legislation that restructured university governance was that individual campuses were adding programs and making budget requests without regard to what the other colleges and universities were doing, said the late Kenneth Royall, Jr., a powerful legislator for decades.

Royall, who was head of the House Appropriations Committee in 1971, told the Center before he died, "Listening to all 16 institutions and their requests — well, you wanted to be fair. But money was limited. What it came down to back then was who had the best lobbyist." In 2005, the University system was tested when supporters of UNC-Chapel Hill and N.C. State University independently lobbied the General Assembly for tuition increases without prior approval by the UNC Board of Governors.

(5) How to meet the state Constitution's mandate for affordable university education while maintaining academic excellence — A key piece of the University's heritage is the provision of the state Constitution which reads, "The General Assembly shall provide that the benefits of the University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense." Thus, North Carolina's average tuition levels historically are among the lowest in the nation. However, tuition for N.C. residents increased 71 percent over a five-year period from 1999–2004.

It's been said that our only real crystal ball is a rearview mirror, and the 1971 legislation that restructured the University system tells us a lot about higher education's future. Knowing our University system's history can help the university, policy-makers, and the citizens of North Carolina understand its past, govern in the present, and better prepare for the future.

rectly on our research findings, which are summarized in Chapter Six in long form and in this Executive Summary in shorter form. These findings are documented in 42 tables, including rankings for all 50 states on state support for higher education, tuition rates, and college-going rates. The findings also document all minority, female, and minority political party members of the Board of Governors in comparison with their percentages in the population; a 34-year history of tuition increases; records of contributions to political candidates by University-related political action committees; minority enrollment by UNC institution; Carnegie Classifications for all 16 campuses; six-year graduation rates for

football players on UNC campuses; a history of college rankings for N.C. public institutions by *U.S. News and World Report*; a history of public votes on higher education bond referenda; a 20-year record of debt service attributable to state borrowing for University building projects; state appropriations to 37 private colleges and universities; and four measures of college-going rates. And, as part of the Center's efforts to give a fair and balanced analysis of various policy options, the report includes tables showing the advantages and disadvantages of legislative elections of higher education boards vs. gubernatorial appointment; the allocation of powers

—continued

The Center's Second Report: *Governance and Coordination of Public Higher Education in All 50 States*

In this report published in 2000, the Center identified three basic state higher education governance structures throughout the country. These structures are:

1. Consolidated Governing Board Systems (24 states, including North Carolina)

In these states, all public institutional governance is centralized into either one or two governing boards. There is either one statewide board whose primary duty is to *govern* all public postsecondary institutions in the state, or there are two multi-campus boards that divide the governance of the state's public institutions between the two of them. Statewide *coordination* of higher education policy and planning may be the responsibility of this same consolidated governing board by statute or convention, or it may be the duty of a separate board or agency.

2. Coordinating Board Systems: (a) Regulatory and (b) Advisory (24 states)

In these states, central coordinating boards serve as liaisons between state government and the governing boards of individual institutions. These central coordinating boards have no governance authority. Instead, governance responsibilities are in the hands of institutional boards, three or more multi-campus boards, or a combination of institutional and multi-campus boards.

a. As part of their responsibility to coordinate higher education efforts throughout the state, *regulatory coordinating boards* generally have the authority to approve and eliminate academic programs at public institutions and to exercise some degree of regulatory power over the budgetary process. For instance, some regulatory boards present consolidated budgets, some may reject proposed budgets from individual campuses, and some review and submit individual campus budgets to the governor and the legislature (21 states).

b. *Advisory coordinating boards* have no real power *per se*, though their recommendations may be influential. They have the authority to review proposals to create new academic programs and to review existing programs, but their role is limited to providing advice to the state legislature, governor, or other higher education boards. The same holds true for their ability to influence university budgets (3 states).

3. Planning Agency Systems (2 states)

In these states, there is no statewide board charged with higher education coordination or governance. There is only a planning agency that facilitates communication among institutions and education sectors and performs a voluntary planning function. Governance is the responsibility of institutional boards on each campus or of multi-campus boards.

Where North Carolina Leads and Lags in Higher Education

The Center identified several areas where North Carolina leads in public higher education:

- North Carolina's public higher education system of 16 public universities and 59 community colleges has the 9th largest student enrollment among the 50 states.
- North Carolina ranks 6th among the 50 states in total state funding for public universities and community colleges.
- The average salary for full-time faculty at North Carolina's four-year public universities is among the highest (now 11th) in the nation.
- North Carolina has the largest number of *public*, four-year, historically black colleges and universities, with five such institutions.
- In comparing the total number of public and private colleges, universities, community colleges, and technical institutes, North Carolina has the 10th highest percentage (60.7%) of *public* institutions of any state in the country.

In some areas, North Carolina lags behind other states, as follows:

- According to the 2000 National Education Goals Panel Report, North Carolina ranked 34th in college-going rates at 54%, as measured by the number of high school graduates going to college over a 12-month period. Massachusetts led at 73%, Nevada was lowest at 40%, and the national average was 57% (see page 114 for the latest data on college-going rates).

- North Carolina is one of only seven states that have no central board or agency charged with planning or coordinating higher education policy for *both* the two-year and four-year public institutions. The University system is governed by the UNC Board of Governors, the community college system is governed by the State Board of Community Colleges, and the 36 private colleges and universities are independently governed by campus-level boards of trustees.

Unique Features of North Carolina's System of Governance of Higher Education

- North Carolina had the first public university to open its doors to students.
- North Carolina has a unique provision in its state Constitution mandating that "The General Assembly shall provide that the benefits of the University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense." This explains why the average tuition for state residents is consistently among the lowest in the 50 states.
- The UNC Board of Governors is one of only two central, state-level governing boards whose members are elected by the legislature (New York is the other state). Members of 43 higher education boards in other states are appointed by governors.
- And, North Carolina is one of only two states where the amount of power given to campus boards of trustees is not spelled out in state statutes but left to the sole discretion of the UNC Board of Governors (Utah is the other state).

National Trends in Higher Education Governance

The Center also highlighted four key *national* trends in higher education governance. First, between 1950

and 1970, 47 states established either coordinating or governing boards for public higher education, but now another wave of changes in governance has begun. Second, 11 states have implemented new accountability measures for public colleges and universities, and governors and legislators are linking additional money for higher education to important state goals. By 2005, 46 states required reporting on higher education's performance, 21 states used performance as one factor in budgeting, and 15 tied funding directly to performance of public universities on outcome measures.

The third trend is a projected 19 percent increase nationally in college enrollment, with 48,000 more students expected in North Carolina's public universities by 2008. Fourth, since 1996, most state legislatures — including North Carolina's — have been appropriating funds to colleges and universities at a rate significantly ahead of inflation rates.

However, this trend was tempered by the predictions of the late Harold A. Hovey, who served as president of State Policy Research and as the top budget officer in both Illinois and Ohio. Hovey estimated that 39 states would have deficits by 2006. Hovey described higher education as "a balance wheel in state finance," which means it receives higher-than-average appropriations when times are good (as in the late 1990s) and lower-than-average appropriations when times are bad (as in the late 1980s and early 1990s). Consequently, the outlook for higher education was not very good, said Hovey.

The Center's 236-page study contained a comprehensive review of all 50 states' statutes on governance and coordination of higher education. It included 36 tables comparing all 50 states in funding for higher education, student enrollment, student tuition and fees, faculty salaries, and numbers of public and private universities and community colleges, among other factors. It also included a description of the boards and agencies governing or coordinating higher education in each state and the advantages and disadvantages of each system. Finally, it compared the power of each of these boards in many areas, including the power to set budgets for public universities, the power to establish or terminate academic programs, and the power to make higher education policy.

between the statewide board and local campus boards of trustees; public universities' search for private money; special exceptions for universities from policies applicable to other state agencies; and whether to pull research universities out of the current governance system in some fashion.

The Center especially wants to thank the UNC President's office and staff, as well as the 16 campuses, for their cooperation and help with this project. They are dedicated public servants who want no less than the best for North Carolina's public universities. We especially appreciate their careful review of our draft report and their helpful comments and suggestions that improved the accuracy, fairness, balance, and comprehensiveness of this report. Though there may be honest policy differences among the University, the legislature, the campuses, other policymakers, and the Center, these differences do not lessen our admiration for the dedication of all these public servants.

Recommendations:

Selection and Composition of the Board of Governors

- 1. The North Carolina General Assembly should enact legislation to change the process of selecting the UNC Board of Governors from having the legislature elect all members of the Board of Governors to a system where the Governor would appoint 24 of the 32 members with confirmation by the state Senate and House of Representatives. Four of the eight remaining appointments should be made by the state Senate and four by the House. These changes should be phased in to avoid loss of momentum and continuity on the Board.**

To recap our findings and the reasons for this recommendation from Chapter Two:

- In 46 states, governors appoint all or some members of statewide public higher education boards, with 31 of these states requiring state senate approval of the gubernatorial appointments. The UNC Board of Governors is one of only two central, state-level governing boards to which all voting members are elected by the legislature.
- The legislature is not doing its job in generating a large pool of applicants for positions on the Board, and the legislature is not doing its job in screening applicants to select the best Board members because it pays little attention to asking applicants about their qualifications for the Board, their demonstrated interest in higher education, their views on higher education policy questions, or their ideas for improving

the system. Even if the legislative nominating committees ask for such information, they do not discuss it or seem to use it in their decisionmaking. One recent candidate for the Board of Governors told the Center that of the more than 70 legislators the candidate spoke with in seeking election to a Board seat, only one lawmaker asked *any* questions about the candidate's qualifications, interest in higher education, ideas for improving the university system, or positions on higher education issues.

- The selection process has become highly politicized. UNC Board members and their families gave a total of \$425,720 to state political campaigns between 1995 and 2000, giving the appearance that they can buy a seat on the Board. And, at least five of the 32 members of the Board of Governors are or have been lobbyists and thus may have both the University and corporate or other clients' interests pending before legislature at the same time. The Political Action Committees of current or former employers of members of the Board of Governors gave an additional \$2 million to legislative and state-level campaigns in the same period. According to Bob Hall of Democracy South (a nonprofit organization that examines the impact of money on North Carolina political races), only the N.C. Board of Transportation has a higher concentration of big political donors.
- The process of election of the Board by the legislature is increasingly partisan in what is now a two-party state. Historically, the minority party has been granted four seats (or 12.5 percent) on the 32-member board, but the Republican Party now holds 78 seats, or 46 percent, of the 170-member legislature. Of the state's registered voters, 34.7 percent are Republicans, as of January 2006. This will increasingly result in higher education policy issues being turned into partisan disputes.
- Advocacy for particular campuses is increasingly coming back into the process of election of Board members by the legislature.
- Governors are more likely than the legislature to appoint a diverse slate of candidates that more accurately reflect the state's demographic make-up by race and ethnicity, gender, geographic region, and political party affiliation.
- Consistency in higher education policy is desirable, and it is counter-productive to consistent university governance to have the Governor making appointments to local campus boards but not to the statewide Board of Governors.

As North Carolina has become a two-party state, partisan politics also has become a more noticeable factor in the legislature's choice of candidates for the UNC Board. Former Rep. Gordon Allen (D-Person) notes that when the Board of Governors system was created in

1972, the Democratic Party was firmly in power in North Carolina, and state lawmakers simply did not anticipate that partisanship would become a factor in elections for the UNC Board. Allen says, "There was no pressure by the party then [to support party-backed candidates for the Board of Governors]. And there was a fair amount of lobbying of members by members" of the General Assembly. Allen says, "I can't imagine any process that has broken down as much as this one has. It's become a purely political matter." Allen was one of only three legislators serving in the General Assembly in 2004 who also was a legislator when the UNC Board of Governors and the 16-campus university system was created in 1971.

Former House Speaker Harold Brubaker (R-Randolph), who was the Co-Chair of the 2003 House Select Committee on Board of Governors Nominating, says, "As a result, you lose good people who are intimidated by the process and do not like coming into an environment in which they are unfamiliar."

Senator Tony Rand (D-Cumberland), Chairman of the Senate Rules Committee since 1999, Majority Leader, and a former member of the Senate Education Appropriations Committee, says politicking associated with the current selection process is a key factor discouraging good candidates from seeking service on the Board of Governors. "It's an unseemly process," he says. "The people who you hope are most influential and aware and concerned about North Carolina and its institutions are not going to come up here beseeching us for entry into the kingdom of heaven."

He adds, "It would be a more stately process if the Governor was doing it. The Governor can prevail upon good people to run for seats. They wouldn't have to come up here and go through the wrenching process we have now." Rand says that having the Governor select UNC Board members also would give the system clearer lines of accountability because a single person — the Governor — would have to answer for his or her choices of University Board members, as opposed to the way legislators can now deflect criticisms by citing overall election results.

In their book on university trustees, Clark Kerr and Marian Gade recommend that public boards "be of mixed origin" — with more than one source of appointment as with *ex officio* members (except individuals who also control the budget), and as with some elected members supplemented by appointed or *ex officio* members or both. The Center recommends that North Carolina implement a mixed approach by giving the Governor power to appoint 24 members of the 32-member UNC Board, with confirmation by the Senate and House. The current selection process for the local campus boards of trustees already allows the Governor to appoint members of *local* boards. Such a change would make the process of seeking Board membership less onerous to qualified persons, many of whom are wary of having to campaign for seats for weeks in the halls of the Gen-

eral Assembly. And, coupled with Recommendation #2 below, this recommendation will bring more diversity to the Board of Governors, since the Governor can more easily present a balanced slate of women, racial minorities, and members of the minority political party.

- 2. The Governor and/or the General Assembly should make their appointments more accurately reflect the proportions of women and racial and ethnic minorities in the state's population, the proportions of registered voters in each political party and those who are not affiliated with a political party, and the proportion of the population residing in the western, Piedmont, and eastern regions of the state. North Carolina's statute should be amended to read like Kentucky's, which says the Governor must "assure broad geographical and political representation; assure equal representation of the two sexes, inasmuch as possible; assure no less than proportional representation of the two leading political parties of the [state] based on the state's voter registration; and assure that appointments reflect the minority racial composition of the [state]."**

As a result of a lawsuit challenging the law setting aside all three categories of *guaranteed* seats, as discussed in Chapter Three, the 2001 General Assembly repealed the language in the statute that required four designated seats for women, four for racial minorities, and four for the minority political party. The statute, as amended, now reads, "In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the

(a) *[Members of the Board of Governors] shall be elected by the Senate and House of Representatives. Sixteen members shall be elected at the regular legislative session in 1993 and every two years thereafter. The Senate and the House of Representative shall each elect one-half of the persons necessary to fill the vacancies on the Board of Governors.*

N.C.G.S. §116-6 (EXCERPTED)

**Advantages and Disadvantages of the
Current System of Election of Members of the
UNC Board of Governors by the N.C. General Assembly and
of an Alternative System of Appointments by the Governor**

Advantages of Election of the UNC Board by the Legislature

1. Election of Board members builds bridges and forces conversation between members of the N.C. General Assembly and UNC Board of Governors.
2. The process of election by the legislature fits within the state's tradition of a legislature that is heavily involved in appointments and elections to public boards in the executive branch.
3. Having to lobby legislators for seats makes Board members more responsive to elected representatives rather than to the governor or a particular university campus.
4. Supporters of the current election process believe it has generally produced effective and dedicated Board members.
5. Historically, the process required at least minimal representation (4 seats each) on the Board for women, racial minorities, and members of the minority political party. [This requirement was repealed in 2001, however, in favor of a provision that says members shall be selected based in part upon their "economic, geographic, political, racial, gender, and ethnic diversity."]

Disadvantages of Election of the Board by the Legislature

1. Legislators who are alumni of particular UNC campuses tend to support candidates who will look after the campuses of their choice, rather than candidates who will have the best interests of the 16-campus system at heart. Also, legislative leaders historically have directed extra funds to campuses in their districts.
2. Election of the Board by the General Assembly may violate the state constitutional requirement of separation of powers under the state Supreme Court's decision in *Wallace v. Bone*, a seminal case involving legislative appointments to policymaking boards in the executive branch.
3. The process is outmoded and has become highly subject to partisan politics and does not fit with North Carolina's current status as a two-party state. The process is too political, with lobbyists on the Board who represent their corporate clients as well as the University, and Board members who contributed a total of \$425,720 to state political campaigns between 1995 and 2000. This gives the appearance that it is possible to "buy" seats on the Board.
4. The process may discourage good candidates from running for seats on the Board because they think the process of lobbying legislators is too arduous and demeaning.

Legislators do not have adequate guidelines for choosing the most qualified candidates for the Board and do not usually question candidates about their qualifications or views on higher education policy issues.
5. Over 34 years, the make-up of the Board has rarely reflected the percentages of North Carolina's population of women, minorities, and members of the minority political party. And since 2001, the statute no longer even ensures minimal representation of women, minorities, and members of the minority political party.
6. Only one other state in the nation (New York) selects its central higher education governing board members this way. And, New York's Democratic majority legislature recently appointed all Democrats to its board, a further illustration that this structure is flawed.

**Advantages and Disadvantages of the
Current System of Election of Members of the
UNC Board of Governors by the N.C. General Assembly and
of an Alternative System of Appointments by the Governor, continued**

**Advantages of Appointment of the Members of a
Higher Education Board by the Governor**

1. The Governor is elected by all state citizens, and has more of a *statewide* perspective; legislators have a *district* perspective and usually have allegiance to a *particular campus*. Legislative leaders also historically direct extra funds to campuses in their districts. And, having one person accountable for appointments establishes clearer lines of accountability.
2. 46 states use a system of appointment by the governor. Institutionally, the N.C. Governor is the seventh weakest in the U.S., according to studies by UNC-CH Professor Thad Beyle. If the legislature is worried about giving the governor too much power, they can temper the governor's appointment power by requiring that the board appointments be subject to confirmation by the Senate or by both the Senate and the House. The N.C. Governor has little say in higher education policy.
3. The legislature's record on appointment of African Americans, women, and Republicans is not good, and governors would be more likely to appoint numbers of women, minorities, and Republicans in proportion to state's population. And, having one person who is elected statewide responsible for appointments can help ensure representation from all geographic areas of the state.
4. The Governor is more likely to be able to recruit good candidates for the Board than is the case under the current system, where candidates choose not to run because they do not want to spend weeks in the halls of the General Assembly lobbying legislators, and they do not like the expectation that candidates should make campaign contributions to legislators.
5. Other states with Governors who appoint higher education boards say that their boards are more effective because they are less often gridlocked by partisan politics in the legislature.
6. It is counterproductive to consistency in higher education policy and governance to have the Governor making appointments to local campus boards of trustees but not to the statewide Board of Governors.

Disadvantages of Appointment by Governor

1. Legislators are more attentive to regional needs and the missions of regional universities.
2. This could give the Governor too much power.
3. Past Governors do not have exemplary records in appointing women and African Americans to boards, commissions and councils in the executive branch — especially to the most important boards (e.g., the Board of Transportation)
4. The process might be just as political — appointees are likely to be of the same political party as the Governor and are likely to be contributors to the Governor's campaign instead of to legislators' campaigns, and many qualified people may not typically contribute to political campaigns.
5. If the Governor had the power to make appointments to the Board of Governors, the appointments could become a tool of political patronage. Outgoing governors could make parting-shot appointments, and rookie governors could attempt to clean house.
6. The Governor can somewhat influence higher education policy through the budget s/he submits and through appointments to local campus boards of trustees.

educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity." While this change abolishes designated seats and recognizes the value of a diverse Board, it does not give the legislature a goal and does not deal with the fact that the legislature has not done a good job historically of appointing more than just the minimum number of women, minorities, and Republicans previously required by statute.

The demographic composition of the UNC Board of Governors has not reflected the diversity of the population of North Carolina. From 1972 through 2004, the number of females actually serving on the Board of Governors has ranged from the statutory minimum of four of 32 (12.5 percent) to a high of nine (28 percent). Women have averaged 19 percent (199 of 1,024) of the Board's voting membership over that 32-year period. During the same time, the number of Board members of a minority race has ranged from five of 32 (16 percent) to nine (28 percent) Board members, and minorities have averaged 20 percent (207 of 1,024) of the Board's voting membership over that time. By contrast, the 2000 Census showed the percentage of women in the state's population was 51 percent while the proportions of African-Americans and other minorities totaled 28.9

percent. Thus, in the 32 years of electing members of the Board of Governors from 1972 through 2004, the N.C. General Assembly has never elected women in proportion to their numbers in the population (51 percent), and the highest number ever was 9 women or 28 percent. And, the legislature has elected proportional numbers of minorities (28.9 percent of the state's population) only twice in 32 years — in 1995 and 2001, when it elected nine (28 percent) minority Board members. As far as the Center can determine, no person of Hispanic ethnicity or of Asian ancestry has ever served on the UNC Board of Governors.

The UNC Board of Governors was cited in a 1999 study by the Women's Forum of North Carolina as one of the most powerful state boards on which women continue to be under-represented. As former Z. Smith Reynolds Foundation executive director and former UNC-Chapel Hill trustee Tom Lambeth puts it, "Questions get asked in a group that includes women and minorities that are not asked if they are not on the board. That seems especially important when you are talking about higher education."

It is also important that the University system be understood and supported by members of both major political parties. From 1987 through 2001, state law

Comparison of UNC Board of Governors Membership with State Demographics by Gender, Race, and Ethnicity

	N.C. Population,* 2000 Census	2003-04 Board of Governors Membership	1972-73 - 2003-04 Board of Governors Cumulative Average**
Women	51.0%	8 (25%)	199 of 1,024 (19%)
Men	49.0%	24 (75%)	825 of 1,024 (81%)
Whites	72.1%	25 (78%)	807 of 1,024 (79%)
African Americans	21.6%	7 (22%)	207 of 1,024 (20%)
Hispanics	4.7%	0 (0%)	0 of 1,024 (0%)
Asians	1.4%	0 (0%)	0 of 1,024 (0%)
Native Americans	1.2%	0 (0%)	12 of 1,024 (1%)

* Population percentages do not sum to 100 percent because Hispanic is considered an ethnicity by the U.S. Census Bureau, rather than a race.

** Calculated as percentage of possible seats in each category on an annual basis, coinciding with the Board term of service. For example, women have held seats 199 times of the possible 1,024 times a seat could be held (32 seats times 32 years, with Board years beginning on July 1 of one calendar year and ending on June 30 the following year).

**Comparison of Legislative Composition by Political Party and
2004 Statewide Voter Registration with
UNC Board of Governors Voting¹ Membership**

	Democrats (%)		Republicans (%)		Unaffiliated/Other (%)	
Serving in 2003–04 NC General Assembly (120 House & 50 Senate) ²	88 of 170	(52%)	82 of 170	(48%)	0 of 170	(0%)
Overall Average for 1972–2004 NC General Assembly	121 of 170	(71%)	49 of 170	(29%)	0 of 170	(0%) ³
Voting Members, 2004–05 UNC Board of Governors	23 of 32	(72%)	9 of 32	(28%)	0 of 32	(0%)
Average Number of Voting Members, 1972–2004, on the Board of Governors ⁴	843 of 1,024	(82%)	179 of 1,024	(18%)	8 of 1,024	(1%)
2004 Statewide Voter Registration ⁵	2,406,712	(47.5%)	1,747,276	(34.5%)	917,521	(18.1%)

¹ *Emeritus* and *ex officio* members do not vote and are not included in this table.

² When the N.C. General Assembly conducted the Board of Governors election in 2003, there were 88 Democrats and 82 Republicans. Two members of the legislature changed parties later in the year, changing the partisan composition to 86 Democrats and 84 Republicans.

³ Former Rep. Carolyn Russell (R-Wayne) was elected as an unaffiliated candidate in 1990, but became a Republican.

⁴ Calculated as a percentage of possible seats in each category on an annual basis. For example, Republicans have held 179 seats of the possible 1,024 times a seat could be held (32 seats times 32 years).

⁵ The N.C. State Board of Elections reports 5,071,509 registered voters in North Carolina, as of April 10, 2004.

mandated that at least four of the 32 voting seats be allocated to “members of the political party to which the largest minority of the members of the General Assembly belongs,” thereby guaranteeing that at least 12.5 percent of the Board would represent the predominant minority political party. Over the 34-year period since the Board of Governors was created (with the exception of 1995–1996 when Republicans held 92 of the total 170 seats in the legislature), Republicans have been the minority party in the N.C. General Assembly.

The number of Republicans in the General Assembly has risen from 31 of 170 legislators in 1971, to 34 in 1981, to 53 in 1991, to 73 in 2001, and to 78 in 2005. The Republicans’ high point in the General Assembly was 1995 when the party elected a total of 92 legislators, controlled the 120-member state House, 68–52, and had 24 seats in the 50-member Senate. The Republicans also held a 61–59 majority in the House in 1997–98, a 60–60 tie in 2003, and a 61–59 edge in 2004. According to information compiled by the N.C. State Board

of Elections, the percentage of registered Republicans in the state increased from 22.9 percent in November 1972 to 29.6 percent in November 1988 to 34.7 percent of registered voters in January 2006.

Since 1973, Republicans have held from one to 13 or 3 to 41 percent, of the 32 voting seats on the Board of Governors in any given year. The Republican high points were 1997 and 1998, when the party held 13 or 41 percent, of the voting seats. Overall, since 1972, the percentage of Republicans on the UNC Board of Governors has averaged 17 percent, or 179 of 1,024 possible seats.

Thus, the percentage of members of the UNC Board who are members of the minority party has exceeded 12.5 percent only a few times. *And, the percentage of seats held by the minority party has always been significantly smaller than the minority party’s percentage of registered voters in the state.* If the Board of Governors does not begin to reflect North Carolina’s two-party system, the Board and the University will retain only the

allegiance of Democrats and lose the support of Republicans. As the late Senator Hamilton Horton (R-Forsyth) said in 2005, the Board of Governors is becoming “a partisan political preserve of one party.”

The Center’s recommendation also includes a component to ensure more geographical balance among the Board’s membership. Currently, statutes governing 24 higher education boards in 22 states mandate some form of geographic representation. The percentage of the state’s population that lives in each region is 22 percent in the west, 48 percent in the Piedmont, and 30 percent in the east. The 2003–04 Board of Governors had five members from the west (16 percent), 21 from the Piedmont (66 percent), and six members (19 percent) from eastern North Carolina.

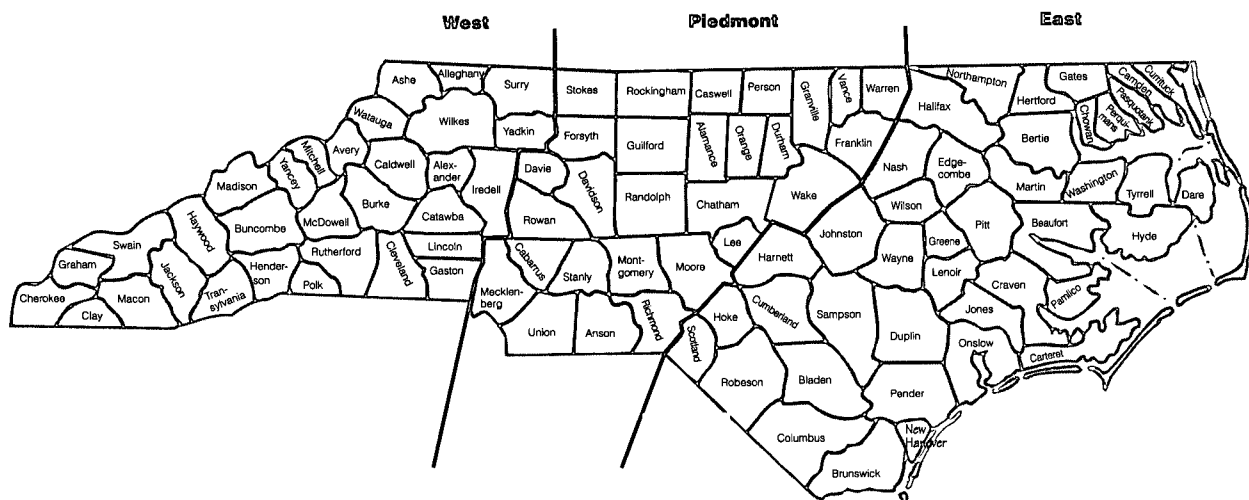
The Center’s research also shows that the statutory goal of having double the number of candidates for seats available on the Board of Governors is not being met under the current process. N.C.G.S. §116-6(c)

states in part that “the slate of candidates shall list at least twice the number of candidates for the total seats open.” However, in 1999, 2001, and 2005, the ballots submitted to the N.C. Senate contained only the number of candidates as there were Board positions to be elected.

The best statutory language on Board composition found by the Center is Kentucky’s, and that is what we recommend for North Carolina. Kentucky’s statute outlines goals for appointments by the Governor to the Kentucky Council on Postsecondary Education. The law expressly directs the Governor to “assure broad geographical and political representation; assure equal representation of the two sexes, inasmuch as possible; assure no less than proportional representation of the two leading political parties of the Commonwealth based on the state’s voter registration; and assure that appointments reflect the minority racial composition of the Commonwealth. . . .”

UNC Board of Governors Voting Membership by Geographic Region, 1997–2004

	Population %	Geographic Ideal Membership	Members of the UNC Board of Governors by Region			
			1997–98*	1999–2000	2001–02	2003–04
West	22%	7	5 (16%)	4 (13%)	2 (6%)	5 (16%)
Piedmont	48%	15	19 (59%)	17 (53%)	21 (66%)	21 (66%)
East	30%	10	7 (22%)	11 (34%)	9 (28%)	6 (19%)



* Because there was a vacancy on the Board in 1997–98 and a total of 31 members instead of the full 32, percentages will not add to 100%.

3. The legislature should change the status of the student member of the Board of Governors from non-voting to a voting seat on the Board.

To recap our findings and the reasons for this recommendation from Chapter Three.

- Currently, 30 central higher education boards in 27 states have a statutory requirement for student members, and on 25 of these boards, the student(s) has the right to vote. Thus, North Carolina's Board of Governors is one of only five boards with student members without voting privileges.
- It is an inconsistent principle of governance in higher education in North Carolina to grant students a voting seat on the 16 local campus boards of trustees, but not on the statewide Board of Governors.
- Voting rights for the student have been endorsed by the Board of Governors itself and by the boards of trustees of N.C. State University, N.C. Central University, and Winston-Salem State University.
- The N.C. House of Representatives has passed legislation by large margins in three separate legislature sessions that would grant voting rights to the student on the Board of Governors.
- Granting a voting seat to the student representative on the Board of Governors is one way to assure a connection between the Board and its chief customers or consumers — the more than 196,000 students in the 16-campus system. The student representative is invaluable in gauging the effect of various policies on students and in communicating Board of Governors decisions back to the campuses.
- The student representative on the Board plays a key role (a) in developing state policy on such issues as tuition and (b) in advocating for the University system with the public and the legislature, such as in previous student participation in public TV special programs on University finances and costs. Student participation in governance also has been very important in building support for the Board's "strategic directions" and in publicly disseminating information about the rationale behind the Board's decisions. Students have proved they merit voting rights with these responsibilities.

Terms of Board Members

- 4. The N.C. General Assembly should increase the length of terms of University Board of Governors members from four years with a three-term limit to six years with a two-term limit. These changes should be phased in to avoid loss of momentum and continuity on the Board.**

Interviews for this report showed almost unanimous support for a return to longer terms for members of the

Board of Governors. Thirty-nine of the 53 central higher education boards have terms exceeding four years. Nationwide, the most common term length is six years (23 out of the 53 public university boards).

Legislation passed in 1987 reduced terms on the Board from eight years with a two-term limit to four years with a three-term limit. As a result, not only do potential candidates have to campaign for seats more often, but Board leadership is subject to rapid turnover. Former Board of Governors Chairman Benjamin Ruffin, for example, had to stand for re-election to the Board one year after he won the post of Chairman.

Even the late state Senator Kenneth Royall, Jr., the architect of the 1987 legislation that reduced the length of terms on the university Board, was uncertain whether shorter terms ended up serving what he says was the intended purpose of his bill — to open the Board to a wider range of candidates. "We have a lot of able citizens in this state, and I just thought they ought to have an opportunity to serve on the Board," Royall told the Center before his death. "I'm not sure now it's the best way. There's too much politics in it."

Lengthening the terms of Board of Governors members from four years to six years would increase continuity in higher education policy, better accommodate a steep learning curve for Board members, and diminish partisan political influence over Board selection when the Governor's office or General Assembly leadership changes hands. Finally, longer terms would allow Board members to develop a stronger sense of institutional memory, give them more time to become acquainted with the complexities of university governance, and facilitate thinking and planning by Board members over the long term.

Governance of Flagship Universities

- 5. The Board of Governors and the N.C. General Assembly should reject any proposals to give special "flagship status" to certain universities.**

Only three central higher education boards in the United States have the power to designate certain universities as flagship institutions — the Maryland Higher Education Commission, the Oklahoma State Regents for Higher Education, and the Board of Trustees of the University of West Virginia. Among these states, only Maryland *statutorily* confers flagship status upon an institution — the College Park campus of the University of Maryland.

The Center believes it would be counter-productive for the Board of Governors or legislature to designate some of the state's 16 public universities as flagship campuses. Although UNC-Chapel Hill likely would make the flagship list and certainly would be joined by N.C. State University, beyond that, the situation is less clear. Some observers feel that UNC-Greensboro

belongs in any armada of flagships, and other campuses such as East Carolina University, N.C. A & T State University, and UNC-Charlotte would have their advocates for leading status as well.

The likely resentments that would result from a dispute over whether certain universities should be designated as flagship universities could actually damage those institutions seeking such status. UNC-Chapel Hill's political connections in the General Assembly have declined since 1939, when the percentage of state lawmakers whose degrees came from UNC-Chapel Hill was 43 percent. By 1997, that percentage had dropped to 15 percent. The percentage of lawmakers who reported receiving an undergraduate degree from Chapel Hill remained at 15 percent in 1999 and increased slightly to 16.5 percent in 2001 but dipped to 13 percent in 2003. In short, the political landscape has changed, so the desire for flagship status is unlikely to yield the results its advocates want — more money, more flexibility, and more prestige — and would likely trigger a large amount of fighting with other public institutions. Conferring the title of flagship campus on some campuses would give special treatment to selected schools, but it would prevent the state's public university system from achieving equitable funding formulas for all of its institutions and addressing *statewide* needs.

6. The Center recommends that the Board of Governors, Governor, and General Assembly reject any proposal that would (i) take UNC-Chapel Hill and N.C. State out of the system governed by the Board of Governors and have them governed solely by campus boards of trustees or (ii) that would create a separate board governing just the research universities, as the California System does.

To recap our findings and the reasons for this recommendation from Chapter Five:

- Creating a new special governance structure for the research universities or certain flagship institutions would hurt the state's ability to achieve equity within the system and ignore the reason the UNC Board of Governors was created in the first place — to end competition among the 16 campuses where the campus with the most alumni or strongest lobbyist wins.
- A special governance structure for the research universities would hurt the regional universities experiencing rapid growth — such as East Carolina University, UNC-Charlotte, and UNC-Wilmington — and it also would harm the five historically black public universities and UNC-Pembroke, as these institutions would be forced continually to battle the research universities.
- Tuition at the research universities likely would sharply increase, as chancellors of flagship schools would intensify their calls for tuition increases to

fund higher faculty salaries and special funds to support research. Such tuition increases would invite a lawsuit that this violates the N.C. Constitutional mandate that “the benefits of the University . . . as far as practicable, be . . . free of expense.”

- The research universities already get special treatment in that they receive higher levels of funding, higher graduate student tuition assistance, greater tuition increases, and greater flexibility to manage budgets, construction projects, and purchasing than other UNC system campuses.
- The advocates of a separate system of governance for the research universities are operating out of beliefs in four myths — (a) that the 16-campus university system's budget is flat and that it gets a substantially lower share of the state budget from the legislature than it used to; (b) that UNC-Chapel Hill and N.C. State get lesser shares of the University budget than they used to; (c) that UNC-Chapel Hill's and N.C. State's national rankings have dropped; and (d) that faculty salaries are not competitive nationally — all because of the University's governance structure. All are untrue.

The University system's appropriation from the General Fund has increased from \$163 million in 1971–72, when the 16-campus system was created, to more than \$1.87 billion in 2004–05, a 1,050 percent increase. In only three fiscal years since 1969–70 (the recession years of 1975–76, 1991–92, and 2002–03), has the University system's total appropriated budget declined. The universities' share of the state budget was 13 percent in 1965–66 and remained steady at 11.8 percent in 2004–05. The slight decline is not due to lessening support for the University system but to rapidly rising Medicaid budgets due to double-digit increases in health care costs. In addition to the General Fund appropriation, the legislature has appropriated more than \$3.5 billion in funding for capital improvements on the 16 campuses from 1995 through 2004. The legislature and voters also approved a \$3.1 billion bond issue for higher education (of which \$2.5 billion was for the universities) in 2000. And, for the next 10 years (2006–07 through 2015–16), the state's debt service payments attributable to university bonds will exceed 30 percent of the total state tax-supported debt service.

Since 1974, North Carolina has ranked among the top 10 states for total spending on higher education. The state has ranked sixth every year since 1996 on this measure. Since these statistics have been compiled consistently, beginning in 1961, North Carolina has ranked as high as fifth, from FY (fiscal year) 1993 through 1995, and as low as fifteenth in FY 1961, 1962, and 1964.

Data provided to the N.C. Center for Public Policy Research by the Association of State Higher Education Executive Officers (SHEEO) also show that legislative support for public higher education has flourished un-

der the Board of Governors. According to the SHEEO figures (which compare higher education spending across the nation and take population and the size of a state's tax base into account), North Carolina has exceeded the national average of per pupil appropriations for higher education since 1977–78. In 1972–73, just after the Board of Governors was established in 1971–72, North Carolina spent 1 percent less per pupil than the national average. Since then, the state appropriation has exceeded the national per pupil average by as much as 27 percent (in 1997–98) and has not fallen below 11 percent above the national average (in 1991–92) since 1984. The most recent measure available in 2001–2002 put North Carolina at 12 percent above the national average, or tenth in the nation in per-pupil appropriations as a percentage of tax revenue.

In summary, since the creation of the Board of Governors in 1971–72, North Carolina has managed to increase its absolute ranking among the 50 states in total higher education appropriations from tenth in 1971–72 to sixth in 2005–06 and to increase the relative per-pupil appropriation from 1 percent below the national average to a level consistently above average.

UNC-Chapel Hill and N.C. State also have fared well when competing for state dollars, especially considering they are educating an 8.8 percentage point smaller share of UNC system students now than in 1972–73. In almost half (14 of 31, or 45 percent) of recent state budget years (1972–73 to 2002–03), the percentage increase in state appropriations for operation of general academic affairs at both UNC-CH and NCSU exceeded the annual percentage increase in General Fund appropriations. Beating the average annual increase 45 percent of the time is even more remarkable considering that these two campuses now enroll a lower percentage of N.C. public university students than prior to consolidation of the 16 campuses. In 1972–73, the two major research campuses combined accounted for 37.5 percent of the public, four-year higher education enrollment and received 30.4 percent of state appropriations for public universities that year. By 2002–03, the two campuses combined enrolled 31.5 percent of all UNC system students and received 25.7 percent of state appropriations to the UNC system for general academic affairs. UNC-Chapel Hill and N.C. State also received more than 39 percent of the \$2.5 billion in bond funds approved by the voters for public universities in 2000.

UNC-Chapel Hill and N.C. State continue to rank among the top public universities in the country. *U.S. News and World Report's* rankings for 2003, 2004, and 2005 ranked UNC-Chapel Hill as the nation's fifth best public university each year, and 29th best overall each year among both public and private universities in 2003 and 2004 and 27th overall in 2005. N.C. State ranked 39th in 2003 and 2004 and 34th in 2005 among public universities, and it ranked 84th among both public and private universities in 2003, 86th in 2004, and 78th in 2005. Since the magazine frequently changes its meth-

odology, *U.S. News* discourages comparing its rankings over time, but, in the broadest terms, the two schools' relative positions in the rankings have changed little over the years. In January 2006, *Kiplinger's Personal Finance* magazine ranked UNC-Chapel Hill number one in its list of "100 Best Values in Public Colleges." UNC-CH has held the top position since the magazine started its rankings in 1998. Other North Carolina public universities on Kiplinger's list were N.C. State University at 28th, UNC-Wilmington at 32nd, Appalachian State University at 33rd, and UNC-Asheville at 50th. And, in July 2000, UNC-CH was ranked as one of the top public research universities in the nation in a study conducted by the Lombardi Program on Measuring University Performance at the University of Florida, a research project that groups top universities without numerically ranking them.

Using nationally comparable statistics, average salaries for full-time faculty at North Carolina's four-year public universities were \$76,070 in 2003–04, ranking 11th in the nation. In summary, North Carolina ranks 6th among the 50 states in total state funding for higher education (includes community colleges in all states) with total appropriations of more than \$2 billion a year in a \$17.2 billion state budget, despite being a relatively poor state with an average per capita personal income of \$29,303 ranking 37th in the nation, and a poverty rate of 14.8 percent ranking 11th in the nation.

The Center discerns the outlines of at least three major governance proposals being floated as follows: (1) give the chancellors and boards of trustees of the flagship schools added flexibility over budgets, personnel, and academic programs; (2) pull the flagship schools (UNC-CH and N.C. State probably) out of the 16-campus system and let them be governed solely by two separate local campus boards of trustees, including allowing them to go independently to the legislature; or (3) pull the flagship campuses out of the 16-campus system and have them governed by a separate board governing only these two research institutions. The last option is modeled after California's three-tier system where that state's nine extensive research institutions are governed by the Board of Regents of the 10-campus University of California, while 23 other four-year colleges and universities are governed by the Board of Trustees of the California State University, and all 109 community colleges are governed by the Board of Governors of the California Community Colleges. It should be noted that these proposals are not favored by university leaders in UNC-General Administration or by chancellors and trustees on most campuses.

California's tiered education governance system may be more appropriate for that state, with its 33 four-year public universities and 109 two-year institutions, but the differences in demographics between the two states suggest that such a system would not work better in North Carolina than our current system. California

—continued on page xxxii

**North Carolina State Funds for
Higher Education Operating Expenses, 1960–2006**

Year	Amount (Thousands \$)	N.C Ranking Among the 50 States
1960–61	\$29,933	15
1961–62	\$35,678	15
1962–63	\$36,532	14
1963–64	\$46,768	15
1964–65	\$51,431	14
1965–66	\$76,323	12
1966–67	\$81,194	13
1967–68	\$106,550	12
1968–69	\$114,709	12
1969–70	\$175,931	10
1970–71	\$175,931	11
1971–72	\$223,486	10
1972–73	\$223,486	11
1973–74	\$287,115	10
1974–75	\$337,044	9
1975–76	\$368,754	9
1976–77	\$407,977	9
1977–78	\$460,932	9
1978–79	\$521,863	9
1979–80	\$580,189	9
1980–81	\$660,645	9
1981–82	\$736,882	9
1982–83	\$793,433	9
1983–84	\$864,658	9
1984–85	\$960,343	9
1985–86	\$1,078,822	8
1986–87	\$1,172,120	8
1987–88	\$1,284,076	7
1988–89	\$1,329,606	7
1989–90	\$1,458,516	6
1990–91	\$1,484,279	7
1991–92	\$1,445,790	7
1992–93	\$1,541,926	5
1993–94	\$1,630,179	5
1994–95	\$1,723,312	5
1995–96	\$1,758,713	6
1996–97	\$1,852,013	6
1997–98	\$2,007,092	6
1998–99	\$2,171,339	6
1999–00	\$2,270,323	6
2000–01	\$2,398,489	6
2001–02	\$2,442,690	6
2002–03	\$2,449,659	6
2003–04	\$2,474,773	6
2004–05	\$2,665,876	6
2005–06	\$2,925,046	6

Source: James C. Palmer, *Grapevine*, Illinois State University, Bloomington, Illinois, 2005. Available online at <http://coe.ilstu.edu/grapevine>. *Grapevine* reports annually on total state effort for higher education, including tax appropriations for universities, colleges, community colleges, and state higher education agencies. Annual *Grapevine* reports have been published since fiscal year 1961. Each of these reports includes a national overview of state tax appropriations to higher education, as well as detailed tables for each of the 50 states. Wherever possible, the N.C. Center for Public Policy Research has used *Grapevine's* revised and updated figures, rather than relying on preliminary reports.

**Comparison of State Funds Spent Per-Student in
North Carolina with National Average
Per-Student Appropriations, 1972–2002**

Year	Relative Tax Capacity (\$ per capita)	Actual Tax Revenues (\$ per capita)	N.C. Appropriations for Higher Education			
			Educational Appropriation (as % of Tax Revenue)	(% of Tax) Index to National Average	Educational Appropriation (per FTE* student)	(Per FTE) Index to National Average
1972–73	453	371	7.7	114	1,304	99
1977–78	638	558	10.0	124	1,986	101
1979–80	708	644	10.6	128	2,400	104
1980–81	753	730	10.5	127	2,584	106
1981–82	818	780	10.9	132	2,805	107
1982–83	905	848	10.6	136	2,926	108
1983–84	1,021	896	10.5	136	2,945	103
1984–85	1,129	1,009	12.0	154	3,952	119
1985–86	1,213	1,125	12.1	156	4,336	120
1986–87	1,312	1,201	12.1	156	4,648	122
1987–88	1,461	1,365	11.3	156	4,965	125
1988–89	1,607	1,496	10.7	150	5,082	125
1989–90	1,717	1,574	10.7	148	5,153	121
1990–91	1,824	1,669	10.4	149	5,139	119
1991–92	1,929	1,673	9.8	147	4,677	111
1992–93	2,029	1,812	9.9	156	5,100	122
1993–94	2,137	1,977	9.5	154	5,432	124
1994–95	2,244	2,110	9.3	150	5,796	124
1995–96	2,358	2,210	8.8	147	5,865	122
1996–97	2,490	2,251	9.2	150	6,356	125
1997–98	2,551	2,389	9.3	149	6,851	127
1998–99	2,610	2,471	9.2	146	6,905	121
1999–00	2,743	2,549	9.2	144	7,124	118
2000–01	2,970	2,653	9.2	145	7,351	117
2001–02	3,100	2,754	8.9	144	6,986	112

* FTE = Full Time Equivalent Student.

Note: "Index to National Average" shows how North Carolina's percentage of state funds spent on higher education compares to the average proportion of such expenditures in all 50 states. For example, if North Carolina's index figure is 112, that means the portion of state funds spent in this state on higher education relative to the size of the entire state budget is 12 percent above the average percentage of funds designated for higher education in all 50 states' budgets. Conversely, if the state's index figure is 99, then North Carolina spends 1 percent less of its total budget for the designated purpose than the average percentage spent by all states from their respective budgets for the same purpose.

Source: State Higher Education Executive Officers, *State Higher Education Finance Survey*, September 2003

**North Carolina General Fund
Appropriations for Colleges and Universities, 1969–2005**

Fiscal Year	Amount Appropriated	Colleges & Universities % of General Fund Appropriations	% of General Fund Appropriations, Average by Decade
1969–70	\$130,344,741	14.9%	
1970–71	\$147,326,678	15.0%	
1971–72	\$163,331,175	15.2%	
1972–73	\$179,910,706	15.2%	
1973–74	\$222,838,796	14.7%	
1974–75	\$280,638,400	16.5%	
1975–76	\$270,526,549	15.6%	
1976–77	\$307,123,340	15.6%	
1977–78	\$357,790,592	16.3%	
1978–79	\$394,767,166	16.1%	
1979–80	\$436,949,552	15.9%	15.6%
1980–81	\$515,255,082	16.4%	
1981–82	\$567,573,821	16.7%	
1982–83	\$599,235,054	16.8%	
1983–84	\$653,091,405	17.1%	
1984–85	\$746,998,910	17.3%	
1985–86	\$840,311,094	17.2%	
1986–87	\$909,134,150	17.4%	
1987–88	\$980,746,492	16.9%	
1988–89	\$1,039,510,499	16.5%	
1989–90	\$1,109,917,895	16.1%	16.8%
1990–91	\$1,143,216,957	15.8%	
1991–92	\$1,121,976,740	15.3%	
1992–93	\$1,170,947,533	14.9%	
1993–94	\$1,229,449,670	14.2%	
1994–95	\$1,296,558,991	13.5%	
1995–96	\$1,301,040,079	13.3%	
1996–97	\$1,385,611,961	13.3%	
1997–98	\$1,489,866,397	13.2%	
1998–99	\$1,628,888,154	13.2%	
1999–00	\$1,682,143,914	12.5%	13.9%
2000–01	\$1,778,278,150	12.9%	
2001–02	\$1,802,904,395	12.6%	
2002–03	\$1,768,097,109	12.3%	
2003–04	\$1,792,141,661	12.1%	
2004–05	\$1,878,813,497	11.8%	12.3%
1969–2005 Average			15.0%

Note: Does *not* include appropriations to the N.C. Community Colleges, as contrasted with Table on page xxiv, which does include appropriations to Community Colleges.

Source: N.C. Office of State Budget and Management

**University of North Carolina 2004–05
General Fund Budget and Enrollment**

Campus	Authorized 2004–05 G.F. Budget	Fall 2004 Student Headcount
Appalachian State University	\$ 91,472,679	14,653
East Carolina Univ. — Academic Affairs Only	147,661,619	22,767
Elizabeth City State University	25,858,276	2,470
Fayetteville State University	38,653,124	5,441
NC A&T State University	76,158,016	10,383
North Carolina Central University	53,281,928	7,727
NC School of the Arts	20,545,094	788
NCSU–Academic Affairs Only	284,471,319	29,957
UNC–Asheville	27,124,880	3,574
UNC–Chapel Hill — Academic Affairs Only	205,241,443	26,878
UNC–Charlotte	115,634,704	19,845
UNC–Greensboro	107,638,521	15,329
UNC–Pembroke	38,200,236	5,027
UNC–Wilmington	64,324,585	11,574
Western Carolina University	58,856,062	8,396
Winston-Salem State University	43,350,007	4,805
TOTAL	\$1,398,472,493*	189,614

* Does not include UNC-General Administration or Health Affairs at ECU and UNC-CH.

Source: Fiscal Research Division, N.C. General Assembly

**The University of North Carolina — Funding for Capital Improvements
from the N.C. General Assembly**

Institutional Appropriations	1995	1996	1997	1998	1999	2000	2000 Bonds*	2001**	2002	2003	2003		2004	2004 COPS	1995-2004
											COPS***	COPS***			
ASU	\$13,488,000	\$13,838,400	\$8,460,100	\$9,223,300	\$3,666,600	\$2,406,600	\$87,406,200	-	-	\$246,200	\$7,663,400	\$1,497,400	-	-	\$147,896,200
ECU	\$7,526,700	\$10,391,800	\$16,591,900	\$10,477,700	\$5,874,800	\$3,979,100	\$190,609,500	-	-	\$387,500	\$12,062,500	\$2,391,700	\$60,000,000	\$60,000,000	\$320,293,200
ECSU	\$1,190,100	\$3,481,400	\$8,072,300	\$2,158,500	\$4,242,600	\$1,087,200	\$46,296,800	-	-	\$106,400	\$3,313,200	\$619,500	\$28,000,000	\$28,000,000	\$98,568,000
FSU	\$4,881,000	\$1,290,900	\$1,444,500	\$2,209,900	\$3,847,600	\$1,105,000	\$46,021,400	-	-	\$102,700	\$3,197,800	\$604,200	\$10,000,000	\$10,000,000	\$74,705,000
NCA&T	\$3,596,500	\$5,250,900	\$7,600,800	\$7,293,200	\$9,475,105	\$2,335,800	\$161,800,091	-	-	\$247,900	\$7,716,400	\$3,482,500	\$5,000,000	\$5,000,000	\$213,799,196
NCCU	\$7,724,700	\$12,011,000	\$17,307,600	\$4,042,600	\$7,466,295	\$1,798,600	\$121,246,203	-	-	\$181,500	\$12,154,205	\$9,984,642	-	-	\$193,917,345
NCSA	\$1,090,100	\$3,856,900	\$3,234,000	\$2,309,900	\$1,514,600	\$968,600	\$42,547,500	-	-	\$95,900	\$2,985,900	\$564,400	\$5,000,000	\$5,000,000	\$64,167,800
NCSU	\$19,327,500	\$19,157,300	\$30,427,600	\$37,938,600	\$11,233,000	\$7,867,900	\$468,256,655	-	-	\$778,000	\$24,214,800	\$4,426,022	-	-	\$623,627,377
UNCA	\$1,590,100	\$1,290,900	\$2,747,300	\$2,709,900	\$1,951,000	\$1,244,200	\$50,464,200	-	-	\$119,200	\$3,710,200	\$742,100	\$35,000,000	\$35,000,000	\$101,569,100
UNC-CH	\$19,222,800	\$30,149,300	\$37,733,875	\$37,130,700	\$14,149,700	\$9,259,100	\$510,539,075	-	-	\$897,387	\$27,934,500	\$5,165,922	-	-	\$692,182,359
UNCC	\$6,818,100	\$19,424,900	\$5,098,500	\$14,306,500	\$3,012,200	\$1,976,400	\$190,033,501	-	-	\$226,900	\$11,584,500	\$5,408,200	\$35,000,000	\$35,000,000	\$292,889,701
UNCG	\$3,431,000	\$5,237,000	\$9,587,000	\$7,822,700	\$5,435,700	\$3,672,100	\$166,008,255	-	-	\$337,700	\$10,510,100	\$3,930,800	\$5,000,000	\$5,000,000	\$220,972,355
UNCP	\$1,090,100	\$1,290,900	\$7,449,700	\$1,909,900	\$4,349,600	\$1,164,400	\$56,873,600	-	-	\$113,400	\$6,432,400	\$687,700	\$10,000,000	\$10,000,000	\$91,361,700
UNCW	\$7,624,600	\$11,586,700	\$10,353,700	\$3,341,600	\$2,209,400	\$1,457,900	\$109,201,800	-	-	\$149,100	\$4,641,500	\$1,376,700	-	-	\$151,943,000
WCU	\$2,946,800	\$4,717,700	\$4,828,300	\$4,795,900	\$2,918,200	\$1,868,300	\$100,336,744	-	-	\$165,300	\$5,144,000	\$966,900	\$10,000,000	\$10,000,000	\$138,688,144
WSSU	\$1,135,600	\$1,290,900	\$6,983,400	\$1,909,900	\$4,262,300	\$1,159,600	\$46,786,581	-	-	\$108,400	\$3,373,300	\$2,643,100	\$5,000,000	\$5,000,000	\$74,653,081
Subtotal	\$102,683,700	\$144,266,900	\$177,920,575	\$149,580,800	\$85,608,700	\$43,350,800	\$2,394,428,105	-	-	\$4,263,487	\$146,638,705	\$44,491,786	\$208,000,000	\$208,000,000	\$3,501,233,558

**The University of North Carolina — Funding for Capital Improvements
from the N.C. General Assembly, continued**

Non-Institutional Appropriations*	1995	1996	1997	1998	1999	2000	2000 Bonds*	2001**	2002	2003	2003 COPS***	2004	2004 COPS	1995-2004
N.C. Arboretum	\$235,000	\$205,700	\$241,600	\$288,700	\$289,800	\$193,300	\$9,331,700	-	-	\$20,000	\$81,000	\$50,000	-	\$10,936,800
Other (UNC-GA, NCSSM, CPTV, NCCAT)	\$3,661,500	\$20,871,500	\$8,925,600	\$29,365,000	\$3,101,500	\$2,455,900	\$96,240,195	-	-	\$311,700	\$10,377,600	\$3,285,000	\$180,000,000	\$358,595,495
Subtotal	\$3,896,500	\$21,077,200	\$9,167,200	\$29,653,700	\$3,391,300	\$2,649,200	\$105,571,895	-	-	\$331,700	\$10,458,600	\$3,335,000	\$180,000,000	\$369,532,295
TOTAL CAPITAL	\$106,580,200	\$165,344,100	\$187,087,775	\$179,234,500	\$89,000,000	\$46,000,000	\$2,500,000,000	-	-	\$4,595,187	\$157,097,305	\$47,826,786	\$388,000,000	\$3,870,765,853
Amount for Repairs and Renovations to Existing Facilities	\$57,500,000	\$59,800,000	\$62,100,000	\$66,700,000	\$89,000,000	\$46,000,000	-	-	-	\$4,595,187	\$157,097,305	\$35,326,786	-	\$578,119,278
TOTAL CAPITAL IMPROVEMENTS FOR NEW FACILITIES	\$49,080,200	\$105,544,100	\$124,987,775	\$112,534,500	-	-	\$2,500,000,000	-	-	-	-	\$12,500,000	\$388,000,000	\$3,292,646,575

* The General Obligation Bonds, authorized in S.L. 2000-03, were approved by a majority of qualified voters of the State of North Carolina in a referendum on November 7, 2000.

** The 2001 General Assembly allocated \$57.5 million to the Board of Governors for repairs and renovations. Funds were later reverted to the General Fund to help balance the 2001-02 State Budget.

*** COPS = certificates of participation

Source: UNC Office of the President

**North Carolina State Funds for Debt Service and Amount
and Percentage Attributable to UNC Bonds**

Fiscal Year	Total Net Tax-Supported Debt Service in North Carolina	Net Tax-Supported Debt Service Attributable to Bonds for the University of North Carolina System	Net Tax-Supported University System Debt Service as Percentage of Total State Tax-Supported Debt Service
1994-95	\$ 113,928,011	\$ 18,541,616	16.27%
1995-96	124,742,353	18,188,742	14.58
1996-97	127,038,338	19,597,200	15.43
1997-98	165,973,573	23,310,088	14.04
1998-99	199,288,093	22,067,720	11.07
1999-00	238,355,819	21,961,555	9.21
2000-01	254,819,455	36,686,413	14.40
2001-02	302,612,023	54,143,281	17.89
2002-03	304,506,218	63,378,252	20.81
2003-04	390,389,698	91,664,980	23.48
2004-05	476,124,775	126,132,493	26.49
2005-06	562,660,742 *	178,714,680 *	31.76 *
2006-07	617,681,395 *	209,517,121 *	33.92 *
2007-08	627,673,359 *	209,654,861 *	33.40 *
2008-09	613,830,496 *	218,541,130 *	35.60 *
2009-10	598,451,624 *	222,565,924 *	37.19 *
2010-11	582,938,211 *	219,549,606 *	37.66 *
2011-12	567,850,420 *	214,384,339 *	37.75 *
2012-13	553,870,156 *	206,537,082 *	37.29 *
2013-14	537,797,560 *	190,051,385 *	35.34 *
2014-15	521,701,329 *	184,761,635 *	35.42 *
2015-16	506,309,806 *	180,841,679 *	35.72 *

* Projected. Does not include Debt Service from Session Law 2004-179 (House Bill 1264), which authorized \$388 million in Special Indebtedness for Capital Improvements at UNC System campuses

Sources: "Tentative Maturity Schedules for Proposed Bonds — To Be Used for General Planning Purposes Only,"
The Department of the State Treasurer, Division of State and Local Government Finance

Proposed Bond Sale Dates and Amounts, Office of State Budget, Planning and Management.

Debt Service on Projected Bond Issues Subject to Change Based on Final Structure and Interest Rates.

Assumes variable rate bonds at 4%.

Campus-Related Political Action Committees

A. Top Political Action Committees (PACs) Contributing to *Legislative* Candidates

Rank in Giving	Name of PAC	Amount Contributed in 2003-04 Election Cycle	Rank in Giving	Name of PAC	Amount Contributed in 2001-02 Election Cycle
1.	N.C. Democratic Party	\$2,715,870	1.	N.C. Democratic Executive Committee	\$4,031,512
2.	N.C. House Democratic Committee	\$1,016,797	2.	N.C. Realtors Association	235,700
3.	N.C. Senate Democratic Committee	\$759,387	3.	N.C. Home Builders Association	213,450
4.	N.C. Republican Party	\$395,994	4.	Duke Energy	173,100
5.	Citizens for Higher Education (UNC-CH group)	337,500	5. (tie)	Citizens for Higher Education (UNC-CH group)	158,000
6.	N.C. Medical Society	296,750		Jim Black Committee (Black was Speaker of the N.C. House in 2001-02)	158,000
7.	N.C. Realtors Association	272,880	7.	N.C. Hospital Association	151,350
8.	N.C. Academy of Trial Lawyers	247,750	8.	BellSouth	149,378
9.	N.C. Home Builders Association	244,689	9.	Progress Energy	143,000
10.	Duke Energy	231,000	10.	N.C. Medical Society	136,050
...					
71.	Economic Development Coalition (NCSU Group)	27,500			
...					
224. (tie)	Coalition for East Carolina (ECU Group)	4,000			

Source: NCFREE, Raleigh, N.C., July 2005

Source: NCFREE, Raleigh, N.C., July 2003

B. Campus-Related PAC Giving to *All* Candidates in 2003-04 Election Cycle

Name of Campus-Related PAC	Amount Contributed in 2003-04 Election Cycle
1. Citizens for Higher Education (UNC-CH Group)	\$362,000
2. Economic Development Coalition (NCSU Group)	36,950
3. Coalition for East Carolina (ECU Group)	8,000

Source:

Jane Stancill and David Raynor, "UNC-CH backers boost lawmakers," *The News & Observer*, Raleigh, NC, January 31, 2005, pp. 1B and 3B.

*Arguments For and Against Pulling the Research Universities
Out of the 16-Campus System and Having Them Governed by a Separate Board
(The California Approach)*

Arguments For

1. California has placed its nine extensive research universities under the Board of Regents of the 10-campus University of California that is separate from the Board of Trustees of the California State University comprised of 23 other four-year colleges and universities.
2. Having a separate board for the research universities is one way to better define and strengthen the diverse missions of UNC campuses. Too many UNC campuses now are trying to achieve the same level of academic standing, a process which may result in unnecessary duplication of academic programs.
3. The Board of Governors and the General Assembly have neglected the needs of the flagship schools in favor of policies designed to promote equity in the UNC system. Proponents of this viewpoint say national rankings of UNC campuses have dipped, and that faculty salaries at UNC-Chapel Hill and N.C. State University have dropped relative to other national campuses.

Arguments Against

1. Only three states have authority to establish “flagship* institutions,” and only Maryland’s statute specifically names a flagship university. California has nine extensive research universities and North Carolina has only two, so there is less need here for a separate board. Also, officials at California’s Postsecondary Education Commission acknowledge that their structure has prevented collaboration between universities in the two systems under two different governing board structures.
2. Advocates for UNC-CH and N.C. State may overestimate their political clout in the legislature. Placing UNC flagship schools under a separate governing board might ultimately harm those campuses, given the growing political and academic influence of the other schools in the system that would then be competing 14 against 2 in the legislature for state funds. And, two separate boards may increase, rather than decrease, duplication of academic programs.
3. Special treatment for the flagship campuses is unnecessary because UNC’s research schools already receive different levels of funding, higher graduate student tuition assistance, and greater management flexibility than other UNC campuses. National rankings for various programs and schools within UNC-Chapel Hill and N.C. State and overall campus rankings fluctuate slightly from year to year, but both continue to be consistently highly ranked among public universities, as well as among public and private universities overall. Using nationally comparable statistics, average salaries for full-time faculty at North Carolina’s four-year public universities were \$76,070 in 2003–04, ranking 11th in the nation.

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has the largest public higher education enrollment in the nation (551,871 in its public four-year institutions compared to 183,000 in N.C. in 2000) and has more than twice the number of public four-year institutions, 33 to North Carolina’s 16. Also, California officials acknowledge its shortcomings. Marge Chisholm, Legislative Coordinator for the California Postsecondary Education

Commission, says, “The major advantage here . . . is also the major disadvantage — namely, the distinction between the systems. . . . That division has allowed admissions, funding, and other policies to be carefully shaped to fit each school’s mission. But this arrangement also has prevented collaboration between universities in the two systems. . . . The disadvantage is that they are territorial.” And, with such divisions of gover-

**Arguments For and Against Pulling the Research Universities
Out of the 16-Campus System and Having Them Governed by a Separate Board
(The California Approach), continued**

Arguments For

4. UNC's larger schools have achieved a high level of academic excellence. Combining the larger institutions under a separate board dedicated to governing and advocating for this group of universities could help prevent any erosion of academic quality that might result from "one size fits all" funding levels and academic policies set by the Board of Governors for all 16 UNC campuses.
5. Allowing UNC-CH and NCSU to be governed jointly by a separate board for research universities will help them obtain more funding than they are able to obtain under the current system.

Arguments Against

4. Allowing the flagship schools to be placed under a separate governance board would ignore the historical reasons that higher education was reorganized in 1971, especially the need to develop a statewide coordinated system of higher education, provide a check on program duplication, and prevent individual campuses from lobbying separately for funds from the state, with the strongest lobby winning the most funds.
5. Creating a separate board for UNC's flagship schools will prevent the state's public university system from achieving equitable funding formulas for all 16 of its schools. Special treatment for UNC flagship schools will necessarily come at the expense of (a) the system's smaller and historically underfunded campuses — particularly North Carolina's five historically black universities and UNC-Pembroke, and (b) rapidly growing institutions, such as UNC-C, UNC-W, and ECU.

* The term flagship most often refers to UNC-Chapel Hill and N.C. State University in Raleigh, both research universities. Some also argue for flagship status for East Carolina University, N.C. A&T State University, UNC-Charlotte, and UNC-Greensboro.

nance, duplication of programs also has occurred. "For example, most of our teacher education programs are in the California State University system, but the community colleges also offer transfer curricula" in teacher education, says Chisholm. "We've urged them to try and avoid duplication and to collaborate, but I'm afraid they do duplicate," she says. Few states other than California have such a tiered system.

Part of the impetus for the 1971 legislation that restructured university governance was that "individual campuses were adding programs and making budget requests without regard to what the other colleges and universities were doing," said the late Kenneth Royall, Jr., a powerful legislator during four decades, serving from 1967 to 1993. Royall, who was the head of the House Appropriations Committee during the restructuring in

1971, told the Center, "Listening to all 16 institutions and their requests — well, you wanted to be fair. But money was limited. What it came down to back then was who had the best lobbyist."

"There are some who would like to throw off the shackles and be free [of the 16-campus system]. But most of that comes without the institutional memory of how it was before restructuring," says former Governor and current Board of Governors member *emeritus* James Holshouser Jr., who also was a member of the state House when the restructuring legislation was enacted. "I think the state would be extremely poorly served if we had enough authority at the campus level to get the institutions fighting with each other again the way it happened before 1971," he says.

Requests for Exceptions for Public Universities from Policies Applicable to Other State Agencies

7. (a) **The Governor and legislature should reject further requests for special treatment for some or all of the 16 universities unless and until the UNC system makes a compelling case about the specific ways these institutions are legitimately different from other agencies in the executive branch of state government, or unless such requests for flexibility are accompanied by outcome-based accountability standards that have been fully examined in an open public process.**

(b) **The Center recommends that a study commission be established by the Governor or the legislature to examine the state construction, purchasing and contracting, personnel, and budgeting systems to determine the following:**

- **whether these systems are working well and, if not, in what situations, and for which agencies the problems occur;**
- **whether changes are needed to modernize state construction, purchasing and contracting, personnel, and budgeting procedures;**
- **whether any state agency, including the University system, is disproportionately affected by weaknesses in the system such that special treatment or flexibility is justified; and**
- **whether there is a need for an overall State Capital Improvement Plan that ranks priorities in capital projects over an eight-year period for all of state government — including projects on all 16 university campuses.**

The study group could be either a legislative study commission created by the General Assembly or a blue ribbon commission created by the Governor. In any event, the study commission should be composed of at least four legislators

from both chambers; representatives from at least two executive departments under the Governor; representatives from two other departments headed by other elected officials in the Council of State; the University system; the State Employees Association; outside corporate consultants with expertise in construction, purchasing and contracting, personnel, and budgeting; and representatives from the State Offices of Construction, Purchase and Contract, Personnel, and State Budget and Management. The majority of the members should be legislators.

Some university officials and members of the Board of Governors have suggested that UNC's research institutions or all 16 campuses should be given more control over policies governing construction, purchase and contract, personnel, and budget. Several state agencies are involved in making and monitoring such policies. These include the Office of State Construction, the Purchase and Contract Division, the Office of State Personnel, and the Office of State Budget and Management, among others. The Office of State Construction, along with its board, the State Building Commission, is the primary agency responsible for the management of construction, repair, and renovation projects for agencies throughout the state. The Purchase and Contract Division in the N.C. Department of Administration is the central purchasing authority for all state government agencies. The Office of State Personnel administers the rules outlined in the State Personnel Act for recruiting and hiring state employees. The Office of State Budget and Management provides fiscal advice and economic analysis for budget preparation and execution and also provides management analysis for state government agencies to assess organization, staffing, systems, processes, and delivery and quality of services. The issue of balancing control and flexibility in construction, purchase and contract, personnel, and budgeting looms larger as the new construction projects and renovations within the UNC system are underway as a result of the \$3.1 billion bond higher education issue approved by the voters in November 2000.

In at least 12 ways, the university system already receives separate or special treatment that is not accorded to most other state agencies, as follows:

Construction and Purchasing

(1) The University system has a higher threshold (\$2 million) than other state agencies (\$300,000) for construction as well as repair and renovation projects that must be subject to management by the State Construction Office.

(2) The University system was granted special authority for "construction management at risk" in contracting for 42 construction projects approved by the voters in the November 2000 bond referendum. This special exemption by the State Building Commission

preceded changes by the General Assembly that allowed other agencies to use alternative construction contracts and a more flexible bidding process.

(3) Unlike other state agencies, the University system as a whole and individual campuses are exempt from the jurisdiction of the Office of Information Technology Services, which normally oversees purchases of information technology goods and services.

Personnel

(4) UNC Hospitals has special flexibility on management rules, equipment, and personnel. Also, employees of the patient care programs at both the UNC-CH and ECU Schools of Medicine, as well as employees of the UNC Health Care System, are exempt from most provisions of the State Personnel Act.

(5) The State Personnel Act does not apply to "instructional and research staff, physicians, and dentists of the University of North Carolina," nor to "[e]mployees whose salaries are fixed under the authority vested in the Board of Governors," thus exempting 44 percent of University employees.

(6) The University system has more flexibility to reclassify personnel positions and to reallocate positions and salary levels than other state agencies.

(7) UNC-Chapel Hill employees get an additional four hours of paid time each year to prepare grievances against their bosses, compared to the eight hours granted all other state employees. About 60 employees filed grievances with UNC-CH in 2003, which amounts to 240 hours of additional paid time, if each employee used it.

(8) University faculty have more job security than other state employees through the tenure system, and they receive the highest pay of any category of state employees. Faculty also are allowed to augment their incomes through consulting (in which they are paid by other employers for days that they also are on state government's payroll), and their contracts typically are for nine months of work, not 12.

Revenue Sources

(9) Individual campuses within the University now have the power to initiate requests to the Board of Governors for tuition and fee increases and keep the proceeds, which, in effect, means they have the power to generate and control a source of revenue separate from General Fund appropriations.

(10) The University also can issue special obligation and revenue bonds with the approval of the General Assembly for self-liquidating projects such as dormitories, parking decks, etc., which is another source of revenue not available to most state agencies.

(11) Nonprofits controlled by public higher educational institutions have been granted an exemption to local government property taxes in North Carolina, an advantage not accorded to the nonprofits controlled by any other state agencies except the community colleges.

General

(12) All 16 UNC campuses now have been designated as "special responsibility constituent institutions," which gives them more authority over budgeting, purchasing, and personnel and allows them to retain up to 2.5 percent of the funds not spent at the end of the fiscal year, a privilege not given to any other state agencies and one that is especially controversial during years of shortfalls in the state's budget.

However, at least nine cases of abuses have occurred with this increased flexibility, and these instances raise questions about whether special treatment for the University system is either warranted or wise, as follows:

(1) With the budget flexibility given to "special responsibility constituent institutions," the N.C. State University Public Safety Director used more than \$2.2 million in unspent department personnel funds to make more than 100 questionable purchases over a six-year period, including TV sets, VCRs, and a mountain bike, many of which he kept in his home or truck, prompting a State Auditor's investigation.

(2) Fayetteville State University also was threatened with revocation of its management flexibility if it did not correct problems identified by the State Auditor in bookkeeping, management oversight, and financial reporting.

(3) UNC-Chapel Hill's Kenan-Flagler Business School and N.C. State's Carter Finley Stadium used the availability of a mix of public and private financing to begin construction before safety inspections by the N.C. Department of Insurance, thereby avoiding provisions of the State Building Code.

(4) The State Auditor said the University's decentralization of the construction oversight function had negatively affected the timeliness of the flow of information to the State Construction Office and State Building Commission.

(5) UNC Hospitals' flexibility in construction contracts and bidding procedures resulted in a 31.5 percent increase in the estimated cost and an opening date that was more than four years behind the original scheduled completion date of November 1997. When the legislation granting special flexibility to UNC Hospitals passed in 1998, President Molly Broad said, "We got relief for that entity. I've made it clear to them that if they can be the exemplars of some best practices, the hospital could be a demonstration project" for how greater management freedom can make the University system more efficient. This is not exactly the poster child for flexibility she hoped it would be.

(6) Inadequate oversight of spending in a scholars program for doctors at UNC-Chapel Hill is now the example that the Robert Wood Johnson Foundation (which funded the program) uses in how not to manage the proceeds from the foundation's grants to similar programs.

(7) In the middle of an acute state budget shortfall when most state workers only got a flat pay raise of \$625, Chancellors at NCSU and UNC-Chapel Hill gave sizable pay raises ranging from \$9,375 to \$30,340 per year to some of their immediate subordinates.

(8) UNC-Chapel Hill Chancellor James Moeser signed an employment separation agreement worth \$313,908 with his former General Counsel that the Chairman of the Board of Governors described as “excessive and indefensible.”

(9) The State Auditor discovered nearly \$1 million in financial abuses at the N.C. School of the Arts that included spending on cellular phone bills, country club memberships, lease payments for a Cadillac Escalade for a Vice Chancellor, undocumented overtime expenses, special “one-time payments” to 20 employees, a down payment on a condominium to be used as a residence for the Chancellor, undisclosed accounts, and questionable real estate transactions between the institution and its related foundation and nonprofit entities — practices the Auditor described as “Enron-style.” President Broad described the findings of the special review as “deeply troubling” and took over financial management of the school in November 2004.

These situations raise questions about special grants of flexibility being given to the University system as a whole or to the 16 campuses individually and about whether the larger research universities are any more likely to avoid problems than the smaller campuses. If the University system is to be treated differently from other state agencies, then exceptions should be made only after a study commission has examined state construction, purchases and contract, personnel, and budgeting procedures, and found either that the systems need to be modified and updated for *all* state agencies or that the University system has made a compelling case that standard state government oversight should not apply to them and that instances of special treatment or grants of flexibility can be handled efficiently and managed well. Even then, any grant of increased flexibility should be accompanied by outcome-based accountability standards tied to the higher education goal the flexibility is designed to accomplish.

Changes in the Allocation of Powers Between the Statewide UNC Board of Governors and the 16 Local Campus Boards of Trustees

8. (a) **Refine the Delegation to Campuses on Intercollegiate Athletics** — The UNC Board of Governors should refine its delegation of power to the local campuses on intercollegiate athletics. The chancellors should retain their lead role, but the Board of Governors should lead reform in governance of intercollegiate athletics by adopting system-wide guidelines on intercollegiate athletics in line with reports by the national Knight

Foundation Commission on Intercollegiate Athletics issued in 1991 and 2001. This should include language incorporated into the University Code based on the Commission’s recommendations that would:

- (1) require Chancellors to bar teams that do not graduate at least 50 percent of their players from conference championships or post-season play;
- (2) require Chancellors to prohibit athletes from wearing uniforms with corporate logos for which the campus, campus employees, or athletes have received any compensation and require that any and all corporate sponsorship and product placement arrangements, such as Website advertising, be subject to open public review;
- (3) forbid campuses from enacting policies or following practices that make it easier for athletes (compared to other students) to be granted exceptions to any campus policy;
- (4) forbid campuses from negotiating contracts with coaches that would require exceptions to the current UNC Code and require that coaches’ salaries be set in the context of other salaries in higher education;
- (5) forbid campuses from participating in athletic conferences in which universities alone do not decide when games would be played and broadcast on television, and expressly forbid NCAA Division I football games from being played on school nights; and
- (6) forbid campuses from participating in athletic conferences that do not encourage the NBA (National Basketball Association) and NFL (National Football League) to develop minor leagues to give young athletes a route to professional sports other than playing on college or university teams.

(b) **Special Task Force of the Board of Governors on Intercollegiate Athletics** — The UNC Board of Governors should appoint a special task force: (1) to determine whether the Board’s policies on intercollegiate athletics are being followed by the campus chancellors and boards of trustees. This recommendation contemplates an inquiry beyond simply reviewing the annual reports submitted by each of the 15 chancellors subject to the Board’s policies on intercollegiate athletics. The special task force also should (2) reassess the need for additional University-wide standards to ensure that the traditional academic values present in the student athlete model are maintained, and if necessary, restored on every UNC campus.

The University *Code* states, "Subject to such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics." While responsibility for college sports is delegated to the local campuses, at times the Board of Governors and system President have stepped in to impose University-wide rules.

To recap the problems with the current system of oversight of intercollegiate athletics by the UNC Board of Governors:

- Intercollegiate athletics has been a trouble spot historically in governance of public universities and in the relationship between local campus boards and the President and Board of Governors for the UNC system, including the following:
 - Problems in the 1930s with football that led to University President Frank Porter Graham attempting to reduce "rampant professionalism" in college sports.
 - A point-shaving scandal that prompted UNC President Bill Friday to cancel the Dixie Classic basketball tournament in 1961.
 - Allegations of drug use, improper gifts, grade-fixing, sale of players' shoes, and use of complimentary tickets that resulted in a two-year probation for N.C. State's basketball team by the NCAA in 1989 and the resignation of NCSU Chancellor Bruce Poulton.
 - Firings of football coaches at Carolina and State in 1999 and 2000 over the objections of campus faculty as being incompatible with the expressed goals of university athletics and academic programs.
 - Since 1953, seven of the 16 UNC constituent institutions have been sanctioned for "major infractions" of bylaws of the National Collegiate Athletic Association. Elizabeth City State University, Western Carolina University, and Winston-Salem State University each have been sanctioned once; East Carolina University, North Carolina Central University, and UNC-Chapel Hill each have been sanctioned twice; and North Carolina State University has been sanctioned five times, ranking it 14th on the all-time list of institutions with major violations of rules of the 1,024 member National Collegiate Athletic Association.
- Buyouts of the contracts of UNC-CH football coach Dick Crum and NCSU basketball coach Jim Valvano which totaled more than \$1.4 million.
- A \$1.6 million-a-year contract for UNC-CH basketball coach Roy Williams being allowed by the Board of Governors despite the contract exceeding the Board's guidelines on excessive buyout clauses.

- Regular scheduling of football and basketball games on Sundays and school nights, including 9 p.m. games.
- A UNC-Chapel Hill contract with Nike sports company that requires placement of the Nike logo on the University's Website.
- Expansion of the number of teams in the Atlantic Coast Conference with little or no input or voice by the UNC President or Board of Governors in the matter.
- Coaches' salaries that now regularly exceed \$1 million, while UNC chancellor's salaries average \$201,816 and salaries for full-time faculty at UNC's four-year public universities average \$76,070. Even the highest-paid university employee, Dr. William Roper, CEO of UNC Health Care System, makes \$450,000, or one-third to half of what many football and basketball coaches earn.
- Graduation rates for football players that consistently lag the graduation rates of the student bodies as a whole at six campuses within the system and which, at best, never average above 60 percent.

Control of intercollegiate athletics by campus presidents or chancellors is a cornerstone of the recommendations made by the national Knight Foundation Commission on Intercollegiate Athletics, which proposed ways to prevent scandals and boost the academic performance of student athletes. Former UNC President William Friday was co-chair, and three other North Carolinians served as Commission members.

The Knight Commission issued two reports in 1991 and 2001 and found that problems in college sports had worsened despite some NCAA rule changes. The 2001 report stated, "The Commission now finds that the NCAA has made considerable progress toward achieving the goals the Commission laid out in its earlier reports. Many reform efforts have been undertaken with sincerity and energy. It is clear, however, that good intentions and the reform measures of recent years have not been enough. We find that the problems of big-time college sports have grown rather than diminished." The Commission found that the most glaring problems it identified — "academic transgressions, a financial arms race, and commercialization — are all evidence of the widening chasm between higher education's ideals and big-time college sports."

The Center believes the problems listed above justify a change in the current policies of the UNC Board of Governors' on intercollegiate athletics. The danger of the current policies is that sports are driving University policy, instead of the University's three statutory missions of teaching, research, and public service. The Center believes the Knight Commission's recommendations offer the best blueprint for the future. The UNC-Chapel Hill Faculty Council approved a resolution

urging the chancellors and presidents of the ACC schools to come up with a strategy to implement the reforms outlined in the Commission's 2001 report. We believe it is time for the Board of Governors to adopt system-wide guidelines on intercollegiate athletics in line with the Knight Commission's 1991 and 2001 reports. This will be perhaps the most difficult recommendation to implement in this report, but if the UNC system leads, the rest of the nation will follow. No less than the University's soul and ability to accomplish its central mission are at stake.

Policies on Private Fundraising by Public Universities

9. (a) **The UNC Board of Governors should establish policies to increase equity among the local campuses on private fundraising and development staff.**
- (b) **The UNC Board of Governors should clarify and broaden its definition of university-affiliated foundations and related entities in a manner consistent with the State Auditor's special review of October 2004, expand reporting requirements for these foundations and related entities, and ensure that these reports are public records.**

As the state's public universities have turned to private sources of funding to help support campus operations, the UNC Board of Governors needs to adopt fundraising policies to monitor and channel such efforts. Currently, the Board of Governors receives a fundraising and endowment report annually, which specifically outlines national giving trends, tracks the results of the 16 campuses, and benchmarks their work against peer institutions. Since 2001, the Board also has required all campuses to record their fundraising results with Voluntary Support for Education and with the National Association of College and University Business Officers' annual surveys.

However, while the Administrative Manual of The University of North Carolina includes policies regarding endowments and trust funds, the Board has not implemented policies or guidelines for campuses on how they approach fundraising; the relationships with other campuses that may be in pursuit of the same funds from individuals, corporations, and foundations; and how the campuses' development activities affect the larger community in terms of competing with nonprofits in their regions. As the University continues to increase the development capacity on the 16 campuses, the Board of Governors should establish policies on private fundraising and development, especially as related to equity, transparency, appropriateness, and accountability.

In the fundraising arena, the main issue is equity among the campuses in providing development staff to seek funds from sources other than state appropriations.

As shown in Chapter Five, the 16 campuses vary widely in the size of their development office staffs, the number of private foundations created on campus (UNC-Chapel Hill alone has 16 university foundations with assets of more than \$1 million), and their ability to compete for funds from sources other than state appropriations. These sources include the federal government, alumni, other individual donors, and private foundations — as well as shoe contracts, cola deals, and other arrangements available to the larger universities' sports programs.

To its credit, the N.C. General Assembly began to deal with this equity issue in 1999 with allocations ranging from \$260,000 for Winston-Salem State to \$308,400 for N.C. Central to beef up fundraising efforts at seven campuses, including five historically black campuses. However, the Center believes it is the Board of Governors that now needs to address this equity issue by adopting a policy that promotes equity among the campuses in fundraising efforts and staff. In a later report, the Center will examine whether there are dangers to the universities' missions in seeking corporate funding for research.

Another issue in university fundraising is transparency for university-related foundations. In October 2004, the State Auditor raised questions about proper oversight of the North Carolina School of the Arts and its university-affiliated foundations. A special review found that “[t]he school failed to exercise appropriate control or oversight over its related organizations.”

The State Auditor found that state and university-affiliated foundation money was used to fund three spending accounts not reported to foundation board members. Expenses totaling \$269,224 were paid from these accounts for cell phone bills, country club memberships, and \$15,000 in lease payments for a Cadillac Escalade for former Vice Chancellor for Finance and Administration Joseph L. Dickson. Dickson also received more than \$90,000 for consulting and expenses from the foundation over a 13-year period in violation of university policies. Dickson twice transferred foundation property without authorization to a nonprofit corporation he controlled.

State Auditor Ralph Campbell said the School of the Arts situation created an opportunity for the UNC system “to bring some needed sunlight to the financial affairs of the foundations associated with all of our universities.” The Auditor recommended that UNC require every campus in the system to submit a report to the Board of Governors outlining every foundation and related agency connected to the University, which would include activities, revenues, and expenditures.

In response, UNC President Molly Broad said that since 1990, all university-related foundations must be audited annually and the results given to her office. And, in response to the Auditor's recommendation that institutions provide further information about foundations and related entities, she said [On an annual basis, I] “will

hereafter require that the chancellors list all affiliated foundations and entities, affirm that they have adequate financial controls in place, and attest that no other foundations or entities exist.”

However, President Broad and the State Auditor disagree over which entities would be defined as affiliated with UNC. For example, the Auditor says payments to the dean of the School of Filmmaking at the N.C. School of the Arts from a nonprofit called the “North Carolina School of the Arts Unity Development Corporation” were a violation of UNC policy against senior administrators receiving compensation from related organizations, but UNC disagrees. The School of the Arts formed the Unity Development Corporation as a nonprofit that would sell bonds to build a corporate headquarters called “Unity Place” to lease to Krispy Kreme Doughnut Corporation. In her response to the audit, Broad says, “The Office of the President does not agree with the Auditor’s conclusion that the Unity Development Corporation is an entity that was intended to come within the meaning of this policy. Nonetheless, in light of this ambiguity, [I] will recommend that the Board of Governors clarify its policy.”

The Center agrees. We recommend that the Board of Governors clarify and broaden its definition of university-affiliated foundations and related entities in a manner consistent with the State Auditor’s special review, expand reporting requirements for these foundations and related entities, and ensure that these reports are public records.

Fulfilling the Board of Governors’ Responsibility To Develop “a Long-Range Plan for a Coordinated System of Higher Education in North Carolina”

10. The Board of Governors should fulfill its statutory duty and exercise its authority to develop “a long-range plan for a coordinated system of higher education,” as required by state law in G.S. 116-11(1). Through its Education Oversight Committee, the General Assembly should require the Board of Governors to exercise its master planning role and produce a master plan every four years on higher education issues of common concern to public and private institutions of higher education, including increasing the state’s college-going rate, increasing manpower in fields of need such as teaching and nursing, ease of transferability between educational systems and institutions, and eliminating duplication of programs.

To recap our findings from Chapter Four and the reasons for this recommendation that the Board of Governors should fulfill its statutory duty and exercise its authority for master planning in higher education:

The Board of Governors shall also meet with the State Board of Education and the State Board of Community Colleges at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State.

— N.C.G.S. §116-9

- It is the law. The General Assembly mandated in N.C.G.S. 116-11(1) that the Board of Governors “plan and develop a coordinated system of higher education in North Carolina” and that, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, the Board of Governors “shall prepare and from time to time revise a long-range plan for a coordinated system of higher education. . . .” The vehicles for accomplishing this coordinated planning already exist in the Education Cabinet and the State Education Commission.
- Centralizing master planning for higher education is a primary reason that states have created higher education boards such as the UNC Board of Governors. Forty-three states, including North Carolina, have higher education boards with authority to conduct master planning for higher education. The need for the Board of Governors to exercise leadership is all the more important here because North Carolina, unlike many other states, has no central board or agency with authority to plan or coordinate higher education policy for *both* two-year community colleges and four-year public colleges and universities. North Carolina has separate governing boards for our public university and community colleges systems, and the State Board of Community Colleges does not have nearly as much power and authority over its constituent institutions as the UNC Board of Governors has over public universities.
- Master planning is needed to plan for how the state’s higher education institutions (16 public universities, 59 community colleges, and 36 private colleges and universities) are going to accommodate the future enrollment boom — a projected 31.4 percent increase in public high school graduates by 2017 in North Carolina. Master planning also is important to attain the state goal of increasing our college-going rate

The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end . . . it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education.

— N.C.G.S. §116-11(1)

in a global economy that increasingly demands more than a high school education and frequent retraining.

- Master planning is needed to ease mobility and transferability of courses and credits between the three systems of higher education.
- The Board of Governors needs to exercise leadership in harnessing all of higher education to address shortages in personnel in certain fields key to the development of the state, such as teaching and nursing. North Carolina will need more than 10,000 new teachers a year for the next 10 years, but all of the state's public and private colleges and universities *combined* currently produce only 3,100 teachers a year. And, the state will need 9,000 more nurses by 2015 to serve the growing elderly population.
- Master planning is needed to help eliminate unnecessary duplication in academic programs of declining interest or effectiveness or where there is an oversupply in public or private institutions.
- Private for-profit colleges and distance education and on-line courses will be a new source of competition in higher education and heighten the need for an increased Board of Governors' role in planning.
- Planning is needed to allocate scarce resources among public universities, public community colleges, and private colleges and universities — all of which receive significant state funding. Public universities receive \$2.086 billion (plus \$16.6 million for capital improvements) from the state's General Fund in Fiscal Year 2005–2006, community colleges receive \$787 million, and private colleges and universities receive \$89.6 million a year through the

N.C. Legislative Tuition Grant Program and the State Contractual Scholarship Program. With this state money comes an obligation to help meet state goals.

The Board's Leadership Role on Tuition Policy and Setting Tuition Rates Within a Constitutional Restraint

11. **The Board should continue its recent activities in taking a leadership role in setting system-wide tuition rates, and the General Assembly should revisit its decision to permit individual campuses to initiate additional tuition rate increases. The Center recommends that the General Assembly repeal N.C. General Statute §116.40-22(c) which permits local campus boards of trustees to propose raising tuition rates and keep the full proceeds on their campus. The Board of Governors should revise the UNC General Administration policy 1000.1.1 to remove the provisions allowing for campus-initiated tuition increases.**

Thirty-four central higher education boards, including the UNC Board of Governors, have the authority to set tuition and fees at constituent institutions. North Carolina law authorizes the Board of Governors to “set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.” Nonetheless, one area where the Board of Governors has rarely exercised its power over its 34-year history until recently is in tuition policy. For the first 27 years of its existence — from 1972 until 1999 — the UNC Board of Governors *never* recommended a tuition increase to the General Assembly, with the sole exception of its first budget request in 1973 when the Board equalized tuition among institutions with comparable missions. During that time, actions by the General Assembly preceded any action by the Board of Governors when tuition was increased.

University Board members and Presidents historically have been governed by a directive in the state Constitution “that the benefits of The University of North Carolina and other institutions of higher education, as far as practicable, be extended to the people of the State free of expense.” This Constitutional mandate is the main reason North Carolina has among the lowest tuition rates in the country, ranking seventh lowest, on average, among the states in tuition and fees at four-year public universities in 2001–2002 and 13th lowest in 2002–03. In practice, the Board's decision to refrain from proposing system-wide tuition increases for North Carolina residents has by default left this decision to the legislature. The *legislature* itself initiated tuition increases in 1971, 1974, 1975, 1977, 1981, 1983, 1985, 1987, from 1989–1998, and 2003. The *Board of Governors* initiated tuition increases in 1973, 1999, 2000, 2001, and 2002. The Board recommended against a

system-wide increase in 2003 but was overruled by the legislature. As a result of these cumulative actions, undergraduate tuition for North Carolina residents has risen by 71 percent over a five-year period (1999–2004).

In September 2001, the General Assembly enacted a special provision in the budget which allowed campus boards of trustees to recommend tuition and fee increases to the system Board of Governors “without regard to whether an emergency situation exists.” In 2002, the Board of Governors approved a “package” of tuition increases, which included the campus-initiated increases for institutions not previously receiving one, system-wide increases, and additional campus-initiated increases at UNC-Chapel Hill and N.C. State, but at reduced amounts from what was submitted. Between February 2000 and March 2002, the Board of Governors approved campus-initiated tuition increases submitted by all 16 campuses. In February 2003, the Board then incorporated a procedure into *The Code* for proposing these changes. The new policy reads, “Campuses may experience circumstances that suggest the need to change their tuition rates.” However, in 2003, the Board publicly opposed additional system-wide tuition increases, but the 2003 legislature enacted a 5 percent tuition increase over the Board’s objection. In March 2004, over Governor Mike Easley’s objection, the Board of Governors approved another package of campus-initiated tuition increases with amounts ranging from \$225 to \$450 per student per semester. The 2004 legislature enacted a budget that did not include a system-wide tuition increase, but did allow the campus-initiated tuition increases approved by the Board of Governors, with constituent institutions keeping the proceeds on their campuses.

Tuition policy is a balancing act between competing state goals. On the one hand, tight state budgets lead university policymakers to turn to tuition increases as a way to generate more revenue. Also, because UNC tuition rates are among the lowest in the country, students whose families have the ability to pay more of the full costs of their education are being subsidized by the state’s population as a whole, which is poorer. On the other hand, North Carolina traditionally has not had a high college-going rate, and in an economy where more higher education is needed, low tuition might be the best policy. But, the factor which tilts the balance most toward a low tuition policy is the state’s unique Constitutional requirement that a university education “as far as practicable, be . . . free of expense.”

Tuition policy also is a balancing act at different levels of higher education governance. At the President’s and Board of Governors’ level, policymakers have to balance the mandate in the state Constitution and their laudable desire to raise college-going rates with the system’s need for revenue and the state’s competitiveness with other states’ public universities. At the campus level, chancellors and local boards of trustees usually want to have some source of revenue they can

control, such as tuition. They closely follow tuition rates at competing higher education institutions, public and private, and they always want flexibility within a large state system. There is no answer that is right all of the time for all public universities in all states.

The Center believes that the UNC Board of Governors is in the best overall position to balance the legitimate needs of the campuses while meeting the state Constitutional mandate that “the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.” The Center commends the Board for developing and implementing its new, comprehensive policy for setting tuition rates at the 16 campuses. However, the Center believes the frequent and substantial tuition increases in 1999, 2000, 2001, 2002, and 2003 — five increases amounting to a 71 percent increase over a five-year period (1999–2003) — have invited a lawsuit on whether these increases violate the state Constitutional guarantee of a university education that is nearly “free of expense.”

While the Center believes the Board is going in the right direction when it exercises its full statutory authority over tuition decisions, the Center is concerned that the Board’s newly found activism in this area could be undermined by the General Assembly’s decision to permit individual campuses to implement their own additional tuition increases. Allowing such a determination to be made by local boards raises the specter of another harm the 1971 University reorganization was intended to prevent — the further politicization of higher education funding. And, because it is easier for some campuses to raise tuition than it is for others, locally-determined tuition increases have the potential to widen the gap between the haves and the have-nots. Finally, the last four years of experience show that legislation allowing the campus-initiated tuition increases has accelerated increases in tuition, an outcome that runs counter to the state Constitution’s mandate that a University education, “as far as practicable, be . . . free of expense.” For these reasons, the Center recommends

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The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

— N.C. CONSTITUTION,
ARTICLE IX, SECTION 9

**Average State Undergraduate Resident Tuition and Fees at
Four-Year Public Higher Education Institutions, Ranked by State**

Rank	State	In-State Tuition & Fees		Rank	State	In-State Tuition & Fees	
		2002-03 (\$)				2002-03 (\$)	
1	Vermont	\$7,754		26	Arkansas	\$3,714	
2	Pennsylvania	7,072		27	Nebraska	3,612	
3	New Jersey	6,709		28	Tennessee	3,589	
4	South Carolina	6,306		29	New Hampshire	3,524	
5	Ohio	5,898		30	Alabama	3,511	
6	Michigan	5,494		31	Kentucky	3,405	
7	Delaware	5,439		32	North Dakota	3,401	
8	Maryland	5,406		33	Texas	3,318	
9	Illinois	5,171		34	Kansas	3,174	
10	Connecticut	5,142		35	Alaska	3,162	
11	Rhode Island	5,072		36	Hawaii	3,133	
12	Minnesota	5,036		37	Colorado	3,102	
13	Massachusetts	4,974		38	North Carolina	3,097	
14	Maine	4,624		39	Idaho	3,033	
15	Indiana	4,620		40	New Mexico	3,016	
16	Missouri	4,602		41	Wyoming	2,997	
17	Washington	4,288		42	Georgia	2,945	
18	New York	4,220		43	West Virginia	2,899	
19	Iowa	4,140		44	Louisiana	2,881	
20	Virginia	4,087		45	California	2,782	
21	Oregon	4,028		46	Utah	2,638	
22	South Dakota	3,971		47	Oklahoma	2,612	
23	Wisconsin	3,965		48	Florida	2,594	
24	Montana	3,925		49	Arizona	2,587	
25	Mississippi	3,716		50	Nevada	2,529	

Note: Data are for the entire academic year and are average charges. Tuition and fees were weighted by the number of full-time-equivalent undergraduates in 2000, but are not adjusted to reflect student residency. Room and board are based on full-time students.

Source: National Center for Education Statistics, "Digest of Education Statistics 2003: Table 316.—Average undergraduate tuition and fees and room and board rates paid by full-time-equivalent students in degree-granting institutions, by control of institution and by state." Available online at <http://nces.ed.gov>. These data originate with the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), "Fall Enrollment" and "Institutional Characteristics" surveys.

University of North Carolina Tuition Increases, 1970–2004*

	<u>In-State Undergraduate</u>		<u>Out-of-State Undergraduate</u>		<u>In-State Graduate</u>		<u>Out-of-State Graduate</u>	
	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>
1970–71	\$255		\$939		\$271		\$939	
1971–72	\$256	1%	\$1,305	39%	\$272	1%	\$1,305	39%
1972–73	\$256	0%	\$1,780	36%	\$272	0%	\$1,780	36%
1973–74	\$266	4%	\$1,780	0%	\$283	4%	\$1,780	0%
1974–75	\$273	3%	\$1,780	0%	\$290	3%	\$1,780	0%
1975–76	\$275	1%	\$1,876	5%	\$292	1%	\$1,876	5%
1976–77	\$275	0%	\$1,876	0%	\$292	0%	\$1,876	0%
1977–78	\$302	10%	\$1,976	5%	\$321	10%	\$1,976	5%
1978–79	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1979–80	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1980–81	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1981–82	\$360	19%	\$2,083	5%	\$382	19%	\$2,083	5%
1982–83	\$360	0%	\$2,083	0%	\$382	0%	\$2,083	0%
1983–84	\$396	10%	\$2,620	26%	\$421	10%	\$2,620	26%
1984–85	\$396	0%	\$2,857	9%	\$421	0%	\$2,857	9%
1985–86	\$403	2%	\$3,184	11%	\$428	2%	\$3,184	11%
1986–87	\$403	0%	\$3,577	12%	\$428	0%	\$3,577	12%
1987–88	\$424	5%	\$3,891	9%	\$451	5%	\$3,891	9%
1988–89	\$424	0%	\$4,225	9%	\$451	0%	\$4,225	9%
1989–90	\$510	20%	\$4,841	15%	\$542	20%	\$4,841	15%
1990–91	\$549	8%	\$5,041	4%	\$583	8%	\$5,041	4%
1991–92	\$654	19%	\$5,844	16%	\$695	19%	\$5,844	16%
1992–93	\$690	6%	\$6,462	11%	\$733	6%	\$6,649	14%
1993–94	\$711	3%	\$6,882	7%	\$755	3%	\$6,882	4%
1994–95	\$734	3%	\$7,329	6%	\$780	3%	\$7,329	6%
1995–96	\$809	10%	\$7,818	7%	\$859	10%	\$7,818	7%
1996–97	\$893	10%	\$8,256	6%	\$948	10%	\$8,256	6%
1997–98	\$919	3%	\$8,336	1%	\$977	3%	\$8,336	1%
1998–99	\$938	2%	\$8,503	2%	\$996	2%	\$8,503	2%
1999–00	\$985	5%	\$8,584	1%	\$1,070	7%	\$8,606	1%
2000–01	\$1,067	8%	\$8,696	1%	\$1,183	11%	\$8,756	2%
2001–02	\$1,286	21%	\$9,646	11%	\$1,452	23%	\$9,898	13%
2002–03	\$1,603	25%	\$10,960	14%	\$1,795	24%	\$11,332	14%
2003–04	\$1,683	5%	\$11,602	6%	\$1,885	5%	\$11,827	4%

* The average tuition figures reported here are the unweighted mean tuition rates for each student category at the 16 campuses of the University of North Carolina.

Source: Fiscal Research Division, N.C. General Assembly

repeal of the legislation which permits local campus boards of trustees to propose raising tuition rates and keep the full proceeds on their campus. The Center also recommends that the Board of Governors revise its policy manual to remove the provisions allowing for campus-initiated tuition increases.

Concluding Observations

Underlying the Center's recommendations to change and improve governance of public universities is a finding that, overall, the basic structure of governance of North Carolina's public universities is sound. Though we conclude that measures such as gubernatorial appointment of the Board, longer terms, and increased efforts at diversity would improve the Board, this does not lessen our finding that there is still a need for a statewide board governing all public universities, with accompanying

powers over university budgets and academic programs. We also find that the basic design for the allocation of powers between the statewide Board of Governors and the local campus boards of trustees, with the modifications recommended here, also is sound. The thought and negotiations that went into the statutory design in 1971 have not lost their relevance today. To the extent that the Center recommends changes in the original design, they are based on our analysis and evaluation of 34 years of actual experience in how this system has worked.

The Center believes the University of North Carolina is key to North Carolina's collective identity, largely due to years of fulfilling its three missions of teaching the state's students, research that expands knowledge and improves the quality of citizens' lives, and public service to the state's citizens. That history of public service includes leadership by former University presidents Frank Porter Graham and William Friday and UNC-CH professor Howard Odom, among others, on key issues such as race and poverty, and services to citizens such

The University of North Carolina Tuition and Fees Applicable to All Regular Full-Time Undergraduate Students, 2004-05

	Tuition		Total Fees	Total Resident Tuition & Fees
	Resident	Non-Resident		
North Carolina State University	\$3,205	\$15,103	\$ 964	\$4,169
The University of North Carolina at Chapel Hill	3,205	16,303	1,155	4,360
East Carolina University	2,135	12,349	1,185	3,320
UNC-Charlotte	2,129	12,241	1,290	3,419
UNC-Greensboro	2,028	12,996	1,356	3,384
Appalachian State University	1,821	11,263	1,334	3,155
Fayetteville State University	1,546	10,982	974	2,520
NC A&T State University	1,769	11,211	1,234	3,003
NC Central University	1,878	11,322	1,163	3,041
UNC-Pembroke	1,689	11,129	1,135	2,824
UNC-Wilmington	1,928	11,638	1,647	3,575
Western Carolina University	1,651	11,087	1,551	3,202
UNC-Asheville	1,897	11,097	1,425	3,322
Elizabeth City State University	1,399	9,738	1,075	2,474
Winston-Salem State University	1,451	9,791	1,203	2,654
NC School of the Arts	2,755	14,035	1,461	4,216

Source: Fiscal Research Division, N.C. General Assembly

as affordable health care in rural areas, public television, agricultural extension programs, and support for public-private partnerships such as Research Triangle Park.

The structure of North Carolina's university governance system reflects a delicate balance:

- among the Governor, the legislature, the UNC System President, and the UNC Board of Governors;
- between the UNC System President and Board of Governors and the chancellors and local campus boards of trustees;
- between the mandate of the state Constitution that a University education "as far as practicable, be . . . free of expense" and the University's need for revenue; and
- among multiple missions of teaching, research, and public service.

The balance achieved by any university system depends heavily upon relations between the central governing Board and the General Assembly. UNC Board of Governors members can protect their ability to make decisions free of legislative interference by making sure that the Board does not abdicate its responsibility to deal

with difficult issues such as tuition increases, accountability for management decisions made by individual campuses, or the role of the system's historically black institutions. Similarly, the Board must ensure that it does not fail to act on key issues before the General Assembly steps in.

University governance does matter. But governance issues should not be viewed in a vacuum. The UNC Board of Governors and President should take the lead in self-evaluation and review of higher education policy in order to prevent having changes imposed by a political process. The Board of Governors is in a unique position to strengthen all of higher education in North Carolina. By and large, it has the tools it needs in statutory authority and funding to guide and govern higher education in North Carolina.

UNC's historic dual commitment to educational access and excellence, as reflected in its statutory missions of teaching, research, and public service, can be a touchstone for the Board in taking on these challenges. As former UNC Board of Governors Chairman Sam Neill says, "Very few states have had the courage to do what we do in this state. The risk is that people won't look at the long-term picture. We are a 200-year institution. We're here for the duration."

PART I

**The History,
Selection,
and Composition
of the
UNC Board of Governors**

*The General Assembly shall provide that the
benefits of The University of North Carolina
and other public institutions of higher
education, as far as practicable, be extended to
the people of the State free of expense.*

— N.C. CONSTITUTION

ARTICLE IX, SECTION 9

CHAPTER 1

The History of the UNC Board of Governors

... what's past is prologue, what to come in yours and my discharge.

— WILLIAM SHAKESPEARE
THE TEMPEST
ACT II, SCENE I

The UNC Board of Governors was created by the N.C. General Assembly in legislation in 1971 that brought 16 higher educational institutions under the administrative umbrella of the University of North Carolina.¹ The Higher Education Reorganization Act was the result of an intense legislative struggle that pitted then-Governor Robert W. Scott against leaders and key supporters of the six-campus Consolidated University of North Carolina. The debate over restructuring took place during an era of unprecedented growth in North Carolina's higher educational institutions — growth that had outstripped the ability of existing agencies to coordinate programs and fairly distribute resources.² Legislators at the time sought relief from the pressure of competing demands for funding of higher educational institutions, while university leaders wanted to shield their campuses from interference by politicians. Former Governor James Holshouser Jr. — then one of only 24 Republicans in the N.C. House of Representatives (R-Watauga) during the debate over restructuring in 1971 — believes the creation of the Board of Governors was a way to achieve both of those ends. “If you accept the fact that the public treasury will never be big enough to meet all of the needs, it's better to have the [budgetary] prioritizing done in the educational community and not in the halls of the legislature. That's what all of us back in 1971 wanted,” he says.

A. Restructuring Higher Education in 1971

In 1971, the restructuring legislation eliminated the state Board of Higher Education, which since 1955 had been a coordinating body for higher education. The bill replaced that old board with a new central governing board with extensive powers to manage 16 public higher educational institutions in North Carolina. The initial 32-member Board was composed of 16 members elected by The Board of Trustees of the former Consolidated University and 16 members elected from the Boards of Trustees of the 10 regional schools, among them former teacher's colleges, a land grant university, and five historically black colleges.³ Future Board of Governors members were to be chosen by the General Assembly — one half by the Senate, and one half by the House. Two unique features of the 1971 restructuring law were that it retained a separate board of trustees for each of the 16 UNC member campuses, and that these local boards derived nearly all of their powers by delegations from the central governing board.

This approach to balancing power between a central governing board and local campus boards was debated until final approval of the higher education restructuring package in 1971, and like many other aspects of the restructuring measure, reflected numerous



compromises. When the House Higher Education Committee debated the proposed reorganization bill in October 1971, regional university supporters backed a proposal to specify powers to be given to the local trustee boards in the law. Proponents of this proposal were concerned that if explicit authority for the institutional boards was not written into the statute, those boards would be too weak. However, their arguments were overridden by lawmakers who felt that all powers should be invested in the central board, and a measure to give specific powers to the local boards of trustees was defeated in the committee by a voice vote.⁴ Following enactment of the restructuring legislation, the Board of Governors delegated significant duties and authority to the campus boards, including authority over student admissions (though enrollment levels were to be set by the Board of Governors), student aid programs, physical expansion of the campuses, endowments, awarding degrees, student services, most personnel decisions, and intercollegiate athletics. (See Appendix B: The Code of the Board of Governors of The University of North Carolina on page 325, for delegations of duty and authority to Boards of Trustees.)

Although the 1971 restructuring legislation was the most dramatic change in university governance in North

Every year I was in the legislature, there was some serious debate about structural change in [higher] education. It was in a consistent state of boiling.

— JAMES E. HOLSHOUSER, JR.
N.C. GOVERNOR, 1973–1977

Carolina, it was not the first. In 1931, the General Assembly enacted, on recommendation of Governor O. Max Gardner, a three-campus consolidation of the University of North Carolina at Chapel Hill, the North Carolina State College of Agriculture and Engineering (now North Carolina State University at Raleigh), and the North Carolina College for Women (now the University of North Carolina at Greensboro), to be known informally as the Consolidated University. The reason for the change was primarily economic. In the lean years of the Great Depression, political and educational leaders hoped that forming a three-campus system would save money by eliminating duplication of costly academic programs.⁵ The three-campus university was governed by a 100-member board of trustees whose members were elected by the legislature.

The Consolidated University expanded in 1965 by taking in Charlotte College, which became the University of North Carolina at Charlotte. And in 1969, Asheville-Biltmore College and Wilmington College joined the Consolidated University as the University of North Carolina at Asheville and the University of North Carolina at Wilmington, respectively. In 1967 and 1969, in a highly controversial move, the legislature granted the title of “regional university” to nine of 10 public senior institutions outside of the Consolidated University system. Along with the title came the legal authority to offer doctoral degree programs subject to the approval of the state Board of Higher Education.⁶ The measure effectively ended the monopoly that the Consolidated University had held over doctoral degree programs and upset the educational hierarchy that lawmakers themselves had created just a few years earlier in 1963. The resulting need for statewide coordination was one factor that led the General Assembly to restructure the university governance system in 1971.

Many state policymakers inside and outside of the university system share a fierce pride in University accomplishments and in a university governance structure that they believe has made North Carolina a na-

tional leader in higher education. Former Governor Holshouser, who served on the UNC Board of Governors from 1979 to 1991 and is now a non-voting emeritus member, echoes the sentiments of many when he says, "The university is what sets North Carolina apart from the rest of the South. The proof of the pudding is the regard this state is held in nationally."

Over the years, the Board of Governors has weathered various controversies and challenges. In the first four years of its existence alone, the UNC Board resolved a dispute over expanding medical education in the state by approving a four-year medical school at East Carolina University in Greenville; prepared a five-year, long-range plan for the university; developed a state plan for the elimination of "racial duality" at historically white and historically black campuses; completed studies of veterinary, medical, legal, and nursing education with recommendations to the General Assembly; completed and adopted a study of state support for North Carolina's five historically black institutions; recommended that the General Assembly consider an alternative to per-capita grants to in-state private colleges and universities; and developed policies and procedures for budgets, campus employment, selection of institutional board members, and creation of institutional endowment funds.⁷

B. Post-1971 Changes in UNC Governance

UNC's governance structure has changed little in the past 33 years. Although there have been alterations in how Board of Governors members are selected and in the duties of the Board, there have been only three significant modifications in the statute that created the system in 1971.⁸ In 1987, the General Assembly reduced the terms of Board members from eight years with a two consecutive term limit to four years with a three consecutive term limit.⁹ As a result of that change and because of the way Board membership is staggered, one-half of the members of the Board are now elected every other year. The second major structural change occurred in 1991, when the President of the UNC Association of Student Governments was made an *ex officio*, non-voting member of the Board of Governors.¹⁰ The third structural change occurred in 2001, when the General Assembly eliminated the requirement, dating from 1971, that at least two of the 16 members elected every two years had to be women, two had to be racial minorities, and two had to be from the minority political party in the General Assembly. This means all seats on the Board of Governors now are filled by persons chosen to serve

—continued

I was riding in the state limousine by myself and apparently this was on my mind. . . . I thought, well, look, both Friday and West are saying there's got to be a better way [to govern higher education]. While we have these two people thinking this way, we'd better move on it.

— ROBERT SCOTT
N.C. GOVERNOR, 1969–1973



Karen Tam

Table 1

Major Legislative Changes in University Governance Since 1971

Year, Chapter in Legislative Session Laws (bill number), and Where Change Is Codified in N.C. General Statutes (HB refers to House Bill, SB to Senate Bill)	Substance of Legislative Action
1971: Chapter 1244 (HB 1456), codified as G.S. Chapter 116	Major restructuring legislation creating the 16 university system and the UNC Board of Governors.
1977: Chapter 506 (SB 691), amending G.S. 116-36	Allows UNC campus Boards of Trustees to establish endowment funds subject to uniform terms and conditions set by the Board of Governors.
1983: Chapter 761 (SB 23), Sec. 107, amending G.S. 116-11(9)b	Alters the relationship between the legislature and the Board of Governors in UNC budget decisions. Directs the Board of Governors to allocate current operating funds requested without reference to constituent institutions according to its own schedule of priorities and in accordance with any specifications in the Budget Appropriations Act. States that the legislation should not be construed to allow the General Assembly, with the exception of capital improvements, to directly refer to particular constituent institutions when specifying priorities for these funds.
Chapter 163 (SB 121), repealing part of G.S. 116-11	Repeals requirement that all requests for state aid by private colleges and universities in North Carolina be submitted first to the UNC Board of Governors for review and approval.
1984: Chapter 1034 (HB 80), Sec. 49 and 50	Made the North Carolina School of Science and Mathematics an affiliated school of the University of North Carolina.
1987: Chapter 228 (SB 736), amending G.S. 116-6	Changes the length of terms for Board of Governors members from eight years with a two-term limit to four years with a three-term limit. Requires General Assembly to hold elections for Board of Governors members within the first 30 legislative days of the regular session. Continues quotas by stating that of the 16 university board members elected each session, at least two must be women, two must be of a minority race, and two must be of the political party to which the largest minority of the members of the General Assembly belongs. Adds as non-voting members anyone who is not yet 70 years old (the age provision was later repealed) and has served one full term as chair of the Board of Governors and whose term has expired.
1989: Chapter 274 (SB 156), amending G.S. 116-6	Provides that the state Senate and House will make their nominations for membership on the Board of Governors separately, rather than in joint session.
1991: Chapter 689 (HB 83), Sec. 206.2, adding sections G.S. 116-44.6, 116-44.9, and 116-44.10, and amending G.S. 143-53.1 and 116-37	Grants the Board of Governors authority to assign certain UNC schools to a new category called "special responsibility constituent institutions," to grant those schools greater management authority over budgeting, purchasing, and personnel, and to permit them to carry forward up to 2.5% of unspent appropriations. To qualify, institutions must meet specific budgetary and accounting standards and safeguards, and must submit an annual report documenting fiscal savings, greater efficiency and other effects of greater management flexibility. (The Board of Governors now has designated all 16 universities as special responsibility constituent institutions.)
Chapter 220 (SB 822), adding new G.S. 116-6.1	Adds the President of the UNC Association of Student Governments, or his designee, as a non-voting ex officio member of the Board of Governors. Adds any former Governor of North Carolina who has thereafter served one full term as a member of the Board of Governors as a non-voting ex officio member of the Board of Governors.

Table 1

CONTINUED

Major Legislative Changes in University Governance Since 1971

Year, Chapter in Legislative Session Laws (bill number), and Where Change Is Codified in N.C. General Statutes (HB refers to House Bill, SB to Senate Bill)

Substance of Legislative Action

Chapter 436 (HB 923), amending G.S. 116-6

Revises the way in which the Senate and House elect members of the Board of Governors. Beginning in 1993 and every four years thereafter, the Senate elects at least two women and two racial minorities to the Board and the House elects at least two political party minorities. In 1995 and every four years thereafter, the Senate elects the members of a minority political party and the House elects the women and racial minorities to the Board. Each chamber elects by resolution members of the Board of Governors from a slate of candidates prepared by that body. Repeals 70-year age limit on ex officio members' service. Requires that election of Board of Governors members be held within 30 legislative days of appointment of education committees.

1993: Chapter 393 (HB 292), adding new Chapter G.S. 116C

Creates (1) an Education Cabinet consisting of the Governor, UNC President, State Superintendent of Public Instruction, and President of the N.C. Community College System, and (2) a State Education Commission, consisting of the UNC Board of Governors, the Board of the Community College System, and the State Board of Education.

1997: Chapter 412 (SB 862), adding new G.S. 116-31.10 and 116-31.11

Extends greater purchasing authority to the UNC system, including allowing the Board of Governors to set bidding thresholds for each "special responsibility constituent institution" at any level up to \$250,000. Also grants the Board new authority over projects related to the design, construction, or renovation of property for which estimated expenditures do not exceed \$500,000 in public money and permits the Board to delegate this authority to constituent institutions under certain circumstances.

1998: Chapter 212 (SB 1366), Sec. 11.8, amending G.S. 116-37

Directs the UNC Board of Governors to create a Board of Directors for the University of North Carolina Health Care System, consisting of 12 members, nine of whom are appointed by the Board of Governors. The new hospital board has the power to make rules, regulations, and policies governing the management and operation of the University of North Carolina Hospitals at Chapel Hill. This was a special provision adopted as part of the state budget act.

2001: Session Law 2001-424 (SB 1005), Sec. 31.11a, amending G.S. 116-40.20-40.23

Gives the Board of Governors increased authority to delegate management functions in the areas of appointing and fixing compensation of senior personnel, tenure, tuition and fees, and information technology to local boards of trustees.

Session Law 2001-503 (HB 1144) amending G.S. 116-6 and 116-7(a)

Eliminates the requirement that at least two of the 16 Board members elected every two years had to be women, two had to be racial minorities, and two had to be from the minority political party. This means all seats on the Board now are elected at-large. The act changes the criteria the General Assembly uses to elect the Board members but does not change the number of members or their terms. The act also states that the Board members shall be "qualified by training and experience to administer the affairs of The University of North Carolina," and "shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic geographic, political, racial, gender, and ethnic diversity."

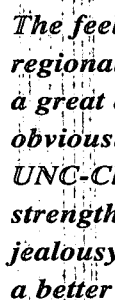
Sources: North Carolina Legislation, 1971–1999: Institute of Government, UNC-Chapel Hill; Summaries of Substantive Ratified Legislation 2000–2001: Research Division, N.C. General Assembly.

at-large.¹¹ (See Table 1, Major Legislative Changes in University Governance Since 1971.)

This is not to say that no other adjustments in the university governance structure have been proposed since 1971. Legislators have shown particular interest in changing the selection process for Board of Governors members. For example, in 1993, brother and sister state Senators Dennis Winner (D-Buncombe) and Leslie Winner (D-Mecklenburg) led an unsuccessful attempt to pass a bill that would have required at-large members of the Board of Governors to be elected from each of the state's 12 congressional districts — upping the total number of seats on the Board from 32 to 36. North Carolina already had the largest higher education governing board in the United States.¹² In 1997, a proposed change would have required members of the General Assembly to wait two years from the date of leaving the legislature before being elected to the Board of Governors. Another proposal called for the Governor's appointments to the campus boards of trustees to be made subject to confirmation by the General Assembly.¹³

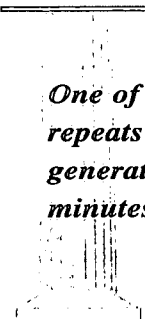
In the 1999 legislative session, Senator Tony Rand (D-Cumberland) introduced a bill that would give the President Pro Tempore of the Senate and the Speaker of the House the power to appoint one member each to the local campus boards of UNC schools — while reducing the number of campus trustees appointed by the Board of Governors from eight to six.¹⁴ Also in 1999, Representative Gene Arnold (R-Nash) introduced a measure that would have required the Board of Governors to conduct a comprehensive study of the UNC system's administrative structure, including the selection and approval process for the members of the Board.¹⁵ Neither of these measures was enacted.

Another measure introduced in the 1999 legislative session would have required that appointments to statutorily created decision-making authorities or boards such as the Board of Governors accurately reflect the proportion of women (51%) in the state's population.¹⁶ After



The feeling on the part of the regional schools was that we were at a great disadvantage. . . . We obviously envied the schools [such as UNC-Chapel Hill] that had more strength. It wasn't prejudice but jealousy. We felt we needed to be in a better posture.

— WALLACE HYDE
FORMER MEMBER OF THE BOARD OF
TRUSTEES, WESTERN CAROLINA UNIVERSITY



One of the reasons why history repeats itself is because every generation refuses to read the minutes of the last meeting.

— ANONYMOUS

being modified to state that its purpose was to “encourage gender equity but is not to direct, mandate, or require such,” the legislation was approved by the Assembly.¹⁷ The law requires the Governor, General Assembly, and other appointing authorities to file annual reports with the Secretary of State disclosing the number and percentage of appointments made during the preceding year from each gender for each state and local board or commission.

The 2001 General Assembly created a UNC Board of Governors Study Commission to “study the method of election or appointment of members of the Board of Governors, the length of members’ terms, the number of terms a member may serve, and the size of the Board of Governors.”¹⁸ Because the General Assembly met until October in 2001 and until December in 2002, there was little time for interim study commissions to meet. The legislative study commission on UNC held one meeting on January 8, 2003 and determined that it could not complete its study before the 2003 legislature that convened on January 29, 2003. The group was reconstituted by the General Assembly and continued its deliberations on April, 20, 2004 and May 6, 2004. Finally, in 2003, Representative Mickey Michaux (D-Durham) proposed legislation that would have required that the Boards of Trustees for each of the 16 campuses of the University nominate individuals for the Board of Governors, who would then be elected by the General Assembly.¹⁹

The Board of Governors itself has debated possible changes in UNC's governance system. At a March 19, 1999 meeting in Raleigh at North Carolina State University, Board members discussed whether to back a proposal from the UNC Association of Student Governments to grant voting rights to the student representative on the Board. Currently, the student body president of each UNC campus has a voting seat on each local campus board of trustees, but the students' representative to the Board of Governors serves without a vote. In 2001, bills were introduced in both legislative chambers to give the student member of the Board of Governors the same voting rights as the other legislatively selected members of that body.²⁰ Legislation that would have accomplished this result passed the House not only during the 2001–02 legislative session (HB 169), but also during the 2003–04 (HB 506) and 2005 sessions (HB 92), but was



Karen Tam

not taken up for consideration in the Senate Committee on Rules and Operations in 2001–02, 2003–04, or 2005. This issue and the Board of Governors proposal will be discussed more fully in Chapter 3 of this report.

Over time, the Board has gained the trust of many legislators and educational leaders alike. “As far as I know, no serious mistakes have ever been made by the system,” says William Dees, a Goldsboro attorney who served as Chairman of the Planning Committee that became the Board of Governors in 1972, as a member of the Board from 1972 to 1987, and as a member emeritus from 1987 to 1990.

“If you accept the fact that the public treasury will never be big enough to meet all of the needs, it’s better to have the [budgetary] prioritizing done in the educational community and not in the halls of the legislature. That’s what all of us back in 1971 wanted.”

— FORMER GOVERNOR JAMES HOLSHOUSER JR.

C. Current Pressures for Change

However, some supporters of the state’s public university system are unconvinced that the governance structure is the reason for its achievements. “We say boastfully that North Carolina has the best public university system. What people really mean is that the 16 institutions stand up so well,” says Paul Hardin, who served as Chancellor of the University of North Carolina at Chapel Hill from 1988 to 1995. “We don’t really know if it’s the [governance] system that is so good or whether it’s the institutions that have prospered despite that system.” Others voice concerns over what they see as a recent decline in the power and prestige of the Board of Governors that has made it less able to advocate for the system in the halls of the legislature. William Friday — whose service as university President from 1956 to 1986 spanned the transformations from a statewide coordinating board system to a system governed by a consolidated governing board, and from a three-campus university to a 16-campus system — recalls that the 100-member board of trustees that ran the university before 1972 was composed of “some of the finest people in the state. You had the chief executive officer of every major company in the state, the head of the Farm Bureau, every living Governor. Now *that* was power. That’s why the university had such a strong time in this state.”

Since we can no longer assume any single historical event, no matter how recent, to be common knowledge, I must treat events dating back only a few years as if they were a thousand years old.

— MILAN KUNDERA

THE BOOK OF LAUGHTER AND FORGETTING

Many of the issues the Board of Governors is grappling with today have their origins in the 1971 restructuring legislation.²¹ One example is the continuing question of the role of the state's five historically black universities within the multi-campus system. In the 1970s, supporters of institutions that had been created to educate African Americans during years of segregation feared that restructuring legislation was a pretense for closing or consolidating those schools. Other smaller institutions were apprehensive of being dominated by larger institutions' interests and supporters. The retention of separate boards of trustees for UNC member campuses was one way to ease those concerns, as was creation of a board large enough to accommodate representatives of schools outside of the former Consolidated University, including the historically black institutions.

In addition, the university governance system that was created in 1971 reflects important aspects of the state's political culture. The General Assembly selected the first university trustees in 1789, gave them lifetime appointments, and provided that the Board should thereafter fill its own vacancies. In 1804, the legislature rescinded the Board's appointment power and reclaimed it for itself. From 1868 to 1873, the State Board of Education, comprised of eight executive branch officials serving ex officio, selected the university trustees. Legislators have elected members of the university Board continuously since 1873.²² The tradition of legislative selection has continued with election of the Board of Governors by the N.C. General Assembly.

Many current attitudes toward changing the university governance system seem to be shaped by whether the holder of the opinion observed or participated in the restructuring fight three decades ago. Interviews for this report show that people who remembered the battle over restructuring were less inclined to favor major structural change than those who did not. "Most legislators now were not around in those terrible years [before restructuring] and don't know how chaotic it was," reflects Robert W. Scott, who was Governor from 1969 to 1973 and who led the effort to reorganize higher education

in 1971. "Any structural change now might lend itself to similar chaos." In fact, only two members of the 2005 General Assembly (Senator Hamilton Horton and Senator R.C. Soles) also served in the 1971 General Assembly.

One argument against any alteration in North Carolina's university system is that the current governance model provides the best means for resolving the types of problems now facing the university. Under this line of thinking, only a strong, central board can best decide how to allocate resources in a time of increased competition for state funds for higher education or decide how to accommodate thousands of new students. Others argue that a system that has produced the degree of academic and administrative success that North Carolina has enjoyed should be changed only if there is an alternative that has proved more effective. "The structure is in place, and it works," says former University President Bill Friday. "Structure is not the issue. The problem is leadership, management, insight, and courage."

Those who favor changes in the structure of university governance give four main reasons for their views. First, advocates for change say the current system of election of the Board of Governors by the legislature has become too vulnerable to partisan politics in the General Assembly. Second, advocates for change say the present university governance system has harmed the state's prestigious research institutions by redirecting needed resources to other campuses. Proponents of this view have offered solutions ranging from allowing UNC-Chapel Hill and N.C. State University to operate under different rules from other UNC campuses to removing them entirely from the 16-campus system. Third, supporters of change argue that the Board of Governors has not been effective in reducing harmful competition among UNC member campuses or avoiding unnecessary duplication of academic programs. And fourth, supporters of change say that the Board of Governors system has fostered a centralized, one-size-fits-all style of management that has stifled creativity and healthy competition among member campuses. "We've got such a highly diverse system that it's very awkward for the Board of Governors to deal with all of those campuses on the same basis," says Paul Rizzo, former dean of the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill who served on the Board of Governors from 1995 to 1999 and is now a member of a new board governing the UNC Health Care System. "If you want to have one board to deal with all 16 campuses all at once, you're going to have some very awkward compromises."

The following chapters of this report will address arguments for and against changing North Carolina's university governance system by exploring specific advantages and disadvantages of the current structure and of alternative structures. The report also will examine the selection process for the UNC Board of Governors,

the powers of the Board of Governors, and the balance of powers between the central governing board and the local campus boards of trustees.

Footnotes

¹ Chapter 1244 (HB 1456) of the 1971 N.C. Session Laws, enacted in a special session in October 1971 and codified as N.C. General Statutes §§116-3 and 116-4.

² Barbara Solow, *Reorganizing Higher Education in North Carolina: What History Tells Us About Our Future*, N.C. Center for Public Policy Research, Raleigh, NC: 1999, p. 8.

³ Chapter 1244 of the 1971 N.C. Session Laws, note 1 above, codified as N.C. General Statute §116-5.

⁴ For additional background on the process that ultimately produced the distribution of power between the new Board of Governors and campus boards of trustees, see Solow, note 2 above, pp. 27-45.

⁵ John Sanders, "The University of North Carolina: The Legislative Evolution of Public Higher Education," *Popular Government*, Volume 59, No. 2 (Fall 1993), Chapel Hill, NC, p. 23.

⁶ Chapter 801 of the 1969 N.C. Session Laws.

⁷ William Dees, *Remarks of Retiring Chairman, UNC Board of Governors*, Chapel Hill, NC, June 9, 1976, p. 5.

⁸ John Sanders, *UNC Governance: A National Model*, speech to 1995 Conference on Trusteeship, Appalachian State University, Boone, NC, 1995, p. 8.

⁹ Chapter 228 (SB 736) of the 1987 N.C. Session Laws, codified as N.C. General Statute §116-6.

¹⁰ Chapter 220 (SB 822) of the 1991 N.C. Session Laws, codified as N.C. General Statute §6-6.1.

¹¹ Session Law 2001-503 (HB 1144), amending N.C. General Statutes §116-6 and 116-7(a).

¹² Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research, Raleigh, NC: 2000, Table 29, p. 108.

[Education] has been thought of, correctly, as a process: to instill a cohesive devotion to what Jefferson called "a due degree of liberty"; to fulfill individual potential of mind and spirit; to inculcate community values; to transmit culture. It has also, and less compellingly, been viewed as the royal road to social contacts, or social respectability, or social success; as necessary to a good job or a presentable marriage; as something between a right and a luxury, somewhere between voting and boating. It is often spoken of, because so conceived, as a consumer staple or a perishable but necessary appliance. Lately, we have learned to extol it as an "investment," as if it were a municipal bond or a home.

Americans believe education is good for you, young and old alike — though there is a persistent strain in American culture that believes a little goes a very long way and a lot is the result of not being able to do anything. We talk about it constantly, see it everywhere, and have developed a three-hundred-year-old habit of wrapping our political wolves in educational sheepskin. To write American educational history is in profound and varied ways to write the history of the American people.

— A. BARTLETT GIAMATTI
*A FREE AND ORDERED SPACE:
THE REAL WORLD OF THE UNIVERSITY*

¹³ SB 452 and HB 174 of the 1997 N.C. Legislative Session.

¹⁴ Senate Bill 387 of the 1999 N.C. Legislative Session.

¹⁵ House Bill 1797 of the 1999 N.C. Legislative Session.

¹⁶ SB 333 and HB 596 of the 1999 N.C. Legislative Session.

¹⁷ Chapter 457 of the 1999 N.C. Session Laws, codified as N.C. General Statute §143-157.1.

¹⁸ Chapter 491 (SB 166) part XXXI, of the 2001 N.C. Session Laws.

¹⁹ House Bill 937 of the 2003 N.C. Legislative Session.

²⁰ These measures were House Bill 169, sponsored by Represen-

tative Alma Adams (D-Guilford) and Senate Bill 188, introduced by Senator Ellie Kinnaird (D-Orange).

²¹ Solow, note 2 above, p. 57.

²² Chapter 20 of the 1789 N.C. Session Laws; chapter 647 of the 1804 N.C. Laws; 1868 NC Constitution, Article IX, Section 13; chapter 86 of the 1871–72 N.C. Public Laws; chapter 64 of the 1873–74 N.C. Public Laws, as cited in John Sanders, “Structural Development of the Board of Trustees/Board of Governors of the University of North Carolina 1789–2001,” unpublished paper, Chapel Hill, NC, January 10, 2002.

CHAPTER 2

Selection of the UNC Board of Governors

Members of the Board of Governors shall be "qualified by training and experience to administer the affairs of The University of North Carolina," and "shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic geographic, political, racial, gender, and ethnic diversity."

— N.C. GENERAL STATUTE 116-7(a)

North Carolina is one of only two states in the nation in which *the legislature elects* all voting members of the statewide higher education board.¹ The other is New York, whose 16-member Board of Regents of the University of the State of New York is elected by lawmakers.² In 43 states, *governors appoint* all or a majority of the members of statewide public higher education boards.³ In 31 of those states, board appointments are subsequently approved by one or both houses of the legislature. In 9 states, public university boards are formed with a combination of gubernatorial and legislative appointments or appointments by some other elective official or appointing authority.⁴

For example, in Alabama, 10 of the 12 members of the Alabama Commission on Higher Education — a coordinating board which regulates public higher educational institutions and vocational-technical institutions — are appointed by the Governor, while two others are appointed by the Lieutenant Governor and the Speaker of the House.⁵ In Pennsylvania, 14 of the 20 members of the Board of Governors of the State System of Higher Education — a board that governs 18 public higher educational institutions — are appointed by the Governor. The President Pro Tempore of the Senate, Senate Minority Leader, Speaker of the House, and House Minority Leader each select one additional member, and the Governor and the state Secretary of Education also have

voting seats on the Pennsylvania board.⁶ And in South Carolina, while the Governor appoints all 14 members of the State Commission on Higher Education — a board that regulates public universities and community colleges — six of those members must represent each of the state's congressional districts. The Governor appoints those six members upon recommendation of a majority of Senate and House members in that legislative district. There also are four voting *ex officio* seats on the South Carolina Commission that are appointed by the Governor with the consent of the Senate to represent both public and private universities in the state.⁷

As noted above, 31 states require legislative approval of gubernatorial appointments to public higher education governance boards. Many of these states require confirmation solely by the state Senate. For example, the 16-member Board of Regents of the University System of Georgia is composed of one member from each congressional district plus five members from the state at large, all of whom are appointed by the Governor and confirmed by the Senate.⁸ The Georgia board oversees 34 public higher education institutions — four research universities, two regional universities, 13 state universities, two state colleges, and 13 two-year colleges. The Board of Regents of the University of Wisconsin system, which governs the state's 13 public four-year institutions, has 17 members — 14 at-large slots filled



The North Carolina House of Representatives. N.C. is one of only two states where the legislature elects all voting members of the statewide higher education board.

by the Governor and subject to Senate confirmation; one student member appointed by the Governor, and two *ex officio* members from the education community.⁹ Finally, Utah's State Board of Regents, which oversees nine public colleges and universities, is composed of 16 members appointed by the Governor, all of whom must be confirmed by the state Senate except for the single student appointee.¹⁰ All three of these entities are consolidated governing boards like North Carolina's Board of Governors. In two of the states, Georgia and Utah, a single board governs all public two-year and four-year institutions; conversely, the board in Wisconsin is responsible for four-year public institutions only.¹¹

In two states — Nevada and Michigan — members of statewide higher education governing boards are *elected by the public*. In Nevada, all 11 members of the Board of Regents, which governs public universities and community colleges, are elected by the public.¹² In Michigan, members of both the State Board of Education and the boards of trustees of three public universities are elected by the public. The Governor and Superintendent of Public Instruction also serve on the Michigan State Board of Education as *ex officio*, non-voting members.¹³ Michigan's 10-member state board is a planning agency that coordinates all public schools,

public higher educational institutions, and community colleges.

The size of statewide higher education boards ranges from a low of seven members of the North Dakota State Board of Higher Education, which is a consolidated governing board, to a high of 32 members on the UNC Board of Governors.¹⁴ The most frequent size of state higher education boards ranges from 10 to 14 members.¹⁵ With 32 voting members, the University of North Carolina's Board of Governors is the largest central higher education board in the country.¹⁶ Until 2001, the statute that created the Board contained the most specific language of any state regarding the number of women, minorities, and minority party representatives who must be elected to serve. Of the 16 Board of Governors members elected every two years, at least two had to be women, two had to be members of a minority race, and two had to be members of the largest minority political party in the General Assembly¹⁷ — which for most of the last 33 years was the Republican Party.

In 2001, under threat of a lawsuit filed by wealthy oilman and former member of the UNC-CH Board, Walter R. Davis, and others, the General Assembly replaced these provisions with language that says Board members "shall be qualified by training and experience

N.C.G.S. §116-6 (excerpted):

(a) [Members of the Board of Governors] shall be elected by the Senate and House of Representatives. Sixteen members shall be elected at the regular legislative session in 1993 and every two years thereafter. The Senate and the House of Representatives shall each elect one-half of the persons necessary to fill the vacancies on the Board of Governors.

to administer the affairs of The University of North Carolina” and “shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State’s citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.”¹⁸ Non-voting seats are held by a representative of the university’s Student Government Association, and for one-term by anyone who has formerly served one full term as Chair of the Board of Governors and whose term on the Board has expired, as well as by any former N.C. Governor who subsequently has served a full term on the UNC Board of Governors.¹⁹ Thus, in 2003–04, in addition to the 32 voting members, there are four non-voting members on the Board — former

N.C. Governor James E. Holshouser Jr., former Board Chairmen Cliff Cameron and Benjamin S. Ruffin, and student member Jonathan L. Ducote. Ducote was replaced by Amanda Devore in July 2004. Cameron resigned in January 2005.

As mentioned in the previous chapter, the terms of UNC Board members were initially eight years with a two-term limit. The length of terms was reduced in 1987 to four years with a three-term limit. Nationally, terms for members on statewide higher education boards range from three years for members of the Delaware and Rhode Island boards, to 12 years for members of the Board of Trustees of State Institutions of Higher Learning in Mississippi, with four- or six-year terms in the vast majority of states.²⁰

The UNC Board of Governors, meeting in Chapel Hill



Karen Tam

A line printed verbatim on letterhead used by Mansfield University assures us:

“Mansfield University is a member of the State System of Higher Education of the Commonwealth of Pennsylvania.”

— C.G.

“MARGINALIA,” *THE CHRONICLE OF HIGHER EDUCATION*, DEC. 17, 1999

A. The Statutory Design for How Members of the UNC Board of Governors Are To Be Elected by the Legislature

The process by which members of North Carolina’s Board of Governors are elected has remained essentially the same since the 16-campus system was created in 1971. The restructuring legislation passed that year directed the N.C. General Assembly to elect members of the Board of Governors every two years beginning in 1973. No members of the General Assembly, state officers, state employees, employees of UNC campuses, or their spouses were allowed to serve on the Board of Governors. The Senate and House of Representatives separately were to elect one-half of the members of the Board, while nominations were to be made in joint legislative session with Senate members sitting in the House chambers. In 1989, the General Assembly changed the process so that the House and Senate now handle their nominations as well as their elections, separately rather than in joint session.

N.C.G.S. §116-6(c) states in part that “the slate of candidates shall list at least twice the number of candidates for the total seats open.” But, in 1999 and 2001, the ballots submitted to the N.C. Senate contained only the number of candidates as there were Board positions to be elected. In 1999, four individuals had initially requested consideration for the two minority party seats to be filled on the Board, but two withdrew their names before the ballot was submitted to the full Senate. In 2001, one of the three candidates for a female seat on the Board withdrew, leaving two candidates for the two positions set aside for women on the ballot. In 2003, the Senate initially had a pool of 20 candidates for eight available seats, but after their Education/Higher Education Committee winnowed the list, the full Senate was left with only 11 choices for the eight seats. In 2005, Education/Higher Education Co-Chair Senator Jeanne

Lucas (D-Durham) announced just prior to the Senate vote that four candidates had “asked that their names be withdrawn,” leading only eight eligible candidates for the eight seats available.

In 2003, the state House of Representatives resolution electing members of the Board of Governors also contained the same number of candidates as available seats, and members were given only the option to vote yes or no on the entire slate. Former House Speaker Harold Brubaker (R-Randolph), who chairs the House Select Committee on the University Board of Governors Nominating, said, “The House leadership decided that we needed more diverse and quality candidates than the process we used for the last couple of sessions would yield, and this was a good way to accomplish that.” Brubaker argues that the process the House leadership used in 2003 is a more formalized version of the process used by the Senate leadership for the past several sessions where members of the majority party vote for a prescribed slate of candidates. He also believes that using a resolution to elect a slate of Board members for the exact number of seats available is an improvement over an election on the floor of the House with double the number of candidates in relation to seats available, because the legislative leadership can do a better job of screening the candidates than is possible in a floor fight.

Although the initial Board of Governors was composed of members chosen by and from the former 11 Boards of Trustees, they and later Board members were deemed to be “members-at-large, charged with the responsibility of serving the best interests of the whole State.”²¹ John Sanders, a former member of the Board of Governors, notes that about half of the 32 members of the current Board of Governors are former members of campus Boards of Trustees and that a majority of those are former chairs of those Boards of Trustees. Says Sanders, “That experience gives them some knowledge of University operation at the campus level. But it also gives them a natural bias in favor of ‘their’ institution and facilities, if it does not inspire parochialism.” Whether all Board members understand their responsibility to adopt a statewide perspective is questionable. For example, when Board member Frank Grainger was

*We deck the halls of higher knowledge
Dear to you and yours this season;
Hail each four- and two-year college,
Ivy, redbrick; healthy, wheezing.’*

— C.G.

“MARGINALIA,” *THE CHRONICLE OF HIGHER EDUCATION*, DECEMBER 20, 1996

elected to the Board in 1997, he “vowed to give NCSU more of a voice to counter what he called a strong tilt toward the University of North Carolina at Chapel Hill.”²²

The 1987 law which reduced the length of terms of Board of Governors members also added a requirement that the General Assembly hold elections for seats on

the university Board within a specified time period after the convening of each biennial session. As required by N.C.G.S. 116-6(c), elections for Board of Governors members are now held within 30 *legislative days*²³ after the committees of each chamber are appointed. If there is a vacancy on the Board, the chamber that originally elected that member is responsible for filling the seat.

Sidebar 2.1

Three Types of State Higher Education Governance Structures

Previous research by the N.C. Center for Public Policy Research identified three basic state higher education governance structures throughout the country.¹ These structures are:

1. Consolidated Governing Board Systems (24 states, including North Carolina)

In these states, all public institutional governance is centralized in either one or two governing boards. There is either one statewide board whose primary duty is to *govern* all public postsecondary institutions in the state, or there are two multi-campus boards that divide the governance of the state’s public institutions between the two of them. Statewide *coordination* of higher education policy and planning may be the responsibility of this same consolidated governing board by statute or convention, or it may be the duty of a separate board or agency. Sometimes, a state has no formal board which carries out typical coordinating responsibilities.

2. Coordinating Board Systems — (a) Regulatory and (b) Advisory (24 states)

In these states, central coordinating boards serve as liaisons between state government and the governing boards of individual institutions. These central coordinating boards have no governance authority. Instead, governance responsibilities are in the hands of institutional boards, three or more multi-campus boards, or a combination of institutional and multi-campus boards.

a. As part of their responsibility to coordinate higher education efforts throughout the state, *regulatory coordinating boards* generally have the authority to approve and eliminate academic programs at public institutions and to exercise some degree of regulatory power over the budgetary process. For instance, some regulatory boards present consolidated budgets, some may reject proposed budgets from individual campuses, and some review and submit individual campus budgets to the governor and the legislature (21 states).

b. *Advisory coordinating boards* have no real power *per se*, though their recommendations may be influential. They have the authority to review proposals to create new academic programs and to review existing programs, but their role is limited to providing advice to the state legislature, governor, or other higher education boards. The same holds true for their ability to influence university budgets (3 states).

3. Planning Agency Systems (2 states)

In these states, there is no statewide board charged with higher education coordination or governance. There is only a planning agency that facilitates communication among institutions and education sectors and performs a voluntary planning function. Governance is the responsibility of institutional boards on each campus or multi-campus boards.

Footnote

¹ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research, N.C., 2000, pp. vii–viii.

B. How the Election Process Works

The specifics for the process of electing Board of Governors members are outlined in resolutions passed by each chamber in odd-numbered years when UNC Board members are elected.²⁴ (See Appendix C for the text of the House and Senate resolutions governing election of Board of Governors members in 2001 and 2003.)

The key components of the statutory design for electing the UNC Board of Governors are as follows:

- (1) The Senate and House each elect half the number of seats available to the Board every two years.
- (2) They fill these seats early in the legislative session — within 30 legislative days after the legislative committees are appointed.
- (3) The Senate and House committees are to recommend slates of candidates with “at least twice the number of candidates for the total seats open” for consideration by the full Senate and House.
- (4) These slates of candidates are to reflect the diversity of the state’s citizens — “their economic, geographic, political, racial, gender, and ethnic diversity,” though specific requirements for minimum numbers of women, African Americans, and members of the minority political party were repealed in 2001.



Karen Tam

- (5) The candidates are charged with “serving the best interests of the whole State” — not a geographic region or individual university campuses.

However, over the last four legislative sessions, the process has increasingly been marked by squabbles between the two political parties and by an increasing desire for control of the process by the Senate and House leadership that leaves little role for the Senate and House as a whole or their committees. As John Sanders says, the statutorily prescribed election scheme is ignored. “The choice of Governors has been made by the Senate leadership (translation Basnight and Rand) since 1995 and the House Co-speakers followed suit in 2003. So much for ‘unseemly’ elections.” The Center’s research and interviews in Chapters Two and Three of this report also will show that the statutory goals of diversity on the Board, statewide orientation, and having double the number of candidates for seats available are not being met by the current structure and process.

In the 1999 session, the ballot submitted to the full Senate for a vote on February 18, 1999 contained only six candidates for six at-large seats and two candidates for the two seats designated for the minority political party. Three other names had been submitted to the nominating committee — one in the at-large category and two in the minority political party category, one of whom was an incumbent on the UNC Board. But those names were withdrawn at the request of the candidates before the committee made its nominations to the full Senate. As provided in the authorizing resolution, no nominations were allowed from the floor, and Senators were told that their ballots would not be counted in a specific category unless they voted for the same number of nominees as there were positions to be filled in that category.

Republicans complained about the controlled process. Senator Hamilton Horton (R-Forsyth) said the candidates for the minority party slots selected by the 15-member Senate Republican Caucus were replaced with Republicans approved by the 35-member Senate Democratic caucus. Sen. Hugh Webster (R-Caswell) complained, “Is that the way they did ballots in the Union of Soviet Socialist Republics?” But Majority Leader Tony Rand (D-Cumberland) said the Senate was selecting candidates “to represent all of us.”²⁵ However, it appears that at least the spirit of the law was violated when the names of the candidates recommended by the Republican caucus were not submitted to the full Senate, thereby preventing the full Senate from being able

UNC Board of Governors member Frank Grainger of Cary was elected to the Board in 1997.



Ethan Hyman, The News & Observer

to choose from four candidates for the two minority party seats on the Board as the statute contemplates. The statute (then and now) says, that the slate of candidates will “list at least twice the number of candidates for the total seats open.”²⁶

On the Senate side in the 2001 legislative session, every Senator was allowed to propose as many nominations for Board of Governors seats as there were positions to fill in each category. To have standing as a nominee to the Board of Governors, a candidate had to be formally nominated by a state Senator, and no one could be a candidate for nomination in more than one category. For example, in the 2001 session, the Senate was responsible for electing two people in the minority race category, two in the female category, and four people in the at-large category — all for four-year terms. In both 2001 and 2003, members of the Senate Committee on Education/Higher Education were required to screen candidates “as to their qualifications and background and may interview each one to make sure that suitable persons are nominated”²⁷ and also were to determine whether candidates were willing to serve and whether they had any “statutory disability” that would prevent them from being able to serve on the university Board.²⁸

In the 2003 session, Senators were allowed to nominate as many candidates as there were seats for the Senate to fill. Since the Senate was to fill eight seats, each Senator could nominate up to eight people. The Senate committee was charged with winnowing the list of nominees down to no more than two per available seat, or 16 people for the eight available seats. In 2003, the Senate initially had a pool of 20 candidates, two of whom withdrew before the committee winnowed the list to 16. Of the remaining 16, five more withdrew before

Sen. Hamilton Horton (R-Forsyth) said the Board of Governors was becoming “a partisan political preserve of one party.”

the floor vote. Senators were left with only 11 choices for the eight seats. Before the floor vote, Senators were cautioned that under a provision in the resolution that defined the rules for the 2003 election — requiring Senators to vote for eight candidates — their ballot would be invalid if they voted for a withdrawn candidate.

In 2005, partisan fighting erupted again in a Senate with 29 Democrats and 21 Republicans. When ballots were handed out in the Senate floor, Education/Higher Education Committee Co-Chair Sen. Jeanne Lucas announced that four candidates had “asked that their names be withdrawn,” leaving only eight eligible candidates for the eight open seats on the Board of Governors. This was a surprise to Republican Senators who had sponsored the four additional candidates. Senate Democratic leaders said the four had withdrawn and that Senate rules, therefore, prevented their names from appearing on the ballot. However, one Republican candidate, Luther Hodges Jr., son of a former governor, said he had not asked that his name be withdrawn. Sen. Robert Pittenger (R-Mecklenburg) called the process a “true kangaroo court and said, “There is greater freedom in the Russian Duma, National People’s Congress in China and the Iraqi Congress than what we experienced today in the N.C. state Senate.”²⁹ Sen. Hamilton Horton (R-Forsyth) said the Board of Governors was becoming “a partisan political preserve of one party.”³⁰

On the House side in 2001, each Representative was allowed to nominate up to two people. Anyone who was nominated but not elected to the Board of Governors by the Senate during the same 2001 legislative session was ineligible for nomination by the House.³¹ In 2001, the House was responsible for electing six at-large members of the Board of Governors (four for four-year terms); two members in the minority political party category for four-year terms; and one member in the minority race category for the remainder of an unexpired term that ended on June 30, 2003. The House University Board of Governors Nominating Committee screened nominees as to their “qualifications, experience, opinions, and statutory suitability”³² through interviews and an exemplary written questionnaire (see Sidebar 2.2 on page 21).

The survey included the following questions:

“1. The UNC system anticipates an increase in enrollment of 48,000 students over the next 10 years. What policy initiatives would you recommend to provide for these students?”

“2. What do you see as your role as an individual member of the Board of Governors? What special abilities or characteristics can you bring to the Board of Governors?”

“3. “What do you think are some of the major issues facing the university system?

a. How would you propose to address those issues given current budgetary restraints?

b. What policy initiatives would you propose to address those issues?

“4. The law provides that ‘all members [of the Board of Governors] shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State.’ Please discuss how you think this obligation relates to the unique missions of each of the 16 constituent universities.”³³

The 2001 House Committee’s slate listed no more than twice the number of candidates for the total seats open in each category. As in the Senate, the House resolution which established the voting rules for the election prohibited any nominations from the floor. In order to be elected, a nominee had to receive the votes of a majority of all members voting in the nominee’s category. House members were required to vote for as many nominees as there were positions to be filled in each category, and provisions were made for runoff elections in the event of a tie or when fewer than two nominees in the minority race or women categories received the votes of a majority of members present.

In 2003, the House functioned with 60 Democrats and 60 Republicans and Co-Speakers — Jim Black (D-Mecklenburg) and Richard Morgan (R-Moore). People interested in election to the UNC Board of Governors were informally steered toward the Co-Speaker of their respective political party. Each Co-Speaker selected four candidates for the eight seats being filled by the House. The eight leadership picks were listed by name in the 2003 House Resolution 753, (which originated from a

House Select Committee on the University Board of Governors Nominating), comprised of equal numbers of Democrats and Republicans, most of whom were key political allies of the House leadership. House Resolution 753 was first introduced as a blank bill³⁴ and the names of the Board of Governors’ nominees were not made known publicly until the committee met the day before the full House was to approve the slate. During the 12-minute floor debate on the resolution containing the slate of candidates, amendments were not allowed and House members could only vote yes or no on the entire slate. During the floor debate, when Rules Committee Chairman William Culpepper (D-Chowan), the bill sponsor, was asked the reason for the changes and if there were flaws in the process used previously, he responded “no” but that the Co-Speakers decided to handle the Board of Governors selection in this manner. Despite a complaint from Representative Russell Capps (R-Wake) that the members had no real voice in the selection of the nominees, as well as hisses and audible calls of “Shame, Shame” during the vote, the resolution passed 98–16.

This process again appears to have violated at least the spirit of the Board of Governors selection statute N.C.G.S. §116-6(c) that reads, “In electing members to the Board of Governors, the Senate and the House of Representatives shall select from a slate of candidates made in each house. The slate shall be prepared as provided by resolution of each house. If a sufficient number of nominees who are legally qualified are submitted, then the slate of candidates shall list at least twice the number of candidates for the total seats open. All qualified candidates shall compete against all other qualified candidates.” According to Harold Brubaker (R-Randolph), a former Speaker of the House and Co-Chair

*Headline in The University Times,
the student newspaper at the
University of North Carolina at
Charlotte:*
**TRUSTEES
MEET, SWEAR
IN EATON**

*There’s something about Eaton that
makes you talk like that.*

— C.G.

“MARGINALIA,” *THE CHRONICLE OF HIGHER
EDUCATION*, JULY 12, 1996

Running for the Board of Governors — How Does the Process Really Work?

Running for a seat on the Board of Governors is unlike running for any other elected office in North Carolina. First, instead of 4 to 5 million citizens (out of the total 8 million population) of the state casting their votes, the 50 members of the Senate and 120 members of the House of Representatives in the N.C. General Assembly elect the Board members. Second, you must have a sponsoring Senate or House member to run for the Board of Governors, whereas any citizen can file for other offices without a sponsor. Third, no nominations are allowed from the House or Senate floor, thus often allowing no opposition on the final ballot — making this not a contested election but an up-or-down vote on the choices presented. Fourth, candidates for this office usually don't discuss the issues — in this case, higher education issues.

Because each house of the General Assembly elects half of the UNC Board members, the election processes for the candidates may differ, depending upon the chamber of the legislature in which they are running. Resolutions passed by each chamber in the years in which the legislature elects UNC Board members outline the specifics of the elections (See Appendix C, which includes the 2001 and 2003 N.C. Senate and N.C. House Resolutions Establishing the Procedures for Nominating and Electing Members of the UNC Board of Governors). In the 2003 legislative session, every Senator was allowed to propose as many nominations for Board of Governors seats as there were positions to fill. Members of the Senate Committee on Education/Higher Education received the nominations and were required to screen candidates "as to their qualifications and background and may interview each one to make sure that suitable persons are nominated" and were also to determine whether candidates were willing to serve and whether they had any "statutory disability" that would prevent them from being able to serve on the university Board.¹

In 2003, the House functioned with 60 Democrats and 60 Republicans and Co-Speakers — Jim Black (D-Mecklenburg) and Richard Morgan (R-Moore). Each of the two Co-Speakers, in effect, selected candidates of his political party for half the available seats and House members were given

only the option to vote yes or no on the entire slate of prescribed candidates. On the House side in 2001, each Representative was allowed to nominate up to two people. Anyone who was nominated to, but not elected, to the Board of Governors by the Senate during the 2001 legislative session was ineligible for nomination by the House.² The House University Board of Governors Nominating Committee screened nominees as to their "qualifications, experience, opinions and statutory suitability"³ through interviews and a written questionnaire (see the questionnaire used by the House for the 2001 Board of Governors elections on page 20).

The key difference between the Senate and House election processes is that the House uses a formal questionnaire to screen candidates (at least it did in 2001). However, Senate Republicans did have an interview committee during the 2001 session. Still, some believe that the 2001 House process was more democratic than the Senate's, where the leaders wielded a strong hand in determining who is elected from the Senate side. "Marc Basnight decides who they want, so I think there is very little campaigning done [on the Senate side]," says a former Board of Governors member who wished to remain anonymous. "Once you get the blessing of [Senate President Pro Tempore Marc] Basnight and [Senate Majority Leader Tony] Rand, I am told they say, 'Stay out of the building; you'll just mess things up if you start campaigning.' In the Senate, the selection is made by the hierarchy and by the leadership . . . The House is much more democratic."

However, another candidate who ran in 2001 believes that the process is less democratic than desirable in both chambers. "I believe the Speaker [Jim Black] had his list, and I think he distributed it, and I think the people who are the good troops support his people," the candidate says. "I expect it's the same way in the Senate. I think that if Marc Basnight said he'd like to see so-and-so on the Board, I think there would be some people who wouldn't care if [the candidate] was Farmer Brown, they'd support [him]. I think if Jim Black or Marc Basnight wave the magic wand and say you're it, then you are elected."

—continued

Beyond the differences in the processes used by the House and Senate in 2001, each candidate's experience running for the Board is going to be different, depending on what prompted him or her to run for the Board, their own "campaign" approach, their sponsor's efforts, and even their name recognition. There is no one right way to run for and ultimately win a seat on the Board of Governors.

Deciding To Run or Being Recruited

Some individuals seek a seat on the Board on their own, while others are contacted by members of the General Assembly or stakeholders of higher education in North Carolina. "I think that people either have an interest in running for a seat on the Board of Governors, or maybe a member of the General Assembly might encourage someone to run," Board member Craig Souza of Raleigh explains. "[In my case] it was probably a combination of both, but I don't have any hesitation in saying I sought the nomination." Jack Cecil of Asheville is another Board member who was simply interested in serving on the Board. "The first time [I ran], I didn't even know where the Legislative Building was. I was just interested in being on the Board," Cecil says. From a different perspective, Board of Governors member John Davis of Winston-Salem ran for the Board in 2001 based on the suggestion and encouragement of others. "Admittedly, I did not seek it [a seat on the Board]," Davis says. "I had several people talk to me about it, and they simply said you've got so much experience that you need to do this."

Securing a Sponsor

After deciding to run for the Board, the candidate must secure a sponsor in either the House or Senate, depending upon the chamber of the legislature in which he or she runs. According to Brad Wilson of Cary, current Board of Governors Chairman and on the Board since 1997, finding a sponsor is a relatively simple process. "Basically, the way it works is you go in and say I'm interested in running — what do you think? And after it looked like it was viable, I said, 'Would you be willing to be my sponsor?' He was not sponsoring anyone else, and the answer was 'yes,' and there we go." However, after finding a sponsor, the role the sponsoring legislator plays in the election process varies. For some, their sponsors play a minimal role that may involve simply sponsoring the individual

to allow them to run. On the other hand, some sponsors play an active role in lobbying fellow legislators, writing letters, and introducing the candidate to key legislative leaders. Former Board of Governors member John Sanders of Chapel Hill believes that having an active sponsor working on a candidate's behalf is important. "My reading and what others confirmed to be the case is that it is very important to have an active sponsor in the House," Sanders says.

Campaigning and Lobbying the Legislators

Regardless of the involvement of their sponsor, most candidates send out some form of a biographical sketch or résumé along with a letter informing the legislators that they are interested in serving on the Board. "I thought the job was to sell myself. Some people said you got to go up there [Raleigh] and meet people and shake hands and talk to them," says Phil Dixon of Greenville, who ran for the Board unsuccessfully in 2001 and 2003, but successfully in 2005. "So about three, four, or five times, I went up to Raleigh, spent the whole day there, went door to door, and left my card and my résumé. I even sent in my mailing [in addition to an earlier letter stating his interest] a long form résumé to everybody. That's a pretty major undertaking."

Likewise, Brad Wilson also made diligent efforts in his successful run for the Board. "I wrote all 50 Senators a letter declaring my interest, with a very brief paragraph about my qualifications. I visited with each one at least once. It may have been a hallway handshake, but I personally asked all 50 for their vote," says Wilson. "Some I talked with longer and more substantively than others, but that was usually based on what their level of interest was and what the relationship was. It was like a mini-campaign, and I believe that if you're running for something you ought to ask people for their support." On the other end of the campaign spectrum, John Davis describes a different approach. "I had somebody saying, 'Gosh, you've really got to politick for this,' and I said, 'If I'm going to have to politick for it, I'm not gonna get it,'" says Davis. "So, I literally never politicked for it. I wrote about nine, ten, eleven, twelve letters saying that I would be interested, and here are my credentials, and here is my résumé, and very honestly, that was it."

Many candidates spend major amounts of time at the Legislative Building meeting with and talking to legislators to garner votes and support.

Those who have run for the Board found that some legislators are more interested than others in learning more about their qualifications and views on key issues. Brad Wilson says, "You always get the question, 'Why are you running? Why do you want to do this?'" Adding, "Frequently, you would get substantive questions like 'What do you think is the greatest challenge facing the university?' or those kinds of things. It was a meaningful conversation." Board of Governors member Bob Warwick of Wilmington found that legislators asked about his experiences, involvement, and views, "depending on their interest." Phil Dixon had a different experience in that legislators did not ask about his qualifications and experience. "There were some [legislators] that wouldn't give me the time of day, that you would literally have to move heaven and earth and almost just plant yourself in their office and just wait and wait and wait and wait," says Dixon. "It was very common for me to show up at their door and for them to immediately stand up and walk out with me. It was like, 'Thanks for coming by, I've got your résumé, I know you're interested, I'll do what I can to help you.' So you sort of felt like you were a door-to-door salesman selling insurance or something, and they wouldn't want to have anything to do with you. I thought it was a demeaning process, but it was also a frustrating process, because you really didn't have much of a chance to talk with anybody," he adds.

Voting by the Legislature

After the nomination and screening process, both houses of the legislature vote on the nominees on the day (or no later than the day) slated in that chamber's resolution. The nominees in the 2001 House consisted of candidates screened by the House University Board of Governors Nominating Committee. Similarly, the Senate Committee on Education/Higher Education votes on each candidate proposed for nomination. If a sufficient number of nominees who are legally qualified are submitted in a category, then the slate of candidates lists at least twice the number of candidates for the total number of open seats. A candidate for nomination receiving the vote of a majority of those members of the Senate committee present and voting becomes a nominee on the Senate ballot. "As I understand it," says Craig Souza, "both the Republican and the Democratic caucuses [in the 2001 Senate] narrowed their list down to the ones they felt like deserved the nomination from the caucus." No nominations from the floor on the day of the election are permitted in either chamber. There are

also guidelines in place in case of a tie. After the election process is complete and the "winners" are announced, the process is over, only to begin again in two years. "It has to be a pain for them [the legislators] to have to go through this every two years," says Board member Bob Warwick. Overall, running for a coveted seat on the Board of Governors can be a time-consuming and highly political process. Some say that the process itself may actually deter qualified individuals from running. Rep. Harold Brubaker (R-Randolph), former Speaker of the House and Co-Chair of the 2003 House Select Committee on the University Board of Governors Nominating, says, "As a result, you lose good people who are intimidated by the process and do not like coming into an environment with which they are unfamiliar."

Footnotes

¹ N.C. Senate Resolution 174 in the 2003 session, adopted March 12, 2003.

² N.C. House of Representatives Resolution 542 in the 2001 session, adopted March 15, 2001.

³ *Ibid.*

of the 2003 House Select Committee on Board of Governors Nominating, the House leadership had a long discussion of the statute and determined that its wording would permit them to elect a slate of Board of Governors members in a resolution which contained no more nominees than the number of seats available.

1. Campaign Contributions to Legislators by Candidates for the UNC Board of Governors

By the time they first seek election to the UNC Board, many successful applicants have already established personal and professional relationships with members of the General Assembly. For example, many members of the UNC Board of Governors have made donations to political campaigns, and a significant number of members of the UNC Board of Governors have served as paid legislative lobbyists at some time during their careers. According to Bob Hall of Democracy South, a nonprofit organization that examines the impact of money on North Carolina political races, candidates for the Board of Governors often make campaign contributions to legislators. Board members and their families gave a total of \$425,720 to state political campaigns between 1995 and 2000.³⁵ The biggest Board donors



UNC Board of Governors member Addison Bell of Charlotte

were C. Clifford Cameron, former chairman of First Union Bank, and James W. Phillips Jr., a contract lobbyist, attorney, and son of former state Sen. Jim Phillips (D-Davidson). Cameron donated \$68,810 over the five-year period to state candidates, and Phillips and his father gave a total of \$55,112. Hall adds that many Board members also have corporate ties to some of the state's largest corporate political action committees (PACs) and thus, potentially share with corporate lobbyists the ability to channel campaign contributions to preferred legislative candidates. The PACs of their current or former employers gave an additional \$2 million in the same 1995–2000 period. In 2001, seven members of the

"As a group, the UNC Board of Governors is dominated by large campaign donors, and its decisions reflect their perspective. The legislators who put these donors on the Board depend on them for campaign money."

— BOB HALL
DEMOCRACY SOUTH

Board of Governors came on the board with ties to PACs of banking, health care, and tobacco firms.

Board member James W. Phillips, Jr., an attorney from Greensboro, says it's natural for some members to be political donors. "I think that by being on the Board, they show they care about public policy," says Phillips. "To the extent they are able to, it doesn't surprise me that they have been active in political campaigns in North Carolina."³⁶ Benjamin S. Ruffin, former chair of the Board, argues that while Board members take an interest in politics, those interests didn't begin when each member took a seat on the Board. In fact, Ruffin says the interest in politics — even including the writing of checks to candidates — can be a help to the university system. "I think it reflects positively on the board as a whole," says Ruffin. "Politicians appreciate people who help them in these expensive campaigns. And it gives [Board members] access. We need access on the Board of Governors."³⁷

Bob Hall says the only state board with a higher concentration of big political donors is the N.C. Board of Transportation and that its record of patronage is well known. "As a group, the UNC Board of Governors is dominated by large campaign donors, and its decisions reflect their perspective," says Hall. "The legislators who put these donors on the Board depend on them for campaign money."

2. Lobbyists on the Board of Governors

However, campaign donations aren't the only political connection between the Board of Governors and the General Assembly. Five of the 32 voting members of the 2001 Board of Governors were registered lobbyists on behalf of corporations and other business interests during the 2001–2002 legislative session, including Brad Adcock and Brad Wilson for Blue Cross and Blue Shield of North Carolina, Craig Souza for the N.C. Health Care Facilities Association (nursing homes), and Peter Keber for Bank of America (though Keber retired from the bank in 2001). A fifth Board member, Jim Phillips, is a contract lobbyist who registered to represent 10 businesses and interest groups during the 2001–02 session. On the plus side, these lobbyists bring political acumen and knowledge of the legislative process to the Board of Governors. On the minus side, Chris Fitzsimon, former executive director of the nonprofit Common Sense Foundation, expresses concern that having registered lobbyists on the UNC Board can create potential conflicts of interest when the lobbyists have both university and corporate issues pending before the legislature at the same time. He also questions whether business lobbyists — whose primary responsibility, he says, is to keep corporate taxes as low as possible — can be zealous advocates for increased funding for the state's public universities.³⁸

Former UNC Board of Governors member C. Clifford Cameron, a retired Charlotte banker who was defeated in a bid for re-election as Chairman by Ruffin in 1998 but then re-elected to an at-large seat in 1999, says, "It's pure politics now. You go to Raleigh and politick, and the one who's the best politicker and knows the most legislators gets elected."³⁹

3. Leading Government Officials on the Board of Governors

Finally, though current legislators are forbidden by statute from serving on the Board of Governors,⁴⁰ the Board does include former members of the North Carolina General Assembly and other elected or appointed officials. The voting membership of the 1999–2000 Board included three former legislators (C.R. Edwards, Helen Marvin, and Teena Little), a former member of a Governor's Cabinet (Irvin Aldridge, who served as N.C. Secretary of Commerce), a former State Budget Officer (C.C. Cameron), and a former state administrative law judge (Angela Bryant). In addition, one member of the 1999–2000 Board, R.V. Owens III, is a nephew of Senate President Pro Tempore Marc Basnight. Two of these

"It's pure politics now. You go to Raleigh and politick, and the one who's the best politicker and knows the most legislators gets elected."

— C. CLIFFORD CAMERON
FORMER CHAIRMAN, UNC BOARD OF GOVERNORS

members, Little and Aldridge, were re-elected to the 2001 Board, and Bryant's term expired in 2003. Also, former legislator and Governor James E. Holshouser, Jr. serves as a non-voting member emeritus of the Board. Almost one fourth of the 2001–2002 voting Board members were attorneys. Other occupations represented on that Board include financial services (banking, savings and loan, investing, and insurance), certified public accountant, clergyman, businessman/woman, corporate executive, retired educator, educational administrator, broadcast executive, association executive, and foundation executive.⁴¹



**Board of Governors members
Brad Adcock and Brad Wilson, Chairman**

Karen Tam

C. Advantages and Disadvantages of Election of the UNC Board of Governors by the Legislature

The research for this report shows several advantages and disadvantages of the current system of election of Board of Governors members by the North Carolina General Assembly (see Table 2 on Advantages and Disadvantages of the Current System of Election of Members of the UNC Board of Governors by the N.C. General Assembly and of an Alternative System of Appointments by the Governor). The major *advantages* cited by those interviewed for this report are:

- The process builds needed bridges between university leaders and the lawmakers who control the university budget.
- The process fits within North Carolina's tradition of a legislature that is heavily involved in appointments and elections to public boards in the executive branch.
- The process of having to lobby legislators for election to the Board makes Board members more responsive to the legislature rather than to the governor or a particular University campus.

- According to supporters, the process has generally produced effective and dedicated Board members.

The major *disadvantages* cited by those interviewed for this report are:

- The process is too heavily influenced by politics and has become subject to partisan politics in the legislature as the state has become a true two-party state. This was particularly true during 1995–1998 when Republicans controlled the House of Representatives and Democrats the state Senate.
- Election of the Board by the General Assembly may violate the state constitutional requirement of separation of powers under the state Supreme Court's decision in *Wallace v. Bone*, a seminal case involving legislative appointments to policymaking boards in the executive branch.⁴²
- The process may discourage good candidates from running for seats on the Board because candidates do not like lobbying the legislators, viewing the process as arduous and demeaning.
- Since 2001, the process no longer ensures that the Board includes at least minimal representation of women, minorities, and representatives of the leading minority political party.
- Legislators do not have adequate guidelines for choosing the most qualified candidates for Board seats, and legislators do not usually question candidates about their qualifications and views on higher education policy.

Sam Neill, who served on the UNC Board of Governors from 1985 to 1997 and as Chairman from 1995 to 1996, believes strongly in the current selection process. "It makes Board members more responsive to the general populace, rather than to an elite group. And, it has a real positive political effect in that it builds ties and relationships between the Board members and the General Assembly," he says. To those who find the practice of campaigning within the halls of the legislature distasteful, Neill says, "When I ran [for the Board] in the Senate, I had the opportunity to discuss things with each Senator personally. I developed relationships with them, and it made me more knowledgeable of a broader base of issues . . . If people are not willing to meet the [political] leadership of the state, do you really think they'll be able to do a good job on the university Board?"

Current Board of Governors Chairman Brad Wilson, who has served on the Board since 1997, agrees with Neill. "It is an independent selection process that is



Karen Tam

UNC Board of Governors member Bill Burns of Durham

"It's an unseemly process. The people who you hope are most influential and aware and concerned about North Carolina and its institutions are not going to come up here beseeching us for entry into the kingdom of heaven."

—SEN. TONY RAND (D-CUMBERLAND)

based on a collective judgment rather than a unilateral one," says Wilson. "It provides an opportunity for the members of the General Assembly and the candidate to have a conversation. In fact, the process forces a conversation about qualifications and philosophy and points of view as it relates to the university. That's an important conversation and an important connect. By the nature of the process, people don't run if they aren't interested. It's complicated enough, it's challenging enough, and it's time-consuming enough that people don't stand for election unless they are genuinely interested in the affairs of the university."

Julius Chambers, a member of the Planning Committee which became the original Board of Governors and who served as Chancellor of North Carolina Central University in Durham until his retirement in May 2001, says the current selection process "increases the number of people who feel they have a role to play in higher education in North Carolina. In this state, higher education needs that kind of political support."

Former Governor Robert Scott views election by the legislature as the best way to shield the Board of Governors from becoming a tool of political patronage. "I would characterize it as probably the least invasive method of selecting a Board of Governors that we could come up with," he says. "It's not likely that the legislature collectively is going to call the university and say, 'We want you to hire thus and so.' If it were just the Governor [appointing Board members], he certainly could do that."

State House Democratic Leader and former Speaker Pro Tempore, Joe Hackney (D-Orange), says, "If the legislature didn't have confidence in the Board, there would be more political meddling. If the Governor selected Board members, the legislature would have less confidence in the Board." Hackney says, "The process is imperfect, but I favor continuation of the current system because it's produced results that are pretty good."

On the other hand, former Board of Governors Chairman William A. Johnson — a former Superior Court Judge who served on the Board from 1972 to 1987 and as an emeritus member from 1987–1990 following his tenure as a trustee of the old Consolidated University — says legislators have become increasingly reliant on university Board elections as a way to reward

political supporters. He says the selection process "has become entirely too political. Political considerations are given too much weight compared to other factors. The most qualified people have not always been chosen."

Senator Tony Rand (D-Cumberland), Senate Majority Leader, Chairman of the Senate Rules Committee, and a member of the Senate Education and Appropriations Committees, says politicking associated with the current selection process is a key factor discouraging good candidates from seeking service on the Board of Governors. "It's an unseemly process," he says. "The people who you hope are most influential and aware and concerned about North Carolina and its institutions are not going to come up here beseeching us for entry into the kingdom of heaven." Former Speaker of the House Harold Brubaker (R-Randolph), who was the Co-Chair of the 2003 House Select Committee on the University Board of Governors Nominating, says, "As a result, you lose good people who are intimidated by the process and do not like coming into an environment with which they are unfamiliar."

Concerns about how politics influence the selection of the Board of Governors have intensified in recent years as North Carolina has become a true two-party state.⁴³ In 1995, one year after the Republican Party won a majority (68–52) in the state House of Representatives for the first time this century, eight Republicans were elected to the Board of Governors — the largest group of GOP members in the Board's history, and a fourth of the total Board membership. Some say the presence of a Republican majority in the House discouraged Democratic candidates from seeking terms on the Board of Governors that year. "We had some wonderful Democrats who chose not to run after 1994," says former state Secretary of Cultural Resources Betty McCain, who served on the university Board from 1975 to 1981 and again from 1987 to 1995. "They knew they couldn't win. It just got so partisan."

Because of their minority status for most of the 33 years of the Board's existence, charges of partisanship have been made more frequently by Republicans. During the process of electing the Board of Governors in February 1999, Republican members of the state Senate claimed that candidates for the minority party slots

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— REP. JOE HACKNEY (D-ORANGE)

Table 2

Advantages and Disadvantages of the Current System of Election of Members of the UNC Board of Governors by the N.C. General Assembly and of an Alternative System of Appointments by the Governor

Advantages of Election of the UNC Board by the Legislature

1. Election of Board members builds bridges and forces conversation between members of the N.C. General Assembly and UNC Board of Governors.
2. The process of election by the legislature fits within the state's tradition of a legislature that is heavily involved in appointments and elections to public boards in the executive branch.
3. Having to lobby legislators for seats makes Board members more responsive to elected representatives rather than to the governor or a particular university campus.
4. Supporters of the current election process believe it has generally produced effective and dedicated Board members.
5. Historically, the process required at least minimal representation (4 seats each) on the Board for women, racial minorities, and members of the minority political party. [This requirement was repealed in 2001, however, in favor of a provision that says members shall be selected based in part upon their "economic, geographic, political, racial, gender, and ethnic diversity."]

Disadvantages of Election of the Board by the Legislature

1. Legislators who are alumni of particular UNC campuses tend to support candidates who will look after the campuses of their choice, rather than candidates who will have the best interests of the 16-campus system at heart. Also, legislative leaders historically have directed extra funds to campuses in their districts.
2. Election of the Board by the General Assembly may violate the state constitutional requirement of separation of powers under the state Supreme Court's decision in *Wallace v. Bone*, a seminal case involving legislative appointments to policymaking boards in the executive branch.
3. The process is outmoded and has become highly subject to partisan politics and does not fit with North Carolina's current status as a two-party state. The process is too political, with lobbyists on the Board who represent their corporate clients as well as the University, and Board members who contributed a total of \$425,720 to state political campaigns between 1995 and 2000. This gives the appearance that it is possible to "buy" seats on the Board.
4. The process may discourage good candidates from running for seats on the Board because they think the process of lobbying legislators is too arduous and demeaning.

Legislators do not have adequate guidelines for choosing the most qualified candidates for the Board and do not usually question candidates about their qualifications or views on higher education policy issues.
5. Over 33 years, the make-up of the Board has rarely reflected the percentages of North Carolina's population of women, minorities, and members of the minority political party. And since 2001, the statute no longer even ensures minimal representation of women, minorities, and members of the minority political party.
6. Only one other state in the nation (New York) selects its central higher education governing board members this way. And, New York's Democratic majority legislature recently appointed all Democrats to its board, a further illustration that this structure is flawed.

Table 2

CONTINUED

Advantages and Disadvantages of the Current System of Election of Members of the UNC Board of Governors by the N.C. General Assembly and of an Alternative System of Appointments by the Governor

Advantages of Appointment of the Members of a Higher Education Board by the Governor

1. The Governor is elected by all state citizens, and has more of a *statewide* perspective; legislators have a *district* perspective and usually have allegiance to a *particular campus*. Legislative leaders also historically direct extra funds to campuses in their districts. And, having one person accountable for appointments establishes clearer lines of accountability.
2. 46 states use a system of appointment by the governor. Institutionally, the N.C. Governor is the seventh weakest in the U.S., according to studies by UNC-CH Professor Thad Beyle. If the legislature is worried about giving the governor too much power, they can temper the governor's appointment power by requiring that the board appointments be subject to the advice and consent of the Senate or by both the Senate and the House. The N.C. Governor has little say in higher education policy.
3. The legislature's record on appointment of African Americans, women, and Republicans is not good, and governors would be more likely to appoint numbers of women, minorities, and Republicans in proportion to state's population. And, having one person who is elected statewide responsible for appointments can help ensure representation from all geographic areas of the state.
4. The Governor is more likely to be able to recruit good candidates for the Board than is the case under the current system, where candidates choose not to run because they do not want to spend weeks in the halls of the General Assembly lobbying legislators, and they do not like the expectation that candidates should make campaign contributions to legislators.
5. Other states with Governors who appoint higher education boards say that their boards are more effective because they are less often gridlocked by partisan politics in the legislature.
6. It is counterproductive to consistency in higher education policy and governance to have the Governor making appointments to local campus boards of trustees but not to the statewide Board of Governors.

Disadvantages of Appointment by Governor

1. Legislators are more attentive to regional needs and the missions of regional universities.
2. This could give the Governor too much power.
3. Past Governors do not have exemplary records in appointing women and African Americans to boards, commissions and councils in the executive branch — especially to the most important boards (e.g., the Board of Transportation)
4. The process might be just as political — appointees are likely to be of the same political party as the Governor and are likely to be contributors to the Governor's campaign instead of to legislators' campaigns, and many qualified people may not typically contribute to political campaigns.
5. If the Governor had the power to make appointments to the Board of Governors, the appointments could become a tool of political patronage. Outgoing governors could make parting-shot appointments, and rookie governors could attempt to clean house.
6. The Governor can somewhat influence higher education policy through the budget s/he submits and through appointments to local campus boards of trustees.

"All of this just trivializes the Board of Governors to a political contest."

— FORMER SEN. HOWARD LEE (D-ORANGE)

that had been chosen by the GOP caucus had been replaced with candidates that had been approved by the Senate Democratic caucus.⁴⁴ Former Senate Education/Higher Education Committee Chairman Howard Lee (D-Orange) dismissed these criticisms, saying that the university Board elections followed the rules laid out in the Senate resolution. But Lee agrees that politics dominate the selection process for the UNC Board. "The Republicans made the same kind of decisions as we did when they were in power" in the House, he says. "All of this just trivializes the Board of Governors to a political contest."

Felix Joyner, former Vice President for Finance for the University of North Carolina, says the politicking involves not only legislators who may be tempted to elect their supporters to the UNC Board, but also alumni who lobby for election of representatives who will favor their university campus. In the Board's early days, members "became what the legislature wanted them to be — real, true advocates of the system," Joyner says. "That has peaked. In recent years, you are again beginning to see institutional advocacy become a big part of the election" of university Board members.

Former Rep. Gordon Allen (D-Person), was a state Senator during the university restructuring legislative debate in 1971 and returned to the state House after a stint lobbying for the N.C. League of Savings and Loan Institutions. He notes that when the Board of Governors system was created in 1971, the Democratic Party was firmly in power in North Carolina, and state lawmakers simply did not anticipate that partisanship would become a factor in elections for the UNC Board. "There was no pressure by the party then [to support party-backed candidates for the Board of Governors]. And there was a fair amount of lobbying of members by members" of the General Assembly, Allen says. "I can't imagine any process that has broken down as much as this one has. It's become a purely political matter." Allen was one of only three legislators serving in the 2003–04 General Assembly who also was a legislator

"I can't imagine any process that has broken down as much as this one has. It's become a purely political matter."

— FORMER REP. GORDON ALLEN (D-PERSON)

when the UNC Board of Governors and 16-campus university system was created in 1971.

Despite fears about growing partisanship in university board elections, many educational leaders who have had experience with other state university systems believe North Carolina has escaped the truly damaging political fights that have taken place surrounding university boards selected by means other than legislative election. "The politicization of public boards is really a serious issue," says Patricia Sullivan, Chancellor of the University of North Carolina at Greensboro, who had previously been head of an institution in the Texas public university system. "So far, North Carolina has avoided that." In addition, UNC President Molly Corbett Broad — who has held leadership positions in public university systems in New York, Arizona, and California — points out that a particular board selection process can be positive or negative, depending on the context. As an example, she cites the Board of Regents in Arizona, which governs three public institutions. The eight members appointed during Governor Bruce Babbitt's tenure were a "strong and diverse board,"

"The politicization of public boards is really a serious issue."

— PATRICIA SULLIVAN
CHANCELLOR, UNC-GREENSBORO

Broad says. "Then a new Governor, Evan Meacham, was elected and impeached, and the character of that board changed dramatically due to the changing political situation" as new members were appointed and continuity was breached. "The main advantage of North Carolina's [selection] system is the continuity," Broad adds. "It is the way North Carolina has historically chosen its university leaders, and it is a much more populist approach than you see typically."

The selection process for the New York Board of Regents — the only other central higher education governing board in the country that is elected solely by the legislature — has been marked by sharp political infighting in recent years, say members and supporters of that board. The Regents, a 16-member coordinating board that regulates all educational institutions in the state — including elementary and secondary schools, museums, and libraries — are elected at a joint session of the legislature, which is now dominated by the Democratic Party. (For example, of the 211 members of the 1999 New York Legislature, 87 were Republicans and 124 were Democrats). In 1999, all but one of the 16 Regents were Democrats. In 2004, Democrats outnumbered Republicans in the joint session of the two New York chambers 126 to 85. In 2004, all members of the Board of Regents were Democrats appointed by the



Karen Tam

The UNC Board of Governors, meeting in Chapel Hill.

Democratic majority in the legislature. To protest their lack of a voice in the selection process, the New York Senate Republican majority regularly boycotts joint sessions where Regents are elected. Steven Saland, chair of the Senate's Education Committee, says, "It is a process that calls out for change."⁴⁵ The situation has resulted in calls for reform ranging from Republican Governor George Pataki's campaign promise to abolish the Regents to attempts by Republican Senators to give the Senate a weighted vote in Regents' elections, to a recent Pataki proposal that would expand the board to 18 members — 12 appointed by the governor and 6 chosen by members of the legislative leadership.

Dave Johnson, Secretary to the Regents, says partisan criticisms of the board have affected neither the number of people wanting to serve nor the diversity of its membership. For example, 41 candidates sought three open seats on the board in 1999, Johnson says. Currently, five of the 16 Regents are racial minorities and five are women — representing 31 percent of the board in each category. But Johnson says, "The Regents *are* becoming more and more concerned about public perception of the board as Republican Senators voice criticisms of what they feel is happening" with the selection process. "We are going to have to find a way around the Republican bashing [of the board] because we want the support of everyone — not just the party in power."

D. Alternative Means of Selecting Members of University Governing Boards

1. Appointment of Board Members by the Governor

Members of statewide public higher education boards most commonly are appointed by governors. This is the case in 46 states. The governor may share this authority with the state legislature or some other appointing or electing body and make appointments either with or without approval of the state Senate, or of both chambers of the legislature. In Alabama, for instance, the governor appoints 10 members of the 12-member board with the advice and consent of the state senate, and the lieutenant governor and speaker of the house each appoint one member.

In Georgia, where the governor appoints all members of the state Board of Regents at-large — a board that governs 34 public senior institutions and community colleges — university leaders say the process has helped shore up support for the university system. "If you're talking in terms of having the executive branch and the university system pulling in the same direction, it helps," says Tom Daniel, Vice Chancellor for External Affairs for the University of Georgia system. "You need the governor behind you to have a successful

educational system.” In 1999, for example, newly-elected Georgia Governor Roy Barnes recommended that the legislature approve all of the Regents’ funding requests, including a 4 percent merit pay increase for university employees, Daniel says.

Edgar Jenkins, a former Georgia Congressman who chaired the state Board of Regents from 1998 to 2000, points out that gubernatorial appointment of higher education board members fits well with Georgia’s tradition of a strong executive branch. The only time this arrangement was a problem for university leaders occurred in the 1940s when then-Governor Eugene Talmadge got into a feud with members of the board that governed the University of Georgia and removed all of its members. Jenkins says, “After that, the legislature enacted a constitutional amendment which set up the Regents. So that means we cannot be dictated to” by the executive or legislative branches of government — although, of course, the General Assembly still controls the purse strings for higher education.

Judy Temby, Secretary to the Board of Regents of the University of Wisconsin system believes their system of having the governor appoint the board members, subject to confirmation by the state senate, works well. “The senate confirmation requirement is a good check. It adds another perspective to the governor’s choices and gets the legislative leadership involved, all of which adds to the credibility and effectiveness of the board.”

One argument in favor of permitting the governor to make appointments to the UNC Board is that the Governor is elected by all citizens across the state, so he or she would be accountable to a broader public for appointments of university Board members. This is sometimes tempered by requiring the advice and consent of the Senate or of both houses. Other states that have systems of gubernatorial appointments to statewide higher education boards, especially those that require the consent of the legislature, say that their boards are more effective because they are less often gridlocked by partisan legislative politics. Illinois reorganized its public university governance in 1995 and changed the state’s selection process from a popularly elected board to a gubernatorially appointed board with six-year staggered terms. Supporters say this resulted in a focus that is less on statewide election politics and more on effective

“It would be a more stately process if the governor was doing it. The governor can prevail upon good people to run for seats. They wouldn’t have to come up here and go through the wrenching process we have now.”

— SEN. TONY RAND (D-CUMBERLAND)

“I don’t think we can avoid partisan politics if the governor is making the appointments — we don’t have any nonpartisan governors.”

— DUDLEY FLOOD
UNC BOARD OF GOVERNORS MEMBER

higher education oversight.⁴⁶ In Illinois, the governor appoints 10 of the 15 board members with the advice and consent of the state Senate, and no more than seven of the members appointed by the governor (excluding the Chairman) can be affiliated with the same political party.⁴⁷

Senator Tony Rand (D-Cumberland) is one legislator who favors gubernatorial appointments to North Carolina’s Board of Governors — the selection process used by most states. “It would be a more stately process if the governor was doing it,” he says. “The governor can prevail upon good people to run for seats. They wouldn’t have to come up here and go through the wrenching process we have now.” Rand adds that having the governor select UNC Board members also would give the system clearer lines of accountability because a single person would have to answer for his or her choices of university Board members, as opposed to the way legislators can now deflect criticisms by citing overall election results.

The late Michael Hooker, former Chancellor of UNC-Chapel Hill, said his experience in two other states where board members are appointed by the governor (Hooker was President of the University of Maryland-Baltimore County and of the five-campus University of Massachusetts system) convinced him that “while politics certainly played a role, it was less so than in North Carolina, and in my experience, those boards functioned better.”

The primary arguments against giving the governor more of a role in the selection of UNC leaders are that gubernatorial appointments would be just as political as election by the General Assembly and that such a change would give the governor too much power. Detractors also say the Governor would appoint only members of his or her political party or ideological bent to the university board.

Dudley Flood, a UNC Board of Governors member elected in 2001, says that gubernatorial appointments would more likely be based on political or partisan lines. “I don’t think we can avoid partisan politics if the governor is making the appointments — we don’t have any nonpartisan governors,” says Flood. “I feel certain there are a multitude of political persuasions on the Board, but because political persuasion *per se* was not how they got on the Board, they don’t have to manifest these persuasions. I would never want to vote on the Board as a

Democrat. If I were appointed by a Democratic governor, there might be an instance when I would be persuaded to learn what the Democrats think. I don't really care what the Democrats think. I'm going to do what my conscience tells me to do." Flood believes his colleagues on the Board feel the same. "I think that most of the people on the Board feel similarly about their responsibilities to the system and to the people of North Carolina. I was told that I got either 86 votes or 86 percent of the vote. I'm not sure, and I really don't care, but it doesn't make me feel any different as far as my responsibility, and I think you want to keep that element as much as you can in the governance structure."

Representative Verla Insko (D-Orange), Chair of the 1999 and 2001 University Subcommittee of the House Education Committee, believes that allowing the governor to select UNC Board members would place too much authority in the hands of the executive branch of state government. "Now that we've given the governor veto power [in 1996 North Carolina became the last state in the nation to grant its governor a veto, which took effect on January 1, 1997], we have one of the strongest governors in the nation," she says. Selection of UNC Board members by the legislature "helps maintain a balance of power within the different arms of government," she adds.

Former Governor James B. Hunt, Jr. points out that the executive branch already has a role in the selection of members of the 16 UNC campus boards of trustees. "These things develop

historically," he says of the current selection process for the Board of Governors. "I think the present process is serving us well. The legislature works at this very hard. The real test is, are they [the university Board] getting really good people, and I think that they are."

The argument that gubernatorial appointment of the UNC Board of Governors would be more political than the current process of election by the legislature is highly debatable. As described above, the current system has led to Board members making sizable political donations to legislators, a significant number of lobbyists on the Board, and highly partisan spats between Democrats and



**Former Governors
Jim Holshouser and Jim Hunt**

Karen Tam



Board of Governors Chairman Brad Wilson of Cary and members Irvin Aldridge of Manteo and Ray Farris of Charlotte.

Republicans in both the Senate and the House over Board nominees. And, legislative leaders historically have directed extra funds to campuses in their districts or regions. Former Speaker of the House Liston Ramsey (D-Madison) did this for Western Carolina University, President Pro Tem of the Senate Marc Basnight (D-Dare) does this for Elizabeth City State University, and Speaker of the House Jim Black (D-Mecklenburg) does this for UNC-Charlotte, all schools in their districts. For example, during deliberations on recommended location of a proposed pharmacy school, one member of the Board of Governors announced that he had a phone message from Senator Basnight's office asking him to persuade his fellow Board members to delay approval of the report recommending against creation of a stand-alone pharmacy school at Elizabeth City State University — a request his fellow Board members did not accommodate. And, when a bill authorizing the creation of research centers on various campuses, including the ECSU pharmacy school, was proposed in the 2004 session, Co-Speaker Black said he could not support the package unless it included a bioinformatics research center at UNC-Charlotte. "I didn't let the train leave the station without them. I won't let it leave without us," says Black.⁴⁸

The argument that Board appointments should not go to the governor because he is one of the most powerful governors in the nation also is extremely weak. In multiple studies by UNC-CH political science professor Thad Beyle of the institutional powers of all 50 governors, North Carolina's governor has consistently ranked as one of the weakest offices institutionally in the country. Beyle ranked North Carolina's governor fifth weakest in 1981, third weakest in 1990, weakest overall in 1996, and seventh weakest in 2002. This is due to the fact that the Tar Heel governor shares executive power with nine other statewide elected officials (more than 38 other governors), has weaker veto power than 43 other governors, has weaker appointive powers, and has less control over the budget than other governors, among other factors, says Beyle.⁴⁹

2. Election of Board Members by the Public

Other means of university board selection include election of Board members by the public and the use of panels of experts to nominate Board members. The research and interviews for this report revealed little support for the idea of *public election* of members of the

state's higher education board — the system used in Nevada and Michigan. The strongest arguments against this model were that election by the public would go against political tradition in North Carolina, lengthen a ballot that is already tied for seventh longest among the states,⁵⁰ and lead to even more politicization of higher education policy. Public election of the Board of Governors would "involve raising money and making promises," says former UNC Board Chairman Benjamin Ruffin. "What is your campaign platform going to be? If you're out there running [for public election] you might have to make promises to a particular campus." Retired East Carolina University Chancellor Richard Eakin says North Carolina's current system "has led us to have members of the Board of Governors who are not single issue. In some states, people run on a popular ballot and that leads to people being elected on one issue."

Former Representative Warren "Pete" Oldham (D-Forsyth), Co-Chairman of the 1999 House Education Appropriations Subcommittee and of the full Appropriations Committee in 2001 and Chairman of the University Board of Governors Nominating Committee in 1999 and 2001, believes that public election of Board of Governors members also would make the process more elitist. "Folks are spending a quarter of a million dollars to run for legislative seats now. So the average person would be placed at a disadvantage" if he or she had to run a public campaign for the university Board, he says. "I think a housewife ought to have as much opportunity to be on the Board of Governors as a CEO of a corporation."

According to Bob Hall of Democracy South, the cost of winning a seat in the state House in legislative elections in 2000 averaged \$69,000, while the average expenditure for securing a Senate seat was \$134,500. The number of legislative candidates who spent more than \$100,000 in the 2000 elections cycle was 61, up from 42 in 1998. And, 25 of these candidates spent over \$200,000 in their legislative races.⁵¹ Thus, a system of public elections for seats on the UNC Board of Governors might be a very expensive proposition.

"If you happen to have a board going in a different direction than the Governor, it's difficult to move forward."

— CAROL EASLICK
ANALYST, GOVERNMENT SERVICES OFFICE,
MICHIGAN DEPARTMENT OF EDUCATION

In Michigan, public election of higher education board members has become inseparable from party politics, says Joseph Chisholm, a lobbyist with the Chisholm Advocacy Group who specializes in education issues and was former Senior Policy Advisor to the Michigan Senate. Candidates for local university board seats are selected at state conventions of the Republican and Democratic parties. "There is no primary opportunity, so you really have to work through your party to get elected," Chisholm says. "It's a statewide seat, and it's almost impossible to cover the whole state [in a campaign]. So you'll find the people who are elected are party loyalists, and the boards at those universities tend to be gridlocked by partisan loyalties." Although some candidates do spend money on races for university board seats, such expenditures do not appear to have much impact, Chisholm says. This is because the public is generally not as aware of or as interested in elections for university board seats as for other statewide offices. An exception occurred in 1998 when David A. Brandon, a popular former University of Michigan football star, successfully ran for a seat on that university's Board of Regents and attracted major media coverage for the race. Chisholm says, "Usually, people don't pay attention to these candidates."

Carol Easlick, an analyst in the Government Services Office of the Michigan Department of Education, says the same is true of public elections for the eight

From the United States District Court for the Middle District of Georgia, Athens Division, comes this:

Amended Order

"The case style on the order entered by this Court on June 17, 1993, should be amended to read 'Board of Regents of the University System of Georgia' rather than 'Board of Rejects of the University System of Georgia.' The court wishes to emphasize that the error was purely typographical and not to any extent Freudian."

— C.G.

"MARGINALIA," *THE CHRONICLE OF HIGHER EDUCATION*, SEPTEMBER 8, 1993

*"There are no clear prerequisites for
being on the Board."*

— FORMER REP. GENE ARNOLD (R-NASH)

members of the Michigan State Board of Education, which is a planning agency with no direct governing power over public university campuses. "A lot of people just aren't familiar with the candidates," she says. "They are focusing on the major elections. So a lot of campaigning has to be done, and endorsements from organizations like education associations, unions, and chambers of commerce become important." According to Easlick, the main advantage of public election of higher education board members in Michigan is that "you have input from the entire state so there is a better dialogue from all sides and maybe a wider range of opinions." Easlick says the main drawback is "if you happen to have a board going in a different direction than the Governor, it's difficult to move forward."

3. Screening of Board Members by a Panel of Experts

Some states have used panels of experts to help screen and nominate candidates for higher education boards. For example, when the governor of Maryland was selecting members of the Board of Regents of the restructured University of Maryland system, he appointed an advisory task force to recommend three times the number of names needed. In Minnesota, a Regent Candidate Advisory Council helps recruit, screen, and set criteria for legislative appointments to the governing board of the University of Minnesota.⁵² The Council develops "written statements of board member qualifications and responsibilities to guide the legislator's selection of appointees," say officials at the Association of Governing Boards (AGB) of Universities and Colleges. AGB officials also note that Virginia Governor Mark Warner signed an executive order in 2002 "establishing a panel to review potential appointees to the governing boards of Virginia's public colleges and universities, the Virginia Community Colleges Board, and the State Council of Higher Education based on 'merit, experience, sound judgment, and proven leadership.'" ⁵³ And in North Dakota, the governor appoints seven of the nine members of the State Board of Higher Education from a list of nominations by the President of the North Dakota Education Association, the Chief Justice of the state Supreme Court, and the Superintendent of Public Instruction.⁵⁴

Rep. Gene Arnold (R-Nash), former North Carolina House Higher Education Appropriations Committee

Chairman, is among those lawmakers who feel that the General Assembly could use some help in identifying qualified candidates for UNC's Board. "There are no clear prerequisites for being on the Board," he says. "I already have five or six applications from people who want to be on the Board of Governors [in the 1999 legislative session]. I don't know them from Adam, and they're walking the halls. It's ridiculous."

In the absence of any specific requirements for membership on the UNC Board, N.C. House University Subcommittee member Verla Insko says she looks for "someone who has had leadership responsibility and can show evidence that they know the university system and have an interest in more than one campus. I also look at gender and age. And I listen to my fellow legislators." Insko says she supports the idea of a nominating panel or some other improvement in the current screening process for the Board of Governors. Former Board of Governors member William Dees also believes a nominating panel "would be a good option" for improving the selection process for the UNC Board.

But former Board of Governors Chairman Sam Neill warns that an extra screening process might result in rigid qualifications that would reduce the chances that dissenting opinions and fresh outlooks would be represented on the university Board. "When I ran [for a seat on the Board of Governors], I was a Wake Forest graduate, and I was in my 30s at a time when nobody on that Board was under 65," he says. "I beat an incumbent, was re-elected, and went on to serve as chair. I was a good Board member. But someone with my background would never have made it through an outside screening process."

Jane V. Wellman, senior associate at the Institute for Higher Education Policy, helped author a statement of five principles of good practice for governing boards for the Association of Governing Boards of Universities and Colleges, a national organization dedicated to strengthening the performance of boards of public and private higher education. Wellman says that selection of university governing board members is a challenge, regardless of the process. "We were hard-pressed to find one state that does it well," says Wellman. "It's too much about political patronage."⁵⁵

*"We were hard-pressed to find one state
that does it well. It's too much about
political patronage."*

— JANE V. WELLMAN
SENIOR ASSOCIATE, INSTITUTE FOR HIGHER EDUCATION POLICY



Karen Tam

Former Chancellor Jim Woodward of UNC-Charlotte and Board of Governors members Addison Bell of Charlotte and Bob Warwick of Wilmington confer at a meeting of the UNC Board of Governors.

E. Selection of Local Campus Boards of Trustees

The selection process for the 13-member local boards of trustees at UNC's 16 campuses differs from the process used to select the UNC Board of Governors. By statute, eight local campus trustees are chosen by the Board of Governors, and four are appointed by the Governor, all for staggered four-year terms with a two consecutive term limit.⁵⁶ The remaining slot goes to the campus student government president, who serves as an ex officio Board member with voting privileges. Prior to restructuring in 1971, 10 of UNC's member institutions — the regional schools outside of the old Consolidated University System — had been managed by boards of trustees, all appointed by the Governor with legislative confirmation. By contrast, the six campuses of the Consolidated University did not have their own separate governing boards. Instead, their operations were controlled by a 100-member board of trustees that was elected by the legislature. In the 1999 legislative session, Senator Tony Rand (D-Cumberland) sought to give the President Pro Tempore of the Senate and the Speaker of the House the power to appoint one member each to the local campus boards of UNC schools, reducing by one the number appointed by the Board of Governors.⁵⁷

This legislation never emerged from the committee to which it was referred (Senate Rules and Operations).

Former UNC-Chapel Hill Chancellor Paul Hardin says he was shocked to discover “that the board of trustees at the University of North Carolina at Chapel Hill was imposed on me with literally no input from me. My suggestions [for board members] were usually not granted because the Board of Governors felt beholden to others out there in the political establishment.” Hardin says chancellors should be allowed “if not an outright veto” over candidates for the local campus boards of trustees, then at least some assurance that their suggestions will be considered. But some educational leaders feel chancellors have had too much control over the selection of campus boards of trustees, making those boards nothing more than what North Carolina Agricultural and Technical State University Trustee Velma Speight calls a “rubber stamp” for decisions of high-level university leaders. Still others believe chancellors have the appropriate amount of influence over selection of boards of trustees of UNC campuses. “I have always felt I had sufficient input into the process,” says James Leutze, former Chancellor of UNC-Wilmington and a former faculty member at UNC-Chapel Hill. “And I don’t think I should necessarily get my way in [campus] board appointments.”

F. Length of Terms for Members of the Board of Governors

One area of strong agreement among North Carolina policymakers is that the shorter terms of UNC Board of Governors members have made the process of Board selection even more vulnerable to politics — both on the Board and in the General Assembly. Legislation passed in 1987 reduced terms on the Board from eight years with a two-term limit to four years with a three consecutive term limit. As a result, not only do potential candidates have to campaign for seats more often, but Board leadership is subject to more rapid turnover. Former Board of Governors Chairman Benjamin Ruffin, for example, had to stand for re-election to the Board one year after he won the post of Chairman. “When they shortened the terms, you win [a Board seat] one day, and you have to start campaigning the next,” says Betty McCain, former Board of Governors member and former N.C. Secretary of Cultural Resources.

State House Democratic Majority Leader and former Speaker Pro Tempore, Joe Hackney, says, “I didn’t like reducing the terms from eight years, so six years would be an improvement.” Lengthening the terms of Board of Governors members from four years to six years would increase continuity in higher education policymaking, better accommodate a steep learning curve for Board members, and diminish unwanted partisan political influence over Board selection when the Governor’s office or General Assembly leadership changes hands. Longer terms would allow Board members to develop a sense of institutional memory, give them more time to become acquainted with the complexities of university governance, and facilitate thinking and planning by Board members over a longer term.

Currently, many Board of Governors members may be on the Board only long enough to serve on two standing committees, a situation that negates contributions they could make in other areas and that gives them an incomplete picture of their overall responsibilities in higher education policy. If the legislature retains its authority to elect Board members, longer terms also would reduce the frequency with which nominees would have to campaign for Board seats. Finally, longer terms would allow more consistent higher education policy by insulating the university system from dramatic but perhaps temporary upheavals in the political landscape, such as those that occurred when the 1994 elections gave Republicans control of the state House, and those that occurred again in 1998, when elections gave the Democratic Party a majority in both the House and the Senate.

Shorter terms also have meant that Board of Governors members have less time to learn the complexities of the university system they are governing, says Samuel Poole, whose service on the Board of Governors from 1983 to 1995, combined with his service as an emeritus member from 1995 to 1999, spanned

“When they shortened the terms, you win [a Board seat] one day, and you have to start campaigning the next.”

— BETTY MCCAIN
FORMER BOARD OF GOVERNORS MEMBER

the careers of three university Presidents. “Now, a person only gets to serve on but one committee, and many members don’t have the familiarity with the campuses,” he says. “They just don’t have the institutional knowledge.” Even the late state Senator Kenneth Royall, Jr., the architect of the 1987 legislation that reduced the length of terms on the university Board, was uncertain whether shorter terms ended up serving what he says was the intended purpose of the bill — to open the Board to a wider range of candidates. “We have a lot of able citizens in this state, and I just thought they ought to have an opportunity to serve on the Board,” Royall told the Center before his death. “I’m not sure now it’s the best way. There’s too much politics in it.”

Footnotes

¹ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research, Raleigh, NC, 2000, p. 105.

² New York Education Law §202. Under the statute, the number of board members “shall at all times be four more than the number of the then existing judicial districts of the state and shall not be less than fifteen.” Currently, twelve members of the Board of Regents represent the state’s respective judicial districts and the additional four members are chosen at large. As a regulatory coordinating board, the Board of Regents of the University of the State of New York oversees two public university governing boards: (1) the City University of New York’s Board of Trustees, of which the majority, or 10 of 17 members are appointed by the state’s Governor with consent of the state Senate, and (2) the State University of New York’s Board of Trustees, where 15 of 16 members are gubernatorially appointed with consent of the state Senate.

*“I’m not sure now it’s the best way.
There’s too much politics in it.”*

— THE LATE SEN. KENNETH ROYALL, JR.

³ Waller *et al.*, note 1 above. Minnesota has a higher education governance structure that consists of two governing boards, the University of Minnesota Board of Regents, and the Minnesota State System Board of Trustees. The Minnesota State System Board of Trustees is appointed by the governor, while the University of Minnesota Board of Regents is elected by the legislature.

⁴ Vermont has a higher education governance structure that consists of two governing boards, the Vermont State Colleges Board of Trustees and the Board of Trustees of the University of Vermont and State Agricultural College. Both boards have members who are appointed by the governor and by the legislature. However, the Board of Trustees of the University of Vermont also includes nine self-perpetuating members. New Hampshire's Board of Trustees of the University of New Hampshire includes members appointed by the governor and others elected by alumni.

⁵ Alabama Code §16-5-2.

⁶ Pennsylvania Consolidated Statute §20-2004-A.

⁷ South Carolina Code §59-103-10.

⁸ Georgia Code §20-3-21.

⁹ Chapter 36 of the Wisconsin Statutes.

¹⁰ Utah Code Annotated §53B-1-104.

¹¹ Waller *et al.*, note 1 above, p. 11.

¹² Nevada Revised Statute §396.040.

¹³ Michigan Compiled Laws §388-1002.

¹⁴ Waller *et al.*, note 1 above, pp. 108–109.

¹⁵ *Ibid.*, p. xii.

¹⁶ The Board has additional members who are not permitted to vote. Former Board chairs may continue to serve for limited periods as non-voting members *emeriti*. Board members who are former Governors of North Carolina and who have been elected by the legislature to a full term on the Board also serve as non-voting members *emeriti*. To date, only former Governor James Holshouser who served from 1973–1997) has met these criteria. Also, the Board has a student representative who is a non-voting member.

¹⁷ N.C. General Statute §116-6(a), prior to 2001.

¹⁸ Session Law 2001-503 (HB 1144) of the 2001 N.C. Session Laws, now codified as N.C. General Statute §116-7(a).

¹⁹ N.C. General Statutes §§116-6(f) and 116-6.1. N.C.G.S. §116-6.1 authorizes the President of the UNC Association of Student Governments to appoint the student who will sit on the Board of Governors. Historically, the student government President has appointed himself or herself to the board.

²⁰ See Waller *et al.*, note 1 above, p. xii.

²¹ N.C. General Statute §116-7(a).

²² As quoted in Dan Kane, "Board of Governors member's wife books NCSU sports travel," *The News & Observer*, Raleigh, NC, October 10, 2000, p. 1A.

²³ *Legislative Days* are days on which the legislature conducts formal meetings of the membership of each chamber. When the legislature is in session, it can go no longer than three *calendar days* without both chambers meeting. Typically, the N.C. General Assembly meets on Monday evening through Thursday while in session, and sometimes on Friday mornings.

²⁴ N.C. Senate Resolution 103 in the 2001 session, adopted February 21, 2001, and N.C. Senate Resolution 174 in the 2003 session, adopted March 12, 2003.

²⁵ Associated Press, "Board of Governors members named over GOP objections," *The Herald-Sun*, Durham, NC, February 19, 1999, p. C9.

²⁶ N.C. General Statute §116-6(c).

²⁷ N.C. Senate Resolution 103 (2001).

²⁸ In the 1999 Board of Governors elections by the House, a tie had necessitated a runoff election for one of the two seats in the minority race category. Under the 2001 Senate resolution, if fewer than two nominees in the minority race category or the female categories or fewer than four nominees in the at-large category had received a majority of votes, a runoff to fill the open positions was to be conducted among nominees who were not elected but who received the highest number of votes cast in each category. If a tie had occurred, both nominees were to be included on the next runoff ballot, even though that would result in more than two nominees per available position. If more than two nominees in the minority race or female categories or if more than four nominees in the at-large category had received a majority of votes, the nominees in each category receiving the highest number of votes were the ones to be given seats on the Board of Governors. A runoff provision for the eight at-large seats also was included in the 2003 Senate Resolution 174.

²⁹ "Under the Dome," *The News & Observer*, Raleigh, NC, April 8, 2005, p. 5B.

³⁰ Associated Press, "N.C. Senate elects Board of Governors applicants," *The Herald-Sun*, Durham, NC, April 7, 2005.

³¹ N.C. House of Representatives Resolution 542 (2001), adopted March 15, 2001.

³² *Ibid.*

³³ N.C. House of Representatives, "Memorandum to House Nominees to the UNC Board of Governors" from Representative Warren D. Oldham, Chair, University Board of Governors Nominating Committee, Re: Questions to the Board of Governors Nominees," Raleigh, NC, March 14, 2001, p. 1.

³⁴ *Blank bills* are a legislative place-holding device where a bill with little or no substantive content is introduced, assigned a number, given a title, and referred to a committee, thereby passing the first of three constitutionally required readings in its chamber of origination before its purpose becomes public. They are often used to meet formal deadlines for bill introduction.

³⁵ Bob Hall, "Study: UNC Board of Governors Embodies Problem of Campaign Money Influencing Elections and Policy," *Democracy South*, Carrboro, NC February 11, 2002. The study reports: Three board members gave more than \$30,000 to political campaigns: James G. Babb, a broadcast executive from Charlotte; J. Addison Bell, a Charlotte businessman; and H. Frank Grainger, a Cary businessman. The other board members who gave more than \$10,000 are John W. Davis III, a Winston-Salem investment banker; Teena S. Little, a former state senator from Southern Pines; John F.A.V. Cecil, an Asheville businessman; Anne W. Cates, a Chapel Hill businesswoman; William L. Burns, Jr. of Hillsborough, retired chairman of Central Carolina Bank; Ray S. Farris, a Charlotte attorney; F. Edward Broadwell, Jr., an Asheville banker; Bert Collins, a Durham insurance executive; Priscilla P. Taylor of Chapel Hill, a foundation executive; and J. Bradley Wilson, a Cary attorney.

³⁶ As quoted in Jane Stancil, "UNC board big political donors," *The News & Observer*, Raleigh, NC, February 11, 2002, p. 3A.

³⁷ As quoted in Eric Ferreri, "Study: UNC governors big donors," *Chapel Hill Herald*, Chapel Hill, NC, February 12, 2002, pp. 1 and 5.

³⁸ Chris Fitzsimon, "From the Left: Conflicts abound for UNC governors," *Triangle Business Journal*, Raleigh, NC, March 26, 1999, p. 43, available online at <http://triangle.bizjournals.com/>

triangle/stories/1999/03/29/editorial3.html.

³⁹ Sue Sturgis, "UNC Politics 101," *The Independent*, Durham, NC, November 19–25, 1997, p. 13.

⁴⁰ N.C.G.S. 116-7(b).

⁴¹ UNC General Administration pamphlet, *The University of North Carolina Board of Governors, 2001–2002*, Chapel Hill, NC.

⁴² The Bone case is cited as *State ex rel. Wallace v. Bone and Barkalow v. Harrington*, 304 N.C. 591, 286 S.E.2d 79 (1982). For explanations of the case, see Lacy Maddox, "Separation of Powers in North Carolina," in *Boards, Commissions, and Councils in the Executive Branch of North Carolina State Government*, N.C. Center for Public Policy Research, Raleigh, NC, 1984, pp. 41–64 and John V. Orth, "Separation of Powers: An Old Doctrine Triggers a New Crisis." *N.C. Insight*, Volume 5, Number 1, 1982, pp. 36–47.

⁴³ See Vanessa Goodman and Jack Betts, *The Two-Party System in North Carolina: Do We Have One and What Does It Mean?*, N.C. Center for Public Policy Research, Raleigh, NC, December 1987, p. i.

⁴⁴ Staff and wire reports, "8 picked for UNC board over Republican objections," *The News & Observer*, February 19, 1999, p. 3A.

⁴⁵ As quoted in Joel Stashenko, Associated Press, "Legislature approves 4 Regents appointees: Senate GOP miffed by process," *Ithaca Journal*, Ithaca, New York, March 10, 2004, p. 1, available online at <http://www.theithacajournal.com/>.

⁴⁶ Jim Edgar, "Rethinking Trustee Selection And Governing Board Composition," *Trusteeship*, Association of Governing Boards of Universities and Colleges, Washington, DC, March/April 2001, p. 37.

⁴⁷ Waller *et al.*, note 1 above, p. 188.

⁴⁸ As quoted in Sharif Durhams, "Black drops plan for university projects," *The Charlotte Observer*, Charlotte, NC, June 3, 2004, p. 1B.

⁴⁹ See Thad Beyle, "The Formal Powers of the Governor in North Carolina: Very Weak Compared to Other States," *North Carolina Focus*, N.C. Center for Public Policy Research, NC, 1996, p. 267, which says North Carolina's governor is the weakest in the nation in formal institutional powers. These powers include length of tenure and succession, power to appoint officials to major offices, number of separately elected statewide officials, preparation and control over the budget, and veto power. In the same article, UNC-CH Professor Beyle commented that even if approved by the voters in November 1996, the general veto power to be given the N.C. governor still "would be weak compared to those 43 states that accord their governors an item veto." Beyle also points out that the three-fifths vote needed to override a veto in North Carolina is easier to override than the two-thirds required in many other states. "These two factors make the N.C. veto a weak form of veto power and thus would not substantially change the 50-state rankings," said Beyle in a press release accompanying the 1996 study.

In Beyle's most recent update on the governor's institutional power index for the 2002 Congressional Quarterly State Fact Finder, he gives North Carolina a 2.9 rating on a 5-point scale (with 1 being low and 5 being high), which places the North Carolina governor tied at 44th with Indiana as the nation's seventh weakest governor.

⁵⁰ Center analysis of data contained in Keon S. Chi, editor, "Table 4.4 — The Governors: Powers," *The Book of the States 2002*, Volume 34, Council of State Governments, Lexington, Kentucky, 2002, pp. 150–151. North Carolina elects more officials statewide than all but 6 states (tied for 7th) in the country.

⁵¹ This information was contained in a report released by Democracy South on February 19, 2001 and based on campaign finance disclosure reports filed with the state Board of Elections. The most expensive Senate seat in 2000 was won by Senator Linda Garrou (D-Forsyth), who spent \$368,110 to win a second term in that chamber. The most expensive House seat was won by newcomer Alice G. Underhill (D-Craven), who spent \$326,546. House Speaker Jim Black (D-Mecklenburg) and Senate President Pro Tempore Marc Basnight (D-Dare) spent \$963,154 and \$901,382, respectively, but much of that money went to other candidates for legislative seats. The average cost of winning a House seat in 1994 was \$25,800, while the average cost for Senators was \$36,300. Total expenditures by legislative candidates have tripled since 1994.

⁵² Clark Kerr and Marian Gade, *The Guardians: Boards of Trustees of American Colleges and Universities, What They Do And How Well They Do It*, The Association of Governing Boards of Universities and Colleges: Washington, DC, 1989, pp. 42 and 43.

⁵³ Neal C. Johnson and Charles S. Clark, "Take the Gamesmanship Out of Appointments to Public Colleges' Governing Boards," *The Chronicle of Higher Education*, June 6, 2003, Washington, DC, p. B20.

⁵⁴ North Dakota Century Code §15-10-02. The seven members appointed by the Governor are the only voting members of the North Dakota higher education board.

⁵⁵ As quoted in Jeffrey Selingo, "Trustees Urged to Defend Their Independence From Politicians," *The Chronicle of Higher Education*, March 2, 2001, Washington, DC, p. A24. The Association's statement is entitled, "Governing in the Public Trust: External Influences on Colleges and Universities" and is available at www.agb.org/about13.cfm.

⁵⁶ N.C. General Statute §116-31.

⁵⁷ Senate Bill 387 of the 1999 N.C. Legislative Session. And, in the 1995 session, Rep. Robert Grady (R-Onslow) also introduced legislation to give the General Assembly the power to appoint some trustees at individual campuses. That bill also failed.

CHAPTER 3

The Composition of the UNC Board of Governors

Of the 16 members elected every two years beginning in 1993, at least two shall be women, at least two other members shall be members of a minority race, and at least two other members shall be members of the political party to which the largest minority of the members of the General Assembly belongs.

— N.C. STATUTORY REQUIREMENT REPEALED IN 2001

In 1971, the N.C. General Assembly enacted legislation establishing the procedures for nomination and election to the Board of Governors. It required the election of minimum numbers of women, racial minorities, and members of minority political parties and divided this responsibility equally and alternately between the House and Senate. In 1993 and every four years thereafter, the Senate elected at least two women and two members of a minority race, and the House elected at least two members of a minority political party. In 1995 and every four years thereafter, the Senate elected two members of a minority political party, and the House elected two women and two racial minorities to the Board.¹ This alternating method was used through 2001 when the General Assembly passed legislation to repeal the language in the statute that required designated seats for females, racial minorities, and members of the minority political party.²

A. Requirements for Representation of Women and Minority Races

A subject of ongoing debate is whether statutory language guaranteeing seats on the Board of Governors to women, racial minorities, and minority political parties helps or hinders guaranteeing diversity on the Board. Until 2001, the law implementing the election process

for the 32-member Board required that “[o]f the 16 members elected every two years . . . at least two shall be women, at least two other members shall be members of a minority race, and at least two other members shall be members of the political party to which the largest minority of the members of the General Assembly belongs.”³ This system resulted in a minimum of four persons from each of these categories serving on the Board at any given time.

Some state leaders question whether the guaranteed seats act as ceilings rather than floors by limiting the number of women and minorities on the university governing Board to the minimum levels provided for by law. William Dees, who served as the first Chairman of the Board of Governors from 1972 to 1976, remembers that argument being posed to him when he addressed a group of educational leaders in Atlanta, shortly after North Carolina’s university governance system was reorganized in 1971. “I was convinced you could not get blacks on there unless the law required it,” he says. “I think the provisions for women and minorities are healthy. The provisions for the political minority [category] might be wrong,” he says, now that North Carolina is a two-party state. Former Governor James Holshouser, who was one of only 31 Republicans in the legislature when higher education was restructured in 1971, agrees that the guaranteed seats for political minorities on the UNC Board are no longer useful. “I always felt they just threw that in for me,” he says. “It’s a pretty broad-based Board even

without that design. I think it's gotten more so over the years." See Table 3.1 on pages 46–56 for the number of women, minorities and members of the minority party who have served on the Board of Governors since its creation in 1971–72.

A review of the UNC Board's membership records shows that while there have been more women and minorities serving on the Board of Governors in most years than the minimum numbers formerly required by law, those numbers remained

very close to the statutory limits and, in any case, are still not proportionate to the percentage of women or minorities in the state's population. The lowest number of women with voting seats on the Board in any given year has been the then statutory minimum of four of 32 (12.5%), which was the case during all but two of the first 10 years of the Board's existence, while the highest has been nine (28%) in 1999, 2000, 2001, and 2002.⁴ The Board of Governors' cumulative roster shows the lowest number of members of a minority race with voting seats on the Board in any given year since 1972 has been five of 32 (16%), which occurred in 1978, 1979, and 1981 through 1984, while the highest has been nine (28%) in 2001–2002. The percentage of racial

In 2003, the first legislative session when Board members were elected after the statute reserving seats for women and minorities was repealed, the legislature reduced the number of seats held by women by two, decreased the number of seats held by African Americans by one, and did not re-elect the sole Native American on the Board.

minorities serving on the university Board has ranged from a low of 16 percent to a high of 28 percent.

From 1972 through 2004, the overall voting percentage of female and racial minority UNC Board members has averaged 19 percent (199 of 1,024), and 20 percent (207 of 1,024 voting members), respectively. By comparison, the 2000 Census showed the percentage of women in the population at 51 percent⁵ and the percentage of all racial minorities⁶ combined is 28.9 percent

(including those individuals indicating two or more races).

Although the percentage of females in the state's population has not changed greatly over the last 30 years, the percentage of Hispanic/Latinos has increased 394% since 1990, and the percentage of non-white North Carolinians increased 3.2 percentage points over the past decade.⁷ As far as the Center can determine, no person of Hispanic ethnicity or of Asian ancestry, has ever served on the UNC Board of Governors. Of the 32 voting members of the 1999–2000 Board of Governors, 19 were white males, five were white women, four were black males, and four were females of a minority race.⁸ Although eight new members were elected to the Board

UNC Board of Governors meeting in Chapel Hill



Karen Tam



Karen Tam

Board of Governors members Cary Owen (left) of Asheville and Patsy Perry of Durham at a meeting in Chapel Hill

in 2001 (along with eight incumbent Board members who were re-elected), the only numerical change in the Board's demographic makeup was an increase of one minority male on the Board; however, the overall number of male (23) and female (9) Board members was unchanged.

In 2003, the first legislative session when Board members were elected after the statute reserving seats for women and minorities was repealed, the legislature reduced the number of seats held by women by one, decreased the number of seats held by African Americans by one, and did not re-elect the sole Native American on the Board. After this election, white males held 20 of the 32 voting seats on the Board, white females held five seats, black males held four, and black females held three seats. Representative Harold Brubaker (R-Randolph) points out that while the 2003 outcome in the legislature reduced the total number of women and racial minorities on the Board, the General Assembly elected more women and African Americans in 2003 than it did in the 2001 session. The General Assembly selected two women and two African Americans in 2001, and five women and four African Americans in 2003. With an eye to the long-term impact of the repeal of the minimum requirements for numbers of women, minori-

ties, and members of the minority political party, Brubaker says, "This will depend on the leadership of the General Assembly and the needs of the University. The future composition of the Board of Governors will be a function of the legislative leadership's desire for quality board members, their need to please their constituency [the members of each chamber], and their need to obtain a majority vote of members of their chamber to elect a slate of Board members."

The importance of diversity goes beyond numbers. As former Z. Smith Reynolds Foundation Director and former UNC-Chapel Hill Trustee Tom Lambeth says, "Questions get asked in a group that includes women and minorities that are not asked if they are not on the Board. That seems especially important when you are talking about higher education." And Benjamin Ruffin, past Chairman of the Board and a former Vice President of R.J. Reynolds Tobacco Company in Winston-Salem, said the law setting aside specific seats provided broader representation from throughout the state and should be preserved. "The way our system has worked, we have been the envy of other states," he said.⁹

The main arguments against statutory language requiring representation by women and minorities on the UNC Board are that such language is no longer



Former UNC President William Friday (seated, left), with the first four chairmen of the UNC Board of Governors: William Dees, Jr., William Johnson, John Jordan, Jr. and Philip G. Carson (seated, right)

necessary due to advances made by women and minorities in public life and invited a lawsuit. "I think they [the guaranteed seats] served a purpose at the time that was needed," says former state Senator Howard Lee (D-Orange). "But I think they are outmoded and divisive and should be gotten rid of."

In 1996, a lawsuit filed against the university Board over the issue of guaranteed seats for minorities by Jack Daly was dismissed by U.S. Magistrate Carl Horn III.¹⁰ (Daly ran unsuccessfully in the House for an at-large seat on the Board of Governors in 1999 and unsuccessfully for the Republican nomination for State Auditor in 2000). A more serious legal challenge to the law setting aside all three categories of guaranteed seats was filed in federal court in May 2001 by Walter Davis, a former member of the Board of Governors for two terms and a former member of the board of trustees at UNC-CH.¹¹ Attorneys representing Davis and four other plaintiffs filing the suit argued that the law violates equal protection provisions of the state and federal constitutions by specifically barring some people from seeking those 12 seats.¹²

At its June 2001 meeting, Board of Governors Chairman Benjamin Ruffin announced that the Board had decided not to fight the legal challenge to the Board's membership and to ask the General Assembly to repeal the law that reserved certain slots on the Board for women, minorities and minority political parties.¹³

In legislation signed into law by Governor Mike Easley on December 19, 2001, the General Assembly repealed the language in the statute that referred to designated seats and substituted a provision that says, "In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity."¹⁴ According to Ruffin, the challenged statute would have been difficult to defend in court, and it was "the view of the Board of Governors that it would be better for us to spend our time and money addressing educational matters than to spend our resources defending the challenged portions of the statute."¹⁵ He added that state law also requires legislators to choose the best qualified citizens for Board service, taking into consideration the need for representation by different races, genders, and political parties. "We trust that the General Assembly will take this objective seriously in future elections for the Board of Governors," Ruffin said.

The UNC Board of Governors was highlighted in a 1999 study by the Women's Forum of North Carolina

Brain work will cause her to become bald, while increasing masculinity and contempt for beauty will induce the growth of hair on her face. In the future, therefore, women will be bald and wear long mustaches and patriarchal beards.

— 19TH CENTURY PROFESSOR
HANS FRIEDENTHAL OF BERLIN UNIVERSITY,
ON THE EVOLUTION OF WOMEN AFTER HIGHER
EDUCATION AND VOTING RIGHTS

as one of many important state boards on which women continue to be under-represented. The Forum's report, "Gender Balance on Boards and Commissions," shows that women comprised only 16 percent of the UNC Board membership in 1998.¹⁶ Based on findings in the six-month study, the Women's Forum worked with legislators and a coalition of women's groups to produce legislation aimed at ensuring proportionate representation of women on public boards — including the UNC Board of Governors. Specifically, Senate Bill 333 and House Bill 596, as introduced in the 1999 legislative session, would have required that those making appointments to boards — including the UNC Board — select "from among the most qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each gender represents in the population of the state as a whole" or in the geographic or political district that each board governs.¹⁷ The bills also would have required appointing officials or bodies to make regular reports to the N.C. Secretary of State's Office on the number and percentage of women appointed for public boards. After being modi-

"Questions get asked in a group that includes women and minorities that are not asked if they are not on the Board. That seems especially important when you are talking about higher education."

— TOM LAMBETH
RETIRED EXECUTIVE DIRECTOR, Z. SMITH REYNOLDS
FOUNDATION, AND FORMER UNC-CHAPEL HILL TRUSTEE

fied to state that its purpose is to "encourage gender equity but is not to direct, mandate, or require such," the legislation was enacted by the General Assembly.¹⁸ The provisions requiring annual reports to the Secretary of State were retained. However, the General Assembly has never filed the annual reports about individuals selected for the UNC Board of Governors with the Secretary of State's Office.

—continued on page 57

Former N.C. Governor Jim Holshouser is an emeritus member of the UNC Board of Governors.



Karen Tam

Table 3.1

*Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971*

A. Board of Governors Members Who Are WOMEN

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1972	0	4	Adelaide Holderness Virginia Lathrop Emily Preyer Elise Wilson	1980	4	5	Geneva Bowe Grace Epps Adelaide Holderness Betty McCain Julia Morton
1973	1	4	Adelaide Holderness Virginia Lathrop Emily Preyer Elise Wilson	1981	4	4	Geneva Bowe Adelaide Holderness Martha McNair Julia Morton
1974	1	4	Adelaide Holderness Virginia Lathrop Emily Preyer Elise Wilson	1982	4	5	Geneva Bowe Terresa Bullock Adelaide Holderness Martha McNair Julia Morton
1975	2	4	Adelaide Holderness Betty McCain Julia Morton Elise Wilson	1983	4	5	Geneva Bowe Terresa Bullock Joan Fox Martha McNair Julia Morton
1976	2	4	Adelaide Holderness Betty McCain Julia Morton Elise Wilson	1984	4	5	Geneva Bowe Terresa Bullock Joan Fox Martha McNair Julia Morton
1977	3	4	Adelaide Holderness Betty McCain Julia Morton Elise Wilson	1985	4	6	Geneva Bowe Terresa Bullock Joan Fox Martha McNair Julia Morton Ruth Dial Woods
1978	3	5	Kathleen Crosby Adelaide Holderness Betty McCain Julia Morton Elise Wilson	1986	4	6	Geneva Bowe Terresa Bullock Joan Fox Martha McNair Julia Morton Ruth Dial Woods
1979	4	4	Grace Epps Adelaide Holderness Betty McCain Julia Morton				

* Number actually serving as voting members of the Board.

Table 3.1

CONTINUED

**Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971**

A. Board of Governors Members Who Are WOMEN, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1987	4	6	Geneva Bowe Joan Fox Betty McCain Martha McNair Julia Morton Ruth Dial Woods	1992	4	8	Lois G. Britt Betty McCain Martha McNair Ellen S. Newbold Maxine H. O'Kelley Priscilla P. Taylor Barbara Wills-Duncan Ruth Dial Woods
1988	4	6	Geneva Bowe Joan Fox Betty McCain Martha McNair Julia Morton Ruth Dial Woods	1993	4	7	Lois G. Britt Valeria L. Lee Helen R. Marvin Ellen S. Newbold Maxine H. O'Kelley Priscilla P. Taylor Barbara Wills-Duncan
1989	4	7	Lois G. Britt Joan Fox Betty McCain Martha McNair Ellen S. Newbold Maxine H. O'Kelley Ruth Dial Woods	1994	4	7	Lois G. Britt Valeria L. Lee Helen R. Marvin Ellen S. Newbold Maxine H. O'Kelley Priscilla P. Taylor Barbara Wills-Duncan
1990	4	7	Lois G. Britt Betty McCain Martha McNair Ellen S. Newbold Maxine H. O'Kelley Priscilla P. Taylor Ruth Dial Woods	1995	4	6	Lois G. Britt Helen R. Marvin Ellen S. Newbold Maxine H. O'Kelley Cary C. Owen Barbara S. Perry
1991	4	8	Lois G. Britt Betty McCain Martha McNair Ellen S. Newbold Maxine H. O'Kelley Priscilla P. Taylor Barbara Wills-Duncan Ruth Dial Woods	1996	4	6	Lois G. Britt Helen R. Marvin Ellen S. Newbold Maxine H. O'Kelley Cary C. Owen Barbara S. Perry
				1997	4	5	Lois G. Britt Helen R. Marvin Maxine H. O'Kelley Cary C. Owen Barbara S. Perry

* Number actually serving as voting members of the Board.

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Table 3.1

CONTINUED

*Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971*

A. Board of Governors Members Who Are WOMEN, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1998	4	5	Lois G. Britt Helen R. Marvin Maxine H. O'Kelley Cary C. Owen Barbara S. Perry	2002	4	9	Anne Cates Angela R. Bryant Hannah Gage Teena S. Little Barbara S. Perry Patsy B. Perry
1999	4	9	Lois G. Britt Angela R. Bryant Teena S. Little Helen R. Marvin Maxine H. O'Kelley Barbara S. Perry Patsy B. Perry Priscilla P. Taylor Ruth Dial Woods	2003	0	8	Anne Cates Hannah Gage Adelaide Daniels Key Cary C. Owen Patsy B. Perry Gladys Ashe Robinson Estelle "Bunny" Sanders Priscilla P. Taylor
2000	4	9	Lois G. Britt Angela R. Bryant Teena S. Little Helen R. Marvin Maxine H. O'Kelley Barbara S. Perry Patsy B. Perry Priscilla P. Taylor Ruth Dial Woods	2004	0	8	Anne Cates Hannah Gage Adelaide Daniels Key Cary C. Owen Patsy B. Perry Gladys Ashe Robinson Estelle "Bunny" Sanders Priscilla P. Taylor <i>Amanda Devore</i> (<i>ex officio</i> nonvoting student member)
2001	4	9	Anne Cates Angela R. Bryant Hannah Gage Teena S. Little Barbara S. Perry Patsy B. Perry Gladys Ashe Robinson Priscilla P. Taylor Ruth Dial Woods				

Note: Women comprised 51 percent of the population of North Carolina in the 2000 U.S. Census. The highest number of women serving as *voting* members on the Board was nine in 1999–2002, comprising 28 percent of the voting membership. Since 1972, the overall percentage of female UNC Board members has averaged 19 percent (199 of 1,024 possible seats).

Note: *Emeritus* and *ex officio* members are members of the Board of Governors but cannot vote.

* Number actually serving as voting members of the Board.

Table 3.1

CONTINUED

**Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971**

B. Board of Governors Members Who Are of a MINORITY RACE

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1972	0	7	Howard C. Barnhill Andrew A. Best Clark S. Brown Julius L. Chambers Louis T. Randolph Maceo A. Sloan E.B. Turner	1977	3	6	Clark S. Brown Julius L. Chambers Louis T. Randolph J.J. Sansom, Jr. Maceo A. Sloan E.B. Turner
1973	1	7	Howard C. Barnhill Clark S. Brown Julius L. Chambers Louis T. Randolph Maceo A. Sloan E.B. Turner John W. Winters	1978	3	5	Clark S. Brown Kathleen R. Crosby Louis T. Randolph Maceo A. Sloan E.B. Turner
1974	1	7	Howard C. Barnhill Clark S. Brown Julius L. Chambers Louis T. Randolph Maceo A. Sloan E.B. Turner John W. Winters	1979	4	5	Grace Epps Jack O'Kelley Louis T. Randolph Maceo A. Sloan E.B. Turner
1975	2	7	Howard C. Barnhill Clark S. Brown Julius L. Chambers Louis T. Randolph J.J. Sansom, Jr. Maceo A. Sloan E.B. Turner	1980	4	6	Geneva Bowe Grace Epps Jack O'Kelley Louis T. Randolph Maceo A. Sloan E.B. Turner
1976	2	7	Howard C. Barnhill Clark S. Brown Julius L. Chambers Louis T. Randolph J.J. Sansom, Jr. Maceo A. Sloan E.B. Turner	1981	4	5	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner
				1982	4	5	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner
				1983	4	5	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner

* Number actually serving as voting members of the Board.

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Table 3.1

CONTINUED

*Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971*

B. Board of Governors Members Who Are of a MINORITY RACE, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1984	4	5	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner	1990	4	7	Joy J. Johnson Maxine H. O'Kelley Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. Harold H. Webb Ruth Dial Woods (Native American)
1985	4	6	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner Ruth Dial Woods (Native American)	1991	4	7	Maxine H. O'Kelley Benjamin S. Ruffin Maceo A. Sloan Asa T. Spaulding, Jr. Harold H. Webb Barbara Wills-Duncan Ruth Dial Woods (Native American)
1986	4	6	Geneva Bowe Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. E.B. Turner Ruth Dial Woods (Native American)	1992	4	7	Mark L. Bibbs (<i>ex officio</i>) Maxine H. O'Kelley Benjamin S. Ruffin Maceo A. Sloan Asa T. Spaulding, Jr. Harold H. Webb Barbara Wills-Duncan Ruth Dial Woods (Native American)
1987	4	6	Geneva Bowe Joy J. Johnson Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. Ruth Dial Woods (Native American)	1993	4	7	Mark L. Bibbs Bert Collins Derrick E. Griffith (<i>ex officio</i>) Valeria L. Lee Maxine H. O'Kelley Benjamin S. Ruffin Harold H. Webb Barbara Wills-Duncan
1988	4	6	Geneva Bowe Joy J. Johnson Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. Ruth Dial Woods (Native American)	1994	4	7	Mark L. Bibbs Bert Collins Valeria L. Lee Maxine H. O'Kelley Benjamin S. Ruffin Harold H. Webb Barbara Wills-Duncan
1989	4	7	Joy J. Johnson Maxine H. O'Kelley Louis T. Randolph Maceo A. Sloan Asa T. Spaulding, Jr. Harold H. Webb Ruth Dial Woods (Native American)				

* Number actually serving as voting members of the Board.

Table 3.1

CONTINUED

**Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971**

B. Board of Governors Members Who Are of a MINORITY RACE, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1995	4	8	Mark L. Bibbs Robert J. Brown William T. Brown <i>Keith Bryant (ex officio)</i> Bert Collins Larnie G. Horton, Sr. Maxine H. O'Kelley Benjamin S. Ruffin Harold H. Webb	2000	4	8	William T. Brown Angela R. Bryant Bert Collins Chancy R. Edwards Maxine H. O'Kelley Patsy B. Perry Benjamin S. Ruffin Ruth Dial Woods <i>(Native American)</i>
1996	4	8	Mark L. Bibbs Robert J. Brown William T. Brown Bert Collins Larnie G. Horton, Sr. Maxine H. O'Kelley Benjamin S. Ruffin Harold H. Webb	2001	4	9	William T. Brown Angela R. Bryant Bert Collins Dudley Flood Willie Gilchrist Patsy B. Perry Gladys Ashe Robinson Benjamin S. Ruffin Ruth Dial Woods <i>(Native American)</i>
1997	4	6	Robert J. Brown William T. Brown Bert Collins Larnie G. Horton, Sr. Maxine H. O'Kelley Benjamin S. Ruffin	2002	4	9	William T. Brown Angela R. Bryant Bert Collins Dudley Flood Willie Gilchrist Patsy B. Perry Gladys Ashe Robinson Benjamin S. Ruffin Ruth Dial Woods <i>(Native American)</i>
1998	4	6	Robert J. Brown William T. Brown Bert Collins Larnie G. Horton, Sr. Maxine H. O'Kelley Benjamin S. Ruffin				
1999	4	8	William T. Brown Angela R. Bryant Bert Collins Chancy R. Edwards Maxine H. O'Kelley Patsy B. Perry Benjamin S. Ruffin Ruth Dial Woods <i>(Native American)</i>	2003	0	7	R. Steve Bowden Bert Collins Dudley Flood Willie Gilchrist Patsy B. Perry Gladys Ashe Robinson <i>Benjamin S. Ruffin</i> <i>(emeritus)</i> Estelle "Bunny" Sanders

* Number actually serving as voting members of the Board.

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Table 3.1

CONTINUED

*Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971*

B. Board of Governors Members Who Are of a MINORITY RACE, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name
2004	0	7	R. Steve Bowden Bert Collins Dudley Flood Willie Gilchrist Patsy B. Perry Gladys Ashe Robinson <i>Benjamin S. Ruffin</i> <i>(emeritus)</i> Estelle "Bunny" Sanders

Note: Persons of minority races comprised a total of 28.9 percent of the population of North Carolina according to the 2000 U.S. Census. The highest number of minorities serving as *voting* members on the Board was nine in 2001 and 2002, comprising 28 percent of the voting membership. Since 1972, the overall percentage of voting racial minority UNC Board members has averaged 20 percent (207 of 1,024 possible seats).

Note: *Emeritus* and *ex officio* members are members of the Board of Governors but cannot vote.

* Number actually serving as voting members of the Board.

Table 3.1

CONTINUED

**Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971**

**C. Board of Governors Members Who Are of a MINORITY POLITICAL PARTY —
Republicans (or *Unaffiliated*) Only**

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1972	0	—		1983	4	5	Laurence A. Cobb T. Worth Coltrane James E. Danieley James E. Holshouser, Jr. Asa T. Spaulding, Jr.
1973	1	1	T. Worth Coltrane				
1974	1	1	T. Worth Coltrane				
1975	2	2	T. Worth Coltrane Harley F. Shuford, Jr.	1984	4	5	Laurence A. Cobb T. Worth Coltrane James E. Danieley James E. Holshouser, Jr. Asa T. Spaulding, Jr.
1976	2	2	T. Worth Coltrane Harley F. Shuford, Jr.				
1977	3	3	Laurence A. Cobb T. Worth Coltrane Harley F. Shuford, Jr.	1985	4	5	T. Worth Coltrane James E. Danieley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.
1978	3	3	Laurence A. Cobb T. Worth Coltrane Harley F. Shuford, Jr.				
1979	4	4	Laurence A. Cobb T. Worth Coltrane James E. Holshouser, Jr. Harley F. Shuford, Jr.	1986	4	5	T. Worth Coltrane James E. Danieley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.
1980	4	4	Laurence A. Cobb T. Worth Coltrane James E. Holshouser, Jr. Harley F. Shuford, Jr.				
1981	4	5	Laurence A. Cobb T. Worth Coltrane James E. Holshouser, Jr. Harley F. Shuford, Jr. Asa T. Spaulding, Jr.	1987	4	4	James E. Danieley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.
1982	4	5	Laurence A. Cobb T. Worth Coltrane James E. Holshouser, Jr. Harley F. Shuford, Jr. Asa T. Spaulding, Jr.	1988	4	4	James E. Danieley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.
				1989	4	4	James E. Danieley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.

* Number actually serving as voting members of the Board.

—continued

Table 3.1

CONTINUED

*Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971*

C. Board of Governors Members Who Are of a MINORITY POLITICAL PARTY —
Republicans (or *Unaffiliated*) Only, *continued*

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1990	4	4	James E. Danieleley John A. Garwood James E. Holshouser, Jr. Asa T. Spaulding, Jr.	1995	4	11 (2)	Robert J. Brown John F.A.V. Cecil Derrick Close <i>(Unaffiliated)</i> Orville D. Coward, Sr. John C. Fennebresque John A. Garwood <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Larnie G. Horton, Sr. W. Kenneth Morgan, Sr. Cary C. Owen Barbara S. Perry D. Wayne Peterson Earl N. Phillips, Jr. Paul Rizzo <i>(Unaffiliated)</i>
1991	4	4	James E. Danieleley John A. Garwood <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Ward Purrington Asa T. Spaulding, Jr.				
1992	4	4	James E. Danieleley John A. Garwood <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Ward Purrington Asa T. Spaulding, Jr.				
1993	4	5 (1)	John F.A.V. Cecil Derrick Close <i>(Unaffiliated)</i> James E. Danieleley John A. Garwood <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> James G. Martin D. Wayne Peterson	1996	4	10 (2)	Robert J. Brown John F.A.V. Cecil Derrick Close <i>(Unaffiliated)</i> Orville D. Coward, Sr. John C. Fennebresque <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Larnie G. Horton, Sr. W. Kenneth Morgan, Sr. Cary C. Owen Barbara S. Perry D. Wayne Peterson Earl N. Phillips, Jr. Paul Rizzo <i>(Unaffiliated)</i>
1994	4	5 (1)	John F.A.V. Cecil Derrick Close <i>(Unaffiliated)</i> James E. Danieleley John A. Garwood <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> James G. Martin D. Wayne Peterson				

* Number actually serving as voting members of the Board.

Table 3.1

CONTINUED

**Number of Women, Minorities, and Members of the Minority Party (Republicans)
Who Have Served on the Board of Governors Since 1971**

**C. Board of Governors Members Who Are of a MINORITY POLITICAL PARTY —
Republicans (or *Unaffiliated*) Only, *continued***

Year	Number Required by Statute	Number Actually Serving*	Name	Year	Number Required by Statute	Number Actually Serving*	Name
1997	4	13 (1)	Robert J. Brown John F.A.V. Cecil Orville D. Coward, Sr. John C. Fennebresque <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Larnie G. Horton, Sr. Timothy K. Moore W. Kenneth Morgan, Sr. Cary C. Owen Barbara S. Perry D. Wayne Peterson	1999	4	8	John F.A.V. Cecil H. Frank Grainger <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Teena S. Little Timothy K. Moore D. Wayne Peterson J. Craig Souza Robert F. Warwick
			Earl N. Phillips, Jr. Paul Rizzo (<i>Unaffiliated</i>) J. Craig Souza Robert F. Warwick	2000	4	8	John F.A.V. Cecil H. Frank Grainger <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Teena S. Little Timothy K. Moore D. Wayne Peterson J. Craig Souza Robert F. Warwick
1998	4	13 (1)	Robert J. Brown John F.A.V. Cecil Orville D. Coward, Sr. John C. Fennebresque <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Larnie G. Horton, Sr. Timothy K. Moore W. Kenneth Morgan, Sr. Cary C. Owen Barbara S. Perry D. Wayne Peterson Earl N. Phillips, Jr. <i>(Unaffiliated)</i> J. Craig Souza Robert F. Warwick	2001	4	7	John F.A.V. Cecil H. Frank Grainger <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Teena S. Little Barbara S. Perry Craig Souza Robert F. Warwick
				2002	4	7	John F.A.V. Cecil H. Frank Grainger <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Teena S. Little Barbara S. Perry Craig Souza Robert F. Warwick

* Number actually serving as voting members of the Board.

—*continued*

Table 3.1

CONTINUED

Number of Women, Minorities, and Members of the Minority Party (Republicans) Who Have Served on the Board of Governors Since 1971

**C. Board of Governors Members Who Are of a MINORITY POLITICAL PARTY —
Republicans (or *Unaffiliated*) Only, *continued***

Year	Number Required by Statute	Number Actually Serving*	Name
2003	0	9	Brent Barringer John F.A.V. Cecil H. Frank Grainger Peter Hans <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Leroy Lail Cary C. Owen Craig Souza Robert F. Warwick
2004	0	9	Brent Barringer John F.A.V. Cecil H. Frank Grainger Peter Hans <i>James E. Holshouser, Jr.</i> <i>(emeritus)</i> Peter Keber Leroy Lail Cary C. Owen Craig Souza Robert F. Warwick

Note: From 1987 through 2001, state law mandated that at least four of the 32 voting seats be allocated to “members of the political party to which the largest minority of the members of the General Assembly belongs,” thereby guaranteeing that at least 12.5 percent of the Board would represent the predominant minority political party. Over the 32-year period since the Board of Governors was created (with the exception of 1995–1996 when Republicans held 92 of the total 170 seats in the legislature), Republicans have been the minority party in the N.C. General Assembly. The number of Republicans in the General Assembly has risen from 31 of 170 legislators in 1971, to 34 in 1981, to 53 in 1991, to 73 in 2001, and to 78 in 2005. The Republican high point in the General Assembly was 1995 when the party elected a total of 92 legislators, controlled the 120-member state House, 68–52, and had 24 seats in the 50-member Senate. The Republicans also held a 61–59 majority in the House in 1997–98, a 60–60 tie in 2003, and a 61–59 edge in 2004. According to information compiled by the N.C. State Board of Elections, the percentage of registered Republicans in the state increased from 22.9 percent in November 1972 to 29.6 percent in November 1988 to 34.5 percent of registered voters in April 2004. Since 1973, Republicans have held from one to 13, or 3 to 41 percent of the 32 voting seats on the Board of Governors in any given year. The Republican high points were 1997 and 1998, when the party held 13 or 41 percent, of the voting seats. Since 1972, the overall percentage of Republican UNC Board members has averaged 17 percent (179 of 1,024 possible seats).

Note: Emeritus and ex officio members are members of the Board of Governors but cannot vote.

* Number actually serving as voting members of the Board.

—continued from page 45

As reported in our study of *Governance and Coordination of Public Higher Education in All 50 States*, the Center found that state laws concerning 37 higher education boards specifically address gender, race/ethnicity, political party affiliation, geographic representation, age, or other criteria for central higher education board membership.¹⁹ Before the 2001 elimination of the guaranteed seats, seven states, including North Carolina, mandated appointment of women on their central higher education boards, while eight states, including North Carolina, mandated that one or more board appointments be reserved for persons of a minority racial or ethnic group.²⁰

State laws setting the composition of higher education boards vary. Some of these statutes have specific requirements, while others speak in more general terms. The former category of laws includes the former N.C. statute, which was unusual in its specificity as to the number of women and minority members to be appointed. Also, the Tennessee Higher Education Commission statute is specific in stating that in making appointments to the 15-member commission, the Governor “shall strive to ensure that at least one (1) person appointed to the commission is a member of a racial minority.” Beginning in January 1995, every other appoint-

Mother whispered, “See, you don’t have to think about doing the right thing. If you’re for the right thing, then you do it without thinking.”

— MAYA ANGELOU

I KNOW WHY THE CAGED BIRD SINGS

tee in Tennessee is to be a woman, until “the membership of the commission reflects the percentage of females in the population generally.”²¹ The Kentucky statute governing the state’s Council on Postsecondary Education directs the Governor to make appointments which “shall assure broad geographical and political representation; assure equal representation of the two sexes, inasmuch as possible; assure no less than proportional representation of the two leading political parties of the Commonwealth based on the state’s voter registration; and assure that appointments reflect the minority racial composition of the Commonwealth. No more than two members may hold an undergraduate degree

Table 3.2

Comparison of UNC Board of Governors Membership with State Demographics by Gender, Race, and Ethnicity

	N.C. Population,* 2000 Census	2003–04 Board of Governors Membership	1972–73 – 2003–04 Board of Governors Cumulative Average**
Women	51.0%	8 (25%)	199 of 1,024 (19%)
Men	49.0%	24 (75%)	825 of 1,024 (81%)
Whites	72.1%	25 (78%)	807 of 1,024 (79%)
African Americans	21.6%	7 (22%)	207 of 1,024 (20%)
Hispanics	4.7%	0 (0%)	0 of 1,024 (0%)
Asians	1.4%	0 (0%)	0 of 1,024 (0%)
Native Americans	1.2%	0 (0%)	12 of 1,024 (1%)

* Population percentages do not sum to 100 percent because Hispanic is considered an ethnicity by the U.S. Census Bureau, rather than a race.

** Calculated as percentage of possible seats in each category on an annual basis, coinciding with the Board term of service. For example, women have held seats 199 times of the possible 1,024 times a seat could be held (32 seats times 32 years, with Board years beginning on July 1 of one calendar year and ending on June 30 the following year).



Board of Governors member Priscilla Taylor of Chapel Hill at a meeting of the Board

from any one Kentucky university, and no more than three voting members shall reside in any one judicial district."²²

By contrast, New Jersey has broad statutory language concerning the composition of its higher education board, the Commission on Higher Education. The law mandates that the board's public members "shall reflect the diversity of the state."²³ Similarly, the law establishing the Connecticut Board of Governors for Higher Education states that the board "shall reflect the state's geographic, racial, and ethnic diversity,"²⁴ while the Washington State Higher Education Coordinating Board's membership "is to be representative of the public, including women and the racial minority community."²⁵

Alternative language expressing the same idea is found in the California Postsecondary Education Commission statute stating, "It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic and economic groups in the state."²⁶ Similarly, the South Carolina Code provides that in making

appointments to the Commission on Higher Education, the Governor "shall assure that various economic interests and minority groups, especially women and blacks, are fairly represented on the commission and shall attempt to assure that the graduates of no one public or private college or technical college are dominant on the commission."²⁷ The Rhode Island statute is even more direct in that it gives the Rhode Island Board of Governors the specific legal responsibility to "make a formal request of the Governor that whenever an opportunity arises to make new appointments to the board, that the Governor make every effort to increase the number of African Americans, Native Americans, Asians and Hispanics on the board."²⁸

Very few women and racial minorities have been elected to *at-large* or *political minority* seats on the UNC Board of Governors since 1972. (See Table 3.3, page 60). Only seven individuals of a minority race, including two minority women, have been elected to at-large seats since 1980. The 2001 Board had the highest number of minority race members elected to at-large seats in the Board's history. These members were William T. Brown, former Chairman Benjamin S. Ruffin, Ruth Dial Woods, and Dudley Flood. A third woman, Ellen S. Newbold, also held an at-large seat on the Board from 1989 through 1997. And, since 1981, only two of a

"The fact that you have six slots [the number filled by racial minorities in 1998] out of 32 is not enough for the minority race. But it does give a kind of floor guarantee. That provision in the law was promoted strongly by the only black Representative we had back in 1971"

— HAROLD WEBB
FORMER DIRECTOR OF STATE PERSONNEL
AND MEMBER OF THE UNC BOARD OF GOVERNORS

minority race have served in the designated minority political party seats: Asa T. Spaulding, Jr. (1981–1993) and Benjamin Ruffin, who served one term in a minority political party slot (as a Democrat elected to a four-year term in 1995–1999 when Republicans held a majority in the N.C. House in 1995–1998). Ruffin was re-elected to the Board in 1999 as an at-large member. Two white women also have been elected to minority political party seats. Former state Senator Teena S. Little of Southern Pines was first elected to the Board in 1999.

Also in 1999, Kinston attorney and former UNC-CH trustee Barbara S. Perry was re-elected to the Board in a minority political party slot. She had been first elected to the Board in 1995 to fill one of the designated seats for women.

Former Director of State Personnel Harold Webb says he decided to run at large in 1999 in order to try to increase the number of African Americans serving on the university Board. "The fact that you have six slots [the number filled by racial minorities in 1998] out of 32 is not enough for the minority race," says Webb, who served on the university Board from 1989 to 1997. "But it does give a kind of floor guarantee. That provision in the law was promoted strongly by the only black Representative we had back in 1971" [former N.C. Representative and Chief Justice of the N.C. Supreme Court Henry Frye]. Webb failed in his 1999 bid for an at-large seat.

When asked about the importance of his election win by one vote in 1998 as the Board of Governors' first African American Chairman, Benjamin Ruffin says, "There is no way in the world you can ignore the symbolism. But my focus is not on symbolism, it is on significance. The significance of my election is being able to place the Board of Governors in a position where we

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Board of Governors members Ed Broadwell of Asheville, Bob Warwick of Wilmington, and Dudley Flood of Raleigh at a meeting in Chapel Hill



Karen Tam

Table 3.3

Board of Governors Members Who Are Women, Minorities, or from Minority Political Parties Who Were Elected to At-Large Seats Rather Than Seats Designated for Women, Minorities, or the Minority Political Party

A. Board of Governors Members Who Are of a Minority Race and Were Elected to an At-Large Seat

B. Board of Governors Members Who Are of a Minority Race and Were Elected to a Political Minority Seat

Year	Name
1980	Geneva Bowe*
1985	Ruth Dial Woods*
1986	Ruth Dial Woods*
1987	Ruth Dial Woods*
1988	Ruth Dial Woods*
1989	Harold H. Webb Ruth Dial Woods*
1990	Harold H. Webb Ruth Dial Woods*
1991	Harold H. Webb Ruth Dial Woods*
1992	Harold H. Webb Ruth Dial Woods*
1993	Mark L. Bibbs Harold H. Webb
1994	Mark L. Bibbs Harold H. Webb
1995	Mark L. Bibbs William T. Brown Harold H. Webb
1996	Mark L. Bibbs William T. Brown Harold H. Webb
1997	William T. Brown
1998	William T. Brown
1999	William T. Brown Benjamin S. Ruffin Ruth Dial Woods*
2000	William T. Brown Benjamin S. Ruffin Ruth Dial Woods*
2001	William T. Brown Dudley Flood Benjamin S. Ruffin Ruth Dial Woods*

Year	Name
1981	Asa T. Spaulding, Jr. <i>(Republican)</i>
1982	Asa T. Spaulding, Jr.
1983	Asa T. Spaulding, Jr.
1984	Asa T. Spaulding, Jr.
1985	Asa T. Spaulding, Jr.
1986	Asa T. Spaulding, Jr.
1987	Asa T. Spaulding, Jr.
1988	Asa T. Spaulding, Jr.
1989	Asa T. Spaulding, Jr.
1990	Asa T. Spaulding, Jr.
1991	Asa T. Spaulding, Jr.
1992	Asa T. Spaulding, Jr.
1995	Benjamin S. Ruffin <i>(Democrat)</i>
1996	Benjamin S. Ruffin
1997	Benjamin S. Ruffin
1998	Benjamin S. Ruffin

Table 3.3

CONTINUED

Board of Governors Members Who Are Women, Minorities, or from Minority Political Parties Who Were Elected to At-Large Seats Rather Than Seats Designated for Women, Minorities, or the Minority Political Party

C. Board of Governors Members Who Are Women and Were Elected to an At-Large Seat

D. Board of Governors Members Who Are Women and Were Elected to a Political Minority Seat

Year	Name	Year	Name
1980	Geneva Bowe*	1999	Teena S. Little (Republican) Barbara S. Perry
1985	Ruth Dial Woods*	2000	Teena S. Little Barbara S. Perry
1986	Ruth Dial Woods*	2001	Teena S. Little Barbara S. Perry
1987	Ruth Dial Woods*		
1988	Ruth Dial Woods*		
1989	Ellen S. Newbold Ruth Dial Woods*		
1990	Ellen S. Newbold Ruth Dial Woods*		
1991	Ellen S. Newbold Ruth Dial Woods*		
1992	Ellen S. Newbold Ruth Dial Woods*		
1993	Ellen S. Newbold		
1994	Ellen S. Newbold		
1995	Ellen S. Newbold		
1996	Ellen S. Newbold		
1999	Ruth Dial Woods*		
2000	Ruth Dial Woods*		
2001	Ruth Dial Woods*		
2002	Ruth Dial Woods*		

* Geneva Bowe is African American and Ruth Dial Woods is Native American (Lumbee) and thus are members of a minority race and are listed under both at-large categories above.

"Without the party quota, the membership of the Board of Governors will, in time, reflect the voting behavior of the citizens of the state. Republicans will control both chambers of the legislature, and the membership of the Board will reflect that control."

— REP. HAROLD BRUBAKER (R-RANDOLPH)
AND HOUSE SPEAKER, 1995–98

can go and get support from more of the citizens of the state."

Other state leaders point out that changes in North Carolina's population and political culture could affect the number of minorities who serve on the UNC Board in the future. For example, former N.C. Central University Chancellor Julius Chambers says the state's growing population of Asians and Hispanics will likely expand public perceptions of who should serve on the

university Board. "With the growth of those groups, you face the problem of whether blacks [the state's largest racial minority group] would want to give up those seats," Chambers says. Overall, figures compiled by the U.S. Bureau of the Census estimate that African Americans will comprise 23.8 percent of the state population in 2025, up from 22.1 percent in 1995, and all other racial minorities are expected to constitute 2.9 percent of the 2025 population (up from 2.2 percent in 1995). Persons of Hispanic origin are projected to constitute 2.2 percent of the 2025 state population (up from 1.4 percent in 1995).²⁹ According to the most recent estimates from the North Carolina Office of State Budget and Management, the total percentage of racial minorities (non-white) in North Carolina is expected to be 27.5 percent in 2010, 28.2 percent in 2015, and 28.9 percent in 2020 — the latter being a 3.3 percentage point increase over the 1995 figure of 25.6 percent.³⁰ However, since *actual* 2000 census figures already place the percentage of Hispanics at 4.7 percent of the state's population and the total percentage of racial minorities at 28.9 percent of the state's population,³¹ these projections from federal and state agencies understate the current and future growth of racial minorities in North Carolina.

Board of Governors members Peter Hans of Raleigh and Jack Cecil of Asheville



Karen Tam

Table 3.4

Comparison of Legislative Composition by Political Party and 2004 Statewide Voter Registration with UNC Board of Governors Voting¹ Membership

	Democrats (%)		Republicans (%)		Unaffiliated/Other (%)	
Serving in 2003–04 NC General Assembly (120 House & 50 Senate) ²	88 of 170	(52%)	82 of 170	(48%)	0 of 170	(0%)
Overall Average for 1972–2004 NC General Assembly	121 of 170	(71%)	49 of 170	(29%)	0 of 170	(0%) ³
Voting Members, 2004–05 UNC Board of Governors	23 of 32	(72%)	9 of 32	(28%)	0 of 32	(0%)
Average Number of Voting Members, 1972–2004, on the Board of Governors ⁴	843 of 1,024	(82%)	179 of 1,024	(18%)	8 of 1,024	(1%)
2004 Statewide Voter Registration ⁵	2,406,712	(47.5%)	1,747,276	(34.5%)	917,521	(18.1%)

¹ *Emeritus & ex officio* members do not vote and are not included in this table.

² When the N.C. General Assembly conducted the Board of Governors election in 2003, there were 88 Democrats and 82 Republicans. Two members of the legislature changed parties later in the year, changing the partisan composition to 86 Democrats and 84 Republicans.

³ Former Rep. Carolyn Russell (R-Wayne) was elected as an unaffiliated candidate in 1990, but became a Republican.

⁴ Calculated as a percentage of possible seats in each category on an annual basis. For example, Republicans have held 179 seats of the possible 1,024 times a seat could be held (32 seats times 32 years).

⁵ The N.C. State Board of Elections reports 5,071,509 registered voters in North Carolina, as of April 10, 2004.

B. Requirement for Representation of the Minority Political Party

The third category of seats historically guaranteed on the UNC Board of Governors was set aside for the minority political party. Beginning in 1973, the state law that governs the membership of the UNC Board was altered to mandate that at least four of the 32 voting seats be allocated to “members of the political party to which the largest minority of the members of the General Assembly belongs,” thereby guaranteeing that at least 12.5 percent of the Board would represent the predominant minority political party. Over the 32-year period since the Board of Governors was created, with the exception of 1995–1996 (when Republicans held 92 of the total 170 seats in the legislature), Republicans have been the minority party in the N.C. General Assembly.

However, GOP influence is growing. The number of Republicans in the General Assembly has risen from 31 of 170 legislators in 1971, to 34 in 1981, to 53 in 1991, to 73 in 2001, and to 78 in 2005.³² The Republi-

can high point was 1995 when the party elected a total of 92 legislators and controlled the 120-member state House, 68–52, and had 24 seats in the 50-member Senate. According to information compiled by the N.C. State Board of Elections, the percentage of registered Republicans in the state has increased from 22.9 percent in November 1972 to 29.6 percent in November 1988 to 34.5 percent of registered voters in April 2004.³³

Since 1973, Republicans have held from one to 13 or from 3 to 41 percent of the 32 voting seats on the Board of Governors. The Republican high points on the Board of Governors were 1997 and 1998, when the party held 13, or 41 percent, of the voting seats. In 2003, the elections in the Senate and House increased the number of Republicans with a vote on the UNC Board of Governors from seven (22%) in 2001–2002 to nine (28%) in 2003–2004.

Although the percentage of members of the UNC Board of Governors who are members of the minority political party exceeded the former statutory minimum of 12.5 percent from time to time, the percentage of seats



Karen Tam

Former student member of the Board of Governors
Jonathan Ducote at a meeting in Chapel Hill

C. Student Voting Rights on the Board of Governors

Currently, 30 central higher education boards in 27 states have a statutory requirement for student members. On 25 of these boards in 22 states (three states have two governing boards with student members), the student(s) has the right to vote. North Carolina is one of only five boards with student members where the student has no voting privileges.³⁴ Students have a voting seat on the 16 local campus boards of trustees in North Carolina but not on the statewide governing board.³⁵

Leaders of UNC's Student Government Association have been active in seeking a voting seat for student representatives on the university Board. At a meeting on March 19, 1999, Board of Governors members were asked to approve a resolution supporting the addition of a voting student member to the Board.³⁶ Jeffrey Nieman, 1998–99 President of the UNC Association of Student Governments and the student representative on the Board of Governors during most of 1998–2000, said a voting seat on the Board would “lend legitimacy to student self-governance. It’s something that has consistently been important to students.” Supporters of the measure also say students should be represented on the Board in order to have the real consumers of higher education on the Board and because students can help the Board understand the effect of various policies on students and best communicate the governing board’s decisions back to the campuses.

UNC Board member Jim Phillips, a Greensboro attorney who has chaired the Board’s Public Affairs Committee, argued that giving students a voting seat would be “a natural evolution of what has happened on this Board” since students were given a non-voting seat on the Board of Governors in 1991. “This just takes that another step,” he said. And, former Board member Helen Rhyne Marvin, a former state Senator and retired educator who was elected to the Board of Governors in 1993, echoed the sentiments of several others when she said, “Students represent the reason we are here. . . . Denial of a vote [on the Board] is second class citizenship.”

Board of Governors members C. Clifford Cameron and Ray S. Farris were among those who spoke against the idea because they felt such a change would upset the current balance in the university governing system. “The legislature 30 years ago reduced the [UNC] Board from 100 members to 32,” said Cameron, referring to the 100-

guaranteed to that part of the state’s population usually has been significantly smaller than that party’s number of legislators or percentage of registered voters in the state, and the disparity is continuing to increase. Some argue that now that North Carolina is a two-party state, there does not appear to be a need for statutory language assuring representation by political minorities. That aspect of Board diversity might also be improved by giving the Governor more of a role in UNC Board selection since Republicans have won two (in 1984 and 1988) of the last six gubernatorial elections.

In 2003, the Democratic-controlled (28–22) Senate elected only one Republican to the UNC Board, while the House, operating with Co-Speakers and a 60–60 tie between the two parties, chose Republicans for four of its eight seats and Democrats for the other four — yielding a net gain of two GOP seats for the year.

Forecasting an increase in the number of Republicans resulting from the repeal of the minority party representation requirements, former GOP House Speaker Harold Brubaker predicts, “Without the party quota, the membership of the Board of Governors will, in time, reflect the voting behavior of the citizens of the state. Republicans will control both chambers of the legislature, and the membership of the Board will reflect that control.”

person Board of Trustees of the Consolidated University. "But here we are, about to recommend an increase of the Board to 33 and to give those who are only here for 12 months a floating vote." Cameron pointed out that students can run and be elected to at-large seats on the UNC Board of Governors. In 1993, Mark Bibbs, a law student at UNC-Chapel Hill, was elected by the House in the at-large category to a four-year term on the Board of Governors, but he is the only student in history to be successful in an at-large race. Cameron also argued that students already have voting seats on the campus boards of trustees.

Former Board of Governors member D. Wayne Peterson, a telecommunications executive with Sprint who was elected in 1993, abstained from voting on the resolution because of mixed feelings about what it would mean for Board service. "We are elected to serve the university, and we do what's best for the whole system," he said. "If students were [voting members] on this Board, they could no longer represent students; they would have to represent the university system." However, by statute, *all* members of the Board, including the *ex officio* student member are "... members at large, charged with the responsibility of serving the best interests of the whole state"³⁷ and all Board members swear the same oath of office, which reads, "I will faithfully discharge the duties of my office as a member of the Board of Governors of The University of North Carolina."

In the end, UNC Board members approved the resolution supporting a voting seat for students by a vote of 19 to 13. In 2001, bills were introduced in both legislative chambers to give the student member of the Board of Governors the same voting rights as the other members of that body.³⁸ Representative Alma Adams (D-Guilford), the primary sponsor of House Bill 169 in 2001, stated the bill "would restore equity to the process" and that the [then] 164,000 students enrolled in the UNC system "have earned this vote." In response, former Representative Gene Arnold (R-Nash), noting that he was "reluctantly speaking" against the bill, said he felt the student's role on the Board should remain advisory only. He added that he did not believe students should "vote on multi-million dollar issues affecting campuses they would never visit," and that it would be "unfair" to "put the responsibility of having the tie breaking vote on the Board" on a student member, especially when it came to close votes, such as the one-vote margin by which the last Board Chairman was elected. Nonetheless, the majority of House members agreed with Representative Carolyn Russell's (R-Wayne) statement that "students need a chance," and approved the bill by a vote of 83-26. Both House Bill 169 and its companion Senate Bill 188 died without a hearing in the Senate Committee on Rules and Operations upon adjournment of the 2002 legislative session.

Senate Rules Committee Chairman Tony Rand (D-Cumberland) said he had a problem with giving students

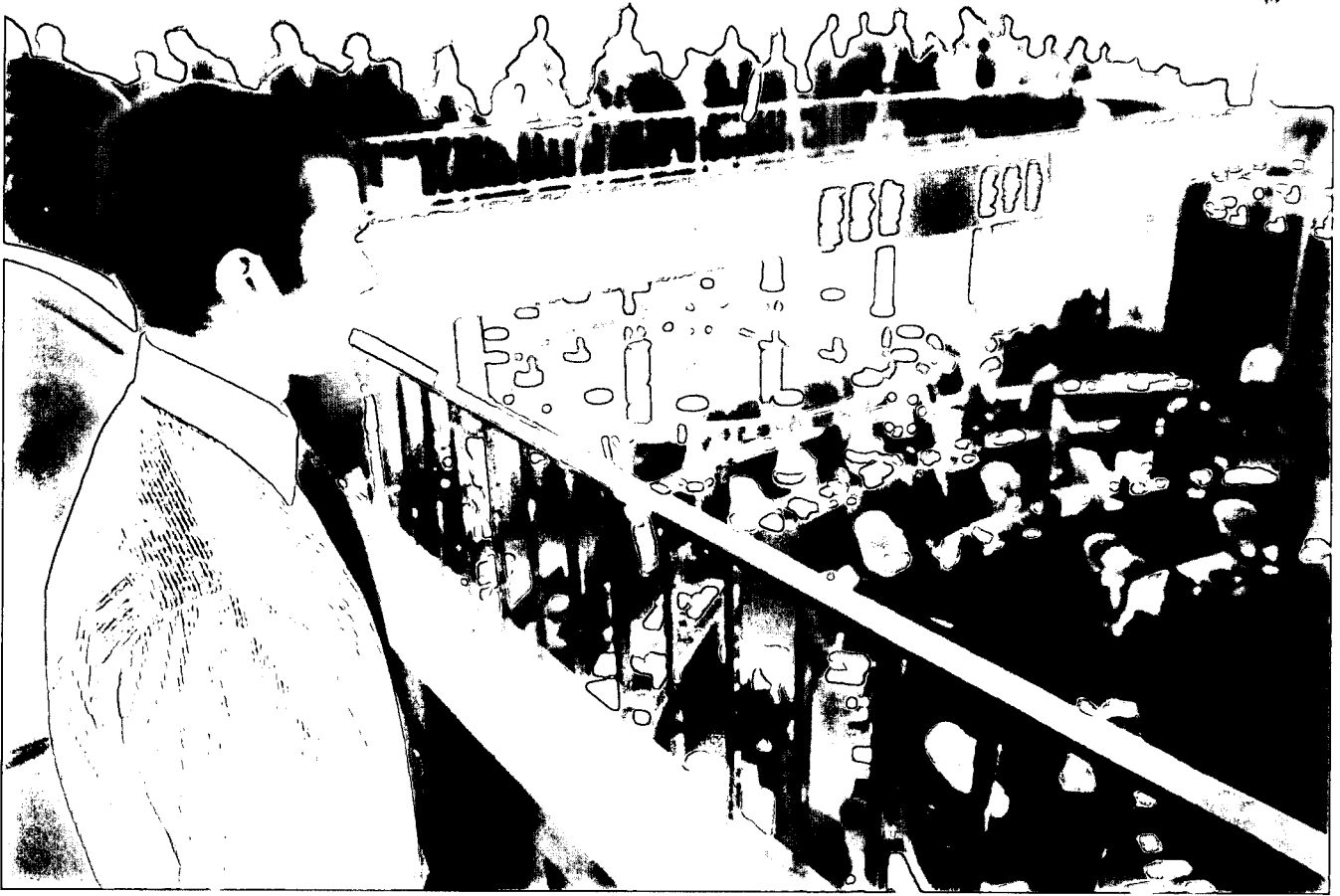
a vote because "a couple of times ... the president of the [Student Government] Association had to be removed for misconduct." Rand also said, "It takes a significant amount of knowledge to serve on the [Board of Governors]. Students don't have that." Yet when University leaders chose which Board members would explain the pros and cons of tuition increases and University financial issues on a live TV special broadcast statewide on the public television network, the student member, Andrew Payne, was one of only two of the 32 Board members chosen, along with future Board of Governors Chairman Brad Wilson. And, the student performed extremely well in explaining the effects of tuition increases on students in the UNC-TV special aired in 2002 called "Focus On ... University Costs."

In the 2003 legislative session, Adams revived her measure as House Bill 506, which passed the House on April 22, 2003, but again died without a hearing in the Senate Rules Committee. The bill had handily passed in both the House committee and on the floor (96-17) of the chamber. During House floor debate in 2003, Representative John Blust (R-Guilford), who had opposed giving the student member a vote during previous legislative sessions, declared his support for

Board of Governors member Ray Farris of Charlotte at a meeting in Chapel Hill



Karen Tam



ECU students in the gallery of the N.C. Senate on a visit to Raleigh to lobby the General Assembly on University enrollment growth funding, voting privileges for the student member of the Board of Governors, no tuition increase, and University faculty and staff salary increases.

the bill and took the opportunity to needle the House leadership, noting that the student member is selected by a democratic process, unlike the process the House used to select its members for the Board of Governors in 2003, where Representatives were only given the opportunity to vote up or down on the leadership's slate of candidates.

On February 13, 2004, at the request of *ex officio* student member Jonathan Ducote, the Board's Public Affairs Committee voted to include passage of the student vote measure in the Board's annual package of legislation. However, after the vote, several committee members expressed their desire to reconsider the request at their next meeting. On March 19, 2004, Board members Brent Barringer of Cary, Ray Farris of Charlotte, and Charles Mercer of Raleigh spearheaded opposition to inclusion of voting privileges for the student member as part of UNC's legislative requests to the General Assembly. They based their opposition to the student vote measure on fairness to emeritus members, the role of the student member in advocating for students, questions about whether the Board should advise the General Assembly on Board membership and voting rights, account-

ability for the use of a student government fee, and allegations of misconduct by two former student members of the Board.

Barringer argues that the *ex officio* student member should not be allowed to vote because *emeritus* members are not allowed to vote. "[The student member] can be just as effective without a vote," Says Barringer "[The student member] can effective, just as the *emeritus* members are." However, *emeritus* members are former Board chairs and a former Governor of the State who have served on the Board, and all members in those categories had to have served as *voting* members before becoming emeriti.

In a letter he sent to committee members before their discussion, Charlotte attorney and former UNC-Chapel Hill football quarterback Farris says, "If the student member were to assume the mantle of full voting membership, he would lose the force of his advocacy: On one hand he cannot be impartial and judgmentally fair and on the other hand, an advocate for the students he represents." Former student member Andrew Payne, replies, "I took the same oath [of office³⁹] that every other Board member takes, and I even supported one tuition increase."

In the Public Affairs Committee meeting, Raleigh attorney Mercer argued it is inappropriate for the Board of Governors to advise the General Assembly about who should be on the Board and which Board members should be allowed to vote. Ironically, the Board seems willing to advise the legislature on another matter involving conditions of service on the Board. The same legislative wish list that Ducote hoped would include the student vote measure contained a request to eliminate the statutory prohibition against a person serving on the Board if their spouse is an employee or officer of the state.

Barringer, Farris, and Mercer also raised questions about accountability with regard to use of proceeds from a one-dollar-per-student fee earmarked for use by the UNC Association of Student Governments (ASG), the organization which selects the student Board member. Barringer says, "I think we need to reconsider the size of the student fee. I'd be more comfortable with 25 cents per student." Says Ducote, "There is plenty of fiscal accountability for the use of the one dollar ASG fee [because] the accounting for the fee is done by UNC General Administration and is handled under their guidelines and provisions. We were independently audited last year and received a clean report."

Farris' letter also raised questions of integrity about two former student members of the Board, saying, "two of those eleven [students who have been *ex officio* members] have resigned from the Board following allegations of student misconduct." Nicholas Mirisis, a former UNC-Charlotte student slated to serve on the Board of Governors, resigned before taking office after he admitted to plagiarizing a term paper.⁴⁰ Cliff Webster, another former *ex officio* student member, resigned after being arrested for stealing two park benches on the ECU campus as part of an apparent prank. Says Ducote, "I think it a very poor generalization of Mr. Farris to lump all students together because of the allegation of misconduct of two students. I don't see how that is a fair comparison for the other 183,000 students in the UNC system. Moreover, during the last few years, we have seen Chancellors, duly elected by the Board of Governors, resign their posts over allegations of mishandling money and other acts more harmful to the public trust than those alleged to have happened with [the former] student members of the Board."

For example, Bruce Poulton resigned as Chancellor of N.C. State in 1989 following reports that he had been aware that basketball players and coaches were abusing the academic rules in order to maintain players' eligibility. After the retirement of Fayetteville State University Chancellor Willis McLeod, three financial officials at FSU resigned in July 2003 following a state audit detailing major problems in bookkeeping and financial procedures.⁴¹ Appalachian State University Chancellor Frank Borkowski resigned under pressure in June 2003 after checking into an alcohol treatment center.⁴² Alvin Schexnider resigned as chancellor of Winston-Salem State University in 2000 after a state audit uncovered fi-

nancial mismanagement.⁴³ Joe Dickson resigned in July 2004 as Vice Chancellor for Finance and Administration of the N.C. School of the Arts after a State Auditor's special review reported he received more than \$90,000 in consulting and expense payments from the school's foundation in violation of UNC policies and that lease payments on his Cadillac Escalade and other questionable expenses were paid out of a foundation account that was not disclosed to trustees.⁴⁴ Billy Armfield, a member of the UNC-Chapel Hill Board of Trustees, was also engaged in questionable conduct when he was found by the N.C. Court of Appeals to have protested a campus police officer's citation of his daughter for underage drinking to university officials as well as to the officer at the scene.⁴⁵ Finally, former UNC Board of Governors Chairman Benjamin Ruffin was charged in August 2004 with one count of simple assault and battery. South Carolina authorities say Ruffin inappropriately touched a 16-year old girl as the two rode an elevator at a Hilton Head hotel during a conference in July. Ruffin said detectives interviewed him at the hotel, but after he checked out, he thought the incident was over.⁴⁶ In February 2005, Ruffin turned himself into the Hilton Head, South Carolina police, was booked, and released on his own recognizance.⁴⁷ Ruffin has requested a jury trial, but as of June 2006, it had not been scheduled.

Though the Board of Governors has retreated some on the priority of its position in support of voting privileges for the student member, Board Chairman Brad Wilson has publicly stated his support for the measure. Also, Boards of Trustees at N.C. State University (February 2001), N.C. Central University (November 2003), and Winston-Salem State University (March 2004) have passed resolutions in support. And, the N.C. House thrice has passed legislation by large margins (83-26 in 2001, 96-17 in 2003, and 82-33 in 2005) granting voting privileges for the student member of the Board of Governors.

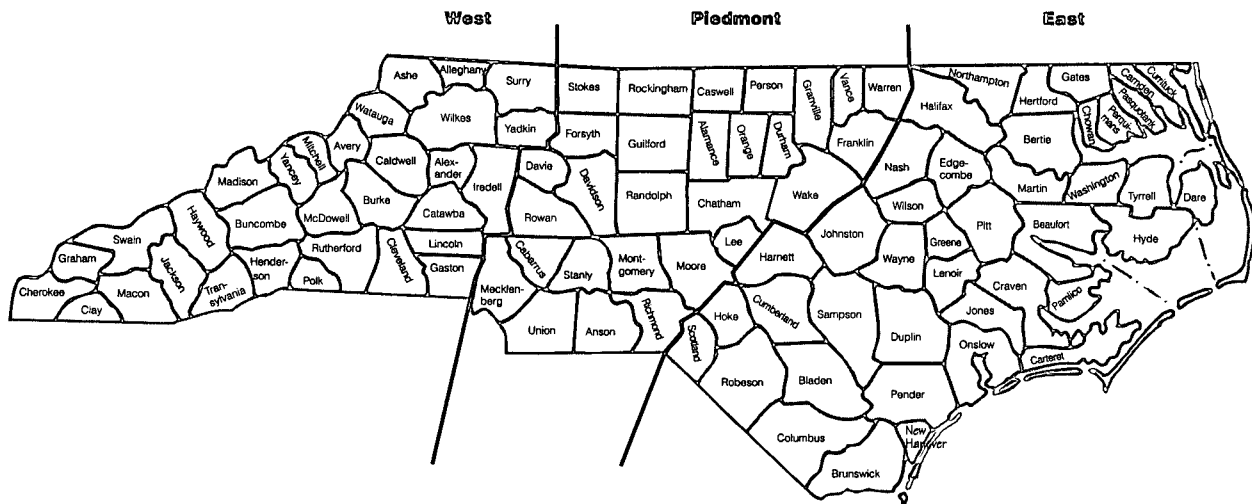
D. Proposals for Changes in the Composition of the Board of Governors

Velma Speight, a trustee of North Carolina Agricultural and Technical State University in Greensboro, is one who supports the idea of broadening Board of Governors membership to include other interest groups in addition to women and minorities. "The diversity rules have worked as far as numbers and visibility," she says in an interview for this report conducted before repeal of the statute which set aside seats on the Board for women and minorities. "But as far as competence and a bringing of spirit and knowledge to the Board, I don't think it has. We don't bother to get those people whose lives are going to be affected [by Board of Governors' decisions] on the Board."

Table 3.5

UNC Board of Governors Voting Membership by Geographic Region in N.C., 1997–2004

	Population%	Geographic Ideal Membership	Members of the UNC Board of Governors by Region			
			1997–98*	1999–2000	2001–02	2003–04
West	22%	7	5 (16%)	4 (13%)	2 (6%)	5 (16%)
Piedmont	48%	15	19 (59%)	17 (53%)	21 (66%)	21 (66%)
East	30%	10	7 (22%)	11 (34%)	9 (28%)	6 (19%)



* Because there was a vacancy on the Board in 1997–98 and a total of 31 members instead of the full 32, percentages will not add to 100%.

1. *The Idea of Geographical Balance*

Some want to see more attention to regional loyalties and expertise on the UNC Board. Currently, 24 boards in 22 states mandate some form of geographic representation in their higher education boards.⁴⁸ In the early days of the UNC Board of Governors, members were selected from the boards of the constituent higher education institutions. Now, many state policymakers say the Board has properly evolved into a body composed of members who see themselves as representing statewide higher education interests, as the law requires. The make-up of the Board also has changed to reflect the political strengths of various regions of the state. “At one time on our Board, when the political strength was centered in Raleigh and Durham, we had more members from there. But as things have shifted, you have seen the membership on our Board shift,” says former Board of Governors Chairman Sam Neill of Hendersonville in

the mountains. Of the 31 voting members of the 1997–98 Board of Governors (there was one vacancy), five (16 percent) were from the western portion of the state, 19 (59 percent) were from the Piedmont (Charlotte to Raleigh), and seven (22 percent) were from eastern North Carolina (see Table 3.5). Of the 32 voting members of the 1999–2000 Board of Governors, four (13 percent) were from the western portion of the state, 17 (53 percent) were from the Piedmont, and 11 (34 percent) were from eastern North Carolina.⁴⁹ The 2001–2002 Board was comprised of 2 (6 percent) members from western North Carolina, 21 (66 percent) members from the Piedmont portion of the state and 9 (28 percent) members from the east. The corresponding figures for the 2003–04 Board were five from the west (16 percent), 21 from the Piedmont (66 percent), and six members (19 percent) from eastern North Carolina. The percentage of the state’s population that lives in each region is 22% in the West, 48% in the Piedmont, and 30% in the East. In

order to match the geographic split of the state, the Board would have seven members from the West, 15 from the Piedmont, and 10 from the East.

During legislative deliberations in the 2003 selection of members for the UNC Board of Governors, geographic representation became a point of conflict. During Senate committee consideration of nominees, a map showing the counties of residence of the incumbent members of the Board of Governors was distributed to make the point that western North Carolina was under-represented on the Board. The 2003 Senate then selected two members residing in western North Carolina — Adelaide Daniels Key and Ed Broadwell, both of whom live in Asheville — as well as Peter Hans, who grew up in Hendersonville but lives in Raleigh. The question of geographic under-representation of western North Carolina also was raised in the House, which responded by selecting Cary Owens of Asheville and Leroy Lail of Hickory.

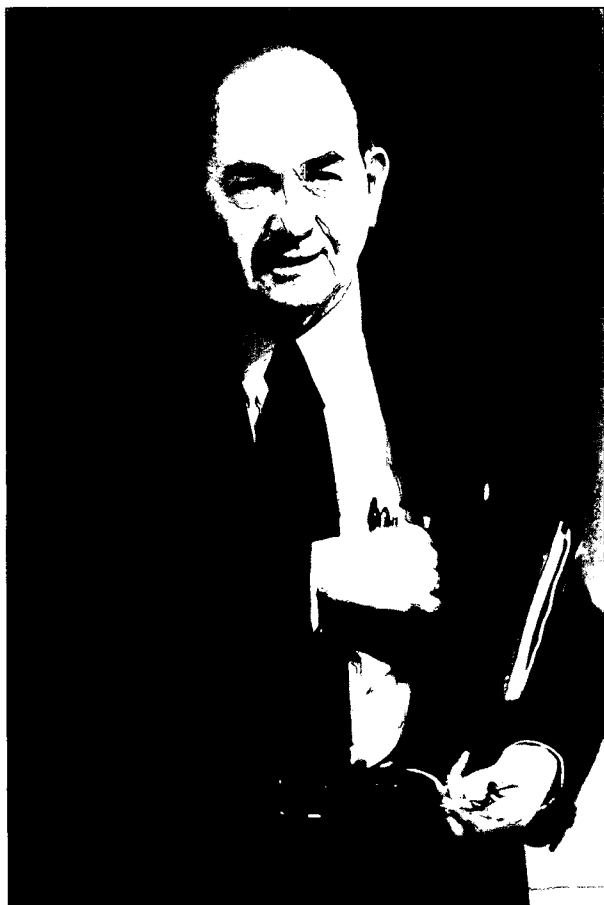
The gain for the west was not without a loss for the east, however. An editorial in the eastern North Carolina-based *Fayetteville Observer* in 2003 took the legislature to task for denying re-appointment of two Board of Governors members from the Fayetteville area at the same time that one other easterner decided to step down. The editorial, which stops short of calling for mandating geographical representation, says,

"It has been pointed out, accurately, that the appointments process has no geographical component. Fair enough. Members don't represent districts, acres or trees.

*But since when does 'not required by law' translate to 'may not exercise a little common sense in the general public interest'? It may be true that all 32 members represent everyone, everywhere, and all 16 campuses. But it is manifestly true that the members now leaving the board know the region's people, their schools and the schools' needs more intimately than members from other parts of the State."*⁵⁰

State Senator Richard Stevens (R-Wake), a member of the 2003 Senate higher education committee and a former member of the UNC-Chapel Hill campus's Board of Trustees says, "Geographical diversity is a good idea. This is a diverse state, and it's important to have folks from all parts of North Carolina." Stevens, however, does not favor mandating geographical diversity. He says, "I didn't like it when there were race, gender, and party quotas, and I wouldn't like geographical or school quotas either. You should put together a balanced slate without quotas." He explains that a more open process at the General Assembly which involves the minority party as well as the majority party would naturally produce a more geographically diverse board because Senators from all parts of the state could have more substantive input in the selection process. Stevens says, "If we had a process in which the entire body was involved, I'm sure the result would be a diversified slate of elected members."

In 1993, brother and sister state Senators Dennis Winner (D-Buncombe) and Leslie Winner (D-Mecklenburg) introduced legislation (Senate Bill 464) to create "geographic equity" on the UNC Board of Governors by requiring that two members be chosen from each of the state's 12 congressional districts. A *Charlotte Observer* editorial in support of the bill noted that at one time Guilford County — which is home to two campuses in the UNC system (the University of North



Karen Tam

"If you've got a person on there whose life and experience and business interests are west of Asheville, he's more likely to be aware of the educational needs of that area than somebody from Elizabeth City, and vice versa."

—FORMER UNC VICE PRESIDENT FOR PLANNING
AND FORMER BOARD OF GOVERNORS MEMBER JOHN SANDERS

Carolina at Greensboro and North Carolina Agricultural and Technical State University) — had no representation on the Board of Governors.⁵¹ Proponents of the 1993 measure argued that the at-large members of the UNC Board generally have been white men from the most populous areas of North Carolina, and they said that African Americans would have a better chance for election to the Board under the bill because of their strong voter registration in certain congressional districts. (In 1993, the 32 UNC Board members resided in just 20 of the state's 100 counties, including five members from Wake County alone.) Similar concerns have been raised in relation to selection of local campus boards. When scholar Marian Gade studied the UNC system in 1992, she found that the board of trustees of UNC-Chapel Hill had no members who lived in Chapel Hill and three of its 13 members did not even live in North Carolina.⁵²

Opponents of the 1993 "geographic equity" legislation recalled the intense battle that accompanied the 16 campus board's creation in 1971 and questioned whether the General Assembly would really want to reopen the selection process issue. Expressing the university system's view that the process did not need changing, Jay Robinson, UNC's Vice President for Special Projects in 1993, said that although he had heard complaints from time to time, the system was self-correcting. He said, "When people feel their area isn't well represented, they go out and get someone and get them elected. . . . The General Assembly has always been sensitive to that. I don't believe this is a chronic problem that's existed over a period of time," he said. "I don't know anyone who thinks it's a perfect system. But it's worked extremely well."⁵³

Former UNC Vice President for Planning and Board of Governors member John Sanders believes that broad geographic representation is important. "If you've got a person on there whose life and experience and business interests are west of Asheville, he's more likely to be aware of the educational needs of that area than somebody from Elizabeth City, and vice versa," says Sanders. "In that sense, I think it is important that the Board be representative. I think it would be unfortunate if everybody chosen for the Board lived in Raleigh and Wake County, though under the law they could." Although Sanders supports the idea of geographic equity, he doesn't propose that it be required in explicitly stated terms. Sanders says, "That [ensuring geographic equity] goes to the good judgment of the legislature in distributing the election in such a way that they see that the Board is not monolithic in terms of its institutional connections or its geographical priority." While there is an advantage to having members on the Board who live in and know about different areas of the state, an individual's current residence may not tell the whole story about his or her life and experience. Current Board of Governors member Charles Mercer says, "Where did they grow up? Where did they go to school? What other

communities have they lived in? You need to look at all of that, not just where someone is living now." Furthermore, members of the Board of Governors are not supposed to make decisions based on an allegiance to one region or one university, but rather for the good of the university system as a whole. Indeed, N.C.G.S. 116-7(a) says, "All members of the Board of Governors shall be . . . charged with the responsibility of serving the best interests of the whole state." Jack Cecil, a Board member from Asheville says, "Board members do not and should not represent any one group once they get on the Board. Bringing different viewpoints is helpful and healthy, but that doesn't mean they need to represent any one view in particular."

2. Representation for Each Campus

A variation of the idea of geographical representation is the idea of representation on the Board of Governors for each campus. Rep. H.M. "Mickey" Michaux (D-Durham) introduced this idea in the 2005 General Assembly. His bill (HB 1144) would have each of the 16 campuses with two representatives on the 32-member Board of Governors — sort of a mini-higher education legislature. Nominations for seats on the Board of Governors would come from the local campus boards of trustees to the legislature. In this Noah's ark of higher education policy, pairs of campus representatives would march two-by-two into Board of Governors' meetings

. . . a copy of an invitation received in April from the provost at Southern Methodist University:

"I would like to invite you to attend the Research Symposium tomorrow, Wednesday, April 8, at 4:00 p.m. in Hughes-Trigg Forum," the letter said.

It added that a professor of engineering would "present a lecture entitled, 'Modeling Thermal Fluid Sciences From Micro-Scales to Deca-Scales.' This is the second in a new series of talks in which the faculty present their research in a way that individuals outside the field can understand. . . ."

— "MARGINALIA"

THE CHRONICLE OF HIGHER EDUCATION

JUNE 26, 1998

and advocate for their campus. Michaux's bill would be in direct conflict with the current law's goal that Board members be charged with "serving the best interests of the whole state."

3. Faculty Representation

University faculty members also have sought representation on the UNC Board of Governors. Currently, faculty are barred from serving on the Board by the same statute that prevents state employees and state government officials from serving on the Board.⁵⁴ The statute is designed this way to prevent faculty from serving on a Board which could recommend faculty pay increases, lighten teaching loads, and establish or abolish academic programs. The idea behind student representation on the Board, by contrast, is to add consumers of higher education to the Board.

An effort by UNC faculty to gain voting representation on the Board of Governors failed in 1976, and the idea has not formally resurfaced since then. Laura Gasaway, a law professor, director of the Law Library

On weeding his garden: "A big weed was a regent, a medium-sized weed was some professor that was causing me problems, and a little weed was some student who was misbehaving."

— FORMER UNIV. OF CALIFORNIA PRESIDENT

CLARK KERR

CHANGE MAGAZINE, MARCH/APRIL 1987

at UNC-Chapel Hill Law School, and a former chair of the UNC Faculty Assembly, says, "That's unfortunate. It feels to the faculty inequitable to have a student non-voting seat on the Board and no seat for faculty." Although the Faculty Assembly has historically worked with UNC leaders on system-wide issues, "most faculty are fairly removed from the Board of Governors and their process," Gasaway says.

The UNC Board of Governors, meeting in Chapel Hill



Karen Tam

The University of California system is cited by some as one option for faculty involvement in governance. The nine-campus system is one of three public higher education systems in the state created by the 1960 California Master Plan for Higher Education.⁵⁵ Schools in the University of California system — the research universities — are the only ones with authority to grant doctoral and certain professional degrees. Although faculty do not have voting seats on the Board of Regents for the University of California, administrators are required by statute to consult with faculty representatives on a number of key issues, including system-wide policies, approval of new degree programs, evaluation of statewide academic activities, and academic personnel and benefits policies. According to Marian Gade, faculty participation in governance is considered a major factor in maintaining the quality of academic programs at the University of California's research campuses.⁵⁶

Another example of faculty participation on a higher education board occurs in North Dakota. In addition to the seven at-large members appointed by the governor and confirmed by the state senate, the North Dakota State Board of Higher Education contains two non-voting advisory representatives — a student and a representative from the council of college faculties who is chosen annually by the council to serve in that capacity. Under the statute, the two non-voting representatives are permitted to “attend and provide input at all board meetings.”⁵⁷

License Plates on Campus:

SPK UP: Helen M. Sterk, professor of communications, Calvin College

STDY HRD: Richard Sours, academic dean, Ferrum College

YARNBOY: David Brookstein, dean, School of Textiles and Materials Technology, Philadelphia U.

NAPMAN: William A. Anthony, professor of rehabilitation counseling, Boston U., and author, with wife, Camille, of *The Art of Napping*

UCBUGDR: Nicholas C. Toscano, entomologist, U. of California at Riverside

— “ACADEMIC LICENSE”

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4. Age Limits on Higher Education Boards

The final category of mandates most frequently seen in state laws that govern the composition of higher education boards is related to age. Only four states have age limits for board members — Alabama, Mississippi, Oklahoma, and Tennessee. In Alabama, board members may not serve past age 70. In Oklahoma, board members must be at least 35 years old, and in Mississippi, they must be at least 25. In Tennessee, one member of the board must be at least 60 years old.⁵⁸

Footnotes

¹ Chapter 436 (House Bill 923) of the 1991 N.C. Session Laws, then codified as N.C. General Statute §116-6(a)-(c).

² Chapter 503 (House Bill 1144) of the 2001 N.C. Session Laws, now codified as §§116-6 and 116-7.

³ N.C. General Statute §116-6(a).

⁴ UNC General Administration, *Board of Governors Members from a Minority Race and Board of Governors Members Who are Women*, tallies done in March 1999, and UNC General Administration pamphlets, *The University of North Carolina Board of Governors, 1999–2000, 2000–2001, 2001–2002, and 2003–2004*, Chapel Hill, NC.

⁵ North Carolina QuickFacts from the U.S. Census Bureau, U.S. Bureau of the Census, May 9, 2001, at quickfacts.census.gov/qfd/states/37000.html.

⁶ According to the U.S. Census Bureau, race includes the designations of white, black or African American, American Indian, Alaskan Native, Asian, Native Hawaiian or Other Pacific Islander, or some other race. However, Spanish/Hispanic/Latino individuals may be of any race and is a self-designated classification for people whose origins are from Spain, the Spanish-speaking countries of Central or South America, the Caribbean, or those identifying themselves generally as Spanish, Spanish-American, etc. Origin can be viewed as ancestry, nationality, or country of birth of the person or person's parents or ancestors prior to their arrival in the United States. See factfinder.census.gov/home/en/epss/glossary_s.html#spanish/hispanic/latino.

⁷ A direct comparison between racial categories in 1990 and 2000 is impossible because the Census Bureau changed the way it measured race in the 2000 census. In 1990, people were forced to select only one race, while in 2000 they could select more than one, which is what 1.3% of the North Carolina population did. Also, the census does not count persons of Hispanic or Latino origin as a separate racial category, because these persons may be of any race. Instead, they were included in the applicable race categories. However, the census treats Latinos and Hispanics as an ethnicity, and 4.7% of North Carolina residents are shown to be of Hispanic or Latino origin in the 2000 census report.

⁸ UNC General Administration pamphlet, *The University of North Carolina Board of Governors, 1999–2000*, Chapel Hill, NC: August 1999.

⁹ Dan Kane, “Board of Governors sued over seat quotas,” *The News & Observer*, Raleigh, NC, May 23, 2001, p. 17A.

¹⁰ *Jack W. Daly v. C.C. Cameron et al.*, Civil Action No. 5:96CV42-V (Sept. 30, 1996).

¹¹ *Walter R. Davis et al. v. State of North Carolina and the Board of Governors of the University of North Carolina*, Case No. 5:01-CV-372-BO(3). Other plaintiffs in the lawsuit included Barbara Howe, the Libertarian candidate for governor in 2000, and Vernon Robinson, a black Republican alderman from Winston-Salem and the unsuccessful Republican nominee for N.C. Superintendent of Public Instruction in 1996 and 2000. A similar suit also was filed in state court in September 2001, with Governor Mike Easley, Senate President Pro Tempore Marc Basnight, House Speaker Jim Black, and then-Board of Governors Chair Ben Ruffin as additional defendants. The plaintiffs in both suits are represented by lawyers Eugene Boyce and his son Daniel, an unsuccessful GOP candidate for attorney general in 2000.

¹² Kane, note 9 above, p. 17A.

¹³ Statement of Chairman Benjamin S. Ruffin concerning *Davis et al. v. The State of North Carolina and the Board of Governors of the University of North Carolina*, June 8, 2001, pp. 1–2.

¹⁴ Session Law 2001-503 (HB 1144) of the 2001 N.C. Session Laws.

¹⁵ Ruffin, note 13 above.

¹⁶ Women's Forum of North Carolina, *Gender Balance on Boards and Commissions: Part A: North Carolina State Government Boards*, Raleigh, NC, January 1999, p. 4.

¹⁷ Senate Bill 333 and House Bill 596 of the 1999 N.C. Legislative Session.

¹⁸ Chapter 457 (SB 333) of the 1999 N.C. Session Laws.

¹⁹ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research, Raleigh, NC: 2000, p. 113.

²⁰ *Ibid.*, Table 30, pp. 110–112.

²¹ *Ibid.* at p. 107, citing Tennessee Code §49-7-204(a)(2)(A),(B).

²² Kentucky Revised Statutes §164.011(2).

²³ New Jersey Code §18A:3B-13(a).

²⁴ Connecticut General Statutes §10a-2.

²⁵ Washington Revised Code §28B.80.390.

²⁶ California Code §66901(e).

²⁷ South Carolina Code §59-103-10.

²⁸ Rhode Island General Laws §16-59-5(13).

²⁹ The final revised 2000 census figure put the total percentage of non-white racial minorities in North Carolina at 28.9 percent. Since the 2000 census allowed people to select more than one race, the U.S. Census Bureau provides information about people who consider themselves to be Hispanic in ethnicity, but as a member of one or more races. The percentage of non-Hispanic whites is 70.2 percent and the percent of the population that identifies itself as Hispanic white is 2 percent. People who checked "Black or African American" alone comprise 21.4 percent of the population, while those who selected Hispanic as well as African American make up 0.2 percent. Of the remainder, Non-Hispanics of one or more other races account for 3.7 percent of the population, while Hispanics who indicated one or more other races are 2.6 percent of the state's population.

³⁰ North Carolina Office of State Budget and Management, *County/State Population Projections, Growth Tables, Age Group Totals and Age Groups-Non White*, Raleigh, NC, at demog.state.nc.us/projections.html.

³¹ North Carolina QuickFacts from the U.S. Census Bureau, U.S. Bureau of the Census, note 5 above.

³² Sam Watts, *Article II: A Guide to the 2005–2006 North Carolina Legislature*, N.C. Center for Public Policy Research, Raleigh, NC: April 2005, p. 224, and earlier editions of *Article II*.

³³ Since 1966, the North Carolina State Board of Elections has published the number of registered voters in the state by political party. Information for this report was obtained from the 1989–90 edition of the *North Carolina Manual* published by the N.C. Secretary of State, Raleigh, NC, p. 879, and from the N.C. State Board of Elections Website: www.sboe.state.nc.us.

³⁴ Waller, *et al.*, note 19 above, Table 30, pp. 110–112.

³⁵ N.C. General Statute §116-31 applies to the campus Boards of Trustees, and §116-6.1 applies to the University Board of Governors.

³⁶ UNC Board of Governors, *A Resolution Concerning a Student Vote on the University of North Carolina Board of Governors*, approved at UNC Board of Governors meeting, March 19, 1999.

³⁷ N.C. General Statute §116-7(a).

³⁸ House Bill 169, sponsored by Representative Alma Adams (D-Guilford) and Senate Bill 188, introduced by Senator Ellie Kinnaird (D-Orange).

³⁹ The oath that members of the Board of Governors take reads: "I do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as a member of the Board of Governors of The University of North Carolina."

"Further, I do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God."

⁴⁰ Al Cross, "Campaign aide Mirisis departs Fletcher's staff," *The Courier-Journal*, Louisville, Kentucky, September 10, 2003, p. 1B, online at <http://www.courier-journal.com/localnews/2003/09/10ky/met-front-fletcher910-8728.html>.

⁴¹ Jane Stancill, "New FSU chief pledges cleanup," *The News & Observer*, Raleigh, NC, August 8, 2003, p. 5B.

⁴² Jane Stancill, "Chancellors' troubles raise issues, eyebrows," *The News & Observer*, Raleigh, NC, September 21, 2003, p. 1A.

⁴³ Jane Stancill, "WSSU acting chancellor now officially in role," *The News & Observer*, Raleigh, NC, May 12, 2001, p. 3A.

⁴⁴ N.C. Department of State Auditor, *Special Review, North Carolina School of the Arts/North Carolina School of the Arts Foundation Inc.*, (Audit Number: INV-2004-0274), Raleigh, NC, October 5, 2004.

⁴⁵ *Swain v. Elfland*, 145 NC App 383 (00-258). The case recites facts as follows: "The plaintiff, Lt. Edwin Swain, Jr., is employed as a police officer at the University of North Carolina at Chapel Hill. On 27 September 1997, plaintiff was assigned to an "Interdiction and Arrest" team at a football game at Kenan Stadium. The primary purpose of the team was to enforce the alcohol laws.

After the game, plaintiff observed a young woman, Caroline Hancock, holding what appeared to be a malt beverage. When plaintiff approached Hancock, a member of Hancock's party alerted her to plaintiff's presence. Hancock took the bottle and placed it in the back

of a truck. Plaintiff told Hancock he saw her in possession of a malt beverage, asked her if it was a beer, and she replied affirmatively. Plaintiff then requested Hancock's driver's license, which listed her age as eighteen years old. Plaintiff proceeded to write her a citation for underage drinking. Soon thereafter, Hancock's father approached, and plaintiff informed him that he was citing Hancock. Hancock's father, Billy Armfield, was a member of the University Board of Trustees. Armfield asked plaintiff not to issue the citation, but plaintiff declined the request. Plaintiff then left and headed back to the police department.

After the game, Armfield protested his daughter's citation to University officials. Plaintiff's superior, Major Jeffrey McCracken, later communicated to plaintiff that there were questions regarding plaintiff's probable cause to issue the citation. On 29 September 1997, plaintiff reported for duty and entered Hancock's citation into the computer. According to plaintiff, Major McCracken ordered him to turn over the copies of the citation to him, and tried to persuade him to withdraw the citation. The citation was later pulled from a stack of citations ready for transfer to a magistrate."

⁴⁶ Staff reports, "Ex-UNC official's charge put on hold," *The News & Observer*, Raleigh, NC, November 5, 2004, p. 6B.

⁴⁷ Journal Staff and Wire Report, "Trial date set for local man in S.C. case," *Winston-Salem Journal*, Winston-Salem, NC, February 20, 2005, p. 2.

⁴⁸ In terms of geographic representation, most state statutes contain language similar to that found in Utah Code §53B-1-104(1); "In making appointments to the boards, persons are selected from the state at large with due consideration for geographical representation." Waller, *et al.*, note 19 above, p. 113.

⁴⁹ UNC General Administration pamphlet, *The University of*

North Carolina Board of Governors, 1999–2000, Chapel Hill, NC: August 1999.

⁵⁰ Editorial, "Bad Break: Region needs a vote on the UNC Board," *The Fayetteville Observer-Times*, Fayetteville, NC, June 4, 2003, page 6A.

⁵¹ Editorial, "Picking the Governors," *The Charlotte Observer*, Charlotte, NC, April 2, 1993, p. 10A.

⁵² Marian L. Gade, *Four Multicampus Systems: Some Policies and Practices That Work*, The Association of Governing Boards of Universities and Colleges: Washington, DC, 1993, p. 27. However, in Spring 2001, the twelve elected members of the UNC-CH board all listed North Carolina addresses, and two of them, including the chair, had Chapel Hill addresses.

⁵³ As quoted in Hunter R. George II, "Bill seeks diverse UNC system board," *The Charlotte Observer*, Charlotte, NC, March 21, 1993, p. 1B.

⁵⁴ N.C. General Statute §116-7(b).

⁵⁵ The University of California is composed of all the state's research universities except one. The other two higher education systems in California are the California State University System, which includes all other four-year public institutions, and the California Community College System, which is composed of the two-year colleges. The California Postsecondary Education Commission coordinates all of higher education in the state, but it does not have direct governing power over any of the campuses. See Waller *et al.*, note 19 above, pp. 29 and 71.

⁵⁶ Gade, note 52 above, p. 52.

⁵⁷ North Dakota Century Code §15-10-02.

⁵⁸ Waller *et al.*, note 19 above, pp. 112 and 113.

PART II
.....

**The Powers
and Duties
of the
UNC Board of Governors**

N.C. General Statute § 116-1. Purpose.

(a) In order to foster the development of a well planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions.

(1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

CHAPTER 4

The Powers of the UNC Board of Governors

A. Statutory Powers of the Board of Governors

The UNC Board of Governors has been granted extensive powers by the legislature, including control over three key aspects of university operations — budgets, academic programs, and personnel. The N.C. Center for Public Policy Research's study of the governance of public university systems in all 50 states notes that "such a wide-ranging grant of power is typical of — and in fact, defines — consolidated governing boards"¹ as opposed to coordinating boards, which may only have advisory powers. North Carolina law requires that the Board of Governors exercise specific powers and perform the following duties:

"(1) . . . plan and develop a coordinated system of higher education in North Carolina. . . . govern the 16 constituent institutions, . . . maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. . . . prepare and from time to time revise a long-range plan for a coordinated system of higher education. . . .

(2) . . . be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. . . . may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property. . . .

(3) . . . determine the functions, educational activities and academic programs of the constituent institutions. . . . determine the types of degrees to be awarded. . . . withdraw approval of any existing program

if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. . . . review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) . . . elect officers . . . elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. . . .

(5) . . . on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(6) . . . approve the establishment of any new publicly supported institution above the community college level.

(7) . . . set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) . . . set enrollment levels of the constituent institutions.

(8a) . . . adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. . . .

(9a) . . . develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for

employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas.

(10) . . . collect and disseminate data concerning higher education in the State. . . may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education. . . . The information shall include: a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education; b. College performance of high school graduates for the year immediately following high school graduation including each student's:

need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State; c. The progress of students from one institution of higher education to another; and d. Consistent and uniform public school course information including course code, name, and description. . . shall coordinate a joint progress report on the implementation of the system. . . annually thereafter.

(10b) . . . shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) . . . assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) . . . give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission and the boards of trustees of the institutions.

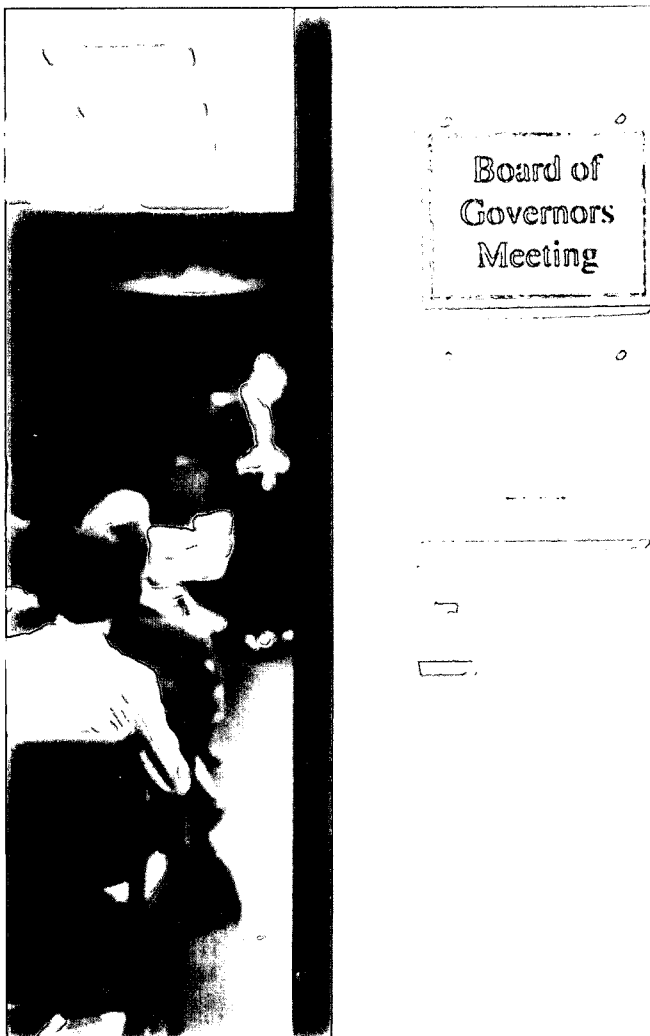
(12a) . . . implement, administer, and revise programs for meaningful professional development for professional public school employees in accordance with the evaluations and recommendations made by the State Board of Education. . . submit to the State Board of Education an annual written report to assess and evaluate the effectiveness of the programs for professional development. . .

(12b) . . . create a Board of Directors for the UNC Center for School Leadership Development. . . determine the powers and duties of the Board. . .

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. . . .

(14) The Board shall possess all powers not specifically given to institutional boards of trustees."²

Other statutes empower the board to: (1) elect a President of the system;³ (2) grant, deny, or revoke permission for non-public educational institutions to offer post-secondary degrees in the state, subject to licensure standards established by the board;⁴ (3) define and delegate the powers and duties of each constituent institution board of trustees;⁵ establish a UNC Center for Public Television;⁶ and (4) as a member of the State Education Commission, engage in dialogue with members of the State Community College Board and State Board of Education regarding issues being addressed by the N.C. Education Cabinet.⁷ The Education Cabinet originally consisted of the Governor, President of the UNC system, State Superintendent of Public Instruction, Chair of the State Board of Education, and President of the N.C. Community College System. And, until 2001,



Karen Tam

the law required the Cabinet to “invite representatives of private education to participate in its deliberations as adjunct members.” However, the 2001 General Assembly added the “President of the North Carolina Independent Colleges and Universities” to the statutory membership of the Cabinet, and stated the Cabinet “may invite other representatives of education to participate in its deliberations. . . .”⁸ The Cabinet’s duties include working “to resolve issues between existing providers of education” and setting the agenda for the State Education Commission.

Significantly, some statutory powers of the Board of Governors — such as setting salaries of UNC administrators and faculty — have not typically been granted to other state boards in North Carolina. For example, although the State Board of Community Colleges has a statutory mandate to “establish standards and scales for salaries and allotments paid from funds administered by the State Board,”⁹ the board does not set salaries for employees of the institutions; the institutions do that. Similarly, the N.C. Board of Transportation does not set salaries for Department of Transportation employees.

Another singular aspect of North Carolina’s public university system is that responsibilities are shared between the central governing board and the local campus boards of trustees. Representatives of regional universities lost a bid to have the powers and duties of campus boards spelled out in the statute during the debate over restructuring in 1971. Instead, all powers of the campus boards are delegated from the central governing board, except for the power to nominate persons to be chosen as chancellor. Only in North Carolina and Utah is this delegation of duties to local boards specifically listed among the responsibilities of the central governing board, and these are the only two states where the amount of power given to campus boards is left to the sole discretion of the central board and not outlined in state statutes.¹⁰ The resulting duties and responsibilities of the local campus boards fall into three main categories: promoting the sound execution of the institution’s mission; advising the Board of Governors on key issues affecting the institution; advising the Chancellor on the management and development of the institution; and nominating candidates for the campus’s Chancellor to the President of the system. The balance of powers between the statewide Board of Governors and the local campus boards of trustees will be discussed in the next chapter of this report.

The UNC Board of Governors also elects members and delegates powers to the Board of Trustees of the University of North Carolina Center for Public Television and elects members to the Board of Directors of the UNC Health Care System, which includes the teaching hospital for the School of Medicine at UNC-Chapel Hill.¹¹ Additionally, the Board of Governors is responsible for appointments to 17 other boards, commissions, and councils. (See Table 4.1 for additional Board appointments.)

B. How the UNC Board of Governors Operates

The Code is a document that spells out procedures and powers of the UNC Board of Governors and includes delegations of authority from the central board to the campus boards of trustees.¹² Pursuant to *The Code*, until 2001, regular meetings of the Board of Governors were held on the second Friday of every month except December. However, in 2001, the Board voted to reduce the number of times it meets annually from eleven to eight.¹³ In addition, the Chair or 10 voting members of the Board may call special meetings. The agendas for meetings are prepared by the UNC President with approval of the Chair of the Board of Governors. Members of the Board of Governors, except *emeriti* members and the student representative, may vote on all matters that come before the Board, but no member may vote by proxy. All meetings of the Board of Governors are open to the public unless, consistent with the requirements of the state’s Open Meetings Law, a meeting is closed by a majority vote of a quorum of the Board.¹⁴ Closed sessions are generally held to consider proposals related to the acquisition, lease, or sale of real property; personnel actions; or confidential matters in which university attorneys are involved. By a two-thirds vote of the membership, the Board may also amend or suspend any provision of *The Code*.¹⁵

The Board of Governors now has five standing committees which conduct most of its official business: (1) Budget and Finance; (2) Educational Planning, Policies, and Programs; (3) Personnel and Tenure; (4) University Governance; and (5) Public Affairs. The Public Affairs Committee was established in 1998 as an *ad hoc* committee of the Board and was made a standing committee on August 12, 2005. As of November 2005, the Board also had the following *ad hoc* groups: Committee on the Future of Information Technology, Special Committee on Economic Development and the University, Special Committee Reviewing the Funding Model for Enrollment Growth, Committee on the University Award–2005, and the Task Force on Tuition Policy. Standing committee members are appointed by the Chair of the Board. Each UNC Board member must serve on one standing committee, and the Chair is a member of all standing committees, although the Chair is not counted in determining a quorum. In lieu of being elected to a committee membership, the Board Vice Chair is assigned to a standing committee by the Chair. The duties of the committees are described as follows:¹⁶

(1) **The Committee on Budget and Finance** consists of seven voting members that advise the UNC President on budget policy and preparation, consider the budget proposed by the President, and, upon its approval, submit the budget to the full Board of Governors for final action. The committee also makes recommendations to the Board regarding allocation of funds appropriated to the Board, as well as real property transactions,

Table 4.1

*Entities Which Are Not Constituent Institutions of the University of North Carolina
But Where Some or All Members Are Selected by the UNC Board of Governors*

Institution	Name of Board / Council / Commission
Blue Cross Blue Shield	Conversion Advisory Committee
James B. Hunt, Jr., Institute for Educational Leadership and Policy	Board of Directors*
North Carolina Arboretum	Board of Directors
North Carolina Center for the Advancement for Teaching	Board of Trustees
North Carolina Center for International Understanding	Advisory Board
North Carolina Center for Nursing	Board of Directors
North Carolina Principal Fellows Program	North Carolina Principal Fellows Commission
North Carolina School of Science and Mathematics	Board of Trustees
North Carolina School of Science and Mathematics*	Educational Advisory Council
North Carolina Teacher Academy	Board of Trustees
Pitt County Memorial Hospital	Board of Trustees
Research Triangle Foundation	Board of Directors
State of North Carolina	State Advisory Council on Indian Education
State of North Carolina	State Building Commission
University of North Carolina Center for Public Television	Board of Trustees
University of North Carolina Health Care System	Board of Directors**
University of North Carolina Health Care System	Liability Insurance Trust Fund Council
University of North Carolina Press	Board of Governors

* The North Carolina School of Science and Mathematics became a constituent institution of the University of North Carolina system in legislation enacted in July 2006 as a special provision (section 9.11) within the 2006 Appropriations Act (Senate Bill 1741).

** The Board of Governors is responsible for ratification of appointments made by the President of the University of North Carolina to the James B. Hunt, Jr. Institute for Educational Leadership and Policy Board of Directors and the University of North Carolina Health Care System Board of Directors.

Source: UNC Office of the President.

investments, endowments, tuition and fee charges, and other fiscal and property matters.

(2) **The Committee on Educational Planning, Policies, and Programs** consists of nine voting members. It makes recommendations to the Board in all areas pertaining to the development of a coordinated system of higher education in North Carolina, including defining missions and assigning functions to UNC campuses, reviewing requests for new degree programs, and providing support services. The committee assists the UNC President and the Board in maintaining liaisons with the State Board of Education, the Department of Community Colleges, and private colleges and universities. It also recommends procedures and standards for licensing of non-public higher educational institutions.

(3) **The Committee on Personnel and Tenure** consists of seven voting members. It reviews and makes recommendations to the Board with respect to (1) all personnel actions under the jurisdiction of the Board, including conferral of permanent tenure, appointment of senior academic and administrative officers for those campuses without “management flexibility to appoint and fix compensation,”¹⁷ establishing and approving faculty and administrative salary ranges, and approving salary increases of 15% or greater; (2) *The Code* and institutional policies and regulations regarding tenure; (3) appeals from faculty members that involve questions of tenure (see Table 4.2); and (4) other personnel matters that involve significant policy considerations. The committee also advises the UNC President regarding the President’s periodic review. Until July 1, 2001, *The Code* mandated that the Personnel and Tenure Committee also would review all institutional policies and regu-

lations governing faculty tenure, as transmitted by the president together with the president’s recommendations, and make recommendations to the Board of Governors after such review. However, *The Code* was amended in 2001 to provide that tenure policies adopted by a campus board of trustees become effective upon review by UNC-system senior administrative officials and approval by the President, thereby apparently eliminating the requirement of review by the committee and approval by the Board before implementation.

(4) **The Committee on University Governance** consists of seven voting members. It reviews and interprets *The Code* and all delegations under *The Code* and makes recommendations to the Board for amendments or delegations of authority to the local campus boards of trustees. The committee makes nominations to the Board of Governors for elections to the local campus boards of trustees. It receives requests from faculty, staff, and students at UNC schools for appellate review of policies adopted by the campus boards of trustees. The committee also has a role in legal matters generally related to decisions to bring suit or other legal actions.

(5) **The Public Affairs Committee** is a committee established to “provide advice and counsel to the President, to assist the Board in the development of the University’s legislative agenda, and to help advocate the interests of the University with various key constituencies.”¹⁸ The committee was an *ad hoc* group until 2005, when it became a Standing Committee of the Board. The genesis of the group came in preparation for the 1999 session of the NC General Assembly, when the Board of Governors and its Public Affairs Committee for the first time asked the campuses to submit non-budget

Table 4.2

Tenure Conferrals, Rejections, and Appeals to the UNC Board of Governors, 1999–2002

Year	Number of Tenure Conferrals	Number of Tenure Rejections	Faculty Tenure Appeals	Number of Campuses with Faculty Tenure Appeals
1999	322	0	5	ASU, ECSU, FSU (2), UNC-G
2000	323	0	3	FSU, NCCU, NCSA
2001	413	1	3	ECSU, FSU, NCSA
2002	289	0	2	NC A&T, NCCU
Totals:	1,347	1	13	

Source: Summary Personnel Reports of UNC Board of Governors Minutes, 1999–2002.

legislative proposals for Board consideration. Campus submissions include statutory changes of benefit to the University as a whole, those that would benefit individual constituent institutions, and other non-budget items that require the action of the General Assembly. The Public Affairs Committee, upon recommendation of the UNC President, now recommends a non-budget legislative agenda to the full Board for final action before each session of the General Assembly. The process provides an opportunity for the President's staff and the committee to consider campus legislative proposals for recommendation to the Board and the President. The process also allows the campuses the opportunity to convey substantive legislation that they believe should be considered. It encourages the individual institutions to share their needs and interests with the Board of Governors and with each other. Ten campuses submitted a total of 18 proposals for consideration in 1999. This number has steadily grown each year, with 83 submissions prior to the 2004 session.

The committee establishes a network for targeted communications with members of the General Assembly and participates in events and activities designed to encourage support for the university system's legislative agenda. The committee also is charged with monitoring federal legislation and establishing communications with members of North Carolina's congressional delegation. Finally, the committee helps plan community and campus visits by members of the Board of Governors to promote UNC's educational and public service benefits to the people of the state and establishes links with key business and civic leaders, former members of the Board of Governors, and other university-related groups.

* * *

Legislators and university leaders who participated in the restructuring fight of the 1970s say creation of a powerful central governing board was partly a reaction to the lack of a rational distribution of state resources to higher education that existed at the time. Even some of those who did not support restructuring legislation in 1971 — among them former University President William Friday — argued during months of debate on the bill that if a multi-campus system was to be established, it had to be controlled by a strong central board. "You had to put the power there and the accountability there," Friday says.

University administrators who were present in the early days of the multi-campus system say the existence of a central governing board helped resolve such difficult issues as East Carolina University's request to build a medical school. Although there was disagreement among Board members as to whether a four-year medical school was needed at East Carolina, the Board ultimately agreed to seek more than \$35 million in funding for that purpose from the General Assembly in 1975. As part of the debate over expansion of the ECU medical school from a one-year to a four-year institution, the

Assembly also created UNC's Area Health Education Center (AHEC) program.¹⁹

At about the same time, the university system was faced with a major civil rights lawsuit commonly known as *Adams v. Richardson*. This lawsuit ultimately forced the federal government to mandate more stringent desegregation requirements on public universities in 10 southern states, including North Carolina.²⁰ The legal dispute between the university system and federal education officials over how UNC would comply with the court decision lasted from 1973 until 1984. However, a consent decree was eventually approved.²¹ Under the consent agreement, the university agreed to improve recruitment and scholarship support for minority students; increase enrollment of black students at traditionally white institutions and of white students at traditionally black institutions; and upgrade programs and maintain levels of financial support for current operating expenses and specific capital improvements at the state's five historically black universities. Federal authorities agreed to abandon their push for binding numerical goals and a "program duplication model of desegregation"²² that would require eliminating similar programs offered by nearby traditionally white and traditionally black schools.

Others also credit the Board of Governors with the history of relatively generous appropriations the General Assembly has made to higher education under the unified funding requests submitted annually by the Board of Governors. "If you didn't have central control, it [the budget process] would be a political free-for-all," says former Board of Governors Chairman Sam Neill. "If you look historically, UNC has been well-funded during the period the Board of Governors has been in place." During 2005–06, North Carolina ranked sixth in the nation in total state funding for higher education operating expenses, with appropriations of almost \$3 billion.²³ Since 1974, North Carolina has ranked among the top 10 states for total spending on higher education. The state has ranked sixth or higher every year since 1996 on this measure. Since these statistics have been compiled consistently, beginning in 1961, North Carolina has ranked as high as fifth, from FY 1993 through 1995, and as low as fifteenth, in FY 1961, 1962, and 1964. (See Table 4.3A, N.C. State Funds for Higher Education Operating Expenses, 1960–2006).

Data provided to the N.C. Center for Public Policy Research by the Association of State Higher Education Executive Officers (SHEEO) also show that legislative support for public higher education has flourished under the Board of Governors. According to the SHEEO figures in Table 4.3-B (which compare higher education spending across the nation and take population and the size of a state's tax base into account), North Carolina has exceeded the national average of per pupil appropriations for higher education since 1977–78. In 1972–73, just after the Board of Governors was established in 1971–72, North Carolina spent 1 percent less per pupil



Karen Tam

Chancellors of UNC constituent institutions at a meeting of the Board of Governors in Chapel Hill

than the national average. Since then, the state appropriation has exceeded the national per pupil average by as much as 27 percent (in 1997–98) and has not fallen below 11 percent above the national average (in 1991–92) since 1984. The most recent measure available in 2001–2002 puts North Carolina at 12 percent above the national average, or tenth in the nation in per-pupil appropriations as a percentage of tax revenue.

Since the creation of the Board of Governors in 1971–72, North Carolina has managed to increase its absolute ranking among the 50 states in total higher education appropriations from tenth in 1971–72 to sixth in 2002–03 and to increase the relative per-pupil appropriation from 1 percent below the national average to a level consistently above average — even though the percentage of the General Fund spent on higher education

declined from 15.2 percent to 12.3 percent during the same period.

There are sometimes differences between the powers a university board is given by statute and the powers it exercises in practice. Discussions with state leaders about the current powers of the Board of Governors suggest three ways to view this issue:

- by examining powers the UNC Board has but which are sometimes overridden or second-guessed by the legislature;
- by looking at powers the Board has but is not fully utilizing; and
- by identifying powers the Board does not have but says it needs in order to better govern the university system.

C. Powers Residing in the Board of Governors But Sometimes Overridden or Second-Guessed by the Legislature

The potential for legislative interference in Board of Governors' decisions has worried state leaders since the Board was established in the early 1970s. As former North Carolina Governor Robert Scott sees it, "We ought not to be concerned about more powers going to the [university] Board, but in seeing that those powers it has are not circumvented." Former UNC President William Friday says, "From the start, the General Assembly did not hesitate to intervene in those matters it thought the Board of Governors might not act on as the General Assembly desired. In the early years, such intervention was infrequent, but with the passing of time it became more common." Even UNC President Molly Corbett Broad, whose job requires a high degree of diplomacy on the issue of legislative involvement in university affairs, points out that "the other side of the coin of a deep, abiding respect for the university is a high willingness [on the part of the General Assembly] to offer advice and call for studies. There is a level of interaction between the legislature and the university that is new to my experience." By contrast, when addressing the Board's Public Affairs Committee on September 9, 2004, House Co-Speaker Jim Black said, "We try not to micromanage the University."

1. *The University's Budget Powers*

UNC's budget has often been the focus of tension between the Board of Governors and the legislature. In the 1980s, university concerns centered mainly on pork barrel appropriations that legislators would routinely insert in the budget to benefit campuses in their home regions. For example, former Speaker of the House Liston Ramsey (D-Madison) regularly directed money to buildings and programs at Western Carolina University, and Senate President Pro Tem Marc Basnight (D-Dare) has done the same for Elizabeth City State University. In recent years, decisions on state appropriations to the university system and raising tuition rates have been the primary sources of anxiety.

Former state Senator Howard Lee (D-Orange), who is now Chairman of the State Board of Education but was Chairman of the Senate Higher Education Committee in 1999–2000 and Co-Chair of the Senate Appropriations/Base Budget Committee in 2001, represented a district that included UNC-Chapel Hill. Lee says there are two sides to the question of how free the Board of Governors has been to set university budget priorities. "In many ways, I think there is over-exuberance at the legislative level in trying to direct resources to individual campuses, and I'm as guilty as anyone else," he says. "But the Board of Governors doesn't always pare down

its requests so that they are reflective of the need, as opposed to trying to be fair to everyone, and this creates legislative intervention." As an example, Lee cites the Board of Governors' request for \$8 million for tuition assistance for graduate teaching and research assistants that the General Assembly approved in 1998. When the university administration stated its intention to distribute those funds system-wide, legislators intervened to ensure that the money would go only to graduate students at UNC's two research universities — UNC-Chapel Hill and North Carolina State University in Raleigh. State Senator Tony Rand (D-Cumberland) sent a letter to UNC leaders calling their attention to a conference committee report amendment that restricted the graduate student assistance funds to doctoral and professional programs.²⁴ UNC President Molly Corbett Broad responded in a letter to Rand that although university leaders were "surprised by the conference committee amendment adding the phrase 'in doctoral and professional programs,'" UNC would "modify the proposal for distribution that will be submitted to the Board of Governors . . . to ensure compliance with the language in the Joint Conference Committee Report."²⁵

University leaders say other legislative changes over the last decade have allowed the Board of Governors more room to flex its budgetary muscle. In 1991, the university Board was given the authority to designate particular UNC schools as "special responsibility constituent institutions" which would be granted broader management authority over budgeting, purchasing, and personnel.²⁶ To be classified as a special responsibility constituent institution, a campus must meet specific fiscal, accounting, and management standards and safeguards, and must submit an annual report describing the impact of the allowed management flexibility on undergraduate student learning, fiscal savings, increased efficiency, and other outcomes. In return, campuses with the special designation are permitted to retain any funds appropriated by the General Assembly for current operations that are not spent by the end of the fiscal year and may use such funds for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward in such cases cannot exceed 2.5 percent of the General Fund appropriations for that campus for the same fiscal year.²⁷ Currently, all 16 campuses have been designated as special responsibility constituent institutions, along with UNC-General Administration and the N.C. School of Science and Mathematics.

The threat to withdraw this management flexibility is a tool wielded by the UNC President when financial impropriety is discovered on a campus. For example, President Molly Broad announced at the August 8, 2003 meeting of the Board of Governors that she would recommend withdrawal of budget management flexibility from Fayetteville State University if the campus did not correct problems identified in an audit completed by the

—continued on page 92

Table 4.3

State Support for Higher Education in North Carolina**A. North Carolina State Funds for Higher Education Operating Expenses, 1960–2006**

Year	Amount (Thousands \$)	N.C Ranking Among the 50 States
1960–61	\$29,933	15
1961–62	\$35,678	15
1962–63	\$36,532	14
1963–64	\$46,768	15
1964–65	\$51,431	14
1965–66	\$76,323	12
1966–67	\$81,194	13
1967–68	\$106,550	12
1968–69	\$114,709	12
1969–70	\$175,931	10
1970–71	\$175,931	11
1971–72	\$223,486	10
1972–73	\$223,486	11
1973–74	\$287,115	10
1974–75	\$337,044	9
1975–76	\$368,754	9
1976–77	\$407,977	9
1977–78	\$460,932	9
1978–79	\$521,863	9
1979–80	\$580,189	9
1980–81	\$660,645	9
1981–82	\$736,882	9
1982–83	\$793,433	9
1983–84	\$864,658	9
1984–85	\$960,343	9
1985–86	\$1,078,822	8
1986–87	\$1,172,120	8
1987–88	\$1,284,076	7
1988–89	\$1,329,606	7
1989–90	\$1,458,516	6
1990–91	\$1,484,279	7
1991–92	\$1,445,790	7
1992–93	\$1,541,926	5
1993–94	\$1,630,179	5
1994–95	\$1,723,312	5
1995–96	\$1,758,713	6
1996–97	\$1,852,013	6
1997–98	\$2,007,092	6
1998–99	\$2,171,339	6
1999–00	\$2,270,323	6
2000–01	\$2,398,489	6
2001–02	\$2,442,690	6
2002–03	\$2,449,659	6
2003–04	\$2,474,773	6
2004–05	\$2,665,876	6
2005–06	\$2,925,046	6

Source: James C. Palmer, *Grapevine*, Illinois State University, Bloomington, Illinois, 2005. Available online at <http://coe.ilstu.edu/grapevine>. *Grapevine* reports annually on total state effort for higher education, including tax appropriations for universities, colleges, community colleges, and state higher education agencies. Annual *Grapevine* reports have been published since fiscal year 1961. Each of these reports includes a national overview of state tax appropriations to higher education, as well as detailed tables for each of the 50 states. Wherever possible, the N.C. Center for Public Policy Research has used *Grapevine's* revised and updated figures, rather than relying on preliminary reports.

Table 4.3

CONTINUED

*State Support for Higher Education in North Carolina***B. Comparison of State Funds Spent Per-Student in North Carolina with National Average Per-Student Appropriations, 1972–2002**

Year	Relative Tax Capacity (\$ per capita)	Actual Tax Revenues (\$ per capita)	N.C. Appropriations for Higher Education			
			Educational Appropriation (as % of Tax Revenue)	(% of Tax) Index to National Average	Educational Appropriation (per FTE* student)	(Per FTE) Index to National Average
1972–73	453	371	7.7	114	1,304	99
1977–78	638	558	10.0	124	1,986	101
1979–80	708	644	10.6	128	2,400	104
1980–81	753	730	10.5	127	2,584	106
1981–82	818	780	10.9	132	2,805	107
1982–83	905	848	10.6	136	2,926	108
1983–84	1,021	896	10.5	136	2,945	103
1984–85	1,129	1,009	12.0	154	3,952	119
1985–86	1,213	1,125	12.1	156	4,336	120
1986–87	1,312	1,201	12.1	156	4,648	122
1987–88	1,461	1,365	11.3	156	4,965	125
1988–89	1,607	1,496	10.7	150	5,082	125
1989–90	1,717	1,574	10.7	148	5,153	121
1990–91	1,824	1,669	10.4	149	5,139	119
1991–92	1,929	1,673	9.8	147	4,677	111
1992–93	2,029	1,812	9.9	156	5,100	122
1993–94	2,137	1,977	9.5	154	5,432	124
1994–95	2,244	2,110	9.3	150	5,796	124
1995–96	2,358	2,210	8.8	147	5,865	122
1996–97	2,490	2,251	9.2	150	6,356	125
1997–98	2,551	2,389	9.3	149	6,851	127
1998–99	2,610	2,471	9.2	146	6,905	121
1999–00	2,743	2,549	9.2	144	7,124	118
2000–01	2,970	2,653	9.2	145	7,351	117
2001–02	3,100	2,754	8.9	144	6,986	112

* FTE = Full Time Equivalent Student.

Note: “Index to National Average” shows how North Carolina’s percentage of state funds spent on higher education compares to the average proportion of such expenditures in all 50 states. For example, if North Carolina’s index figure is 112, that means the portion of state funds spent in this state on higher education relative to the size of the entire state budget is 12 percent above the average percentage of funds designated for higher education in all 50 states’ budgets. Conversely, if the state’s index figure is 99, then North Carolina spends 1 percent less of its total budget for the designated purpose than the average percentage spent by all states from their respective budgets for the same purpose.

Source: State Higher Education Executive Officers, *State Higher Education Finance Survey*, September 2003

Table 4.3

CONTINUED

State Support for Higher Education in North Carolina**C. North Carolina General Fund Appropriations for Colleges and Universities, 1969–2005**

Fiscal Year	Amount Appropriated	Colleges & Universities % of General Fund Appropriations	% of General Fund Appropriations, Average by Decade
1969–70	\$130,344,741	14.9%	
1970–71	\$147,326,678	15.0%	
1971–72	\$163,331,175	15.2%	
1972–73	\$179,910,706	15.2%	
1973–74	\$222,838,796	14.7%	
1974–75	\$280,638,400	16.5%	
1975–76	\$270,526,549	15.6%	
1976–77	\$307,123,340	15.6%	
1977–78	\$357,790,592	16.3%	
1978–79	\$394,767,166	16.1%	
1979–80	\$436,949,552	15.9%	15.6%
1980–81	\$515,255,082	16.4%	
1981–82	\$567,573,821	16.7%	
1982–83	\$599,235,054	16.8%	
1983–84	\$653,091,405	17.1%	
1984–85	\$746,998,910	17.3%	
1985–86	\$840,311,094	17.2%	
1986–87	\$909,134,150	17.4%	
1987–88	\$980,746,492	16.9%	
1988–89	\$1,039,510,499	16.5%	
1989–90	\$1,109,917,895	16.1%	16.8%
1990–91	\$1,143,216,957	15.8%	
1991–92	\$1,121,976,740	15.3%	
1992–93	\$1,170,947,533	14.9%	
1993–94	\$1,229,449,670	14.2%	
1994–95	\$1,296,558,991	13.5%	
1995–96	\$1,301,040,079	13.3%	
1996–97	\$1,385,611,961	13.3%	
1997–98	\$1,489,866,397	13.2%	
1998–99	\$1,628,888,154	13.2%	
1999–00	\$1,682,143,914	12.5%	13.9%
2000–01	\$1,778,278,150	12.9%	
2001–02	\$1,802,904,395	12.6%	
2002–03	\$1,768,097,109	12.3%	
2003–04	\$1,792,141,661	12.1%	
2004–05	\$1,878,813,497	11.8%	12.3%
1969–2005 Average			15.0%

Note: Does *not* include appropriations to the N.C. Community Colleges, as contrasted with Table 4.3A, which does include appropriations to Community Colleges.

Source: N.C. Office of State Budget and Management

Table 4.3

CONTINUED

State Support for Higher Education in North Carolina

D. University of North Carolina 2004–05 General Fund Budget and Enrollment

Campus	Authorized 2004–05 G.F. Budget	Fall 2004 Student Headcount
Appalachian State University	\$ 91,472,679	14,653
East Carolina Univ. — Academic Affairs Only	147,661,619	22,767
Elizabeth City State University	25,858,276	2,470
Fayetteville State University	38,653,124	5,441
NC A&T State University	76,158,016	10,383
North Carolina Central University	53,281,928	7,727
NC School of the Arts	20,545,094	788
NCSU—Academic Affairs Only	284,471,319	29,957
UNC—Asheville	27,124,880	3,574
UNC—Chapel Hill — Academic Affairs Only	205,241,443	26,878
UNC—Charlotte	115,634,704	19,845
UNC—Greensboro	107,638,521	15,329
UNC—Pembroke	38,200,236	5,027
UNC—Wilmington	64,324,585	11,574
Western Carolina University	58,856,062	8,396
Winston-Salem State University	43,350,007	4,805
TOTAL	\$1,398,472,493*	189,614

* Does not include UNC-General Administration or Health Affairs at ECU and UNC-CH.

Source: Fiscal Research Division, N.C. General Assembly

Table 4.3

CONTINUED

State Support for Higher Education in North Carolina

E. North Carolina State Funds for Debt Service and Amount and Percentage Attributable to UNC Bonds

Fiscal Year	Total Net Tax-Supported Debt Service in North Carolina	Net Tax-Supported Debt Service Attributable to Bonds for the University of North Carolina System	Net Tax-Supported University System Debt Service as Percentage of Total State Tax-Supported Debt Service
1994-95	\$ 113,928,011	\$ 18,541,616	16.27%
1995-96	124,742,353	18,188,742	14.58
1996-97	127,038,338	19,597,200	15.43
1997-98	165,973,573	23,310,088	14.04
1998-99	199,288,093	22,067,720	11.07
1999-00	238,355,819	21,961,555	9.21
2000-01	254,819,455	36,686,413	14.40
2001-02	302,612,023	54,143,281	17.89
2002-03	304,506,218	63,378,252	20.81
2003-04	390,389,698	91,664,980	23.48
2004-05	476,124,775	126,132,493	26.49
2005-06	562,660,742 *	178,714,680 *	31.76 *
2006-07	617,681,395 *	209,517,121 *	33.92 *
2007-08	627,673,359 *	209,654,861 *	33.40 *
2008-09	613,830,496 *	218,541,130 *	35.60 *
2009-10	598,451,624 *	222,565,924 *	37.19 *
2010-11	582,938,211 *	219,549,606 *	37.66 *
2011-12	567,850,420 *	214,384,339 *	37.75 *
2012-13	553,870,156 *	206,537,082 *	37.29 *
2013-14	537,797,560 *	190,051,385 *	35.34 *
2014-15	521,701,329 *	184,761,635 *	35.42 *
2015-16	506,309,806 *	180,841,679 *	35.72 *

* Projected. Does not include Debt Service from Session Law 2004-179 (House Bill 1264), which authorized \$388 million in Special Indebtedness for Capital Improvements at UNC System campuses

Sources: "Tentative Maturity Schedules for Proposed Bonds — To Be Used for General Planning Purposes Only," The Department of the State Treasurer, Division of State and Local Government Finance.

Proposed Bond Sale Dates and Amounts, Office of State Budget, Planning and Management.

Debt Service on Projected Bond Issues Subject to Change Based on Final Structure and Interest Rates.

Assumes variable rate bonds at 4%.

Table 4.3

CONTINUED

State Support for Higher Education in North Carolina

**F. The University of North Carolina — Funding for Capital Improvements
from the N.C. General Assembly**

Institutional Appropriations	1995	1996	1997	1998	1999	2000	2000 Bonds*	2001**	2002	2003	2003 COPS***	2004	2004 COPS	1995-2004
ASU	\$13,488,000	\$13,838,400	\$8,460,100	\$9,223,300	\$3,666,600	\$2,406,600	\$87,406,200	-	-	\$246,200	\$7,663,400	\$1,497,400	-	\$147,896,200
ECU	\$7,526,700	\$10,391,800	\$16,591,900	\$10,477,700	\$5,874,800	\$3,979,100	\$190,609,500	-	-	\$387,500	\$12,062,500	\$2,391,700	\$60,000,000	\$320,293,200
ECSU	\$1,190,100	\$3,481,400	\$8,072,300	\$2,158,500	\$4,242,600	\$1,087,200	\$46,296,800	-	-	\$106,400	\$3,313,200	\$619,500	\$28,000,000	\$98,568,000
FSU	\$4,881,000	\$1,290,900	\$1,444,500	\$2,209,900	\$3,847,600	\$1,105,000	\$46,021,400	-	-	\$102,700	\$3,197,800	\$604,200	\$10,000,000	\$74,705,000
NCA&T	\$3,596,500	\$5,250,900	\$7,600,800	\$7,293,200	\$9,475,105	\$2,335,800	\$161,800,091	-	-	\$247,900	\$7,716,400	\$3,482,500	\$5,000,000	\$213,799,196
NCCU	\$7,724,700	\$12,011,000	\$17,307,600	\$4,042,600	\$7,466,295	\$1,798,600	\$121,246,203	-	-	\$181,500	\$12,154,205	\$9,984,642	-	\$193,917,345
NCSA	\$1,090,100	\$3,856,900	\$3,234,000	\$2,309,900	\$1,514,600	\$968,600	\$42,547,500	-	-	\$95,900	\$2,985,900	\$564,400	\$5,000,000	\$64,167,800
NCSU	\$19,327,500	\$19,157,300	\$30,427,600	\$37,938,600	\$11,233,000	\$7,867,900	\$468,256,655	-	-	\$778,000	\$24,214,800	\$4,426,022	-	\$623,627,377
UNCA	\$1,590,100	\$1,290,900	\$2,747,300	\$2,709,900	\$1,951,000	\$1,244,200	\$50,464,200	-	-	\$119,200	\$3,710,200	\$742,100	\$35,000,000	\$101,569,100
UNC-CH	\$19,222,800	\$30,149,300	\$37,733,875	\$37,130,700	\$14,149,700	\$9,259,100	\$510,539,075	-	-	\$897,387	\$27,934,500	\$5,165,922	-	\$692,182,359
UNCC	\$6,818,100	\$19,424,900	\$5,098,500	\$14,306,500	\$3,012,200	\$1,976,400	\$190,033,501	-	-	\$226,900	\$11,584,500	\$5,408,200	\$35,000,000	\$292,889,701
UNCG	\$3,431,000	\$5,237,000	\$9,587,000	\$7,822,700	\$5,435,700	\$3,672,100	\$166,008,255	-	-	\$337,700	\$10,510,100	\$3,930,800	\$5,000,000	\$220,972,355
UNCP	\$1,090,100	\$1,290,900	\$7,449,700	\$1,909,900	\$4,349,600	\$1,164,400	\$56,873,600	-	-	\$113,400	\$6,432,400	\$687,700	\$10,000,000	\$91,361,700
UNCW	\$7,624,600	\$11,586,700	\$10,353,700	\$3,341,600	\$2,209,400	\$1,457,900	\$109,201,800	-	-	\$149,100	\$4,641,500	\$1,376,700	-	\$151,943,000
WCU	\$2,946,800	\$4,717,700	\$4,828,300	\$4,795,900	\$2,918,200	\$1,868,300	\$100,336,744	-	-	\$165,300	\$5,144,000	\$966,900	\$10,000,000	\$138,688,144
WSSU	\$1,135,600	\$1,290,900	\$6,983,400	\$1,909,900	\$4,262,300	\$1,159,600	\$46,786,581	-	-	\$108,400	\$3,373,300	\$2,643,100	\$5,000,000	\$74,653,081
Subtotal	\$102,683,700	\$144,266,900	\$177,920,575	\$149,580,800	\$85,608,700	\$43,350,800	\$2,394,428,105	-	-	\$4,263,487	\$146,638,705	\$44,491,786	\$208,000,000	\$3,501,233,558

Table 4.3

CONTINUED

State Support for Higher Education in North Carolina

F. The University of North Carolina — Funding for Capital Improvements from the N.C. General Assembly

Non-Institutional Appropriations	1995	1996	1997	1998	1999	2000	2000 Bonds*	2001**	2002	2003	2003 COPS***	2004	2004 COPS	1995-2004
N.C. Arboretum	\$235,000	\$205,700	\$241,600	\$288,700	\$289,800	\$193,300	\$9,331,700	-	-	\$20,000	\$81,000	\$50,000	-	\$10,936,800
Other (UNC-GA, NCSSM, CPTV, NCCAT)	\$3,661,500	\$20,871,500	\$8,925,600	\$29,365,000	\$3,101,500	\$2,455,900	\$96,240,195	-	-	\$311,700	\$10,377,600	\$3,285,000	\$180,000,000	\$358,595,495
Subtotal	\$3,896,500	\$21,077,200	\$9,167,200	\$29,653,700	\$3,391,300	\$2,649,200	\$105,571,895	-	-	\$331,700	\$10,458,600	\$3,335,000	\$180,000,000	\$369,532,295
TOTAL CAPITAL	\$106,580,200	\$165,344,100	\$187,087,775	\$179,234,500	\$89,000,000	\$46,000,000	\$2,500,000,000	-	-	\$4,595,187	\$157,097,305	\$47,826,786	\$388,000,000	\$3,870,765,853
Amount for Repairs and Renovations to Existing Facilities	\$57,500,000	\$59,800,000	\$62,100,000	\$66,700,000	\$89,000,000	\$46,000,000	-	-	-	\$4,595,187	\$157,097,305	\$35,326,786	-	\$578,119,278
TOTAL CAPITAL IMPROVEMENTS FOR NEW FACILITIES	\$49,080,200	\$105,544,100	\$124,987,775	\$112,534,500	-	-	\$2,500,000,000	-	-	-	-	\$12,500,000	\$388,000,000	\$3,292,646,575

* The General Obligation Bonds, authorized in S.L. 2000-03, were approved by a majority of qualified voters of the State of North Carolina in a referendum on November 7, 2000.

** The 2001 General Assembly allocated \$57.5 million to the Board of Governors for repairs and renovations. Funds were later reverted to the General Fund to help balance the 2001-02 State Budget.

*** COPS = certificates of participation.

Source: UNC Office of the President

—continued from page 84

State Auditor on June 30, 2003 and satisfy the concerns raised in a subsequent letter from the State Controller. The Auditor found significant missteps in capital-assets internal controls, cash-disbursement internal controls, and financial statements. Incoming FSU Chancellor T.J. Bryan, who took the helm of the campus just as the problems were coming to light, told the Board of Governors' Finance Committee, "I won't let you down."

Concerns about the potential for misuse of the budget flexibility given to special responsibility constituent institutions had arisen before in June 2000, with allegations that the Public Safety Director at N.C. State University had directed more than \$2.2 million in unused department personnel funds (lapsed salaries) to purchase more than 100 questionable items, including 15 television sets, 17 VCRs (video camera recorders), 22 laptop computers, a mountain bike, motion detectors in ceramic frogs, and various other electronic products, many of which he kept at his home or in his truck.²⁸ These expenditures occurred over a six-year period. The timing of this discovery was dangerous for the UNC system because it came on the heels of the General Assembly's approval of a November 2000 ballot referendum calling for a statewide vote on a \$3.1 billion bond package for the 16 UNC campuses and the community college system.²⁹ Legislative leaders who had shepherded the bond package through the General Assembly (following a high profile and contentious debate which resulted in the defeat of a similar proposal the year before) were quick to express concern over the UNC system's fiscal oversight procedures, and corrective action from UNC General Administration and the Board of Governors was swift.

UNC President Molly Broad soundly condemned the NCSU Public Safety Office action at the July 2000 Board of Governors meeting, and at the same meeting, the Board adopted a resolution requiring the chancellors of special responsibility campuses to submit to the Board plans and justifications for how they intend to spend lapsed salary funds, before the expenditures are undertaken. The resolution also required the chancellors to identify the vacant positions responsible for the unspent funds, including the length of time each position has been vacant and the expected duration of the vacancy. Meanwhile, N.C. State University officials requested that State Auditor Ralph Campbell and his staff conduct a special review of the NCSU Public Safety Department.

A report detailing the NCSU public safety department's operations and recommending corrective actions was issued by the State Auditor's Office on October 3, 2000.³⁰ With public release of the report, State Auditor Campbell said, "We recommend the university provide the substantive oversight and institute all measures necessary to ensure that funds from lapsed salaries go where they are most needed, rather than automatically staying in the department that generated the funds. In particular, I urge the NCSU administration to

consider uses that directly benefit students, as has been done at other campuses in the UNC system." The report contained 12 specific recommendations to address the inappropriate use of personnel funds for questionable expenses, possible illegal taping of telephone conversations, and improper personnel management practices.³¹

President Broad then announced that she had given N.C. State 90 days to implement all of the Auditor's recommendations. "Budget flexibility is a valuable tool that must be continuously earned by each of our institutions," she said, and added that if such action was not taken within the time limit, she would recommend to the Board of Governors that budget flexibility for NCSU be withdrawn.³² Throughout the campaign in behalf of the bond referendum, information distributed by bond proponents consistently stressed that all expenditures from the bond proceeds would be monitored by "a special Oversight Committee . . . to make sure the money is spent the way it should be."³³

*Former Chancellor Marye Anne Fox of
N.C. State University*



Karen Tenn

An analysis by *The News & Observer* of Raleigh also found that N.C. State University and UNC-Chapel Hill alone accounted for 60 percent of the financial losses to state agencies reported to the State Bureau of Investigation for the first nine months of 2002.³⁴ One example of misspending came in an audit of NCSU's Wood and Paper Science Department which showed that a former bookkeeper spent more than \$1,200 on airfare, long distance phone calls, gasoline, and other items for personal use.³⁵ Additionally, between September 2000 and March 2002, UNC-Chapel Hill's undergraduate admissions office paid more than \$49,000 for advertising in non-existent publications.

A manager of a scholars program at UNC-Chapel Hill was found to be improperly allowing a program credit card to be used to make questionable purchases, such as compact discs, books, and gift certificates totaling \$157,000, as well as allowing staff and students to take personal possession of state-owned computers and furniture. The credit card spending occurred in a scholar's program for doctors in training that is one of seven such curricula at elite schools across the nation which are funded by the Robert Wood Johnson Foundation of Princeton, New Jersey. Peter Goodwin, vice president and treasurer of the foundation says, "We use the incident as an example for our other sites to have the proper controls and proper checks and balances."³⁶

Episodes such as this encourage the legislature to override or second-guess Board of Governors' decisions in its oversight of higher education spending. Still, the 2001 General Assembly granted the Board of Governors the power to make additional delegations of authority to local boards of trustees at special responsibility constituent institutions,³⁷ including appointing and fixing compensation of senior personnel,³⁸ granting tenure, setting tuition and fees that the institution may keep,³⁹ and information technology.⁴⁰ Former UNC Vice President and Board of Governors member John Sanders believes that the Board had the power to make those delegations since 1972 and that the "extension" of the power to delegate more authority was itself a form of legislative second-guessing. Says Sanders, "Given the origination of these delegations with the Senate leadership, there was the implied threat, 'delegate, at least to the major institutions, or explain to us why you didn't do so.'"

The General Assembly also required the Joint Legislative Education Oversight Committee to study "whether management flexibility for special responsibility constituent institutions should be expanded to include personnel, property, and purchasing responsibilities" while considering the impact of extending that flexibility on the University system as a whole, on the individual special responsibility constituent institutions, and on the State's budget, budgeting process, and fiscal accountability.⁴¹ The Oversight Committee originally was slated to report its findings and recommendations to the 2003 General Assembly. However, the committee, which usually conducts its work in the interim between

UNC Budget Features

- Management Flexibility since 1991.
- Campuses can carry forward 2.5% of their budget for nonrecurring expenses.

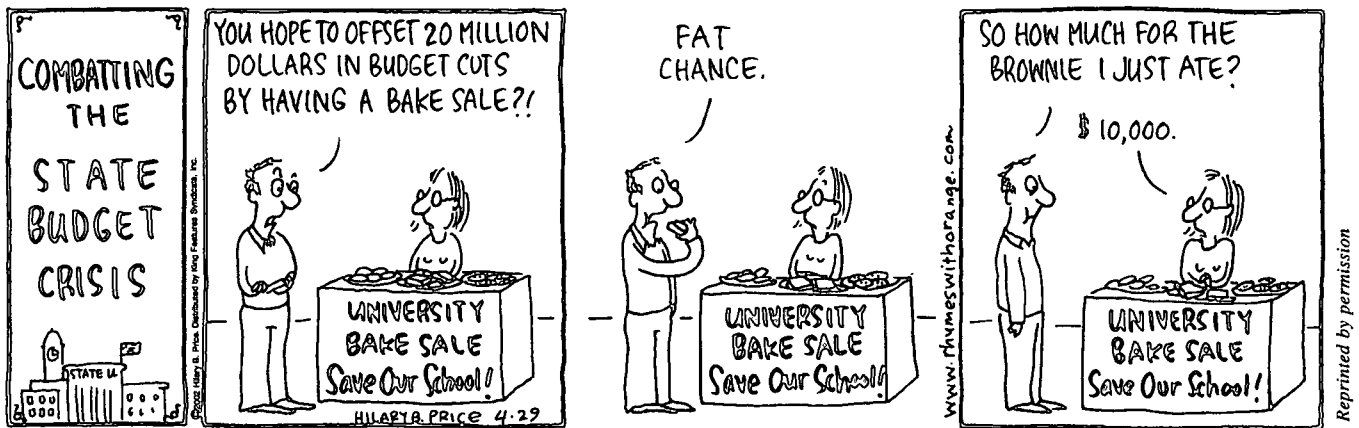
Source: Fiscal Research Division, N.C. General Assembly

legislative sessions was only able to meet twice between the December 2002 adjournment of the 2001–2002 session and convening of the next session in January 2003 and did not consider the issue.⁴² State House Democratic Leader and former Speaker Pro Tempore Joe Hackney (D-Orange) says, "Flexibility has been wisely used. By and large, it has made the University more efficient and cost effective."

2. The Power To Set Tuition and Fees

The Board of Governors has had statutory power to make tuition policy since its creation, but dramatic changes in how to exercise that power occurred in the late 1990s. As noted earlier in this Chapter, the law stating the Board's powers and duties mandates that "[t]he Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly."⁴³ During the first 27 years of its existence — until 1999 — the UNC Board of Governors never recommended a tuition increase to the General Assembly, with the sole exception of the first budget request in 1973, when the Board equalized tuition among institutions with comparable missions. During that time period, action by the General Assembly preceded action by the Board of Governors when tuition was increased. Former UNC President William Friday says that until the tuition policy changes in the late 1990s, the fact that Board of Governors only raised tuition after the General Assembly passed its budget and directed the Board to do so was an intentional strategy the Board employed to keep tuition as low as possible. Friday acknowledges that this approach resulted in setting tuition at a late date which inconvenienced students and their families, but he believes the new approach leads to higher tuition.

Says Friday, "The Board of Governors no longer functions in a framework in which 'low tuition' for North Carolina students means a tuition as low as the state's financial condition allows, as that condition is defined by the General Assembly. Today it functions instead with a 'low tuition' policy for North Carolina students and their families that means, variously, 'low' related to increases in the cost of educational programs, 'low' related to charges made by other states, [and] 'low' in relation to the ability of students to pay."



University Board members and legislators are constrained by a directive in the state Constitution “that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.”⁴⁴ This constitutional mandate is the reason that North Carolina’s in-state tuition and fees for UNC campuses, on average, remain among the lowest in the nation. For 2002–03, in the most recent 50-state comparison of tuition and fees published by the U.S. Department of Education, North Carolina ranked 38th or thirteenth lowest among the states in tuition and fees at four-year public universities. (See Table 4.4, Average State Undergraduate Resident Tuition and Fees at Four-Year Public Higher Education Institutions, Ranked by State.)

In 2003–2004, the UNC system average was 31 percent below the 2003–04 national average for in-state student tuition at four-year public universities, and 14 percent below the average for universities in the southern United States.⁴⁵ However, tuition and fees vary significantly by campus. For example, at UNC-Chapel Hill, the most expensive UNC campus, tuition and fees were 15 percent below the national average and six percent above the average for the South, while at Fayetteville State University, the least expensive campus, these costs were 52 percent below the national average and 41 percent below the average for the South. UNC’s staff explains the wide variations in per-student charges as reflecting “campus mission and complexity.”

In practice, the Board’s decision to refrain from proposing system-wide increases in tuition for North Carolina residents has by default left this decision to the legislature. (See Table 4.5, UNC Tuition Increases, 1970–2003.) The legislature itself initiated tuition increases in 1971, 1974, 1975, 1977, 1981, 1983, 1985, 1987, from 1989–1998, and 2003. The Board of Governors initiated tuition increases in 1973, 1999, 2000, 2001, and 2002. The Board of Governors recommended against a system-wide tuition increase in 2003 but was overruled by legislature. From 1999–2000 through 2003–04, average in-

state undergraduate tuition across the UNC system increased by 71 percent, from \$985 to \$1,683. In a 1998 op-ed piece written for *The News & Observer* of Raleigh, UNC President Molly Corbett Broad outlined four “unintended — and decidedly negative — consequences” of this practice. She wrote, “Over the past 10 years, tuition has risen by an average of more than 8 percent per year — a rate well above any reasonable measure of affordability.” She added that, “the practice by the Board of Governors of not considering tuition increases has shifted the locus of deliberations away from the University and has forced the legislature to act without the considered advice of the Board.”⁴⁶ John Sanders adds, “The fact that tuition was low for a long time was not a default, but an accomplishment. Until 1999, students were not considered a major and indefinitely expanding income source for UNC.” He says that the Board of Governors’ tuition policy was keeping tuition costs low.

Former ECU Chancellor William V. Muse, who also served as president of Auburn University in Alabama, contrasts the UNC tuition policy with Alabama’s as polar opposites. In North Carolina, the legislature and the Board of Governors control the costs of higher education centrally and set tuition rates. In Alabama, tuition is set by local campus Boards of Trustees. Muse says this lack of statewide planning, budgeting, and control in Alabama has led to inadequate funding for public universities and a great deal of competition among institutions. Faced with a 7.5 percent budget cut to his campus while president of Auburn in 1996, Muse says “We raised tuition and increased the number of out-of-state students [because they] pay more in tuition.” Auburn increased the number of out-of-state-students to one-third of their student body.

UNC-Chapel Hill’s Kenan-Flagler Business School made headlines in 1997 when its dean bargained with leaders of the General Assembly for a tuition increase without approval by the UNC Board of Governors, a move that President Broad quickly squelched. Two years earlier, supporters of North Carolina State University and UNC-Chapel Hill managed to persuade the

Table 4.4

**Average State Undergraduate Resident Tuition and Fees at
Four-Year Public Higher Education Institutions, Ranked by State**

Rank	State	In-State Tuition & Fees		Rank	State	In-State Tuition & Fees	
		2002-03 (\$)				2002-03 (\$)	
1	Vermont	\$7,754		26	Arkansas	\$3,714	
2	Pennsylvania	7,072		27	Nebraska	3,612	
3	New Jersey	6,709		28	Tennessee	3,589	
4	South Carolina	6,306		29	New Hampshire	3,524	
5	Ohio	5,898		30	Alabama	3,511	
6	Michigan	5,494		31	Kentucky	3,405	
7	Delaware	5,439		32	North Dakota	3,401	
8	Maryland	5,406		33	Texas	3,318	
9	Illinois	5,171		34	Kansas	3,174	
10	Connecticut	5,142		35	Alaska	3,162	
11	Rhode Island	5,072		36	Hawaii	3,133	
12	Minnesota	5,036		37	Colorado	3,102	
13	Massachusetts	4,974		38	North Carolina	3,097	
14	Maine	4,624		39	Idaho	3,033	
15	Indiana	4,620		40	New Mexico	3,016	
16	Missouri	4,602		41	Wyoming	2,997	
17	Washington	4,288		42	Georgia	2,945	
18	New York	4,220		43	West Virginia	2,899	
19	Iowa	4,140		44	Louisiana	2,881	
20	Virginia	4,087		45	California	2,782	
21	Oregon	4,028		46	Utah	2,638	
22	South Dakota	3,971		47	Oklahoma	2,612	
23	Wisconsin	3,965		48	Florida	2,594	
24	Montana	3,925		49	Arizona	2,587	
25	Mississippi	3,716		50	Nevada	2,529	

Note: Data are for the entire academic year and are average charges. Tuition and fees were weighted by the number of full-time-equivalent undergraduates in 2002, but are not adjusted to reflect student residency. Room and board are based on full-time students.

Source: National Center for Education Statistics, "Digest of Education Statistics 2004: Table 316.—Average undergraduate tuition and fees and room and board rates paid by full-time-equivalent students in degree-granting institutions, by control of institution and by state." Available online at <http://nces.ed.gov>. These data originate with the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), "Fall Enrollment" and "Institutional Characteristics" surveys.



Karen Tam

Former UNC Vice President J.B. Milliken at a meeting of the Board in Chapel Hill.

General Assembly to allow them to raise tuition by \$400 and to appropriate funds for “academic enhancement” outside of their normal budgets and keep the proceeds.⁴⁷

In order to address the repercussions of this shift in initiative from the Board of Governors to the General Assembly — including both legislative end-runs by campus leaders and the General Assembly enacting budgets with tuition increases, used mostly to help balance the state budget — President Broad formed a Tuition Policy Task Force composed of Board of Governors members, faculty, staff, and students. The 77-page report produced by the task force and adopted by the full Board in November 1998 described a plan designed to create a more inclusive, purposeful process for setting tuition. The report envisioned that the Board would approve tuition changes a year in advance (a plan the Board has not accepted), and the 16 campuses would come to the Board with their own proposals and justifications for increases. Students were generally supportive of the plan because individual institutions would have more input in tuition planning and because the plan was ex-

pected to help prevent last-minute tuition increases that are often a hardship for students on tight budgets.⁴⁸

In 1999, based on the work of this task force, UNC leaders made their first request to the legislature since 1972 for higher tuition rates for in-state students. In February 1999, the Board of Governors approved a plan calling for a 4.9 percent across-the-board percent tuition hike for in-state undergraduates at all UNC campuses; plus an additional 3.5 percent tuition increase for graduate and “first professional students”⁴⁹ at two of the system’s research universities — UNC-Chapel Hill and NC State University — and an additional 2 percent tuition increase for graduate and first-professional students at all non-research institutions; and a 3.3 percent increase for all students at UNC-Asheville to bring non-resident tuition rates “into greater alignment with the national average for peer institutions.” The Board recommended no increase for non-resident tuition rates at all other UNC campuses because it felt that “those rates are already well above the national average for comparable institutions.”⁵⁰ These new tuition rates were recommended to become effective in the fall semester of 1999. University leaders estimated that the higher tuitions would generate \$7.8 million in revenue annually for UNC schools. Finally, the Board of Governors recommended that a previous Board request for \$1.3 million in additional need-based student financial aid for UNC students be funded by a portion of the increased revenues from tuition.

The 1999 General Assembly responded to the Board’s recommendations by approving the new tuition rates as proposed. However, the Senate version of the budget bill that endorsed the tuition increases recommended by the Board also contained a provision the Board did not request — one which would have permitted *local boards of trustees* to increase tuition rates by up to \$250 per academic year for the 2000–2001 and 2001–2002 academic years, respectively. On campuses that chose to raise tuition rates, the chancellor was required to allocate at least 35 percent of the new funds for need-based financial aid; the balance of the funds was to be earmarked for faculty salaries. Senator Howard Lee endorsed the provision because he said it would give boards of trustees flexibility to approve tuition increases based on their individual campus needs without the General Assembly’s imposing statewide

On allowing local campuses to increase tuition: “It would be like changing the formula for Coca-Cola.”

— C.D. SPANGLER, JR.
UNC PRESIDENT, 1986–1997

Table 4.5

University of North Carolina Tuition and Fees**A. University of North Carolina Tuition Increases, 1970–2004***

	<u>In-State Undergraduate</u>		<u>Out-of-State Undergraduate</u>		<u>In-State Graduate</u>		<u>Out-of-State Graduate</u>	
	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>	<i>Average Tuition</i>	<i>Percent Increase</i>
1970–71	\$255		\$939		\$271		\$939	
1971–72	\$256	1%	\$1,305	39%	\$272	1%	\$1,305	39%
1972–73	\$256	0%	\$1,780	36%	\$272	0%	\$1,780	36%
1973–74	\$266	4%	\$1,780	0%	\$283	4%	\$1,780	0%
1974–75	\$273	3%	\$1,780	0%	\$290	3%	\$1,780	0%
1975–76	\$275	1%	\$1,876	5%	\$292	1%	\$1,876	5%
1976–77	\$275	0%	\$1,876	0%	\$292	0%	\$1,876	0%
1977–78	\$302	10%	\$1,976	5%	\$321	10%	\$1,976	5%
1978–79	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1979–80	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1980–81	\$302	0%	\$1,976	0%	\$321	0%	\$1,976	0%
1981–82	\$360	19%	\$2,083	5%	\$382	19%	\$2,083	5%
1982–83	\$360	0%	\$2,083	0%	\$382	0%	\$2,083	0%
1983–84	\$396	10%	\$2,620	26%	\$421	10%	\$2,620	26%
1984–85	\$396	0%	\$2,857	9%	\$421	0%	\$2,857	9%
1985–86	\$403	2%	\$3,184	11%	\$428	2%	\$3,184	11%
1986–87	\$403	0%	\$3,577	12%	\$428	0%	\$3,577	12%
1987–88	\$424	5%	\$3,891	9%	\$451	5%	\$3,891	9%
1988–89	\$424	0%	\$4,225	9%	\$451	0%	\$4,225	9%
1989–90	\$510	20%	\$4,841	15%	\$542	20%	\$4,841	15%
1990–91	\$549	8%	\$5,041	4%	\$583	8%	\$5,041	4%
1991–92	\$654	19%	\$5,844	16%	\$695	19%	\$5,844	16%
1992–93	\$690	6%	\$6,462	11%	\$733	6%	\$6,649	14%
1993–94	\$711	3%	\$6,882	7%	\$755	3%	\$6,882	4%
1994–95	\$734	3%	\$7,329	6%	\$780	3%	\$7,329	6%
1995–96	\$809	10%	\$7,818	7%	\$859	10%	\$7,818	7%
1996–97	\$893	10%	\$8,256	6%	\$948	10%	\$8,256	6%
1997–98	\$919	3%	\$8,336	1%	\$977	3%	\$8,336	1%
1998–99	\$938	2%	\$8,503	2%	\$996	2%	\$8,503	2%
1999–00	\$985	5%	\$8,584	1%	\$1,070	7%	\$8,606	1%
2000–01	\$1,067	8%	\$8,696	1%	\$1,183	11%	\$8,756	2%
2001–02	\$1,286	21%	\$9,646	11%	\$1,452	23%	\$9,898	13%
2002–03	\$1,603	25%	\$10,960	14%	\$1,795	24%	\$11,332	14%
2003–04	\$1,683	5%	\$11,602	6%	\$1,885	5%	\$11,827	4%

* The average tuition figures reported here are the unweighted mean tuition rates for each student category at the 16 campuses of the University of North Carolina.

Notes: Tuition Revenue: (1) Each 1% increase in resident student tuition generates an estimated \$3.2 million. (2) Each 1% increase in nonresident student tuition generates an estimated \$2.6 million. Source: Fiscal Research Division, N.C. General Assembly

Table 4.5B

**The University of North Carolina Tuition and Fees Applicable to
All Regular Full-Time Undergraduate Students, 2004–05**

	Tuition		Total Fees	Total Resident Tuition & Fees
	Resident	Non-Resident		
North Carolina State University	\$3,205	\$15,103	\$ 964	\$4,169
The University of North Carolina at Chapel Hill	3,205	16,303	1,155	4,360
East Carolina University	2,135	12,349	1,185	3,320
UNC–Charlotte	2,129	12,241	1,290	3,419
UNC–Greensboro	2,028	12,996	1,356	3,384
Appalachian State University	1,821	11,263	1,334	3,155
Fayetteville State University	1,546	10,982	974	2,520
NC A&T State University	1,769	11,211	1,234	3,003
NC Central University	1,878	11,322	1,163	3,041
UNC–Pembroke	1,689	11,129	1,135	2,824
UNC–Wilmington	1,928	11,638	1,647	3,575
Western Carolina University	1,651	11,087	1,551	3,202
UNC–Asheville	1,897	11,097	1,425	3,322
Elizabeth City State University	1,399	9,738	1,075	2,474
Winston-Salem State University	1,451	9,791	1,203	2,654
NC School of the Arts	2,755	14,035	1,461	4,216

Source: Fiscal Research Division, N.C. General Assembly

increases. However, Representative David Redwine (D-Brunswick), one of the co-chairs of the House Appropriations Committee in 1999, stated that House budget writers found the proposal objectionable. He said, “In my opinion, it potentially widens the gap between the haves and have-nots. It’s easier for Chapel Hill to raise tuition than Elizabeth City State.”⁵¹ UNC President Molly Broad expressed similar concerns by stating, “I know that members of the Board of Governors are greatly distressed by this. . . . It undermines the Board’s new policy that was developed thoughtfully and with active participation at the behest of the General Assembly.”⁵² The Senate position was dropped during final negotiations on the 1999 budget bill.⁵³

However, local boards of trustees were not left powerless when it came to requests for tuition increases. The tuition policy task force report adopted by the Board in November 1998 also recommended that campuses be allowed to initiate tuition increases for (1) graduate and professional schools when needed to support graduate education, and for (2) all students, including undergraduates, when *extraordinary circumstances exist* and retain

the proceeds on the campus [emphasis added].⁵⁴ Even though this recommendation was not incorporated into *The Code*, in February 2000 the boards of trustees of five of the 16 institutions requested that the Board of Governors approve campus-initiated tuition increases to finance a miscellany of activities. The Board’s Committee on Budget and Finance recommended that these requests be approved, along with proposals to raise tuition rates for all undergraduate students at all 16 campuses by 2.1 percent, and for tuition increases of 5.6 percent for in-state graduate and first-professional students at UNC-Chapel Hill and N.C. State, and 4.1 percent for students in those categories enrolled at all other campuses.

Jeffrey Nieman, the student member of the Board, offered a substitute motion related to the resident undergraduate portion of the Committee’s recommendations (the Committee had recommended \$600 per year increases). He advocated that “[t]uition increases at UNC-Chapel Hill and North Carolina State University be set at \$200 (or \$300, if the financial aid package is not approved) for one year, and a 2.1 percent across-the-board

Table 4.5B

**The University of North Carolina Tuition and Fees Applicable to
All Regular Full-Time Graduate Students, 2004–05**

	Tuition		Total Fees	Total Resident Tuition & Fees
	Resident	Non-Resident		
North Carolina State University	\$3,413	\$15,461	\$ 964	\$4,377
The University of North Carolina at Chapel Hill	3,413	16,661	1,147	4,560
East Carolina University	2,216	12,532	1,185	3,401
UNC–Charlotte	2,204	12,411	1,290	3,494
UNC–Greensboro	2,112	13,162	1,356	3,468
Appalachian State University	1,893	11,476	1,334	3,227
Fayetteville State University	1,618	11,208	974	2,592
NC A&T State University	1,841	11,426	1,234	3,075
NC Central University	2,050	11,631	1,139	3,189
UNC–Pembroke	1,761	11,348	1,135	2,896
UNC–Wilmington	2,004	11,841	1,647	3,651
Western Carolina University	1,723	11,308	1,551	3,274
UNC–Asheville	1,955	11,269	1,425	3,380
Elizabeth City State University	1,458	9,951	1,075	2,533
Winston-Salem State University	1,510	10,003	1,203	2,713
NC School of the Arts	3,167	14,601	1,461	4,628

Source: Fiscal Research Division, N.C. General Assembly

increase for the entire university, excluding other specific campus requests.” Board member John Sanders supported Nieman, saying, “I oppose the recommendation of the Budget and Finance Committee because I think the 39% (\$600) increase at NC State and UNC-Chapel Hill would constitute an inordinate burden on their families. I think it would widen the discrepancy between tuition charged at those two institutions and at the next tier of institutions within the University. I think the recommendations with respect to the other three institutions do not meet the standards that this Board established in its tuition policy [report] of November 1998, that there be ‘extraordinary circumstances’ to justify those requests. . . . I think that by the action we have taken we have effectively abandoned the standard that we set out 15 months ago for increases initiated by the campuses.” Noting the large number of students in attendance at the Board meeting to support Nieman in his efforts, Board member Timothy Moore, who was later elected to the N.C. General Assembly (R-Cleveland), stated his support for the amendment and added that although he agreed “there may be needs,” he intended

to vote against the tuition increase in its entirety because he was “not compelled that this increase is necessary.” Brad Wilson, who chaired the Budget and Finance Committee, stated that the Committee proposal was intended “to meet some of the most critical needs for a short-term solution,” and “it is the responsibility of this Board to try to craft an approach that will meet those needs while we are hopefully awaiting better budgetary times at the General Assembly.”⁵⁵ Nieman’s substitute motion then failed by a vote of 17 to 11.

The Board then considered the tuition package as a whole. Speaking in favor of the proposal, former N.C. Governor and UNC Board member *emeritus* James Holshouser said that the tuition increases have “had as much discussion as any issue I can remember for the Board in its history. . . . I do not believe this is a change from our historic low tuition policy that is mandated by our State Constitution. Rather I believe it is a short-term, temporary response to the extraordinary circumstances we face because of Hurricane Floyd and the flooding across Eastern North Carolina. . . . Take special note that there is a financial aid increase that is a key component

in this proposal, and it represents our commitment to continued access, and that's what that constitutional provision is all about — access. I believe it's temporary, I hope it's temporary. I believe we have a duty to go to the legislature and ask them to replace the tuition funds with appropriations as soon as the state recovers from its circumstances.”⁵⁶ The tuition package was approved by a majority vote and submitted to the Governor and General Assembly. The legislature endorsed all of the increases, which took effect in the fall of 2000. The tuition increases were expected to generate revenues totaling \$19.6 million. The Board required that sufficient revenues be set aside to “hold harmless” qualifying needy students. From the increased receipts, \$6.4 million was set aside for need-based financial aid.⁵⁷

At its November 2000 meeting, the Board of Governors adopted a budget request for fiscal years 2001–2003 to be forwarded to the 2001 General Assembly. Included in the budget proposal was another 4 percent undergraduate tuition increase.⁵⁸ The Board also approved additional increases for graduate students ranging from 2 percent to 3.5 percent. These proposals were accompanied by a request that the Assembly allocate the revenue generated by the increases to the University's need-based financial aid program.

At its March 2001 meeting, the Board addressed proposals from six institutions for additional campus-initiated tuition increases with the institutions to keep the proceeds, which also would become effective for the fall semester of 2001.⁵⁹ With two dissenting votes,⁶⁰ the Board approved the increases. In September 2001, the General Assembly enacted a special provision in the budget which allowed campus Boards of Trustees to recommend tuition and fee increases to the UNC Board of Governors, “without regard to whether an emergency situation exists.”⁶¹

UNC President Molly Broad opened the 2002 Board debate on tuition increases, saying “[UNC] remains true to its historic promise of high quality education at an affordable price. Low tuition — absent high quality — is a poor bargain. . . UNC must find viable ways — including higher tuition — to ensure that resources are adequate to keep the value of a UNC education from

eroding.” In 2002, in addition to a system-wide tuition increase, the Board approved campus-initiated tuition increases from all campuses where increases had not previously been levied. After lengthy debate and discussion stretching over multiple meetings about tuition increases, the Board approved a “package” of tuition increases, which included the campus-initiated increases for schools not previously receiving one, the system-wide increases, and additional campus-initiated increases for schools requesting them, but at reduced amounts from what was submitted. The most contentious part of the 2002 Board public deliberations on tuition increases came on a motion to double the campus-initiated tuition increases for UNC-Chapel Hill and N.C. State University that had been recommended by the Board's Committee on Budget and Finance. The motion failed on a tie vote and pitted Board members with loyalties to those two research universities against supporters of the other campuses.

Since adoption of the Report of the Task Force on Tuition Policy in November 1998, the Board has aggressively exercised its statutory authority to set tuition rates for the UNC system, as shown by its tuition increases in 1999, 2000, 2001, and 2002, which in total for those four years, raised tuition across the system an average of 62 percent. Between February 2000 and March of 2002, the Board of Governors approved campus-initiated tuition increases submitted by all 16 campuses. In February 2003, the Board then incorporated a procedure into *The Code* for proposing those changes. The new policy reads, “Campuses may experience circumstances that suggest the need to change their tuition rates.”⁶² However, in 2003, the Board publicly opposed additional system-wide tuition increases, but the legislature enacted a 5 percent tuition increase over the Board's objection. Moreover, the General Assembly and the Board have given local boards of trustees the authority to initiate requests for tuition increases on behalf of their respective institutions, while the Board retained limited control over the outcome of individual campus tuition requests, subject to action by the General Assembly.

In March 2004, the Board of Governors approved another package of campus-initiated tuition increases over the objections of Gov. Mike Easley and student demonstrators chanting, “Make it your mission, don't raise tuition!” and “Show us some love, be like the Gov!” Each of the 16 campuses was granted an increase, with amounts ranging from \$225 to \$450 per student. The 2004 legislature enacted a budget that did not include a system-wide tuition increase but did allow the campus-initiated tuition increases approved by the Board of Governors to stand, with constituent institutions keeping the proceeds on their respective campuses.

At its February 2005 meeting, the Board of Governors voted to freeze *in-state* tuition for the 2005–2006 academic year. This decision had been urged by Board Chairman Brad Wilson and by Gov. Mike Easley. Each cited a series of tuition increases in recent years as the

The General Assembly shall provide that the benefits of the University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

— N.C. CONSTITUTION, ARTICLE IX, SECTION 9



Harry Lynch, The News & Observer

Students from across the state fill the room at the March 2004 UNC Board of Governors meeting. The students were silently protesting a hike in tuition and fees. Sitting from left are Board members Gladys Robinson, Robert Warwick, and Leroy Lail.

reason for freezing tuition. Gov. Easley assured UNC leaders that his proposed 2005 state budget would include \$73 million for enrollment increases, more money for financial aid, and money to cover the reduction in the number of federal Pell Grant awards. Fourteen of the 16 public campuses had requested tuition increases of \$200 to \$300 a year. The School of the Arts made no request, and N.C. A&T State University's original request was withdrawn by Chancellor James Renick the day before the Board of Governors' decision. At its March 2005 meeting, the Board did approve *out-of-state* tuition increases at 11 of the 16 campuses and *graduate* tuition increases on 12 campuses. Despite facing its fourth consecutive \$1 billion revenue shortfall, the 2005 General Assembly did not increase *in-state* student tuition, as recommended by Governor Easley and the Board of Governors.

Also in 2005, UNC Board of Governors Chairman Brad Wilson proposed a new idea in the tuition debate — “tuition certainty” for students at the 16 campuses. In effect, the proposal would guarantee students the same tuition for all four undergraduate years. Thus, parents and students would have certainty in tuition costs, and students would be encouraged to graduate in four years. However, the General Assembly also would have to agree to such a program.⁶³ Florida's university Board of Governors is implementing a fixed, four-year tuition rate in 2005.

For 26 years, the power to increase system-wide tuition was a power exercised by the General Assembly before the Board of Governors acted. In that vacuum, the General Assembly raised tuition from time to time, usually to help raise revenue in tight budget times. Now that the Board has changed its approach to begin exercising this power since 1999 by proposing tuition increases before the General Assembly adopts a budget, it will be interesting to see if the General Assembly recedes from the system-wide tuition policy arena. This does not seem likely with state budget shortfalls for four consecutive years since 2000. The temptation to raise tuition and create new revenue is strong for legislators who wish to avoid tax increases on the general public. John Sanders says that since 1998, “attitudes toward tuition (and its payers) have been reversed in UNC and the General Assembly — from one of keeping costs down to encourage student access, to one of squeezing students to the maximum and hoping need-based aid will counterbalance the hits.”

During this time period, 46 of the 50 states have experienced budget shortfalls due to tax cuts in earlier years, a declining economy and the terrorist acts of September 11, 2001. In response, public four-year colleges raised tuition and fees an average of 9.6 percent in 2002–3 and another 14.1 percent in 2003–4, according to The College Board's annual Trends in College Pricing reports.⁶⁴ Virginia Governor Mark Warner summarized the

recent nationwide trends of budget cuts and tuition increases, saying, "Colleges and universities traditionally are one of the areas where the legislatures and governors cut [funding], because they can at least make up a bit of the shortfall with tuition increases. But that can only go so far," he warns.⁶⁵

The other possible reaction to the series of tuition increases in North Carolina totaling 71 percent in five years is a lawsuit. Such a suit would test the constitutionality of such increases and argue that cumulatively they violate the state constitution's guarantee that a university education "as far as practicable, be . . . free of expense." The key phrase for the N.C. Supreme Court to interpret would then be "as far as practicable."

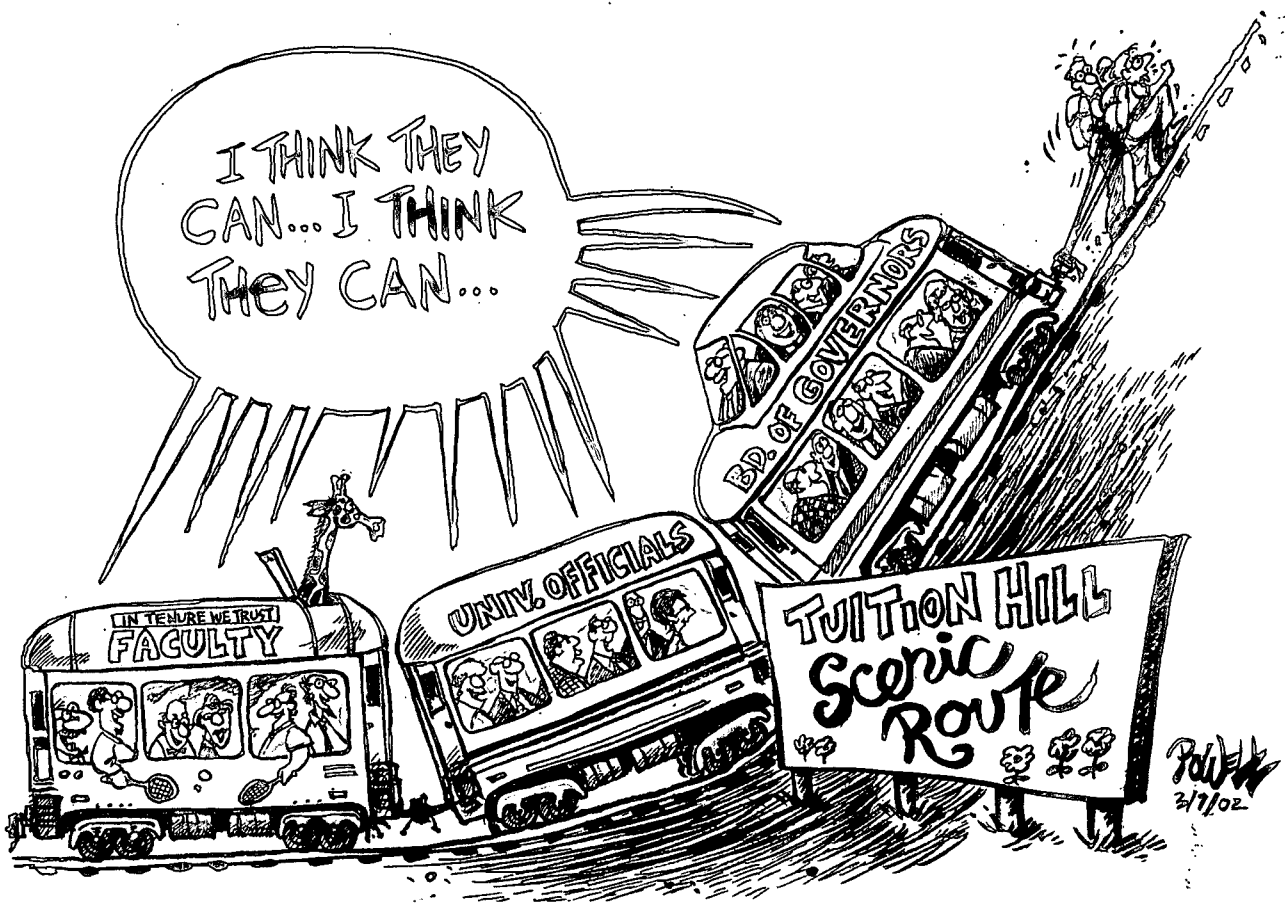
Arizona courts are being asked to rule on a similar provision in their state's constitution which reads, "The University and all other state educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible."⁶⁶ Arizona's university Board of Regents' recently adopted a policy to keep tuition at Arizona public universities at the top of the least expensive one-third of public universities nationally, and this policy will be tested in the lawsuit. Arizona Regent Lorraine Frank says, "I think that's a reasonable [policy] because it puts us really, really low in comparison to the rest of the country." Paul Gattone, the attorney for the Arizona student plaintiffs, says, "We're

getting as far away from that constitutional mandate as we possibly can."⁶⁷

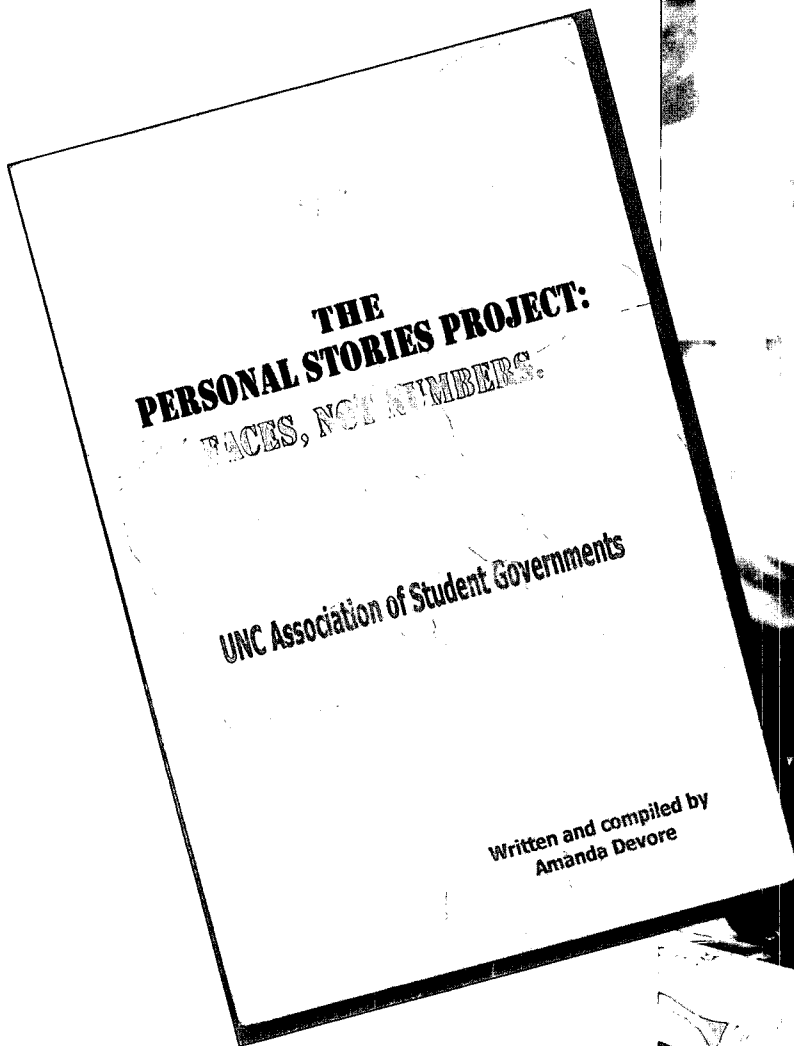
Lawsuits by students protesting tuition and fee hikes — even in states without constitutional mandates for a free university education — also are pending in California and Maryland.⁶⁸ It is not unprecedented for tuition suits to succeed. In January 2003, the Missouri University system lost a student tuition suit based on a 19th century state statute prohibiting their schools from charging tuition. The statute was repealed in 2001, but the university may be forced to pay up to \$450 million in damages plus interest for violating the statute between 1986 and 2001.⁶⁹

Tuition policy also has been an issue for public university leaders in other states. The authority to set tuition and fees at constituent institutions is among the responsibilities granted to many state higher education boards. The Center's research indicates that 23 higher education consolidated governing boards throughout the nation (including the UNC Board of Governors) have this power. In addition, 11 regulatory coordinating boards also have responsibilities in this area. Some are empowered to set tuition and fee *policies* in their states but not actual tuition *rates* (such as the Colorado Commission on Higher Education), while others (such as the Kentucky Council on Postsecondary Education) can set tuition rates.⁷⁰ In Arizona, which, like North

—continued



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Jacque Lenz, The Appalachian

Hi, my name is Joanna and my life is affected by the budget cuts and tuition increases of N.C. Universities. College is a privilege, and one that comes with a hefty cost. I know that I am grateful for my college experience, but feel very stressed by the pressures of tuition increases and budget cuts. My father died three years ago and my mother has physical handicaps. My mother does the best she can, but we are both very dependent on the grant money that I receive. I could not imagine my education continuing if my funding was cut and if I had to come up with that additional expense, not to mention an increase in tuition. I know that one of the appeals of Appalachian State University is that students are offered an excellent education at a reasonable price. If this school continues to face tuition increases, not only will the morale of financial victims decrease, but the morale of the school as a whole will decrease . . . and the reputation of this fine University will suffer. What overall price is a University willing to pay for inflicting unnecessary increases upon its student body?

— BY JOANNA CONNER, FRESHMAN AT APPALACHIAN STATE UNIVERSITY IN THE PERSONAL STORIES PROJECT: FACES, NOT NUMBERS, A 417-PAGE REPORT PRODUCED BY THE UNC ASSOCIATION OF STUDENT GOVERNMENTS TO EDUCATE THE BOARD OF GOVERNORS AND THE LEGISLATURE ABOUT THE IMPACT OF TUITION INCREASES AND BUDGET CUTS ON STUDENTS

Sidebar 4.1

Two Takes on Tuition and State Support for Public Universities

A Tuition Hike for Quality in Education by J. Bradley Wilson

In considering tuition proposals for 2004–05, the UNC Board of Governors is striving to strike a balance that ensures affordable access to our 16 campuses for North Carolina residents and sustains academic excellence.

Low tuition without high quality is no bargain.

Tuition decisions are among the hardest facing the governing boards of public universities, and rightfully so. Higher education has never been more important to our economic future, and funding decisions we make now will affect our state's educational progress for years to come.

As chair of the Board of Governors, I have spent a considerable amount of time traveling to our campuses and talking with faculty, students, administrators, and staff. I have seen and heard compelling evidence of the erosion of quality that is occurring in our University at an unacceptable pace. Based on this experience and after reading hundreds of student anecdotes compiled by the UNC Association of Student Governments, I am convinced that the quality of a UNC education is now at risk. In a sense, this tuition debate is really about whether we are going to permit the erosion of the quality of public higher education in this state.

Over the past three years, University-wide enrollment has grown by more than 20,000 students, to 183,000. That is akin to adding the student body of East Carolina University, along with the faculty and student services needed to support it. Nearly 7,000 additional students are expected to enroll this fall.

While the Governor and the General Assembly have provided funding for enrollment growth, increased need-based financial aid, and other Board priorities in recent years — and we are very grateful for that support — these new funds have been largely offset by cuts elsewhere in the University's budget and by required reversions and withholdings.

During this time of dramatic growth, the state dollars we have had available to spend per budgeted student have actually dropped by about 8 percent, or \$700 per student, resulting in larger classes, fewer course sections, and disruption of students' graduation schedule.

We know that many students and their families have been hard hit by the state's struggling economy. We are all in agreement that tuition should not become a major source of funding public higher education in this state. That is why the Board of Govern-

nors called for a one-year freeze on tuition rates last year, even in the face of growing enrollment demand and repeated state budget cuts. The legislature ultimately imposed a 5-percent increase.

According to the latest national statistics, in 2003–04 UNC tuition and fee charges for in-state students actually became more affordable relative to peer institutions across the country. These findings are consistent with a recent study by the State Education Assistance Authority, which concluded that despite rising tuition, the University remains affordable for North Carolina residents.

The creation and expansion of the UNC Need-Based Aid Program is largely responsible for this development. In approving previous campus-initiated tuition increases, our Board has insisted that adequate need-based aid be set aside to offset the impact of higher tuition on needy North Carolina students.

The quality of a university is built on its faculty, and the lack of state funding for salary increases in recent years has placed UNC at a growing competitive disadvantage. The tuition sought by our campuses this year to support faculty salaries would not even bring us to the average of our peer institutions, and our faculty benefits also lag far behind those offered by our peers.

Clearly, we will be hard pressed to maintain the quality of education that North Carolinians expect and deserve without additional revenues.

We agree wholeheartedly with Governor Easley and others that salary funds and other basic support for UNC should come from the state's General Fund. While we are hopeful that North Carolina may be in a better fiscal position in 2004, there is little hope that the state can meet all our needs in another tight budget year. In fact, within the past two weeks the state budget office has asked the University to provide scenarios of how we would exact permanent cuts to our operating budgets of up to 3 percent, or approximately \$50 million.

One thing is certain. If North Carolina is to rebuild and strengthen its economy, it cannot afford to lessen its historic commitment to affordable access to our 16 campuses, and it cannot afford to let the quality of a UNC education erode further. Low tuition without high quality is no bargain.

— J. Bradley Wilson, Chair of the UNC Board of Governors
*op-ed piece printed in The News & Observer
of Raleigh on February 24, 2004*

Letter to the Editor: UNC's Funding Gains by David McCoy

In response to Wilson's op-ed piece, the State Budget Officer for Gov. Mike Easley wrote the following letter to the editor and distributed a 10-point fact sheet to the press. The letter to the editor appeared in the March 4, 2004 The News & Observer.

UNC Board of Governors' Chairman Brad Wilson's Feb. 24 Point of View article "A tuition hike for quality in education" could give readers the incorrect impression that our university campuses have been denied necessary resources in the past few years. University resources overall, from state funds, tuition and fees, actually increased by \$252 million from 1999–2000 to 2002–03, an increase of 12 percent, or roughly the same as enrollment increases.

As Wilson correctly noted, Gov. Mike Easley and the General Assembly have provided full support for campus enrollment increases and need-based financial aid. There have been some budget cuts that offset some of these investments, although far less than those made in other state agencies. State leaders also gave full flexibility to the university system to decide how to manage its budget in ways that would not affect the core mission of teaching, research and service. We all must embrace the need to become more efficient.

The unprecedented \$3.1 billion bond issue for new higher education construction contracts also requires \$72 million in annual debt service — just for the universities alone. This amount is not included in the universities' budget and represents additional funding the governor believes is vital to meet critical needs. The governor is keeping the commitment to build these classrooms and labs on schedule.

North Carolina ranks fifth nationally in state funding support for higher education, and faculty pay ranks 10 percent above the national average.

The governor will continue to support sufficient funds for higher education, but not revenues generated through substantial tuition increases on North Carolina students. We rank in the top six in the nation in our college-going rate of high school seniors, a strength that is imperative in the global economy. Our campuses are ranked as "best values" in America. We must keep it that way, and we cannot jeopardize access through making education unaffordable.

A strong university system is crucial to our economic future. The governor and the General Assembly welcome the challenge to do more. However, overstating the case for increased funding based on partial information is not useful.

—David McCoy, State Budget Officer
under Gov. Mike Easley

"UNC Budget Story: The Entire Context"

1. Overall, total UNC actual spending climbed from \$2.024 billion in 1999–2000 to \$2.276 billion in 2002–03.
2. Chapel Hill has increased spending from \$288 million to \$326 million and NC State has increased spending from \$355 million to \$400 million over this time frame.
3. Total spending from appropriations increased very slightly from \$1.525 billion to \$1.554 billion over the time period. This is the net increase, which more than offsets the \$300 million-plus in "cuts" that has been described by some university officials and repeated in the media.
4. Appropriations in 2002–03 accounted for 68 percent of total UNC budget. There is no danger of the spectre of "state-supported" versus "state-funded."
5. NC ranks 5th nationally in state tax dollars as a percent of the state economy in support of higher education.
6. UNC tuition remains 30 percent below national norms.
7. UNC faculty salaries are 10 percent above national average.
8. According to the *Chronicle [of Higher Education]* and SREB [Southern Regional Education Board], appropriations have increased for 2003–04, unlike most southern states.
9. Spanish enrollment is up, not down.
10. Debt service for the University bonds now totals over \$90 million annually.

—State Budget Office

Fees Another Key Part of Costs for Students

Tuition is not the only cost of a college education. Fees also are part of the cost and also controlled by the Board of Governors. Recently, the mandatory student fee to support college sports has been in controversy. In 2005, thirteen UNC campuses sought increases in student athletic fees. UNC-Chapel Hill initially asked for a fee increase of \$150 per student over two years to support sports programs other than football and men's basketball, the revenue-producing sports. UNC-Pembroke asked for a \$140 fee increase so that it could start a football program. Winston-Salem State wants to move from Division II to Division I competition in the NCAA (National Collegiate Athletic Association). And, East Carolina University wants to create more scholarships for women. As of

2006, student athletic fees ranged from \$0 at the N.C. School of the Arts, which has no sports programs, to \$198.50 at UNC-Chapel Hill, to \$528 at UNC-Asheville. Student athletic fees are usually lower at universities with large money-making football and basketball programs. UNC-Chapel Hill and N.C. State University have the lowest fees in the UNC system and lowest of the public institutions in the Atlantic Coast Conference.* At its March 2005 meeting, the Board of Governors passed a student athletic fee increase for UNC-Chapel Hill from \$98 to \$198.50 and granted fee increase requests which ranged from \$7 to \$80. In April 2005, the Board granted a \$140 for increase for UNC-Pembroke to start a football team.

Athletics Fee Increases, February 2005

	2005-06 Fee	2005 Increase	Percent Increase Over 2004-05
Appalachian State University	\$364	\$13	4%
East Carolina University	386	50	15
Elizabeth City State University	338	7	2
Fayetteville State University	273	0	0
N.C. A&T State University	391	15	4
N.C. Central University	345	25	8
N.C. State University	94	0	0
UNC-Asheville	528	45	9
UNC-Chapel Hill	198.50	100	102
UNC-Charlotte	400	35	10
UNC-Greensboro	376	15	4
UNC-Pembroke	511	140	38
UNC-Wilmington	360	17	5
Western Carolina University	448	20	5
Winston-Salem State University	416	80	24

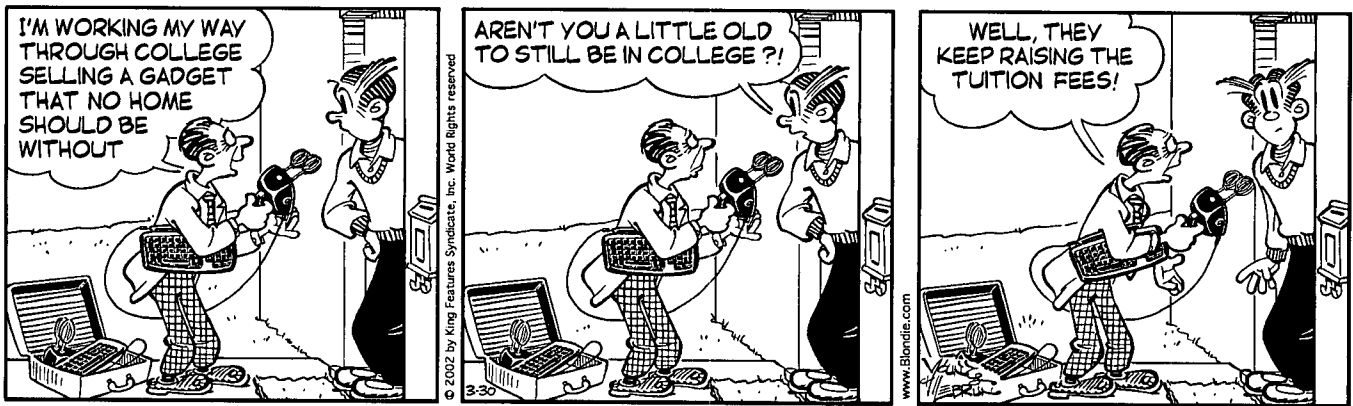
* Jane Stancill, "UNC-CH seeks big increases," *The News & Observer, Raleigh, N.C., January 28, 2005, p. 1A*, and Stancill, "UNC schools seek higher athletics fees," *The News & Observer, Raleigh, N.C., February 20, 2005, p. 12A*.

Source: UNC Board of Governors

—continued from page 102

Carolina has a consolidated governing board for higher education, the Board of Regents is authorized to set tuition and fees at its constituent institutions. According to Marsha Arzberger, the Arizona board's assistant for special projects, this power is one of the board's major strengths and it "ensures statewide equity and access and is popular with the public."⁷¹ However, in

Wisconsin, which also has a consolidated governing board for higher education and has powers similar to the UNC Board of Governors,⁷² university Board members have felt constrained by legislative reluctance to raise tuition. "There is a proposal in our current budget to give the board more authority over tuition," says Judy Temby, Secretary to the Board of Regents of the University of Wisconsin system.



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D. Powers Not Fully Utilized by the UNC Board of Governors

The interviews and research for this report uncovered at least two examples of powers and responsibilities that the UNC Board of Governors has but is not fully utilizing. One is the Board's statutory mandate to be the planning agency for *all* of higher education — not just public universities — and the other is the Board's authority to terminate unnecessary academic programs.

1. The Power To Develop a Coordinated System of Higher Education in N.C. and a Long-Range Plan

The Center's research shows that 43 state higher education governing boards have authority to conduct master planning for higher education. In fact, the Center's previous research shows that centralized master planning for higher education systems is a primary reason states create higher education boards and planning agencies.⁷³ This responsibility may be specifically expressed as "master planning," or expressed more generally in language suggesting an overall responsibility for planning and coordination. Another approach used by some states is to charge higher education boards with setting statewide higher education priorities.

Statutes granting authority to plan for higher education vary in the amount of power and responsibility they give to the respective boards. For example, the Arkansas Higher Education Coordinating Board is responsible for "directing an integrated program for defining, popularizing, and securing acceptance of the major goals and objectives of higher education in Arkansas and for relating them to the state's various problems."⁷⁴ In California, the Postsecondary Education Commission, an advisory coordinating board, is not responsible for setting state higher education priorities *per se*, but the commission's education policy recommendations "shall be a primary consideration in developing state policy and funding for postsecondary education."⁷⁵

The North Carolina statute says, "The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina" and that the Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, "shall prepare and from time to time revise a long-range plan for a coordinated system of higher education." It is also the Board's statutory duty to "maintain close liaison with the State Board of Community Colleges, the Department of Community Colleges System Office, and the private colleges and universities of the State."⁷⁶

There are extensive joint efforts which require planning between the community colleges, the community college system office, and UNC. (1) The general articulation agreement is one manifestation of this, as are the ongoing discussions of the Transfer Advisory Committee to improve the process for students transferring from community colleges to universities. To date, 21 private and independent colleges have joined the articulation agreement, and they are consulted if changes need to be made. (2) There is an annual joint meeting of the boards of the community colleges, the private and independent colleges, the Department of Public Instruction, and UNC, where common issues are addressed and discussed. More recently, the community college board and the Board of Governors have established a joint task force to explore further opportunities for cooperation. (3) The College Foundation of North Carolina website (www.cfnc.org) provides common access to information and admissions for the 111 institutions of higher education in North Carolina. This approach has been agreed upon by all public universities, community colleges, and private and independent colleges in North Carolina. This was a coordinated planning and development effort initiated by UNC to expand access to college in N.C. (4) UNC and the North Carolina Community College System have concluded joint discussions to articulate a number of degree programs for fully online delivery, so the community colleges would provide the first two years online, and the UNC campuses will provide the second two years, including the upper division major

online. (5) There are a growing number of joint academic and research centers and institutes that span UNC, independent, and community college campuses. (6) There is growth in “2+2 programs” offered by UNC institutions on community college campuses. (7) And, a number of joint degree programs exist. These are but a few examples of the ways there is coordinated planning among different sectors of public higher education and with the private and independent colleges and universities. But none of these comes close to providing “a long-range plan for a coordinated system of higher education” as required by statute.

Concerning the UNC Board of Governors’ infrequent exercise of its master planning duties for all of the state’s higher education institutions, former Board of Higher Education (which existed before 1972 in North Carolina) Director Cameron West notes that there are few extensive studies conducted by the Board of Governors of statewide educational resources that include the community colleges and private schools. He says, “The Board [of Higher Education] did a lot of things because it looked at the totality of higher education. I think the Board of Governors can do the same. But you’re going to have to have stronger leadership to take a total view.”⁷⁷

John Sanders is the former director of the Institute of Government at UNC-Chapel Hill, a former Vice President for Planning for the 16-campus system, and was elected in 1999 to fill an unexpired term on the Board of Governors. He says planning for all of higher edu-

cation would require the Board of Governors to “coordinate community colleges and private institutions. It has never done that because the private and community colleges don’t want to be coordinated.” In addition, Sanders says UNC’s past attempts to deal with funding requests from private institutions have made the Board of Governors reluctant to carry out its broader planning responsibility — at least as it involves private higher education. According to Sanders, “[I]t does not matter how many community colleges or private colleges and universities North Carolina has, or how many students they enroll, or how much money they spend. The Board of Governors has no authority with respect to either set of institutions, it has never sought to exercise authority over them, and any effort to do so would be summarily rejected by those institutions (and probably by the General Assembly as well).”⁷⁸

Yet since 1971, the N.C. General Assembly has provided funds to private colleges and universities in North Carolina based on the number of state residents they enroll.⁷⁹ According to A. Hope Williams, President of the 36-member N.C. Independent Colleges and Universities, the funds are appropriated through the private institutions to the students. “Rather than writing 34,000 checks to students, the state writes the checks to the colleges and universities to be credited to student accounts.” Until 1983, requests for state funds from private schools were reviewed by the UNC Board of Governors. That duty was assigned to the university Board as part of the restructuring act of 1971, along with other responsibilities that had been given to the old State Board of Higher Education — a regulatory agency that was abolished by the restructuring legislation in 1971.

There are two state-funded programs of financial assistance to students attending private colleges in North Carolina — both of which are restricted to state residents enrolled in undergraduate programs at private, nonprofit colleges.⁸⁰ The first of these programs, the **North Carolina Legislative Tuition Grant program**, provides \$1,800 to full-time *students* in a grant credited to the student’s account.⁸¹ Says Williams, “The Legislative Tuition Grant Program is provided for all North Carolina students under the same philosophy as the state subsidy, which is provided for all students in the state university system.”

The second program works differently. The **State Contractual Scholarship program** provides \$1,100 to the *institution* for each North Carolina student enrolled full-time in undergraduate courses at each college.⁸² The funds are paid directly to the college and not to the student in the form of vouchers. Each school uses the pool of money to award need-based scholarships to North Carolina residents. In 2002–03, the legislature appropriated \$78,570,866 to the UNC System for distribution to 37 private colleges under these two programs. The \$14.7 billion state budget enacted by the 2003 General Assembly for FY 2003–04 added \$2.8 million to the Governor’s recommendation of \$80.6 million for a to-

Rumors about severe budget cuts that will affect faculty have been rampant every April for the past five years, although this year’s have been particularly persistent and virulent. Still, the fact is that every year the legislature has threatened deep cuts in higher education. And every year a high-powered education task force is sent to the capitol to lobby the legislature for increased spending. Every year accusations are leveled, editorials written. Every year the threatened budget cuts are implemented, then at the last fiscal moment money is found and the budget — most of it — restored.

— RICHARD RUSSO
STRAIGHT MAN

tal of \$83.4 million in state financial aid for undergraduate students who are state residents and attend private colleges in North Carolina.⁸³ (See Table 4.6 for actual 2002–03 disbursements to each institution.)

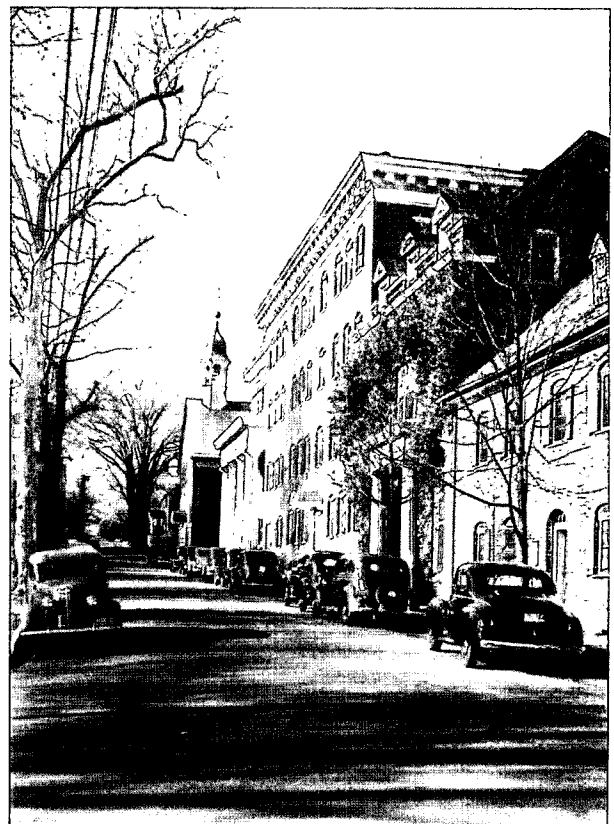
However, to the relief of UNC officials, in 1983 the legislature repealed the requirement that the Board of Governors review all requests by private colleges and universities for state aid.⁸⁴ Says John Sanders, “The Board of Governors for 20 years advised the General Assembly on aid to the private institutions and their students and was consistently ignored, so it asked to be relieved of the futile duty.” In his book, *The Multicampus University of North Carolina Comes of Age, 1956–1986*, Arnold King, a former UNC-CH professor and administrator, describes the difficult and acrimonious discussions generated by that review process. King writes, “Each time the private institutions filed a request with the Board of Governors, they asked the Board to support their objective of a tuition grant for each of their students in an amount equal to 50 percent of the ‘subsidy’ the state gave on an average to each undergraduate student enrolled in a public senior college or university.”⁸⁵ Because of the competition for state funds for higher education, former UNC President Friday says the public university Board could never be perceived as an objective planning agency by private colleges and universities. “You can do statistical studies, but if you ever say anything, you create ill will,” says Friday.

Hope Williams, President of the 36-member North Carolina Independent Colleges and Universities, agrees. She believes it would be difficult for the Board of Governors to try to plan for all of higher education because of the difficulty of satisfying the requirements for a long-range plan while recognizing the legal and fiduciary authority and the responsibility of the other sectors of higher education in North Carolina to be self-governing. She notes that while the Board of Governors does a good job of “setting the context” for educational planning in all sectors by conducting annual studies of enrollments, tuition, and other aspects of public and private universities, “it could be difficult for them to actually plan for community colleges and private schools because they are chosen to represent the [public] university system.” Instead, Williams believes the Education Cabinet created in 1993 by the legislature⁸⁶ provides the best forum for cooperative planning efforts between public and private universities. The Cabinet is composed of the UNC President, state Superintendent of Public Instruction, Chair of the State Board of Education, and President of the state Community College System and is chaired by the Governor. The 2001 General Assembly changed the status of the President of the North Carolina Independent Colleges and Universities by adding her to the statutory membership of the Cabinet;⁸⁷ previously, representatives of that private higher education organization were “adjunct members” of that body. “The Education Cabinet provides an important structure for discussions about all of education in North Carolina,” Williams says. “It

is the one entity on which the Governor and leaders of all of the education sectors in the state and, therefore, all perspectives are represented.”

H. Martin Lancaster, President of the North Carolina Community College System, which consists of the 59 two-year community colleges in the state, has pointed out that the UNC Board of Governors has much more power over its respective institutions than the community colleges board. Lancaster wrote the Center, “[Whereas the Board of Governors of the University of North Carolina] is truly a governing board with significantly centralized powers in the office of the president of the University and General Administration . . . the Community College System is very decentralized with almost all governing authority reposed in the local Board of Trustees.”⁸⁸ And, some of the more important distinctions between these systems are worth noting, says Lancaster. “[The president of the UNC System] has authority to hire and fire chancellors; I do not. Boards of Trustees [of the community college system] choose their presidents with little input from the State Board and the State President. The Board of Governors receives a lump sum appropriation with little categorical funding and distributes those funds to the constituent campuses of the university with broad discretion. Funds are allocated to the various community colleges on a formula basis with almost no discretion in the State Board and unlimited discretion in the local president and board in

Private Salem College in 1940, Winston-Salem, N.C.



"The Education Cabinet provides an important structure for discussions about all of education in North Carolina. It is the one entity on which the Governor and leaders of all of the education sectors in the state and, therefore, all perspectives are represented."

— HOPE WILLIAMS
PRESIDENT OF THE 36-MEMBER NORTH CAROLINA
INDEPENDENT COLLEGES AND UNIVERSITIES

how those funds will be used once they arrive on the campus . . . [And the] State Board [of Community Colleges] has no involvement in choosing the local boards as opposed to the authority of the Board of Governors to choose trustees for the individual universities."⁸⁹

While there is less eagerness to revive the Board of Governors' role in reviewing funding requests from North Carolina private colleges and universities, many current and former Board members believe the UNC Board of Governors should be more involved in planning discussions with private colleges and universities, particularly in light of a projected enrollment boom for all of higher education that will rival the growth that occurred in the 1960s and 1970s. A 1998 study by a UNC task force estimated that the 16 campus UNC system will need to accommodate more than 48,000 additional students by the year 2008.⁹⁰ Those projections were confirmed by estimates from the U.S. Department of Education that North Carolina will have 79,000 high school graduates in 2010, compared with 62,000 in 2000.⁹¹ An analysis prepared by the Western Interstate Commission on Higher Education in 2003 projects that North Carolina institutions will face a 31.4 percent increase in the number of public high school graduates by 2017.⁹² Williams says, "North Carolina enrollment at independent colleges and universities increased by 12.6% from 1999 to 2003." She says that private higher education can help relieve the pressure on the public university system in the decades ahead. "Many of the independent colleges and universities still have or are continuing to increase capacity to help meet the demand of North Carolina enrollment. Even those institutions that are not expanding [their] total enrollment would like to have more North Carolina students."

Despite tensions over the issue of state appropriations to private schools, there have been cooperative efforts between the public university system and private colleges and universities in North Carolina. Among the most significant joint ventures cited by King in his book are the development of Research Triangle Park (involving public UNC-CH and N.C. State and private Duke University), the North Carolina Center for the Advance-

ment of Teaching (which has received principal private assistance from Greensboro's Guilford College), and the nine Area Health Education Centers, which link medical schools at public (UNC-Chapel Hill and East Carolina University) and private (Wake Forest and Duke) universities.⁹³ Another small but innovative program increasing collaboration between public and private higher education is the Robertson Scholars Program. The program, funded by a \$24 million dollar endowment gift from Julian and Josie Robertson, whose sons attended UNC-CH and Duke University, works to foster increased collaboration between Duke and UNC-CH by creating an undergraduate scholarship program in which half of the 30 scholars each year will matriculate at UNC-CH and half at Duke University but will take classes and participate in activities on both campuses.

A Comprehensive Articulation Agreement (mandated by the 1995–96 General Assembly) has eased student transfers from community colleges to public universities. The 59 community colleges adopted the same semester system used by four-year universities, as well as a standardized course catalogue and common course library. At the January 14, 2005 meeting of the Board of Governors, President Molly Broad announced that 6,800 students had transferred successfully from community colleges to public universities during academic year 2003–2004, a growth rate of 27 percent. Only 38 students were unsuccessful.

Aid to Students Attending Private Colleges

- There are two state-funded programs that assist students attending private colleges:
 - Legislative Tuition Grant (LTG): \$1,800 per full-time N.C. resident attending private college
 - State Contractual Scholarship Fund (SCSF): \$1,100 per FTE N.C. undergraduate student for need-based aid
- The \$51.3 million in Legislative Tuition Grants aided 31,413 resident students in 37 private colleges in FY 2003–04.
- The \$36.2 million in State Contractual Scholarship Funds aided 13,420 resident students with an average grant of \$2,518 in FY 2003–04.

Source: Fiscal Research Division, N.C. General Assembly

Table 4.6

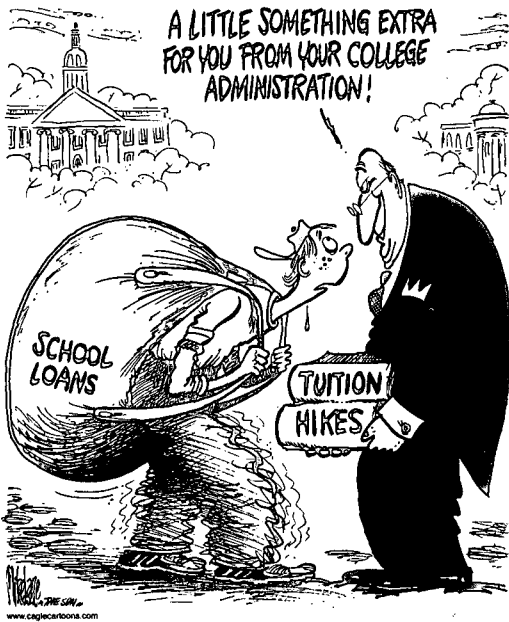
**2002–03 State Disbursements to Private Colleges and Universities in North Carolina
for State Contractual Scholarship Program and Legislative Tuition Grants**

Private College or University	City	State Contractual Scholarship (\$)	Legislative Tuition Grant (\$)
1. Barber Scotia College*	Concord	\$382,800	\$574,539
2. Barton College	Wilson	855,251	1,151,064
3. Belmont Abbey College	Belmont	546,151	727,786
4. Bennett College	Greensboro	143,000	219,729
5. Brevard College	Brevard	300,575	431,742
6. Cabarrus College of Health Sciences	Concord	242,551	278,703
7. Campbell University	Buies Creek	4,049,356	4,385,376
8. Catawba College	Salisbury	1,120,351	1,677,066
9. Chowan College	Murfreesboro	369,051	554,497
10. Davidson College	Davidson	348,700	551,886
11. Duke University	Durham	946,000	1,469,538
12. Elon University	Elon	1,244,100	1,907,481
13. Gardner-Webb University	Boiling Springs	1,906,300	2,587,272
14. Greensboro College	Greensboro	605,825	924,099
15. Guilford College	Greensboro	862,951	1,205,034
16. High Point University	High Point	1,640,925	2,193,687
17. Johnson C. Smith University	Charlotte	370,675	544,194
18. Lees-McRae College	Banner Elk	485,651	742,341
19. Lenoir-Rhyne College	Hickory	967,175	1,344,642
20. Livingstone College	Salisbury	601,151	899,247
21. Louisburg College	Louisburg	322,300	483,285
22. Mars Hill College	Mars Hill	807,400	1,164,426
23. Meredith College	Raleigh	1,706,925	2,413,545
24. Methodist College	Fayetteville	1,257,305	1,520,719
25. Montreat College	Montreat	745,251	1,113,519
26. Mount Olive College	Mount Olive	1,599,951	2,025,938
27. North Carolina Wesleyan College	Rocky Mount	1,212,200	1,565,298
28. Peace College	Raleigh	602,525	913,743
29. Pfeiffer University	Misenheimer	821,975	1,253,573
30. Queens University of Charlotte	Charlotte	487,851	519,502
31. Saint Augustine's College	Raleigh	729,575	1,082,787
32. Salem College	Winston-Salem	541,200	728,307
33. Shaw University	Raleigh	1,714,351	2,449,023
34. St. Andrews Presbyterian College	Laurinburg	299,751	434,856
35. Wake Forest University	Winston-Salem	1,188,551	1,817,484
36. Warren Wilson College	Swannanoa	147,951	221,033
37. Wingate University	Wingate	796,125	1,195,232
		\$32,969,727	\$45,272,192

* Barber Scotia College is no longer a member of N.C. Independent Colleges and Universities. The school lost its accreditation and will lose state funding.

Note: This table reflects actual disbursements to the institutions totaling \$78,241,919. The 2002–03 certified state budget contained appropriations of \$78,570,866 for these programs and is available online from the Office of State Budget and Management at <http://www.osbm.state.nc.us>.

Source: Office of the State Auditor, "Report on Private Organizations Receiving State Funds For the Fiscal Year Ended June 30, 2003." Available online at <http://www.ncauditor.net>.



In February 2005, President Broad and Community College System President Martin Lancaster also began a listening tour together across the state, focusing on the future of higher education and job training needs. Called the “Staying a Step Ahead” initiative, this came in response to a request from the 2004 General Assembly to conduct “a comprehensive study of the mission and educational program needs for the University System and the Community College System.”⁹⁴ The assessment was prompted by a net loss of 189,100 manufacturing jobs in North Carolina since 2000 and is designed to “ensure that the State’s citizens are academically prepared and equipped for current job opportunities and jobs of the future in North Carolina’s growing knowledge economy.” A final report was due in December 2005.

While relationships between the UNC Board of Governors and leaders of the state’s community college system historically have been positive, some state educational leaders say the university Board could do more to strengthen cooperative planning efforts with that system as well. James Owen, President of Piedmont Community College in Roxboro, wrote in a January 1999 newspaper column that “a plan that would serve a portion of the projected [enrollment] growth through the community college system would save the state a great deal of money and serve many students closer to home.”⁹⁵ Similarly, David J. Whichard II, Chairman of *The Daily Reflector* in Greenville, who served on the UNC Board of Governors from 1973 to 1989 and later was a campus trustee at UNC-Chapel Hill until July 1999, sees a need for more collaboration among all sectors of higher education. “We’ve got to increase the number of college-age students going to college. We’ve always lagged behind the nation on that,” he says. “We’ve got to look at the educational system as a carry-through almost through to graduate school. And that’s more than just the university system involved.”

2. The Power To Add New Academic Programs or Terminate Unnecessary Programs

The UNC Board of Governors is responsible for creation and termination of degree granting programs throughout the University. The process for planning a new academic program is initiated at an individual constituent institution and is then forwarded to the UNC Senior Vice President for Academic Affairs, who, depending on the type of program, either notifies or seeks approval from the Board of Governors’ Committee on Educational Planning, Policies, and Programs. The Vice President seeks approval from the committee for the institution to plan doctoral and first professional programs, but merely notifies the committee if the campus is planning a new undergraduate, masters, or a non-degree-granting academic program. The campus seeking to create a program then follows a prescribed planning process. After the planning process is complete, any creation of a degree-granting program must be approved by the Board of Governors. Modification of existing degree-granting programs or creation of other programs may require approval by an institution’s Chancellor, the UNC Senior Vice President for Academic Affairs, or the State Board of Education. Termination of degree-granting programs requires approval by the Board of Governors.

The Board of Governors received mixed reviews from people interviewed for this report on how well it has exercised its power to prevent duplication and terminate unnecessary academic programs. Former UNC-Chapel Hill Chancellor Paul Hardin believes the Board has not been effective in this area. Hardin served on the Board of Higher Education in New Jersey in the years before it was abolished under restructuring legislation signed into law by former Gov. Christine Todd Whitman in 1994. That board served a coordinating function and had less power over academic programs than North Carolina’s Board of Governors, says Hardin. Nevertheless, he says, “The New Jersey board was tougher and more stringent on program approval than North Carolina’s, so it has seen a little less proliferation of expensive graduate programs than North Carolina.”

Hardin says the UNC Board of Governors took a positive step in 1995 when it carefully defined missions for each of the system’s 16 campuses with an eye to limiting the spread of academic programs that were not integral to those missions.⁹⁶ “But mission creep is a failing of almost every institutional head,” he adds. “The problem has to do with the over-emphasis on legislative control, rather than control by the Board of Governors” over programmatic missions for UNC institutions. Likewise, an issue paper on academic program planning prepared for the 1991–1993 North Carolina General Assembly Government Performance Audit Committee by Eva Klein and Associates found that the General Assembly “can influence the Board of Governors’ decisions on

"But mission creep is a failing of almost every institutional head."

— PAUL HARDIN
FORMER UNC-CHAPEL HILL CHANCELLOR

program additions and eliminations" and that "the democratic process itself plays a role in the expansion of programs." The report recognized that the General Assembly's influence may "undermine the Board's ability to rationalize delivery of UNC services," while others argue that "since responsibility for initiating programs lies with institutions, the General Assembly, representing the state's interests, must step in when institutions fail to take the lead in identifying a priority."⁹⁷

President Broad strongly disagrees with Hardin's view. "We are not victims of mission creep in North Carolina," she says. "One of the great advantages of having a university that covers distinctive missions is

President Molly Broad and Board member John W. Davis at a meeting in Chapel Hill.



Karen Tam

that over the long haul, there can be changes that respond to the needs of the state. None of us can predict how universities will evolve and how the state and its needs will evolve." The real problem is not that UNC campuses have too many similar academic programs but that some of those programs are underfunded, Broad says. She adds, "Mission differentiation has to be followed by funding differentials." Former N.C. Central University Chancellor Julius Chambers goes one step further. He believes the Board of Governors should play more of a role in developing missions for each campus that define their respective roles within the overall university system, rather than the current focus on missions that relate only to a particular campus. "Program assignment is a part of governance," he says. "The question is how do you do it, and how can you do it without considering what the historical roles of institutions have been?"

Former UNC-General Administration Vice President and former UNC Board of Governors member John Sanders also believes that the Board has "done well" in terms of program allocation. "It [the Board of Governors] has been able to strengthen some of the weaker institutions by approving new programs and seeing that there were the resources there to run those programs effectively and discouraging some initiatives that the institutions were not prepared to carry out," says Sanders.

Duplication of academic programs among North Carolina's universities was one of the reasons the 16-campus system was created. In 1971, the Report of the Governor's Study Committee on the Structure and Organization of Higher Education noted that during the 1969-70 academic year, 44 percent of masters programs offered by Tar Heel universities had produced no graduates, while at the doctoral level, nearly one-third of programs had produced no graduates. The report concluded, "The emphasis under the present system is on what each institution considers to be its needs, which are not necessarily synonymous with statewide goals, needs and priorities."⁹⁸

The UNC Board of Governors has taken steps in the past to eliminate unproductive and outdated academic programs. Pursuant to a 1993 legislative mandate, the Board cut or consolidated 143 of almost 1,200 degree programs in 1996. And in January 1997, the Board moved to close 13 university-sponsored public-service institutes and research centers. "In retrospect," said Roy Carroll, UNC system senior vice-president for academic

—continued on page 119

"We are not victims of mission creep in North Carolina"

— MOLLY BROAD
PRESIDENT, UNC SYSTEM

Measures of College-Going Rates for North Carolina and the U.S.

Historically, North Carolina has lagged behind the nation in participation in higher education, a disparity which widened in the mid-1990s but which, by multiple indicators, has shown signs of improvement. “This is a source of great pride to me,” said UNC President Molly Broad in 2003, touting a record percentage of recent N.C. high school graduates attending UNC campuses.¹ While the overall percentage of North Carolinians attending college has met or exceeded the national average recently, the percentage of low-income North Carolinians participating in higher education remains below the national average. The measure of higher education participation which has received the most public discussion in North Carolina is the “college-going rate.” There are a variety of measures used to evaluate college-going rates.

The National Center for Educational Statistics produces the most widely accepted figures of the national college-going rate. (See Table 4.7: National College-Going Rates, 1960–2002.) The national college-going rate estimate is derived by combining enrollment figures from individual colleges with survey data from the U.S. Department of Labor and as a result, is subject to a statistical margin of error and it cannot be disaggregated to component units such as states or individual schools.² For the most recent year available (2002) the national college-going rate for high school graduates was 65.2 percent. The highest marks on this measure since 1960 were achieved in 1997, when the rate peaked at 67 percent, while the lowest rate in that time period was 45 percent in 1963. For the most recent 10 years, this measure has ranged from 61.7 percent to 67 percent.

On a state level, the college-going rate is usually defined as an estimate of the percentage of high school graduates who enter a degree-granting program at an accredited two- or four-year institution within a year of completing high school. For state policymakers, the value of knowing the state college-going rate is being able to decide whether the state’s citizens have an appropriate level of access to higher education and being able to react affirmatively to trends. For instance, lawmakers can respond to a downward trend in the college-going rate by questioning whether the decline is caused by inadequate preparation of students for college by public schools or by insufficient provision of educational facilities at the university or the community colleges — separate problems, but each with a concrete solution that lawmakers can prioritize appropriately. Lawmakers also

can use the college-going rate as a measure to which to hold education administrators accountable. Additionally, college-going rates can be reported down to the level of individual school systems or even individual high schools as a measure of their success at producing more college-ready students.

While there are a number of ways to define “college-going rate,” the most widely used methods are by groups that study education trends, such as the Southern Regional Education Board (SREB), Postsecondary Educational OPPORTUNITY, and the now-defunct National Education Goals Panel (NEGP) — all of which make national comparisons based on statistics produced regularly by the U.S. Department of Education’s National Center for Education Statistics (NCES). Outside of data produced by state higher education planning agencies such as UNC-General Administration, the NCES data are the only national base of information. To make this concept seem even more complicated, part of the NCES data is provided by state planning agencies such as UNC-General Administration and individual UNC campuses. In short, the only source of national data is the NCES and the only source for a portion of that data is UNC. However, NCES does not itself produce a state-level “college-going rate” measure, only the data that are used by others to develop a measure. As a result, figures produced nationally by organizations such as SREB, NEGP, and others, draw from a common set of NCES data, but use a variety of methodologies to estimate college-going rates. To further complicate matters, there is a lag in the publication of the NCES data, and all components for some methodologies used to create college-going rate measures are not published each year. For example, in its 1996 report, the NEGP ranked North Carolina 34th with a college-going rate of 54 percent — based on 1994 data.

The college-going rate formerly produced by the NEGP was a single-year snapshot, produced every other year, of the number of students from North Carolina enrolling in college anywhere in the United States divided by the previous academic year’s number of high school graduates in the state. The strengths of their methodology were simplicity, ease of explanation, and its indirect but general comparability to the NCES estimate of the national college-going rate. Its weaknesses were that it is subject to wide annual swings based on the number of high school graduates, it may under- or overestimate the college-going rate when large number of stu-

dents delay college entry for a year, and it can only be produced with a two-year lag because of reporting dates for its component statistics.

*The NEGP college-going rate estimates for North Carolina in the 1990s were 49 percent, or 37th in the nation in 1992; 51 percent, or 36th in the nation in 1994; 54 percent, or 34th in the nation in 1996; and 65 percent, or seventh in the nation, in 1998.*³ The wide swing in the estimate in the NEGP reported figures may be attributed in part to a 6.3 percent decline in the number of high school graduates from 1991–92 through 1995–96, which accompanied a 1.5 percent increase in the number of students enrolled in college over the same time period. The NEGP has been dissolved by Congress and will not be producing any additional figures.

The college-going rate produced by the SREB is based on a rolling average of the three most recent “cycles” of available statistics from the NCES. For example, the figures published in 2003 by SREB are based on an average of the fall college enrollments from 1996, 1998, and 2000 divided by the number of high school graduates from the average of the previous respective academic years.⁴ The chief advantage of this estimation method is its stability and low likelihood of a significant change in the numbers being due to a one-year aberration. The chief weaknesses of this method are that it is more difficult to explain, has a two-year lag in availability, and, becomes cumbersome to analyze when disaggregated down to component units such as school systems or individual high schools.

*The SREB college-going rate estimates for North Carolina are 51.1 percent, or 26th in the nation in 1994; 51.3 percent, or 36th in the nation for 1996; 56.2 percent, or 26th in the nation for 1998; and 61.1 percent, or 13th in the nation for 2000.*⁵ The SREB methodology estimates the national college-going rate at 50.0 percent for 1994, 52.5 percent for 1996, 54.3 percent for 1998, and 55.3 percent for 2000.

A different measure of college participation other than the “college-going rate” is the “college continuation rate.” This measure is the ranking among states of the percentage of 18–24 year-olds enrolled in any higher education institution. *For 2002, the figures most recently published, estimate North Carolina at 63.6 percent or 6th in the nation behind North Dakota (73.7), New York (68.6), Massachusetts and Mississippi (tied at 65.1), and Iowa (64.3).* College continuation rates are often used in conjunction with college-going rates as an additional indicator of success for higher education policymakers. This measure is readily available from the federal government. However, it can overstate the actual participation rate if the 18–24 year-old population is expanding rapidly.

Postsecondary Educational OPPORTUNITY, a monthly research newsletter devoted to analysis and reporting on postsecondary education published by higher education policy analyst Tom Mortensen, provides a different analysis of college participation rates for North

Carolina. Mortensen publishes a figure based on NCES and U.S. Department of Agriculture data that reports the college-going rate of 18 to 24-year olds from low-income families. The chief advantage of Mortensen’s approach is that it provides a narrowly targeted view of progress toward increasing participation of citizens historically underserved by higher education. The disadvantage is that it is an indirect indicator, based on dividing the number of students receiving free or reduced lunch in a high school class (a proxy for poverty) by the number of students in that same class who later received a federal low-income student financial subsidy called a Pell grant while attending college.

*Mortensen’s most recent college-going rate for low-income North Carolinians is 24.6 percent, or 26th in the nation for 2002–03.*⁶ *Nationally, he puts the rate for 2001–02 at 24.0 percent. Mortensen’s estimates of the rate for North Carolina range from 15.2 percent in 1992–93, or 42nd in the nation, to as high as 22.9 percent, or 32nd in the nation in 1998–99.* (See Table 4.8: North Carolina and United States College Participation Rates for Students from Low-Income Families, 1992–93 to 2001–2002.)

Regardless of which methodology is used to estimate college-going rates, there are four principal components of N.C.’s overall college-going rate because N.C. high school graduates may choose to attend either: (1) public four-year institutions (UNC), (2) public two-year institutions (N.C. Community Colleges), (3) accredited in-state private institutions, or (4) accredited out-of-state public or private institutions. As part of the Board of Governors responsibility to “plan and develop a coordinated system of higher education,” policymakers look to UNC to report enrollment and student headcount data. The college-going rate produced by UNC and published annually by UNC’s Office of the President, referred to as “UNC College-Going Rates of North Carolina First-Time Freshmen” (See Table 4.9), measures only the percentage of North Carolina high school graduates who attend one of the 16 campuses of the University of North Carolina. UNC tabulates but does not regularly publish a similar statistic on behalf of the NC Community College System. UNC does not publish overall estimates of the state college-going rate that take into account students who attend private colleges or who attend out-of-state schools, or a disaggregated overall rate that examines school systems or individual schools.

UNC’s measure of college-going said the rate was 30.6 percent in the fall of 2005 and has stayed near that mark for seven years, but never exceeded 25 percent prior to 1992. The other arm of North Carolina’s public higher education efforts, the North Carolina Community College system, reports a relatively flat college-going rate between 1990 and 2001, which hovers near 30 percent.

The strengths of the UNC-produced rates are their simplicity and usefulness to administration of the system. For example, based on these figures, UNC’s Office of the

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Table 4.7

National College-Going Rates, 1960–2002

Year	College-Going Rate*	Statistical Error Estimate**	Year	College-Going Rate*	Statistical Error Estimate**
1960	45.1	+/-2.1	1982	50.6	+/-1.4
1961	48.0	+/-2.1	1983	52.7	+/-1.4
1962	49.0	+/-2.0	1984	55.2	+/-1.4
1963	45.0	+/-2.1	1985	57.7	+/-1.4
1964	48.3	+/-1.9	1986	53.8	+/-1.4
1965	50.9	+/-1.7	1987	56.8	+/-1.5
1966	50.1	+/-1.7	1988	58.9	+/-1.6
1967	51.9	+/-1.4	1989	59.6	+/-1.6
1968	55.4	+/-1.4	1990	60.1	+/-1.6
1969	53.3	+/-1.3	1991	62.5	+/-1.6
1970	51.7	+/-1.4	1992	61.9	+/-1.6
1971	53.5	+/-1.3	1993	62.6	+/-1.6
1972	49.2	+/-1.3	1994	61.9	+/-1.4
1973	46.6	+/-1.3	1995	61.9	+/-1.4
1974	47.6	+/-1.3	1996	65.0	+/-1.4
1975	50.7	+/-1.3	1997	67.0	+/-1.4
1976	48.8	+/-1.3	1998	65.6	+/-1.4
1977	50.6	+/-1.3	1999	62.9	+/-1.4
1978	50.1	+/-1.3	2000	63.3	+/-1.4
1979	49.3	+/-1.3	2001	61.7	+/-1.5
1980	49.3	+/-1.3	2002	65.2	+/-1.4
1981	53.9	+/-1.3			

* This is the estimated percentage of high school graduates who enroll in any degree-granting institution in the United States.

** This is the plus/minus statistical error estimate attached to the yearly national college-going rate. For example, the 2001 rate of 61.7% may be read as having a 95% probability of falling between 63.2 percent and 60.2 percent.

Source: National Center for Educational Statistics, "Digest of Education Statistics, 2003," U.S. Department of Education, Washington D.C., Table 186. Data are based upon sample surveys of the civilian population. High school graduate data in this table differ from figures appearing in other tables because of varying survey procedures and coverage. High school graduates include GED recipients. The original sources are American College Testing Program, unpublished tabulations, derived from statistics collected by the U.S. Bureau of the Census; and U.S. Department of Labor, "College Enrollment of High School Graduates," various years. (These data were prepared March 2004.)

Table 4.8

**North Carolina and United States College Participation Rates for
Students from Low-Income Families, 1992–93 to 2002–2003**

Academic Year	United States Low-Income College Participation Rate (%)	North Carolina Low-Income College Participation Rate (%)	North Carolina Low-Income College Participation Rate National Rank
1992–93	20.0	15.2	42
1993–94	21.6	16.2	40
1994–95	22.2	16.4	39
1995–96	23.2	16.3	39
1996–97	24.4	17.7	40
1997–98	26.3	20.8	35
1998–99	27.5	22.9	32
1999–00	24.5	21.2	32
2000–01	23.1	19.6	38
2001–02	24.0	21.9	29
2002–03		24.6	26

Source: Lorraine Ludwick, "College Participation Rates for Students from Low Income Families by State, 1992–93 to 2002–2003," Tom Mortensen's Postsecondary Educational OPPORTUNITY, Oskaloosa, IA, June 17, 2005. Data available online at <http://www.postsecondary.org/archives/Reports/Spreadsheets/ParticLowIncome.htm>.

President asked NCSU to admit 200 additional freshmen for its fall 2003 class as part of an effort to ensure that the system total of NC high school graduates was at or above the prior year. The chief weaknesses of the UNC-produced rates are that they do not take into account North Carolinians going to out-of-state schools or attending private colleges, and they cannot be compared with national data. As a result, the UNC-produced numbers are not useful to state policymakers for comparisons with other states or for evaluation of progress in improving the state's college participation rates. (See Table 4.9: College-Going Rates of North Carolina First-Time Freshmen at UNC and N.C. Community Colleges.)

State educational leaders say efforts to encourage more North Carolinians to earn college degrees should be helped by an agreement signed in 1998 between UNC and the state community college system. This "articulation agreement" enables students to transfer more easily from community college programs to public university campuses. The major effort by UNC to expand distance education also could have an impact on college participation by encouraging more non-traditional students to enroll in higher education, but it will be a challenge for analysts to track its impact on college-going

rates because distance education will blur the definition of first-time freshmen when recent high school graduates arrive on UNC campuses already having college credits. The Board of Governors also has been providing regular reports to public high schools in North Carolina describing how well freshmen at UNC campuses coming from their high schools have performed in their first year in college.

One way the UNC Board of Governors could more fully realize its potential as the agency responsible for planning and developing "a coordinated system of higher education" — not just public universities — is in the regular production of nationally-comparable data on such indicators as college-going rates for all of higher education in North Carolina that N.C. policymakers could utilize as benchmarks for progress toward public goals. Previous work from the N.C. Center for Public Policy Research has highlighted the national trend toward greater accountability for higher education.⁷ Responding to inevitably increasing demands for accountability from legislative bodies in Raleigh and Washington, D.C. will require the Board of Governors to increase its level of activity in planning and developing a coordinated system of higher education.

Table 4.9

*College-Going Rates of North Carolina First-Time Freshmen at
UNC and N.C. Community Colleges*

Year	% of High School Graduates Attending UNC Campuses*	% of High School Graduates Attending NC Community Colleges **
Fall 1983	21.2	--
Fall 1984	22.1	--
Fall 1985	22.5	--
Fall 1986	23.9	--
Fall 1987	24.7	--
Fall 1988	24.6	--
Fall 1989	23.8	--
Fall 1990	23.7	29.3
Fall 1991	24.3	29.4
Fall 1992	26.0	29.4
Fall 1993	25.9	29.5
Fall 1994	27.3	29.4
Fall 1995	27.6	32.7
Fall 1996	29.3	30.6
Fall 1997	30.0	32.6
Fall 1998	30.4	31.2
Fall 1999	30.3	32.6
Fall 2000	30.3	32.4
Fall 2001	30.9	31.8
Fall 2002	30.1	--
Fall 2003	30.4	--
Fall 2004	30.1	--
Fall 2005	30.6	--

* This is the estimated annual percentage of North Carolina high school graduates who attend a campus within the University of North Carolina. Source: UNC Office of the President, "The University of North Carolina Fall 2002 Enrollment Report," November 7, 2002, Attachment 2. Data for 1983 and 1984 were taken from the 2000 Enrollment Report, and 2003 is from the 2003 Enrollment Report.

** This is the estimated annual percentage of North Carolina public high school graduates who attend a community college within the North Carolina Community College System. Source: Data provided to the N.C. Center for Public Policy Research by the North Carolina Community College System.

-- Statistic unavailable in May 2004.

Note: In July 2004, UNC General Administration reported to the Board of Governors that it was revising the way it was going to report the "UNC College-Going Rate." In addition to the figures reported above which only represent fall term enrollment for the UNC campuses, the Board will be given the sum of fall and spring term participation rates which would have ranged from eight-tenths of one percent to 1.2 percent higher for all years (1992–2003) for which General Administration staff was able to provide data. Additionally, the Board will be given a three academic-year rolling average of both the fall term rate and the newly combined fall and spring term participation rates. Using the rolling average of the new combined participation rate figures provided to the Board, General Administration says the UNC College-Going Rate for 2001–2004 is 31.5 percent, a figure which has not varied by more than one-half of one percent since 1995–1998, when it was 30.0 percent.

Footnotes to Sidebar

¹ As quoted in Staff Writers, "Footnotes: Triangle universities and colleges," *The News & Observer*, Raleigh, NC, November 17, 2003, p. 3B. The "record-setting" preliminary UNC college-going rate figures touted by President Broad were later revised downward in July 2004 when additional data became available.

² National Center for Educational Statistics, "Digest of Education Statistics, 2003," U.S. Department of Education, Washington D.C., Table 184. Data are based upon sample surveys of the civilian population. High school graduate data in this table differ from figures appearing in other tables because of varying survey procedures and coverage. High school graduates include GED recipients. The original sources are American College Testing Program, unpublished tabulations, derived from statistics collected by the U.S. Bureau of the Census and U.S. Department of Labor, "College Enrollment of High School Graduates," various years. (These data were prepared March 2004.)

³ The NEGP numbers are reported on a two-year lag, e.g., the "1992" reported number is based on the number of students enrolled in college in the fall of 1990 divided by the number of 1989–90 high school graduates.

⁴ Southern Regional Education Board, *SREB Fact Book on Higher Education*, Web Edition, Atlanta, Georgia, July 2003,

p. 11, using accompanying linked data. Available online at http://www.sreb.org/main/EdData/FactBook/2003_Fact_Book_Web_Edition.pdf.

⁵ The SREB estimates for 2000 are based on the average of figures from 2000, 1998, and 1996; 1998 is based on figures from 1998, 1996, and 1994; 1996 is based on 1996, 1994, and 1992; while 1994 is based on 1994, 1992, and 1988. The increase in NC's college-going rate by the SREB figures may partially reflect the 25.6 percent increase in the number of NC students enrolling in college in the fall of 1997 when there was only a 4.8 percent increase in the number of high school graduates the previous spring.

⁶ Lorraine Ludwick, "College Participation Rates for Students from Low Income Families by State, 1992–93 to 2002–2003," Tom Mortensen's *Postsecondary Educational OPPORTUNITY*, Oskaloosa, IA, June 17, 2005. Data available online at <http://www.postsecondary.org/archives/Reports/Spreadsheets/ParticLowIncome.htm>.

⁷ Ran Coble and Sam Watts, "Public Higher-Education Governance: A Comparison of State Structures and Key Trends," *The Book of the States, 2002 Edition, Volume 34*, The Council of State Governments, Lexington, Kentucky, pp. 461–462.

—continued from page 113

affairs at the time, "it was a worthwhile exercise for us, there was no question about it."⁹⁹ *From 1972 to 2003, 512 academic programs were added, and 439 have been discontinued, yielding a net increase of 73 degree programs.* Over that time period, the Board has established 218 Bachelors degree programs while discontinuing 178, established 226 Masters degree programs while discontinuing 139, established three Professional degree programs, established 65 Doctoral degree programs while discontinuing nine, discontinued 18 Associates degree programs, and eliminated 77 Intermediate degree programs.¹⁰⁰

In a state as large and diverse as North Carolina, many schools, especially teacher training institutions, were established to serve particular regions or populations that would be less likely to attend universities located far from home. For example, even though the content of a course of study at Western Carolina might duplicate one also offered at UNC-Wilmington, the distance between those campuses might suggest that to give students adequate access to the program, both schools should offer it. In the case of the state's five historically black universities, program duplication is a direct legacy of segregation when African Americans were barred from attending colleges with whites. Former Board member John Sanders says that what has never been fully understood by critics of the University is the

connection between program duplication at UNC's traditionally white and traditionally black campuses and the history of segregation that led to those parallel programs. "There has not been much sorting out [of academic missions] because of racial considerations," says Sanders. The debate over restructuring of higher education governance in 1971 did not directly address program duplication at the undergraduate level. Instead, the focus was on what legislators and educators believed was unnecessary duplication of university programs at the graduate and professional levels where costs were higher than at the undergraduate level.

Among the issues currently being debated in the Board of Governors are new programs in engineering, pharmacy, and law. The Board approved a new engineering program at East Carolina University in March 2004, only to have the N.C. State University Board of Trustees pass a resolution expressing disappointment over the approval. N.C. State has the nation's fifth largest college of engineering, and A&T State University and UNC-Charlotte also have engineering programs. Legislators also have proposed a new pharmacy school at Elizabeth City State University. And, proposals for new law schools are in various stages of development at private nonprofit Elon University, public UNC-Charlotte, a private for-profit law school in Charlotte, and perhaps private nonprofit Queens University in Charlotte. At its March 2005 meeting, the Board of Governors approved

a license for the new for-profit Charlotte School of Law, which is expected to open in the fall of 2006. It is part of the InfiLaw Consortium of Law Schools, which also operates Florida Coastal School of Law in Jacksonville, Florida and Phoenix International School of Law in Scottsdale, Arizona. Elon University plans to open a law school in 2006 in downtown Greensboro. This will bring the total number of law schools in North Carolina to seven.

The concern for avoiding costly duplication of academic programs is a common theme among the 50 states. It is often mentioned in state statutes as one of the reasons for creating a higher education board. Nationwide, 41 higher education boards have the authority to review and/or terminate *existing* academic programs, and 44 boards are empowered to approve or reject requests to establish *new* academic programs. Twenty-one consolidated governing boards — the type which includes the UNC Board of Governors — have both the power to terminate existing academic programs *and* the power to approve or disapprove *new* programs.¹⁰¹

The power to terminate existing programs can be quite controversial. Once a program is in place, jobs are at stake, as is the pride of an institution in offering the program. Though a central board may be charged with eliminating wasteful duplication of programs, it is politically easier to create new programs than to terminate those already in existence. Nonetheless, Oklahoma State Regents Chancellor Hans Brisch reports that under an Academic Planning and Resource Allocation effort commenced in 1991, “the State Regents have approved the elimination of 595 academic programs at state colleges and universities for the purpose of reallocating cost savings to higher priority programs.”¹⁰² However, while one of the findings in the issue paper on academic program planning mentioned above stated that “UNC planning

procedures since 1976 have been effective in preventing excessive proliferation of new programs,” it also found that “UNC has been relatively more effective in preventing proliferation of *new* programs than in eliminating low priority *existing* programs [emphasis not in the original].”¹⁰³

Like North Carolina, governance of higher education in Wisconsin and Utah is handled by consolidated governing boards with dual powers to approve or disapprove new academic programs and to terminate existing programs. According to Jan Sheppard, Academic Planner with the University of Wisconsin System, the Board of Regents of the University of Wisconsin System addresses program duplication primarily through the new program development process. “There is a careful review of new proposals to make sure there is no duplication,” explains Sheppard. In terms of eliminating existing programs, institutions within the system can

“There has not been much sorting out [of academic missions] because of racial considerations.”

— JOHN SANDERS
FORMER VICE PRESIDENT, UNC SYSTEM
FORMER MEMBER, UNC BOARD OF GOVERNORS



Karen Tam

eliminate programs without approval of the Board of Regents but must notify the Board of Regents and the system administration of any program terminations. "At various points in the past, the program array system-wide was considered, but it is not a standard process," says Sheppard. "The primary time it occurred was when the system was created in the 1970s. Now our efforts to make sure there is no unnecessary program duplication are more preventive in nature."

The Utah Board of Regents must approve new specialized associate degrees, new associate of applied science degrees, and new baccalaureate, masters, and doctoral majors and degrees.¹⁰⁴ However, it has delegated the "review and approval of academic program quality reviews, certificates, minors, emphases and options that are recommended within existing programs, and program cancellations and name changes" to institutional boards of trustees, "subject to being reported annually, in summary form, to the Regents and subject to audit."¹⁰⁵ According to Linda Fife, Director of Academic Programs for the Utah State Board of Regents, the board requires institutional boards of trustees to provide information to the board on when they will be submitting new programs for approval and a projection (24 months in the future) of new programs that may be submitted. "We have a matrix for approval requests along with projections of possible requests," says Fife. "We've only recently started using the matrix approach, but it has helped."

Mission differentiation also has been an issue for public universities in Georgia, says Edgar Jenkins, former Chairman of that state's Board of Regents. The board asked each of the 34 institutions under its umbrella to examine their missions in order to avoid unnecessary duplication of academic programs. Jenkins says the Georgia system has an advantage over North Carolina in addressing the problem of duplication in that the Board of Regents governs both public senior colleges and universities and community colleges. He says, "So, for example, remedial education programs are now offered only by the two-year institutions or the four-year colleges that are not universities," thereby eliminating the need for those programs at the four-year universities.

In California, public universities with research missions [the University of California system], those with undergraduate teaching missions [the California State University system], and community colleges are each governed by three separate boards. And, with such divisions of governance, duplication of programs has occurred. "For example, most of our teacher education programs are in the California State University system, but the community colleges also offer transfer curricula" in teacher education, says Marge Chisholm, Legislative Coordinator for the California Postsecondary Education Commission, which coordinates higher education in the state. "We've urged them to try and avoid duplication and to collaborate, but I'm afraid they do duplicate," she says.

E. Powers the UNC Board of Governors Does Not Have But Wants

In the previous section, we examined powers the UNC Board of Governors has but is not exercising to the fullest. In the section below, we examine powers the Board does not have but says it needs. Some North Carolina policymakers believe the existing powers of the Board of Governors should be extended to include more control over building projects, purchasing, and personnel at UNC's 16 campuses, while others are more skeptical.

1. More Control Over Building Projects

a. The Statutory Framework for Construction Projects and Recent Grants of Flexibility to the Universities

The Office of State Construction is the primary agency responsible for the management of capital construction, repair, and renovation projects for state agencies. All state agencies are subject to management by the State Construction Office for all new construction projects costing \$300,000 or more.¹⁰⁶ State law also requires that the State Construction Office manage all state agency repair and renovation projects exceeding \$300,000.¹⁰⁷

Until recently, the university was subject to the same statutory limitations that apply to state agency construction projects. However, effective January 1, 1998, the General Assembly gave UNC General Administration the authority to manage all university system capital projects with expenditures of less than \$500,000.¹⁰⁸ This delegation to UNC was the first time that a state agency was given the authority to implement such projects without management oversight from the State Construction Office.¹⁰⁹ As a condition of the delegation, UNC General Administration was to develop policies and procedures that the University system must follow to manage the larger construction projects, subject to approval by the State Building Commission. At the same time, the General Assembly directed the Office of State Budget and Management and the State Building Commission in the Department of Administration to evaluate the process and quality of construction projects managed by the UNC General Administration and to make recommendations regarding the continuance of the delegated powers, which were to expire on July 1, 2001.

In June 2001, the two state agencies provided the required analysis and recommendations in a report to the Board of Governors and General Assembly.¹¹⁰ The report compared university-managed building projects costing between \$100,000 and \$500,000 with all projects of any value managed by the State Construction Office for factors which included: the time needed to complete the projects, the accuracy of project cost

estimates, frequency of disagreements with contractors, and quality of construction. After concluding that the expanded delegation of authority on construction to the UNC system had produced “no overall adverse impact on the construction management process for the State as a whole,”¹¹¹ the report recommended that the delegation of authority on construction to The University of North Carolina be increased to a maximum of \$1 million, including repair and renovation projects within that threshold. Noting that the bidding process for projects over \$500,000 will require additional technical work and expertise, the report also recommended that the Board of Governors be authorized to determine the threshold amounts for delegating construction to each campus. Accordingly, the report cautioned the Board of Governors to consider carefully the expertise and size of campus staffs available to coordinate projects, as well as the complexity associated with managing more expensive projects. Finally, the report recommended that the authority for the increased delegation expire on June 30, 2005, by which time the State Building Commission will have reviewed the outcome of the expanded authority and will make recommendations to legislators regarding the continuance, modification, or elimination of the construction delegation authority. In 2001, the General Assembly increased the maximum allowable delegation to the University system to \$2,000,000, included repair and renovation projects in the increased amount, gave authority to the Board of Governors to determine the threshold amounts for construction in delegations to each campus up to the new cap, and extended the sunset for the delegated authority until December 31, 2006.¹¹²

Certain across-the-board procedures apply to all state construction projects, whether managed by the university, by a state agency, or by the State Construction Office. For example, design reviews are conducted by the owner, designer, and the N.C. Department of Insurance to ensure that the state receives work of adequate quality. Each entity has a specific role in the review process. These reviews are intended to ensure that the work complies with State Building Code requirements and to identify areas that need attention or improvement. Similarly, both the State Construction Office and the university system utilize a series of inspections that identify problems during the design, construction, and final inspection phases of all projects.

b. University Concerns About the Department of Administration’s Construction Review Process and the “Hiccup Funding” Process

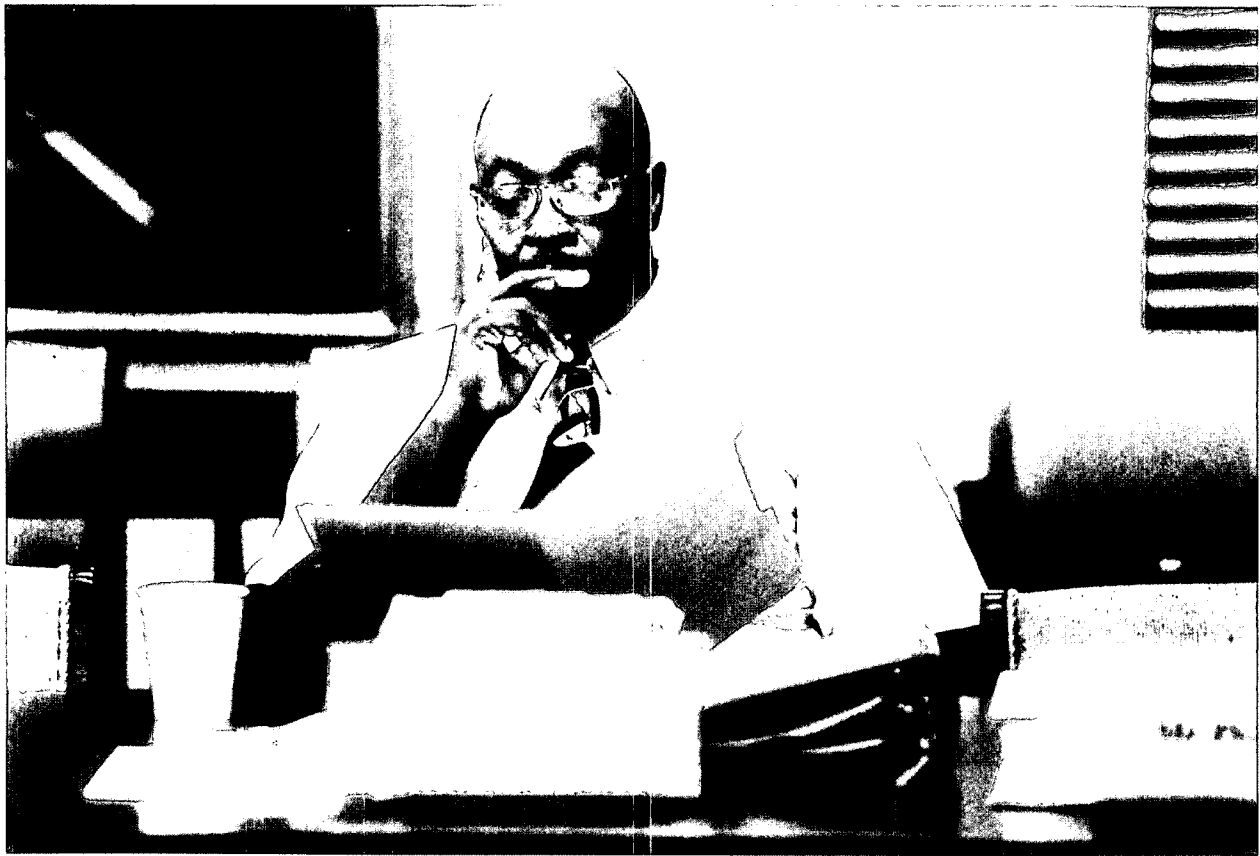
Despite the protections they offer, university leaders say such reviews can create unnecessary delays in completing building projects which can result in higher costs. “It can sometimes take [UNC campuses] an extraordinary length of time to build a residence hall,” says Jeff Davies, UNC General Administration Vice President

for Finance and Chief Financial Officer. “The campus has to go through a planning stage to determine that the hall is needed. The approval for that construction goes through the campus board of trustees, and then it comes to the Board of Governors. Because we would issue revenue bonds for the construction of that residence hall, we must seek authorization from the General Assembly for the project before we issue the bonds. Therefore, if a campus was to determine in August that it needs to build a residence hall, the approval to proceed on that project may not come until the next July.” In addition to the planning and approval process, Davies says that the review processes also can delay projects. “When we start a project, there are three times when state agencies in Raleigh get involved and review our plans — very critical reviews and very important reviews — but if those reviews are elongated, it can add nine to ten months to the process,” Davies explains. “Sometimes, it can be three years from the time that an institution identifies the need to build. . . and we can’t accept that time frame.”

In response to complaints about the construction review process, Speros Fleggas, Director of the State Construction Office says, “I cannot overstate the value of a good review. To have the same level of quality at Elizabeth City or Western Carolina, you need to have some independent oversight, and I’m not sure how the UNC system would accomplish that [on its own].” Fleggas also remarked, “We’re [state construction projects] not a testing ground, we need tried and true good design practices and quality of materials.” Fleggas explains that the Office of State Construction provides the only comprehensive review of construction plans by a state agency that government buildings receive because other reviewing agencies’ evaluations are more limited in scope. Fleggas says, “Looking at the overall context of project development and completion, there is no data to back up claims of elongated time delays caused by the Office of State Construction.”

UNC officials say the state building process is characterized by other problems too. Kevin MacNaughton, former UNC Associate Vice President for Finance and University Property Officer, says that building projects that have received design and planning money often have to wait for another budget cycle to receive construction money. He calls this system “hiccup funding” since the university receives individual burps of funding in each biennial budget cycle rather than an appropriation for the full amount of the project. “A regular funding stream would enhance the process more than any other measure,” MacNaughton says.

The funding situation MacNaughton describes is not unique to the university system. Many state construction projects receive some initial funding for the first year and must often wait for additional funding to be budgeted or appropriated to complete the project in the second or third year. Some university leaders acknowledge other state agencies experience the same challenges



Karen Tam

UNC Board of Governors member Willie Gilchrist at a meeting in Chapel Hill

and obstacles that the university system faces. “I don’t know that it’s fair to say that we should be treated differently from other state agencies,” says Jeff Davies. “What I would hope would be that this state would embark on a course where we have the most efficient processes in place for all state agencies. Maybe it’s an opportune time for the university to lead the way in this arena. But, I would clearly not want us to be singled out as an organization that needs something that everyone doesn’t.” However, the University has successfully sought such special treatment three times now from state construction rules.

Senate Appropriations Co-Chair Walter Dalton (D-Rutherford) views “hiccup-funding” of construction projects as a problem for all of state government. He says, “In the long run, this approach costs us more. That’s what created the backlog that the [2000 higher education] bond issue was meant to address. We’ve got to find a solution to this problem.”

c. Future University Construction

The cost of renovations and new building projects at UNC campuses over the next decade was estimated at \$6.9 billion in a consultant’s study presented to the Board of Governors on April 9, 1999.¹¹³ Consultant Eva Klein estimated that failure to keep up with building maintenance needs has produced a \$3.3 billion repair bill

on UNC campuses. If the university relied solely on the approximately 46 percent of the state’s Repair and Renovation Reserve Fund it receives each year from the General Assembly,¹¹⁴ it would take 50 years to fix the problems outlined in the study, Klein told Board members.¹¹⁵ University leaders say state checks on the management powers of the Board of Governors put the system at a disadvantage in trying to meet projected capital needs. Since the Board lacks the power to put building projects up for bid until the state commits the funds, post-design delays occur and drive up the cost of those projects. “I wish the Board of Governors had more financial flexibility in terms of indebtedness” for capital projects, says Patricia Sullivan, Chancellor of the University of North Carolina at Greensboro. “We have to come up with something other than pay-as-you-go in order to address our capital needs. We need a funding scheme that’s more than year-to-year for capital projects.” Among the options suggested by Klein are a state-supported bond program, more self-supporting campus projects, more private gifts to the 16 campuses, and a dedicated source of state funds such as an earmarked tax or state lottery.¹¹⁶ Klein also favors giving consideration to forming a private, nonprofit agency to administer the entire process of public university capital construction and renovation projects, including the handling and disbursement of funds, receiving and accepting bids for project design, among other components.

Of all the threats to the institution, the most dangerous come from within. Not the least among them is the smugness that believes the institution's value is so self-evident that it no longer needs explication, its mission so manifest that it no longer requires definition and articulation.

— FORMER YALE UNIVERSITY PRESIDENT A. BARTLETT GIAMATTI

A FREE AND ORDERED SPACE:
THE REAL WORLD OF THE UNIVERSITY

Former UNC-Wilmington Chancellor James Leutze says he would like to see the UNC Board of Governors do a better job of ranking capital improvement requests submitted by campus leaders — something Klein's study is designed to do. "At present, they will put forward [requests to the General Assembly] for the highest priority for each campus," he says. "I would prefer the Board of Governors to make some sort of [overall] priority list" of projects among *all* UNC campuses.

On November 7, 2000, 73 percent of the state's voters approved a total of \$3.1 billion in bonds for the UNC system and the 59 community colleges — \$2.5 billion for the universities and \$600 million for the community colleges. Not only was this the state's largest bond package ever, but it also was the largest higher education bond issue in the history of the United States. The bond election victory was a sharp reversal from 1999 when a larger bond proposal for the university system died in the General Assembly after university leaders would not agree to submit the bond issue to a public vote.

The following year, the University agreed to the public referendum, and the legislature unanimously approved the bond plan. The legislation authorizing the public referendum on the bond issue included a list of specific capital improvement projects to be undertaken on each campus and the cost of each.¹¹⁷ The projects reflected the highest priorities on each university campus and were approved by each institution's board of trustees. They were adopted as a package by the UNC Board of Governors and transmitted to the General Assembly in May 2000.

The bond package was then pushed in a high-profile, \$4 million promotional campaign organized by the state's largest business lobby, N.C. Citizens for Business and Industry. From September until Election Day, voters were bombarded with television and radio ads promising the bonds would deliver educational opportunity and economic progress without a tax increase. In addition, the UNC President, UNC-TV, and the chancellors of all 16 constituent universities made "educating" the public about the proposed uses of the bonds a top priority, while the members of the Board of Governors were actively involved in promoting passage of the

bonds.¹¹⁸ Substantial efforts also were made to enlist the support of alumni from all of the 16 campuses, with information on how each campus would benefit from the bonds distributed to that institution's alumni and to those living in the communities in which the institutions were located. Statewide public television also broadcast hour-long special programs called "A Building Crisis" and "Focus On. . . The Bond" touting the need for the bond package, which included money for UNC-TV's conversion to digital television. The TV specials together were re-broadcast at least 17 times.

Expenditure of the newly authorized bonds is overseen by a special Higher Education Bond Oversight Committee operating under the auspices of the General Assembly.¹¹⁹ The new law also requires the Board of Governors to "continue to study and monitor any inequities in funding for capital improvements and facilities which may still exist on North Carolina's Public Historically Black Colleges and Universities and the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act" and to "report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how these inequities should be addressed."

d. Additional Flexibility for the University: Alternative Contracting Methods

After approval of the bond referendum in November 2000, some legislators considered changing some state building regulations to speed up work on the bond projects. Under the system in place at the time, projects expected to cost over \$500,000 require at least four separate contracts — general contracting, heating and cooling, electrical, and plumbing. Some university administrators complain that this system causes paperwork headaches, delays and higher costs, and they prefer "single-prime contracts" in which a general contractor hires all the subcontractors. According to news reports, Senate President Pro Tempore Marc Basnight (D-Dare) said, "We will have a bill in the Senate that modernizes and refines methods that we currently use in construct-

ing state buildings” and “[t]hat could include single-prime.”¹²⁰ Basnight added that he would push for more flexible regulations in the project design and construction phases. The same report related that UNC officials again wanted changes in the system. Former UNC Associate Vice President Kevin MacNaughton was reported as saying that the state should consider other ways of managing projects, such as hiring an agency to coordinate construction sites to ease the workload on campus staff but maintain a competitive bid process for subcontractors.¹²¹

At its January 12, 2001 meeting, the Board of Governors adopted a resolution supporting the use of “construction management at risk”¹²² and recommended that the UNC President seek an exemption from the State Building Commission to allow the campuses to utilize alternative contracting methods for the bond projects approved in November 2000. The resolution stated that the Board had determined that “it is in the best interest of the University and the state to utilize alternative contracting methods for expediting the bond projects.”¹²³ At the same meeting, President Broad told the Board that “the University would need help from the General Assembly and state government to assist the University in streamlining the protocol and processes in order to timely complete the program and within budget.”¹²⁴ Subsequently, the State Building Commission approved the Board’s request for beginning construction on 42 bond projects.¹²⁵ The 2001 General Assembly responded to the Board’s resolution by passing legislation that authorized construction management at risk contracts, increased the threshold amount under which the university system can manage and award capital projects without oversight from the state construction office from \$500,000 to \$2 million, and granted the university more flexibility in the bidding process.¹²⁶ The same legislative act reinforced the state’s 10 percent minority business participation goal, required public bodies to set verifiable percentage goals for minority participation in building projects, and raised the dollar threshold of projects subject to the minority participation efforts from \$100,000 to \$300,000. According to Jeff Davies, the University was pleased with the General Assembly’s actions and says they already have seen some positive results. “[We were] very pleased with everything in that bill,” says Davies. “We’ve already seen major construction firms entering the picture that wouldn’t even come to the table before and that means lower prices, better efficiency, and higher quality for all of us.”

e. Criticisms of the Special Grants of Flexibility in Construction for Universities

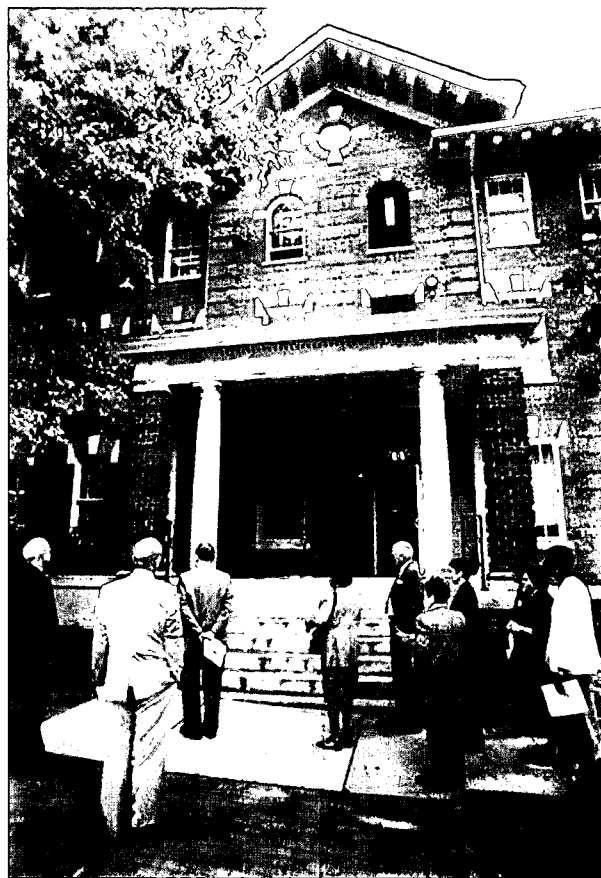
As the University system gained flexibility in building projects, criticisms of the results of these new grants of flexibility came from four directions. The State Auditor said the decentralization of the construction process had a negative effect on the timeliness of the flow

of information from the University to the State Construction Office and the State Building Commission in the Department of Administration. The Department of Insurance said the University system began construction on two projects before safety inspections of building plans by the Department. Legislators criticized the cost overruns and delay in building the new UNC-Chapel Hill Women’s and Children’s Hospitals. And, other state agencies wondered why they don’t have the right to issue special obligation bonds for some of their building projects.

i. State Auditor’s Criticism of Timeliness of Information to the State Construction Office

A December 2002 performance audit of the State Construction Office by State Auditor Ralph Campbell concluded that the decentralization of the construction oversight function had negatively affected the timeliness of the flow of information from the University to the State Construction Office and the State Building Commission in the Department of Administration about the progress of construction projects included in the state’s capital improvement plan.¹²⁷ The audit cited complications in the construction of the UNC-Chapel Hill

**Board of Governors members touring
NCSU Campus**



Roger Winstead

Women's and Children's Hospitals, which by June 2002 had experienced increases in estimated costs totaling 31.5 percent, as an example of a decentralized project where inconsistencies of reporting in the construction oversight process can "erode public and industry confidence in the State's construction procedures." The Women's and Children's Hospitals project was one of a limited number of construction projects allowed additional flexibility with regards to bidding procedures by a special arrangement with the Office of State Construction. Of the handful of projects allowed to use this "single-prime style" approach, the hospitals were the only project to incur significant overruns and delays. The Auditor recommended, "The General Assembly should evaluate the effect of legislation decentralizing the oversight responsibilities for State construction projects. If the State Construction Office is to provide data on the overall State capital improvement plan, consideration should be given to requiring periodic status reports of all decentralized projects to the State Construction Office and the State Building Commission. This change would ensure a better flow of information to the General Assembly, allowing all construction projects paid for by State funds to be reported in a consolidated format." The audit also reported that only 2.4 percent, or 9, of 370 university projects being funded

by the higher education bonds approved by voters in November of 2000 were ahead of schedule.

Taking issue with the Auditor's use of what it considered preliminary schedules for the audit's analysis of the number of construction projects reported as on-time, Jeff Davies, Vice-President for Finance for the University system, asked the Auditor's office to evaluate more up-to-date schedule estimates after the initial release of the audit. In a letter dated March 27, 2003 to the Governor and the General Assembly, State Auditor Ralph Campbell acknowledged receipt of the updated figures but concluded that the University's additional information did not change any of his original conclusions regarding the negative impact of the decentralized projects on the timely development of information about progress on the state's capital improvement plan. However, in light of what he called "erroneous news stories" about the report, he said that his audit spoke only to the reporting of status information and did not recommend re-centralizing any of the decentralized capital improvement projects under the State Construction Office.

In early January 2005, the State Auditor recommended that all state agencies and public universities keep closer tabs on repairs and renovations and that the legislature should review the level of money needed for repairs every five years. Outgoing State Auditor Ralph

Board of Governors members touring a science lab at N.C. State University



Roger Winstead



David Barbour, Reprinted by permission

Campbell said all agencies and universities should quickly notify the state property office of any renovations that would change the value of state-owned buildings. The state owns \$12 billion worth of buildings and finances maintenance with its Repair and Renovation Reserve Fund. Of that money, 46 percent is used for university facilities. The Auditor's report was prompted by an infestation of mold at N.C. Central University that forced the state to spend millions of dollars in repairs.

ii. *The State Department of Insurance's Criticism That UNC Began Construction Before Safety Inspections of Building Plans*

On at least two occasions, the University system began construction on major projects utilizing lease-to-build arrangements between campuses and nonprofit foundations *before* state safety inspections of the building plans were complete. State insurance and construction officials required changes to building designs after construction was underway to both the Paul J. Rizzo Conference Center at the Kenan-Flagler Business School at UNC-Chapel Hill and to the Wendell H. Murphy Football Center at NCSU's Carter-Finley Stadium.

In 1997, neither state insurance nor construction oversight offices nor the Town of Chapel Hill were consulted on plans for the Paul J. Rizzo Conference Center at the Kenan-Flagler Business School at UNC-Chapel Hill. The Rizzo Center, a complex comprised of a 24,500 square foot education building and a 41,500 square foot luxury hotel, was built on state property by a private foundation which received \$2.8 million from

the General Assembly towards the \$24 million construction tab. In 1998, with both buildings well underway, state construction and insurance officials were brought into the process and eventually required the private contractor to replace dampers, partitions, and doors deemed inadequate to protect occupants from smoke and fire.¹²⁸

The Department of Insurance also objected to the width of stairwells in the \$28 million Wendell H. Murphy Football Center at NCSU's Carter-Finley Stadium after the building was underway, which would have meant reconstructing the foundation of the building. Four months after the Department of Insurance's initial objection and while construction continued, the project's architect provided more detailed plans to the department and contended that the stairway design compensated for being narrower than the Department wished by having shorter steps, which would allow people to go down them more quickly.¹²⁹ The department then accepted the architect's stairway.

In December 2001, the General Assembly responded to concerns raised over these facilities by requiring that plans for any structure to be built under these arrangements for the use of the state or a state institution must be submitted to the Department of Insurance for approval. Building plans must be approved by the Department of Insurance before the agency slated to use the building accepts the plans as final.¹³⁰ In March 2004, N.C. State University and UNC-CH presented a report by Huron Consulting Group to a legislative study committee, saying, "... in several recent cases at UNC-Chapel Hill, [the] required approvals from the State Department of Insurance delayed renovation of research laboratory

space by 36–42 days.” The report said these delays had a negative economic impact on the state and recommended that the legislature “ease existing restrictions on construction.”¹³¹

According to Jim Roberts, State Property Plan Review Section Supervisor with the N.C. Department of Insurance, even if the university system had full responsibility for administering construction projects, the N.C. Department of Insurance would essentially have the same role in the process. “We would still be involved in the same way with building code compliance,” says Roberts. “However, there are some concerns about project management, design selection, and project review.” Roberts believes the more important question is whether there are services currently provided by the State Construction Office that UNC can effectively provide on its own. He says, “We’ve had a few bumps in the road with contracts done with ‘creative financing’ (e.g., foundations, booster clubs, etc.). The classic example is with [former Dean Paul] Rizzo [and the Kenan-Flagler Business School] at UNC, and we [had] some problems with the expansion at Carter-Finley Stadium [at N.C. State]. In that case, we had construction get ahead of plan review, so there have been things where we’ve had to pull rabbits out of a hat to make it code acceptable without resorting to a jack hammer,” Roberts explains.

Roberts continues, “We have a good handle on things with the Centennial Campus [at N.C. State] where there is a clear distinction as to what is being done with private money and what is state money. The city reviews the private projects, and we take care of the state projects. In cases where the building will be turned over to the state once it’s built, even if funded with private money, we have done a courtesy review making certain that the state won’t have any problems taking over the building.” Roberts says another potential problem is that under the Americans With Disabilities Act, new construction and alterations of public (i.e., state or local government-owned and operated) buildings may have different standards than places of public accommodation (e.g., restaurants, stores, etc.) or commercial facilities, so the university could run into problems if the building is constructed by firms that are more familiar with commercial building projects.¹³² With this in mind, Roberts says, “We are most concerned that there is a proper setup so that what gets built complies with the code. There needs to be a clear understanding of jurisdiction — private, city, state, or some type of hybrid.”

The 2003 General Assembly approved three additional projects at the University of North Carolina at Chapel Hill to be built through the same lease arrangements with nonprofit foundations as the Rizzo Center and the Murphy Center were. The legislature approved an expansion of the Rizzo Center through lease with the Kenan-Flagler Business School Foundation, an expansion of the Ackland Art Museum, and construction of Student Family Housing through leases with the University of North Carolina at Chapel Hill Foundation, Inc.

The University is authorized to borrow up to \$64 million to fund the three new projects under this arrangement with the foundations.¹³³

iii. Cost Overruns and Delay of the UNC Hospitals Project

An independent audit of the construction of the UNC-Chapel Hill Women’s and Children’s Hospitals found that by June 2002, the UNC hospitals project was at least \$24 million over budget and had incurred an additional \$4.9 million in extra finance costs stemming from project delays.¹³⁴ State agency estimates of what the \$28.9 million in additional costs identified in the audit represent as a percentage of the project’s total cost vary, depending on what starting point the respective agencies choose as their baseline. These estimates of the percentage of the cost overrun range from 8.5 percent by a UNC Health Care spokesperson in February 2002, to 18 percent by UNC-Chapel Hill’s Chancellor James Moeser in September 2004, to 31.5 percent by the

UNC Vice President Rob Nelson and former Board member Jack Cecil at a meeting in Chapel Hill



Karen Tam

State Auditor in December 2002. An independent audit relied on by the State Auditor says, “[Our] experience has shown that construction overruns between five to ten percent would be a normal and expected range for hospital projects of the size and complexity of the Women’s and Children’s Hospitals.”

Similarly, estimates of the length of the delay vary. The hospitals opened for business on February 23, 2002, more than two years later than the December 1999 date originally estimated by UNC Health Care on its Certificate of Need documents filed with the North Carolina Division of Facility Services. The projects were declared complete by the Division of Facility Services in the N.C. Department of Health and Human Services on April 2, 2004, more than four years later than the scheduled completion date.¹³⁵ The February 2002 opening date was more than four years later than the projected completion date on documents filed with the Office of State Construction. UNC Health Care’s scheduled completion date on those documents was December 1997. As of April 2006, more than eight years after the UNC Health Care’s original estimated completion date, the Architect’s Final Report, a document which will contain the final tally of project costs, has not been filed with the Office of State Construction.

Discussions about constructing the facilities began in 1986, architects were hired by the hospital’s board in 1993, and the hospitals issued bonds to pay for building the facilities in March 1996. Prior to construction, hospital administrators made a request to the State Building Commission to use a single prime contract instead of a multi-prime contract in building the hospitals. While their request was denied in its original form, the officials worked out a compromise with the State Construction Office where the hospital would bid the contract as if it were going to one contractor, but would award the contract to multiple companies in order to meet state guidelines. This type of flexibility arrangement, which is very similar to the alternative construction methods that since have been approved by the General Assembly, was utilized successfully on five previous non-university state buildings by the Office of State Construction. With the compromise in place, UNC Health Care “pre-qualified” a construction company willing to assemble “a team” of contractors, but after the job got underway in July 1997, the “team” effort soon disintegrated.

In November 1998, the General Assembly passed legislation which removed the Office of State Construction from oversight responsibility with respect to design, construction, and renovation of buildings, utilities, and other property developments of the UNC Health Care System, a law which also removed the State Construction Office’s oversight authority for the Women’s and Children’s Hospitals, even though the project was already under construction.¹³⁶ Less than one year after the General Assembly ended the State Construction Office’s oversight of the project, UNC Health Care’s lead engi-

neer on the project, Billie C. Biggs asked the state construction office for help. Biggs said he asked for the assistance after realizing the small size of his staff and the complexities of the projects ahead.¹³⁷ UNC Health Care and the Office of State Construction executed a Memorandum of Understanding on September 3, 1999, changing the role of the Office of State Construction with regards to “design selection, design contract negotiation, and methods of construction bidding.”¹³⁸ When the extent of the overruns and delays became known publicly in February 2002, key legislators who had supported more autonomy for UNC to manage construction projects expressed concerns about this type of mismanagement spilling over into UNC’s administration of the \$2.5 billion construction program funded by the higher education bonds approved by voters in November 2000.¹³⁹

Former state Senator Howard Lee, who at that time was Co-Chairman of the Senate Appropriations Committee, expressed hope that the problem would be averted by new contracting methods already adopted by the legislature saying, “Hopefully, this new [construction management at risk] bill we passed [in December 2001] will be a major step toward getting a better handle on projects, especially under the higher education bond [issue]. We can’t tolerate this level of overrun.”¹⁴⁰ Responding to the concerns about the hospitals project, UNC President Molly Broad called the project a “poster child” for how not to run a construction effort when she asked for an independent audit. The \$93,750 audit, completed by PricewaterhouseCoopers Consulting in June 2002, attributed the cost overruns and construction delays to inadequate budgeting, insufficient planning, last minute changes to the plans by the hospital staff, deficient administration of contracts, poor execution of work by contractors, and to the multi-prime contract required by the state.¹⁴¹

The primary legislative sponsor of the bill that instituted the change to single-prime contracting is doubtful of the claim that the new alternative contracting law will be the cure-all for construction ills. Senator Walter Dalton (D-Rutherford) says, “Though I have high hopes, I doubt it’s a cure-all.” However, Dalton says the contracting law will accelerate the building process and create clear lines of accountability when problems inevitably arise and adds, “It should expedite and simplify construction projects and reduce the finger-pointing between contractors when something does go wrong.”

iv. Special Obligation Bonds and Revenue Bonds: A Special Source of Money for UNC Building Projects

In addition to annual appropriations from the General Assembly and occasional statewide bond issues, the UNC system has another source of revenue to support campus building projects that many other state agencies don’t have — special obligation and revenue

bonds.¹⁴² Every year, legislators approve a bill to authorize the construction and the financing of a specific list of capital improvement projects at the various campuses. Funding for these projects is provided by private gifts, private foundation or federal grants, receipts, self-liquidating indebtedness, or from other sources, but no state appropriations are involved.

The Board of Governors may issue “special obligation bonds” to finance these projects. The kinds of projects funded by this method include student dormitories and recreation facilities, faculty housing, parking facilities, and projects for “academic, research, patient care, and community services.”¹⁴³ For example, the 2000 General Assembly approved 13 university capital improvements projects totaling \$81,569,444 on nine campuses. The facilities authorized ranged from \$750,000 for a dining hall addition at UNC-Pembroke to \$18,780,000 for “Centennial Campus Infrastructure” at N.C. State University. The Board sought approval for 22 capital improvements projects totaling \$299,989,200 at 10 institutions during the 2001 session, and \$204,489,200 was approved.¹⁴⁴ The 2001 request was the third installment in a 10-year, \$6.9 billion capital plan adopted by the Board in June 1999.¹⁴⁵ The 2003 General Assembly approved an additional 46 projects on 10 campuses totaling \$465,217,820 and allowed an additional \$15 million in borrowing to cover bond issuance

expenses, funding of reserve funds, and capitalized interest, bringing the total cost of the 2003 package to \$480,217,820.¹⁴⁶

The right to build facilities by issuing special obligation bonds or revenue bonds is a privilege given only to a few state agencies. Outside of the 16 campuses in the UNC System, this privilege only has been extended to seven other state agencies — the two municipal power agencies, the State Education Assistance Authority, the Capital Facilities Finance Agency, the Housing Finance Agency, the Medical Care Commission, and the State Ports Authority. Special obligation bonds or revenue bonds from UNC campuses accounted for \$669,421,176 in state fiscal year 1996–97, or 6.4 percent of that type of debt issued by all state agencies. In fiscal 1998–99, UNC schools were responsible for \$738,268,083, or 6.1 percent all of this type of debt issued. In fiscal 2001–02, UNC campuses accounted for \$800,717,723 in special obligation bond debt, or 5.4 percent, and for fiscal 2002–03 climbed to \$1,079,156,005, or 7.2 percent of this type of debt.¹⁴⁷ The right to use this financing method is not extended to most other state agencies, such as community colleges, state mental hospitals, schools for the deaf and blind, or aquariums. (See Table 4.10: Special Obligation Bonds and Similar Indebtedness of North Carolina Authorities and Institutions, as of June 30, 2002, June 30, 2003, and June 30, 2004.)

Board members Brad Wilson, Irvin Aldridge and Ray Farris at a meeting in Chapel Hill



Karen Tam

Table 4.10

Special Obligation Bonds and Similar Indebtedness of North Carolina Authorities and Institutions, as of June 30, 2002, June 30, 2003, and June 30, 2004

Agency	Fiscal Year Ending		
	June 30, 2002	June 30, 2003	June 30, 2004
1. Appalachian State University	\$ 83,144,000	\$ 112,131,127	\$ 107,725,003
2. East Carolina University	59,905,000	70,860,000	66,590,000
3. Elizabeth City State University	4,905,000	6,815,000	6,530,000
4. Fayetteville State University	3,765,000	7,435,000	6,912,000
5. North Carolina A & T State University	17,280,000	16,485,000	15,640,000
6. North Carolina Central University	11,050,000	10,720,000	11,350,000
7. North Carolina School of the Arts	4,910,000	4,580,000	5,445,000
8. North Carolina State University at Raleigh	87,092,000	153,159,000	160,637,000
9. University of North Carolina at Asheville	19,730,000	30,200,000	28,775,000
10. University of North Carolina at Chapel Hill	382,247,579	390,786,054	474,824,431
11. University of North Carolina at Charlotte	69,820,000	87,259,000	89,868,000
12. University of North Carolina at Greensboro	76,497,000	78,645,000	75,530,000
13. University of North Carolina at Pembroke	4,625,000	5,305,000	5,025,000
14. University of North Carolina at Wilmington	39,035,000	73,343,744	70,189,474
15. Western Carolina University	8,113,000	17,632,080	29,514,239
16. Winston-Salem State University	11,660,000	13,800,000	13,270,000
University Subtotal	\$800,717,723	\$1,079,156,005	\$1,167,825,147
17. North Carolina Capital Facilities Finance Agency	1,257,164,275	1,319,254,527	1,481,034,589
18. North Carolina Eastern Municipal Power Agency	3,144,767,000	3,056,816,000	2,972,539,000
19. North Carolina Housing Finance Agency	1,348,072,000	1,305,637,000	1,268,137,000
20. North Carolina Medical Care Commission	4,302,858,578	4,779,353,715	4,879,589,894
21. North Carolina Municipal Power Agency No. 1	2,152,928,000	2,027,570,000	1,985,665,000
22. North Carolina State Education Assistance Authority	1,103,406,000	1,299,806,000	1,685,968,000
23. North Carolina State Ports Authority	9,938,055	19,684,537	21,118,176
Total	\$14,912,912,487	\$14,887,277,784	\$15,461,876,806

Source: N.C. Department of the State Treasurer, *The State Treasurer's Annual Report to the People of North Carolina Fiscal Year 2001-02, 2002-03, and 2003-04*. This chart outlines all "special obligation" or revenue bonds and similar indebtedness of state authorities and institutions at the end of each fiscal year. The state is not responsible for debt service on any of the indebtedness represented in this chart.

2. More Control Over Purchasing

In 1989, then-UNC President C.D. Spangler called for the university system “to move forward aggressively to make needed changes” in areas such as budgeting rules and purchasing regulations.¹⁴⁸ Similarly in 1992, Ben Tuchi, UNC-Chapel Hill’s departing Vice Chancellor for Business and Finance, complained that the university is required to purchase equipment, such as computers, from specified dealers at specified prices, and that if a computer dealer wanted to offer the Chapel Hill campus a discount, it would be illegal for the university to accept it.¹⁴⁹ He added that institutions that compete for students, staff, and grants with schools that do not operate under such state regulations need to be treated differently from the rest of state government.

Robyn Render, UNC-General Administration’s Vice President for Information Resources and Chief Information Officer, says UNC campus leaders also need more freedom in state purchasing. “The university environment requires the purchase of some things such as certain scientific equipment, chemicals, animals even that are unique to the university and not applicable to the average state agency,” she says. “More freedom would help us be more efficient and more cost effective.” Again, however, other state agencies can make the same argument. The State Bureau of Investigation, Department of Environment and Natural Resources, and Department of Agriculture all have special equipment needs, chemical use, or animal use unique to their agencies.

North Carolina statutes establish a detailed set of requirements that must be followed by state agencies and institutions in the purchase of goods and services.¹⁵⁰ The Purchase and Contract Division in the N.C. Department of Administration is the central purchasing authority for all state government agencies, community colleges, local boards of education, and the UNC system. The Division establishes purchasing contracts for commonly used items and reviews all requests for purchases by these entities when the requests exceed certain dollar amounts described below.¹⁵¹ State Purchase and Contract also develops and administers statewide purchasing policies and audits adherence to these policies. In 1999, the General Assembly created an Office of Information Technology Services by upgrading the responsibilities of an earlier state information technology office and making it responsible for obtaining information technology goods and services for the state, thereby removing some of the responsibility for that category of purchases from the Purchase and Contract Division.¹⁵²

As with the state building construction projects discussed above, state government purchases of goods and services costing less than certain amounts of money have been exempt from many of the legal requirements mandated for larger acquisitions. Although purchases of supplies, materials, and equipment for state agencies generally must be conducted pursuant to a formal, public

competitive bidding process, as specified in rules adopted by the N.C. Secretary of Administration, purchases that do not exceed a “benchmark” expenditure amount set by the General Assembly are exempt from these requirements.¹⁵³ Similarly, a waiver of competitive bidding can be granted if a vendor is the sole supplier of a good or if there is an emergency or pressing need for an item. For any contract amount over a purchasing agency’s threshold, the waiver of competitive bidding request must be sent to Purchase and Contract and ultimately to the Board of Awards for approval. For contracts within an agency’s threshold amount, the agency is responsible for approving a waiver of competitive bidding.¹⁵⁴

Before 1997, state agencies were not subject to the formal competitive bid procedures for purchases under \$10,000, while the state universities had a \$35,000 threshold. In 1997, the General Assembly significantly raised the amount at which state agencies and the UNC system did not have to seek approval from the state purchasing office to issue competitive bids for goods and services. The threshold for the universities was raised from \$35,000 to \$250,000, while state agencies and the other entities subject to the purchasing laws received a more modest increase from \$10,000 to \$25,000.¹⁵⁵

UNC Board of Governors members Patsy Perry, Priscilla Taylor, and Peter Keber



Roger Winstead

As with the delegations of authority over construction projects to the individual campuses, the UNC System's Office of the President is the authority which determines the threshold amounts for each campus.¹⁵⁶ The 1997 law permitted all UNC institutions that had attained the status of "special responsibility constituent institutions" to be eligible for the expanded purchasing authority.¹⁵⁷ In determining whether to approve institutional requests for expanded purchasing authority, the statute required the UNC Board of Governors to consider each institution's "overall capabilities, including staff resources, purchasing compliance reviews, and audit reports."¹⁵⁸ The law also required the Office of State Budget and Management to "evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions" and to "report its findings and recommendations to the General Assembly by April 15, 2001."

In April 2001, the State Budget Office filed its report and recommendations regarding the purchasing benchmark increases.¹⁵⁹ To determine the effectiveness of the increase in delegation, the State Budget Office looked at the impact of the new system on the cost of goods and services, changes in administrative costs related to the new system, changes in the amount of time needed to complete the transactions, and participant satisfaction with the new process. The report stated that 13 of the 16 UNC campuses received additional purchasing authority over their previous \$35,000 threshold, with the increased amounts ranging from a low of \$50,000 (at Fayetteville State University, the N.C. School of the Arts, and UNC-Asheville) to the maximum permitted amount of \$250,000, which was granted to East Carolina University, N.C. State University, and UNC-Chapel Hill.¹⁶⁰ The Budget Office said, "[t]he universities with increased delegation reported that they are generally pleased with the new increased delegation for the following reasons: (1) a substantial amount of time is saved in purchasing without losing quality, (2) they feel like they have ownership over the process, and (3) there is improved flexibility in being able to purchase goods."¹⁶¹ In assessing the overall effect of the expanded purchasing authority to the university system and participating state agencies, the report concluded that the changes had not been "detrimental to state government agencies, vendors or the taxpayers" and that the "increased delegation has allowed state agencies to improve their turnaround time thus enabling them to get their goods and services to the end users sooner." Accordingly, the report recommended that the delegation limits for state agencies, community colleges, and local education agencies be increased to the same level already given to the universities — \$250,000 — and that the \$250,000 limit "continue to be automatically adjusted biennially based upon changes in the federal Consumer Price Index for all goods and services as the General Statutes currently allow." (Note that the June 2000 scandal in purchasing

at N.C. State's Public Safety Office placed that university's continued grant of budget flexibility in jeopardy. For more details, see p. 92 above).

During the 2002–2003 fiscal year, 6,824 purchases totaling \$204.7 million were made on the campuses between the old benchmark of \$10,000 and the increased benchmarks, which then ranged from \$35,000 to \$250,000. Because of the management flexibility legislation, these purchases were not processed through the Department of Administration's Division of Purchase and Contract.¹⁶²

The 2003 General Assembly further increased the maximum amount the Board of Governors may delegate to a special responsibility constituent institution for flexibility in purchasing from \$250,000 to \$500,000.¹⁶³ However, the institutions granted purchasing thresholds that exceed \$250,000 must submit contracts that cost between \$250,000 and \$500,000 to the Division of Purchase and Contract for approval. Notice of the Division's decision is then sent to that campus, which then proceeds with the award of the contract or other recommended action. (See Table 4.11: Authorized Purchasing Benchmarks for UNC Campuses in Effect April 1, 2005.)

Additionally, the 2003 General Assembly granted additional purchasing flexibility to campuses for purchase of goods and services not covered under state term contracts when more than 50 percent of the cost of those purchases is paid for with non-appropriated funds, such as grants or contracts.¹⁶⁴ The campuses are also exempt from state oversight if less than 30 percent of the purchase price for items not subject to state term contracts is to be paid for with state appropriations or tuition funds. Under the same legislation, campuses were also allowed to opt out of state term contracts if they could obtain more favorable terms than provided under state contract. However, at least two UNC campuses appear poised to push for even more purchasing flexibility. A March 2004 report released by UNC-CH and NCSU to a legislative committee criticized the fact that UNC schools must use state term contracts at all. The report's authors recommended that the two institutions releasing the report should be exempted from the requirement to use state term contracts and that the legislature should evaluate whether the other UNC institutions should be similarly exempted.¹⁶⁵

While the university already has purchasing flexibility in terms of the dollar amount of a good or service that can be purchased without having to use the formal competitive bid process required for larger requisitions, the university also is interested in more flexibility with vendors. The university system does not participate in the state's "e-procurement" system. Robyn Render of the UNC Office of the President says that a more direct business [university] to business relationship with suppliers would be more productive and efficient for the University. Render says, "We need a more direct procurement process between the University and potential suppliers."

Table 4.11

Authorized Purchasing Benchmarks for UNC Campuses in Effect February 1, 2006

Institution	Authorized Benchmark	Date Effective
1. Appalachian State University	\$150,000	January 1, 1998
2. East Carolina University	500,000	December 1, 2003
3. Elizabeth City State University	100,000	April 1, 2005
4. Fayetteville State University	50,000	January 1, 1998
5. North Carolina A & T State University	100,000	January 1, 2000
6. North Carolina Central University	35,000	January 1, 1998
7. North Carolina School of the Arts	50,000	January 1, 1998
8. North Carolina State University	500,000	December 1, 2003
9. University of North Carolina at Asheville	50,000	January 1, 1998
10. University of North Carolina at Chapel Hill	500,000	December 1, 2003
11. University of North Carolina at Charlotte	200,000	January 1, 1998
12. University of North Carolina at Greensboro	500,000	April 1, 2004
13. University of North Carolina at Pembroke	150,000	December 1, 2003
14. University of North Carolina at Wilmington	500,000	February 1, 2006
15. Western Carolina University	250,000	April 1, 2004
16. Winston-Salem State University	100,000	January 1, 1998
17. North Carolina School of Science & Mathematics*	35,000	February 8, 2002

* The North Carolina School of Science & Mathematics is a high school, but is an affiliated institution of the University.

Note: The benchmark for North Carolina A & T State University was increased from \$35,000 to \$100,000 by the Board of Governors on November 19, 1999, effective January 1, 2000. The benchmark for the North Carolina School of Science & Mathematics was increased from \$10,000 to \$35,000 by the Board of Governors on February 8, 2002, also effective February 8, 2002. Benchmarks for East Carolina University, North Carolina State University, and the University of North Carolina at Chapel Hill, respectively, were increased from \$250,000 to \$500,000 by the Board of Governors on November 14, 2003, effective December 1, 2003. The benchmark for the University of North Carolina at Pembroke was increased from \$35,000 to \$150,000 by the Board of Governors on November 14, 2003, effective December 1, 2003. The benchmark for the University of North Carolina at Greensboro was increased from \$150,000 to \$500,000, and the benchmark for Western Carolina University was increased from \$100,000 to \$250,000 by the Board of Governors on March 19, 2004, effective April 1, 2004. The benchmark for Elizabeth City State University was increased from \$35,000 to \$100,000 by the Board of Governors on May 13, 2005, effective April 1, 2005. The benchmark for the University of North Carolina at Wilmington was increased from \$200,000 to \$500,000, effective February 1, 2006.

Source: University of North Carolina, Office of the President, Finance Division



Karen Tam

UNC Vice President for Information Resources and Chief Information Officer Robyn Render at a meeting in Chapel Hill

Although the General Assembly has not yet given the UNC system all of the control over purchasing that it wants, the 2001 legislature did direct the Joint Legislative Education Oversight Committee to study whether management flexibility for those institutions should be expanded to include purchasing responsibilities.¹⁶⁶ According to Jeff Davies, the university welcomes this study and believes it a good approach for identifying where there are ways to improve the effectiveness of purchasing in the state. “We all look forward to that report,” says Davies. “What we’ll have is a thorough assessment that will be beneficial for all of us.” The Joint Legislative Education Oversight Committee did not take up the matter in time to report to the 2003 session of the General Assembly because it did not have enough time between legislative sessions (the 2002 session ended in December and the 2003 session began in January) to complete the study.

Finally, as mentioned earlier in this section, a separate purchasing system was established in 1999 for state government purchases of information technology goods and services. Unlike most other state agencies subject to the state’s Purchase and Contract requirements (for purchases over threshold amounts), the UNC system is

exempt from the jurisdiction of the Office of Information Technology Services (ITS) by law.¹⁶⁷ Robyn Render says the university needs the exemption because “higher education has a need for multiple and even competing technologies.” She says, “In the past, there has been a lack of appreciation for the difference in what a university uses information technology for and what an agency may need for straight staff work.” Although the university is exempt from the jurisdiction of ITS, a memorandum of understanding was signed in May 2000 between Information Technology Services and the University System that ITS would review the respective institutions’ IT purchases when those purchases exceeded threshold amounts for each campus.¹⁶⁸ “We’ve made a lot of progress,” Render says. “There is better focus and understanding now, and ITS is in a position to negotiate with the universities.”

According to Render, the University also has recently secured the ability to lease equipment and now has the option to participate in state contracts or in independent contracts with vendors. In addition to improvements for the University System as a whole, the 2001 General Assembly allowed the Board of Governors to extend management flexibility for planning, acquisition,

implementation, and delivery of information technology and telecommunications to the local campuses.¹⁶⁹ However, after establishing “policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at the institution,” the statute says each campus board of trustees must “submit all initial policies and rules. . . to Office of Information Technology Services for review.” ITS also must review “any subsequent changes to these policies and rules” made by the boards.

State Chief Information Officer George Bakolia wrote UNC’s Render on October 9, 2003 referencing the statute requiring the campuses to report to his office, saying, “please advise me of the status of these policies and rules, and your plans to comply with the statute. . . .” By October 10, 2003, the Board of Governors had granted this additional management flexibility for information technology to 14 of the 16 constituent institutions (all but the School of the Arts and UNC-Pembroke). None of the constituent institution’s Boards of Trustees given this flexibility by the Board of Governors had submitted either initial policies or changes in policies to the Office of Information Technology Services as of October 27, 2003 according to a letter from Render to Bakolia. “[N]o campus has implemented any policy or rule as a result of this [management flexibility] authorization,” says Render.

Having a separate information technology (IT) purchasing process has yielded different rates of spending for UNC compared to other state agencies. Spending by UNC campuses on information technology rose at more than twice the pace of IT spending by 30 other state agencies. In a report by the Office of State Controller, Robert L. Powell, released on September 30, 2004, UNC campuses increased their spending on information technology from \$283 million in the fiscal year ending June 30, 2000 to \$335 million in FY 2004 — an increase of 18 percent. By contrast, 30 state government, non-university agencies, departments, and commissions increased their information technology spending by 8.6 percent during the same period. The Controller found IT spending at East Carolina University up 29 percent, at N.C State University up 21 percent, and at UNC-Chapel Hill up 19 percent. Additionally, the Controller found that the UNC system spends a larger share of its IT funds on salaries and fringe benefits (46 percent) than other state agencies (34 percent). UNC campuses also pay their technology employees (\$56,566) an average of \$5,300 less a year than similar workers in state agencies (\$61,855). However, UNC campuses spend less for equipment purchases, application development, and telecommunications than other state agencies, according to the report.¹⁷⁰ Robyn Render, Vice President for Information Resources for the UNC system, told *Triangle Business Journal* that UNC’s higher rate of spending is due to “continued increases in student enrollment. . .” and extensive new construction projects.¹⁷¹

3. More Control Over Personnel

a. UNC’s Complaints About the State Personnel System

As of January 6, 2004, the state University system employed 20,080 (22.64%) of the 88,675 state employees subject to the State Personnel Act — more state workers subject to the personnel act than any other state agency.¹⁷² The Department of Correction has 20 percent of all state workers subject to the Personnel Act, and the Department of Health and Human Services has another 18 percent. The 16 UNC campuses must follow rules outlined in the State Personnel Act¹⁷³ for recruiting and hiring employees — rules which university leaders say do not always fit the peculiarities of academic life. Among the problems cited by Kitty McCollum, UNC-General Administration’s Associate Vice President for Human Resources and University Benefits Officer, are the following:

- N.C. General Statute 126-5 (c1) states that, except for the law’s sections conferring certain privacy and equal opportunity protections, the State Personnel Act does not apply to “instructional and research staff, physicians, and dentists of The University of North Carolina,” nor to “[e]mployees whose salaries are fixed under the authority vested in the Board of Governors” under specific statutes (which apply to chancellors;¹⁷⁴ vice-chancellors, senior academic and administrative officers, and persons having permanent tenure;¹⁷⁵ the UNC President, a UNC system senior vice-president, and “other vice-presidents and officers as may be deemed desirable” who are elected by the Board¹⁷⁶). The means the University has more flexibility than other state agencies in the personnel arena. Yet, McCollum says the laws which list positions that are exempt from the State Personnel Act do not clearly define the categories that relate to employment in higher education, such as admissions and financial aid. To improve this situation, university leaders have presented proposals to the General Assembly and the State Personnel Office to exempt positions for which applicants are recruited on a national basis, that are professional in nature, or are typically not in the classified work force.
- The state Personnel Commission sets the rules for the university employees who are subject to the State Personnel Act. These employees occupy executive, administrative, managerial, and professional positions ranging from accountants, development officers, and computing consultants to physician extenders, social workers, and clinical nurses. They also fill positions in technical and paraprofessional fields, such as computer systems administration, dental hygiene, laboratory management, and electronics. Other employees subject to the Act are secretarial and clerical staff, service occupations, skilled craftsmen, and maintenance personnel. On the other hand, the

Board of Governors sets personnel policies for chancellors, senior academic and administrative officers, and university faculty members who are exempt from the State Personnel Act. This dual system results in a division of responsibility that McCollum says “impedes the university’s ability to effectively and efficiently manage its human resources.”

- The Office of State Personnel requires what UNC leaders contend is “excessive documentation” for transactions requiring that agency’s approval. For example, UNC-Chapel Hill’s Merit-Based Recruitment and Selection Plan¹⁷⁷ requires that “[a] record in a format useful to the University and acceptable to the Office of State Personnel will be maintained for each selection or canceled vacancy for a minimum of three years. Each record consists of the:
 - job analysis (if any) conducted for the vacancy, including any additional knowledge, skills and abilities and/or selective criteria that resulted from the job analysis;

UNC Board members Brad Adcock and Brad Wilson



- vacancy announcement recruitment sources;
- selection tools and criteria applications received;
- priority re-employment inventory/register Referral Record; and
- listing of applicants who are not qualified, qualified, and most qualified.

The plan also requires the UNC-Chapel Hill Human Resources staff to “comply with the reporting and plan update requirements of the Office of State Personnel,” in addition to providing annual summaries of personnel recruitment and selection activity for the UNC-CH chancellor.

- The existing state classification system does not “adequately recognize the current roles and responsibilities in a university setting, especially with respect to research (i.e., grant-funded) and student services positions,” McCollum says. An example cited by former UNC Vice President for Human Resources Ronald G. Penny (who had previously served as State Personnel Director and as an attorney for Elizabeth City State University) involves laboratory technicians that work for state agencies and those that work for the university. “They have lab techs (laboratory technicians) in the Department of Agriculture, and they have them in the Department of Environment and Natural Resources. One series of lab techs may indeed go out and collect samples and then come back to the lab on a routine basis. Our [the university’s] lab techs may have a completely different kind of world in which they are not following a defined protocol but instead discover something new and then have to make a decision about the next analytical tool they must use. Therefore, they have more independence of judgment. In the state system, I have to treat that lab tech — the one with more independence of judgment — just as I’m treating these other lab techs even though I’m expecting more from this other lab tech,” Penny explains. “I’m expecting my lab tech to use a lot more independence of judgment, a stronger analytical ability, maybe even, in many instances, higher education credentials. So, we still have a basic problem of trying to fit a system that is designed primarily against the evils that can come with politics onto a world that doesn’t have those evils.” University officials also believe that research personnel at other state agencies are involved in more limited research that does not change as rapidly as it does in a university setting. And, unlike student services positions at the state’s universities, such positions in the public school system are said to differ because public school employees are exempt by law from the State Personnel Act. Still, part of the University’s argument is negated by the fact that N.C. General Statute §126-5(c1)(8) exempts employees of the patient care programs at the UNC and ECU Schools of

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Medicine and employees of the UNC Health Care System from most provisions of the State Personnel Act.

- Current state personnel rules make it difficult to react to employment market trends affecting universities, says McCollum. She says there is no merit-based system for allocating annual salary increases to university employees covered by the State Personnel Act, and the current performance evaluation system is not “conducive to a university environment.” She adds, “Institutions are not permitted to develop their own evaluation programs.” The UNC system also finds it difficult to develop benefits packages that are competitive with peer institutions since oversight of these programs is divided among several state offices, including the Office of State Treasurer (for the retirement system), the State of North Carolina

Teachers’ and State Employees’ Comprehensive Major Medical Plan, and the Office of State Personnel (for flexible benefits).¹⁷⁸

McCollum and other UNC leaders emphasize that legislation enacted in 1991 allowing more flexibility in university personnel policies¹⁷⁹ has led to greater cooperation between the Office of State Personnel and the university system. The new law established standards under which campus chancellors could create and abolish personnel positions. Positions subject to the State Personnel Act could be added or deleted, provided the chancellor complies with State Personnel policies and procedures and permits “[t]he results achieved by establishing and abolishing” the positions to “be subject to postauditing by the Office of State Personnel.”

The UNC system also has been delegated the authority for approval of personnel actions through an agreement with the State Office of Personnel.¹⁸⁰

State Personnel Director Thomas Wright [not the N.C. Representative from Wilmington with the same name] says, “UNC has a 100 percent delegation agreement to reclassify, reallocate, etc. positions, without our [the state Office of Personnel] approval. They can reallocate positions and salary levels as long as it’s within the rules of the state system. The UNC system doesn’t really come to us for approval on anything, they are totally independent in what they are doing anyway.”

The University argues that it’s such “rules of the state system” that pose a challenge and that the system needs to be fixed. According to Kitty McCollum, even under the delegation agreements, there are personnel transactions that cannot be delegated or that do require Office of State Personnel approval, including the creation of new classification titles that are unique to higher education, unique to a campus, or in research areas where new skills or technology are utilized.

Leaders from the State Personnel Office and the university have formed an advisory board that is looking at ways the state personnel system can be made more responsive to university concerns. Some of these concerns

“The goal is not to get separated from the state plan. The goal is to get better benefits. . . . What we’re saying is, for this pilot program, let us control the premiums we charge for employees and their families.”

—UNC VICE PRESIDENT AND
GENERAL COUNSEL LESLIE WINNER



Karen Tam

include making salaries and benefits more competitive, allowing for portable retirement plans, and autonomy from the state's classification system.

In terms of more competitive salaries, former UNC Vice President for Human Resources Ron Penny speaks from his former experience as State Personnel Director to the state's method of establishing a pay scale and how that affects the university. "One of the issues is that when State Personnel surveys salaries, they tend to survey only in North Carolina. So if we're trying to attract people from outside the state, there is not a national benchmark, it's a North Carolina benchmark. Second, they [the Office of State Personnel] tend to survey employers all over the state. Therefore, you are going to have the Triangle employers, the eastern North Carolina, and the western North Carolina [employers]. The Triangle tends to have the highest rates, while the far east and far west tend to have lower rates. What you end up with is a weighted average, but that weighted average still means that your salary will be below the Triangle rate and above the eastern and western rates," says Penny.

He says the differences between campuses are "enough so that the western and eastern people are saying these rates are too high in some instances. In other instances, they are too low because the more professional the job, the harder it is to get people to go to the east or to the west, and therefore they have to pay more. They would then flip the coin and say I'm not paying enough. It tends to bring the average down so that it's too low for Raleigh but too high typically for some of the other areas. Therefore, you don't come up with a salary that is good for anyone. If you are going to create a new world, what you are going to do is look at the human resource values that you are trying to protect or foster. What is it that you want to make sure is protected for employees, what is it that you want to promote? Then you set policies that seek to protect and foster those, but allow each campus the ability to then design a program within it."

With regard to position classification, Penny says, "The state has put in place a system that sort of defines everything, and therefore it takes away the ability for someone to look at credentials and say, 'yes, she only has three years of experience, but that experience is of a higher quality.' They [the Office of State Personnel] will say she has six years and she has three, I'm going to pick the one that has six because the numbers are there. But if that six isn't of the same quality, the person with three could be better prepared for the unique job." Penny adds, "We can't change that. The system requires that we administer it consistent with rules." Acknowledging that the rules are hard to change, even for the Office of State Personnel, Penny says, "If they [the Office of State Personnel] wanted to change a period to a comma in their rules it would take them probably until June of next year (7 months) because it has to go through the administrative procedures process. It's

*"I don't know how they're going to pay for it.
From what I've seen, it is a Mercedes plan,
and we're on a bicycle budget."*

— JACK WALKER
FORMER EXECUTIVE ADMINISTRATOR
OF THE OVERALL STATE EMPLOYEES' HEALTH PLAN

just very difficult to run a State Personnel Office, even if they overhaul it and got it right, personnel change is dynamic."

Ron Penny does note the advisory board's effort to identify state personnel regulations that could be handled at the university level but says "there are some instances in which the universities are different from other state agencies, and there are some instances in which there are perceived differences that aren't really there." For example, the division of responsibility between the State Personnel Commission and the Board of Governors in managing university employees is "not unique to the university," Penny says. "Each state agency is run by people who are elected by the state of North Carolina [or are appointed by the Governor].¹⁸¹ So they have to abide by the legislature's desires as well as the rules of their own agencies." He adds that policies such as merit pay are determined by the legislature, not the State Personnel Office, as are benefits such as insurance and health care coverage. Paid leave is one employee benefit affecting university employees that the Personnel Office has agreed to review.

As part of its 2005–06 legislative package, the UNC Board of Governors seeks legislative approval for an experiment in which it would create its own employee health insurance program. Under this proposal, the university system would provide health insurance directly to 37,000 state university employees and about 24,000 dependents. UNC says it hopes to drive down costs by using university hospitals, pharmacies, and fitness centers, and it wants to place a greater emphasis on wellness and preventive health care. A consultant's report provided to Board members said the pilot program might restrict choices of doctors and hospitals. UNC leaders also want to broaden the university's insurance plan to compete for faculty recruited from other states.

"The goal is not to get separated from the state plan. The goal is to get better benefits," said Leslie Winner, the University system's general counsel. "We're not trying to break off, but we're not just trying to tinker with it either. What we're saying is, for this pilot program, let us control the premiums we charge for employees and their families."¹⁸²

Jack Walker, former executive administrator of the overall state employees' health plan was skeptical of



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UNC Associate Vice President for Finance James Smith at a Board of Governors meeting in Chapel Hill

UNC's plans. "I don't know how they're going to pay for it," he said. "From what I've seen, it is a Mercedes plan, and we're on a bicycle budget."¹⁸³

The State Employees Association of North Carolina also said it was uncertain whether the UNC proposal would cover retirees, the most expensive group to insure. Sherry Melton, the association's communications director, said covering younger, healthier, active university employees and not covering older, sicker retirees would drive up costs for everyone else in the Teachers' and State Workers' Comprehensive Major Medical Plan. Melton added, "Obviously, we would have a problem with that."¹⁸⁴

b. State Personnel: Reform for the Whole System, Not Dual Systems

State Personnel Director Thomas Wright agrees that the state personnel system is in need of reform. "I can see where the UNC system is coming from, but all state agencies have the same issues," says Wright. "There is a need for the state to start at ground zero and revamp the whole state personnel system but not to have UNC and other agencies cut bait and run. If they [the UNC System] are given an option to pull out, then the other

agencies should be as well." Wright also notes that there would be an advantage to the UNC system if they had their own personnel system, but that such an advantage could come with reform at the state level. He says, "The benefit of the UNC System having their own personnel structure is that they could be more market competitive not just in salary, but in retirement, personal and sick leave issues, health insurance, etc. However, the state as a whole needs to embrace modern practices. We recognize that one size does not fit all. That is why we need to look at the state's system." The General Assembly passed legislation in 2001 that authorized the Legislative Research Commission to study the state's overall system of personnel administration.¹⁸⁵ The 2001 General Assembly also asked the Joint Legislative Education Oversight Committee to study whether management flexibility for special responsibility constituent institutions — which now includes all 16 campuses — should be expanded to include personnel issues.¹⁸⁶ The 2001–02 General Assembly did not have enough time between sessions to study these issues. A 2002 advisory opinion by the N.C. Attorney General's Office underscored that the intent of the legislation establishing the single statewide employee benefits plan was to avoid competition between state agencies with regards to providing benefits.¹⁸⁷

Senate Appropriations Committee Co-Chair Walter Dalton (D-Rutherford) does not close the door on the idea of additional management flexibility in personnel for the University but thinks the issue should be studied in the context of the entire state personnel system. Dalton says, "I'm open to studying the issue, but we need to compare what we would be doing with the rest of the nation, and assess the impact of it on the University as well as the rest of state government." Pulling the University out of the state personnel system could create ill feelings among state workers from other agencies, especially those most affected by the recent years of continuous budget cuts and more work for fewer workers. Senator Dalton says, "The morale issue [for all state workers] has to be considered when we look at the state personnel system."

UNC President Molly Broad points out that public universities in many other states have their own personnel systems that are not linked to state personnel agencies. She says, "That is one example of a longstanding practice" in higher education that could be replicated in North Carolina. She says the development of new information technologies and the Internet have opened up new areas for management reform in areas such as personnel. But Broad says that UNC has not yet "adequately made the case to change the statutes" regarding state rules the University must follow. Instead, UNC leaders are trying to garner legislative and state agency support for incremental steps toward greater management flexibility for the University system. "At some point in time, I'd like to see that shift to a full-fledged study or report that says, here are the best practices by universities, and here's what we do," Broad says. "The sooner we are persuasive, the better for the University and the state."

c. New York as a Model?

President Broad notes that a similar effort to eliminate red tape was successfully undertaken some years ago by the State University of New York (SUNY) system. A blue-ribbon commission was created with the backing of the Governor and the New York legislature to study statutory provisions and regulations that were hampering the university's ability to manage its affairs effectively. Under the New York system, each of the SUNY campuses now is responsible for its own faculty and professional recruitment and staffing procedures. Two groups of university employees are exempt from the state's civil service laws: (1) management and confidential employees who are designated as such by the SUNY board of trustees or SUNY chancellor under state law, and (2) faculty and non-teaching staff who provide "professional services" and who are certified by the SUNY chancellor as such to the state civil service commission.¹⁸⁸ The professional services group is represented by a union — the State University Professional Services Negotiating Unit. All other SUNY employees

— which consist primarily of clerical and technical support staff, entry level administrative positions, and other support functions such as maintenance, operation, and security — are considered nonprofessional "classified staff" and are subject to the state civil service laws. Recruitment procedures for these positions are governed by the civil service laws, administrative regulations, and agreements negotiated with various unions representing public employees. University vacancies in these positions are filled in cooperation with the Department of Civil Service, which tests and grades applicants for initial hire and promotion and coordinates the filling of vacancies across all state agencies.

Nonetheless, the SUNY board of trustees has considerable authority over nonprofessional staff positions at the various campuses. Under state law, the board sets a schedule of positions and salaries governing new appointments to nonprofessional services positions, and the trustees can remove individual positions or groups from these schedules.¹⁸⁹ The board can transfer nonprofessional positions from one institution in the state university system to another, can make employee promotions, and can adjust salaries when reallocating nonprofessional positions.

Although some university leaders in North Carolina would prefer that UNC be able to operate free of the constraints of state personnel regulations, current efforts are aimed at streamlining particular rules without removing public accountability safeguards. President Broad suggests that UNC and state agency leaders could explore some of the measures taken by higher education systems in other states to ease red tape and increase the efficiency of their institutions. She notes that national consulting agencies and associations have experience with helping higher educational systems streamline their management practices. "We're in a time, as in every other industry, where the old rules don't work anymore," Broad says. "Given the budget constraints we now face, all of us are going to have to think about different ways of doing business."

President Broad cited recent legislation freeing the UNC Health Care System from some of the state personnel regulations governing the rest of the university system as a good step toward needed reform in North Carolina. A special provision buried in the 348-page state budget bill enacted by the General Assembly in 1998 loosened management rules and created a separate

*"The morale issue [for all state workers]
has to be considered when we look at
the state personnel system."*

— WALTER DALTON (D-RUTHERFORD)
CO-CHAIR, SENATE APPROPRIATIONS COMMITTEE

Sidebar 4.4

Property Tax Exemption for University-Associated Nonprofits

In August 2004, nonprofits associated with public higher educational institutions were granted an exemption from local government property taxes in North Carolina by the legislature, an advantage not accorded to the nonprofits controlled by any other state agencies except the community colleges. The exemption is related to a dispute between Appalachian State University and Watauga County. A nonprofit entity, Appalachian Student Housing Corporation, which was created by Appalachian State University for the purpose of constructing and operating a privately-funded dormitory, requested property tax exemptions from the Watauga County Board of Commissioners for tax years 2001 and 2002. The county board denied the exemptions. Appalachian Student Housing Corporation subsequently appealed to the North Carolina Property Tax Commission. In March 2003, the tax commission ruled in favor of the county, saying, "The operation of a student housing facility is not a use that qualifies under the statutes of North Carolina as an educational purpose" and that "the subject student housing facility is not owned by Appalachian State University[.]"

Appalachian Student Housing Corporation appealed the tax commission's decision to the N.C. Court of Appeals. On July 20, 2004, a three-judge panel comprised of Chief Judge John C. Martin and Judges Robert C. Hunter and Alan Z. Thornburg ruled in favor of Appalachian Student Housing Corporation. The court overturned the property tax commission's finding that the state didn't own the nonprofit's property since the property was held in trust for the exclusive benefit of Appalachian State University and further expressed "strong disagreement" with the tax commission's assertion that student housing didn't qualify as an educational purpose.

Meanwhile, Senator Tony Rand (D-Cumberland) had filed a bill in the legislature on March 3, 2003 to exempt all property held in trust by nonprofits for institutions of the University from local property tax. A version of the bill approved by a Senate committee in May 15, 2003 retroactively applied the exemption to July 2001. As of May 2003, when legislative researchers estimated the fiscal impact of the bill, six of the 16 constituent institutions of the University of North Carolina had formed nonprofit organizations that qualified for the property tax exemption. Legislative researchers reported that nonprofits already existed at Appalachian State University, Fayetteville State University, the N.C. School of the Arts, N.C. A&T State University, UNC-Pembroke, and Winston-Salem State University, and that North Carolina Central University was in the process of developing such an organization.¹ After rewriting the bill to apply to nonprofit organizations using property for educational purposes for the benefit of UNC, the community colleges, or other institutions of higher education, stating that providing student housing was an educational purpose, and making the bill effective beginning July 1, 2004, the General Assembly ratified the bill on July 19, 2004 — ironically, one day before the Court of Appeals ruled in favor of Appalachian Student Housing Corporation. The bill was signed into law by the Governor on August 2, 2004.²

Footnotes

¹ Linda Struyk Millsaps, *North Carolina General Assembly Legislative Fiscal Note SB 277 (SCS)*, May 15, 2003, p. 2.

² 2004 Session Law 2004-173 (Senate Bill 277).

board to govern operations at the UNC Health Care System.¹⁹⁰ An editorial written while the changes were being considered noted that "[h]orror stories abound of the [UNC] hospital having to wait six months to hire a key employee or buy medical equipment, while Duke Medical Center is out snapping up hospitals and medical practices."¹⁹¹ "We can't be like Nero sitting around with our fiddle while Rome is burning. We've got to change too," stated UNC President Broad while the General Assembly was considering the proposed changes.¹⁹²

After the change in the hospital law was approved, she said, "We got relief for that entity. I've made it clear to them that if they can be the exemplars of some best practices, the hospital could be a demonstration project" for how greater management freedom can make the university system more efficient.

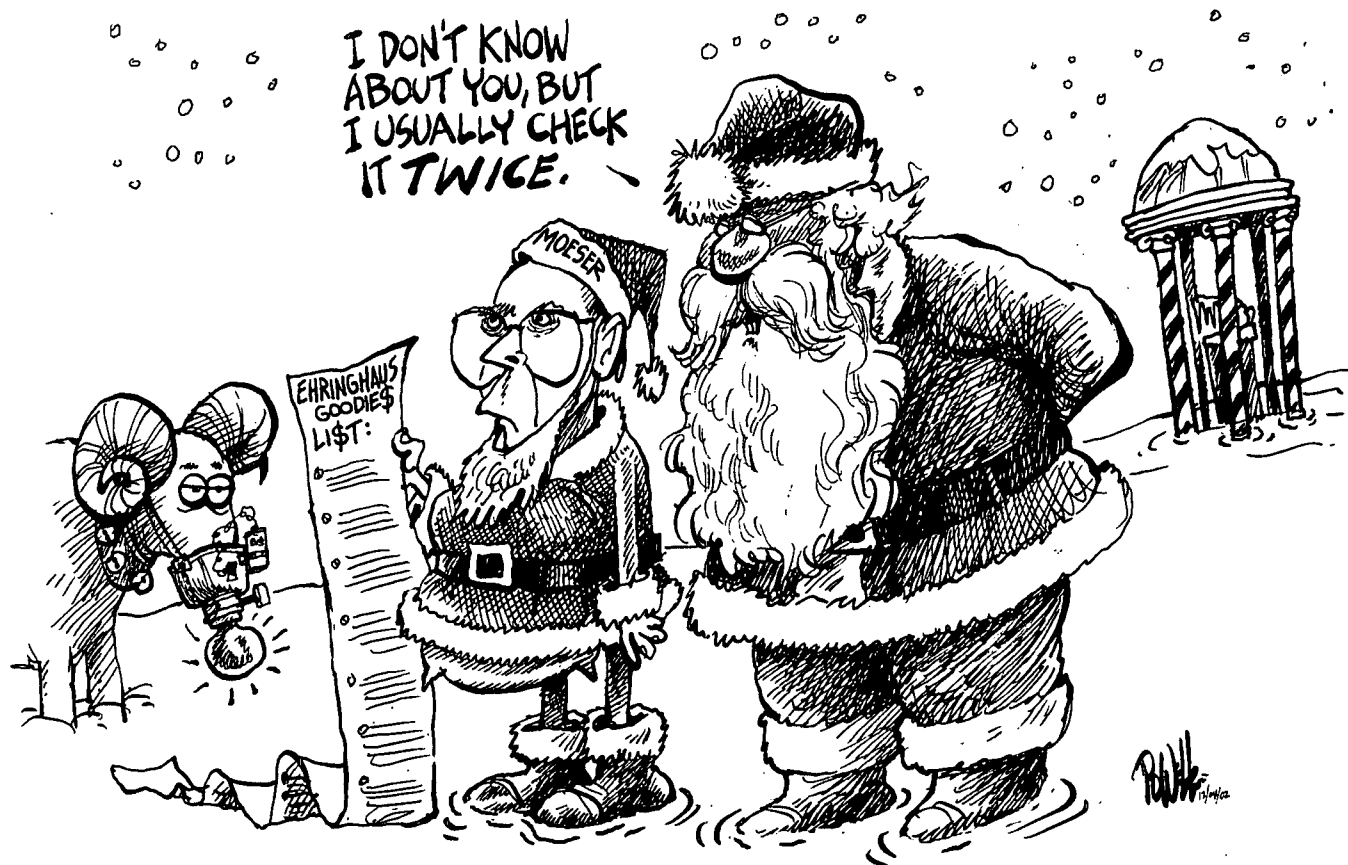
Not everyone sees UNC's requests for more flexibility in personnel systems as positive, however. First, the New York personnel system cited as a model by President Broad operates in a state that is heavily union-

ized, unlike North Carolina. Second, UNC Health Care System employees and their advocates have questioned whether giving UNC administrators the same management powers as their private-sector counterparts will mean lower wages for hospital workers and a lower quality of care for hospital patients.¹⁹³ Also, UNC Health Care System's 1999 purchase of Raleigh's private Rex Hospital and Duke University's lease of Durham Regional Hospital and purchase of Raleigh Community Hospital in 1998 raised concerns that UNC would be, in effect, dividing the Raleigh-Durham-Chapel Hill area's landscape into two competing hospital camps.¹⁹⁴ Others wondered whether the changes enacted in 1998 might impede UNC's historic mission of serving the indigent and uninsured, for which it received more than \$38.4 million¹⁹⁵ in state money in 2003-04.¹⁹⁶ Regardless of how these issues are dealt with, it is not certain that these changes in UNC Health Care System's legal status will offer much of a precedent for the rest of the UNC system. Although the UNC Health Care System bears some similarities to the rest of the university — such as its responsibility to conduct research and train new health care professionals — it is dissimilar in numerous ways. The UNC Health Care System is competing mostly with the *for-profit sector* and must respond swiftly to market conditions in a highly competitive environment. Public universities generally compete only

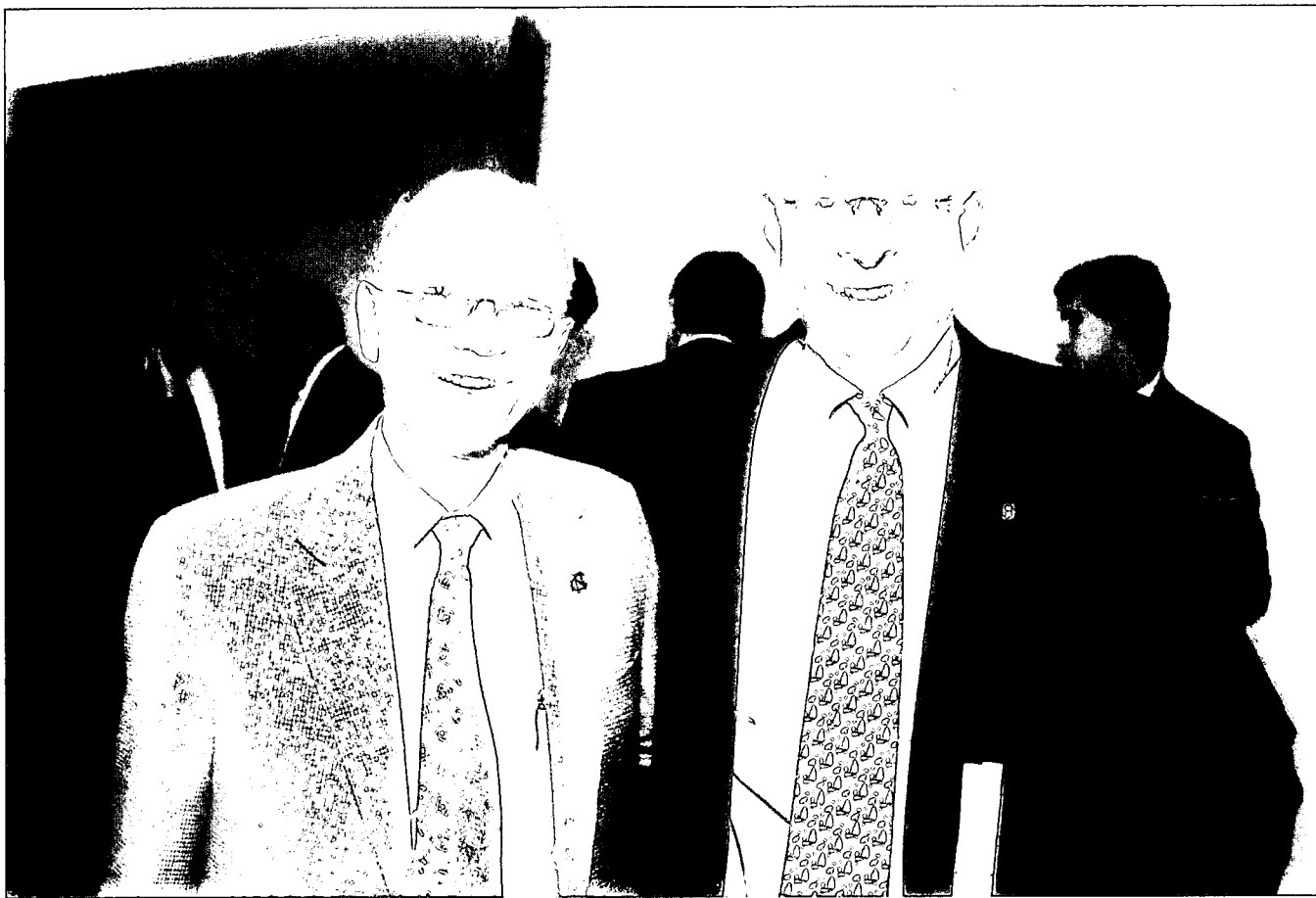
with other public universities or with private colleges and universities in the *nonprofit sector*.

Third, recent handling of personnel issues by campus administrators has raised red flags with legislators about the wisdom of granting increased flexibility on personnel decisions to the University. For example, when most state employees got a flat pay raise of \$625 in 2001, employees closest to UNC-Chapel Hill Chancellor James Moeser and former N.C. State Chancellor Marye Anne Fox received pay raises ranging from \$9,375 to \$30,340.¹⁹⁷ After the pay hikes came to light in 2002, future Co-Speaker of the House Richard Morgan (R-Moore), called the raises "bait" for legislators looking for places to cut spending. Morgan says, "Situations like these that have been popping up at different campuses have given rise to legislators talking more about the university system. I happen to think the university is an important and cherished asset to the state. But we expect the people who run the campuses to show good judgment."¹⁹⁸

However, on October 10, 2002, UNC-Chapel Hill Chancellor James Moeser inked an employment separation agreement worth \$313,908 with Susan Ehringhaus, former General Counsel and Vice Chancellor.¹⁹⁹ Under the agreement, Ehringhaus would still work for the institution, but in a different job. Following a round of public criticism, Moeser publicly apologized for the deal



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UNC-Chapel Hill Chancellor James Moeser and N.C. State University Chancellor James Oblinger

and announced that the money to pay for the arrangement would come from private sources instead of public appropriations. After meeting with Moeser to discuss the matter, UNC President Molly Broad and several members of the Board of Governors acknowledged the legality of the agreement but denounced the settlement as “excessive and indefensible.” UNC Board of Governors Chairman Brad Wilson issued a written statement about the agreement, saying, “It reflects poorly — and unfairly — on the entire University of North Carolina.” In a later interview on the matter, Wilson said, “I am concerned about the impact it has had on [the University’s] image and what it may mean for the upcoming legislative session.”²⁰⁰

Then, in October 2004, State Auditor Ralph Campbell released an 85-page special review of the North Carolina School of the Arts and its foundation. The Auditor’s report found that a personnel department employee with an annual salary of \$49,412 was paid \$69,112 for inadequately documented overtime during a 29-month period, that the school inappropriately reclassified a position twice in the personnel department without required approval from UNC, that the school overpaid a personnel assistant because of incorrect overtime calculations, that a personnel analyst approved per-

sonnel actions (including overtime and one-time payments) for her sister, and that the school inappropriately paid 20 employees special one-time payments amounting to more than \$53,000, mostly for work that appeared to fall within the scope of their regular jobs.²⁰¹

The Auditor’s review also said that state and university-affiliated foundation money was used to fund three spending accounts not reported to foundation board members. Expenses totaling \$269,224 were paid from these accounts for cell phone bills, country club memberships, and \$15,000 in lease payments for a Cadillac Escalade for former Vice Chancellor for Finance and Administration Joseph L. Dickson. Dickson also received more than \$90,000 for consulting and expenses over 13 years from the foundation in violation of university policies. Dickson transferred three acres of land without authorization, resulting in the misapplication of \$108,000 from the foundation. He also misapplied \$177,945 from the foundation related to five houses that had been donated. Subsequently, \$25,000 was used as a down payment for a \$1 million condominium intended as a new residence for Chancellor Wade Hobgood. Finally, School of the Arts employees appeared to be abusing an employee loan program by using it as revolving lines of credit. Vice Chancellor

Dickson and two other employees have resigned. All told, the audit questioned \$987,483 in expenses and diversions.

State Auditor Campbell said the findings were as serious as any his office had released because School of the Arts employees had engaged in “willful, deliberate, and intentional” behavior and then misled state investigators. Campbell compared the situation to the corporate scandal at now-bankrupt Enron Corporation because money was shifted between related entities specifically to avoid detection and skirt state rules.

“Today, Enron is financially and morally bankrupt,” said Campbell. “Our university system cannot and should not sink to that level. This kind of situation must not be allowed to spread to our public university system, or to erode the confidence of our taxpayers and the donors to those universities.”

Campbell recommended that the Board of Governors consider revoking the school’s budget flexibility. UNC President Molly Broad did not revoke its budget flexibility but did take over financial management of the school in November 2004. She placed the school on a 90-day notice to straighten out its finances or lose its budget flexibility, which allows universities in the system to keep unspent money at the end of the fiscal year and to make certain personnel changes without state approval. President Broad described the Auditor’s findings as “deeply troubling” in her response to the Auditor.²⁰²

The proposals for additional autonomy are generally referred to as “requests for flexibility.” Legislative sentiment on this point varies. Senate Appropriations Committee Co-Chair Walter Dalton (D-Rutherford) says, “UNC has to have managers who are more effective and efficient, and [the legislature] should give them the tools they need and hold them accountable for their actions.” Dalton, though a strong supporter of the University who is open to discussing additional flexibility, also has noticed the way campus leaders have handled the flexibility already granted them, saying, “There have been occasions where decisions made by University officials have been less than optimal, but the legislature certainly doesn’t need to micro-manage.” After a September 2003 recap of University system difficulties by *The News & Observer*, House Co-Speaker Richard Morgan questioned whether management flexibility for the university system is working and indicated that other lawmakers are expressing doubts as well. Morgan said, “Enough members [of the General Assembly] are asking questions that it won’t be far off that we start asking more questions.”²⁰³

Possible moves by the legislature to examine the results of management flexibility may come as the uni-

versity pushes for more flexibility. In February 2004, the Board of Governors’ Public Affairs Committee reviewed a package of legislation to be requested in the 2005 session of the N.C. General Assembly which includes a request to “provide the authority for the University of North Carolina to create a separate university personnel system that would better reflect the needs of a multi-campus, multi-mission, higher education system.”²⁰⁴

At a March 2004 meeting of the General Assembly’s Joint Select Committee on Economic Growth and Development, UNC-CH and N.C. State jointly released a study authored by Jim Roth of Huron Consulting Group, which recommended that the legislature “widen the exemption of North Carolina’s public research universities from the State Personnel System.” Roth’s report also says, “North Carolina is increasingly an outlier [among states] with respect to research university involvement in and control by a centralized personnel system.” Even though the data presented in the report only draws comparisons between UNC-CH and N.C. State with other national research universities, Roth writes, “it is likely that other UNC campuses would also benefit from these recommendations.” Roth specifically criticizes the state personnel system for not differentiating between “nationally marketable research staff and state-focused, agency-based employees,” for not offering a flexible benefits program, for having a rigid pay scale, and for having inefficient administrative processes relying on non-automated (paper) forms.²⁰⁵

The problem, university leaders say, is a heavy burden of state regulations that UNC schools bear as public agencies. They argue they should be treated differently than other state agencies, but they have trouble saying why they should be singled out for special treatment. Leslie Winner, UNC General Administration Vice President and General Counsel and a former legislator says, “The UNC system delivers a different product than other state agencies and deals with different types of vendors. It’s not that the UNC system can’t operate under state systems. It just makes it unnecessarily more cumbersome and is not necessary for appropriate accountability.” However, every other state agency can make the same argument.

Thus, to the extent that the UNC Board of Governors argues for new powers or special treatment for the university system, it is going to have to make a compelling case for why it is different from other state agencies. It also might achieve the same powers or treatment by advocating that reform is needed for *all* state agencies in construction, purchasing and contracting, and personnel.

F. Existing Areas of Special Treatment for UNC and Cautionary Tales of Flexibility

1. Existing Areas of Special Treatment for UNC

In at least 12 ways, the university system already receives separate or special treatment that is not accorded to most other state agencies, as follows:

a. Construction and Purchasing

(1) The University system has a higher threshold (\$2 million) than other state agencies (\$100,000) for construction as well as repair and renovation projects that must be subject to management by the State Construction Office.

(2) The University system was granted special authority for "construction management at risk" in contracting for 42 construction projects approved by the voters in the November 2000 bond referendum. This special exemption by the State Building Commission preceded changes by the General Assembly that allowed other agencies to use alternative construction contracts and a more flexible bidding process.

(3) Unlike other state agencies, the University system as a whole and individual campuses are exempt from the jurisdiction of the Office of Information Technology Services, which normally oversees purchases of information technology goods and services.

b. Personnel

(4) UNC Hospitals has special flexibility on management rules, equipment, and personnel. Also, employees of the patient care programs at both the UNC-CH and ECU Schools of Medicine, as well as employees of the UNC Health Care System, are exempt from most provisions of the State Personnel Act.

(5) The State Personnel Act does not apply to "instructional and research staff, physicians, and dentists of the University of North Carolina," nor to "[e]mployees whose salaries are fixed under the authority vested in the Board of Governors, thus already exempting 44 percent²⁰⁶ of University employees."

(6) The University system has more flexibility to reclassify personnel positions and to reallocate positions and salary levels than other state agencies.

(7) UNC-Chapel Hill employees get an additional four hours of paid time each year to prepare grievances against their bosses, compared to the eight hours granted all other state employees. About 60 employees filed grievances with UNC-CH in 2003, which amounts to 240 hours of additional paid time, if each employee used it.²⁰⁷

(8) University faculty have more job security than other state employees through the tenure system, and they receive the highest pay of any category of state employees. Faculty also are allowed to augment their incomes through consulting (in which they are paid by other employers for days that they are also on state

government's payroll) and their contracts typically are for nine months of work, not 12.

c. Revenue Sources

(9) Individual campuses within the University now have the power to initiate requests to the Board of Governors for tuition and fee increases and keep the proceeds, which, in effect, means they have the power to generate and control a source of revenue separate from General Fund appropriations.

(10) The University also can issue special obligation and revenue bonds with the approval of the General Assembly for self-liquidating projects such as dormitories, parking decks, etc., which is another source of revenue not available to most state agencies.

(11) Nonprofits controlled by public higher educational institutions have been granted an exemption to local government property taxes in North Carolina, an advantage not accorded to the nonprofits controlled by any other state agencies except the community colleges.

d. General

(12) All 16 UNC campuses now have been designated as "special responsibility constituent institutions" which gives them more authority over budgeting, purchasing, and personnel and allows them to retain up to 2.5 percent of the funds not spent at the end of the fiscal year, a privilege not given to any other state agencies and one that is especially controversial during years of shortfalls in the state's budget.

2. Cautionary Tales of Flexibility

However, at least nine cases of abuses have occurred with this increased flexibility, and these instances raise questions about whether special treatment for the university system is either warranted or wise, as follows:

(1) With the budget flexibility given to "special responsibility constituent institutions," the N.C. State University Public Safety Director used more than \$2.2 million in unspent department personnel funds to make more than 100 questionable purchases over a six-year period, including TV sets, VCRs, and a mountain bike, many of which he kept in his home or truck, prompting a State Auditor's investigation.

(2) Fayetteville State University also was threatened with revocation of its management flexibility if it did not correct problems identified by the State Auditor in bookkeeping, management oversight, and financial reporting.

(3) UNC-Chapel Hill's Kenan Flagler Business School and N.C. State's Carter Finley Stadium used the availability of a mix of public and private financing to begin construction before safety inspections were completed by the N.C. Department of Insurance, thereby avoiding provisions of the State Building Code.

(4) The State Auditor said the University's decentralization of the construction oversight function had negatively affected the timeliness of the flow of information to the

State Construction Office and State Building Commission.

(5) UNC Hospitals' flexibility in construction contracts and bidding procedures resulted in a 31.5 percent increase in the estimated cost and an opening date that was more than four years behind the original scheduled completion date of November 1997. When the legislation granting special flexibility to UNC Hospitals passed in 1998, President Molly Broad said, "We got relief for that entity. I've made it clear to them that if they can be the exemplars of some best practices, the hospital could be a demonstration project" for how greater management freedom can make the university system more efficient. This is not exactly the poster child for flexibility she hoped it would be.

(6) Inadequate oversight of spending in a scholars program for doctors at UNC-Chapel Hill is now the example that the Robert Wood Johnson Foundation (which funded the program) uses in how not to manage the proceeds from the foundation's grants to similar programs.

(7) In the middle of an acute state budget shortfall when most state workers only got a flat pay raise of \$625, Chancellors at NCSU and UNC-Chapel Hill gave sizable pay raises ranging from \$9,375 to \$30,340 per year to some of their immediate subordinates.

(8) UNC-Chapel Hill Chancellor James Moeser signed an employment separation agreement worth \$313,908 with his former General Counsel that the Chairman of the Board of Governors described as "excessive and indefensible."

(9) The State Auditor discovered nearly \$1 million in financial abuses at the N.C. School of the Arts that included spending on cellular phone bills, country club memberships, lease payments for a Cadillac Escalade for a Vice Chancellor, undocumented overtime expenses, special "one-time payments" to 20 employees, a down payment on a condominium to be used as a residence for the Chancellor, undisclosed accounts, and questionable real estate transactions between the institution and its related foundation and nonprofit entities — practices the Auditor described as "Enron-style." President Broad described the findings of the special review as "deeply troubling" and took over financial management of the school in November 2004.

These situations raise questions about special grants of flexibility being given to the University system as a whole or to the 16 campuses individually and about whether the larger research universities are any more likely to avoid problems than the smaller campuses. If the University system is to be treated differently from other state agencies, then it should be made only after a study commission has examined state construction, purchase and contract, and personnel procedures, and found either that the systems need to be modified and updated for all state agencies or that the University system has made a compelling case that standard state government oversight should not apply to them and that instances of special grants of flexibility can be handled efficiently and managed well.

Footnotes

¹ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research: Raleigh, NC, 2000, p. 115.

² N.C. General Statute §116-11.

³ N.C. General Statute §116-14.

⁴ N.C. General Statute §116-15.

⁵ N.C. General Statute §116-33.

⁶ N.C. General Statute §116-37.1.

⁷ N.C. General Statute §116C.

⁸ Chapter 123 (SB 735) of 2001 N.C. Session Laws.

⁹ N.C. General Statute §115D-5.

¹⁰ Waller *et al.*, note 1 above, p. xii.

¹¹ Chapter 649 (HB 1058) of the 1979 N.C. Session Laws and Chapter 212 (SB 1366) of the 1998 N.C. Session Laws.

¹² UNC Board of Governors, *The Code*, Section 202, Chapel Hill, NC, May 5, 1999. The Delegations of Duty and Authority to Boards of Trustees are contained in Appendix 1 on pp. 39-43 of *The Code*. See Appendix B of this report for a copy of *The Code*.

¹³ The proposal to reduce the number of board meetings did not pass unanimously. In speaking against the change, Board member John Sanders said he thought the "personal relationships important" to the Board's operations would be weakened as the Board "delegates more to others and meets less frequently." Stating that he "anticipates challenges to the Board structure," he added, "Our credibility is important and we need to stick closely to our work. . . . We don't help make our case by cutting back on the number of times we meet."

¹⁴ *The Code*, note 12 above, pp. 5-7.

¹⁵ *Ibid.*, Section 202 F, p. 7. *The Code* does not alter the duties created either by statute or the State Constitution, and Board members have no authority to amend or suspend such duties.

¹⁶ *Ibid.*, Section 301, pp. 10-11.

¹⁷ "Management flexibility to appoint and fix compensation" is a set of personnel powers and authority, which includes granting tenure and writing tenure policies that the Board of Governors is allowed to delegate to campuses who have been designated "special responsibility constituent institutions" and was granted to UNC-Charlotte and UNC-Greensboro on September 13, 2002; to East Carolina University, North Carolina State University, UNC-Asheville, and UNC-Chapel Hill on November 8, 2002; to Western Carolina University on March 21, 2003; to UNC-Wilmington on January 9, 2004; to Winston-Salem State University on February 13, 2004; to Appalachian State University on November 12, 2004; and to UNC-Pembroke on August 12, 2005.

¹⁸ UNC Board of Governors, *Minutes of the August 11, 1998 Board of Governors meeting*, UNC General Administration, Chapel Hill, NC, Appendix D.

¹⁹ For a more detailed discussion of the events that surrounded the ECU medical school controversy, see Barbara Solow, *Reorganizing Higher Education in North Carolina: What History Tells Us About Our Future*, N.C. Center for Public Policy Research, Raleigh, NC: 1999, pp. 50-51.

²⁰ *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973). Litigation began as *Adams v. Richardson*, 351 F. Supp. 636 (D.C. Cir. 1972). *Adams* has gone through many name changes in its history as evidenced by the following list: *Women's Equity Action League v.*

Cavazos, 906 F.2d 742 (D.C. Cir. 1990); *Adams v. Bennett*, 675 F. Supp. 668 (D.C. Cir. 1987) *rev'd sub nom.*, *Women's Equity Action League v. Cavazos*, 879 F.2d 880 (D.C. Cir. 1989); *Women's Equity Action League v. Bell*, 743 F.2d 42 (D.C. Cir. 1984); *Adams v. Bell*, 711 F.2d 161 (D.C. Cir. 1983) (en banc), *cert. denied*, 465 U.S. 1021 (1984); *Adams v. Mathews*, 536 F.2d 417 (D.C. Cir. 1976); *Adams v. Califano*, 430 F. Supp. 118 (D.C. Cir. 1977); *Adams v. Weinberger*, 391 F.Supp. 269 (D.C. Cir. 1975); *Adams v. Richardson*, 356 F. Supp. 92 (D.C. Cir.) *aff'd en banc*, 480 F.2d 1159 (D.C. Cir. 1973).

²¹ *North Carolina v. Department of Education* No. 79-217-CIV-5 (E.D.N.C. 17 July 1981). For a summary of the events leading to adoption of the consent decree, see Solow, note 19 above, at p. 50.

²² *North Carolina v. Department of Education* No. 79-217-CIV-5 (E.D.N.C. 17 July 1981).

²³ James C. Palmer, *Grapevine*, Illinois State University, Bloomington, Illinois, 2003. Available online at <http://coeilstu.edu/grapevine>. *Grapevine* reports annually on total state effort for higher education, including tax appropriations for universities, colleges, community colleges, and state higher education agencies. Annual *Grapevine* reports have been published since fiscal year 1961. Each of these reports includes a national overview of state tax appropriations to higher education, as well as detailed tables for each of the 50 states.

²⁴ State of North Carolina, "Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets," October 26, 1998, *Session Laws and Resolutions Passed By the 1997 General Assembly at Its Extra Session 1998 and at Its Regular Session 1998*, Vol. 4, p. 1648. See also Alan S. Zagier, "Free tuition for graduate students in jeopardy," *The News & Observer*, Raleigh, NC, November 13, 1998, p. 3A.

²⁵ UNC General Administration, *Letter from Molly Corbett Broad to The Honorable Anthony E. Rand*, November 19, 1998. In 1999, the General Assembly did an about-face when it required that \$3.5 million of the funds appropriated to the Board of Governors be allocated "to campuses having graduate programs and students eligible for graduate tuition remission or resident graduation tuition awards. None of these funds may be allocated to the Research I institutions." Chapter 237 (H 168) of the 1999 Session Laws, Section 10.9. Nothing in the 2000 budget act related specifically to graduate tuition remission.

²⁶ Chapter 689 (HB 83) of 1991 N.C. Session Laws, codified as N.C. General Statutes §§116-30.1 through 116-30.5.

²⁷ N.C. General Statutes §§116-30.1 through 116-30.6, and UNC General Administration, *Selection Criteria and Operating Guidelines for Special Responsibility Constituent Institutions*, The Administrative Manual of The University of North Carolina, Chapel Hill, NC, revised September 10, 1999, pp. VI-I-1 through VI-I-5.

²⁸ Dan Kane, "Unspent salaries used for high-tech equipment for NCSU police," *The News & Observer*, Raleigh, NC, June 18, 2000, p. 1A.

²⁹ "Bond stakes extend beyond N.C.," *The Insider*, North Carolina State Government News Service, Raleigh, NC, October 19, 2000, p. 2, reporting on an interview with UNC President Molly Broad by *Charlotte Observer* Associate Editor Jack Betts and published October 18, 2000. According to President Broad, the \$3.1 billion university and community college bond issue on the Nov. 7 ballot is "the biggest single investment in the history of American higher education and is drawing national attention."

³⁰ N.C. Department of State Auditor, *Investigative Audit, North Carolina State University — Department of Public Safety*, (Audit Number: INV-0231), Raleigh, NC, October 3, 2000. The special report identified \$843,588.47 in expenditures in areas it characterized as "where the system of internal controls was either circumvented or should be enhanced, or where, in our judgment, questionable activities or practices occurred." *Ibid.* at p. 35.

³¹ N.C. Department of State Auditor, *Investigative Audit, North Carolina State University — Department of Public Safety*, (Audit Number: INV-0231), Raleigh, NC, October 3, 2000.

³² UNC General Administration press release, "NC State Given 90 Days to Implement State Auditor's Recommendations or Budget Flexibility Will Be Withdrawn," Chapel Hill, NC, October 3, 2000.

³³ Letter sent to all Carolina Alumni from the UNC-Chapel Hill General Alumni Association, October 2000. See also North Carolinians for Educational Opportunity Key Points at Website www.uncbuildings.org, stating that "The General Assembly will be keeping a tight rein on the expenditures, with an Oversight Committee that will be monitoring the projects very closely."

³⁴ Dan Kane, "Millions vanish through misuse," *The News & Observer*, Raleigh, NC, November 24, 2002, p. 1A.

³⁵ Dan Kane, Anne Blythe, and Vicki Cheng, "Footnotes — Triangle universities and colleges," *The News & Observer*, Raleigh, NC, March 20, 2002, p. 5B.

³⁶ Dan Kane, "Credit card spree at UNC," *The News & Observer*, Raleigh, NC, November 24, 2002, p. 16A.

³⁷ Chapter 424 (SB 1005) of 2001 N.C. Session Laws, codified as N.C. General Statute §116-40.20-23.

³⁸ Senior personnel includes vice-chancellors, senior academic and administrative officers, and any person having permanent tenure at that institution. *Ibid.*, N.C.G.S. 116-40.22(b).

³⁹ The additional tuition and fees authority states that "in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. The institution shall retain any tuition and fees set pursuant to this subsection for use by the institution." *Ibid.*, N.C.G.S. 116-40-22(c).

⁴⁰ The additional information technology authority states that "The Board of Trustees of an institution shall establish policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at the institution. These policies and rules shall provide for security and encryption standards; software standards; hardware standards; acquisition of information technology consulting and contract services; disaster recovery standards; and standards for desktop and server computing, telecommunications, networking, video services, personal digital assistants, and other wireless technologies; and other information technology matters that are necessary and appropriate to fulfill the teaching, educational, research, extension, and service missions of the institution. *Ibid.*, Section 22(d).

⁴¹ *Ibid.*

⁴² Joint Legislative Education Oversight Committee, Report to the 2003 General Assembly of North Carolina, March 5, 2003, p. 2.

⁴³ N.C. General Statute §116-11(7).

⁴⁴ *North Carolina Constitution*, Article IX, Section 9.

⁴⁵ The College Board, *Trends in College Pricing*, Washington, D.C., November 2003. The averages for the nation and region reported are weighted for enrollment, as is the average tuition and fee figure for the UNC System. The UNC average includes the N.C. School of the Arts tuition and fees for college level only, not high school.

⁴⁶ Molly Corbett Broad, "A Clearer Path for UNC's Tuition Policy," *The News & Observer*, Raleigh, NC, Nov. 4, 1998, p. 21A.

⁴⁷ Solow, note 19 above, pp. 61–62.

⁴⁸ Jane Stancill, "UNC panel proposes new tuition-setting policy," *The News & Observer*, Raleigh, NC, October 27, 1998, p. 3A.

⁴⁹ "First professional students" are defined by the National Center for Education Statistics as those studying for a degree in dentistry, medicine, pharmacy, veterinary medicine, or law. The definition also includes other fields for which the UNC system does not offer first professional degrees (optometry, osteopathic medicine, podiatric medicine, chiropractic, and theology).

⁵⁰ UNC Board of Governors, *Authorization of Tuition and Amendment of the 1999–2001 Budget Request, Revised 3/18/99*, Approved by the Board of Governors at its March 19, 1999 meeting in Raleigh, NC.

⁵¹ Wade Rawlins, "Senate offers its version of budget," *The News & Observer*, Raleigh, NC, June 17, 1999, p. 3A.

⁵² Anne Blythe, "Trustees could raise tuition in state Senate proposal," *The News & Observer*, Raleigh, NC, June 18, 1999, p. 1B.

⁵³ Chapter 237 (HB 168) of the 1999 N.C. Session Laws.

⁵⁴ Information presented by Jeffrey R. Davies, UNC Vice President for Finance, to the Joint Legislative Education Oversight Committee, Raleigh, NC, August 29, 2000.

⁵⁵ UNC Board of Governors, "Minutes of the February 11, 2000 Board of Governors Meeting," UNC-General Administration, Chapel Hill, NC, pp. 5–11.

⁵⁶ *Ibid.* at p. 12.

⁵⁷ Davies presentation, note 54 above.

⁵⁸ UNC Board of Governors, "Minutes of the November 10, 2000 Board of Governors Meeting," UNC General Administration, Chapel Hill, NC, pp. 2–3.

⁵⁹ A seventh campus, NC State University, requested and received Board approval for tuition increases for two masters level programs to take effect in the fall of 2002. UNC Board of Governors Report, Chapel Hill, NC, March 2001, Website www.northcarolina.edu/bog/reports/2001.

⁶⁰ UNC Board of Governors, *Minutes of the March 7, 2001 Board of Governors meeting*, UNC General Administration, Chapel Hill, NC, pp. 3. Board members John Sanders and Ray Farris voted against the motion.

⁶¹ Chapter 424 (SB 1005) of the 2001 N.C. Session Laws, Section 31.11.

⁶² Administrative Manual of the University of North Carolina, Policy 1000.1.1, amended February 14, 2003.

⁶³ Jane Stancill, "Tuition increases discouraged," *The News & Observer*, Raleigh, NC, December 14, 2004, p. 1B.

⁶⁴ The College Board, note 45 above.

⁶⁵ Patrick M. Callan, "An Interview: Mark Warner," *National CrossTalk*, Vol. 12, No. 4, The National Center for Public Policy and Higher Education, San Jose, CA., Fall 2004, p. 2.

⁶⁶ Arizona Constitution, Article 11, Section 6.

⁶⁷ As quoted in Amanda Keim, "UA students to appeal tuition

suit," *The State Press*, Arizona State University, March 9, 2004, p. 1, available online at <http://www.asuwebdevil.com>.

⁶⁸ Jennifer Jacobsen, "Students Sue States over Tuition Increases but Face an Uphill Battle," *The Chronicle of Higher Education*, Washington, D.C., September 19, 2003, p. 14A.

⁶⁹ Jonathon Margulies, "University of Missouri Loses Tuition Case," *The Chronicle of Higher Education*, Washington, D.C., January 3, 2003, p. 30A.

⁷⁰ Waller *et al.*, note 1 above, Table 31, pp. 117–122.

⁷¹ As quoted in *Ibid.* at p. 116. For a discussion of the various powers granted to such boards, see *ibid.*

⁷² Among the 50 states, Wisconsin's overall structure of higher education is most similar to the structure adopted in North Carolina. Both have a consolidated governing board with authority over the four-year public institutions and another board that oversees the technical and community colleges. Student enrollment in each state's public universities is comparable, and each state has approximately the same number of four-year public universities. In addition, both are among the small group of states with no central board or planning agency that oversees both the state's public two-year and four-year institutions. Waller *et al.*, note 1 above, pp. xii–xiii.

⁷³ *Ibid.*, pp. 133–134.

⁷⁴ *Ibid.*, p. 134, citing Arkansas Code §6-61-202(a)(2).

⁷⁵ *Ibid.*, p. 134, citing California Code §66900.

⁷⁶ N.C. General Statute §116-11(1).

⁷⁷ As quoted in Solow, note 19 above, p. 63.

⁷⁸ As quoted in Waller *et al.*, note 1 above, p. 45, quoting a January 1999 letter from Sanders to the Center.

⁷⁹ Chapter 744 (HB 780) of 1971 N.C. Session Laws.

⁸⁰ Additional assistance is provided by a combination of federal and state funds, such as those which support the North Carolina Student Incentive Grants program. See the Website for N.C. Independent Colleges and Universities: www.ncicu.org.

⁸¹ Chapter 424 (SB 1005) of the 2001 N.C. Session Laws.

⁸² *Ibid.*

⁸³ North Carolina General Assembly, Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, June 28, 2003, p. 7F. See also N.C. Office of State Budget and Management, Budget Certified by General Assembly 2003–04," online at <http://www.osbm.state.nc.us>.

⁸⁴ Chapter 163 (SB 121) of 1983 N.C. Session Laws.

⁸⁵ Arnold K. King, *The Multicampus University of North Carolina Comes of Age, 1956–1986*, University of North Carolina, Chapel Hill, NC, 1987, p. 287.

⁸⁶ Chapter 393 (HB 292) of 1993 N.C. Session Laws, codified as Chapter 116C of the N.C. General Statutes.

⁸⁷ Chapter 123 (SB 735) of 2001 N.C. Session Laws.

⁸⁸ Waller *et al.*, note 1 above, p. 10, quoting from a January 4, 1999 letter from President Lancaster to the North Carolina Center for Public Policy Research, Raleigh, NC.

⁸⁹ *Ibid.*

⁹⁰ The University of North Carolina, *UNC Ten-Year Enrollment Growth Plan (1998–2008)*, adopted April 9, 1999. The plan projected 203,600 students would be enrolled at the 16 campuses in 2008, which is an increase of 48,611 over the actual 1998 enrollment of 154,989. The percentage increase in students over that 10-year period is 31.36%. In June 2001, the Board approved a revised enrollment plan for 2000–2010. The plan projects that 218,000 students will be enrolled in the

UNC system in 2010. Unlike the 1998–2008 plan, the new projections include institutional targets for off-campus enrollment through distance education programs. Also, the two new years included in the new plan (2008–10) have larger potential pools of students than do the two years (1998–2000) that dropped out of the plan. See *Memorandum from Judith P. Pulley, Special Assistant to the Senior Vice President for Academic Affairs to The Board of Governors re: The University of North Carolina Enrollment Plan for 2000–2010*, Chapel Hill, NC, May 21, 2001.

⁹¹ U.S. Department of Education, *Projections of Education Statistics to 2010*, August 2000, at <http://www.nces.ed.gov>.

⁹² Western Interstate Commission for Higher Education, The ACT (formerly the American College Testing Program), and The College Board, “Knocking at the College Door: Projections of High School Graduates by State, Income, and Race/Ethnicity — N.C. Summary,” Western Interstate Commission for Higher Education, Boulder, Colorado, December 2003, p. 1.

⁹³ King, note 85 above, pp. 33–34 and 292–293.

⁹⁴ Session Law 2004-179 (House Bill 1264), Section 6.1.

⁹⁵ H. James Owen, “Community Colleges Can Help With Growth,” *The News & Observer*, Raleigh, NC, Jan. 19, 1999, p. 11A.

⁹⁶ For the missions of each of the 16 UNC campuses, see Waller *et al.*, note 1 above, pp. 45–54. Since 1995, the Board of Governors has occasionally amended the missions of the 16 campuses. For example, after receiving a favorable recommendation from the Committee on Educational Planning, Policies, and Programs in June 2001, the Board approved minor revisions in institutional mission statements requested by Elizabeth City State University, UNC-Charlotte, and Winston-Salem State University.

⁹⁷ Eva Klein and Associates, “Academic Program Planning, The University of North Carolina,” December 1992, pp. 8.13–8.14.

⁹⁸ *Report of the Governor’s Study Committee on the Structure and Organization of Higher Education*, 1971, Raleigh, NC, pp. 15–17.

⁹⁹ As quoted in Peter Schmidt, “Sweeping Reviews Lead States To Consider Cutting Many Academic Programs,” *The Chronicle of Higher Education*, Washington, D.C., February 14, 1997, p. 33A.

¹⁰⁰ UNC Board of Governors, *Long-Range Plan 2004–2009*, January 9, 2004, pp 210–211.

¹⁰¹ Waller *et al.*, note 1 above, p. 125. For a history of how achieving a fair and rational distribution of educational resources entered into the North Carolina’s 1971 debate which led to legislation restructuring higher education, see Solow, note 19 above, pp. 28–30.

¹⁰² As quoted in *Ibid.*, p. 125.

¹⁰³ Klein and Associates, note 97 above, p. 8.10.

¹⁰⁴ Utah State System of Higher Education Policies and Procedures, R401, Approval of New Programs, Program Additions or Program Changes sections 5 and 8 at <http://www.utahsbr.edu/policy/r401.htm>.

¹⁰⁵ Utah State System of Higher Education Policies and Procedures R220, Delegation of Responsibilities to the President and Board of Trustees sections 4.5.2. and 4.5.3 at <http://www.utahsbr.edu/policy/r220.htm>.

¹⁰⁶ N.C. General Statute §§143-129 and 143-135.27.

¹⁰⁷ *Ibid.* See discussion in: The State Building Commission and The Office of State Budget, Planning and Management, *Evaluation of the Delegation of Construction Authority to The University of North Carolina System for Projects Less Than \$500,000*, Raleigh, NC, June 2001.

¹⁰⁸ Chapter 412 (SB 862) of the 1997 N.C. Session Laws, codified as N.C. General Statute §116-31.10 and 116-31.11.

¹⁰⁹ See State Building Commission, note 107 above, p. 4.

¹¹⁰ State Building Commission, note 107 above. The report analyzed university-managed projects started after July 1, 1997 and completed by December 31, 2001.

¹¹¹ *Ibid.*, p. 15.

¹¹² Session Law 2001-96 (Senate Bill 914), signed into law on December 19, 2001. Section 8 of the law applies to the University of North Carolina.

¹¹³ Eva Klein & Associates, Ltd., *Building for the New Millennium, A Report to The University of North Carolina Board of Governors, Capital Equity and Adequacy Study and Preliminary 10-Year Capital Needs*, Chapel Hill, NC, April 9, 1999.

¹¹⁴ In 1999, the UNC system received \$69 million from the Reserve Fund for Repairs and Renovations; \$46 million was allotted to UNC from the Reserve in 2000, and \$57.5 million in 2001. See Chapter 237 (HB 168) of the 1999 N.C. Session Laws, Chapter 67 (HB 1840) of the 2000 N.C. Session Laws, and Chapter 424 (SB 1005) of the 2001 N.C. Session Laws respectively. UNC’s percentage of the fund is based on the square footage that UNC’s total building space represents in relation to the total gross square footage of all state buildings.

¹¹⁵ As quoted in Jane Stancill, “UNC Faces \$7 Billion Growth Tab,” *The News & Observer*, Raleigh, NC, March 20, 1999, p. 1A.

¹¹⁶ See Klein, note 113 above. UNC leaders have been circumspect about formally endorsing the idea of creating a lottery in N.C. and using lottery funds to support higher education. President Molly Corbett Broad has said she supports the ends, if not the means, of proposals to use lottery funds for higher education. In Georgia, funds from several sources, including a lottery, have supported a tuition-free scholarship program for students who maintain good grades and attend state public universities. Established in 1993, the HOPE Scholarship Program provides any in-state student wishing to attend a Georgia public college or university with full tuition, mandatory fees, and a \$150-per-semester book allowance, provided the student graduates from high school with a “B” average or higher. Students must maintain a “B” average in college to retain the scholarship. As of September 1998, Georgia had awarded more than \$580 million in HOPE scholarship grants to 319,000 students. The National Association of State Student Grant and Aid Programs now ranks Georgia number one in the nation in student financial aid, with 77.9 percent of undergraduates receiving aid.

However, the Georgia program draws criticism as well. In addition to the arguments against lotteries generally, opponents of the program cite news reports stating that 75 percent of students from Atlanta and 64 percent of scholarship recipients statewide lose their HOPE scholarships after their freshman year of college due to not making the required “B” average. Second, the HOPE Scholarship program also has been criticized for relying on the poor — who spend a disproportionate share of their incomes on the lottery — to shoulder the college costs of the more affluent. And third, the program has been criticized for not making scholarship money available to students who receive federal Pell grants — need-based scholarships awarded to students from low-income households. Georgia’s funding for need-based scholarships dropped from \$5.3 million in 1994 to \$2.2 million in 1997.

During a March 1998 Center event, “An Evening with Four

Educators," co-sponsored by the N.C. Cable Telecommunications Association, the N.C. Center for Public Policy Research, and Time Warner Cable. Broad said, "Students are going to college at increased rates; they are staying in Georgia. And somehow, the message has reached students and their parents that if you graduate from high school and you take all the courses and you get a B average, you can have a tuition-free scholarship to attend a [public] university in Georgia," Broad said. For more information on all 38 lotteries in the U.S. and the HOPE Scholarship Program, see John Manuel, "13 Ways of Looking at a State Lottery," *N.C. Insight*, N.C. Center for Public Policy Research, Raleigh, NC, October 2000, p. 13. Under the legislation enacted by the 2005 N.C. General Assembly, North Carolina's new state lottery will have 35% of the proceeds go to education. Of that 35%, 50% will go to pre-kindergarten programs, 40% to local school construction, and 10% to college scholarships. For college completion rates by race, see also Joanne Scherer, "What Is the Impact of Race and Ethnicity on Outcomes in Public Policy?," *North Carolina Insight*, N.C. Center for Public Policy Research, Raleigh, NC, June 2004, pp. 16-75.

¹¹⁷ Chapter 3 (SB 912) of the 2000 N.C. Session Laws, which added a new Chapter 116D to the N.C. General Statutes. The list of capital projects is contained in new N.C. General Statute §116D-49.

¹¹⁸ According to advice received from the university's legal counsel, UNC was not permitted to spend public money to advocate the bond issue; however, it could spend public funds to educate the citizens about the subject. As policymakers elected by the General Assembly, members of the Board were told they could be advocates for the bond issue. This information was communicated in an oral report from the Public Affairs Committee to the UNC Board of Governors at the Board meeting held on June 9, 2000 at Elizabeth City State University.

¹¹⁹ Chapter 3 of the 2000 N.C. Session Laws, note 117 above, Section 4.

¹²⁰ Gene Wang, editor, "Contracting Fights Ahead?," *The Insider*, North Carolina State Government News Service, Raleigh, NC, November 20, 2000, p. 3.

¹²¹ According to the State Construction Office, the effect of expanding delegation to the University of construction projects expected to cost up to \$1 million would have very little effect on the capital improvements funded under the recently approved \$2.5 billion university bond referendum. Of the 316 projects to be funded by the bond issue, only 33 of them are valued at \$1 million or less. State Building Commission, note 107 above.

¹²² "Construction management at risk" are services provided by a person, corporation, or entity that manages construction of a project throughout the preconstruction and construction phases. The person or entity is licensed as a general contractor and guarantees the cost of the project.

¹²³ UNC Board of Governors, *Minutes of the January 12, 2001 Board of Governors Meeting*, UNC General Administration, Chapel Hill, NC, pp. 3-4.

¹²⁴ *Ibid.*, p. 6.

¹²⁵ UNC Board of Governors, *Minutes of the April 12, 2001 Board of Governors meeting*, UNC General Administration, Chapel Hill, NC, p. 2.

¹²⁶ Chapter 496 (SB 914) of the 2001 N.C. Session Laws.

¹²⁷ Office of the State Auditor, *Performance Audit of the State Construction Process and the State Construction Office within the*

Department of Administration, (Audit Number: PER-0200), Raleigh, NC, December 17, 2002.

¹²⁸ Dan Kane, "Campus projects escape oversight," *The News & Observer*, Raleigh, NC, November 18, 2001, p. 1A.

¹²⁹ Dan Kane, "State OKs football center design," *The News & Observer*, Raleigh, NC, January 28, 2002, p. 1B.

¹³⁰ Chapter 496 (SB914) of the 2001 N.C. Session Laws.

¹³¹ Jim Roth, "Enhancing the Ability of North Carolina's Public Research Universities to Contribute to State Economic Development," Huron Consulting Group, March 4, 2004, pp. 29-30 and 33. The Roth report was presented to the N.C. General Assembly's Joint Select Committee on Economic Growth and Development. The report was funded by Federal Express, GlaxoSmithKline, and Winston Hotels, Inc. and was released jointly by the press offices of N.C. State University and UNC-CH.

¹³² "Title II Highlights," U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Washington, D.C. at www.usdoj.gov/crt/ada/t2hlt95.htm. Title II of the Americans With Disabilities Act (ADA) covers *public* entities which include any state and local government and any of its departments, agencies, or other instrumentalities. *Private* entities that operate *public* accommodations — such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys — are not covered by Title II but are covered by Title II of the ADA. Section 35-151 of Title II states that each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities and must comply with Title II regulations. Under Title II, public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities and that when a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible. Currently, public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, or the Americans with Disability Act Accessibility Guidelines (ADDAAG), adopted by the Department of Justice for places of public accommodation and commercial facilities covered by Title III of the ADA. Note that according to the U.S. Department of Justice's "Common Questions About Title II of the Americans With Disabilities Act (ADA)" at www.usdoj.gov/crt/ada/pubs/t2qa.txt, the Department of Justice is proposing to amend its current ADA Standards for Accessible Design and apply these standards to new construction and alterations under Title II. Under the proposed rule, the choice between ADAAG and UGAS also would be eliminated.

¹³³ 2003 N.C. Session Law 2003-360 (Senate Bill 705).

¹³⁴ PricewaterhouseCoopers Consulting, "University of North Carolina Health Care System: Management Assessment of Women's and Children's Hospitals Project," July 15, 2002.

¹³⁵ Michael J. McKillip, "Letter to Dee Jay Zerman — April 2, 2004," N.C. Department of Health and Human Services, Raleigh, NC, April 2, 2004, p. 1.

¹³⁶ Chapter 212 (SB 1366, Section 11.8) of the 1998 N.C. Session Laws, which added Chapter 116-37(j) to the N.C. General Statutes. See also discussion in Office of the State Auditor performance audit, note 127 above.

¹³⁷ John Sullivan and Joseph Neff, "Two Years Late, \$28 Million

Over," *The News & Observer*, Raleigh, NC, February 17, 2002, p. 1A.

¹³⁸ Billie C. Biggs, Jr. and Spero Fleggas, "Memorandum of Understanding between Office of State Construction and University of North Carolina Health Care System," September 9, 1999, p. 2.

¹³⁹ John Sullivan and Joseph Neff, note 137 above. Additional Information about the hospitals project may be found at: Joseph Neff and John Sullivan, "Consumers likely, indirectly, to pick up tab on hospital costs," *The News & Observer*, Raleigh, NC, February 17, 2002, p. 19A; John Sullivan and Joseph Neff, "UNC chief orders audit of hospitals construction," *The News & Observer*, Raleigh, NC, February 19, 2002, p. 1B; John Sullivan, "UNC hospitals face more delays," *The Chapel Hill News*, Chapel Hill, NC, July 14, 2002, p. 6A; John Sullivan, "Audit outlines overruns" *The News & Observer*, Raleigh, NC, July 19, 2002, p. 1B; and Dan Kane, "Auditor reports overruns," *The News & Observer*, Raleigh, NC, December 18, 2002, p. 5B. See also Dee Jay Zerman, "Letter to Michael McKillip and Progress Report on N.C. Womens & Childrens Hospitals (Project Identification Numbers J-6419-01 & J-5110-94)," The University of North Carolina Hospitals, Chapel Hill, NC, December 16, 2003, pp. 1-5 for the final progress report from UNC Hospitals to the N.C. Department of Health and Human Services.

¹⁴⁰ As quoted in John Sullivan and Joseph Neff, "UNC chief orders audit of hospitals construction," *The News & Observer*, Raleigh, NC, February 19, 2002, p. 1B.

¹⁴¹ PricewaterhouseCoopers Audit, note 134 above.

¹⁴² According to N.C. General Statutes §§116D 22-23, a special obligation bond for the University of North Carolina is a bond that does not obligate the full faith and credit of the taxpayers of the state, but instead, is slated to be repaid by receipts for rents, charges, or fees derived by the university from any of its constituent parts; earnings on the investment of the endowment funds of a constituent institution; or funds to be received under a construction grant agreement, which may include overhead costs reimbursement.

¹⁴³ Chapter 168 (HB 1853) of the 2000 N.C. Session Laws.

¹⁴⁴ Chapter 463 (SB 968) of the 2001 N.C. Session Laws.

¹⁴⁵ UNC Board of Governors, *Minutes of the February 9, 2001 Board of Governors meeting*, UNC General Administration, Chapel Hill, NC, p. 5. [Note: The online version of the February 2001 minutes read that the chairman said the 10-year plan was approved in 1990, however the report to which he was referring was approved by the Board in June of 1999 as a \$4.99 billion five-year portion of a 10-year plan.]

¹⁴⁶ 2003 N.C. Session Law 2003-360 (Senate Bill 705).

¹⁴⁷ N.C. Department of the State Treasurer, *The State Treasurer's Annual Report to the People of North Carolina Fiscal Year 2002-03* and N.C. Department of the State Treasurer, *The State Treasurer's Annual Report to the People of North Carolina Fiscal Year 2001-02*. Also see N.C. Department of the State Treasurer, *The State Treasurer's Annual Report to the People of North Carolina Fiscal Year 1998-99* and N.C. Department of the State Treasurer, *The State Treasurer's Annual Report to the People of North Carolina Fiscal Year 1996-97*.

¹⁴⁸ Pam Kelley, "Spangler Asks State To Lighten Up On UNC," *The Charlotte Observer*, Charlotte, NC, Oct. 14, 1989.

¹⁴⁹ Mark Schultz, "UNC official rips N.C. bureaucracy," *The Herald-Sun*, Durham, NC, May 24, 1992, p. 1A.

¹⁵⁰ See generally Article 3 of Chapter 143 of the N.C. General Statutes.

¹⁵¹ Office of State Budget and Management, *Evaluation of the Effectiveness and Efficiency of the Increase of the Purchasing Benchmark*, Raleigh, NC, April 2001.

¹⁵² Chapter 434 (SB 222) of the 1999 N.C. Session Laws, as amended by Chapter 174 (HB 1578) of the 2000 N.C. Session Laws. Provisions creating and governing the Office of Information Technology Services are codified as Article 3D of Chapter 147 of the N.C. General Statutes.

¹⁵³ See N.C. General Statutes §§143-52 through 143-53.1.

¹⁵⁴ Office of State Budget and Management, note 151 above, p. 6.

¹⁵⁵ Chapter 412 of the 1997 N.C. Session Laws, note 108 above.

¹⁵⁶ *Ibid.*

¹⁵⁷ For more information about the selection criteria and operating guidelines a campus must satisfy to be designated as a "special responsibility constituent institution," see pp. 62-63 of this Chapter. Currently, all 16 institutions, plus the Office of General Administration of the University of North Carolina, have this designation. See Chris Morgan, editor, "Designation of Special Responsibility Constituent Institutions," *The Administrative Manual of The University of North Carolina*, revised September 10, 1999, p. VI-I-7, Website www.ga.unc.edu.

¹⁵⁸ Chapter 412 of the 1997 N.C. Session Laws, note 108 above.

¹⁵⁹ Office of State Budget and Management, note 151 above.

¹⁶⁰ *Ibid.*, Appendix A, p. 18. According to the report: "Universities that did not have increased delegation during FY '99-'00 indicated that they were generally pleased with their current level of delegation. One institution indicated that they would be applying for increased delegation within the next year pending the outcome of an audit. UNC-General Administration, when asked why the other universities have not been granted the increase, replied that it was mainly due to the results of their compliance audits and staffing issues. UNC-General Administration indicated that they would continue to work with the institutions to help them obtain increased delegation." *Ibid.*, p. 12.

¹⁶¹ *Ibid.*

¹⁶² UNC Board of Governors, *Report to the 2004 North Carolina General Assembly Joint Legislative Education Oversight Committee: The University of North Carolina Summary of Institutional Annual Reports — Special Responsibility Constituent Institutions, UNC General Administration, and North Carolina School of Science & Mathematics 2002-03*, University of North Carolina General Administration, Chapel Hill, North Carolina, November 14, 2003, p. 1.

¹⁶³ 2003 N.C. Session Law 2003-312.

¹⁶⁴ 2003 N.C. Session Law 2003-228 (House Bill 975).

¹⁶⁵ Roth, note 131 above at pp. 26-27 and 32.

¹⁶⁶ Chapter 424 of the 2001 N.C. Session Laws, note 37 above.

¹⁶⁷ Chapter 174 (HB 1578) of the 2000 N.C. Session Laws, codified as Article 3D of Chapter 147 of the NC. General Statutes. N.C. General Statute §147-33.78(b)(5) provides that "[n]o State agency, other than The University of North Carolina or any of its constituent institutions, shall allocate or expend funds in excess of five hundred thousand dollars (\$500,000) on any information technology project without prior certification as required by this subsection" (which outlines the powers and duties of the Information Resource Management Commission, including certifying information technology projects that comply with Commission policies, standards, and procedures). And §147-33.80 states, "Except as otherwise specifically provided by law, this Article shall not apply to the General Assembly, the

Judicial Department, or The University of North Carolina and its constituent institutions. These agencies may elect to participate in the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.”

¹⁶⁸ Office of State Budget and Management, note 151 above, p. 14.

¹⁶⁹ Chapter 424 of the 2001 N.C. Session Laws, note 37 above.

¹⁷⁰ North Carolina Office of the State Controller, *Information Technology Expenditures Report For the Period Ended June 30, 2004*, Raleigh, NC, September 30, 2004.

¹⁷¹ As quoted in Lee Weisbecker, “UNC writing checks faster than agencies,” *Triangle Business Journal*, Raleigh, NC, December 24, 2004, p. 41.

¹⁷² Data from N.C. Office of State Personnel. As of January 6, 2004, UNC employed the largest share of the 88,675 state employees subject to the State Personnel Act at 20,080 (22.6%), followed by the Department of Correction at 17,766 (19.6%), and the Department of Health and Human Services at 16,268 (18.0%).

¹⁷³ N.C. General Statutes Chapter 126. See information published by the Office of State Personnel at <http://www.osp.state.nc.us/data/stats/tnote.htm>.

¹⁷⁴ N.C. General Statute §116-11(4).

¹⁷⁵ N.C.G.S. §116-11(5).

¹⁷⁶ N.C.G.S. §116-14.

¹⁷⁷ *University of North Carolina at Chapel Hill Merit-Based Recruitment and Selection Plan*, April 6, 1998, Chapel Hill, NC, available at <http://www.osp.state.nc.us/manuals/plans>.

¹⁷⁸ *Memo to Jeff Davies from Kitty M. McCollum and Judith M. Stillion*, March 1, 1999, UNC General Administration, Chapel Hill, NC, pp. 1–2.

¹⁷⁹ Chapter 689 (HB 83) of the 1991 N.C. Session Laws, now codified as N.C. General Statute §116-30.4.

¹⁸⁰ N.C. General Statute §126.4(18).

¹⁸¹ Under the N.C. Constitution, 10 departments are headed by an official elected statewide by the people — the Office of the Governor, Office of the Lieutenant Governor, Secretary of State, Commissioner of Labor, Commissioner of Insurance, State Auditor, State Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, and the Attorney General, who heads the Department of Justice. Ten other departments — Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, and Transportation — are headed by Secretaries appointed by the Governor.

¹⁸² As quoted in Associated Press, “UNC system probes improved health plan for its workers,” *The Herald Sun*, Durham, NC, February 20, 2005.

¹⁸³ *Ibid.*

¹⁸⁴ As quoted in Jean P. Fisher, “Union pushing on insurance: UNC system may split from state plan,” *The News & Observer*, Raleigh, NC, February 22, 2005, p. 9C.

¹⁸⁵ Chapter 491 (SB 166), section 2.1E, of the 2001 N.C. Session Laws.

¹⁸⁶ Chapter 424 of the 2001 N.C. Session Laws, note 37 above, section 31.11(c).

¹⁸⁷ Ann Reed and Alexander McC. Peters, “Advisory Opinion: N.C. Gen. Stat. §116-17.2 and §143.34.1(d); ability of the University System to offer dependant health coverage,” North Carolina

Office of the Attorney General, Raleigh, NC, March 26, 2002, p. 3.

¹⁸⁸ N.Y. CIV.SERV. Law §35 (Consol.). See also SUNY System Administration Employment General Information at Website www.suny.edu.

¹⁸⁹ N.Y. EDUC. Law §355-a (Consol.).

¹⁹⁰ Chapter 212 (SB 1366) of the 1998 N.C. Session Laws, Sec. 11.8, pp. 57–69, which rewrote N.C. General Statute §116-37. A new G.S. section 116-40.6 extended comparable authority over personnel matters involving employees of the East Carolina University Medical Faculty Practice Plan to ECU’s Board of Trustees. For more information on special provisions in budget bills, see Ran Coble, *Special Provisions in Budget Bills: Pandora’s Box Is Open Again*, N.C. Center for Public Policy Research: Raleigh, NC, February 1999. The Center recommends that the General Assembly enact legislation to ban special provisions in budget bills that make substantive changes to state laws unrelated to the budget.

¹⁹¹ Editorial, “Why the haste?,” *The Chapel Hill Newspaper*, Chapel Hill, NC, August 23, 1998, p. 4A.

¹⁹² Jane Stancill, “Measure would loosen state ties that bind UNC Hospitals,” *The News & Observer*, Raleigh, NC, July 29, 1998, p. 1A.

¹⁹³ Eric Bates, “Whose Hospital? Business Interests Operate on the State Medical Center,” *The Independent*, Durham, NC, March 10–16, 1999, p. 19.

¹⁹⁴ Joel Obermayer, Dudley Price, and Alan Zagier, “UNC Health Care buys Rex,” *The News & Observer*, Raleigh, NC, April 16, 1999, p. 1A.

¹⁹⁵ N.C. Office of State Budget and Management, “Budget Certified by General Assembly, 2003–04,” available online at <http://www.osbm.state.nc.us>.

¹⁹⁶ Joel Obermayer and Wade Rawlins, “New rules, new path?” *The News & Observer*, Raleigh, NC, April 18, 1999, p. 1B.

¹⁹⁷ Dan Kane, “Salaries jump for some,” *The News & Observer*, Raleigh, NC, April 26, 2002, p. 1A.

¹⁹⁸ Dan Kane, “Moeser wouldn’t give same raises now,” *The News & Observer*, Raleigh, NC, May 24, 2002, p. 1A.

¹⁹⁹ Jane Stancill, “Ehringhaus is leaving UNC-CH,” *The News & Observer*, Raleigh, NC, July 27, 2003, p. 2A.

²⁰⁰ As quoted in Jane Stancill, “Board scolds UNC leader,” *The News & Observer*, Raleigh, NC, December 3, 2002, p. 1A.

²⁰¹ N.C. Department of State Auditor, *Special Review, North Carolina School of the Arts/North Carolina School of the Arts Foundation Inc.* (Audit Number: INV-2004-0274), Raleigh, NC, October 5, 2004.

²⁰² As quoted in Jane Stancill and Tim Simmons, “Audit finds scandal at School of the Arts,” *The News & Observer*, Raleigh, NC, October 6, 2004, pp. 1A and 4A.

²⁰³ Jane Stancill, “Chancellors’ troubles raise issues, eyebrows,” *The News & Observer*, Raleigh, NC, September 21, 2003, p. 1A.

²⁰⁴ UNC Board of Governors, *Minutes of the Board of Governors Public Affairs Committee for February 13, 2004*, UNC General Administration, Chapel Hill, NC.

²⁰⁵ Roth, note 131 above, pp. 4, 23–26, and 32.

²⁰⁶ According to data provided by UNC Office of the President, in March 2004, the University system employed 16,413 permanent employees exempt from the State Personnel Act, or 44 percent of its workforce.

²⁰⁷ Under the Dome, “Gripe Time,” *The News & Observer*, Raleigh, NC, December 28, 2004, p. 5B.

The Balance of Powers Between the Statewide UNC Board of Governors and the Local Campus Boards of Trustees

In American higher education, only the North Carolina and Utah legislatures have given their statewide higher education boards for public universities statutory authority to delegate duties to local campus boards of trustees.¹ North Carolina's two-tiered structure is a product of the fierce battle over restructuring higher education in 1971, when the support of regional universities that had been governed by their own boards of trustees was critical to the passage of the 1971 legislation. Felix Joyner, former UNC Vice President for Finance, says the final language of the statute also reflects the lobbying presence of the state's five historically black institutions, which had pushed for retention of the campus boards. "It was so much a given in restructuring that you were going to have local boards. You had to have them to even pass a bill," he says.

The UNC Board of Governors elects eight of the 13 members of each local campus board of trustees, and the Governor appoints four. The thirteenth voting seat on local boards of trustees is held by the elected President of the campus Student Government Association. The North Carolina School of the Arts in Winston-Salem has two additional non-voting members on its board of trustees — the Conductor of the North Carolina Symphony (or his or her designee) and the Secretary of the N.C. Department of Cultural Resources.²

A. The Roles of Local Campus Boards of Trustees

One of the first actions of the Planning Committee that later became the Board of Governors was to prepare *The Code*, a document outlining the powers and duties of local boards of trustees for the 16 UNC campuses. It was adopted by the Board of Governors at its first meeting in July 1972. As stated earlier in this report (see page 79), the major areas of campus life over which local boards of trustees have been delegated authority include: (1) selection of institutional personnel (except for presidents, chancellors, and vice chancellors) and adoption of personnel policies; (2) campus security; (3) intercollegiate athletics; (4) admissions standards and enrollment levels (within guidelines set by the Board of Governors); (5) conferral of academic and honorary degrees; (6) endowments; (7) student services and student conduct; and (8) campus planning and the management of capital construction projects. The Board of Governors retains powers over the university system's budget, approval of new academic programs and termination of existing programs, and the hiring of chancellors and vice-chancellors. The university system's General Administration staff acts as an arm of the central governing Board in maintaining links with and providing information to leaders of the 16 campuses.



"Chancellors Row" at a meeting of the Board of Governors in Chapel Hill.

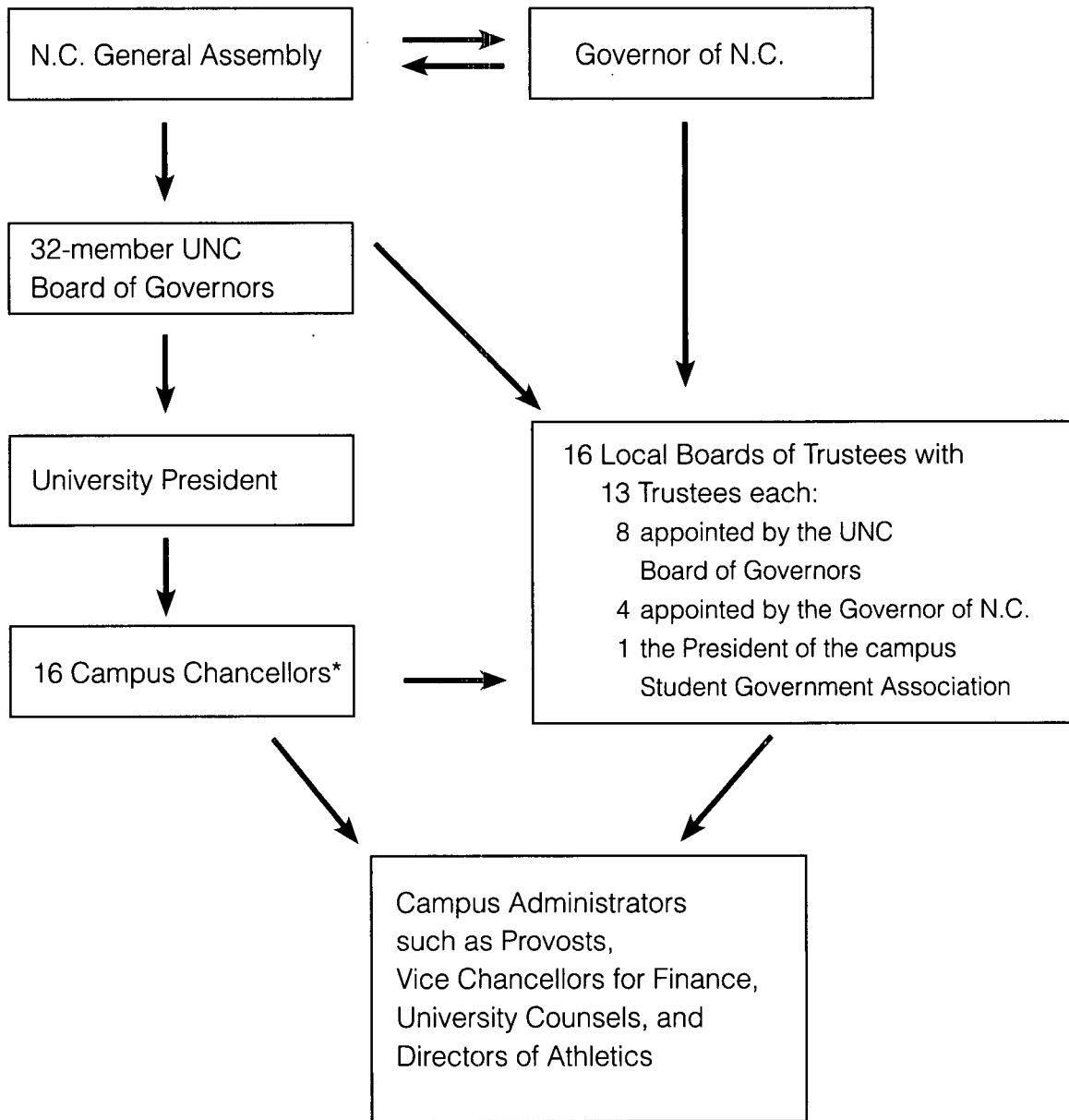
One of the most important duties of the campus boards of trustees is making nominations to the university President for the position of chancellor of a constituent institution. Final election of chancellors rests with the Board of Governors, as does their removal. In January 1994, former UNC President C.D. Spangler, Jr. complained to the UNC Board that all the chancellors in the system were males, and that "during my eight years here I have participated in about 13 [chancellor] searches, and of the 30 candidates I've interviewed, all have been males."³ The Board promptly appointed a committee to study the problem, which members acknowledged would require addressing institutional problems that make it difficult for women and minorities to move up in the university system. Three months later, the Board ended a decade of choosing only male chancellors by naming a woman, Patsy Bostick Reed, as chancellor of UNC-Asheville. (In fact, both of the finalists whose names were presented by the UNC-Asheville Board of Trustees to Spangler were women.) In October 1994, Patricia A. Sullivan was selected as the first female chancellor of UNC-Greensboro. Marye Anne Fox became the Chancellor of N.C. State in August 1998. However, Fox left N.C. State in August 2004, and her replacement, James L. Oblinger, is male.

Replacements for departing chancellors at N.C. Central, East Carolina, and Appalachian State Universities were male — James H. Ammons, Jr. at NCCU and William Muse at ECU in 2001 and Kenneth E. Peacock at ASU and Steven Ballard at ECU in 2004. In 2003, the chancellors tapped to lead both Fayetteville State University and UNC-Wilmington were women, T.J. Bryan at FSU and Rosemary DePaolo at UNC-Wilmington. In 2005, Anne Ponder was chosen as the new chancellor of UNC-A. With the addition of Bryan, DePaolo, and Ponder to Patricia Sullivan at UNC-G, four of the chancellors in the 16-campus system are female.

University chancellors play a unique role in the UNC system because of the relationship between the central Board and the campus boards of trustees. "The Chancellor derives his or her authority in part from statute, in part from delegations by the Board of Governors, and in part from sub-delegations of authority that have been delegated by the Board of Governors to the Boards of Trustees," writes former Institute of Government Director John Sanders in an article about the legislative evolution of public higher education in North Carolina.⁴ Sanders says, "The administrative responsibility line, however, runs from the Chancellor to the President. The Chancellor is in the potentially uncomfortable position

Figure 5.1

Organizational Chart for the UNC System



* The N.C. School of Science and Mathematics is an "affiliated school" of the University of North Carolina.

of being answerable both to the President and to his or her own Board of Trustees.” In North Carolina’s 16-campus university system, N.C.G.S. 116-14 says, “The President shall be the chief administrative officer of the University.” The *UNC Code* says the President shall coordinate the activities of all constituent institutions, resolve disputes among the institutions, and act as “the official administrative medium of communication between the Board of Governors and all individuals, officials, agencies, and organizations, both within and without the university and its constituent institutions.”⁵ (See Figure 5.1, Organizational Chart for the UNC System, showing the relationship between the UNC Board of Governors, the UNC President, the 16 Chancellors, and various campus academic and administrative officers.)

Former Board of Governors Chairman William Dees says that in the early days of the multi-campus system, some chancellors who had been Presidents of formerly independent campuses had a hard time adjusting to their new role. “A lot of the success of the system still has to do with the attitude of the chancellors,” he says. “If the chancellors are going to back the Board of Governors, that’s fine. But if they want to hurt the Board of Governors, they can do it.” Board of Governors member and former Vice Chairman of the Board Jack Cecil also recognizes the importance of the chancellors’ role in the successful and coordinated operation of the 16 campus system. “There is a fine line between hiring qualified chancellors who have visions for their own campus and how they [the chancellors] operate within the system,” says Cecil. “We need to make sure we act as a team and within the system.”

The late UNC-Chapel Hill Chancellor Michael Hooker said he regarded his campus board of trustees “as a *de facto* governing board, though I recognize it does not have that *de jure* authority. It certainly so regards itself, and the relationship works. I do not interact with members of the Board of Governors as a matter of principle, because I think that is the President’s role, and if Chancellors interact directly with the members of the Board of Governors, they make it more difficult for the President to function. I believe this strongly, having served as head of a system” in Massachusetts. Not all chancellors, however, adopt this hands-off policy with the Board of Governors. During the 2002 Board deliberations on the campus-initiated tuition increases, several chancellors actively and publicly lobbied members of the Board of Governors to support individual campuses’ interests.

Former UNC-Wilmington Chancellor James Leutz cites a practice that arose in the early 1990s of allowing campus boards to supplement chancellors’ salaries out of the endowment funds they control as an example of how UNC’s organizational structure can sometimes lead to confusion. “That practice leads the chancellors not to know to whom they answer,” he says. “And it disadvantages some schools [that have less endowment money]. I told my board I would take the money but

didn’t think it was a good policy.” The practice, which began at UNC-Chapel Hill and spread to five other UNC campuses, since has been eliminated by the Board of Governors. However, the August 2004 departure of N.C. State University Chancellor Marye Anne Fox prompted a call by members of NCSU’s Board of Trustees to reconsider this policy because of concerns that the \$257,134 to \$411,429 salary hiring range for her replacement is not competitive enough. Fox left NCSU at a salary of \$248,225 and accepted a position at the University of California at San Diego for \$350,000.⁶ The hiring range for Fox’s replacement was revised to \$295,704–\$473,143 for fiscal year 2004–05. Her replacement, James L. Oblinger, was hired at a salary of \$274,797 in October 2004.

William C. Friday, who served as UNC President for 30 years and was the first chief executive of the 16-campus system, says he created (1) an Administrative Council early in his tenure as a forum for communications with the chancellors, and (2) a Faculty Assembly as a similar forum for communications with university faculty. The Administrative Council meets monthly and the Faculty Assembly meets quarterly. Friday created these in order to prevent the breakdowns in communications that had become associated with higher educational governance systems with dual board structures. “You can look around in every state [that has local campus boards], and they’ve done something to weaken the system,” Friday says. “I was arguing not so much for autonomy as for responsible freedom” on UNC campuses.

There also has been at least one instance in which campus trustees have publicly and successfully rebuffed efforts by the Board of Governors to gain more control of governance on their campuses. In 1995, trustees of the North Carolina School of Science and Mathematics in Durham resisted efforts by the Board of Governors to exercise the same authority over the residential high school’s board as it has over other schools in the UNC system. Under North Carolina law, the Durham-based N.C. School of Science and Mathematics is an “affiliated school” of The University of North Carolina,⁷ as opposed to being grouped among UNC’s 16 constituent institutions. The school was attached to the Board of Governors in 1985 by legislative action to take its control away from the Governor; it was not requested by the Board of Governors.

The trustees at the school serve four-year terms, and the membership consists of 27 members — 13 chosen by congressional district and appointed by the Board of Governors, four chosen without regard to residency and appointed by the Board of Governors, three *ex officio* members who are the chief academic officers at three constituent institutions to be designated by the Board of Governors, one *ex officio* member (designated by the Board of Governors) who serves as the chief academic officer at another college or university in North Carolina not affiliated with the UNC system, two members ap-

pointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, two members appointed by the General Assembly upon the recommendation of the Speaker of the House, and two members appointed by the Governor. The members are selected for "their interest in and commitment to public education and to the purposes of the School" and are "charged with the responsibility of serving the interests of the whole state." The statutory guidelines for appointing members also state that "the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties."⁸

Unlike the 16 constituent institutions of the UNC system, state law gives the School's board of trustees virtually exclusive power over the school's academic programs, financial affairs, and personnel, including the sole authority to appoint the school's director, who serves as its chief administrative officer.⁹ In 1995, the UNC Board of Governors sought to reduce the number of trustees at the Durham school from 26 to 12 and appoint eight of those members — in effect, paralleling the power the Board has over other UNC campuses. The

Board of Governors also wanted more input into the school's budget and a larger role in hiring its director.¹⁰ Those efforts did not succeed and were put on hold.¹¹ However, on March 10, 2006, at the urging of newly-elected UNC President Erskine Bowles, the school's trustees unanimously voted to seek legislation to become the 17th campus in the UNC system, beginning July 1, 2007.

The difficulties of trying to balance central management control with local campus autonomy have recently surfaced in California in relation to that state's community college system. The 109-campus system is governed by a central Board of Governors, but each of the 71 districts in which community colleges are located also has a locally-elected campus board. In recent years, shared governance has led to variation in the quality and clout of individual campuses, state educational leaders say. "The system doesn't work well," says Marge Chisholm, Legislative Coordinator for the California Postsecondary Education Commission, the overall coordinating agency for higher education in the state. "We have a wide array in the quality of institutions [in the community college system]. Some are just a whole lot better than others. And we find they [local campus leaders] are lobbying

Board of Governors Chairman Brad Wilson, Board member Jim Phillips, and UNC President Molly Broad confer at a Board meeting in Chapel Hill.



Karen Tam

legislators for specific campus needs, which shouldn't be happening. We're really looking hard at the situation and trying to empower the central administration, with less influence from the local trustees." A year-long review by the Postsecondary Education Commission of the community college governance structure resulted in a recommendation that the central Board of Governors be made the statewide governing board for community colleges with power to delegate specific responsibilities and authority to the local boards of trustees. "For the California Community Colleges to operate as a more unified state system, the role, responsibilities, authority, and accountability of the statewide governing board and its administrative office must be stated in unambiguous terms," the Commission's report states. "Moreover, the legislature must resist pleas for its direct intervention in the governance and management of the community college system."¹²

By contrast, in Utah, pressure from local leaders has recently led to an expansion of duties delegated to the campus boards of trustees of that state's nine public universities. Specifically, trustees who had felt left out of the selection process for university presidents lobbied successfully for more of a role. The Utah State Board of Regents, the central governing board like the UNC Board of Governors, now must meet with trustees of local campus boards and consult with the chair of each board before hiring a new university President. Previously, the Regents were not required to consult with campus leaders during the search process. "The pendulum swings back and forth on this issue" of delegation of duties to the local campuses, says Norm Tarbox, Assistant Commissioner for Finance and Facilities for the Utah board. "At this point in time, people see a need for greater local control. That's being driven by a couple of powerful trustees and a cooperative Board of Regents." Although the presence of local campus boards makes managing Utah's university system more complicated, says Tarbox, "it also fosters good local involvement for the nine institutions. And that really helps in the legislative process. Legislators who are not willing to walk across the street for the Board of Regents will do so for the local trustees."

8. Advantages and Disadvantages of the Current Allocation of Powers Between the UNC Board of Governors and Local Campus Boards of Trustees

Because nearly all powers of the UNC campus boards are defined and delegated by the central governing Board and not by the legislature in North Carolina statutes, there is not much of a gap between what the law prescribes and what happens in practice. As former university Board member and UNC-Chapel Hill Trustee David Whichard says, "There really is no [statutory] allocation of powers in our system. All powers are delegated by the Board of Governors. There is no question about who's boss and who makes the final policies." Opinions about the relationship between the central Board of Governors and the local campus boards of trustees tend to focus on whether the campus boards play a helpful or a harmful role in the larger system; whether they have the power and resources they need to be advocates for the 16 campuses; and whether UNC's research universities — UNC-Chapel Hill, N.C. State University, and perhaps UNC-Greensboro and others — should remain part of the 16-campus system or receive some form of special treatment in terms of management flexibility.

The research and interviews for this report identify the following advantages and disadvantages of the current allocation of powers between the Board of Governors and local campus trustees (see Table 5.1, Advantages and Disadvantages of the Current Allocation of Powers Between the UNC Board of Governors and the Local Campus Boards of Trustees). The major advantages are:

- Giving more power to a central Board of Governors increases the likelihood of attention to statewide needs in higher education rather than to regional or institutional ambitions.
- Keeping budget and program control in the hands of the central Board has created a more rational distribution of state educational resources and reduced harmful competition among the 16 campuses.
- Having a central governing Board and a President for the 16-campus system provides a unified voice for public universities in the state.
- The existence of the campus boards is a shield against too much centralization and too much authority in the hands of either the Board of Governors or the legislature.
- The campus boards provide vital fundraising, outreach, and political support for each school and also have maintained a system-wide respect for the historical traditions of various campuses.

The major disadvantages of the current balance of powers are:

- The degree of centralized control in the UNC system has frustrated some members of the campus boards of trustees who say it inhibits solutions to problems facing individual campuses.
- The current system may favor the established pecking order of institutions, with UNC-Chapel Hill and N.C. State University flourishing at the top, but perhaps to the detriment of fast-growing institutions such as UNC-Charlotte and UNC-Wilmington, or the five historically black universities and UNC-Pembroke.
- The existence of campus boards adds to the danger that supporters of individual schools will make end-

runs around the Board of Governors and contact legislators, asking for funds not in the Board of Governors' schedule of budget priorities.

- The Governor, elected statewide by the people, has some say in appointing local campus trustees but little say in election of the members of the Board of Governors by the legislature.
- There is not enough oversight or care taken by the Board of Governors on appointments to local campus boards, resulting in a situation in which some boards are effective in supporting their schools, while others are not.

State legislators, supporters of former regional universities such as East Carolina, and historically black universities such as N.C. Central University are the

Table 5.1

Advantages and Disadvantages of the Current Allocation of Powers Between the UNC Board of Governors and the Local Campus Boards of Trustees

Advantages

1. Giving more power to a central Board of Governors increases the likelihood of attention to statewide needs in higher education rather than regional or institutional ambitions.
2. Keeping budget and program control in the hands of the central Board of Governors has created a more rational distribution of state educational resources and reduced harmful competition among the 16 campuses.
3. Having a central governing board and a President for the 16-campus system provides a unified voice for public universities in the state.
4. The existence of the campus boards is a shield against too much centralization and too much authority in the hands of either the Board of Governors or the legislators.
5. The campus boards provide vital fundraising, outreach, and political support for each school and also have maintained a system-wide respect for the historical traditions of various campuses.

Disadvantages

1. The degree of centralized control in the UNC system has frustrated some members of the campus boards of trustees who say it inhibits solutions to problems facing individual campuses.
2. The current system may favor the established pecking order of institutions, with UNC-Chapel Hill and N.C. State University flourishing at the top, but perhaps to the detriment of fast-growing institutions such as UNC-Charlotte and UNC-Wilmington, or the five historically black universities and UNC-Pembroke.
3. The existence of campus boards adds to the danger that supporters of individual schools will make end-runs around the Board of Governors and contact legislators, asking for funds not in the Board of Governors' schedule of budget priorities.
4. The Governor, elected statewide by the people, has some say in appointing local campus trustees but little say in election of the members of the Board of Governors by the legislature.
5. There is not enough oversight or care taken by the Board of Governors on appointments to local campus boards, resulting in a situation in which some boards are effective in supporting their schools, while others are not.

"At one time in our history, we would have said 'no' [to the question of whether the Board of Governors system has worked to distribute resources fairly among the 16 schools]. The answer now is 'yes.' There has been an attempt to see that there is a sense of equity."

— RICHARD EAKIN, RETIRED CHANCELLOR OF
EAST CAROLINA UNIVERSITY IN GREENVILLE

strongest supporters of the current governance system's record in reducing harmful competition among the 16 campuses. Without a power equation that favors the central Board in this area, "you'd have all the institutions fighting like mad with each other," says retired N.C. Central University Chancellor Julius Chambers, who also is a former member of the Planning Committee that became the Board of Governors. Richard Eakin, retired Chancellor of East Carolina University in Greenville, says, "At one time in our history, we would have said 'no' [to the question of whether the Board of Governors system has worked to distribute resources fairly among the 16 schools]. The answer now is 'yes.' There has been an attempt to see that there is a sense of equity."

But others say tipping the power scales in favor of the central governing Board has merely served to drive turf and funding battles among UNC member campuses underground. Former UNC-Chapel Hill trustee and retired Z. Smith Reynolds Foundation Director Tom Lambeth says, "I have a question about whether competition behind closed doors is worse than competition out in the open." James Leutze, former Chancellor of UNC-Wilmington, says the Board of Governors has not done an effective job in "truly determining and enforcing the missions of the institutions. In point of fact, I see too much competition allowed. Some of the smaller and medium-sized institutions are always at the risk of having their programs catch the eye of the larger institutions, and that leads to overlap and duplication." Clark Kerr and Marian Gade describe the negative aspects of internal competition within multi-campus governance systems such as North Carolina's, saying, "The tendency within consolidated governance systems is to homogenize, because each type of institution looks so closely at one another."¹³

Former UNC-Chapel Hill trustee Tom Lambeth believes that tensions between the local campus boards and the statewide Board of Governors can be traced to the difficult times in which the 16-campus university governance system was formed. "At that time, we were divided about desegregation," he says. "University leaders were so consumed by those issues and by the competition between campuses that they had an exaggerated response, which was to have extremely tight control."

The campus boards don't need more delegated duties, says Lambeth, but they do need more authority to carry out their work. "I would do everything to enforce the idea that the Chancellor is the chief executive officer, and that the General Administration is a bureaucratic arrangement for coordination and budgeting, but it is not a university," he says.

On the other hand, some feel there is not enough oversight by the Board of Governors of the selection of members of local campus boards of trustees. They also say local campus trustees need to know more about the overall university system budget and other big picture issues that affect all 16 schools. As a result, "Those boards remain a rubber stamp — until they get into trouble," says North Carolina A&T State University Trustee Velma Speight. For that reason, Speight favors tighter central control by the Board of Governors over the activities of local campus boards.

Public university systems in other states have handled the issue of balance of power between a central board and local campuses in a number of ways. For example, consolidated governing boards in Maine, Vermont, and Utah are authorized to define and delegate duties to the local campus governing boards of trustees.¹⁴ In two of those states (Maine and Vermont), one higher education institution is governed by its own board, and the remaining higher education institutions are governed by the consolidated board.

On the other hand, Wisconsin's public university system, which is governed by a consolidated governing board and was created one year before North Carolina restructured its higher educational sector in 1971, has no local campus boards of trustees at all. Instead, each campus has a Board of Visitors with advisory powers only. However, significant responsibilities have been statutorily assigned to different campus "constituencies," says Judy Temby, Secretary to the Board of Regents, the consolidated governing board for all public universities in Wisconsin. For example, faculty have primary responsibility for policies regulating curriculum and programs, and students have primary responsibility for policies covering student fees. Since the system was created in 1970, the academic staff also have been given responsibility for policies and procedures governing academic staff. "The statute is well written in terms of the way the powers are divided," Temby says. "The law is respectful of the way that colleges and universities are governed locally and yet gives enough central power" to ensure the efficient use of state resources for higher education.

At the other end of the spectrum, Michigan, one of only two states with a planning agency higher education structure, has elected to keep governing duties in the hands of each individual campus.¹⁵ Finally, coordinating boards in 24 states have no governance authority, and governance responsibilities are left to institutional boards, three or more multi-campus or segmental boards, or a combination of institutional and multi-campus boards.¹⁶

C. Funding Equity Among the 16 Campuses

1. Equity in Distribution of Public Funds

Competition among institutions is highly related to the issue of funding equity within the UNC system. But equity is a thorny topic because definitions of equity vary, depending on who is doing the defining. Charges of inequitable funding have been leveled at different times and in different ways by leaders of rapidly-growing regional schools within the system, by supporters of the research campuses in Chapel Hill and Raleigh, and by leaders of the five historically black institutions and the school with Native American roots, UNC-Pembroke. Former UNC President William Friday traces the equity argument back to efforts in the 1970s to eliminate the racial duality in the University system during his tenure as President. Says Friday, "It was no accident that the level of funding [for the equivalent of each full-time student] for the historically black comprehensive and general baccalaureate institutions was significantly higher than for their counterpart historically white institutions." Friday also points to a related study "in

the late 1980s that indicated how the more rapidly growing campuses had, in one sense, been disadvantaged by the allocation of new funds." Friday says that the result was that a "modest budget request was made to acknowledge this issue, even if only in a symbolic manner."

In 1995, a study of funding equity mandated by the General Assembly also revealed a divide over visions of funding equity in North Carolina's university system. The first phase of the study identified five predominantly white institutions with "material levels of relative underfunding."¹⁷ They were Appalachian State University, East Carolina University, UNC-Charlotte, UNC-Greensboro, and UNC-Wilmington. When the Board of Governors requested and received \$21 million in recurring funds for those five institutions beginning with the 1997-98 university budgets, African American lawmakers protested the absence of any historically black universities on the list. "All of us must have fallen off the turnip truck yesterday if we believe that these [historically black] institutions have gotten more funding," former House Speaker Dan Blue (D-Wake) was quoted as saying. "We either came from another planet or are totally disregarding the history of this state and this region."¹⁸ In response to those criticisms, the 1997

Members of the N.C. State University board of trustees don 3-D glasses at their September 2004 session for a demonstration of physical modeling from two professors in the College of Physics and Mathematical Sciences. From left are trustees Wendell Murphy, Bob Matlocks, and Richard Vaughn.



Roger Winstead

AN ANALYSIS OF FUNDING
EQUITY IN THE UNIVERSITY
OF NORTH CAROLINA
PHASE I FINAL REPORT

SUBMITTED TO:

BOARD OF GOVERNORS
THE UNIVERSITY OF NORTH CAROLINA
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budget bill stated, "In making this appropriation [of \$21 million], the General Assembly does not conclude that the total funding of any institution, including specifically the historically black universities, is adequate in light of all considerations."¹⁹ The bill also directed the Board of Governors to conduct a study of "the relative equity and adequacy of the physical facilities of its constituent institutions," to be completed in January 1999.

Phase II of the study, released in November 1996, proposed a new funding model for UNC member campuses designed to provide "horizontal equity" based on the size, mission, and growth characteristics of institutions, rather than previous formulas based solely on enrollments.²⁰ (See Table 5.2, Guiding Principles of New Funding Model for UNC Campuses) The new formulas, adopted by the Board of Governors in March 1998, are expected to address the needs of historically black schools that have not seen major increases in enrollment, those of rapidly growing schools such as UNC-Wilmington and UNC-Charlotte, and those of the system's two research universities — which compete nationally with well-off private educational institutions for faculty, students, and federal grants. But some state policymakers are concerned that the new formulas will

The 1995 General Assembly mandated a funding equity study for the University system.

exacerbate the gap between existing "haves" and "have nots" within North Carolina's public university system. "I'm worried about it," says Valeria Lee, President of the Golden LEAF (Long-term Economic Advancement Foundation), who served on the Board of Governors from 1993 to 1995, was a candidate for a Board seat in 1999, and is currently a trustee at N.C. Central University. "It seems those institutions that historically had more resources will be able to gain more. The big ones will get stronger, and the weak ones will get weaker." Mark Lanier, Assistant to the Chancellor of UNC-Wilmington, says that because the new funding formulas do not account for all factors affecting the cost of various UNC programs, "the end result will be wide differentials in funding between institutions."

Still, others see the Board as the key for ensuring there isn't an even greater difference in funding among the public universities. "Every university out there is not created equally," says Board of Governors member John W. Davis, III of Winston-Salem. "Some have better chancellors than others, some have better trustees than others, some have a larger endowment than others, some have more graduates than others. Without an oversight body [the Board of Governors] and the Board having the power it has, I'm afraid that it [the inequality] would be more unequal than it is already."

In September 2003, after five years of experience with the new funding model, a special committee of the Board began evaluating the effectiveness of the new model. State House Democratic Leader Joe Hackney says, "This is an example of the Board of Governors doing what it's designed to do. This is not a process that should happen at the legislature."

*"This is an example of the Board of Governors
doing what it's designed to do.*

*This is not a process
that should happen at the legislature."*

— STATE HOUSE DEMOCRATIC LEADER JOE HACKNEY
(D-ORANGE)

Table 5.2

**Guiding Principles of New Funding Model for UNC Campuses
Adopted by the UNC Board of Governors**

Principle	Summary Description
Adequacy	The funding model serves to identify the funding level needed by each institution to achieve its goals and not be unduly influenced by average funding rates elsewhere.
Goal-Based	The model is used as a tool in implementing the broad goals of the state and its system of higher education.
Performance-Based	The model provides incentives for effectiveness and efficiency and does not provide any inappropriate incentives for institutional behavior.
Simplicity	Key participants in the state budget process understand how changes in institutional characteristics will affect funding levels under the model.
Equity	The model enables resources to be distributed in proportion to the relative need of each institution based on its size and mission characteristics.
Responsiveness	Funding levels provided under the model reflect changes in institutional workloads and mission as well as changing external conditions.
Stability	The model does not permit shifts in funding levels to occur more quickly than institutional managers can reasonably be expected to accommodate.
Validity and Reliability	The model relies on data that are appropriate for measuring differences in need and can be verified by third parties when necessary.
Balance	The model is based on a reasonable balance among the sometimes competing requirements of each of the criteria listed above.

Note: The principles are not listed in any particular order of importance.

Source: "User Manual, University of North Carolina, Student Credit Hour Enrollment Change Funding Model," Finance Division, General Administration, University of North Carolina, Chapel Hill, NC, p. 4.

These principles were outlined in a report adopted by the UNC Board of Governors on November 14, 1997, but the principles were not incorporated into *The Code*.



UNC Board of Governors meeting in Chapel Hill.

In November 2004, the special Board committee conducting the evaluation produced a final report that affirmed use of the funding model. However, the committee recommended changing one part of the funding model's distribution formula (the undergraduate cost factor) that benefitted campuses whose average undergraduate class size was more than ten percent below the UNC system average and replacing it with a factor that benefits all UNC campuses not classified as research extensive or research intensive institutions. This part of the funding model benefits Appalachian State University, Elizabeth City State University, Fayetteville State University, N.C. Central University, UNC-Asheville, UNC-Pembroke, UNC-Wilmington, Western Carolina University, and Winston-Salem State University.

The committee also recommended adding Fayetteville State University to the list of institutions that get additional funding because of diseconomies of scale related to having a smaller student body than other UNC institutions. Fayetteville State University would join Elizabeth City State University, UNC-Asheville, UNC-Pembroke, and Winston-Salem State University in getting this additional funding. The committee also recommended a revision to the way in which the funding model defines service to "disproportionate numbers of disadvantaged students." Under this new definition, the

same six institutions — Elizabeth City State University, Fayetteville State University, NC A&T State University, N.C. Central University, UNC-Pembroke, and Winston-Salem State University — would continue to receive additional funding. Additionally, the committee recommended and the Board approved eliminating a financial aid component of the funding model that had provided only minimal financial aid.

In addition to its review of the funding model, the committee also spent considerable time reviewing appropriations levels based on enrollment at the campuses. Data provided to the committee showed that Appalachian State University, UNC-Charlotte, and UNC-Wilmington were receiving the lowest level of funding for the equivalent of each full-time student (FTE). In October 2004, the committee's work prompted a budget request from UNC to the General Assembly for more money for UNC-Charlotte, \$7 million more per year for UNC-Wilmington, and \$1.4 million more per year for Appalachian State University to counter what supporters of those institutions believed to be negative impacts of the equity funding model on those institutions. However, UNC-General Administration staff point out that this was not a negative impact of the funding model, but instead a result of legislative funding formulas for FTE enrollment.

2. Public Universities Also Compete for Private Contributions

When considering funding equity among the 16 institutions, it also is necessary to consider the institutions' relative successes in obtaining financial support from sources other than state appropriations, including private sources such as grantmaking foundations, corporations, individual donors, and school alumni, as well as the federal government and licensing revenue from inventions. For example, in his installation speech on October 12, 2000, UNC-CH Chancellor James Moeser announced his goal of raising \$1.8 billion in private money to more than triple UNC-CH's \$511 million share of the \$3.1 billion bond package approved by the state's voters in November 2000.²¹ And, N.C. State University announced a \$1 billion campaign in 2004. UNC-CH's \$1.8 billion target (raised to \$2 billion in October 2005) is one of the highest capital campaign goals set by public universities across the nation so far.²² Though called a "capital campaign," the fundraising campaign is not just for building funds, as the bond funds are.

The state's public universities always have been the recipients of significant federal grants and grants from private foundations and individuals. In 1999, UNC system faculty attracted more than \$600 million in external grants for research and other sponsored programs; only the Universities of California and Texas attracted more dollars from these sources.²³ Recent examples include the award of \$6.1 million over three years from the U.S. Department of Education to a consortium composed of UNC-CH, N.C. State, N.C. Central University, and Duke University for international studies programs;²⁴ \$9.5 million from the U.S. Agency for International Development to the Carolina Population Center at UNC-CH for research on international health and family planning;²⁵ and \$8 million from the Brody family to the East Carolina University Medical School to support medical research and fund scholarships.²⁶ Other grants awarded to UNC constituent institutions from federal and private sources in 2000 included \$260,000 from a private pharmaceutical foundation to N.C. Central University (NCCU) to support biomedical and biotechnology research and training,²⁷ \$855,000 in federal funds to

NCCU to study the effect of environmental hazards on minority communities,²⁸ and \$500,000 in federal dollars to UNC-Greensboro for a program to help protect water sources from potential bioterrorism.²⁹

During fiscal year 2004, the 16 campuses in the UNC system attracted \$1.016 billion of external support for research and sponsored programs. This represented an 8 percent increase over the previous year and a five-year gain of 69 percent.³⁰ Sponsored research includes research grants awarded to faculty from the federal government, other government agencies, and private sources such as foundations and corporations. In 2005, the campuses increased this total to \$1.019 billion.

UNC-Asheville quadrupled its external funding to \$4.7 million, including \$1.3 million to launch environmental research under its new National Environmental Modeling and Analysis Center. UNC-Wilmington saw a 45 percent increase in their total, with a major part of that due to its location as a coastal university with a niche in marine science research. Fayetteville State University's total external funding rose by 84 percent in FY 2004, with much of that coming for science and technology education at the K-16 level. N.C. Central University and N.C. State University also reported substantial increases in the total amount of awards, particularly through grants from the Golden Leaf Foundation in Rocky Mount, N.C. for new bio-manufacturing research and training programs.

These totals are dwarfed by the external funding brought in by UNC-Chapel Hill. For example, during fiscal year 2003, UNC-CH's sponsored research funding totaled \$537.4 million, an increase of 10 percent over the prior year. Chapel Hill received federal funding from the U.S. Departments of Defense, Health and Human Services (\$308.2 million), and Education, as well as the National Science Foundation and the Agency for International Development. For fiscal year 2003, the campus submitted 3,585 proposals and managed about 7,595 active contract and grant awards.³¹

Nationwide, the federal government awarded nearly \$21.8 billion in 2002 in university-based research and development, and UNC-Chapel Hill and N.C. State University are consistently ranked among the top 75 institutions in federal support. In the National Science

The Patriot News of Harrisburg, Pa., reported last month on Pennsylvania State University's current fund-raising campaign, which began in July 1996 and has raised \$332 million in its "silent" phase. "As a measure of the campaign's success so far," the newspaper reported, "Penn State officials point to the last university-wide campaign that raised \$352 million between 1984 and 1990, far surpassing the goal of \$200."

— "MARGINALIA"

THE CHRONICLE OF HIGHER EDUCATION, MAY 14, 1999

Table 5.3

***Sponsored Program and
Research Awards Received by the
UNC System During Fiscal Year 2005***

	Number of Awards in Fiscal 2005	Dollar Amount of Awards in Fiscal 2005
Doctoral/Research-Extensive		
UNC-Chapel Hill	3,634	\$580,104,170
N.C. State University	1,839	201,297,428
Doctoral/Research-Intensive		
N.C. A&T State University	243	35,553,929
East Carolina University	334	33,378,636
UNC-Greensboro	214	27,628,789
UNC-Charlotte	371	26,780,409
Master's Comprehensive I		
N.C. Central University	82	23,487,173
UNC-Wilmington	196	18,835,968
Appalachian State University	174	11,413,662
UNC-Pembroke	63	10,418,496
Fayetteville State University	50	8,488,584
Western Carolina University	91	7,560,623
Baccalaureate-General		
Winston-Salem State University	53	13,347,189
Elizabeth City State University	58	9,023,241
Baccalaureate-Liberal Arts		
UNC-Asheville	32	1,355,182
Arts, Music and Design		
N.C. School of the Arts	2	95,000
System Office		
UNC-Office of the President	22	11,175,345
UNC Total	7,458	\$1,019,943,823

Source: The Sponsored Programs and Research Council (SPARC) data system, available online at <http://uncsparc.northcarolina.edu/>.

Notes: Sponsored programs are scholarly, professional, and creative activities (e.g., research, instruction, and public service) that University personnel conduct with support from external funding such as grants, contracts, and cooperative agreements. Figures include all sponsored program awards actually received by the University of North Carolina from 7/01/2004 through 6/30/2005 and do not include awards that were promised but had not been paid. The totals shown include inter-institutional sub-agreements and internal awards and may therefore be higher than other officially reported totals. Dollar amounts are rounded.

Foundation's annual "Survey of Research and Development Expenditures at Universities and Colleges" for 2002 (released in 2004), UNC-Chapel Hill ranked 23rd with \$254.6 million in federal funds received, and N.C. State ranked 94th with \$75.2 million in federal funds. N.C. State later corrected its survey response and would have ranked 73rd at \$92 million if those revised figures had been the basis of the rankings.³²

Another source of external funding for universities is licensing revenue from patents and inventions developed on campuses. In the 2002 fiscal year, universities nationwide collected more than \$959 million from the commercialization of new drugs, computer software, and other inventions, such as Gatorade sports drink. While most universities own the rights to inventions developed by the professors and graduate students, the inventors themselves usually receive about a third of the licensing income. If universities create companies based on the inventions, they often receive — and share with the inventors — the equity from these start-ups, reports *The Chronicle of Higher Education*.³³ For fiscal year 2002, N.C. State University ranked 40th in licensing income, with \$3.72 million received. N.C. State also had 25 patents issued and 83 patent applications formed. Tony Waldrop, Vice Chancellor for Research and Economic Development at UNC-Chapel Hill, says that school has created 22 spin-off companies.³⁴ Systemwide, the 16 UNC campuses had more than 93 patent applications and 407 invention disclosures and generated more than \$8.6 million in licensing income during fiscal year 2003.³⁵

Internally, public universities create private foundations for the primary purpose of obtaining external financial support. For example, as of June 30, 2002, there were 16 private university foundations at UNC-Chapel Hill with assets of more than \$1 million each, including three with more than \$100 million in assets. These 16 university foundations have combined assets totaling more than \$610 million (See Table 5.4: Private University Foundations at UNC-Chapel Hill with Assets Greater than \$1 Million).³⁶

*"UNC-Chapel Hill has sources
of money that others in the system don't have.
They receive federal research money,
[athletic] shoe contracts, and private gifts."*

— MARK LANIER, SPECIAL ASSISTANT TO CHANCELLOR
ROSEMARY DEPAOLO
AT UNC-WILMINGTON

"You know, we've brought six companies under the TransNational wing in the last six years, some big, some not so big. That gives us control of eleven diverse companies in all, and, of course, a goodly debt. Not much left over for research and development, for, let's say, the physical plant aspects, and the personnel. So I look around me, and I say, who's got the physical plant and the personnel, and I don't have to look far, do I?"

Ivar, whose nodding agreement had become unpleasantly rhythmic, said, "No, probably not," and consciously stilled his head.

"Our interests continue to coincide, Dr. Harstad. I got hybrid seeds, you got plant genetics. I got steel roller mills, you got materials science and industrial engineering. I got airplane engine parts, you got aerospace engineering. I got chickens, beef, and llamas; you got animal science. I got a chemical company that specializes in pesticides, you got entomology. I got a big accounting and PR firm, you got a business school. Are you catching my meaning, Dr. Harstad? Why should I hire R and D people just to read what your R and D people already know?"

"Of course," said Ivar.

"Your own governor says that alliances between education and business are the wave of the future, Dr. Harstad."

"Technology transfer," murmured Elaine.

— JANE SMILEY

MOO

By contrast, for 2001–02, the NCSU Foundation, Inc. listed assets of \$56.3 million, while the NCSU Student Aid Association (the Wolfpack Club) had liabilities that exceeded assets by \$4.6 million. For the same year, the Medical Foundation of East Carolina had assets of \$19.4 million, the athletics foundation of UNC-Charlotte had \$11 million, the North Carolina Central University Foundation had \$9 million, and the Winston-Salem State University Foundation had \$5 million.³⁷

"UNC-Chapel Hill has sources of money that others in the system don't have," says Mark Lanier, Special Assistant to Chancellor Rosemary DePaolo at UNC-Wilmington. "They receive federal research money, [athletic] shoe contracts, and private gifts," he says.³⁸

There is clear evidence of increased attention being given to beef up development offices and fundraising staffs within the UNC system. The university created a Division of Public Affairs and University Advancement in 1998,³⁹ and fundraising is an increasingly important part of the lives of the chancellors. According to UNC President Molly Broad, "We expect our chancellors to give their full energy to delivering on the public commitment of the mission to the University of North Carolina, providing access and service, and reaching out to all of their constituents. Increasingly, we are also expecting them to provide substantial energy on the private side in raising funds and in developing alliances with corporations and securing support from foundations."⁴⁰

In 1999, the General Assembly provided \$2 million in recurring funds to build development office capacity at seven designated UNC campuses targeted for high enrollment growth over the next decade.⁴¹ Then in 2000, the UNC Foundation was created by the University to support multicampus and university-wide initiatives. And, in February 2001, the UNC Foundation received a \$400,000 grant from the Glaxo Wellcome Foundation (now the North Carolina GlaxoSmithKline Foundation) to assist smaller UNC campuses and affiliated organizations in their efforts to build institutional capacity for private fundraising.⁴²

However, two years later, *The News & Observer* of Raleigh reported that the seven schools barely had enough private gifts for operations and scholarships, and none for new buildings, a key goal of the legislature in appropriating the \$2 million in 1999.⁴³ The legislature hoped the institutions would use the \$3.1 billion state-wide capital bond issue (with \$2.5 billion of that going to the universities) to induce private donors to give more. This action was taken in response to a recommendation by Eva Klein, a consultant on UNC building needs, that the universities should try to match and perhaps exceed national trends in seeking larger portions of capital funds from philanthropy. This was especially a challenge for the smaller and historically black universities.

Seven of the 16 public universities received allocations from the legislative appropriation of \$2 million per year, beginning in 1999, to beef up their fundraising

Table 5.4

Private University Foundations at UNC-Chapel Hill with Assets Greater Than \$1 Million

Foundation	Net Assets
1. Arts & Sciences Foundation, Inc.	\$ 73,555,229
2. Botanical Garden Foundation, Inc.	5,040,479
3. Dental Foundation of NC, Inc.	17,994,255
4. Educational Foundation, Inc. (Rams Club)	4,717,174
5. Educational Foundation Scholarship Endowment Trust	106,300,000
6. Institute of Government Foundation, Inc.	6,845,718
7. Kenan Flagler Business School Foundation	46,197,210
8. Law Alumni Association of UNC, Inc. & U.N.C. Law Foundation, Inc.	14,010,228
9. Medical Foundation of NC, Inc.	148,105,118
10. Pharmacy Foundation of NC, Inc.	19,342,205
11. Public Health Foundation, Inc.	9,546,430
12. School of Education Foundation, Inc.	1,326,384
13. School of Journalism & Mass Communication Foundation of NC, Inc.*	15,867,425
14. School of Nursing Foundation, Inc.	4,427,209
15. School of Social Work Foundation, Inc.	4,745,808
16. University of North Carolina at Chapel Hill Foundation, Inc.	132,862,134
Total:	\$ 610,883,006

* Net assets amount reported as of December 31, 2001 instead of June 30, 2002.

Source: Information provided to the N.C. Center for Public Policy Research by UNC-Chapel Hill's Office of the University Counsel, July 2003 and data obtained from <http://www.guidestar.org>.

offices. (See Table 5.6. Allocations to Public Universities in the UNC System To Beef Up Private Fundraising, and Amounts Raised in 1998 and 2001–2003.) Four of those seven institutions actually saw annual private giving decline from 1998 to 2001 — Fayetteville State, N.C. Central, UNC-Pembroke, and Winston-Salem State. None of the seven were able to add private money to bond-funded building projects. Instead, the state allocations went for such expenses as hiring and training fundraising staff (Elizabeth City State and A&T State) and computerized phone banks (A&T State). Meanwhile, the UNC system as a whole raised about \$323 million from private sources in 2001. UNC-Chapel Hill alone raised \$160 million, enough to rank 14th on a list compiled by the national Council for Advancement

and Support of Education, a private nonprofit that tracks private fundraising for education.⁴⁴

“This is an equity issue,” says former Fayetteville State University Chancellor Willis McLeod. “Most of the money from UNC-General Administration is enrollment-driven. There ought to be certain positions, such as development positions, that are provided to all institutions, regardless of size,” says McLeod.⁴⁵ He adds that he doesn’t have 20 development positions like some other schools, yet he says he’s expected to have as many endowed chairs.

It is also an equity issue in terms of the different sizes and nature of the alumni bases when the schools solicit contributions. Charles Waddell, Fayetteville State University’s Vice Chancellor for Institutional Develop-

ment, says, "Fayetteville State started out being a teachers college, while UNC was producing lawyers and doctors who are going to have more disposable income. And we are talking of first-generation college students who don't have the resources."⁴⁶ In 2001–2002, FSU received only \$180,517 in alumni contributions, and in 2002–2003, only \$122,047. Nationally, one recent book says alumni giving rates at predominantly white institutions are more than double the rates for many historically black colleges.⁴⁷

In June and July 2003, the fundraising consulting firm of Bentz Whaley Flessner conducted a follow-up to its 2000 review of the advancement programs for the seven focused growth institutions⁴⁸ within the UNC system. The firm concluded that the seven institutions have widely differing potentials for fundraising growth but that each has the opportunity to increase its fundraising. The review suggested that the institutions' fundraising operations need to improve their computer systems and attract, retain, and develop staff members. The University system's then newly-hired Director of University Advancement, Laura R. Foxx, reported to the Board of Governors in August 2003 that she was actively working on developing system-wide resources to benefit the focused-growth campuses, saying, "We are keenly aware of the special resources required to enhance the advancement operations of the focused growth institutions."

"We're seeing increased competition between nonprofits and universities for foundation monies. It makes nonprofits nervous because the playing field is not level. Institutions of higher education have so much more fundraising capacity — well-developed infrastructures, development staffs, entrée, and contacts — than the average community-based nonprofit, so it makes fundraising for them an even greater challenge."

— TRISHA LESTER,
VICE PRESIDENT OF THE N.C. CENTER FOR NONPROFITS

Private nonprofits are concerned that public universities are competing with them for limited private foundation grants. Historically, state universities sought funds from state government, the federal government, and alumni, leaving private foundation grants mostly to private nonprofits. Now, however, many public universities have set up private university foundations as

Table 5.5

Ranking and Amount of Endowments of N.C. Public Universities in National College Business Officers Survey

Ranking of School's Endowment	UNC Institution	Amount of Endowment
32	UNC-Chapel Hill	\$1,317,211,000
146	N.C. State University	324,189,000
291	UNC-Greensboro	118,932,000
347	UNC-Charlotte	86,999,000
385	East Carolina University	65,729,000
483	Appalachian State University	43,755,000
571	UNC-Wilmington	29,654,000
612	Western Carolina University	23,053,000
665	UNC-Asheville	14,909,000
717	Fayetteville State University	5,890,000

* Includes assets of supporting foundations

Source: National Association of College and University Business Officers, Fiscal Year 2004 survey, released 1/24/2005.

"In the last few years, we've realized that we're never going to get enough money from the legislature. If we don't ask for the money from other places, we're not going to get it."

— ADDISON BELL, A UNC BOARD OF GOVERNORS MEMBER

fundraising units to make it easier for private grantmaking foundations to give to universities. Trisha Lester, Vice President of the N.C. Center for Nonprofits, a statewide association serving charitable nonprofits, confirms that such competition exists. "We're seeing increased competition between nonprofits and universities for foundation monies," says Lester. "It makes nonprofits nervous because the playing field is not level. Institutions of higher education have so much more fundraising capacity — well-developed infrastructures, development staffs, entrée, and contacts — than the average community-based nonprofit, so it makes fundraising for them an even greater challenge."

Still, the university feels that the current state budget situation necessitates looking elsewhere for resources. "In the last few years, we've realized that we're

never going to get enough money from the legislature," says Addison Bell, a UNC Board of Governors member. "If we don't ask for the money from other places, we're not going to get it."⁴⁹ (See Table 5.7. Pros and Cons of State Universities Seeking Private Foundation Grants and Corporate Contributions.)

Managing private fundraising foundations within public universities is not without dangers and policy questions. In October 2004, the State Auditor raised questions about proper oversight of the North Carolina School of the Arts and its university-affiliated foundations. A special review found that "[t]he school failed to exercise appropriate control or oversight over its related organizations." The audit uncovered violations of personnel policy that included inadequately documented overtime, reclassification of a job twice without proper approval, inappropriate special one-time payments to 20 employees, and abuse of an employee loan program. (For more on the personnel abuses, see pages 143–145 in this report.)

Additionally, with respect to foundations affiliated with the School of the Arts, the State Auditor found that state and university-affiliated foundation money was used to fund three spending accounts not reported to foundation board members. Expenses totaling \$269,224 were paid from these accounts for cell phone bills, country club memberships, and \$15,000 in lease payments for a Cadillac Escalade for former Vice Chancellor for Finance and Administration Joseph L. Dickson. Dickson

Table 5.6

***Allocations to Public Universities in the UNC System
To Beef Up Private Fundraising, and Amounts Raised in 1998 and 2001–2003***

	Annual Allocation To Beef Up Fundraising	Amounts Raised (Millions of \$)			
		1998	2001	2002	2003
Elizabeth City State University	\$284,000	\$0.3	\$0.6	\$0.6	\$0.8
Fayetteville State University	273,000	3.8	1.6	0.9	0.9
N.C. A&T State University	303,200	4.1	6.1	5.0	13.3
N.C. Central University	308,400	7.8	2.6	2.8	3.3
UNC-Pembroke	260,600	0.8	0.7	1.7	1.3
Western Carolina University	260,625	2.6	3.0	3.2	3.3
Winston-Salem State University	260,000	1.0	0.7	1.9	2.3

Source: UNC Office of the President and John Sullivan, "Fund-raising plan fizzles at UNC schools," *The News & Observer*, Raleigh, NC, April 24, 2002, pp. 1A and 19A.

Table 5.7

***Pros and Cons of State Universities Seeking
Private Foundation Grants and Corporate Contributions***

North Carolina's public universities often set up private foundations in order to increase their access to foundation grants and corporate contributions to nonprofit entities.

Pros

1. Creates the possibility of adding outside new money to supplement state appropriations, tuition and fees, federal grants, and alumni giving.
2. Can help offset state budget cuts if the university receives grant income at same time
3. Corporate giving can help further the University's research mission.

Cons

1. Not a sustainable source of revenue: Foundations mostly make grants for special projects, not continuing general operating support over long periods of time.
2. Circumvents the conversation between universities and legislators and the public and creates a false picture of the universities' continuing finances, thus hurting the university's ability to make its case to legislators and ultimately to the public on why more funds are needed.
3. Reduces public accountability: This enables public universities to raise funds without the same level of public scrutiny normally expected of government entities.
4. Strains relations between the public and nonprofit sectors at a time when government is expecting the nonprofit sector to provide more services with the same or less funding. Also, nonprofits resent public entities dipping into private foundations when public agencies already have access to public funds through state, local, and federal appropriations, as well as alumni giving.
5. Distracts the university from focusing on its public mission, and the university instead spends time pursuing foundation or corporation grants.
6. Corporate gifts for University research projects may have conditions attached or may be inconsistent with the University's value for disinterested research.

also received more than \$90,000 for consulting and expenses over 13 years from the foundation in violation of university policies. Dickson twice transferred foundation property without authorization to a nonprofit corporation he controlled. First, he transferred three acres of land without authorization, resulting in a misapplication of \$108,000 from the foundation. Second, he misapplied \$177,945 from the foundation related to five houses that had been donated. The entities involved included the N.C. School of the Arts Foundation, the N.C.S.A. Housing Corporation, the N.C.S.A. Unity Development Corporation, and the Program Support Corporation, which was established in 1997 to support the school. Many of the Auditor's findings focused on the nonprofit Program Support Corporation. Its three-member board was comprised only of Dickson, Chancellor Wade Hobgood, and Provost Lucinda Lavelli.

State Auditor Ralph Campbell said the School of the Arts situation created an opportunity for the UNC system "to bring some needed sunlight to the financial affairs of the foundations associated with all of our universities."⁵⁰ The Auditor recommended that UNC require every campus in the system to submit a report to the Board of Governors outlining every foundation and related agency connected to the University, which would include activities, revenues, and expenditures.⁵¹

In response, UNC President Molly Broad said that since 1990, all university-related foundations must be audited annually and the results given to her office. For the past seven years, the foundations have been required to adopt financial standards governing how they operate. The School of the Arts' foundation audit had shown no problems though. And, Broad said she and other system administrators were unaware of the existence of the

Program Support Corporation, the entity that held some of the money in question. Broad responded to the Auditor's recommendation that institutions provide further information about foundations and related entities, saying, [On an annual basis, I] "will hereafter require that the chancellors list all affiliated foundations and entities, affirm that they have adequate financial controls in place, and attest that no other foundations or entities exist."⁵²

However, President Broad and the State Auditor disagree over which entities would be defined as affiliated with UNC. For example, the auditor says payments to the dean of the School of Filmmaking at the N.C. School of the Arts from a nonprofit called "North Carolina School of the Arts Unity Development Corporation" were a violation of UNC policy against senior administrators receiving compensation from related organizations, but UNC disagrees. The School of the Arts formed the Unity Development Corporation as a nonprofit that would sell bonds to build a corporate headquarters called "Unity Place" to lease to Krispy Kreme Doughnut Corporation.⁵³ In her response to the audit, Broad says, "The Office of the President does not agree with the Auditor's conclusion that the Unity Development Corporation is an entity that was intended to come within the meaning of this policy. Nonetheless, in light

of this ambiguity, [I] will recommend that the Board of Governors clarify its policy."

In January 2006, A Board of Governors' Task Force on Best Financial Practices (set up a year earlier to study "non-profit entities created to benefit the University") recommended creation of a Board audit committee, establishment of audit committees for the local Boards of Trustees of the campuses, performance of pre-employment background checks of prospective senior university officials, monitoring of employee loan programs, and a ban on personal loans to trustees and senior executives by university-associated entities. The task force also endorsed a set of regulations on university-associated entities for the UNC Administrative Manual. Those regulations, which had already been approved by the Board in November 2005, require university-associated entities to report a limited amount of financial information annually to chancellors of the constituent institution with which they are associated, with multi-campus entities reporting to the President. With regard to additional disclosure of information to governing boards about affairs of university-associated entities, the regulations take a "don't tell us if we don't ask" approach as an effort to minimize public disclosure of foundation records. Boards of trustees or the

Board of Governors member Bob Warwick chairs the Board's Task Force on Best Financial Practices.



Karen Tam

He [Dwight D. Eisenhower] insisted that the [Columbia University] trustees must understand, before they acted, the nature and extent of the verbal agreements he had made with Watson. These included no involvement in purely academic matters, no responsibility for fund raising, no excessive entertaining, and no burdensome administrative details.

— STEPHEN AMBROSE

EISENHOWER

Board of Governors must first articulate a reason for their information request. And, the regulations only require the associated entity to allow inspection of information rather than transmission of documents.

In addition to the issue of equity in access to private funding among public universities and the issue of management of these private foundations by university leaders is the issue of accountability and transparency of these private foundations. This issue has been raised by the situation at the N.C. School of the Arts and by events in Georgia, whose University System Board of Regents voted in 2004 to terminate its relationship with the University of Georgia Foundation. That foundation was created in 1937 to support and raise money for the University of Georgia. The foundation pays 57% of University President Michael F. Adams' \$559,468 salary, controls a \$400 million endowment, provides a sky suite for the president at home football games for entertaining donors and dignitaries, and even holds the federal trademark registration of the University of Georgia name. The foundation became angry at President Adams when he decided not to extend the contract of popular long-time athletic director Vince Dooley in 2003. The split between the University and the foundation came as the university was less than halfway toward its goal in a \$500 million capital campaign.

The Chronicle of Higher Education says, "Many public universities have become increasingly dependent in recent years on their foundations for financial support, as state appropriations for higher education have declined. The foundations raise and manage private donations to the universities, engage in real-estate deals, and, in recent years, have played a greater role in supplementing presidential pay."⁵⁴ *The Chronicle* says about a third of public university presidents now receive a portion of their pay from private sources.

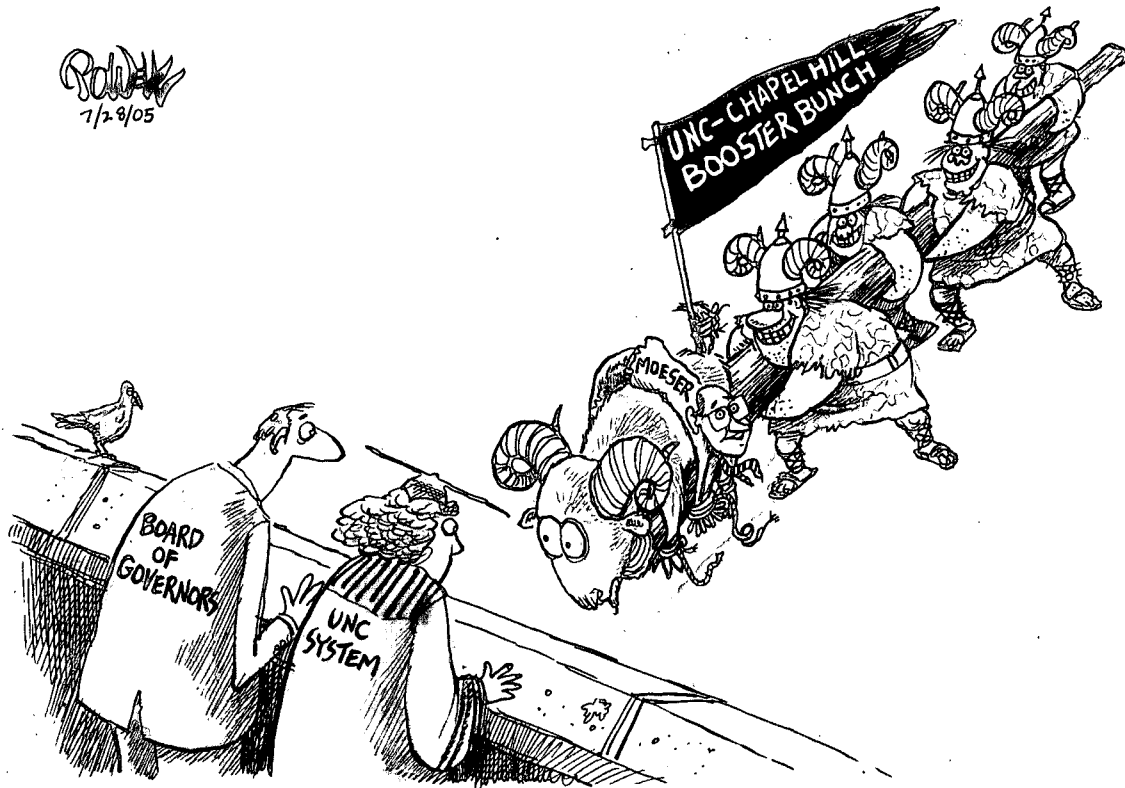
However, trustees and members of public university boards worry that the growing dependence on private foundations can reduce the universities' accountability and transparency to the public because private foundations are not subject to the same open meetings and public records laws as other state entities are. The relationship between public universities and private

foundations also can create conflict of interest situations, as it did in Georgia where the President and several employees were paid by both the foundation and the university.

Scholar Marian Gade found in her study of multi-campus university systems that many public universities now are competing with private universities, nonprofits in their regions, and even other campuses within their own university systems for private donations — a situation that has raised new policy questions. "For example, do alums 'belong' to the campus from which they graduated, or are they fair game for any campus in whose jurisdiction they now live or work?" Gade asks. "As private fundraising becomes more important for public institutions, fundraising policies (but not campaigns) may become a more important item on system agendas."⁵⁵

As the state's public universities have turned to private sources of funding to help support campus operations, the UNC Board of Governors needs to adopt fundraising policies to monitor and channel such efforts. Currently, the Board of Governors receives a fund-raising and endowment report annually, which specifically outlines national giving trends, tracks the results of the 16 campuses, and benchmarks their work against peer institutions. Since 2001, the Board also has required all campuses to record their fundraising results with the Voluntary Support for Education and with the National Association of College and University Business Officers' annual surveys. However, while the Administrative Manual of The University of North Carolina includes policies regarding endowments and trust funds,⁵⁶ the Board has not implemented policies or guidelines for campuses on how they approach fundraising, the relationships with other campuses that may be in pursuit of the same funds from individuals, corporations, and foundations, and how the campuses' development activities affect the larger community in terms of competing with nonprofits in their regions. As the university continues to increase the development capacity on the 16 campuses, the Center believes the Board of Governors should establish policies on private fundraising and development, especially as related to equity, transparency, appropriateness, and accountability.

Rowley
7/28/05



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**D. Lobbying by UNC Campuses:
An Untapped Resource,
“Self-Centered Muscle-Flexing,”
or Competition Under Control?**

In an increasingly competitive budget climate, the 16 local boards of trustees are seen by many as a way to extend fundraising and public outreach roles of the UNC campuses. For example, in February 1999, the East Carolina University Board of Trustees announced an effort to transform the image of the state’s third largest university — a change characterized by one reporter as being “from one of parties and Pirates to science and scholars”⁵⁷ — through more extensive marketing activities, scholarship programs, and new enrollment strategies. Former North Carolina Governor and current Board of Governors member *emeritus* Jim Holshouser says, “The local boards are an integral part of what’s made our system successful. I believe most chancellors would say the trustees are a real asset in reaching out to university constituents and supplementing public resources and also giving them a group of people who aren’t ‘yes’ people reporting to the chancellor who can be called upon for advice.”

Some state policymakers say the current balance of power in the UNC system has prevented the local campus boards from acting as true champions for their schools. “We have an immense resource that we are not utilizing by not letting each institution argue for itself

[in the legislature] and for the system,” says David Whichard, a former member of the Board of Governors and former trustee at UNC-Chapel Hill. “Reserving for the [UNC] General Administration the role of being a spokesperson with the legislature means we are missing some opportunities.” N.C. Central University Trustee Valeria Lee says the problem is especially serious for UNC’s smaller and less prestigious campuses. “We need to revive the muscle of the smaller institutions to approach the General Assembly,” she says. “I have seen more of the local boards trying to find ways to have more say with their local legislators. The larger institutions have had that influence all along.”

UNC-Chapel Hill’s supporters have taken an alternative route to seeking clout with the legislature by forming their own political action committee (PAC) called Citizens for Higher Education. This committee makes campaign contributions to candidates for the state legislature. In the 2001–2002 election cycle, the PAC contributed \$158,000 to legislative candidates — tied for the fifth largest sum of direct contributions given by any registered political committee that year and more than such corporate heavyweights as BellSouth and Progress Energy, according to NCFREE, a research group for business interests in North Carolina (see Table 5.8: Campus-Related Political Action Committees). Only 15 of the 522 PACs contributing in that election cycle gave more than \$100,000.⁵⁸

Table 5.8

Campus-Related Political Action Committees

A. Top Political Action Committees (PACs) Contributing to Legislative Candidates

Rank in Giving	Name of PAC	Amount Contributed in 2003–04 Election Cycle	Rank in Giving	Name of PAC	Amount Contributed in 2001–02 Election Cycle
1.	N.C. Democratic Party	\$2,715,870	1.	N.C. Democratic Executive Committee	\$4,031,512
2.	N.C. House Democratic Committee	\$1,016,797	2.	N.C. Realtors Association	235,700
3.	N.C. Senate Democratic Committee	\$759,387	3.	N.C. Home Builders Association	213,450
4.	N.C. Republican Party	\$395,994	4.	Duke Energy	173,100
5.	Citizens for Higher Education (UNC-CH group)	337,500	5. (tie)	Citizens for Higher Education (UNC-CH group)	158,000
6.	N.C. Medical Society	296,750		Jim Black Committee (Black was Speaker of the N.C. House in 2001–02)	158,000
7.	N.C. Realtors Association	272,880	7.	N.C. Hospital Association	151,350
8.	N.C. Academy of Trial Lawyers	247,750	8.	BellSouth	149,378
9.	N.C. Home Builders Association	244,689	9.	Progress Energy	143,000
10.	Duke Energy	231,000	10.	N.C. Medical Society	136,050
...					
71.	Economic Development Coalition (NCSU Group)	27,500			
...					
224. (tie)	Coalition for East Carolina (ECU Group)	4,000			

Source: NCFREE, Raleigh, N.C., July 2003

Source: NCFREE, Raleigh, N.C., July 2005

B. Campus-Related PAC Giving to All Candidates in 2003–04 Election Cycle

Name of Campus-Related PAC	Amount Contributed in 2003–04 Election Cycle
1. Citizens for Higher Education (UNC-CH Group)	\$362,000
2. Economic Development Coalition (NCSU Group)	36,950
3. Coalition for East Carolina (ECU Group)	8,000

Source:

Jane Stancill and David Raynor, "UNC-CH backers boost lawmakers," *The News & Observer*, Raleigh, NC, January 31, 2005, pp. 1B and 3B.

The News & Observer of Raleigh sharply criticized the UNC-CH PAC in an August 3, 2003 editorial, saying, "It is self-centered muscle-flexing that reminds the other 15 institutions in the UNC system that these Chapel Hill folks are looking out for number one. It undermines the very principle that caused the system to be formed more than 30 years ago — that the public universities should be all for one and one for all, and should present a unified voice to the General Assembly." The editorial went on to say that such an "organized, cash-and-carry group like this" is "a slap in the face to other schools in the system . . . which don't have the financial clout in their alumni base that Chapel Hill has." The editorial concluded that the Chapel Hill PAC "should cease operations, and donate the cash on hand to need-based scholarships. Right now."⁵⁹

Instead, the UNC-Chapel Hill group, Citizens for Higher Education, more than doubled its involvement in political campaigns in the 2003–2004 election cycle, giving \$362,000 to candidates, including \$283,500 to legislative candidates. Again, this was more money than that donated by big banks, pharmaceutical companies, the N.C. Medical Society, and the N.C. Academy of Trial Lawyers. Worse still, the disease has spread to other campuses. A group of N.C. State backers gave \$36,950 to candidates through their PAC called the Economic Development Coalition. And, East Carolina University supporters formed a new Coalition for East Carolina in June 2004 and gave \$8,000 to candidates.⁶⁰ It is perhaps no accident that the 2003–2004 General Assembly enacted legislation establishing a new \$180 million cancer center at UNC-Chapel Hill and a new \$60 million cardiovascular diseases center at East Carolina University, even though these projects were not in the UNC Board of Governors' list of funding priorities submitted to the legislature at the start of the 2003–2004 session.

The rise of campus-related PACs is a disturbing development for four reasons. First, to the extent that these campus-related PACs lobby independently for their campus wish list, they undermine the Board of Governors' process in examining statewide priorities and public university needs from a system-wide perspective. In effect, this returns the system to pre-1971 days when the campus with the best lobbyist and largest alumni group won — only now it's the campus with the most political action committee contributions. Second, campus-related PACs worsen the issue of equity for funding among the 16 campuses. Not all 16 schools will be able to create a PAC, and not all PACs will raise the same amount of money to contribute to campaigns. Third, this could end up harming the campuses individually and the university system as a whole. If a PAC gives mostly to one party or if the candidates it chooses lose, the likelihood of the winning, non-UNC-PAC-backed candidates seeking revenge on campus budgets is high. Fourth, as Raleigh *News & Observer* columnist Jim Jenkins puts it, these campus-related PACs "risk diminishing that which the

university should value most — its independence, and its integrity." Jenkins writes, "This is the kind of idea that chancellors and presidents ought to stop."⁶¹

In addition, the clout that individual UNC campuses enjoy with the legislature changes over time. For example, research conducted by Thad Beyle, professor of political science at UNC-Chapel Hill, shows that far fewer of the state's political leaders are graduates of the Chapel Hill campus than in past decades. In 1939, the percentage of state legislators who received degrees from UNC-Chapel Hill was 43 percent, in 1969 it was 36 percent, in 1979, 31 percent, and by 1997, the proportion had dropped to 15 percent, Beyle found. In a 1998 newspaper opinion piece, he wrote, "All this means higher education goals, needs, and battles are more diverse than in the past. And the privileged position that UNC-Chapel Hill once had due to the political positions some of its graduates held no longer exists."⁶² The percentage of lawmakers receiving an undergraduate degree from Chapel Hill remained at 15 percent in 1999, 16.5 percent in 2001, and 13 percent in 2003.⁶³ Former Board of Governors member John Sanders says, "And, with the increase in numbers of institutions, some UNC-CH alumni-legislators must take care of the institutions in their districts more attentively than they do of UNC-CH."

After an end-run around the Board of Governors by the dean of the UNC-CH Business School in 1997, the Board required all chancellors to submit proposals for legislation to the President and a newly created Public Affairs Committee.⁶⁴ At the time, *The News & Observer* of Raleigh reported, "That may prevent the kind of freelance lobbying done by campus leaders in recent years — something that has irked [UNC President Molly Corbett] Broad and the Board."⁶⁵ By upgrading an existing position, President Broad created a new post of Vice President for Public Affairs and University Advancement to "lead UNC's efforts to build relationships and coalitions across the sectors of education, business, and government."⁶⁶

Former UNC-Chapel Hill Chancellor Paul Hardin recalls being bluntly informed by university administrators when he took the post in 1988 that campus leaders in Chapel Hill "were not to go to Raleigh. That was for the General Administration to do. And while I was under that proscription, some other chancellors were not." Hardin adds that the situation changed in 1993, when leaders from all 16 university campuses were encouraged to help garner support for a statewide bond issue for higher education. Though the university bond referendum failed in 55 of 100 counties, the \$310 million bond issue was narrowly approved statewide by 52.1 percent of voters, and Hardin says the experience led university leaders to relax their ban on lobbying by some UNC institutions. Only 23.9 percent of state voters turned out to vote on the bond issue, one of four bond issues on the ballot that year. The UNC bonds' 52.1 percent margin was the narrowest victory among the four issues on the ballot, with the state parks

bonds passing by 56.0 percent, the Community College bonds passing by 56.5 percent, and the clean water bonds passing by 58.5 percent.

Support for the UNC bonds was strongest in those urban counties where UNC campuses are located. For example, 59% of the voters in Guilford County, home to UNC-Greensboro and NC Agricultural and Technical State University, supported the bond issue; 72% of the voters in Orange County, home to UNC-Chapel Hill, favored the measure; and 54% of the voters in Mecklenburg County, home to UNC-Charlotte, supported the bond issue. By contrast, in Johnston County, 56% voted against the bond issue, and 61% of Randolph County voters opposed it. Neither of these counties is home to a UNC campus. (See Table 5.9: History of

Public Votes on Higher Education Bond Referenda in North Carolina Since 1959.)

On the other hand, former Board of Governors member John Sanders sees the strong central board as a key reason that a similar but much larger \$3.1 billion bond referendum was successful in 2000. "The 2000 bond issue is a supreme example of the advantages achieved by having a unified leadership of the university in the President and Board of Governors taking full account of the interests and needs of the individual institutions," Sanders says. "Nobody got all that their institution would have liked, but all of them got a great deal more than any of them would have gotten if they'd had 16 separate appeals to the General Assembly and the public."

Table 5.9

History of Public Votes on Higher Education Bond Referenda in North Carolina Since 1959

Date	Amount of Bond Referendum	General Description	Outcome and % of Public Vote
10/27/59	\$18,891,000	Capital Improvements — state educational institutions & agencies; one of nine issues on ballot; seven of the nine approved	Passed by 58.93% to 41.07% 70,476 (Y) — 49,123 (N)
11/7/61	\$31,008,000	Capital Improvements — state educational institutions; one of 10 issues on ballot; all 10 defeated	Defeated by 61.50% to 38.50% 139,641 (Y) — 223,046 (N)
03/23/76	\$43,267,000	Capital Improvements — higher education; sole bond issue on ballot	Passed by 53.38% to 46.62% 382,575 (Y) — 334,148 (N)
11/2/93	\$310,000,000	Capital Improvements — for constituent and affiliated institutions of UNC; one of four issues on ballot; all four approved	Passed by 52.10% to 47.90% 435,670 (Y) — 400,473 (N)
11/7/00	\$3,100,000,000	Capital Improvements — \$2.5 billion for construction & renovation at constituent and affiliated institutions of UNC and \$600 million for 59 Community Colleges; only statewide bond issue on the ballot	Passed by 73.66% to 26.33% 1,898,592 (Y) — 678,731 (N)

Source: N.C. State Board of Elections



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E. Powers on Which the Board of Governors Might Consider Refining the Delegation to Local Campus Boards

Some university leaders believe the Board of Governors is overly involved in the conduct of local campus affairs, and they have recommended that the Board consider delegating additional management authority to local boards of trustees.

A Refinement of the Delegation to Local Campuses Regarding Intercollegiate Athletics

The University Code states, "Subject to such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics."⁶⁷ While authority over college sports is delegated to the local campuses, at times the Board of Governors and system President have stepped in to impose university-wide rules and policies.

Intercollegiate athletics is a trouble spot historically in the relationship between local campus boards and the President and Board of Governors for the UNC system. In his history of UNC-Chapel Hill, former Greensboro newspaper editor William Snider points out that control over college athletics has been a challenge for North Carolina university leaders since the 1930s, when University President Frank Porter Graham unsuccessfully attempted to reduce "rampant professionalism" in college sports.⁶⁸ Since 1953, seven of the 16 UNC constituent institutions have been among the 258 colleges and universities sanctioned for "major infractions" of bylaws of the National Collegiate Athletic Association.⁶⁹ Elizabeth City State University, Western Carolina University, and Winston Salem State University each have been sanctioned once; East Carolina University, North Carolina Central University, and UNC-Chapel Hill have each been sanctioned twice; and North Carolina State University has been sanctioned five times, ranking it fourteenth on the all-time list of institutions with major violations of rules of the 1,024 member National Collegiate Athletic Association.⁷⁰

In 1961, UNC President William C. Friday canceled the popular Dixie Classic basketball tournament after learning that players at North Carolina State University

and UNC-Chapel Hill had received money from gamblers to shave points in tournament games. That move prompted bitter reaction from campus trustees.

In 1985, the UNC Board of Governors adopted the comprehensive recommendations of a Special Committee on Intercollegiate Athletics.⁷¹ The 1985 "Policy on Intercollegiate Athletics," which forms the framework of the policy in effect today, began by reaffirming the 1972 delegation of authority over intercollegiate athletics to the campus chancellors. The policy stated that beginning in July 1986, each chancellor must submit an annual report on intercollegiate athletic programs to his or her institution's board of trustees and to the UNC president. These reports must cover topics that include athlete profiles (SAT scores, high school grade point averages, etc.); the institution's policy on admission of student athletes, including "exceptional" admissions; graduation rates and student progression information; information about the majors or programs of study chosen by student athletes; and information about the structure and governance of athletic "booster" clubs and organizations.

The policy required the chancellors to study the status of former student athletes still enrolled on their campuses "to the end that graduation rates of athletes with grants-in-aid are raised to those levels that apply to the general student bodies" and to submit their findings and plans in this regard in the July 1986 report.⁷² The policy also addressed freshman eligibility to participate in sports and admissions of student-athletes and asked the chancellors to study the effect of the length of sports seasons on their institutions, the number of contests, and recruitment practices, and "to conduct that study in concert with their directors of athletics and coaches, as well as with the NCAA and the athletic conferences." The policy stated that the Board of Governors opposed recommendations then being debated by the NCAA Presidents' Commission that would lower academic standards for student athletes [Proposition 48], and noted that "[t]he need for stronger academic eligibility standards than those currently in effect . . . is underscored by the information we have presented in this report." The policy concluded by stating, "The chancellors shall emphasize to the coaches and athletic administrators that their appointments and their continuation in their appointments are not conditioned upon the obligation merely to win games or to achieve national standings for our teams. Coaches and athletic administrators should also be evaluated on the integrity of their programs and on their relationships to the primary purpose of the University."⁷³

Despite the comprehensive policy issued in 1985 by the Board of Governors, problems with college basketball arose again in January 1989 when publication of Peter Golenbock's book, *Personal Fouls*, led to intense scrutiny and several investigations.⁷⁴ The book alleged that players on the 1986–1987 N.C. State basketball team, coached by Jim Valvano, used drugs, received im-

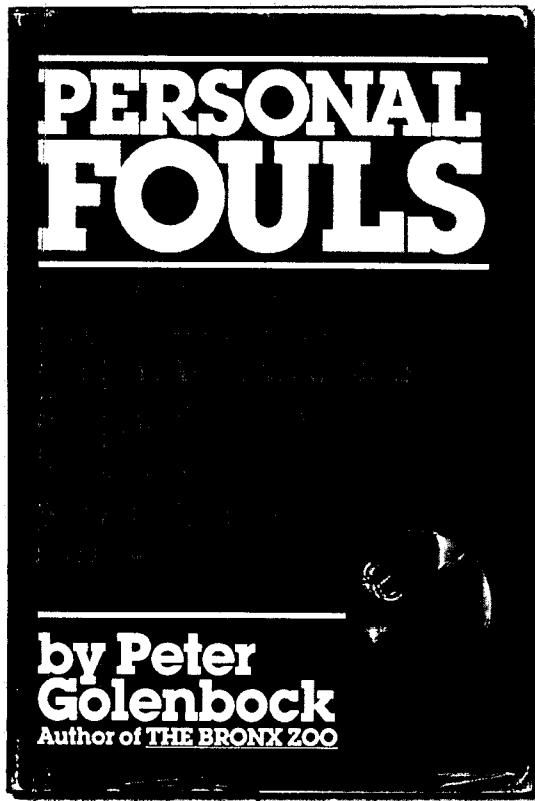
proper gifts of stereos, cash, cars, and jewelry, and that their grades were "fixed" by college officials. On January 17, 1989, then-UNC President C.D. Spangler Jr. appointed a special university commission to look into the alleged academic abuses, point-shaving, and other complaints against the program.⁷⁵ The four-member commission ("Poole Commission") was headed by Samuel H. Poole, a Raleigh attorney who served on the Board of Governors from 1983 to 1995 and was vice-chairman of the UNC Board of Governors in 1989. The Commission, using State Bureau of Investigation (SBI) agents, conducted its investigation between January and August 1989.⁷⁶ Following reports that he had been aware that basketball players and coaches were abusing the academic rules in order to maintain players' eligibility, N.C. State University Chancellor Bruce Poulton resigned on August 21, 1989.

The Poole Commission report found that at one point in 1989, 10 of 12 Wolfpack basketball players were not in good academic standing. And, according to interviews conducted by the SBI, illegal drug use among the players was widespread, and several people said they heard talk about deliberately losing games to avoid drug tests.⁷⁷ On August 25, President Spangler reported to the UNC Board of Governors on the state of intercollegiate athletics at the constituent institutions. The report included comprehensive policy recommendations developed by the Poole Commission, following findings that "the university admitted dozens of poor students to pump up the basketball program."⁷⁸ Then in early September 1989, following its own eight-month investigation, the National Collegiate Athletic Association (NCAA) announced it had uncovered violations of eight Atlantic Coast Conference athletic league rules at N.C. State University.⁷⁹ Later that year, the NCAA put N.C. State's men's basketball program on probation for two years for irregularities involving the sale of players' shoes and the use of complimentary tickets.⁸⁰ Coach Jim Valvano was

*"Is student life to revolve mainly
around a circus subsidized and
brought into the institutions? Or is
it to center around, mainly, the
teachers, library, classrooms,
laboratories, historic buildings,
shrines and traditions which are a
part of the soil, the air and the spirit
of the place?"*

—FRANK PORTER GRAHAM

NOVEMBER 1934



forced out in 1990 after additional disclosures of the systematic academic problems of players and the start of a point-shaving investigation.

As mentioned above, the intercollegiate athletics policies adopted by the Board in 1985 were designed to provide solutions to problems involving university athletics and academics. The 1989 Poole Commission's recommendations were formulated to strengthen the 1985 policies and to address what commission chairman Samuel Poole called "the hodgepodge of rules that campuses were following" with regard to student athletes and to help restore the integrity of a public university. After consulting with campus board chairs and the heads of UNC's athletic programs, the Board of Governors adopted the Poole Commission's recommendations on August 25, 1989, and, like the 1985 policy on athletics, they remain largely in effect today.⁸¹

In the rewritten policy, the Board first re-affirmed the July 1972 delegation of responsibility for intercollegiate athletics to the chancellors.⁸² The annual athletic survey report established in 1985 was redesigned to ensure that "it contains those data that will permit an informed and detailed assessment of the consistency of athletic activities with the academic standards of the institution." The policy requires, "The 'Minimum Admissions Requirements' adopted by the Board of Governors shall apply to all students and there shall be no

waiver for athletes" and that no student athlete shall be admitted to "constituent institutions unless . . . the athlete is deemed to have the potential to complete the requirements for a baccalaureate degree." A mandatory drug-testing program was developed for student athletes by the chancellors and put into effect for the fall 1990 term. All foundations and groups established primarily to raise money on behalf of constituent institutions are audited annually, and the audit reports are public records.

Poole says the work of the UNC Board of Governors' special commission met with some initial resistance from campus leaders. "I can remember an incident when we had the chair of a faculty committee, and we were telling them about a preponderance of athletes taking a particular course," says Poole. "This particular chair didn't believe us. But they found out we were right."

In October 1989, the Board addressed another problem area when it began an inquiry about contracts involving athletic coaches at some constituent institutions. The major focus of concern was agreements involving head coaches in revenue-producing sports on Division I-A campuses, including men's basketball and football at East Carolina University, North Carolina State University, and UNC-Chapel Hill. The Board members who examined the coaching contracts in question found that "there have been contractual provisions in the area of buy-out clauses and the payment of damages, which have been particularly and painfully embarrassing to the institutions and to the University in the past."⁸³ They also reported that they found major differences in practices among the campuses "in the procedures followed in developing and approving contracts with head athletic coaches, and particularly in the extent of the involvement of boards of trustees."

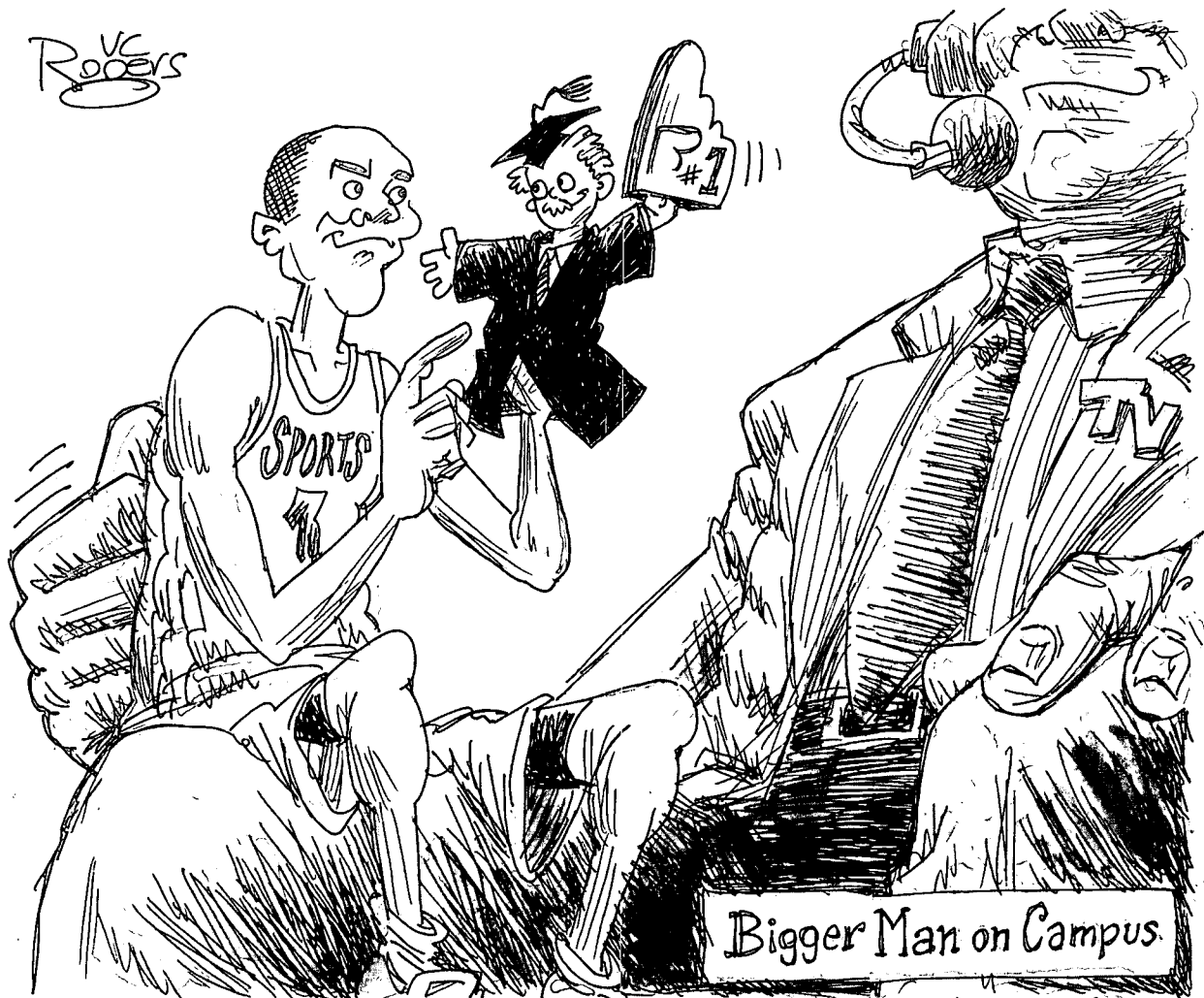
These findings led the Board to adopt a resolution in May 1990 which explicitly defined and required trustee participation in these contracts by stating that no employment contract with a head coach or athletic director would be valid "unless and until all terms and conditions of the contracts have been approved by the board of trustees."⁸⁴ In February 1991, the Board issued four standards that all institutions are expected to follow in executing such contracts.⁸⁵ The standards set minimum requirements for buy-out clauses, length of contracts, academic values, and outside compensation. The Board required each institution's policy on student athlete recruitment and retention to address "the necessity that athletes progress toward a degree in a defined academic program," and stated that the "coach should have a clear obligation to contribute to the academic progress of team members under his or her supervision." The new policy reaffirmed the Board's decision to continue delegating responsibility for athletics to the individual campuses because of "the commitment of those chancellors who are most directly involved and their unequivocal acceptance of the obligations to carry out their institutional and the board's policies and standards."

These ongoing efforts by the Board of Governors to address the pervasive conflicts between academics and athletics on the individual campuses were similar to those occurring in other states and at the national level. Former UNC President William Friday served as one of the two co-chairs of the national **Knight Foundation Commission on Intercollegiate Athletics**, which proposed ways to prevent scandals and boost the academic performance of student athletes in its initial report issued in 1991.

The Commission's 1991 report proposed a new model for intercollegiate athletics, entitled "one-plus-three." Under this model, the responsibility for control and oversight of college sports would be placed in the hands of presidents of individual universities [called chancellors in the UNC system], not governing boards or board members.⁸⁶ Presidents (the "one" in the "one-plus-three") would then focus on the "three" major ways to clean up college sports — academic integrity, financial integrity, and independent certification of athletics programs. "The Commission's bedrock conviction is

that university presidents are the key to successful reform," the 1991 report stated. "They must be in charge — and be understood to be in charge — on campuses, in conferences and in the decision-making councils of the NCAA."⁸⁷ The University of North Carolina policy mirrors this Knight Commission recommendation in that campus chancellors are in charge of intercollegiate athletics, and the Board of Governors has reaffirmed that policy at least five times since 1972 — in 1985, 1989, 1990, 1991, and 2003.

The 1991 Knight Commission report also recommended that student athletes not be admitted unless they are likely, in the judgment of academic officials, to graduate, and that graduation rates of student-athletes in each sport "will be similar to the graduation rates of other students who have spent comparable time as full-time students."⁸⁸ As part of the financial integrity reforms, the report recommended that all funds raised and spent for athletics go through the university's central financial controls and be subject to the same oversight as funds in other departments, that athletics foundations



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Former UNC President William Friday co-chaired the Knight Foundation Commission on Intercollegiate Athletics.

and booster clubs not be permitted to provide support for athletics programs outside the administration's direct control, and that "contracts for athletics-related outside income of coaches and administrators, including shoe and equipment contracts, will be negotiated through the university." The report also recommended that each NCAA institution awarding athletic financial aid be required to participate in a comprehensive certification program, which would verify that "the athletics department follows institutional goals, that its fiscal controls are sound, and that athletes in each sport resemble the rest of the student body in admissions, academic progress and graduation rates."⁸⁹

The Commission issued follow-up reports in 1992⁹⁰ and 1993,⁹¹ and stated in the latter report that they were "confident that we have accomplished what we set out to do. Responding to our initiatives, the leaders of the nation's colleges and universities and the members of the NCAA have put reforms in place over the past three years that, in effect, establish the 'one-plus-three' model."⁹² *The UNC Board of Governors has not incorporated these Knight Commission recommendations into The Code.*

Nonetheless, despite the Commission's initial optimism and the considerable progress made by the NCAA and some individual schools, the landmark reforms recommended in 1991 did not prove effective overall. As a result, in June 2000, the original members of the Knight Foundation Commission on Intercollegiate Athletics agreed to reconvene to reassess the status of the group's 1991 recommendations and to consider major issues that had surfaced in the intervening 10 years.⁹³

Among the issues aired before the 2000–2001 Knight Commission were those related to what was called an athletics "arms race" in the Atlantic Coast Conference, including the UNC system. Chancellors at the two largest UNC campuses had recently dismissed their head football coaches. Former N.C. State University Chancellor Marye Anne Fox fired coach Mike O'Cain in November 1999, and in November 2000, newly-installed UNC-Chapel Hill Chancellor James Moeser fired coach Carl Torbush. The Torbush firing disappointed and angered the school's football team and many members of the faculty. UNC-CH English professor Trudier Harris resigned in protest from the institution's Faculty Committee on Athletics, stating that "I consider the firing of Football Coach Carl Torbush to be incompatible with the expressed goals of our athletic program — at least our publicly expressed goals."⁹⁴ She added that such a decision is a "public indication" that the university is "just as driven by money and powerful fans" as schools that UNC condemns. The same sentiments were expressed by an editorial in the *Raleigh News & Observer*, which commented, "The firing of UNC-Chapel Hill football coach Carl Torbush is a sad commentary on the priorities of the athletics program. The coach appears to be another victim of big-money sports boosterism."⁹⁵ Tar Heel fans' lack of enthusiasm for Carl Torbush's teams had become an economic problem, said UNC-CH officials to justify the firing. During the coach's three years, the Tar Heels won 17 games and lost 18, and empty seats in Kenan Stadium, which had a \$50 million upgrade and expansion completed in 1997, hurt the athletics department's bottom line. According to Chancellor Moeser, Carolina needed a football program that could bring back the fans at a time when the university was embarking on a \$1.8 billion fund-raising campaign (see page 167).⁹⁶

Released on June 26, 2001, the Knight Commission's new report found that problems in college sports had worsened despite some NCAA rule changes, stating, "The Commission now finds that the NCAA has made considerable progress toward achieving the goals the Commission laid out in its earlier reports. Many reform efforts have been undertaken with sincerity and energy. It is clear, however, that good intentions and the reform measures of recent years have not been enough. We find that the problems of big-time college sports have grown rather than diminished."⁹⁷ The Commission found that the most glaring problems it identified — "academic transgressions, a financial arms race, and commercialization — are all evidence of the widening chasm between higher education's ideals and

big-time college sports.”⁹⁸ According to Commission member Douglas Dibbert, President of the UNC-CH General Alumni Association, “What became clear . . . was that the arms race has escalated because no program believes that it can unilaterally disarm. Coaches’ salaries and benefits have ballooned out of proportion to those for most faculty and staff; resources desperately needed for research and teaching space are difficult to find while luxury boxes, pro-style weight rooms, indoor practice facilities and expanded stadiums and arenas are enthusiastically funded — all in the name of staying competitive.”⁹⁹

Among the 2001 Commission recommendations are: (1) barring teams that do not graduate at least 50 percent of their players from conference championships or post-season play (by 2007); (2) prohibiting athletes from wearing uniforms with corporate logos; (3) treating athletes more like other students; (4) setting coaches’ salaries in the context of other salaries in higher education, (5) universities alone would decide when games would be played and broadcast on television; and (6) encouraging the NBA and NFL to develop minor leagues to give young athletes a route to professional sports other

*On the job of a college president:
“ . . . to provide sex for the students,
athletics for the alumni, and parking
for the faculty.”*

— FORMER UNIV. OF CALIFORNIA PRESIDENT
CLARK KERR, *CHANGE* MAGAZINE,
MARCH/APRIL 1987

than playing on college or university teams. *None of these recommendations has been incorporated into the UNC Board of Governors’ athletics policy.* The panel stated its belief that “only a multilateral effort among college presidents can reduce out-of-control spending on college sports and academic transgressions” and that “if intercollegiate athletics cannot live honorably within the American college and university system, then institutions should get out of the business of big-time sports.”¹⁰⁰

During a debate over whether UNC staff and faculty should be given equal consideration for Dean Dome seats, UNC staff member Bruce Egan was inspired to pen these lines:

*A professor bemoaned his seats at the Dome, “an embarrassing problem,” said he.
“I’m a faculty member, king of the Hill, yet my seats are way up in ZZ.*

*My colleagues are laughing, they think it’s quite funny, that things have worked out this way.
For way down in front, behind Dean himself, sits my secretary in Row A.*

*Now it’s true that she has been here for 31 years, missed five days work all that time.
But c’mon, let’s get real, what does UNC value, her capabilities or mine?*

*She works hard, but I teach!! It’s as simple as that. The importance of each well defined.
And questionable concepts of equality and such were not in the contract I signed.*

*Anyway it’s important for students to know how the real world is run, and by whom.
And sharing the spoils is a threat to our system of rewarding a chosen few.*

*We must take a stand. She already gets parking. Good God, where will it end?
That staff’s demands get worse and worse. My perks I must defend!*

*Just then he awoke, it had all been a dream. “What a relief, what a nightmare!” said he.
But it did make him think, “I’m not getting enough. Maybe Nike’s got something for me. . . .”*

—BRUCE EGAN, REPRINTED BY PERMISSION

Furthermore, as an expansion to its original 1991 recommendation for campus presidents to have primary control over athletics both at the campus level and over NCAA decision-making, the Commission endorsed a collective effort to reform college sports, stating, "The plain truth is that one clear and convincing message needs to be sent to every member of the academic community: What is needed today is not more rules from above, but instead a concerted grassroots effort by the broader academic community — in concert with trustees, administrators and faculty — to restore the balance of athletics and academics on campus. But a grassroots effort cannot be expected to flourish campus by campus. As long as there is an athletics arms race, unilateral disarmament on the part of one institution would most assuredly be punished swiftly by loss of position and increased vulnerability. Change will come, sanity will be restored, only when the higher education community comes together to meet collectively the challenges its members face."¹⁰¹ In addition to such a collective effort, the Commission also encouraged boards of trustees and presidents to work together, stating, "Presidents and trustees must work in harness — not wage the battles so commonplace today over control of the athletic enterprise. Presidents cannot act on an issue as emotional and highly visible as athletics without the unwavering public support of their boards."

The group added, "Given the enormous scope of this reform effort, the Commission recognizes that change will have to come in a series of steps over time."¹⁰² It recommended establishing a Coalition of Presidents within the American Council on Education to pursue an agenda of academic reform, de-escalation of the athletics arms race, and de-escalation of commercialization. The coalition envisioned by the Commission would operate independently of the NCAA. The Commission concluded, "Clearly, more NCAA rules are not the means to restoring the balance between athletics and academics on our nation's campuses."¹⁰³

North Carolina higher education policymakers interviewed for this report did not favor any change in the

In the world of competitive games, it seems to be the way of the spectator to build up heroes beyond their actual powers. Pitting equal adversaries against each other arouses interest of a sort, but is not the hope really for a nonpareil?

— YASUNARI KAWABATA
THE MASTER OF GO

Sports item in The St. Paul Pioneer Press:

"Alabama ousted athletics director Bob Bockrath, who resigned Tuesday. President Andrew Sorensen praised Bockrath's ability to work within NCAA rules and improve facilities, then added, 'A change was needed.'"

You can't let those things go on.

— "MARGINALIA"

THE CHRONICLE OF HIGHER EDUCATION
NOVEMBER 5, 1999

delegation of control over intercollegiate athletics. In fact, the Board of Governors' actions with respect to college sports were frequently cited as an example of how UNC's two-tier system works to allow the central governing board to step in when particular campus issues call for system-wide action, such as the problems that N.C. State University had in the late 1980s (see pp. 181-182). Former UNC Board Chairman William Dees, who served on the Board committee which examined contractual commitments to some athletic coaches in 1989, says, "The Board of Governors selects the chancellor . . . and the Board of Governors can discharge the chancellor. That's just very important that that power be in the Board of Governors. [Then] there's the issue of our dear friend State College and all the trouble they've had with basketball," Dees explains. "That's an illustration that's real sad. I thought they [the Board of Governors] were awkward about the way it was handled, but nobody knew what to do."

Former UNC President and Knight Commission Co-Chairman William Friday insists that problems with college sports are not the result of university governance problems but of the growth of athletics as a multi-million dollar business. "All of this is outside of the institution," he says. "But it's also where a strong board of trustees has to stand up" and assert control over the influence of corporate money and other pressures brought to bear on college sports.

In a March 2002 WUNC-FM public radio special examining problems in college athletics in North Carolina, Friday listed a number of problems in North Carolina schools.¹⁰⁴ He said UNC-Chapel Hill's \$28.34 million contract with Nike is among the largest in the country and even requires placement of the Nike logo on the university's Website, much less placement of the Nike swoosh on players' uniforms. Coaches' contracts

now exceed \$1.5 million, he said, and the largest capital expenditures for universities in recent years have been for stadiums and coliseums, not classroom buildings. And, he noted that the Atlantic Coast Conference's 2001 contract with the Fox Sports Network has resulted in basketball games being televised on Sunday nights, a conflict with the Sunday night services of 1,600 churches in North Carolina. A guest on the program, James Shulman, co-author of a book on educational values and college sports titled, *The Game of Life*, playfully added, "Well, it's been said that basketball is religion in North Carolina."¹⁰⁵ A radio listener who called into the show and identified himself as "Andy from Raleigh" acknowledged what he called "the prisoner's dilemma"¹⁰⁶ — the difficulty for a university that goes first in implementing athletic reforms which might put the school at a competitive disadvantage.

Another radio listener called in and asked whether there is any difference in the commercialization of university sports and the commercialization of university research, where pharmaceutical firms, tobacco companies, and forestry firms all sponsor university research. Shulman replied that at least the research is more central to the university's mission.

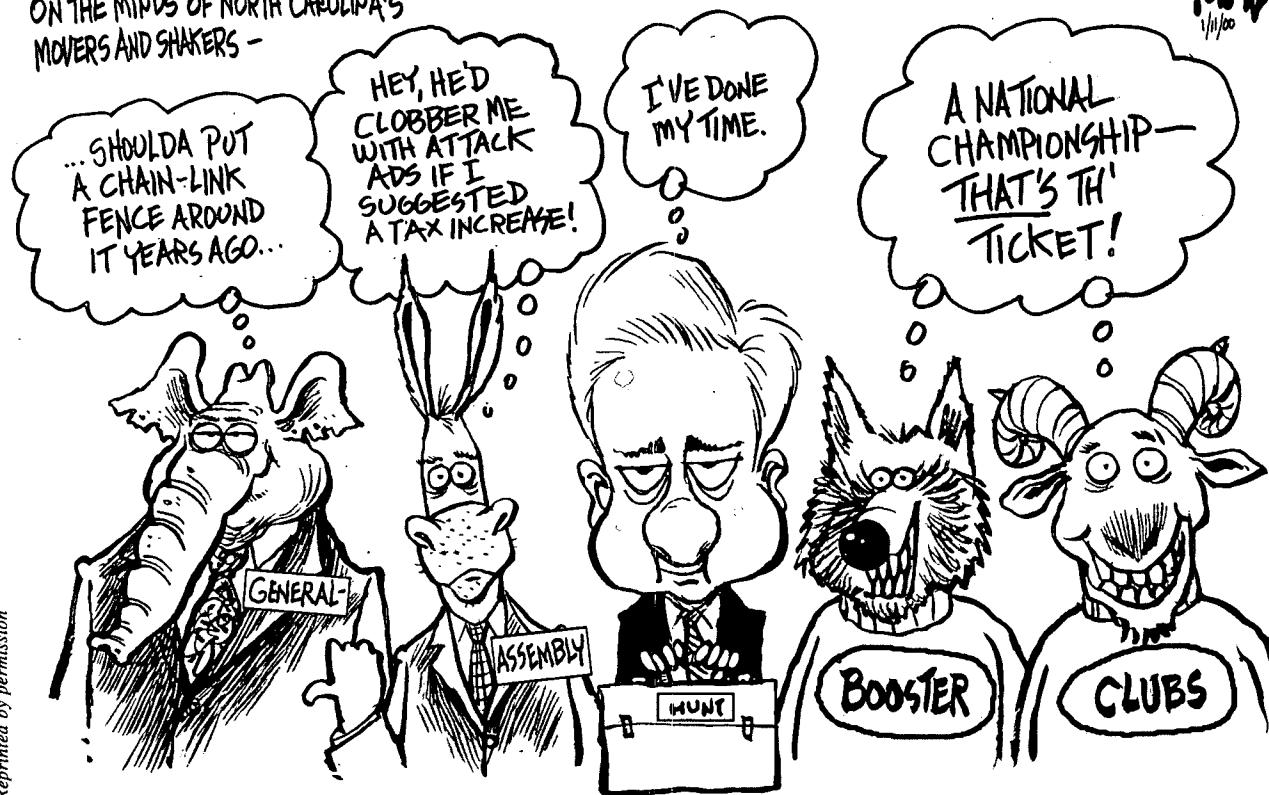
The pressures on public universities to compete are not confined to games on the gridiron and the hardwood. According to The Collegiate Licensing Company, UNC-Chapel Hill led the nation for three years in sales of sports memorabilia such as hats and T-shirts

with team logos, bringing \$3.6 million annually in royalties to the campus. Despite this news, UNC-Chapel Hill officials are worried that losses by their teams could make the royalty pot shrink. "There are some dark clouds on the horizon," says UNC-Chapel Hill trustee Nelson Schwab. "A combination of a poor economy and some less-than-stellar performances on the field gives us pause."¹⁰⁷

One problem with the Knight Foundation Commission's logic and the UNC Board of Governors' delegation of authority is that it assumes that campus presidents or chancellors will always want to be the ones protecting the university from big-time sports. As the case of N.C. State University Chancellor Bruce Poulton shows, chancellors can be part of the problem, not the solution, in wanting their sports teams to succeed at all costs.

James J. Duderstadt, President *Emeritus* of the University of Michigan and a staunch defender of campus CEO accountability for intercollegiate athletics, writes, "In many cases it is the presidents themselves who have driven intercollegiate athletics with their desire for more revenue from events such as the NCAA basketball tournament or postseason play in football. Like the others associated with intercollegiate athletics, the presidents all too frequently give priority to competitive issues or revenue generation rather than to the welfare of student-athletes or the alignment of sports with the educational mission of the university."¹⁰⁸

URGENT UNC SYSTEM NEEDS WEIGH HEAVY ON THE MINDS OF NORTH CAROLINA'S MOVERS AND SHAKERS -



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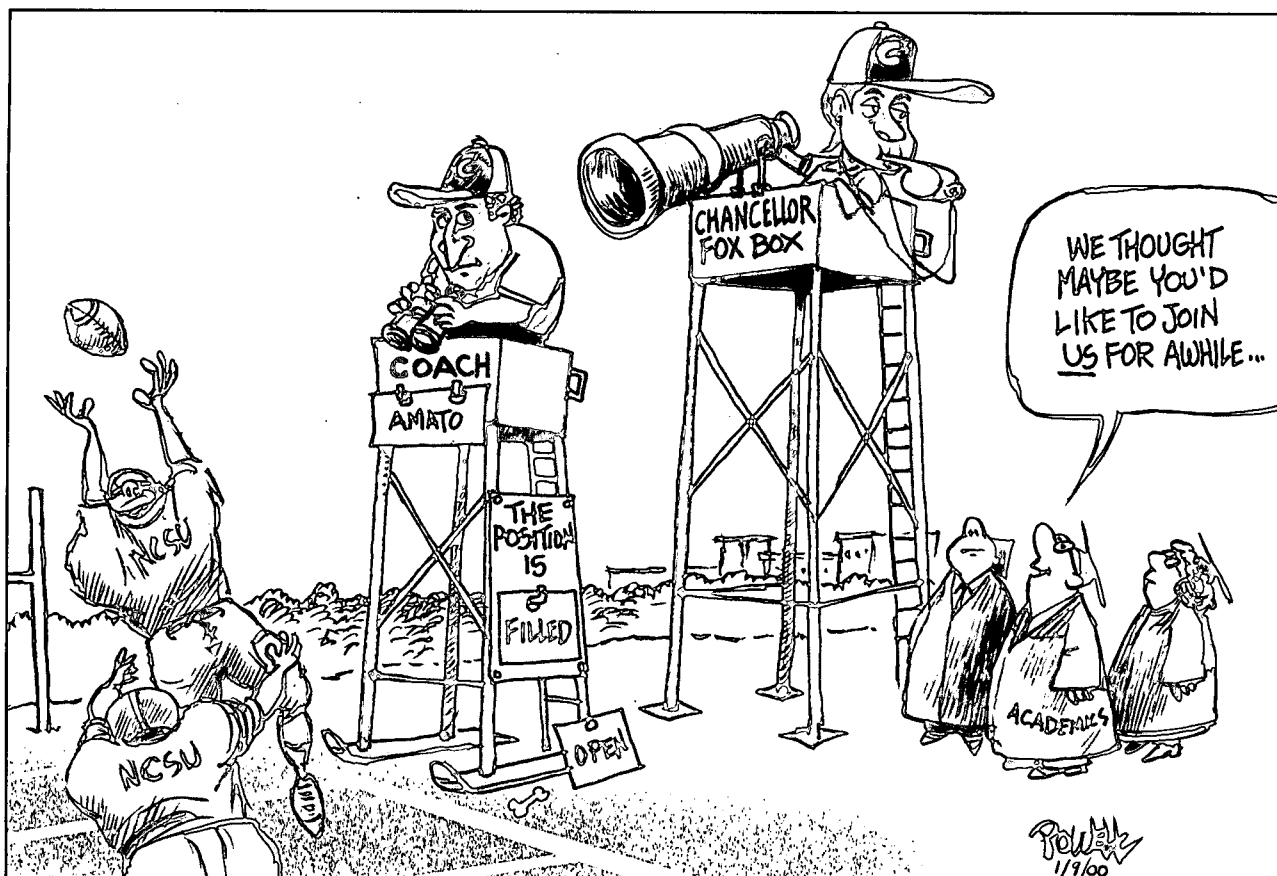
More recently, N.C. State University's former Chancellor Marye Anne Fox and UNC-Chapel Hill Chancellor James Moeser both have indicated their beliefs that making a university "excellent" is integrally tied to having championship-calibre sports teams.¹⁰⁹ Fox and Moeser came to the ACC from football powerhouses at the University of Texas and the University of Nebraska, respectively. Upon taking over at N.C. State, Fox asked for "a national athletics championship."¹¹⁰ And, part of Nike's \$28 million contract with UNC-Chapel Hill includes \$800,000 over eight years to an academic enhancement fund controlled by Chancellor Moeser, who says he plans to spend that money on undergraduate education.

According to the Office of the President, the six-year graduation rate for athletes in Division I campuses in the UNC system is 56 percent, which is higher than the NCAA average of 54 percent. However, graduation rates for scholarship football players at N.C. State University and UNC-Chapel Hill are declining, according to statistics reported by the NCAA. N.C. State's 45 and 47 percent graduation rates for 2002 and 2003, respectively, would make it ineligible for post-season play under the proposed 2001 Knight Commission reforms. For example, N.C. State would not have been allowed to participate in the 2003 and 2004 NCAA basketball tournaments, the 2003 Gator Bowl, or the 2004 Tangerine Bowl.¹¹¹ NCSU netted a minimum of \$1 million for its

appearance in the Gator Bowl, a figure does not include its additional percentage of shared bowl revenue from other ACC schools.¹¹² (See Table 5.10: Six-Year Graduation Rates of Football Players on UNC Campuses in NCAA Division I That Provide Athletic Scholarships.)

Although the new Knight Commission report has received kudos for having accurately described the current problems surrounding intercollegiate athletics, it is too early to know whether the solutions proposed by the Commission will be implemented nationwide or on UNC campuses. A "Colloquy" in *The Chronicle of Higher Education* pointed out that some educators have questioned whether the Knight Commission plan is realistic.¹¹³ Among the questions now being asked are "whether college presidents have the power or courage to make such changes and whether institutions will tolerate changes that may affect the competitiveness or financial strength of big-time teams."¹¹⁴

Faculty at both UNC-Chapel Hill and N.C. State have stated support for the Knight Foundation Commission's reforms. The UNC-Chapel Hill Faculty Council approved a resolution urging the chancellors and presidents of the Atlantic Coast Conference (ACC) schools to come up with a strategy to implement the reforms outlined in the Commission's 2001 report.¹¹⁵ However, there seems to be some skepticism and even resistance from others on the Chapel Hill campus. For example, UNC-CH Chancellor James Moeser has said



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Table 5.10

Six-Year Graduation Rates of Football Players (Who Entered College in 1990–91 through 1997–98) on UNC Campuses in NCAA Division I That Provide Athletic Scholarships

	2000 Cohort (Entered 1990–94)		2001 Cohort (Entered 1991–95)		2002 Cohort (Entered 1992–96)		2003 Cohort (Entered 1993–97)		2004 Cohort (Entered 1994–98)	
	Football Players	All Students	Football Players	All Students	Football Players	All Students	Football Players	All Students	Football Players	All Students
Appalachian State University	53%	62%	56%	59%	58%	63%	57%	60%	54%	63%
East Carolina University	48%	50%	49%	51%	49%	52%	59%	54%	61%	54%
N.C. A & T State University	32%	42%	34%	44%	32%	44%	28%	40%	35%	44%
N.C. State University	54%	65%	50%	60%	45%	62%	47%	64%	42%	63%
UNC- Chapel Hill	58%	80%	59%	79%	56%	79%	53%	80%	53%	83%
Western Carolina University	50%	47%	46%	45%	46%	47%	48%	46%	53%	49%

Note: Table does not include the four NCAA Division II teams at Elizabeth City State, Fayetteville State, N.C. Central, and Winston-Salem State universities.

Source: Published by the NCAA in 2000, 2001, 2002, 2003, and 2004. Online database provided at <http://www.chronicle.com>, the website of the *Chronicle of Higher Education*, updated as of May 25, 2005. Figures for “All Students” represent 6-year graduation rates of the final academic year of the cohort.

that he doesn't think it is realistic for ACC schools to stop the “arms race” in coaches' salaries and commercial contracts because those matters are a function of the market. “Certainly, we can't unilaterally disarm nor can the conference unilaterally disarm,” says Moeser. UNC-Chapel Hill athletic director Dick Baddour also expressed reservations. “Do I think it's realistic that the ACC, or even this institution, would support every one of the recommendations? I don't think that's the case,” says Baddour. He adds, “But there are many, if not most, we can support,”¹¹⁶ without specifying which recommendations UNC-CH could support.

Two major events in 2003 raised questions about whether the Board of Governors has delegated too much authority for intercollegiate athletics to the campuses — a record compensation package for a UNC-CH coach involving an exemption to the 1991 Board standards on coaching contracts, and the lack of Board involvement in the decision to expand the number of schools in the Atlantic Coast Conference (ACC). In order to lure

Kansas University's basketball coach Roy Williams, UNC-Chapel Hill offered him the most lucrative compensation package in the school's history. The package, worth \$1.6 million per year for five years, was granted a special exemption from the Board's 1991 standards on coaching contracts, even though it violated the Board's guidelines to campuses published in the University's policy manual.

The Board of Governors put guidelines on coaching contracts in place in 1991 (see p. 182) to limit the financial responsibility of campuses and avoid excessive buyouts. The provisions were, in part, a response to the contract buyouts of former UNC-CH football coach Dick Crum and former NCSU basketball coach Jim Valvano, which together totaled more than \$1.4 million. In September 2003, the Board of Governors granted an exemption to the 1991 provisions to UNC-CH for the Roy Williams contract. Specifically, the Williams contract needed the exemption because it contains provisions that would require UNC-CH to reimburse Williams for loss

of outside compensation, such as the contract for his television show, if he is fired as coach by the campus. This practice was expressly forbidden by the 1991 guideline in the UNC policy manual. "What we approved was a deviation from the guideline," says Brent Barringer, member of the Board of Governors sitting on the committee that approved the contract. "We did not change the guideline. We agreed it was time to revisit the guideline and see if [it] still had validity, or if it should be changed after 13 years . . . we didn't intend to open up a big exception or loophole." NCSU athletics director Lee Fowler got a different signal from the exemption, saying, "Judging from what I'm being told [on the Williams contract], it could open the door for others."¹¹⁷

One member of the Board of Governors, speaking on condition of anonymity, says the Board was put in the position of having to approve the contract by interpreting its own actions as a deviation from a "guideline" rather than a "policy" in order to meet dual goals of avoiding creation of a loophole and averting litigation with UNC-CH. Interpreting the Williams contract as a deviation from a guideline allowed the Board of Governors to avoid a public showdown with UNC-Chapel Hill. The Board member says, "If we had said 'no,' and [UNC-CH] had [executed the contract], we would have had to sue them to make them [comply]."

The UNC-CH faculty questioned the amount of money involved in the compensation package for Williams. "I think it is extraordinarily problematic when non-academic parts of the university — in this instance the men's basketball program — can and do provide competitive salary levels, while core aspects of our academic program are unable to do so," said Faculty Council Chairwoman and former law school dean Judith Wegner. UNC-CH Chancellor James Moeser e-mailed campus leaders, saying, "I'm sensitive to the reaction of our campus community. Times are difficult, and we certainly haven't been able to appropriately compensate our faculty and staff in recent years . . . [But,] we wanted the best person to lead our program, and coach Williams is that person."¹¹⁸

The second controversy raising questions about delegation of athletics to campuses involves the decision to expand the number of schools in the Atlantic Coast Conference (which includes two public universities in North Carolina, N.C. State and UNC-Chapel Hill) — first to expand from nine to 11 teams, then three months later to expand to 12 teams. The conference expansion is designed to maximize revenue for ACC schools by increasing access to television markets and possibly providing a future entrée into the lucrative Bowl Championship Series (BCS). For the ACC expansion to have a

Former N.C. State University Chancellor Marye Anne Fox and Board of Governors Chairman Brad Wilson at a meeting in Chapel Hill.



Karen Tam

Albert Bushnell Hart, writing about college sports in the October, 1890, issue of The Atlantic Monthly: "Another phase of the disposition to make sport the end rather than the means is the pressure brought to bear on athletic men, who have graduated from college, to return and go upon teams. A further advance of the same spirit is seen in those students who accept from proprietors of summer hotels offers of board, and sometimes of incidental expenses, as an inducement to play during the season, and who thus come within the strict definition of professionals. Another step is to receive money for occasional games. . . . The purpose for which college athletics exist ceases, the moment a man begins to consider his skill a pecuniary resource."

— "THE OCTOBER ALMANAC"

THE ATLANTIC MONTHLY

OCTOBER 1890

revenue neutral impact on the athletics budgets of its current schools, the conference will need to net at least \$30 million from the addition of a conference football championship game and renegotiated television rights packages.¹¹⁹

Former Knight Commission Co-Chairman and UNC President Emeritus William C. Friday denounced the decision to expand the conference, saying, "This decision means [the ACC] has become a follower of money." Specifically citing the influence of commercial television over college sports, Friday says, "What it adds up to is moving more and more toward becoming America's entertainment industry."¹²⁰ Paul Haagen, a law professor who directs Duke University's Center for Sports Law and Policy expressed concern about the expansion decision, saying, "It's a business opportunity. It doesn't have a lot to do with educational opportunities for these kids. It's a money-driven decision that could have a lot of negative consequences."¹²¹ NCSU women's basketball coach Kay Yow voiced her concern in a September 2003 panel discussion at Elon University, saying, "That mind-set — that college athletics is a business — concerns me. We have to say the right things [about re-

form]. Then we have to walk the talk." Len Elmore, a lawyer and former University of Maryland basketball All-American who is now a basketball commentator for the ESPN television network, took the opportunity at the same panel discussion to criticize not only the role of money but also the secrecy of the ACC expansion process.¹²² The discussions about expansion between presidents and chancellors of the ACC schools occurred in secret for more than a year. UNC-Chapel Hill Chancellor James Moeser and Athletics Director Dick Baddour opposed the ACC expansion, while former NCSU Chancellor Marye Anne Fox supported the move.

UNC President Molly Broad did not participate in the public debate on ACC expansion even though she oversees two ACC schools, N.C. State University and UNC-Chapel Hill, because of the delegation of authority over intercollegiate athletics to the campuses of the university system. Broad says the controversy surrounding ACC expansion is just another example of colleges participating in an athletic arms race. "Each new major decision reveals a new low," she says. "It's quite understandable that people see intercollegiate athletics as out of control."¹²³

F. Other Issues Involving Local Campus Boards

1. Authority Over Admissions

Admissions are another area of campus life delegated by the Board of Governors to campus trustees. The university *Code* states: "Subject to such enrollment levels and minimum general criteria for admission as may be established for a constituent institution by the Board of Governors, each constituent institution of the University of North Carolina shall establish admissions policies and resolve individual admission questions for all schools and divisions within the institution. No appeal concerning an individual admission case shall lie beyond the institutional board of trustees."¹²⁴ The two areas of admissions policy that have received the most attention over the years are (1) academic standards for admission, along with the related issue of on-campus remedial education programs for entering freshmen and transfer students, and (2) efforts to increase the numbers of racial and ethnic minority students at all 16 campuses.

a. Admissions Standards

Periodically, the Board of Governors has taken steps to boost admissions standards. For example, in 1987, the Board of Governors established minimum undergraduate admissions requirements for all UNC schools in response to criticisms from the legislature about the expense of remedial instruction being offered by many campuses.¹²⁵ The Board of Governors amended its delegation of authority to the local campus boards of trustees to require that in addition to a high school diploma or its equivalent, students admitted to UNC institutions also must have completed specific courses in English, math, history, and science.¹²⁶ In April 2000, the Board of Governors voted to raise admissions standards again on its campuses. At least two years of a second language will be required, effective in the fall of 2004, and four years of high school math will be mandated beginning in the fall of 2006. The rationale given for the new standards is to "ensure that freshmen have a strong chance of completing a baccalaureate degree."¹²⁷ The Board took this action after a study of 1997–98 N.C. public high school seniors who enrolled in UNC institutions in the fall of 1998 showed significant differences in retention rates and performance between students who met only the current minimum admissions standards versus those who had taken additional courses equivalent to the new, phased-in standards.¹²⁸

Consistent with the delegation of admissions standard-setting to the individual UNC campuses, local campuses are allowed to have their own remedial education policies. Thus, the need for remedial education is defined, determined, and delivered differently at each UNC constituent institution. Remediation is most often provided to incoming freshmen and transfer students in their first year of attendance at a UNC institu-

tion, and remedial instruction is required more often in mathematics than in English. Since the 1986–87 peak in the number of UNC students enrolled in remedial programs (9,723 students out of 145,809 total undergraduates), the numbers and percentages of such students have declined steadily. In 1990–91, the first academic year in which the minimum admissions standards adopted in 1987 took effect, the percentage of all undergraduate students in remedial programs was 4.9 percent (7,617 students out of 156,129 undergraduates), representing a 1.9 percentage point decrease in four years. By 1999–2000, the number of UNC students in remedial education was 6,402 out of a total of 167,189 undergraduates, or 3.8 percent. UNC's expenditures for remedial coursework and support totaled \$3,249,331 in 1986–87, \$2,030,311 in 1999–2000, and \$1,929,178 in fiscal year 2002–03.¹²⁹

The 1997–98 study of N.C. high school students who later attended UNC institutions, reaffirmed the correlation between admissions coursework requirements and the need for remedial education.¹³⁰ The proportion of freshmen who met only the minimum standards for admission to the UNC system and who required remedial work in mathematics or English was 42.7 percent in the fall of 1998. By contrast, only 17 percent of the entering students who already satisfied the new coursework minimum requirements required remediation.

Remedial courses often are provided under contract with a local community college, such as the arrangement between East Carolina University and Pitt Community College, or by faculty at the university system campuses, as occurs at Fayetteville State University and North Carolina Central University.¹³¹ A report prepared for the General Assembly in December 1992 said that community colleges are better equipped than the universities to do remediation and can do it at a lower cost.¹³²

Legislation to prohibit constituent institutions from providing remedial programs to any UNC student was introduced in the 2001 General Assembly. Under House



"Hey, there's Sara, padding her college-entrance résumé!"

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Table 5.11

Fall 2005 Student Enrollment at the 16 University of North Carolina System Campuses

	Undergraduate Students	Graduate and First Professional Students	Total Students
1. N.C. State University	22,767	7,381	30,148
2. UNC-Chapel Hill	16,764	10,512	27,276
3. East Carolina University	17,728	5,436	23,164
4. UNC-Charlotte	16,555	4,217	20,772
5. UNC-Greensboro	12,388	3,759	16,147
6. Appalachian State University	12,986	1,667	14,653
7. UNC-Wilmington	10,723	1,116	11,839
8. N.C. A&T State University	9,735	1,368	11,103
9. Western Carolina University	6,980	1,685	8,665
10. N.C. Central University	6,353	1,866	8,219
11. Fayetteville State University	5,029	1,043	6,072
12. UNC-Pembroke	4,963	669	5,632
13. Winston-Salem State University	5,264	302	5,566
14. UNC-Asheville	3,462	37	3,499
15. Elizabeth City State University	2,604	60	2,664
16. N.C. School of the Arts	728	101	829
UNC Total	155,029	41,219	196,248

Note: Figures reflect unduplicated headcount enrollment.

Source: UNC General Administration, January 2006.

Bill 1211, co-sponsored by Representatives Fern Shubert (R-Union) and Marge Carpenter (R-Haywood), the Board of Governors would have been required to work with the State Board of Education (which governs the public schools) to develop and implement a plan to “ensure that each high school student who plans to seek a college degree upon high school graduation is adequately prepared in his or her course of academic study so that no remediation should be needed by a student who enrolls at a constituent institution.”¹³³ The Board of Governors also would have been required to direct each campus to provide referrals to enrolled students or applicants for admission “to an appropriate remedial program of studies offered elsewhere.” The bill was not enacted by the 2001–02 General Assembly.

In addition to meeting the minimum course work standards set by the Board of Governors, applicants to UNC system campuses are evaluated based on specific criteria set by each institution. Local admissions officials maintain that each campus in the system needs to be able to set its own evaluation measures and retain individualized admissions policies.

Accordingly, university officials were concerned about another effort in the 2001 General Assembly to change some of the criteria used in making decisions about admissions. Representative Gene Arnold (R-Nash) introduced legislation (House Bill 1246) that was widely viewed as an “anti-SAT” (Scholastic Aptitude Test) bill.¹³⁴ As originally written, HB 1246 would have required the UNC Board of Governors, in conjunction with the State Board of Education and State Board of Community Colleges, to study the measures used by the constituent institutions to make admissions and placement decisions regarding incoming freshmen. As part of the study, the proposed legislation mandated that “particular emphasis shall be focused on eliminating or reducing the emphasis placed on the Scholastic Aptitude Test (SAT) and ACT [formerly the American College Testing Program] Assessment for North Carolina students as a mandatory university admissions measure and instead incorporating the State’s end-of-course testing into admissions, placement, and advanced placement decisions.”¹³⁵

After being told by the bill’s sponsor that UNC “has endorsed this study,” members of the House of



"My parents never talk to me about S-E-X—all they talk about is S-A-Ts."

Representatives unanimously approved the measure. The measure also received Senate approval, but only after it was reworded to eliminate the directive that new admissions standards be developed that would have weakened the role of the SAT or eliminated the test altogether. Senators were swayed by the University's argument that a study of admissions standards would have little value if its outcome was dictated by the legislature. University admissions officials also argued that the SAT is important in that it provides the only common assessment measure available on the national level, and it can help admissions personnel reduce local variances in grading.¹³⁶

The version of House Bill 1246 that became law permits the study participants to examine the roles of grade point average, class rank, and the SAT and ACT Assessment in making admissions decisions and to "consider shifting the emphasis currently placed on the SAT and ACT Assessment as an admissions measure to the State's end-of-course tests or other available tests as an admissions measure."¹³⁷ Moreover, the final bill required that "[r]ecommendations should be made to improve the consistency and fairness of each measure independently and as used together for admissions decisions." Jerry Lucido, director of undergraduate admissions at UNC-CH, stated that although he was pleased that the bill had been revised, he was "gravely concerned" that there was any bill at all. He warned against the "politicization of admissions policies" and added, "We don't want a cookie-cutter approach to admissions."¹³⁸

Meanwhile, the SAT itself has undergone a major revision, at least in part due to a proposal by the University of California that would have eliminated the test as an admissions requirement. According to The College Board of New York City, the organization which administers the SAT, the revised test is more closely aligned with current high school curricula than older versions of the test. The "new SAT I" adds a writing test, including multiple-choice questions and a student-

written essay; replaces analogies with critical reading of passages from a variety of texts that range from science and history to humanities and literature; and expands the math section to include topics from Algebra II. In April 2003, the UNC Board of Governors approved a modification of its policy on "Minimum Requirements for Undergraduate Admission" to include a requirement that students submit either the new SAT I (which includes the writing component) or the ACT with the writing component for admission for fall 2006 and subsequent terms, dates which coincide with the administration of the new test.

Under House Bill 1246 (Chapter 312 of the 2001 Session Laws), UNC was required by the 2001 General Assembly to submit a final report on changes in admissions criteria by December 1, 2003. The Board of Governors' report to the Joint Legislative Education Oversight Committee recommends no changes to campus admissions policies. The report concludes that "although the GPA is the single best predictor of success in college, the use of the SAT/ACT with the GPA enhances the overall prediction of college success." While the report does not recommend changes to the admissions criteria at this time, it does suggest further evaluation based on the changes to the SAT made by The College Board. The UNC study committee recommends "that a follow-up study be conducted after campuses have had experience with the new SAT, which will be first administered in March 2005 to see what, if any, impact the test enhancements have had on predictive validity in the admissions decision making process."¹³⁹

b. Minority Presence Enrollment

On January 13, 1995, the Board of Governors adopted a policy titled "Program for Further Increases in Minority Presence Enrollment."¹⁴⁰ Increasing "minority presence" includes increasing the number of African American students on white campuses and the number of white students on historically black campuses. Although the policy stated that "none of the activities or programs described in this program requires any constituent institution to modify its admission policies or its policies concerning academic eligibility for retention of students," it set forth specific measures that each institution was required to follow in recruiting minority students, including requirements related to publications by each institution designed to inform prospective minority students about the respective campuses. The document also required the president to "monitor each constituent institution's continuing compliance with all elements" of the program and to report annually to the Board of Governors on the program.

Authority over admissions became an issue during the first four months of Molly Corbett Broad's presidency when, in the fall of 1997, Broad instructed UNC campuses to examine their admissions policies and change any that were vulnerable to legal challenges on affirmative action grounds.¹⁴¹ Her decision followed

court cases across the country involving affirmative action, including a 1996 lawsuit filed against the University of Texas that resulted in a ban on race-based preferences in admissions and financial aid at that institution¹⁴² and passage of a California ballot initiative, Proposition 209, which prevents state and local governments from using race or gender preferences in public hiring, education, and contracting. However, Broad said

she would have called for the review with or without the court rulings because although the number of minorities was up on the campuses, she felt the campuses had fallen short on educating North Carolinians disadvantaged by economics, geography, and other factors.¹⁴³

The UNC-Chapel Hill Faculty Council responded to President Broad's directive in April 1998 by adopting a resolution reaffirming the university's obligation to serve

A Devil's Dictionary of College Admissions

ad. com. n. 1. *an all-powerful committee deciding one's fate in life.* 2. *a body riddled with judgment flaws.* Created by high-school students in Internet discussion groups.

College fair n. *a gala extravaganza of tables covered with a confusing array of lavish college brochures; all promising similar experiences.*

development case n. *an applicant to college whose family wealth may be in direct proportion to his academic unpreparedness.* Archaic but still in use.

hook n. *something that turns an otherwise mediocre (or worse) applicant into an admissible candidate.* See also: *development case, legacy, and student-athlete*

legacy n. *a birthright of the American aristocracy*

likely letter n. 1. *an ambiguously written missive.* 2. *a letter saying one is a strong applicant to a college, but shouldn't assume any kind of commitment.* 3. *something that leads to abject confusion.*

package n. 1. *a messy sheaf of hopes, dreams, and half-truths put together by aspiring applicants.* 2. *a messy sheaf of forms, folders, and information sent out by a financial-aid office.*

rankings n. *a marketing strategy for maximizing magazine sales*

school visit n. *a method of increasing the number of applications to colleges, carried out by admissions officials, usually consisting of one day, five stops at high schools, eight wrong turns.* Archaic, based on the Fuller Brush approach

student-athlete n. *an employee of the university*

tour guide n. *a cheerleader who has the ability to walk backward on a college campus*

viewbook n. *a fanciful work of fiction describing an imaginary institution of higher learning*

wait list n. 1. *a list of extremely well-qualified applicants who, if they lived in a different part of the country, went to a less competitive high school, had been born to more-savvy parents, had their application read earlier than 3 a.m. or had a last name that started with a different letter of the alphabet, would have been admitted to a college.* 2. *a list of fine but ordinary applicants whom an admissions committee does not want to turn down outright because such an action is likely to send a wrong message to the high school that prepared the applicant (the right message: We want more like this, but better).* 3. *a list of applicants who are substantially below the quality of those admitted, but who cannot for political reasons be denied.*

yield n. *a mathematical criterion, based on the percentage of 17-year-old applicants who accept an offer of college admission, used for reckoning how good an institution is; as important as faculty productivity, quality of teaching, and general academic standards.* See also: *rankings*

— RACHEL TOOR

in *THE CHRONICLE OF HIGHER EDUCATION*, FEBRUARY 25, 2005

all the people of North Carolina, "recognizing the racial and ethnic diversity of the state's population."¹⁴⁴ The statement deliberately avoided use of the words "affirmative action," choosing instead to go into detail about how the university should achieve diversity in all its forms, both in student admissions and hiring decisions.¹⁴⁵ A report issued in March 2000 by the UNC-CH Chancellor's Minority Affairs Review Committee stated that the institution "as a whole, continues to exhibit deficiencies in the implementation of its minority affairs and diversity policy."¹⁴⁶ Like the Chapel Hill campus, other UNC institutions have their own individual policies and methods to improve diversity in student admissions and retention of minority students, consistent with the long-standing UNC system policy which "seeks to promote racial integration at each of its constituent institutions."¹⁴⁷

The 1995 system-wide policy on minority enrollment was revised in February 2001 when the Board of Governors approved a new plan entitled "Increasing Access to and Diversity within the University of North Carolina: A Program for Continuing Achievement."¹⁴⁸ According to the Office of the President, the new plan "changes the philosophy of access and diversity in significant ways, placing the responsibility for program design and execution on the individual campuses. Measures of success will be determined by outcomes rather than adherence to a list of required activities."¹⁴⁹ Under the new program, each institution must develop its own strategic plan to meet the following goals: (1) reaching a "critical mass" of minority presence students on each campus; (2) reaching racial and ethnic parity in retention and graduation rates; and (3) developing meaningful opportunities for students to experience a diverse environment that will prepare them for the real world of the 21st century. Thus, as with admissions standards and remedial education, the Board has chosen to decentralize the process of encouraging minority presence enrollment, with campuses responsible for achieving defined goals but having considerable leeway to determine how those goals are met.

In June 2001, the Board received its first minority presence report, which summarized the initial response from each campus to the new diversity planning requirements. Among the activities and initiatives being undertaken by the various institutions are: (1) a Science Track Enhancement Program to reach high school students from under-represented groups or disadvantaged backgrounds to pursue careers in science and math (East Carolina University); (2) a "Den of Diversity" to include deans and African American faculty to recommend diversity policy and a "Lair of Diversity" to provide monthly meetings about diversity issues (North Carolina State University); (3) a new Special Assistant to the Chancellor for Diversity and Multicultural Affairs (UNC-Asheville); (4) English as a Second Language courses for community members (N.C. Central University); (5) participation in National Scholarship Service

for Negro Students fairs (UNC-Wilmington), and (6) a Cherokee Center to support Cherokee students and work closely with public schools (Western Carolina University).¹⁵⁰ These efforts to increase minority presence on UNC campuses are the latest attempt to address the lingering effects of *de jure* segregation of public universities in North Carolina.

Since 1972-73, when North Carolina's four-year public colleges were combined into the 16-campus University of North Carolina under the Board of Governors, the total African American enrollment in the schools has never met or exceeded the percentage of African Americans in the state's overall population until the fall of 2003. Official figures from the U.S. Census Bureau estimated the percentage of African Americans in the population of North Carolina at 22.4 percent in 1980, 22.0 percent in 1990, and 21.6 percent in 2000. Comparatively, enrollment of African Americans on all UNC campuses was 18.9 percent of total enrollment in aca-

UNC President Molly Corbett Broad



Karen Tam

demographic year 1980–81, 17.9 percent in 1990–91, and 20.5 percent in 2000–01, and it reached 23.1 percent in 2005–06. An examination of the enrollment figures for each of the 16 campuses is necessary to evaluate the results of 30 years of oversight by the UNC Board of Governors in reaching minority presence enrollment goals. Table 5.12 shows these statistics for each campus.

Under the UNC Board of Governors, total enrollment of African Americans in the group of 11 historically white and Native American institutions has steadily increased from 3.1 percent in 1972–73 to 11 percent in 2005–06. However, the figures for individual historically white campuses have varied significantly from the group subtotals.

For example, African Americans comprised 2.8 percent of the enrollment at UNC-Asheville in 1972–73 and 2.9 percent in 2005–06. The high point of minority enrollment at UNC-A was 4.8 percent in 1984–85. At UNC-Wilmington, African Americans made up 3.4 percent of the student body in 1972–73 and 5.0 percent in 2005–06, with a high point of 7.5 percent in 1983–84. Meanwhile, at UNC-Pembroke, African American enrollment was 2.8 percent in 1972–73 and climbed to a peak of 23.3 percent by 2005–06. N.C. State University and UNC-Chapel Hill had African American enrollments of 1.6 percent and 4.4 percent, respectively, in 1972–73, but reached 9.1 and 9.9 percent in 2005–06. NCSU's highest black enrollment was 9.9 percent in 2000–01, while UNC-CH's highest was 10.1 percent in 2003–04.

At the five historically black institutions, whites made up 5 percent of total enrollment in 1972–73 and 12.9 percent in 2005–06. During that time period, the highest percentage of whites enrolled was 18.8 percent, a mark reached in 1992–93. Elizabeth City State University, Fayetteville State University, and Winston-Salem State University generally have attracted a higher percentage of white students than N.C. Agricultural & Technical State University and N.C. Central University.

Elizabeth City State, Fayetteville State, and Winston-Salem State each registered less than 10 percent in white student populations in 1972–73, but since then all three institutions have seen their percentage of white students exceed 20 percent during at least six academic years. However, each of those three institutions also has seen a decline in the percentage of white enrollment since 1993–94. NCA&T's student body was 4.9 percent white in 1972–73 and 7.0 percent white in 2005–06. The highest percentage of white students was 13.1 percent, a level reached in 1989–90. The enrollment of whites at N.C. Central University was 6.1 percent in 1972–73 and was 13.0 percent by 2005–06. White enrollment peaked at 16.5 percent in 1986–87.

Sidebar 5.1

Minority Presence Goals

*from the 1981 Affirmative
Action Consent Decree
Between UNC and the U.S.
Department of Education*

North Carolina v. U.S. Department of Education, No. 79-217-CIV-5 (E.D.N.C. 17 July 1981) *By the 1986–87 academic year, minority presence enrollment shall equal or exceed 15.0% of the total combined headcount enrollment in the predominantly black institutions and shall equal or exceed 10.6% of the total combined headcount enrollment in the predominantly white institutions. These enrollment goals pertain to all regular session fall headcount enrollments and include fall headcount enrollments in the Fayetteville Graduate Center at Fayetteville State University, the Elizabeth City State University Graduate Center, and the Winston-Salem Graduate Center at Winston-Salem State University. In the event the actual rate of change in minority presence enrollment exceeds the average annual rate implied by the 15.0% goal (.63%), then that excess, less any underrealization of the average annual rate in any other prior or subsequent year, shall be added to the 15.0% goal. In the event the actual rate of change in minority presence enrollment at the predominantly white institutions exceeds the average annual rate implied by the 10.6% goal (.53%), then that excess, less any underrealization of the average annual rate in any other prior or subsequent year, shall be added to the 10.6% goal.*

Prior to recent initiatives by the Board, the last major push to boost minority presence on UNC campuses occurred between 1981–82 and 1986–87, the result of a 1981 consent decree between UNC and the U.S. Department of Education in a civil rights lawsuit known as *Adams v. Richardson*. In 1973, the federal district court in the D.C. Circuit ordered the U.S. Secretary of Health, Education, and Welfare to enforce more stringent desegregation requirements at public universities in 10 Southern states, including North Carolina. As a result, UNC was ordered to submit a desegregation plan to the U.S. Department of Health, Education and Welfare (now the U.S. Dept. of Health and Human Services and the U.S. Dept. of Education) by June 1973. Negotiations over desegregation between UNC and the federal government continued from 1973 to 1981.

In 1981, UNC reached a consent agreement with federal education officials — although attempts to appeal the agreement were not exhausted until 1984. Under the

—continued on page 218

Table 5.12

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

A. Historically Black Institutions
1. Elizabeth City State University

Year	Enrollment		Nominal HBI Consent Decree Goal/White %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White	
	Black %	White %			Graduation Rate %	Graduation Rate %	Graduation Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %		
1972-73	93.6%	6.4%														
1973-74	92.3%	7.6%														
1980-81	85.9%	12.6%														
1981-82	85.3%	13.1%	11.68%	1.38%												
1982-83	85.8%	12.5%	12.35%	0.12%												
1983-84	82.0%	16.4%	13.01%	3.34%												
1984-85	82.7%	15.9%	13.67%	2.19%	38.5%						44.3%					
1985-86	82.3%	16.7%	14.34%	2.36%	33.8%						44.3%					
1986-87	81.9%	17.4%	15.00%	2.42%	38.3%	39.3%	27.8%	48.6%	33.3%	47.2%	48.6%	33.3%	48.6%	33.3%	47.2%	48.6%
1987-88	80.0%	19.0%			49.4%	50.8%	38.3%	55.3%	38.3%	53.8%	55.3%	42.6%	55.3%	42.6%	53.8%	42.6%
1988-89	81.5%	17.6%			47.3%	49.1%	34.6%	57.3%	34.6%	55.2%	57.3%	40.4%	57.3%	40.4%	55.2%	40.4%
1989-90	78.5%	20.8%			47.2%	48.9%	39.6%	63.0%	39.6%	59.3%	63.0%	39.6%	63.0%	39.6%	59.3%	39.6%
1990-91	75.3%	23.6%			48.2%	54.7%	21.7%	61.3%	21.7%	54.4%	61.3%	26.7%	61.3%	26.7%	54.4%	26.7%
1991-92	74.8%	23.6%			48.5%	49.6%	42.9%	59.8%	42.9%	58.7%	59.8%	53.1%	59.8%	53.1%	58.7%	53.1%
1992-93	73.7%	24.5%			48.9%	51.1%	33.3%	60.4%	33.3%	57.4%	60.4%	36.1%	60.4%	36.1%	57.4%	36.1%
1993-94	73.0%	25.3%			44.4%	50.0%	23.7%	57.7%	23.7%	51.4%	57.7%	28.0%	57.7%	28.0%	51.4%	28.0%
1994-95	74.1%	24.7%			49.6%	50.3%	44.8%	56.8%	44.8%	55.5%	56.8%	47.8%	56.8%	47.8%	55.5%	47.8%
1995-96	74.9%	23.7%			55.4%	57.9%	36.7%	62.8%	36.7%	60.1%	62.8%	40.8%	62.8%	40.8%	60.1%	40.8%
1996-97	74.3%	24.1%			52.5%	59.7%	21.2%	68.8%	21.2%	60.4%	68.8%	24.2%	68.8%	24.2%	60.4%	24.2%
1997-98	74.7%	23.6%			50.5%	54.0%	35.7%	63.7%	35.7%	59.9%	63.7%	44.3%	63.7%	44.3%	59.9%	44.3%
1998-99	75.2%	22.9%			45.4%	47.9%	29.4%	59.6%	29.4%	56.5%	59.6%	39.2%	59.6%	39.2%	56.5%	39.2%
1999-00	75.4%	22.8%						59.8%		57.4%	59.8%	46.5%	59.8%	46.5%	57.4%	46.5%
2000-01	76.6%	21.6%						57.3%		55.4%	57.3%	38.0%	57.3%	38.0%	55.4%	38.0%
2001-02	77.7%	20.6%						60.6%		56.4%	60.6%	34.7%	60.6%	34.7%	56.4%	34.7%
2002-03	76.2%	22.2%														
2003-04	76.9%	21.6%														
2004-05	78.3%	19.6%														
2005-06	78.0%	19.5%														

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

2. Fayetteville State University

Year	Enrollment		Nominal HBI Consent Decree Goal/White %	Consent Decree Goal Variance %	Six-Year Graduation Rate %		Black Six-Year Graduation Rate %		White Six-Year Graduation Rate %		Third-Year Retention Rate %		Black Third-Year Retention Rate %		White Third-Year Retention Rate %	
	Black %	White %			Black %	White %	Black %	White %	Black %	White %	Black %	White %	Black %	White %	Black %	White %
1972-73	96.7%	3.0%														
1973-74	96.5%	3.5%														
1980-81	82.9%	15.4%														
1981-82	79.6%	17.6%	11.68%	5.91%												
1982-83	77.1%	20.3%	12.35%	7.98%												
1983-84	78.0%	18.7%	13.01%	5.67%	16.5%											
1984-85	74.4%	22.4%	13.67%	8.73%	14.3%											
1985-86	75.6%	22.2%	14.34%	7.81%	21.3%											
1986-87	74.3%	23.2%	15.00%	8.25%	20.9%											
1987-88	73.3%	24.4%			36.4%											
1988-89	70.0%	27.1%			33.1%											
1989-90	68.1%	29.0%			34.9%											
1990-91	66.0%	30.5%			43.2%											
1991-92	63.1%	32.9%			38.3%											
1992-93	62.6%	32.6%			34.7%											
1993-94	62.6%	32.7%			33.0%											
1994-95	64.1%	30.7%			37.1%											
1995-96	65.1%	29.1%			38.5%											
1996-97	63.5%	29.0%			38.0%											
1997-98	65.5%	26.6%			34.9%											
1998-99	69.5%	23.5%			36.2%											
1999-00	71.5%	22.0%														
2000-01	72.2%	20.8%														
2001-02	72.5%	20.9%														
2002-03	73.7%	20.0%														
2003-04	75.2%	18.1%														
2004-05	75.0%	17.7%														
2005-06	73.4%	17.8%														

—continued

Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

3. N.C. Agricultural & Technical State University

Year	Enrollment		Nominal HBI Consent Decree Goal/White %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White	
	Black %	White %			Graduation Rate %	Graduation Rate %	Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %		
1972-73	95.1%	4.9%														
1973-74	94.7%	5.2%														
1980-81	86.9%	9.1%														
1981-82	85.2%	6.9%	11.68%	-4.77%												
1982-83	82.2%	9.1%	12.35%	-3.26%												
1983-84	82.7%	9.2%	13.01%	-3.79%												
1984-85	82.4%	10.7%	13.67%	-3.00%	37.3%											
1985-86	82.8%	11.5%	14.34%	-2.82%	35.2%											
1986-87	83.4%	11.8%	15.00%	-3.18%	37.7%			38.1%		16.1%				58.3%		16.1%
1987-88	84.4%	11.8%			44.3%			45.5%		11.4%				60.8%		15.9%
1988-89	83.8%	12.8%			40.9%			41.8%		17.6%				59.8%		26.5%
1989-90	83.9%	13.1%			44.0%			45.0%		15.9%				59.7%		22.7%
1990-91	84.7%	12.7%			44.4%			44.8%		27.8%				63.8%		36.1%
1991-92	84.9%	12.5%			45.3%			46.1%		17.1%				61.1%		20.0%
1992-93	84.6%	12.9%			43.5%			44.5%		15.0%				59.8%		22.5%
1993-94	85.5%	11.7%			42.1%			42.9%		17.5%				57.0%		30.0%
1994-95	86.6%	10.5%			43.6%			44.3%		14.3%				58.5%		14.3%
1995-96	86.5%	10.4%			44.1%			45.1%		12.5%				58.5%		17.5%
1996-97	87.0%	10.0%			40.1%			41.0%		13.3%				57.4%		20.0%
1997-98	87.8%	9.0%			44.2%			44.9%		30.2%				60.9%		32.6%
1998-99	88.1%	8.3%			42.5%			43.1%		26.5%				58.7%		41.2%
1999-00	88.0%	8.6%														
2000-01	88.7%	7.7%														
2001-02	88.7%	6.9%														
2002-03	87.5%	7.6%														
2003-04	87.7%	7.7%														
2004-05	88.9%	7.0%														
2005-06	89.1%	7.0%														

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

4. N.C. Central University

Year	Enrollment		Nominal HBI Consent Decree Goal/White %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White	
	Black %	White %			Graduation Rate %	Graduation Rate %	Graduation Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %		
1972-73	93.6%	6.1%														
1973-74	92.0%	7.8%														
1980-81	88.0%	10.2%														
1981-82	87.2%	10.9%	11.68%	-0.78%												
1982-83	85.9%	12.2%	12.35%	-0.15%												
1983-84	85.4%	12.4%	13.01%	-0.63%												
1984-85	82.9%	14.7%	13.67%	1.07%	32.8%						50.6%					
1985-86	82.8%	15.0%	14.34%	0.68%	32.5%			34.1%	5.6%	50.2%			51.8%		5.6%	
1986-87	81.3%	16.5%	15.00%	1.55%	33.3%			39.1%	15.8%	50.3%			53.4%		21.1%	
1987-88	83.0%	15.3%			38.4%			40.2%	22.2%	52.5%			59.1%		5.6%	
1988-89	82.6%	15.5%			39.8%			39.6%	26.3%	57.8%			57.9%		31.6%	
1989-90	83.2%	15.2%			39.1%			45.8%	14.3%	56.9%			61.1%		42.9%	
1990-91	83.3%	15.1%			45.4%			46.6%	28.6%	60.6%			61.5%		28.6%	
1991-92	83.3%	14.9%			45.8%			44.6%	8.3%	60.4%			57.1%		25.0%	
1992-93	83.6%	14.4%			43.6%			50.1%	0.0%	60.0%			60.8%		0.0%	
1993-94	83.9%	13.9%			49.4%			50.1%	0.0%	62.4%			63.4%		11.1%	
1994-95	84.0%	14.0%			49.4%			45.2%	38.1%	57.5%			59.4%		23.8%	
1995-96	82.8%	15.0%			44.7%			49.7%	27.3%	62.7%			63.3%		45.5%	
1996-97	82.1%	15.3%			48.9%			48.9%	29.4%	59.6%			60.4%		35.3%	
1997-98	81.9%	15.1%			48.7%			50.2%	23.5%	61.7%			61.5%		35.3%	
1998-99	81.5%	14.5%			50.7%					58.0%			58.4%		33.3%	
1999-00	81.4%	14.1%								63.6%			64.8%		33.3%	
2000-01	81.3%	13.8%								64.9%					33.3%	
2001-02	81.2%	13.8%														
2002-03	80.0%	14.7%														
2003-04	80.1%	14.2%														
2004-05	80.0%	14.2%														
2005-06	80.4%	13.0%														

Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

5. Winston-Salem State University

Year	Enrollment		Nominal HBI Consent Decree Goal/White %	Consent Decree Goal Variance %	Six-Year		White		Black		White		Black		White	
	Black %	White %			Graduation Rate %	Graduation Rate %	Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %		
1972-73	96.2%	3.8%														
1973-74	97.5%	3.6%														
1980-81	86.4%	13.2%														
1981-82	85.0%	14.9%	11.68%	3.18%												
1982-83	86.3%	13.1%	12.35%	0.75%												
1983-84	85.2%	14.3%	13.01%	1.25%												
1984-85	85.3%	14.0%	13.67%	0.37%	28.7%											
1985-86	85.6%	13.9%	14.34%	-0.40%	30.9%											
1986-87	84.4%	15.0%	15.00%	-0.02%	30.8%	31.7%	14.8%	44.7%	49.2%	25.9%	49.2%	25.9%	49.2%	25.9%	49.2%	25.9%
1987-88	83.0%	16.1%			38.2%	39.2%	0.0%	45.7%	52.4%	30.8%	52.4%	30.8%	52.4%	30.8%	52.4%	30.8%
1988-89	84.6%	14.7%			36.4%	37.4%	17.6%	47.9%	51.1%	11.8%	51.1%	11.8%	51.1%	11.8%	51.1%	11.8%
1989-90	84.2%	15.0%			32.7%	32.8%	33.3%	49.5%	49.1%	40.0%	49.1%	40.0%	49.1%	40.0%	49.1%	40.0%
1990-91	82.1%	17.1%			38.4%	39.0%	33.3%	50.1%	51.1%	38.9%	51.1%	38.9%	51.1%	38.9%	51.1%	38.9%
1991-92	79.9%	19.0%			37.6%	39.2%	6.3%	52.4%	54.4%	12.5%	54.4%	12.5%	54.4%	12.5%	54.4%	12.5%
1992-93	77.9%	21.0%			47.8%	49.2%	7.1%	58.8%	60.1%	21.4%	60.1%	21.4%	60.1%	21.4%	60.1%	21.4%
1993-94	75.7%	22.9%			36.9%	38.0%	15.8%	49.3%	50.9%	21.1%	50.9%	21.1%	50.9%	21.1%	50.9%	21.1%
1994-95	76.4%	22.4%			44.5%	45.3%	42.9%	53.0%	54.7%	45.7%	54.7%	45.7%	54.7%	45.7%	54.7%	45.7%
1995-96	75.5%	22.8%			50.7%	51.8%	33.3%	58.1%	59.4%	40.7%	59.4%	40.7%	59.4%	40.7%	59.4%	40.7%
1996-97	76.2%	21.9%			42.9%	43.7%	37.1%	51.0%	52.6%	37.1%	52.6%	37.1%	52.6%	37.1%	52.6%	37.1%
1997-98	77.8%	20.4%			47.6%	48.0%	43.5%	57.5%	58.1%	52.2%	58.1%	52.2%	58.1%	52.2%	58.1%	52.2%
1998-99	79.6%	18.5%			43.7%	45.3%	10.5%	62.6%	64.1%	25.0%	64.1%	25.0%	64.1%	25.0%	64.1%	25.0%
1999-00	81.7%	16.6%														
2000-01	82.5%	15.9%														
2001-02	82.4%	15.8%														
2002-03	81.4%	17.0%														
2003-04	81.7%	16.3%														
2004-05	81.4%	16.5%														
2005-06	81.8%	16.7%														

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

All 5 Historically Black Institutions (HBI) Subtotal

Year	Enrollment		Nominal HBI		Consent Decree Goal Variance %	Extrapolated		Revised HBI Consent Goal Variance %	Revised Consent Goal Variance %	Six-Year		White		Black		White		Black			
	Black %	White %	Consent Decree Goal %	White %		Consent Goal Headcount	White %			White %	Graduation Rate %	Graduation Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	
1972-73	94.9%	5.0%																			
1973-74	94.2%	5.8%																			
1980-81	86.5%	11.2%																			
1981-82	85.0%	11.3%	11.68%		-0.35%	-56															
1982-83	83.5%	12.6%	12.35%		0.21%	32															
1983-84	83.1%	12.9%	13.01%		-0.10%	-16															
1984-85	81.7%	14.6%	13.67%		0.98%	156															
1985-86	81.9%	15.1%	14.34%		0.74%	125	15.07%	0.01%													
1986-87	81.4%	15.9%	15.00%		0.92%	163	15.70%	0.23%	33.0%	20.1%	49.2%	50.4%	24.3%	50.4%	24.3%	20.1%	49.2%	50.4%	24.3%	50.4%	
1987-88	81.8%	15.9%							39.4%	18.4%	52.0%	53.3%	25.9%	53.3%	25.9%	18.4%	52.0%	53.3%	25.9%	53.3%	
1988-89	81.3%	16.4%							40.3%	25.8%	55.8%	57.3%	30.8%	57.3%	30.8%	25.8%	55.8%	57.3%	30.8%	57.3%	
1989-90	80.8%	17.1%							39.8%	29.7%	54.8%	56.4%	33.7%	56.4%	33.7%	29.7%	54.8%	56.4%	33.7%	56.4%	
1990-91	79.9%	17.9%							43.0%	25.1%	58.1%	59.9%	36.2%	59.9%	36.2%	25.1%	58.1%	59.9%	36.2%	59.9%	
1991-92	79.1%	18.6%							44.5%	28.8%	58.2%	60.2%	32.6%	60.2%	32.6%	28.8%	58.2%	60.2%	32.6%	60.2%	
1992-93	78.6%	18.8%							44.3%	26.1%	57.3%	59.1%	31.8%	59.1%	31.8%	26.1%	57.3%	59.1%	31.8%	59.1%	
1993-94	78.6%	18.7%							42.6%	21.7%	54.6%	56.9%	27.4%	56.9%	27.4%	21.7%	54.6%	56.9%	27.4%	56.9%	
1994-95	79.5%	17.8%							44.3%	30.6%	55.7%	57.4%	31.6%	57.4%	31.6%	30.6%	55.7%	57.4%	31.6%	57.4%	
1995-96	79.3%	17.7%							45.7%	24.7%	56.5%	58.5%	28.7%	58.5%	28.7%	24.7%	56.5%	58.5%	28.7%	58.5%	
1996-97	78.6%	17.9%							43.3%	22.5%	55.6%	58.0%	26.5%	58.0%	26.5%	22.5%	55.6%	58.0%	26.5%	58.0%	
1997-98	79.4%	16.8%							45.5%	35.2%	57.7%	59.1%	39.9%	59.1%	39.9%	35.2%	57.7%	59.1%	39.9%	59.1%	
1998-99	80.6%	15.4%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	
1999-00	81.0%	15.0%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	
2000-01	81.8%	14.1%							43.3%	22.5%	55.6%	58.0%	26.5%	58.0%	26.5%	22.5%	55.6%	58.0%	26.5%	58.0%	
2001-02	81.8%	13.7%							45.5%	35.2%	57.7%	59.1%	39.9%	59.1%	39.9%	35.2%	57.7%	59.1%	39.9%	59.1%	
2002-03	81.2%	14.2%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	
2003-04	81.8%	13.6%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	
2004-05	82.2%	13.2%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	
2005-06	82.1%	12.9%							43.4%	24.2%	56.7%	57.8%	35.3%	57.8%	35.3%	24.2%	56.7%	57.8%	35.3%	57.8%	

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Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

B. Historically White and Native American Institutions
6. Appalachian State University

Year	Enrollment		Enrollment Black %	Nominal HBI		Consent Decree Variance %	Six-Year		Black		White		Third-Year		Black		White	
	White %	Black %		Consent Goal/Black %	Consent Goal Variance %		Graduation Rate %	Graduation Rate %	Graduation Rate %	Graduation Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %
1972-73	97.9%	1.4%																
1973-74	97.8%	1.7%																
1980-81	96.6%	2.5%																
1981-82	96.3%	2.7%	7.93%	-5.22%														
1982-83	95.9%	3.2%	8.47%	-5.30%														
1983-84	95.0%	3.9%	9.00%	-5.09%														
1984-85	94.0%	4.6%	9.53%	-4.96%	54.1%									59.2%				
1985-86	94.2%	4.5%	10.07%	-5.55%	56.1%									59.8%				
1986-87	94.4%	4.4%	10.60%	-6.25%	59.3%			60.0%	47.6%	60.0%	60.0%			63.3%	56.3%	63.9%		
1987-88	94.4%	4.6%			63.4%			64.4%	48.1%	64.4%	64.4%			67.6%	62.0%	68.0%		
1988-89	94.2%	4.5%			66.2%			67.4%	45.6%	67.4%	67.4%			70.1%	55.3%	70.9%		
1989-90	94.2%	4.3%			60.8%			62.2%	42.1%	62.2%	62.2%			66.3%	51.8%	67.5%		
1990-91	94.1%	4.4%			63.4%			64.2%	44.2%	64.2%	64.2%			68.9%	66.3%	68.9%		
1991-92	94.2%	4.1%			62.6%			63.0%	53.0%	63.0%	63.0%			68.0%	65.0%	68.1%		
1992-93	94.1%	4.0%			62.1%			62.6%	60.0%	62.6%	62.6%			67.2%	64.6%	67.8%		
1993-94	94.0%	4.0%			62.3%			62.8%	53.9%	62.8%	62.8%			67.2%	61.8%	67.5%		
1994-95	94.2%	3.6%			59.5%			59.9%	53.1%	59.9%	59.9%			64.5%	60.9%	64.8%		
1995-96	94.5%	3.3%			63.0%			63.3%	57.4%	63.3%	63.3%			67.7%	67.6%	67.7%		
1996-97	94.8%	2.9%			60.3%			61.1%	43.6%	61.1%	61.1%			64.8%	65.5%	65.0%		
1997-98	94.6%	2.8%			61.2%			62.1%	53.2%	62.1%	62.1%			66.1%	65.8%	66.6%		
1998-99	94.5%	3.0%			60.2%			61.2%	42.5%	61.2%	61.2%			66.2%	52.1%	67.0%		
1999-00	94.3%	3.0%												68.6%	64.1%	68.9%		
2000-01	94.1%	3.1%												67.3%	75.8%	67.1%		
2001-02	94.3%	3.3%												67.1%	65.4%	67.3%		
2002-03	92.1%	3.4%																
2003-04	91.5%	3.5%																
2004-05	90.9%	3.8%																
2005-06	90.9%	3.5%																

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

7. East Carolina University

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Six-Year		White		Black		White	
	White %	Black %				Graduation Rate %	Graduation Rate %	Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %
1972-73	95.4%	3.1%											
1973-74	94.9%	3.5%											
1980-81	88.5%	10.1%											
1981-82	87.2%	10.7%	7.93%	2.77%									
1982-83	86.9%	10.5%	8.47%	1.98%									
1983-84	85.8%	11.3%	9.00%	2.31%									
1984-85	86.0%	11.2%	9.53%	1.71%	44.8%								
1985-86	85.6%	11.8%	10.07%	1.73%	48.0%								
1986-87	86.4%	11.3%	10.60%	0.67%	49.5%								
1987-88	86.9%	11.0%			48.9%	40.0%	50.7%	53.2%	55.2%	55.0%	58.7%	58.7%	58.7%
1988-89	87.2%	10.4%			48.8%	43.9%	49.7%	58.2%	59.0%	59.5%	59.2%	59.2%	59.2%
1989-90	87.8%	9.7%			49.0%	41.7%	49.9%	57.9%	57.9%	57.9%	58.0%	58.0%	58.0%
1990-91	88.2%	9.1%			49.1%	44.1%	49.8%	58.7%	58.7%	61.8%	58.9%	58.9%	58.9%
1991-92	87.8%	9.3%			48.1%	52.1%	49.1%	59.5%	59.5%	66.1%	59.2%	59.2%	59.2%
1992-93	87.4%	9.6%			49.0%	45.5%	48.6%	56.9%	56.9%	57.6%	56.9%	56.9%	56.9%
1993-94	86.9%	9.7%			50.2%	52.2%	49.0%	58.2%	58.2%	64.8%	56.5%	56.5%	56.5%
1994-95	86.3%	10.1%			51.1%	48.1%	49.1%	59.8%	59.8%	59.7%	59.6%	59.6%	59.6%
1995-96	85.9%	10.2%			52.3%	54.9%	52.1%	59.7%	59.7%	72.2%	58.4%	58.4%	58.4%
1996-97	85.1%	10.8%			54.4%	60.3%	53.4%	60.8%	60.8%	69.5%	59.6%	59.6%	59.6%
1997-98	83.7%	11.7%			53.7%	51.0%	54.5%	59.7%	59.7%	61.4%	59.7%	59.7%	59.7%
1998-99	82.2%	12.3%			53.3%	52.7%	53.6%	60.9%	60.9%	65.0%	60.4%	60.4%	60.4%
1999-00	80.9%	12.8%						61.9%	61.9%	70.4%	61.0%	61.0%	61.0%
2000-01	80.1%	13.3%						63.5%	63.5%	68.1%	63.6%	63.6%	63.6%
2001-02	79.3%	14.0%						61.5%	61.5%	70.4%	60.3%	60.3%	60.3%
2002-03	79.5%	13.8%											
2003-04	79.2%	14.1%											
2004-05	78.4%	14.7%											
2005-06	77.8%	14.9%											

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Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

8. N.C. School of the Arts

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree		Consent Decree Goal Variance %	Six-Year Graduation		Black Six-Year Graduation		White Six-Year Graduation		Third-Year Retention		Black Third-Year Retention		White Third-Year Retention	
	White %	Black %		Goal/Black %	Rate %		Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %
1972-73	90.9%	8.3%					41.2%	20.0%	42.1%	31.8%	0.0%	32.9%	31.8%	0.0%	32.9%	31.8%	0.0%	32.9%
1973-74	91.3%	7.9%					36.9%	66.7%	34.4%	40.0%	66.7%	37.7%	40.0%	66.7%	37.7%	40.0%	66.7%	37.7%
1980-81	84.9%	11.0%					34.5%	25.0%	33.3%	29.9%	25.0%	28.2%	29.9%	25.0%	28.2%	25.0%	25.0%	28.2%
1981-82	85.1%	9.7%	7.93%	1.81%			23.1%	33.3%	21.4%	32.3%	66.7%	30.4%	32.3%	66.7%	30.4%	66.7%	30.4%	30.4%
1982-83	87.7%	8.0%	8.47%	-0.43%			40.0%	0.0%	43.9%	40.0%	0.0%	43.9%	40.0%	0.0%	43.9%	0.0%	0.0%	43.9%
1983-84	86.4%	8.8%	9.00%	-0.21%			40.0%	100.0%	40.5%	34.0%	100.0%	31.0%	40.0%	100.0%	31.0%	100.0%	31.0%	31.0%
1984-85	84.2%	12.3%	9.53%	2.75%			38.5%	66.7%	37.3%	34.6%	66.7%	34.3%	34.6%	66.7%	34.3%	66.7%	34.3%	34.3%
1985-86	81.6%	12.1%	10.07%	2.00%			43.9%	0.0%	47.8%	40.6%	0.0%	43.3%	40.6%	0.0%	43.3%	25.0%	25.0%	43.3%
1986-87	83.1%	11.3%	10.60%	0.72%			46.7%	80.0%	42.1%	43.3%	80.0%	38.2%	43.3%	80.0%	38.2%	80.0%	38.2%	38.2%
1987-88	82.3%	11.5%					55.6%	33.3%	57.6%	50.5%	33.3%	52.2%	50.5%	33.3%	52.2%	33.3%	33.3%	52.2%
1988-89	82.7%	11.1%					47.6%	28.6%	47.8%	42.9%	28.6%	44.4%	42.9%	14.3%	44.4%	14.3%	14.3%	44.4%
1989-90	83.6%	8.1%					45.9%	60.0%	46.8%	47.1%	60.0%	48.2%	47.1%	40.0%	48.2%	40.0%	40.0%	48.2%
1990-91	81.3%	8.6%					49.6%	60.0%	50.0%	49.6%	60.0%	50.0%	49.6%	40.0%	50.0%	40.0%	40.0%	50.0%
1991-92	83.3%	11.3%					7.4%	7.4%	7.4%	7.4%	7.4%	54.8%	7.4%	7.4%	7.4%	7.4%	7.4%	54.8%
1992-93	84.7%	5.9%					7.7%	7.7%	7.7%	7.7%	7.7%	52.3%	7.7%	7.7%	7.7%	7.7%	7.7%	52.3%
1993-94	85.2%	6.2%					9.8%	9.8%	9.8%	9.8%	9.8%	50.7%	9.8%	9.8%	9.8%	9.8%	9.8%	50.7%
1994-95	83.7%	6.8%					9.5%	9.5%	9.5%	9.5%	9.5%	52.3%	9.5%	9.5%	9.5%	9.5%	9.5%	52.3%
1995-96	84.8%	7.1%					8.3%	8.3%	8.3%	8.3%	8.3%	54.8%	8.3%	8.3%	8.3%	8.3%	8.3%	54.8%
1996-97	82.8%	7.8%					8.4%	8.4%	8.4%	8.4%	8.4%	52.3%	8.4%	8.4%	8.4%	8.4%	8.4%	52.3%
1997-98	81.8%	6.9%					8.7%	8.7%	8.7%	8.7%	8.7%	50.7%	8.7%	8.7%	8.7%	8.7%	8.7%	50.7%
1998-99	82.5%	7.4%					8.9%	8.9%	8.9%	8.9%	8.9%	54.8%	8.9%	8.9%	8.9%	8.9%	8.9%	54.8%
1999-00	83.6%	7.4%					8.7%	8.7%	8.7%	8.7%	8.7%	52.3%	8.7%	8.7%	8.7%	8.7%	8.7%	52.3%
2000-01	83.6%	7.7%					9.8%	9.8%	9.8%	9.8%	9.8%	50.7%	9.8%	9.8%	9.8%	9.8%	9.8%	50.7%
2001-02	82.9%	9.8%					8.3%	8.3%	8.3%	8.3%	8.3%	54.8%	8.3%	8.3%	8.3%	8.3%	8.3%	54.8%
2002-03	82.9%	9.5%					8.4%	8.4%	8.4%	8.4%	8.4%	52.3%	8.4%	8.4%	8.4%	8.4%	8.4%	52.3%
2003-04	82.1%	8.3%					8.7%	8.7%	8.7%	8.7%	8.7%	50.7%	8.7%	8.7%	8.7%	8.7%	8.7%	50.7%
2004-05	81.6%	8.4%					8.9%	8.9%	8.9%	8.9%	8.9%	54.8%	8.9%	8.9%	8.9%	8.9%	8.9%	54.8%
2005-06	80.9%	8.7%																

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

9. N.C. State University

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White		
	White %	Black %				Graduation Rate %	Graduation Rate %	Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %			
1972-73	97.8%	1.6%																
1973-74	96.9%	2.4%																
1980-81	87.7%	6.4%																
1981-82	87.4%	6.9%	7.93%	-1.06%														
1982-83	86.3%	7.5%	8.47%	-0.97%														
1983-84	85.8%	8.0%	9.00%	-1.02%														
1984-85	85.3%	8.1%	9.53%	-1.42%														
1985-86	84.4%	8.8%	10.07%	-1.27%														
1986-87	83.0%	9.4%	10.60%	-1.23%			59.0%	39.3%	61.8%	70.2%	61.4%	71.3%	61.4%	71.3%				
1987-88	83.3%	9.1%					63.7%	43.5%	66.5%	75.5%	69.1%	76.5%	69.1%	76.5%				
1988-89	83.1%	9.3%					67.7%	50.1%	70.3%	76.9%	72.9%	77.7%	72.9%	77.7%				
1989-90	83.3%	8.9%					66.9%	48.9%	69.6%	76.2%	68.4%	77.3%	68.4%	77.3%				
1990-91	83.3%	8.7%					67.1%	48.1%	69.5%	75.8%	68.4%	76.6%	68.4%	76.6%				
1991-92	82.8%	8.7%					63.9%	48.8%	65.9%	73.1%	69.9%	73.4%	69.9%	73.4%				
1992-93	82.1%	9.0%					62.7%	44.8%	65.2%	70.9%	65.6%	71.6%	65.6%	71.6%				
1993-94	81.8%	9.1%					64.7%	45.5%	67.3%	72.5%	62.1%	73.7%	62.1%	73.7%				
1994-95	81.3%	9.1%					60.3%	45.6%	61.9%	67.8%	64.5%	68.1%	64.5%	68.1%				
1995-96	80.9%	9.4%					61.7%	46.2%	64.4%	70.5%	66.6%	71.2%	66.6%	71.2%				
1996-97	80.4%	9.3%					64.0%	46.2%	66.9%	73.4%	65.3%	75.0%	65.3%	75.0%				
1997-98	79.8%	9.5%					63.3%	47.3%	65.8%	72.2%	65.1%	73.3%	65.1%	73.3%				
1998-99	79.3%	9.7%					66.9%	49.9%	69.5%	74.1%	65.3%	75.5%	65.3%	75.5%				
1999-00	78.4%	9.8%								77.0%	74.1%	77.8%	74.1%	77.8%				
2000-01	77.6%	9.9%								77.6%	74.1%	77.8%	74.1%	77.8%				
2001-02	76.5%	9.7%								77.6%	74.1%	77.8%	74.1%	77.8%				
2002-03	77.0%	9.7%								76.2%	74.9%	77.2%	74.9%	77.2%				
2003-04	77.3%	9.8%																
2004-05	76.6%	9.7%																
2005-06	76.0%	9.1%																

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Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

10. UNC-Asheville

Year	Enrollment		Enrollment Black %	Nominal HBI Decree Goal Goal/Black %	Consent Decree Goal Variance %	Six-Year Graduation		Black Six-Year Graduation		White Six-Year Graduation		Third-Year Retention		Black Third-Year Retention		White Third-Year Retention	
	White %	Black %				Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %	Rate %
1972-73	96.8%	2.8%															
1973-74	96.6%	2.9%															
1980-81	93.7%	4.7%															
1981-82	93.7%	4.2%	7.93%	-3.76%													
1982-83	94.0%	3.8%	8.47%	-4.70%													
1983-84	93.4%	4.5%	9.00%	-4.54%													
1984-85	92.9%	4.8%	9.53%	-4.70%		34.1%											
1985-86	93.7%	4.2%	10.07%	-5.90%		36.6%						44.2%					
1986-87	94.1%	3.9%	10.60%	-6.67%		34.2%	30.8%	33.5%	46.6%	44.3%	33.5%	45.2%	61.5%	44.2%			
1987-88	93.8%	4.0%				41.3%	50.0%	41.4%	48.9%	41.4%	41.4%	48.9%	55.0%	49.4%			
1988-89	94.2%	3.5%				42.2%	30.0%	42.7%	52.4%	42.7%	42.7%	52.4%	60.0%	52.4%			
1989-90	94.2%	3.6%				41.6%	42.9%	41.8%	52.1%	41.8%	41.8%	52.1%	71.4%	51.4%			
1990-91	93.5%	3.9%				40.6%	34.8%	40.5%	47.6%	40.5%	40.5%	47.6%	43.5%	47.1%			
1991-92	94.3%	3.0%				45.2%	50.0%	44.3%	55.1%	44.3%	44.3%	55.1%	58.3%	54.4%			
1992-93	93.5%	3.5%				51.9%	57.1%	51.9%	61.2%	51.9%	51.9%	61.2%	66.7%	61.7%			
1993-94	92.6%	3.8%				55.1%	58.3%	55.7%	55.9%	55.7%	55.7%	55.9%	70.8%	55.1%			
1994-95	92.3%	3.7%				48.0%	62.5%	46.9%	56.9%	46.9%	46.9%	56.9%	44.8%	58.4%			
1995-96	91.7%	4.2%				53.8%	48.3%	54.6%	57.3%	54.6%	54.6%	57.3%	68.4%	57.8%			
1996-97	91.6%	3.8%				50.7%	63.2%	51.2%	56.4%	51.2%	51.2%	56.4%	58.8%	57.4%			
1997-98	92.1%	3.4%				51.1%	52.9%	52.5%	58.9%	52.5%	52.5%	58.9%	50.0%	59.9%			
1998-99	91.7%	3.4%				51.5%	50.0%	51.8%	59.0%	51.8%	51.8%	59.0%	85.7%	59.4%			
1999-00	90.9%	3.5%							60.0%			60.0%	33.3%	60.8%			
2000-01	90.6%	3.6%							61.2%			61.2%	64.7%	61.5%			
2001-02	90.6%	2.9%															
2002-03	90.6%	2.7%															
2003-04	90.0%	2.8%															
2004-05	89.8%	3.0%															
2005-06	89.4%	2.9%															

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

11. UNC-Chapel Hill

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White		
	White %	Black %				Graduation Rate %	Rate %	Graduation Rate %	Rate %	Retention Rate %	Retention Rate %	Graduation Rate %	Rate %	Retention Rate %	Retention Rate %	Retention Rate %	Retention Rate %	
1972-73	94.9%	4.4%																
1973-74	94.0%	5.1%																
1980-81	89.2%	7.8%																
1981-82	88.3%	8.4%	7.93%	0.45%														
1982-83	87.7%	8.7%	8.47%	0.22%														
1983-84	87.3%	8.7%	9.00%	-0.34%														
1984-85	87.4%	8.3%	9.53%	-1.23%														
1985-86	87.4%	7.9%	10.07%	-2.15%			75.7%											
1986-87	87.0%	7.8%	10.60%	-2.78%			80.2%											
1987-88	87.0%	7.5%					81.7%	58.3%										86.3%
1988-89	86.3%	7.8%					83.2%	66.6%										87.2%
1989-90	85.4%	8.1%					85.0%	62.9%										90.1%
1990-91	84.2%	8.6%					84.1%	67.7%										87.2%
1991-92	83.7%	8.5%					81.7%	65.1%										86.5%
1992-93	82.8%	8.7%					83.6%	68.7%										87.7%
1993-94	82.4%	8.6%					80.2%	64.1%										85.8%
1994-95	81.9%	8.9%					79.7%	60.8%										84.9%
1995-96	81.1%	9.2%					78.9%	69.7%										82.3%
1996-97	80.3%	9.6%					79.1%	63.7%										84.5%
1997-98	80.1%	9.7%					80.4%	70.2%										85.7%
1998-99	79.7%	9.9%					82.8%	70.7%										87.6%
1999-00	79.2%	9.8%					81.3%	70.4%										84.6%
2000-01	78.6%	9.7%																86.0%
2001-02	77.5%	9.8%																87.4%
2002-03	76.0%	9.9%																87.9%
2003-04	74.5%	10.1%																
2004-05	73.2%	10.0%																
2005-06	72.2%	9.9%																

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Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

12. UNC-Charlotte

Year	Enrollment		Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Black		White		Black		White	
	White %	Black %			Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %		
1972-73	95.2%	3.7%										
1973-74	94.1%	5.2%										
1980-81	88.3%	8.4%										
1981-82	87.7%	8.3%	7.93%	0.41%								
1982-83	86.5%	8.1%	8.47%	-0.32%								
1983-84	85.5%	8.5%	9.00%	-0.50%								
1984-85	84.9%	8.6%	9.53%	-0.95%	50.3%							
1985-86	85.2%	8.8%	10.07%	-1.30%	51.0%							
1986-87	84.2%	9.5%	10.60%	-1.10%	49.9%	38.7%	51.6%	57.8%	56.0%	57.6%	58.0%	58.0%
1987-88	84.8%	9.3%			53.5%	46.5%	54.1%	62.4%	61.8%	62.4%	62.5%	62.5%
1988-89	84.9%	9.7%			59.7%	45.2%	61.6%	68.1%	55.3%	68.1%	69.9%	69.9%
1989-90	83.5%	10.9%			58.3%	48.0%	61.2%	67.0%	62.0%	67.0%	68.6%	68.6%
1990-91	83.2%	11.1%			52.8%	42.9%	55.3%	63.1%	64.0%	63.1%	62.8%	62.8%
1991-92	82.5%	11.1%			51.0%	39.8%	53.9%	60.8%	55.0%	60.8%	62.4%	62.4%
1992-93	80.9%	11.6%			50.9%	34.3%	55.7%	59.3%	51.2%	59.3%	62.1%	62.1%
1993-94	79.2%	12.9%			48.7%	42.2%	50.7%	57.6%	55.3%	57.6%	58.8%	58.8%
1994-95	78.1%	13.9%			50.4%	44.8%	52.1%	59.3%	54.5%	59.3%	60.1%	60.1%
1995-96	77.6%	14.3%			50.8%	52.2%	50.4%	61.3%	64.1%	61.3%	60.4%	60.4%
1996-97	76.6%	14.8%			45.4%	39.4%	46.6%	55.1%	57.2%	55.1%	55.1%	55.1%
1997-98	75.5%	15.9%			49.1%	44.8%	50.9%	58.8%	63.3%	58.8%	58.6%	58.6%
1998-99	74.4%	16.8%			46.5%	43.3%	47.8%	53.7%	55.9%	53.7%	53.1%	53.1%
1999-00	73.5%	16.9%						55.7%	60.3%	55.7%	54.2%	54.2%
2000-01	73.1%	16.4%						56.7%	65.2%	56.7%	55.2%	55.2%
2001-02	73.0%	16.1%						57.2%	62.5%	57.2%	56.0%	56.0%
2002-03	73.3%	15.7%										
2003-04	73.7%	15.3%										
2004-05	74.8%	14.7%										
2005-06	74.9%	14.3%										

Table 5.12

CONTINUED

*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

14. UNC-Pembroke

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Six-Year		Black		White		Third-Year		Black		White		
	White %	Black %				Graduation Rate %	Graduation Rate %	Six-Year Graduation Rate %	Six-Year Graduation Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %	Third-Year Retention Rate %		
1972-73	81.8%		2.8%															
1973-74	79.9%		3.3%															
1980-81	62.4%		12.3%															
1981-82	61.9%		12.4%	7.93%	4.51%													
1982-83	61.3%		12.9%	8.47%	4.40%													
1983-84	60.3%		12.6%	9.00%	3.63%													
1984-85	59.4%		14.3%	9.53%	4.81%	40.2%												
1985-86	59.6%		13.8%	10.07%	3.74%	38.1%												
1986-87	60.7%		13.3%	10.60%	2.70%	37.2%	32.0%	35.0%	49.0%	55.7%	49.2%	49.0%	52.0%	43.2%	52.0%	49.2%	43.2%	
1987-88	62.8%		12.5%			43.7%	55.6%	43.4%	49.2%	56.6%	56.6%	56.6%	66.7%	54.7%	66.7%	56.6%	54.7%	
1988-89	63.2%		12.1%			40.4%	46.3%	37.9%	49.0%	49.0%	49.0%	49.0%	50.0%	46.0%	50.0%	49.0%	46.0%	
1989-90	62.5%		11.6%			37.6%	38.5%	31.9%	49.9%	49.9%	49.9%	49.9%	53.8%	41.3%	53.8%	49.9%	41.3%	
1990-91	63.4%		11.1%			32.8%	32.6%	31.3%	45.1%	45.1%	45.1%	45.1%	46.5%	40.6%	46.5%	45.1%	40.6%	
1991-92	63.8%		10.9%			36.4%	35.6%	32.3%	47.0%	47.0%	47.0%	47.0%	42.2%	42.8%	42.2%	47.0%	42.8%	
1992-93	63.4%		11.0%			33.8%	39.0%	31.1%	45.3%	45.3%	45.3%	45.3%	61.0%	39.0%	61.0%	45.3%	39.0%	
1993-94	62.7%		12.1%			39.6%	42.3%	40.8%	47.4%	47.4%	47.4%	47.4%	51.9%	46.1%	51.9%	47.4%	46.1%	
1994-95	61.0%		12.9%			37.1%	40.0%	32.7%	45.2%	45.2%	45.2%	45.2%	50.0%	39.5%	50.0%	45.2%	39.5%	
1995-96	60.4%		13.6%			37.1%	30.5%	40.0%	44.4%	44.4%	44.4%	44.4%	45.8%	43.5%	45.8%	44.4%	43.5%	
1996-97	60.1%		14.1%			34.1%	39.4%	28.5%	44.3%	44.3%	44.3%	44.3%	47.0%	36.8%	47.0%	44.3%	36.8%	
1997-98	57.7%		14.9%			38.1%	44.6%	37.5%	45.8%	45.8%	45.8%	45.8%	60.0%	41.2%	60.0%	45.8%	41.2%	
1998-99	57.9%		15.6%			41.4%	39.2%	42.7%	47.2%	47.2%	47.2%	47.2%	41.9%	48.5%	41.9%	47.2%	48.5%	
1999-00	56.7%		17.0%						45.1%	45.1%	45.1%	45.1%	45.3%	41.8%	45.3%	45.1%	41.8%	
2000-01	55.3%		18.3%						46.6%	46.6%	46.6%	46.6%	54.8%	42.0%	54.8%	46.6%	42.0%	
2001-02	54.9%		19.5%						45.3%	45.3%	45.3%	45.3%	47.9%	40.5%	47.9%	45.3%	40.5%	
2002-03	54.3%		20.6%															
2003-04	53.6%		21.5%															
2004-05	51.9%		22.7%															
2005-06	49.4%		23.3%															

Table 5.12

CONTINUED

**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

15. UNC-Wilmington

Year	Enrollment		Enrollment Black %	Nominal HBI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Six-Year Graduation Rate %		White Six-Year Graduation Rate %		Third-Year Retention Rate %		Black Third-Year Retention Rate %		White Third-Year Retention Rate %	
	White %	Black %				Six-Year Graduation Rate %	White Six-Year Graduation Rate %	Third-Year Retention Rate %	Black Third-Year Retention Rate %	White Third-Year Retention Rate %					
1972-73	96.6%	3.4%													
1973-74	96.9%	3.1%													
1980-81	92.4%	6.3%													
1981-82	91.8%	7.0%	7.93%	-0.97%											
1982-83	91.3%	7.3%	8.47%	-1.13%											
1983-84	90.9%	7.5%	9.00%	-1.50%											
1984-85	91.4%	7.0%	9.53%	-2.53%	42.7%					50.0%					
1985-86	91.2%	7.0%	10.07%	-3.10%	44.6%					50.7%					
1986-87	91.9%	6.5%	10.60%	-4.09%	46.4%				46.6%	52.4%			61.3%		51.9%
1987-88	91.4%	7.2%			47.3%				47.4%	53.2%			59.3%		52.9%
1988-89	91.1%	7.3%			55.4%				56.4%	60.8%			58.2%		60.9%
1989-90	91.3%	7.1%			51.5%				52.0%	56.2%			56.1%		56.2%
1990-91	91.0%	7.1%			57.0%				58.1%	63.0%			61.8%		63.2%
1991-92	91.2%	6.7%			53.9%				54.8%	60.1%			56.9%		60.6%
1992-93	90.6%	7.0%			52.4%				53.6%	58.2%			52.1%		58.2%
1993-94	90.9%	6.4%			55.8%				57.9%	62.2%			43.9%		63.9%
1994-95	90.9%	6.0%			59.8%				60.5%	63.1%			61.4%		63.5%
1995-96	90.5%	6.1%			59.0%				59.2%	65.0%			65.8%		65.1%
1996-97	90.5%	6.1%			61.5%				61.8%	64.3%			64.6%		64.2%
1997-98	90.2%	6.2%			59.0%				59.5%	62.9%			61.4%		62.9%
1998-99	90.4%	5.6%			61.2%				62.7%	64.8%			52.3%		66.1%
1999-00	90.5%	5.3%							60.5%	67.0%			62.1%		67.9%
2000-01	90.8%	5.1%							59.2%	67.4%			64.4%		68.7%
2001-02	91.2%	4.7%							61.8%	68.2%			57.1%		68.7%
2002-03	90.8%	4.6%							59.5%						
2003-04	89.9%	4.8%							62.7%						
2004-05	88.9%	4.6%							40.0%						
2005-06	88.3%	5.0%													

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Table 5.12

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*Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02*

16. Western Carolina University

Year	Enrollment		Nominal HBI		Consent Decree Variance %	Six-Year Graduation Rate %		Black Six-Year Graduation Rate %		White Six-Year Graduation Rate %		Third-Year Retention Rate %		Black Third-Year Retention Rate %		White Third-Year Retention Rate %	
	White %	Black %	Consent Decree Goal/Black %	Consent Decree Variance %		Black Six-Year Graduation Rate %	White Six-Year Graduation Rate %	Black Third-Year Retention Rate %	White Third-Year Retention Rate %	Black Third-Year Retention Rate %	White Third-Year Retention Rate %	Black Third-Year Retention Rate %	White Third-Year Retention Rate %				
1972-73	97.1%	2.4%															
1973-74	97.4%	2.1%															
1980-81	92.1%	4.8%															
1981-82	91.5%	5.0%	7.93%	-2.92%													
1982-83	90.6%	5.3%	8.47%	-3.12%													
1983-84	90.2%	5.1%	9.00%	-3.88%													
1984-85	91.0%	5.4%	9.53%	-4.13%	42.7%												
1985-86	89.0%	5.5%	10.07%	-4.62%	46.4%												
1986-87	90.5%	5.1%	10.60%	-5.51%	46.3%												
1987-88	92.0%	4.8%			47.5%												
1988-89	91.8%	4.7%			47.0%												
1989-90	92.7%	3.8%			50.3%												
1990-91	91.9%	4.3%			48.0%												
1991-92	92.2%	4.0%			47.5%												
1992-93	92.0%	4.3%			49.2%												
1993-94	91.2%	4.4%			47.1%												
1994-95	92.1%	4.3%			44.7%												
1995-96	89.8%	5.4%			47.1%												
1996-97	90.2%	4.6%			45.8%												
1997-98	87.0%	4.9%			48.8%												
1998-99	89.4%	4.7%			46.0%												
1999-00	89.8%	4.5%			46.0%												
2000-01	88.5%	4.8%			45.2%												
2001-02	87.4%	4.8%			41.8%												
2002-03	87.6%	5.1%			46.0%												
2003-04	87.6%	5.0%			48.8%												
2004-05	86.0%	5.1%			46.0%												
2005-06	86.1%	5.0%			46.0%												

Table 5.12

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**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

All 11 Historically White and Native American Institutions Subtotal

Year	Enrollment		Nominal HWI Consent Decree Goal/Black %	Consent Decree Goal Variance %	Extrapolated Consent Goal Variance/Black Headcount Enrollment	Six-Year Graduation Rate %		Six-Year Graduation Rate %		Third-Year Retention Rate %		Third-Year Retention Rate %	
	White %	Black %				Black	White	Black	White	Black	White		
1972-73	95.4%	3.1%											
1973-74	95.1%	3.7%											
1980-81	89.1%	7.4%											
1981-82	88.5%	7.7%	7.9%	-0.2%	-201								
1982-83	87.9%	7.9%	8.5%	-0.6%	-577								
1983-84	87.3%	8.2%	9.0%	-0.8%	-783								
1984-85	87.1%	8.3%	9.5%	-1.2%	-1262								
1985-86	86.7%	8.5%	10.1%	-1.6%	-1708								
1986-87	86.5%	8.5%	10.6%	-2.1%	-2319	57.4%	44.5%	58.9%	59.9%	64.4%	59.9%	64.9%	64.9%
1987-88	86.9%	8.3%				59.3%	49.1%	60.6%	59.9%	66.8%	65.8%	67.0%	67.0%
1988-89	86.6%	8.4%				61.6%	49.5%	63.2%	49.5%	68.3%	63.3%	69.1%	69.1%
1989-90	86.4%	8.3%				60.5%	51.6%	61.8%	51.6%	67.2%	65.3%	67.6%	67.6%
1990-91	86.1%	8.4%				60.1%	50.1%	61.4%	50.1%	67.5%	65.6%	67.7%	67.7%
1991-92	85.9%	8.3%				59.9%	50.8%	61.1%	50.8%	66.9%	64.6%	67.2%	67.2%
1992-93	85.1%	8.6%				58.6%	48.5%	60.0%	48.5%	65.2%	62.8%	65.7%	65.7%
1993-94	84.5%	8.8%				59.4%	48.9%	61.0%	48.9%	65.7%	60.9%	66.6%	66.6%
1994-95	84.0%	9.0%				58.7%	52.0%	59.6%	52.0%	64.6%	63.8%	64.8%	64.8%
1995-96	83.4%	9.4%				59.2%	53.7%	60.2%	53.7%	65.8%	67.6%	65.8%	65.8%
1996-97	82.9%	9.5%				59.5%	53.0%	60.6%	53.0%	65.9%	65.8%	66.1%	66.1%
1997-98	82.1%	9.9%				60.3%	53.3%	61.8%	53.3%	66.3%	66.3%	66.6%	66.6%
1998-99	81.6%	10.3%				60.3%	52.0%	61.9%	52.0%	65.8%	62.8%	66.6%	66.6%
1999-00	80.8%	10.5%											
2000-01	80.2%	10.6%											
2001-02	79.4%	10.7%											
2002-03	78.9%	10.8%											
2003-04	78.3%	10.9%											
2004-05	77.7%	10.9%											
2005-06	77.1%	11.0%											

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Table 5.12

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**Minority Enrollment by UNC Institution and Race, 1972-73 through 2005-06;
Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981-82 through 1986-87;
and Graduation/Retention Rates 1984-85 through 2001-02**

All 16 UNC Campuses Total

Year	U.S. Census Figures on Black % of State Population	UNC Enrollment Black %	Extrapolated HWI & HBI Consent Decree Goal/Black %	Extrapolated Consent Decree Goal Variance Black %	Extrapolated Consent Decree Goal Variance/Black Headcount Enrollment	UNC Enrollment White %	Six-Year		White		Black		White	
							Graduation Rate %	Retention Rate %	Six-Year Graduation Rate %	Retention Rate %	Six-Year Graduation Rate %	Retention Rate %	Six-Year Graduation Rate %	Retention Rate %
1972-73		16.4%			82.3%									
1973-74		17.1%			81.9%									
1980-81	22.4%	18.9%			78.1%									
1981-82		18.3%	19.0%	-0.7%	-853	78.0%								
1982-83		17.9%	18.7%	-0.8%	-968	77.9%								
1983-84		18.7%	19.6%	-0.9%	-1093	76.9%								
1984-85		18.0%	19.0%	-0.9%	-1129	77.5%								
1985-86		18.4%	19.4%	-1.0%	-1238	77.0%								
1986-87		18.4%	19.5%	-1.1%	-1363	76.9%	53.4%	37.2%	58.5%	61.9%	53.5%	64.5%	64.5%	64.5%
1987-88		18.0%				77.4%	56.2%	43.4%	60.1%	64.5%	57.6%	64.5%	66.6%	66.6%
1988-89		17.9%				77.4%	58.5%	44.4%	62.8%	66.5%	59.6%	66.5%	68.7%	68.7%
1989-90		18.0%				77.2%	57.3%	44.9%	61.4%	65.3%	59.8%	65.3%	67.2%	67.2%
1990-91		17.9%				77.1%	57.6%	46.7%	60.9%	66.1%	62.2%	66.1%	67.2%	67.2%
1991-92	22.0%	17.9%				76.7%	57.4%	47.5%	60.6%	65.5%	61.8%	65.5%	66.7%	66.7%
1992-93		18.5%				75.8%	56.2%	46.7%	59.6%	63.9%	60.4%	63.9%	65.2%	65.2%
1993-94		19.0%				74.9%	56.6%	46.0%	60.4%	63.9%	58.3%	63.9%	66.0%	66.0%
1994-95		19.4%				74.3%	56.5%	47.9%	59.2%	63.2%	59.9%	63.2%	64.3%	64.3%
1995-96		19.4%				74.0%	57.2%	49.9%	59.8%	64.4%	62.4%	64.4%	65.3%	65.3%
1996-97		19.5%				73.5%	57.0%	48.2%	60.2%	64.2%	61.0%	64.2%	65.6%	65.6%
1997-98		20.0%				72.7%	58.0%	49.1%	61.5%	65.0%	62.0%	65.0%	66.3%	66.3%
1998-99		20.2%				72.3%	57.8%	47.5%	61.6%	64.5%	59.9%	64.5%	66.3%	66.3%
1999-00		20.5%				71.5%				65.8%	62.5%	65.8%	67.3%	67.3%
2000-01	21.6%	20.5%				71.0%				66.4%	63.7%	66.4%	67.5%	67.5%
2001-02		20.8%				70.1%				66.2%	63.6%	66.2%	67.4%	67.4%
2002-03		21.4%				69.2%								
2003-04		22.1%				68.1%								
2004-05		22.5%				67.3%								
2005-06		23.1%				66.1%								

Table 5.12

CONTINUED

Minority Enrollment by UNC Institution and Race, 1972–73 through 2005–06; Lawsuit Consent Decree Minority Enrollment Goals by Institution and Race, 1981–82 through 1986–87; and Graduation/Retention Rates 1984–85 through 2001–02

Notes: Effective fall 2000, enrollment data were revised (1982–2001) to include “distance education only” enrollments not included in previous reports. These data are taken from historical Student Data Files, where the quality of “distance education only” data improves in more recent years. Fall 1972, 1973 “Other” is included in “White.” Fall 1980 — Source data combines Asian/Hispanic/Other. Fall 1990 and later — “Other/Unknown” includes non-resident aliens, unreported race, and mixed race.

“HBI & HWI Consent Goals” were established for Historically White and for Historically Black Institutions as groups in the consent decree issued in *North Carolina v. Dep’t of Education*, No. 79-217-CIV-5 (E.D.N.C. 17 July 1981). The consent goal for each group is listed under each institution for comparison purposes. For the “Total UNC” section of the table, the “extrapolated goal” for Black percentage of total enrollment is based on dividing the actual total enrollment by the sum of the African American enrollment goals established for HWIs in the consent decree and the actual enrollment of African Americans at HBIs. “Revised HBI Consent Goals” refers to a clause in the consent agreement that increased the original (nominal) goals by any cumulative percentage that the schools exceeded the White enrollment targets. A parallel clause for the HBIs existed but was never triggered since the HBIs never exceeded the Black enrollment goals. Due to rounding, some percentages may not sum to 100 percent.

“Six-Year Graduation Rate” represents the percentage of the freshman class (cohort) who entered in the academic year indicated in the table that have completed at least one degree from the institution they originally entered within six years. Excludes High School at NCSA and Agriculture Institute at NCSU.

“Third-Year Retention Rate” represents the percentage of the freshman class (cohort) who entered in the academic year indicated and who were still actively pursuing a degree at the institution they originally entered after three years. Excludes High School at NCSA and Agriculture Institute at NCSU.

Sources: U.S. Dept of Education Office of Civil Rights, Compliance Report of Institutions of Higher Education; UNC General Administration Program Assessment Enrollment Reports; Court Filings *N.C. v. U.S. Dep’t of Education*; Report on Retention, Graduation, and Time-to-Degree, UNC General Administration, January 11, 2001; Official Records — U.S. Census Bureau; UNC General Administration Website, updated information as of February 28, 2006.

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consent agreement, the University agreed to improve recruitment and scholarship support for minority students; increase enrollment of black students at traditionally white institutions and of white students at traditionally black institutions; and to upgrade programs and maintain levels of financial support for current operating expenses and specific capital improvements at the state's five historically black universities. Federal authorities agreed to abandon their push for binding numerical goals and for a "program duplication model of desegregation that would require eliminating similar programs offered by traditionally white and traditionally black schools."¹⁵¹

In the consent decree, UNC agreed that, "By the 1986–87 academic year, minority presence enrollment shall equal or exceed 15.0% of the total combined headcount enrollment in the predominantly black institutions and shall equal or exceed 10.6% of the total combined headcount enrollment in the predominantly white institutions."¹⁵² During the five-year time period (1981–82 — 1986–87) specified by the consent decree, UNC met or slightly exceeded its enrollment goal for white students on historically black campuses, but failed to meet its court-decreed goal for enrolling African Americans on historically white campuses. In 1986–87, white enrollment at the five historically black institutions reached 15.9 percent, which was above the consent decree goal of 15.0 percent. However, black enrollment at the 11 historically white institutions stood at 8.5 percent, which was below UNC's agreed-upon goal of 10.6 percent.

This 2.1 percentage point shortfall meant that UNC had approximately 2,319 fewer African American students in 1986–87 in the historically white institutions than they agreed under the 1981 consent decree. Looking at all 16 campuses, it means that the 16-campus system as a whole had 1,363 fewer black students in 1986–87 than it had agreed to enroll under the 1981 settlement (18.4 percent black overall vs. the 19.5 percent goal).

University leaders stand behind their policy of supporting efforts to increase minority presence on UNC campuses. In a 1998 policy statement published in *The Charlotte Observer*, UNC president Molly Broad wrote, "For more than 25 years, the University of North Carolina has worked to overcome the effects of past racial segregation in our public system of higher education. Many of these outreach efforts were initiated under a consent decree with the federal government and have been voluntarily continued under programs adopted by the UNC Board of Governors. We have consistently sought to make educational opportunities available to as many N.C. citizens as possible, regardless of race, gender or socioeconomic circumstances. We are intensely proud of the progress that has been made, and believe that the affirmative outreach that has produced greater minority participation across the university has been morally and legally appropriate."¹⁵³

2. Preventing or Encouraging End-Runs Around the Board of Governors to the Legislature?

Another potential area of tension between the central statewide UNC Board of Governors and the 16 campus boards of trustees arises when campus boards, officials, faculty, or alumni bypass the chain of command and normal decision-making processes and take their requests directly to the legislature. "Any board wants to feel it has an effect, so there is always that potential tension" between the central board and the campus boards," says former UNC-Wilmington Chancellor James Leutze. "My experience is that for what a board of trustees wants — if they make a strong enough case — the Board of Governors is willing to listen." An example cited by former N.C. Central University Chancellor Julius Chambers is the central Board's reaction to a well-publicized attempt in 1997 by Paul Fulton, dean of the Kenan-Flagler Business School at UNC-Chapel Hill, to bypass the Board of Governors in seeking a tuition increase from the legislature. "The Board didn't bite anybody on the hand [by firing any administrators, for example], and they worked out a system to allow the school to raise tuition," Chambers says. "If the institution needs some kind of assistance, and if a policy of the Board augurs against it, somebody needs to reflect on it."

The epitaph of this end-run offers a lesson to renegade institutions. In June 2002, Robert Sullivan, former Dean of the UNC-Chapel Hill's Kenan-Flagler Business School made an urgent request to the Board of Governors to delay indefinitely implementation of campus-initiated tuition increases the school had obtained as a result of the 1997 end-run. At the time their special tuition increases were passed, the business school had not foreseen that the Board and the legislature would later enact system-wide tuition increases. The combined impact of both the campus and the system increases put the school at a competitive disadvantage with its national peers. The Board granted the business school's request to roll back its campus-initiated tuition increase.

On the other hand, chemistry professor Tom Meyer was not re-appointed as vice provost for graduate studies and research at UNC-CH after taking arguments favoring higher faculty pay and greater financial support and tuition breaks for graduate students directly to the General Assembly, rather than through the chain of command. According to news accounts, President Broad steadfastly denied any involvement in the UNC-CH personnel move. But campus officials at UNC-CH acknowledged that Meyer's direct dealings with lawmakers on university-related matters was a factor in the campus decision not to reappoint him as vice provost in 1999. Jane Brown, a journalism professor and former faculty chair at UNC-CH, commented that "It's a difficult relationship. [General Administration] has to rep-

resent all the campuses, and Carolina and N.C. State have special needs. We need someone in the legislature to speak for us. It's a difficult position for President Broad."¹⁵⁴ Former Board of Governors Chairman Sam Neill believes such incidents can work to make the central Board more aware of problems confronting UNC's institutions. "We need to respond to those boards of trustees and campus constituencies that have needs," says Neill, a Hendersonville attorney. "It's one of the geniuses of the two-tiered system."

Others take a less positive view, insisting that the current balance of power may actually encourage end-runs by institutions. "Chancellors need to be part of discussions of university-wide priorities, not just their own campuses," says former UNC-Chapel Hill Chancellor Paul Hardin. Involvement in only campus-level issues "tends to drive them to a more chauvinistic approach," he adds. Former Representative Gene Arnold (R-Nash) is even more blunt, noting that if one of the purposes of the Board of Governors system is to eliminate end-runs, "it has failed miserably." However, John Sanders notes that "end-runs can only be successful if they are welcomed (if not invited) by legislators."

A good example of that occurred in the 2005 legislative session when UNC-Chapel Hill administrators and trustees and state Senate leaders attempted to circumvent the UNC President and Board of Governors and gain more freedom to set tuition and to give in-state status to out-of-state scholarship students. Both policy changes were contained in special provisions in the Senate version of the state budget bill.

The first special provision would have given boards of trustees at UNC-Chapel Hill and N.C. State University alone the power to raise tuition on their own and bypass the UNC Board of Governors. The second budget provision, applicable to all 16 campuses, would give in-state tuition status to all 2,827 out-of-state students who receive full scholarships (academic or athletic), of whom 1,061 are athletes. Those out-of-state students would not count against the UNC system's 18 percent limit on out-of-state freshmen. This provision would save millions of dollars for athletics booster clubs such as UNC-CH's Rams Club and NCSU's Wolfpack Club because many scholarship athletes are from outside North Carolina, and thus the booster club had to pay higher out-of-state tuition rates for those scholarships. This special budget provision also would help private merit scholarship programs such as UNC-CH's Morehead and Robertson Scholars and NCSU's Park Scholars. Out-of-state students pay about \$14,000 a year more than in-state students to attend UNC-CH and about \$12,000 more to attend N.C. State. The total loss in tuition revenue to be picked up by state taxpayers instead of private foundations is estimated to be \$32 million.

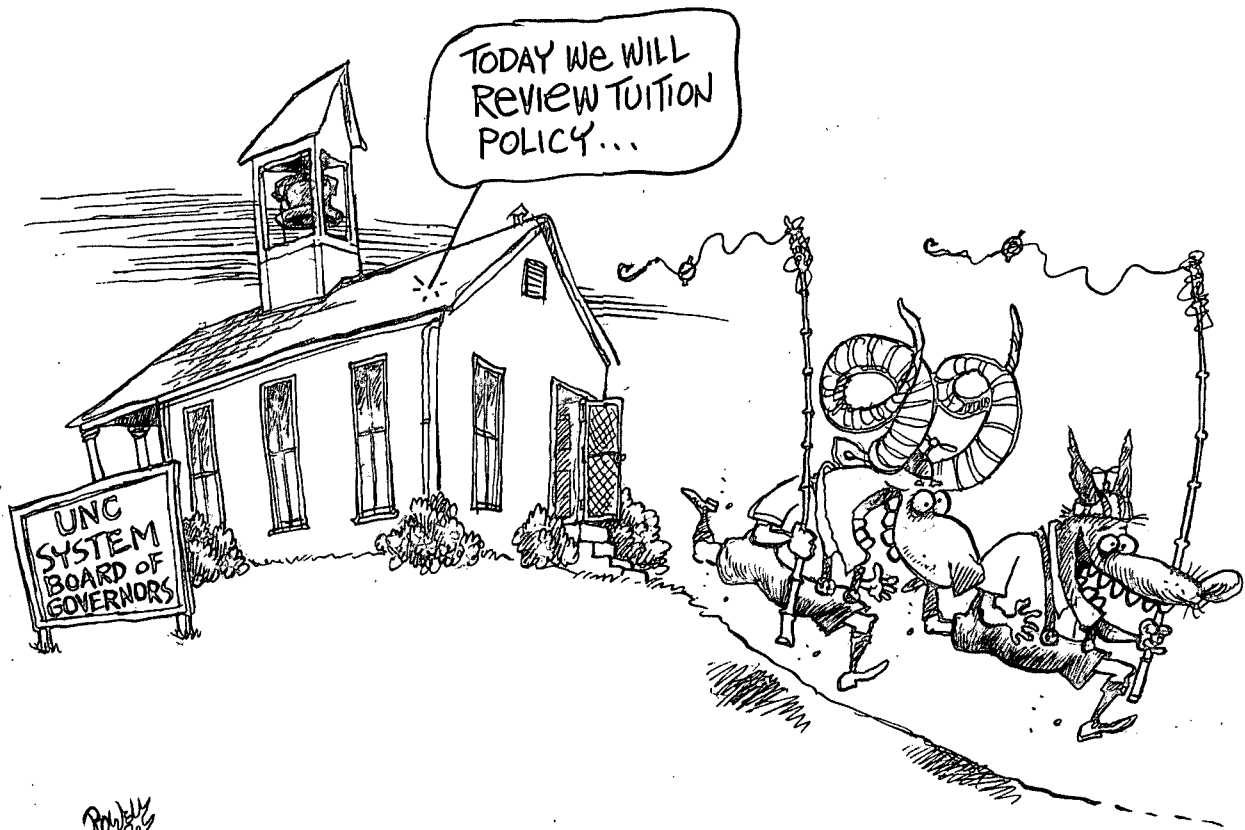
UNC President Molly Broad said she first heard about the provisions on April 29, 2005 after conversations were already underway between UNC-CH Chancellor James Moeser, UNC-CH lobbyist Kevin

Fitzgerald, Senate President Pro Tem Marc Basnight, and Senate Majority Leader Tony Rand. President Broad said, "It's profoundly disappointing that the leadership of Chapel Hill would have been engaged in the development of these proposals." In later comments, Broad chided UNC-CH and NCSU officials, who she said went behind the backs of the Board of Governors "to seek special treatment from legislators."¹⁵⁵ Board of Governors member Jim Phillips of Greensboro said, "What concerns me so much about this [tuition] provision is that it fails to recognize that our goals and our strategies must be for all of the people of North Carolina, and therefore, all of the campuses of the University of North Carolina."¹⁵⁶ And, Brad Wilson, Chair of the Board of Governors said, "We believe that if the autonomy is given, that it will begin the erosion of the university system as we know it."¹⁵⁷ On May 13, 2005, the Board of Governors passed a resolution opposing both special provisions.

Doug Dibbert, President of the UNC-CH General Alumni Association, talks with Board of Governors member Jim Babb at a meeting in Chapel Hill.



Karen Tam



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David Coverly
5/19/95

Chancellor Moeser said administrators were only responding to questions from Senate leaders, and Senate President Pro Tem Marc Basnight (D-Dare) said, "This is not something the university asked for at all." Basnight said, "This is my issue. It's not theirs."¹⁵⁸ Speaker of the House Jim Black (D-Mecklenburg) then said that if new authority for campuses to set tuition and bypass the Board of Governors was going to be granted, it ought to be extended to UNC-Charlotte, East Carolina University, and UNC-Greensboro."

Opposition to the Senate budget provisions was strong. Newspapers in Asheville, Charlotte, Elizabeth City, Fayetteville, Greensboro, Greenville, Lexington, Raleigh, Southern Pines, Wilmington, and Winston-Salem all weighed in against the provisions. *The News & Observer* of Raleigh said the tuition provision "would imperil a system that has benefited the state for over 30 years."¹⁵⁹ *The Daily Reflector* of Greenville asked, "Is East Carolina to be left behind because it does not rank among the top two schools? . . . The 16 campuses are best united, and this proposal should be brushed aside."¹⁶⁰ *The Asheville Citizen-Times* took a similar approach, asking "Why should our region's universities be left without the authority to seek tuition increases if they need the money — penalizing WNC [Western North Carolina] while allowing the central portion of the state where the Research Triangle has long thrived, to benefit? But there's a more fundamental reason why sin-

gling two universities out is a bad idea. Doing so undermines the board of governors, and that would be a serious mistake."¹⁶¹ *The Dispatch* in Lexington concluded, "It's an obvious end run around UNC President Molly Broad and the UNC Board that is a threat to the university system."¹⁶²

At least three members of the UNC-CH campus board of trustees countered with op-ed pieces in newspapers. UNC-CH trustee Rusty Carter responded in Wilmington. UNC-CH board of trustees chair Richard T. "Stick" Williams said in *The Charlotte Observer* that the trustees' desire to increase tuition would not violate the state constitutional mandate that "the benefits of the University . . . , as far as practicable, be . . . free of expense." Williams wrote, "We have broadly defined 'as free as practicable' today as the lowest 25 percent of national public peers."¹⁶³ UNC-CH trustee Paul Fulton wrote in the *Winston-Salem Journal*, "I have a hard time seeing why giving this board the ability to set tuition and better plan the university's financial future is such a problem." Rather than leading to the demise of the UNC system, Fulton said, "these provisions could strengthen our system by recognizing our campus' individual needs and by allowing all our universities to compete for the highest-quality faculty and students."¹⁶⁴

But in late July, all four living former governors and four former lieutenant governors issued a statement expressing "grave concerns" about the proposed changes,

which they said “hold real potential to begin a total dismantling of our university structure.”¹⁶⁵ The governors’ statement was a “crucial blow,” said Basnight, who admitted there probably were not even “two votes” for the tuition autonomy plan in the state House, and it died.

However, the measure on out-of-state tuition survived and was included as a special provision in the middle of a 364-page final budget bill in August 2005.¹⁶⁶ These 2005 events are a good example of John Sanders’ premise that end-runs can only be successful if they are welcomed or invited by legislators.

UNC President Broad says end-runs should be viewed in the context of the university system’s history and the state’s political culture. “In California, if an institution did an end-run, the Governor would veto it. That’s not the history in North Carolina,” she says. But Broad agrees with those who say that the best way to prevent end-runs is to involve local campuses in setting university policies. She points to development of a process by the Board’s Public Affairs Committee where campuses are invited to propose non-budget legislative priorities. These suggestions are then developed into a system-wide non-budget policy agenda. “Here, there has been no vehicle in the past for a university public policy agenda except through the budget,” Broad says. “The campuses didn’t have a front door to go through, so they had to go through the back door.”

UNC Vice President and General Counsel Leslie Winner (left) with President Molly Corbett Broad



3. Special Treatment for “Flagship” Institutions?

Frustrations with the current balance of power in the university system have led some legislators and educational leaders to suggest that two or three of the state’s research or flagship institutions — UNC-Chapel Hill, North Carolina State University in Raleigh, and perhaps UNC-Greensboro — be given some kind of preferential treatment. Advocates of this view often are not very specific on what kind of preferential treatment they advocate. But the Center discerns the outlines of at least three proposals being floated as follows: (1) give the chancellors and boards of trustees of the flagship schools added flexibility over budgets, personnel, and academic programs; (2) pull the flagship schools (UNC-CH and N.C. State) out of the 16-campus system and let them be governed solely by two separate local campus boards of trustees, including allowing them to go independently to the legislature; or (3) pull the flagship campuses out of the 16-campus system and have them governed by a separate board governing only these two research institutions. The last option is modeled after California’s three-tier system where that state’s nine extensive research institutions are governed by the Board of Regents of the 10-campus University of California (the University of California–San Francisco is not an extensive research institution but one of the 10 campuses),¹⁶⁷ while 23 other four-year colleges and universities are governed by the Board of Trustees of the California State University, and all 109 community colleges are governed by the Board of Governors of the California Community Colleges. (See Table 5.13: Carnegie Classifications for North Carolina’s Public Universities.)

The late UNC-Chapel Hill Chancellor Michael Hooker was among those who advocated the first proposal. Specifically, Hooker said UNC’s research universities needed more control over policies governing construction, purchasing and contracting, and personnel related to their missions. Others who share this viewpoint regard added management flexibility for flagship schools as a way to acknowledge historic differences among UNC campuses. “Right now, we’re just pretending to be a university system” by having uniform policies for all campuses, says former Kenan Flagler business school dean and former Board of Governors member Paul Rizzo. “That’s good for the smaller schools, but the older, more sophisticated schools should be given more power.” (See Table 5.14: Arguments For and Against Giving Special Treatment to Chancellors and Campus Boards of Trustees of the Flagship Schools.)

Rizzo’s argument ignores the fact that the whole UNC system already receives special treatment or has greater management flexibility in at least 12 areas that is not accorded to other state agencies, and the research universities have even higher levels of flexibility (see page 146). And, UNC’s research institutions already receive higher levels of funding, higher graduate student

Table 5.13

Carnegie Classifications for North Carolina's Public Universities

Public University in N.C.	2000 Carnegie Classification ¹	2005 Carnegie Classification ²
1. Appalachian State University	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (larger programs)
2. East Carolina University	Doctoral/Research University — Intensive	Doctoral/Research Universities
3. Elizabeth City State University	Baccalaureate College — General	Baccalaureate Colleges—Diverse Fields
4. Fayetteville State University	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (smaller programs)
5. N.C. A & T State University	Master's (Comprehensive) Colleges and Universities I ³	Research Universities (high research activity)
6. N.C. School of the Arts	Specialized Institution — Arts	Special Focus Institutions —Schools of art, music, and design
7. N.C. State University	Doctoral/Research University — Extensive	Research Universities (very high research activity)
8. N.C. Central University	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (larger programs)
9. UNC-Asheville	Baccalaureate College — Liberal Arts	Baccalaureate Colleges—Arts & Sciences
10. UNC-Chapel Hill	Doctoral/Research University — Extensive	Research Universities (very high research activity)
11. UNC-Charlotte	Master's (Comprehensive) Colleges and Universities I ³	Doctoral/Research Universities
12. UNC-Greensboro	Doctoral/Research University — Intensive	Research Universities (high research activity)
13. UNC-Pembroke	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (medium programs)
14. UNC-Wilmington	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (larger programs)
15. Western Carolina University	Master's (Comprehensive) Colleges and Universities I	Master's Colleges and Universities (larger programs)
16. Winston-Salem State University	Baccalaureate College — General	Baccalaureate Colleges—Diverse Fields

¹ Carnegie Foundation for the Advancement of Teaching, *The Classification of Institutions of Higher Education*, 2000 edition (Princeton, NJ: 2000).

² Carnegie Foundation for the Advancement of Teaching, *The Carnegie Classification of Institutions of Higher Education*, 2005 Revision (Princeton, NJ: February 2006). Online at <http://www.carnegiefoundation.org/classifications/>.

³ On August 11, 2000, the University of North Carolina at Charlotte was recognized by a resolution of the UNC Board of Governors as being on par with other UNC institutions classified as Doctoral/Research Universities-Intensive by Carnegie. A similar resolution passed the Board of Governors concerning North Carolina A & T State University on August 8, 2004.

tuition assistance, higher tuition increases, and greater flexibility in construction, purchasing and contracting, and personnel. And, at least nine cases of abuse have occurred with this increased flexibility. These instances raise doubts about whether special treatment for the university system in general or research universities in particular is warranted or wise (see pages 146–147). For example, the recent problems that N.C. State encountered with the misuse of Public Safety funds and UNC-Chapel Hill's problems with cost overruns and delays in the UNC Hospitals construction — both with increased management flexibility — raise doubts as to whether the “older, more sophisticated schools” are any better equipped to handle increased autonomy than smaller campuses. And, if increased management flexibility in areas such as construction, purchasing and contracting, and personnel is needed, then probably reform is needed for all state agencies, not just UNC.

Former State Senator Howard Lee (D-Orange) who now chairs the State Board of Education, describes a scenario that falls into the second category of flagship proposals: pulling the research institutions out of the Board of Governors' sphere of control and having them be governed solely by two separate campus boards of trustees. “You could have a board that you might call the Board of Higher Education. We'd put that board in charge of 14 campuses and then have UNC-Chapel Hill and State run by their own boards of trustees,” Lee says.

Such a system would result in a three-tiered structure for higher education. The first tier would be composed of the two research universities under their own separate local boards of trustees; the second tier would consist of the 14 other schools that are now part of the UNC system under a statewide Board of Governors; and the third tier would be made up of the 59 community colleges under their own governing board, the current State Board of Community Colleges.

Christopher Fordham, former Chancellor of UNC-Chapel Hill says, “I'm attracted to Howard Lee's proposal.” Fordham explains he thinks that the goal of building excellence at UNC-Chapel Hill and N.C. State University would be better served by having a governing board separate and apart from the other 14 UNC constituent institutions. Fordham says, “Administrative arrangements should support excellence and capacity. I find it hard to see how a super-board can serve excellence and capacity. It can serve capacity, but not excellence.” Fordham says, “[The Board of Governors] are a good-spirited and devoted group who want to do the best by all of the institutions in the UNC system. However, that, by its nature, does not provide a Board suitable for a world-class research university of outstanding excellence, which needs constantly to be nurtured.”

The proponents for pulling the flagship schools out of the 16-campus system and letting them be governed

—continued



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Table 5.14

Arguments For and Against Giving Special Treatment to Chancellors and Campus Boards of Trustees of the Flagship Schools in Added Management Flexibility Over Construction, Purchasing and Contracting, Budgets, Personnel, and Academic Programs

Arguments For

1. The research universities face a higher level of national competition for students, faculty, and federal grants than do their fellow schools in the UNC system. The research campuses, therefore, need more flexibility in construction, purchasing and contracting, and personnel policies in order to carry out their missions successfully.

2. Research universities have larger staffs with higher levels of specialization and administrative expertise in the areas of building construction and design, budgeting, purchasing and contracting, and personnel. Because these campuses have the necessary expertise locally, they have less need for the guidance and assistance that the staff of UNC General Administration provides to the smaller campuses.

Arguments Against

1. Special treatment is unnecessary because UNC's research universities already have greater management flexibility than some other UNC campuses. The Board of Governors has delegated various amounts of management flexibility to the campuses, based on their ability to handle the additional responsibilities, and this system has worked well so far.

2. At least nine cases of abuses have occurred with this increased flexibility, and these instances raise questions about whether special treatment for the university system in general or flagship research institutions in particular is either warranted or wise, as follows: (1) With the budget flexibility given to "special responsibility constituent institutions," the N.C. State University Public Safety Director used more than \$2.2 million in unspent department personnel funds to make more than 100 questionable purchases over a six-year period, including TV sets, VCRs, and a mountain bike, many of which he kept in his home or truck, prompting a State Auditor's investigation. (2) Fayetteville State University also was threatened with revocation of its management flexibility if it did not correct problems identified by the State Auditor in bookkeeping, management oversight, and financial reporting. (3) UNC-Chapel Hill's Kenan Flagler Business School and N.C. State's Carter Finley Stadium used the availability of a mix of public and private financing to begin construction before safety inspections by the N.C. Department of Insurance. (4) The State Auditor said the University's decentralization of the construction oversight function had negatively affected the timeliness of the flow of information to the State Construction Office and State Building Commission. (5) UNC Hospitals' flexibility in construction contracts and bidding procedures resulted in a 31.5 percent increase in the estimated cost and an opening date that was more than four years behind the original scheduled completion date of November 1997. When the legislation granting UNC Hospitals special flexibility passed in 1998, President Molly Broad said, "We got relief for that entity. I've made it clear to them that if they can be the exemplars of some best

Table 5.14

CONTINUED

**Arguments For and Against Giving Special Treatment to Chancellors and
Campus Boards of Trustees of the Flagship Schools in
Added Management Flexibility Over Construction, Purchasing and Contracting,
Budgets, Personnel, and Academic Programs**

Arguments For

Arguments Against

3. To the extent that management decisions can be decentralized and implemented at the local campus level, time and money can be saved.

practices, the hospital could be a demonstration project for how greater management freedom can make the university system more efficient.” This is not exactly the poster child for flexibility she hoped it would be. (6) Inadequate oversight of spending in a scholars program for doctors at UNC-Chapel Hill is now the example that a national foundation funding the program (the Robert Wood Johnson Foundation) uses in how not to manage the proceeds from the foundation’s grants to similar programs. (7) In the middle of an acute state budget shortfall when most state workers only got a flat pay raise of \$625, Chancellors at NCSU and UNC-Chapel Hill gave sizable pay raises ranging from \$9,375 to \$30,340 per year to some of their immediate subordinates. (8) The State Auditor discovered nearly \$1 million in financial abuses at the N.C. School of the Arts that included spending on a Cadillac Escalade for a Vice Chancellor, country club memberships, special “one-time payments” to employees, undisclosed accounts, and questionable real estate transactions between the institution and its related corporate entities — a practice the Auditor described as “Enron-style” procedures. President Broad described the findings of the special review as “deeply troubling.” (9) UNC-Chapel Hill Chancellor James Moeser signed an employment separation agreement worth \$313,908 with his former General Counsel that the Chairman of the Board of Governors described as “excessive and indefensible.” These situations raise questions about special grants of flexibility being given to the University system as a whole or to the 16 campuses individually and about whether the larger research universities are any more likely to avoid problems than the smaller campuses. Six of the nine problems described above involve UNC-Chapel Hill and N.C. State.

3. To the extent that reforms and more flexibility are needed in state personnel, purchasing, or construction procedures, those reforms should be applied to all state agencies, not just the university system, which has not demonstrated that its needs are unique.

Table 5.15

**Average Salaries for Full Professors at
UNC Constituent Institutions**

	Average Salary* (Full Professor)
1. UNC-Chapel Hill	\$112,700
2. N.C. State University	94,800
3. UNC-Charlotte	89,000
4. N.C. A&T State University	87,100
5. UNC-Greensboro	86,400
6. East Carolina University	84,000
7. N.C. Central University	78,900
8. UNC-Pembroke	77,000
9. UNC-Wilmington	75,300
10. UNC-Asheville	74,500
11. Appalachian State University	73,000
12. Western Carolina University	72,200
13. Fayetteville State University	71,700
14. Winston-Salem State University	68,700
15. Elizabeth City State University	64,800

* N.C. School of the Arts not included
Source: *The News & Observer* of Raleigh, N.C., 2005

solely by two separate local Boards of Trustees, including allowing them to go independently to the legislature, argue that the Board of Governors and the General Assembly have neglected the needs of the flagship schools in favor of policies designed to promote equity in the UNC system. First, proponents of this viewpoint say national rankings of UNC campuses have dipped and that faculty salaries at UNC-Chapel Hill and N.C. State University have dropped relative to other national campuses. Second, proponents say that giving separate boards to each flagship research university is one way to better define and strengthen the diverse missions of UNC campuses. Too many UNC campuses now are trying to achieve the same level of academic standing, a process which may result in unnecessary duplication of academic programs. Third, proponents say that UNC's larger schools have achieved a high level of academic excellence. Having separate boards for UNC-CH and NCSU could help prevent any erosion of academic quality that might result from "one size fits all" funding levels and academic policies set by the Board of Governors for all 16 UNC campuses. A fourth argument is that having separate boards of trustees for the research universities would allow them to take advantage of their elite status by raising tuition, which can create more revenue to increase faculty salaries and establish new academic programs. Lastly, the chancellors from the larger institutions have special access to legislative leaders already. Since *de facto* end-runs around the Board

of Governors and UNC President are already going on, why not formalize the process and get everything out in the open, argue the proponents.

However, allowing the flagship schools to be placed under a separate governance structure could be viewed as ignoring the historical reasons that higher education was restructured in North Carolina in 1971, especially the need to prevent individual campuses from lobbying separately for funds from the state, with the strongest lobby winning the most dollars and unchecked academic program duplication.¹⁶⁸ Opponents argue that UNC's research universities already receive different levels of funding, higher graduate student tuition assistance, greater tuition increases, and greater flexibility to manage budgets, construction projects, and purchasing than other UNC system campuses. National rankings for various programs and schools within UNC-Chapel Hill and N.C. State and overall campus rankings fluctuate slightly from year to year, but both continue to rank highly among both public and private universities overall. Using nationally comparable statistics, average salaries for full-time faculty at North Carolina's four-year public universities were \$76,070 in 2003-04, ranking 11th in the nation.¹⁶⁹

Second, opponents say that giving special treatment to two of the research universities will prevent the state's public university system from achieving equitable funding formulas for all of its schools. It also would discriminate against other universities which recently achieved doctoral/research university status under the Carnegie Classifications, such as UNC-Greensboro, UNC-Charlotte, A&T State, and East Carolina University. Opponents of Lee's proposal worry that special treatment for the flagships will necessarily come at the expense of (a) the system's smaller and historically underfunded campuses, particularly the state's five historically black universities and UNC-Pembroke, the state's historically Native American institution and (b) rapidly growing institutions, such as UNC-Charlotte, UNC-Wilmington, and East Carolina University.

Third, opponents say that without central coordination of academic program development, the larger campuses could develop new programs unilaterally, thereby increasing overall higher education costs in North Carolina. Academic program planning needs to be coordinated to prevent duplication, and this was one of the main reasons the UNC Board of Governors was created in the first place.

Fourth, opponents point out that the larger schools already charge higher tuitions. And, each institution's board of trustees already can initiate tuition increases and keep the proceeds at that campus, and these increases are separate from across-the-board tuition increases implemented by the Board of Governors. Placing UNC's flagship schools solely under separate local, institutional boards of trustees might make these universities less affordable to North Carolina residents because there would be more pressure to raise tuition

at the research universities to make them more elite and to fund new programs. The state Constitution says, "The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense." There are no exceptions for research universities in this mandate.

Finally, advocates for UNC-CH and N.C. State may overestimate their political clout in the legislature. John Sanders says, "This scheme reflects the fantasy of a few UNC-CH alumni partisans about a former time when (they think) what UNC-CH wanted from the legislature UNC-CH got and a desire to recreate those times. The facts of political power are such that a free-standing UNC-CH would be at constant risk from more powerful combinations of friends of other institutions. The same would be true for a UNC-CH and NCSU combine." Thus, placing UNC flagship schools under a separate governing board might ultimately harm those campuses, given the growing political and academic influence of the other schools in the system that would then be competing 14 against 2 in the legislature for state funds. (See Table 5.16: Arguments For and Against Pulling the Flagship Schools Out of the 16-Campus System and Letting Them Be Governed Solely by Two Separate Local Boards of Trustees.)

With respect to the third proposal, former UNC-CH Chancellor Paul Hardin says UNC might consider emulating the three-tiered university governance system in California. There, all nine extensive research institutions are governed by the Board of Regents of the 10-campus University of California,¹⁷⁰ while 23 other four-year colleges and universities are governed by the Board of Trustees of the California State University, and all 109 community colleges are governed by the Board of Governors of the California Community Colleges. The California Postsecondary Education Commission, a statewide higher education board, sets broad policy for all public, independent, and private postsecondary education institutions in that state but does not have much power or direct authority over the campuses. In the North Carolina system, Hardin says, having all public universities under the same administrative umbrella encourages schools to expand to the highest academic and prestige levels achieved within the system, rather than focusing on their own missions. He adds, "And you can't have more than two or three major research universities in one system" without straining available resources.

Supporters of some form of special treatment for the research universities say change is necessary if those schools are to preserve their national reputations and argue that the needs of those institutions have been neglected under the current governance system. "I think the Board of Governors went to sleep at the switch in support of the research institutions in the last 10 years," says Ray Farris, a former UNC-Chapel Hill football

quarterback, Charlotte attorney, and current member of the UNC Board of Governors. Proponents of this viewpoint often cite fluctuations in rankings of UNC's research schools in popular magazines and newspapers as proof that those campuses are being neglected under the present university governance system. However, recent rankings show UNC's flagship campuses continue to rank among the best in the nation for both public and private universities.

U.S. News and World Report's rankings for 2003, 2004, and 2005 each year ranked UNC-Chapel Hill as the nation's fifth-best public university. UNC-Chapel Hill ranked 29th best overall among both public and private universities in 2003 and 2004 and 27th overall in 2005. N.C. State ranked 84th overall in 2003, 86th in 2004, and 78th in 2005. Among only public universities, N.C. State ranked 39th in 2003 and 2004 and 34th in 2005. Since the magazine's methodology frequently changes, *U.S. News* discourages comparing their rankings over time, but in the broadest terms the two schools' relative positions in the rankings have changed little over the years.¹⁷¹

In other 2004 *U.S. News* rankings, UNC-CH's Kenan-Flagler Business School tied for sixth with Carnegie Mellon University and the University of Texas at Austin among undergraduate business degree programs. Kenan-Flagler tied for third among public campuses. In specialty areas, Kenan-Flagler was listed fifth for marketing and tied for fifth in productions/operations management. Other specialties ranked were management (sixth), finance (ninth), quantitative analysis (tied for 11th) and international business (tied for 16th).

In 2003 *U.S. News* rankings, UNC's Kenan-Flagler Business School tied for fourth among public universities and tied for seventh among public and private universities offering undergraduate business degree programs. In specialty areas, Kenan-Flagler was listed fifth

—continued

"One of the things we had to overcome right away was the idea that people were there to represent somebody [an individual school]. . . . Within a year, we had everyone representing the state of North Carolina."

— WILLIAM DEES
FORMER CHAIRMAN OF THE
PLANNING COMMITTEE AND
CHAIRMAN OF THE UNC BOARD OF
GOVERNORS, 1973–1976

Table 5.16

Arguments For and Against Pulling the Flagship Schools Out of the 16-Campus System and Letting Them Be Governed Solely by Two Separate Local Boards of Trustees, Including Allowing Them To Go Independently to the Legislature

Arguments For

1. The Board of Governors and the General Assembly have neglected the needs of the flagship schools in favor of policies designed to promote equity in the UNC system. Proponents of this viewpoint say national rankings of UNC campuses have dipped, and that faculty salaries at UNC-Chapel Hill and N.C. State University have dropped relative to other national campuses.
2. Giving separate boards to each flagship research university is one way to better define and strengthen the diverse missions of UNC campuses. Too many UNC campuses now are trying to achieve the same level of academic standing, a process which may result in unnecessary duplication of academic programs.
3. UNC's larger schools have achieved a high level of academic excellence. Having separate boards for UNC-CH and NCSU could help prevent any erosion of academic quality that might result from "one size fits all" funding levels and academic policies set by the Board of Governors for all 16 UNC campuses.

Arguments Against

1. UNC's research universities already receive different levels of funding, higher graduate student tuition assistance, and greater management flexibility than other UNC campuses. National rankings for various programs and schools within UNC-Chapel Hill and N.C. State and overall campus rankings fluctuate slightly from year to year, but both continue to be consistently highly ranked among both public and private universities overall. Using nationally comparable statistics, average salaries for full-time faculty at North Carolina's four-year public universities were \$76,070 in 2003-04, ranking 11th in the nation.
2. Allowing two schools special, direct access to legislators for appropriations and related matters will prevent the state's public university system from achieving equitable funding formulas for all 16 of its schools. Special treatment for UNC flagship schools will necessarily come at the expense of (a) the system's smaller and historically underfunded campuses — particularly North Carolina's five historically black universities and UNC-Pembroke, and (b) rapidly growing institutions, such as UNC-C, UNC-W, and ECU.
3. Without central coordination of academic program development, the larger campuses could develop new programs unilaterally, thereby increasing overall higher education costs in North Carolina. Academic program planning needs to be coordinated to prevent duplication, and this was one of the main reasons the UNC Board of Governors was created in the first place.

Table 5.16

CONTINUED

Arguments For and Against Pulling the Flagship Schools Out of the 16-Campus System and Letting Them Be Governed Solely by Two Separate Local Boards of Trustees, Including Allowing Them To Go Independently to the Legislature

Arguments For

4. Having separate boards of trustees for the research universities will allow them to take advantage of their elite status by raising tuition, which can create more revenue to increase faculty salaries and establish new academic programs.
5. Chancellors from the larger institutions have special access to legislative leaders already. Since *de facto* end-runs around the Board of Governors and UNC President are already going on, why not formalize the process and get everything out in the open?

Arguments Against

4. The larger schools already charge higher tuitions. And, each institution's board of trustees already can initiate tuition increases at that campus, and these increases are separate from across-the-board tuition increases implemented by the Board of Governors. Placing UNC's flagship schools solely under separate local, institutional boards of trustees might make these universities less affordable to North Carolina residents because there would be more pressure to raise tuition at the research universities to make them more elite and to fund new programs. The state Constitution says, "The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense." There are no exceptions for research universities in this mandate.
5. Advocates for UNC-CH and N.C. State may overestimate their political clout in the legislature. Placing UNC flagship schools under a separate governing board might ultimately harm those campuses, given the growing political and academic influence of the other schools in the system that would then be competing 14 against 2 in the legislature for state funds.

* The term flagship most often refers to UNC-Chapel Hill and N.C. State University in Raleigh, both research universities. Some also argue for flagship status for East Carolina University, N.C. A&T State University, UNC-Charlotte, and UNC-Greensboro.

for marketing, sixth for management and operations, eighth for finance, ninth for accounting, 12th for quantitative analysis, and 16th for international business. *U.S. News* ranked N.C. State fourth in veterinary medicine, seventh in graphic design, and 32nd in engineering. Also in 2003, *The Wall Street Journal* ranked UNC Chapel Hill's MBA program 10th overall, second among public universities, and first in the South.¹⁷²

In 2001, *U.S. News and World Report* reported that Chapel Hill's Pharmacy School ranked seventh (tied with five others), and the Medical School ranked 23rd. The Education Schools at UNC-CH and UNC-G ranked 17th and 37th, respectively. N.C. State's Undergraduate Engineering Department was rated 17th among higher education institutions offering Ph.D. programs.¹⁷³ In January 2006, *Kiplinger's Personal Finance* magazine ranked UNC-Chapel Hill number one in its list of "100 Best Values in Public Colleges." UNC-CH has held the top position since the magazine started its rankings in 1998. Other North Carolina public universities on Kiplinger's list were N.C. State University at 28th, UNC-Wilmington at 32nd, Appalachian State University at 33rd, and UNC-Asheville at 50th.¹⁷⁴ And, in July 2000, UNC-CH was ranked as one of the top public research universities in the nation in a study conducted by the Lombardi Program on Measuring University Performance at the University of Florida, a research project that groups top universities without numerically ranking them.

Still, advocates for the research universities say they face a higher level of competition than the other schools in the UNC system and that they need preferential treatment. "The flagships need to be free to go out and compete with their peers," says former Senator Howard Lee. "They are in a first-class, high-level, beat-them-to-the-punch game. That's why we did what we did with UNC Hospitals [placing the hospitals under a separate governing board]. There is no way that UNC Hospitals, under the weight of bureaucracy, could compete with Duke [Medical Center, its major regional competitor] —

"The emphasis under the present system is on what each institution considers to be its needs, which are not necessarily synonymous with statewide goals, needs, and priorities."

— REPORT OF THE 1971 GOVERNOR'S STUDY ON
THE STRUCTURE AND ORGANIZATION OF HIGHER EDUCATION

Headline in The University Gazette, a newspaper for the faculty and staff of the University of North Carolina at Chapel Hill:

**UNIVERSITY EXAMINES
HOW EFFECTIVE
IT EDUCATES STUDENTS**

And what, pray tell, did university find?

— "MARGINALIA"

THE CHRONICLE OF HIGHER EDUCATION

MAY 26, 1993

and the same is true for UNC-Chapel Hill and N.C. State University."

Opponents of a separate governing structure for UNC's flagship schools point out that such a change might actually harm the research universities because of the increased political and academic influence of the other 14 campuses now. "If they [the research universities] are on their own, they lose the strength of a system," says Craig Souza, a member of the Board of Governors and former Chairman of the Board of Trustees of East Carolina University in Greenville. "The 14 other campuses are not going to sit idly by. Look what ECU did in the 1960s [when it expanded rapidly¹⁷⁵]. UNC-Charlotte could do the same now. It is imperative to keep the system together."

And, as stated earlier in this report, the proportion of legislators with close ties to at least one of the research universities — UNC-Chapel Hill — has declined over the long run. In 1997, 1999, 2001, and 2003 only 15 percent, 15 percent, 16.5 percent, and 13 percent, respectively, of the members of the General Assembly had undergraduate degrees from UNC-Chapel Hill, down from 43 percent in 1939.¹⁷⁶

Opponents of special status for Chapel Hill and N.C. State also point out that advocates have not made their case that the institutions have suffered under the current system. National rankings have not really dropped, and UNC-CH and N.C. State have fared well in competing for state budget support under the current system. In almost half (14 of 31, or 45%) of recent state budget years (1972–73 to 2002–03), the percentage increase in state appropriations for operation of general academic affairs at both UNC-CH and NCSU exceeded the annual percentage increase in state General Fund appropriations.¹⁷⁷ Beating the average annual change figures 45 percent of the time is even more remarkable considering that these two campuses now enroll a lower percentage of N.C. public university students than prior to consolidation of the 16 campuses. In 1972–73, the two major research campuses combined accounted for

37.5 percent of public, four-year higher education enrollment and received 30.4 percent of state appropriations for public universities that year. By 2002–03, the two campuses combined enrolled 31.5 percent of all UNC system students and received 25.7 percent of state appropriations to the UNC system for general academic affairs.¹⁷⁸ (See Table 5.17: Arguments For and Against Pulling the Extensive Research Universities Out of the 16-Campus System and Having Them Governed by a Separate Board.)

Some university leaders also worry that a system that separates the research universities from other UNC institutions will make it harder for the less prestigious schools to get the budgetary support they need from the legislature. “We all want to find a way of assuring that the flagships are first-rate,” says N.C. Central University trustee Valeria Lee. “The fear is that it will be done at the expense of other institutions. It’s always a delicate dance. How do we advocate both positions without it becoming an either/or situation?” Former UNC Board of Governors Chairman Benjamin Ruffin says he would like to see more collaboration between North Carolina’s major research institutions, N.C. State and UNC-Chapel Hill, and the system’s other 14 campuses, particularly in light of an expected enrollment boom for all of higher education. “A huge

part of the equity question is going to be answered by the [projected student] population growth,” he says. “We’d better get busy trying to be sure we’re enhancing all of our schools.”

Still other policymakers cite the state’s historic commitment to keeping higher education affordable to state residents as the chief reason for maintaining the current multi-campus governance system. They argue that if the research institutions were to be pulled out from under the Board of Governors, there would be increased pressure to raise tuition at these schools to make them more elite institutions and to fund new programs. Tuition for those schools would likely rise beyond the level that many North Carolina students could afford and beyond what the state Constitution contemplates. “People always think we should argue that issue on the basis of what’s good for students,” says former UNC President Bill Friday. “The real issue is what’s good for the state” in having more of its citizens able to attend college.

In California, where nine public extensive research universities have a separate governing board, educational leaders see both pluses and minuses in the system. “The major advantage here in California is also the major disadvantage — namely, the distinction between the systems,” says Marge Chisholm, Legislative Coordinator for the California Postsecondary Education Commission, the

Board of Governors members Hannah Gage of Wilmington and Cary Owen of Asheville confer at a meeting in Chapel Hill.



Karen Tam

Table 5.17

Arguments For and Against Pulling the Research Universities Out of the 16-Campus System and Having Them Governed by a Separate Board (The California Approach)

Arguments For

1. California has placed its nine extensive research universities under the Board of Regents of the 10-campus University of California that is separate from the Board of Trustees of the California State University comprised of 23 other four-year colleges and universities.
2. Having a separate board for the research universities is one way to better define and strengthen the diverse missions of UNC campuses. Too many UNC campuses now are trying to achieve the same level of academic standing, a process which may result in unnecessary duplication of academic programs.
3. The Board of Governors and the General Assembly have neglected the needs of the flagship schools in favor of policies designed to promote equity in the UNC system. Proponents of this viewpoint say national rankings of UNC campuses have dipped, and that faculty salaries at UNC-Chapel Hill and N.C. State University have dropped relative to other national campuses.

Arguments Against

1. Only three states have authority to establish “flagship* institutions,” and only Maryland’s statute specifically names a flagship university. California has nine extensive research universities and North Carolina has only two, so there is less need here for a separate board. Also, officials at California’s Postsecondary Education Commission acknowledge that their structure has prevented collaboration between universities in the two systems under two different governing board structures.
2. Advocates for UNC-CH and N.C. State may overestimate their political clout in the legislature. Placing UNC flagship schools under a separate governing board might ultimately harm those campuses, given the growing political and academic influence of the other schools in the system that would then be competing 14 against 2 in the legislature for state funds. And, two separate boards may increase, rather than decrease, duplication of academic programs.
3. Special treatment for the flagship campuses is unnecessary because UNC’s research schools already receive different levels of funding, higher graduate student tuition assistance, and greater management flexibility than other UNC campuses. National rankings for various programs and schools within UNC-Chapel Hill and N.C. State and overall campus rankings fluctuate slightly from year to year, but both continue to be consistently highly ranked among public universities, as well as among public and private universities overall. Using nationally comparable statistics, average salaries for full-time faculty at North Carolina’s four-year public universities were \$76,070 in 2003–04, ranking 11th in the nation.

coordinating board for public education in the state. “The California State University system consists of schools whose major focus is teaching, while the University of California system is composed of schools whose primary focus is research. That division has allowed admissions, funding, and other policies to be carefully shaped to fit each school’s mission. But this arrangement also has also prevented collaboration between

universities in the two systems, Chisholm says. “The disadvantage is that they are territorial. The University of California doesn’t want the California State University system to grant doctorates.”

Setting up tiers of institutions also may happen when a state designates an official “flagship” campus. Though many states have universities that are informally considered their flagship institution, in only three states

Table 5.17

CONTINUED

Arguments For and Against Pulling the Research Universities Out of the 16-Campus System and Having Them Governed by a Separate Board (The California Approach)

Arguments For

4. UNC's larger schools have achieved a high level of academic excellence. Combining the larger institutions under a separate board dedicated to governing and advocating for this group of universities could help prevent any erosion of academic quality that might result from "one size fits all" funding levels and academic policies set by the Board of Governors for all 16 UNC campuses.
5. Allowing UNC-CH and NCSU to be governed jointly by a separate board for research universities will help them obtain more funding than they are able to obtain under the current system.

Arguments Against

4. Allowing the flagship schools to be placed under a separate governance board would ignore the historical reasons that higher education was reorganized in 1971, especially the need to develop a statewide coordinated system of higher education, provide a check on program duplication, and prevent individual campuses from lobbying separately for funds from the state, with the strongest lobby winning the most funds.
5. Creating a separate board for UNC's flagship schools will prevent the state's public university system from achieving equitable funding formulas for all 16 of its schools. Special treatment for UNC flagship schools will necessarily come at the expense of (a) the system's smaller and historically underfunded campuses — particularly North Carolina's five historically black universities and UNC-Pembroke, and (b) rapidly growing institutions, such as UNC-C, UNC-W, and ECU.

* The term flagship most often refers to UNC-Chapel Hill and N.C. State University in Raleigh, both research universities. Some also argue for flagship status for East Carolina University, N.C. A&T State University, UNC-Charlotte, and UNC-Greensboro.

(Maryland, Oklahoma, and West Virginia) is there specific statutory authority to establish or develop such an institution. Of these, only Maryland's statute specifically names a flagship institution, the College Park campus of the University of Maryland.¹⁷⁹

"[The designation as the flagship campus] and my personal opinion will get a dollar fifty and a cup of coffee," says Donald Langenberg, Chancellor of the Uni-

versity of Maryland System. "What is worth something is that it [the University of Maryland at College Park] is the only major research university in Maryland. What is worth something is its performance in moving up the ranks of major research universities. The substantive things are what matter, they're the things we look at and support. We don't question the term 'flagship,' but we don't necessarily think it means something."¹⁸⁰ John

Sanders, a former UNC Vice President and a former member of the Board of Governors says, "I would forbid the use of the term 'flagship' with respect to a UNC institution. Used by friends of an institution, it is seen by others as an offensive act of vanity. Used by others with respect to an institution, it is often a term of contempt — a charge of vanity."

Conferring the title of flagship campus on some campuses would give special treatment to selected institutions but it would prevent the state's public university system from achieving equitable funding formulas for all of its institutions, as well as create resentment by other institutions. Events in Michigan support the likelihood of that scenario. At least informally (though not designated by statute), Michigan has a flagship campus, the University of Michigan. However, Michigan State University enrolled more students and more state residents than the flagship in 1994–95, but received less money than the University of Michigan. To improve its budgetary situation in 1995, Michigan State broke an informal agreement with other higher education institutions in the state and enlisted the help of Michigan State graduate Gov. John Engler. With direct lobbying and Engler's help, Michigan State obtained \$10.4 million in extra state funds on top of a standard budget increase.

"Lobbying against other universities was a big mistake, and I think there will be a long memory of that," said Rep. Kirk A. Profit, a former chairman of the Michigan House of Representatives Higher Education Committee.¹⁸¹

As with most change or reform, a proposal to introduce tiers where none had been present before is bound to create some political upheaval. Another example involves the City University of New York (CUNY). In June 1999, New York City Mayor Rudolf Guiliani's Advisory Task Force on CUNY proposed a new model for the universities that immediately produced strong debate. One of the report's recommendations included creating tiered missions for CUNY colleges, designating some as flagships and creating specific, different missions for each one. While some praised the idea of tiering as "brilliant," others registered harsh criticism.

Bernie Sohmer, chairman of the University Faculty Senate and a mathematics professor at City College, described the report's call for tiers as "a code word for 'ethnic cleansing.'" Dividing the colleges, he argued, would divert the bulk of resources to the few top colleges in the system and leave the others struggling. The result would be a decline in the quality of education available for many minority and economically disadvantaged stu-

Board of Governors member Peter Hans of Raleigh and member emeritus and former Governor Jim Holshouser of Southern Pines.



Karen Tam

dents, who attend in greater numbers those institutions most likely to be placed in the lower tiers.¹⁸²

The advantages and disadvantages of tiering universities are generally open for debate. Furthermore, every state's character, culture, and political environment are different. A higher education design that works well in one state may not work well in another. Joe Szutz, Assistant Vice Chancellor for Planning with the Georgia Board of Regents says, "While some institutions may feel they would do better competing freely for funding from the legislature, I don't see an advantage for the people of Georgia or for the majority of institutions from that model of public higher education."

Footnotes

¹ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research: Raleigh, NC, 2000, p. 135.

² N.C. General Statute §116-65. Also, the North Carolina School of Science and Mathematics has a 27-member Board of Trustees, 21 of whom are either appointed by the UNC Board or Governors or represent public or private higher education institutions designated by the UNC Board. See N.C. General Statute §116-233. In June 2003, a provision was added to the statute to allow the conductor of the N.C. Symphony to choose a designee to sit on the Board of the N.C. School of the Arts, Chapter 215 (SB 1210) of the 2003 N.C. Session Laws.

³ Laurie Willis, "UNC admonished to give women shot at top jobs: 'You have to address this,' Spangler tells board," *The News & Observer*, Raleigh, NC, January 15, 1994, p. 1A.

⁴ John Sanders, "The University of North Carolina: The Legislative Evolution of Public Higher Education," *Popular Government*, Vol. 59, No. 2 (Fall 1993), Institute of Government, UNC-Chapel Hill, p. 28.

⁵ N.C. General Statute §116-14(a) and University of North Carolina Board of Governors, *The Code*, University of North Carolina: Chapel Hill, NC, July 1, 2001, Sections 501 C(1), C(3), and B(5). See Appendix B.

⁶ Barbara Barrett, "NCSU seeks aid on salary," *The News & Observer*, Raleigh, NC, April 26, 2004, p. 1A.

⁷ N.C. General Statute §116-231.

⁸ N.C. General Statute §116-233.

⁹ N.C. General Statutes §§116-235 and 116-236. The Board of Governors' limited statutory authority over the School of Science and Mathematics is reflected in Section 902 of *The Code*, note 5 above, which requires only that the Science and Math School's board of trustees (1) present a recommended budget which the Board of Governors "shall" transmit to the General Assembly and (2) keep the Board of Governors informed about the trustees' activities, including providing copies of meeting notices and minutes.

¹⁰ Lynn Bonner, "Science, Math School Board Balks at Ceding Control to UNC," *The News & Observer*, Raleigh, NC, March 8, 1995, p. 3B.

[The designation as the flagship campus] and my personal opinion will get a dollar fifty and a cup of coffee.

— DONALD LANGENBERG
CHANCELLOR OF THE UNIVERSITY OF
MARYLAND SYSTEM

¹¹ Confusion over the governance status of the specialized high school dates to legislative action in 1978, when the General Assembly, by means of a special provision in the state budget bill, voted to "establish" the school and set up a board of trustees. Some legislators thought all they were doing was approving planning money for the school and after the initial budget provision was approved, an amendment was offered stating that funds were for planning purposes only. That amendment was defeated by a margin of almost 50 votes after some intense behind-the-scenes lobbying. Eventually, the high school was formally established in Durham, but the events of the 1978 legislative session raised criticisms of the legislature's practice of handling policy initiatives as part of special provisions in the budget, rather than in separate bills with full debate of the General Assembly. For more information, see Peggy Payne, "And yet another surprise: The N.C. School of Science and Mathematics," *N.C. Insight*, Vol. 1, No. 4 (Fall 1978), Raleigh, NC, pp. 8-11, and Ran Coble, *Special Provisions in Budget Bills: Pandora's Box Is Open Again*, N.C. Center for Public Policy Research: Raleigh, NC, Feb. 1999.

¹² California Postsecondary Education Commission, Educational Policy and Programs Committee, *Toward a Unified State System: A Report and Recommendations on the Governance of the California Community Colleges*, Sacramento, CA, December 7, 1998, p. 34.

¹³ Clark Kerr and Marian Gade, *The Guardians: Boards of Trustees of American Colleges and Universities*, The Association of Governing Boards of Universities and Colleges, Washington, DC, 1989, p. 121.

¹⁴ See Waller *et al.*, note 1 above, pp. 151-153.

¹⁵ *Ibid.*, p. 163.

¹⁶ For a discussion of how these boards relate to each other within these 24 states, see *Ibid.*, pp. 19-30.

¹⁷ *An Analysis of Funding Equity in the University of North Carolina: Phase I Report*, as presented at April 12, 1996 Board of Governors meeting, p. 1.

¹⁸ Jena Heath, "Principals Fare Well in House Budget Proposal," *The News & Observer*, Raleigh, NC, May 30, 1997, p. A3.

¹⁹ Chapter 443 (SB 352) of the 1997 N.C. Session Laws, Sections 10.1(a) and 10.1(b). See also Barbara Solow, *Reorganizing Higher Education in North Carolina: What History Tells Us About Our Future*, N.C. Center for Public Policy Research: Raleigh, NC, 1999, p. 59.

²⁰ *A Revised Funding Model for the University of North Carolina, Phase II Final Report*; Briefing for the Committee on Budget and Finance and Other Members of the Board of Governors, November 7, 1996, p. 3.

²¹ Anne Blythe, "New UNC chancellor sworn in," *The News & Observer*, Raleigh, NC, October 13, 2000, p. 1B.

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²³ The University of North Carolina, *Building for the New Millennium, UNC Facts*, October 13, 2000, see Website www.uncbuildings.org/facts.

²⁴ Jennifer Chorpene, "4 schools win \$6.1M in grants," *The Herald-Sun*, Durham, NC, May 30, 2000, p. C1.

²⁵ "Population Center," *ncinsider.com*, August 28, 2000, p. 4.

²⁶ Staff and wire reports, "ECU medical school gets record donation and new name," *The News & Observer*, Raleigh, NC, Dec. 9, 1999, p. 3A.

²⁷ "Footnotes: \$260,000 grant for N.C. Central," *The News & Observer*, Raleigh, NC, July 12, 2000, p. 5B.

²⁸ Associated Press, "N.C. Central Researchers Awarded Grant for Environmental Study," WRAL-TV OnLine, Raleigh, NC, October 23, 2000.

²⁹ Associated Press, "Coble: UNC-Greensboro to Get Money to Protect Water Sources," WRAL-TV OnLine, Raleigh, NC, Oct. 20, 2000.

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³³ Goldie Blumenstyk, "Inventions Produced Almost \$1-Billion for Universities in 2002," *The Chronicle of Higher Education*, Washington, D.C.: December 19, 2003, p. A28.

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³⁵ The Association of University Technology Managers, *AUTM Licensing Survey: FY 2003, Interim Report*, September 2004.

³⁶ This table updates information originally published in Chip Alexander, "Rams Club boosts its finances and critics," *The News & Observer*, Raleigh, N.C., January 18, 1998, p. 1A. The new figures were supplied by UNC-Chapel Hill's Office of the University Counsel and obtained from <http://www.guidestar.org>.

³⁷ Foundation net assets information obtained from Internal Revenue Service Tax Form 990s as published online at <http://www.guidestar.org>.

³⁸ Presentation by Mark Lanier, Special Assistant to then-Chancellor James Leutze at UNC-Wilmington, to the Board of Directors for the N.C. Center for Public Policy Research, Wilmington, NC, September 11, 1998.

³⁹ University of North Carolina General Administration, *Press Release*, Chapel Hill, NC, May 15, 1998.

⁴⁰ UNC Board of Governors, *Minutes of the April 14, 2000 Board of Governors Meeting*, p. 9.

⁴¹ Chapter 237 (HB 168) of the 1999 N.C. Session Laws, Section 10.8(b).

⁴² University of North Carolina General Administration, *Press Release*, Chapel Hill, NC, February 27, 2001.

⁴³ John Sullivan, "Fund-raising plan fizzles at UNC schools," *The News & Observer*, Raleigh, NC, April 24, 2002, pp. 1A and 9A.

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⁴⁵ Presentation by Willis McLeod, former Chancellor of Fayetteville State University to the Board of Directors for the N.C. Center for Public Policy Research, Fayetteville, NC, September 22, 2000.

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⁵³ Victoria Cherrie and Mary Giunca, "Audit won't slow Unity Place development, officials say," *Winston-Salem Journal*, Winston-Salem, NC, October 6, 2004, p. 8.

⁵⁴ Julianne Basinger, "U. of Georgia Vies for Control of Its Money and Its Name," *The Chronicle of Higher Education*, Washington, D.C.: June 11, 2004, pp. A1 and A20-21.

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⁶³ Carolyn A. Waller, *Article II: A Guide to the 1999-2000 N.C. Legislature*, N.C. Center for Public Policy Research: Raleigh, NC, March 1999; Ann L. Hale, *Article II: A Guide to the 2001-2002 North Carolina Legislature*, N.C. Center for Public Policy Research:

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⁶⁴ Solow, note 19 above, pp. 61–62.

⁶⁵ “Footnotes — Getting inside Triangle universities and colleges,” *The News & Observer*, Raleigh, NC, October 14, 1998, p. 5B.

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⁶⁷ *The Code*, note 5 above, Appendix 1, Delegations of Duty and Authority to Boards of Trustees, Section XIII, p. 43. This policy has been in place since July 1972.

⁶⁸ William Snider, *Light on the Hill: A History of the University of North Carolina at Chapel Hill*, University of North Carolina Press, Chapel Hill, NC, 1992, p. 264. Snider says the Graham Plan of 1934 decreed that college athletes would receive no special financial aid and have to provide statements of their income. The faculty would control athletics. “Recruitment would be limited, athletic accounts would be audited and published, and there would be no postseason contests.” At the November 1934 trustees’ meeting, Graham asked, “Is student life to revolve mainly around a circus subsidized and brought into the institutions? Or is it to center around, mainly, the teachers, library, classrooms, laboratories, historic buildings, shrines and traditions which are a part of the soil, the air and the spirit of the place?” As quoted in Snider, p. 220.

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⁷¹ UNC-General Administration, “Policy on Intercollegiate Athletics,” adopted October 11, 1985, Chapel Hill, NC, pp. XI–A–1 through XI–A–4.

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⁷³ *Ibid.*

⁷⁴ Peter Golenbock, *Personal Fouls: The Broken Promises and Shattered Dreams of Big Money College Basketball at Jim Valvano's North Carolina State*, Carroll & Graf Publishers, New York, New York, 1989.

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⁷⁶ See *News and Observer Publishing Company v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992), p. 471.

⁷⁷ Riley, note 75 above.

⁷⁸ *Ibid.* Records showed that of the 54 players who played for Valvano and for whom SAT scores were available, the entrance exam scores ranged from 470 to 1,190. The top score for the test is 1,600, and showing up for the test earns 400 points.

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⁸⁴ *Ibid.* “Approval of Head Coaches’ and Athletic Directors’ Contracts,” adopted May 11, 1990, Chapel Hill, NC, p. XI–C–1.

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⁸⁷ *Ibid.*, Introduction, p. 17.

⁸⁸ *Ibid.*, p. 18.

⁸⁹ *Ibid.*, p. 19.

⁹⁰ The Knight Foundation Commission on Intercollegiate Athletics, *A Solid Start: A Report on Reform of Intercollegiate Athletics*, March 1992, published in “The Reports of the Knight Commission on Intercollegiate Athletics,” note 86 above.

⁹¹ The Knight Foundation Commission on Intercollegiate Athletics, *A New Beginning for a New Century: Intercollegiate Athletics in the United States*, March 1993, published in “The Reports of the Knight Commission on Intercollegiate Athletics,” note 86 above.

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⁹³ The 2000 Commission also had the same Co-Chairmen as had served previously, Father Theodore Hesburgh of Notre Dame and North Carolina’s William Friday. Former N.C. Central University Chancellor LeRoy Walker, Wake Forest President Thomas K. Hearn Jr., and UNC-CH General Alumni Association President Douglas Dibbert also served on the Commission. Thus, North Carolina had four of the Commission’s 27 members.

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⁹⁷ The Knight Foundation Commission on Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, June 2001, p. 4, available at Website www.knightfdn.org.

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¹⁰³ Knight Foundation Commission 2001 report, note 97 above, p. 4.

¹⁰⁴ Interview of William C. Friday with host Mary Hartnett on “The State of Things,” WUNC-FM radio, Chapel Hill, NC, March 28, 2002.

¹⁰⁵ James L. Shulman and William G. Bowen, *The Game of Life:*

College Sports and Educational Values, Princeton University Press, Princeton, New Jersey, 2001.

¹⁰⁶ "The prisoner's dilemma (attributed to A. W. Tucker) is an illustration of a two-person noncooperative, nonzero-sum game; noncooperative because agreements are not binding (or enforceable), and nonzero-sum because it is not the case that what one person gains the other loses. Thus imagine two prisoners who are brought before the attorney general and interrogated separately. They both know that if neither confesses, they will receive a short sentence for a lesser offense and spend a year in prison; but that if one confesses and turns state's evidence, he will be released, the other receiving a particularly heavy term of ten years; if both confess each gets five years. In this situation, assuming mutually disinterested motivation, the most reasonable course of action for them — that neither should confess — is unstable. . . . To protect himself, if not to try to further his own interests, each has a sufficient motive to confess, whatever the other does. Rational decisions from the point of view of each lead to a situation where both prisoners are worse off." From John Rawls, *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, MA, 1971, p. 269.

¹⁰⁷ As quoted in Eric Ferreri, "Hot UNC gear sales may cool off: Officials point to changing fashions, economy, athletic performances," *The Chapel Hill Herald*, September 28, 2003, p. 1.

¹⁰⁸ James J. Duderstadt, *Intercollegiate Athletics and the American University: A University President's Perspective*, The University of Michigan Press, Ann Arbor, Michigan, 2000, pp. 257–258.

¹⁰⁹ Ned Barnett and Jane Stancill, "ACC joins athletic arms race," *The News & Observer*, Raleigh, NC, Dec. 3, 2000, p. 1A.

¹¹⁰ N.C. State University, "Fox outlines vision for N.C. State," *NCSU Bulletin Online*, Raleigh, NC, April 17, 1998, p. 2, available at <http://www.ncsu.edu>.

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¹²³ Ned Barnett, "ACC jumble lamented," *The News & Observer*, Raleigh, NC, June 29, 2003, p. 1A.

¹²⁴ Board of Governors of UNC, *The Code*, note 5 above, Appendix 1, Delegations of Duty and Authority to Boards of Trustees, Section VIII, p. 41.

¹²⁵ Data on the unduplicated enrollment in all UNC remedial courses in the 14-year span between 1985–86 and 1999–2000 show that such enrollment was at its highest in both the fall and spring semesters in 1986–87. The new minimum admissions standards were adopted in the summer of 1987 and took effect with the fall 1990 semester.

¹²⁶ UNC Board of Governors, *Administrative Memoranda 251 and 252*, adopted July 31, 1987, Chapel Hill, NC, now codified as UNC General Administration, *The Administrative Manual*, "Administrative Policy on Minimum Undergraduate Admission Requirements," pp. VII–B–3 through VII–B–5.

¹²⁷ UNC General Administration, Program Assessment and Public Service Division, *Institutional Profiles: University of North Carolina, 2000–2001 Edition*, Chapel Hill, NC, Appendix F, available at www.northcarolina.edu/pres/publications.

¹²⁸ *Ibid.* According to the study, the freshman-to-sophomore retention rate for students meeting only the old minimum UNC admissions requirements was 66.7%, compared to a retention rate of 81.8% for students who met the new standards.

¹²⁹ UNC General Administration, *Remediation Trends: Presentation to Board of Governors*, Report to the Board of Governors on Remedial Instruction, University of North Carolina, 1999–2000, Chapel Hill, NC, May 11, 2000, pp. 1 and 2. See especially Table 1, "Summary Report on Remediation Offered by the University of North Carolina by Institution, Fall 1999 and Spring 2000," and Table 2, "Remediation Trends in the University of North Carolina, 1985–1986 through 1999–2000." The figures from fiscal year 2002–03 are from the Remediation/Developmental Activities Report to the Board of Governors, March 2004.

¹³⁰ UNC General Administration, *Institutional Profiles*, note 127 above.

¹³¹ UNC General Administration, *Remediation Trends*, note 129 above, Table 1.

¹³² Eva Klein & Associates for KPMG Peat Marwick for North Carolina General Assembly Government Performance Audit Committee, "The Continuum of Education Programs and Intersystem Governance," Raleigh, NC, December 1992, p. 12.7.

¹³³ House Bill 1211, Section 2, of the 2001 N.C. General Assembly.

¹³⁴ Dan Kane, "Bill seeks to sap strength of SAT scores in N.C.,"

The News & Observer, Raleigh, NC, May 20, 2001, p. A1.

¹³⁵ Section 1(a) of House Bill 1246 (Edition 1) of the 2001 N.C. General Assembly.

¹³⁶ Dan Kane, note 134 above, and UNC-CH General Alumni Association, "Legislation Calls for Review of SAT, End-of-Course Tests," *From the Hill Online*, Chapel Hill, North Carolina, June 15, 2001.

¹³⁷ Chapter 312 (HB 1246), section 1(b) of the 2001 N.C. Session Laws.

¹³⁸ UNC-CH General Alumni Association, "Legislation Calls for Review of SAT, End-of-Course Tests," note 136 above.

¹³⁹ UNC Board of Governors, "Report on Measures Used in Decision Making for Incoming Freshmen for Admission and Placement: Final Report for House Bill 1246, General Assembly of North Carolina, Session Laws 2001-312, Submitted to Joint Legislative Education Oversight Committee by the University of North Carolina Board of Governors," Chapel Hill, North Carolina, December 1, 2003, p. 3.

¹⁴⁰ UNC General Administration, *The Administrative Manual*, note 126 above, "Administrative Policy on Minimum Undergraduate Admission Requirements," adopted January 13, 1995, pp. VII-A-1 through VII-A-7.

¹⁴¹ Cynthia Barnett, "Broad takes on tough issue," *The News & Observer*, Raleigh, NC, December 7, 1997, p. 1A.

¹⁴² *Hopwood v. State of Texas*, 78 F.3d 932, cert. denied, 518 U.S. 1033 (1996).

¹⁴³ Cynthia Barnett, "Backing off race-based remedies," *The News & Observer*, Raleigh, NC, November 23, 1997, p. 1A.

¹⁴⁴ UNC-CH Faculty Council, "Resolution 98-6, Faculty Statement on Principles of Service, Diversity and Freedom of Inquiry," Chapel Hill, NC, adopted April 24, 1998.

¹⁴⁵ *Ibid.* See also Jane Stancill, "Plea for diversity issued at UNC-CH," *The News & Observer*, Raleigh, NC, April 25, 1998, p. 3B.

¹⁴⁶ UNC-Chapel Hill, "Report of the Chancellor's Minority Affairs Review Committee," Chapel Hill, NC, March 9, 2000, p. 4, available online at www.unc.edu/minaff/report.

¹⁴⁷ UNC General Administration, *Institutional Profiles*, note 127 above, p. 1.

¹⁴⁸ UNC Board of Governors, *Minutes of the February 9, 2001 Board of Governors Meeting*, UNC General Administration, Chapel Hill, NC, p. 3.

¹⁴⁹ Office of the President, "Increasing Access to and Diversity within the University of North Carolina: A Program for Continuing Achievement," Chapel Hill, NC, June 7, 2001, p. 3.

¹⁵⁰ *Ibid.*, pp. 4-9.

¹⁵¹ Solow, note 19 above, p. 50.

¹⁵² *North Carolina v. U.S. Dep't of Education*, No. 79-217-CIV-5 (E.D.N.C. 17 July 1981), Consent Decree, pp. 21-22. For a summary of the events leading to adoption of the consent decree, see Solow, note 19 above, p. 50.

¹⁵³ Molly Broad, "The university system's president responds," *The Charlotte Observer*, Charlotte, NC, June 30, 1998, p. 13A.

¹⁵⁴ Alan Zagier, "Maverick approach costs UNC professor a vice provost role," *The News & Observer*, Raleigh, NC, Aug. 14, 1999, p. 1B.

¹⁵⁵ As quoted first in Jane Stancill, "UNC-CH lobbied for tuition freedom," *The News & Observer*, Raleigh, NC, May 13, 2005, p. 16A, and later in Chris Day, "Broad pans tuition autonomy plan," *The Daily Advance*, Elizabeth City, NC, August 2, 2005, p. 1.

¹⁵⁶ As quoted in Jane Stancill, "Board opposes tuition move," *The News & Observer*, Raleigh, NC, May 14, 2005, p. 1B.

¹⁵⁷ As quoted in staff and wire reports, *The News-Topic*, Lenoir, NC, July 24, 2005.

¹⁵⁸ As quoted in Stancill, note 156 above, p. 6B, and Jane Stancill, "Leader: Tuition plan is a no-go," *The News & Observer*, Raleigh, NC, August 5, 2005, p. 22A.

¹⁵⁹ Editorial, "Tuition test," *The News & Observer*, Raleigh, NC, September 29, 2005.

¹⁶⁰ Editorial, "Better as one," *The Daily Reflector*, Greenville, NC, September 27, 2005.

¹⁶¹ Editorial, "Tuition-raising decisions should continue to reside with UNC board of governors," *Asheville Citizen-Times*, Asheville, NC, May 17, 2005.

¹⁶² Editorial, "Athletic booster clubs would be the biggest beneficiaries of cuts in university tuitions," *The Dispatch*, Lexington, NC, May 18, 2005.

¹⁶³ Richard T. Williams, "Unleash UNC-CH creativity," *The Charlotte Observer*, Charlotte, NC, May 31, 2005.

¹⁶⁴ Paul Fulton, "Planning university's financial needs," *Winston-Salem Journal*, Winston-Salem, NC, June 1, 2005.

¹⁶⁵ "Don't Threaten UNC Board: Tuition Policy Changes Could Begin Dismantling of Governing Board," statement signed by former NC Governors Bob Scott, Jim Holshouser, Jim Hunt, and Jim Martin, and former Lieutenant Governors Pat Taylor, Bob Jordan, Jim Gardner, and Dennis Wicker, published on the editorial page of *The Charlotte Observer*, Charlotte, NC, July 31, 2005.

¹⁶⁶ Session Law 2005-276 (Senate Bill 622), section 9.27(a), p. 105.

¹⁶⁷ This includes the University of California-Merced, which did not formally open until 2005, as an extensive research institution. The University of California at San Francisco is an intensive research institution, as is California State University affiliate San Diego State University.

¹⁶⁸ Waller *et al.*, note 1 above, p. 72.

¹⁶⁹ Faculty salary statistics for 2003-04 are from the U.S. Department (www.ed.gov), as reported in *The Chronicle of Higher Education Almanac Issue 2005-2006*, August 26, 2005, Washington, DC, 2005, pp. 37-100. Figures cover full-time members of the instructional staff on 9- and 10-month contracts only. Figures do not include salaries of medical school faculty members. The average for all faculty members includes the categories of instructors, lecturers, and faculty members without ranks.

¹⁷⁰ This includes the University of California-Merced, which did not formally open until 2005, as an extensive research institution. The University of California at San Francisco is an intensive research institution, as is California State University affiliate, San Diego State University.

¹⁷¹ "America's Best Colleges — 2003," *U.S. News and World Report*, September 1, 2003, available online at <http://www.usnews.com>.

¹⁷² Press Release, "Wall Street Journal Ranks MBA Program No. 10," University of North Carolina at Chapel Hill, Kenan-Flagler Business School, Chapel Hill, North Carolina, September 18, 2003, p. 1.

¹⁷³ For the complete report, which was published in September 2000, see Website www.usnews.com/usnews/edu.

¹⁷⁴ Jane Stancill, "UNC-CH is rated No. 1 in value," *The News & Observer*, Raleigh, NC, January 10, 2006, p. 1B.

¹⁷⁵ In the 1960s, East Carolina College in Greenville was one of the

most rapidly growing schools in North Carolina. Much of its growth was due to Leo Jenkins, who served as President from 1960 to 1978. In the late 1960s, Jenkins launched a drive to establish a two-year medical program in Greenville and full university status for East Carolina. Full university status was granted in 1967 by the legislature in a bill that also extended university status to Western Carolina Teachers College in Cullowhee, Appalachian State Teachers College in Boone, and North Carolina Agricultural and Technical State College in Greensboro.

¹⁷⁶ Thad Beyle, note 62 above, and Waller, Hale, and Watts, note 63 above.

¹⁷⁷ Official records of state budget data for this report were provided to the N.C. Center for Public Policy Research by the N.C. Office of State Budget and Management (OSBM). The Center calculated the nominal annual percentage change figures. This methodology is based on Aaron Wildavsky, *The Politics of the Budgetary Process*, Little, Brown and Company, Boston, Massachusetts, 1979, p. 17. Wildavsky writes, "Fair share means not only the base an agency has established but also the expectation that it will receive

some proportion of funds, if any, which are to be increased over or decreased below the base of the various governmental agencies. Fair share, then, reflects a convergence of expectations on roughly how much the agency is to receive in comparison to others."

¹⁷⁸ *Ibid.* OSBM data. Enrollment figures for the campuses are as reported by U.S. Department of Education Office of Civil Rights (Compliance Report of Institutions of Higher Education) and University of North Carolina Office of the President, *University of North Carolina Fall 2003 Enrollment Report*, University of North Carolina, Chapel Hill, NC, November 13, 2003, Attachment 1, pp. 1–7.

¹⁷⁹ Waller *et al.*, note 1 above, p. 71.

¹⁸⁰ As quoted in *Ibid.*, pp. 71–72.

¹⁸¹ As quoted in Patrick Healy, "Michigan State U's Political Coups Provoke Anger," *The Chronicle of Higher Education*, Washington, DC: August 18, 1995, p. A25.

¹⁸² Sara Hebel, "Critical Report on CUNY Ignites Debate on Mission and Direction of the System," *The Chronicle of Higher Education*, Washington, DC: June 18, 1999, p. A38 and recounted in Waller *et al.*, note 1 above, pp. 72–73.

Do these places only preach and never perform? Are they havens for the trivial pursuits of the privileged, or do they still teach necessary skills, some sense of tradition, some values that are recognizable? Is the commercialization of "students" in athletics for revenue really a legitimate function of a university? In short, is this historically valued way of entering American society, this means to making yourself into someone who can be productive as a person and useful as a citizen — a college education — really worth it? Or has the system become so concerned with its own squabbles and perquisites and weird forms of job security, so obsessed with maintaining itself as a system, that it is beyond accountability and not worth the tremendous investment it constantly requires? And the question beneath all the questions is, What is the purpose of your college or university? You have not told us, educators and administrators, and we can no longer see or know the point.

— FORMER YALE UNIVERSITY PRESIDENT A. BARTLETT GIAMATTI

A FREE AND ORDERED SPACE:

THE REAL WORLD OF THE UNIVERSITY

Rankings of Colleges and Universities by *U.S. News & World Report* and Others

When people speak of “college rankings,” they usually mean *U.S. News & World Report*’s “America’s Best Colleges” rankings of undergraduate colleges and universities.¹ *U.S. News & World Report* has published a number of different rankings of schools, but none as well known as their *America’s Best Colleges* series. Initially published in 1983, the rankings have become an annual event. The magazine generally publishes an issue with the rankings as a cover story and then produces an annual guidebook on colleges. The success of the series has inspired any number of magazines and groups to publish college rankings as well, including *Kiplinger’s Personal Finance*, *Money*, *The Princeton Review*, *The Wall Street Journal*, and *The Washington Monthly*.

The editors of *U.S. News & World Report* produce their rankings to provide comparative information about the perceived academic quality of schools in order to benefit students and their families and to assist them in making informed decisions about their educational choices. Explaining that there is an active and ongoing debate about how to best measure quality in education, *U.S. News & World Report* frequently changes its methodology for the stated purpose of better serving readers. The magazine is not interested in examining a school’s movement over time within their rankings, but in providing information they believe prospective students and their families need at the time when the students are choosing schools. *U.S. News & World Report* suggests their rankings as a starting point for prospective students and their families to narrow down their list of colleges to consider. In addition to the rankings, the editors suggest that students and families consider the student’s academic and professional ambitions, personal preferences, financial resources, and scholastic record, as well as each school’s size, atmosphere, and location.

Methodology of *U.S. News* Rankings

Prior to ranking schools, *U.S. News & World Report* first places 1,400 colleges into categories based on their missions. For example, they differentiate whether a school is a research university or a liberal

arts college and further separate universities offering a range of graduate programs from colleges focusing on undergraduate education. The magazine’s editors then divide these groups into four geographical regions — North, South, Midwest, and West. The editors only compare master’s universities and comprehensive colleges against other schools in the same group and region. The editors believe this system of categorization better allows students and families to compare schools with similar missions. In addition to the multi-tiered system, the magazine also provides 150 category-specific rankings, such as “best value,” southern universities, top schools for undergraduate aerospace engineering, etc.

This initial classification system means that a particular school will either be considered a National University-Doctoral; a Liberal Arts College-Bachelor’s; a University-Master’s (by region); or a Comprehensive College-Bachelor’s (by region). The editors have changed the names of these categories over the years, and schools have moved in and out of basic categories as well.

For placement in the first category, National Universities-Doctoral, the school must provide a full range of undergraduate majors, as well as master’s and doctoral degrees. In many cases, these schools place strong emphasis on research and receive federal money to support their research endeavors. *U.S. News & World Report* rates 162 public and 87 private schools in this category. For *U.S. News & World Report* to classify a school as a Liberal Arts College-Bachelor’s, the school must award at least 50 percent of its degrees in liberal arts disciplines, such as languages and literature, biology and life sciences, philosophy, cultural studies, and psychology. The magazine recognizes 218 schools in this category, only 21 of which are public. It chose not to rate four of these schools, one of which is the N.C. School of the Arts. The magazine defines Universities-Master’s as schools that offer a full range of undergraduate programs and provide graduate education at the master’s level, but offer few, if any, doctoral programs. The editors rate 573 regional master’s universities, of which 259 are public. The fourth broad category, Comprehensive Colleges-Bachelor’s is comprised of 322 schools, of which 54 are public that grant fewer than 50 percent of their degrees in liberal arts

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disciplines. This category includes institutions that provide technical or professional education, but at least 10 percent of the awarded degrees awarded are undergraduate bachelor's.

U.S. News & World Report's staff gathers data on 16 indicators of academic excellence about each school. They assign each indicator a weight, based on their opinion of the importance of each factor. They then rank the colleges based on this weighted score. They publish the numerical rank of the most highly rated 25 percent of schools in each category. Of the 75 percent of schools they decline to rank numerically, the magazine only reveals whether the schools fall into the second, third, or fourth tier of rankings and publishes an alphabetical list for each tier.

U.S. News & World Report advises its readers against tracking a college's annual movement in its rankings, because, they insist, the rankings are designed to help prospective students and their families select a college that best meets their individualized needs at the time they are selecting a school.² However, policymakers, university administrators, and the media frequently find it difficult to resist the temptation to draw conclusions from year-to-year comparisons of a college's position in the rankings, even when the methodology for those rankings changes from year to year.³ For example, in 2003, the magazine eliminated consideration of a college's "yield rate," the percentage of students admitted who actually attend the school, as a part of the rankings.

Use of the Rankings in N.C.

Regardless of methodological cautions, North Carolina policymakers, university administrators and pundits frequently cite the year-to-year comparisons when discussing the University of North Carolina campuses. For example, in 2001, N.C. Senate President Pro Tem Marc Basnight and former UNC-Chapel Hill trustee Walter R. Davis pointed to UNC Chapel Hill's decline in *U.S. News & World Report's* rankings as a reason to study the structure and powers of the UNC Board of Governors. "I'm dissatisfied with the condition of the university and the direction we're moving — we all should be," said

Basnight. "We've gone from ninth to 28th in 15 years."⁴

Campus administrators often make year-to-year movement in the rankings a public goal. Former N.C. State University Chancellor Marye Anne Fox said she wanted to improve NCSU's ranking among all public universities, but specifically with other land grant colleges such as Georgia Tech by increasing the quantity of research on campus, by improving student and faculty quality, and by raising more private funds.⁵ Former UNC-CH Chancellor Michael Hooker vowed to take the Chapel Hill campus to the top of the *U.S. News* rankings.⁶

In 1991, UNC President C.D. Spangler, former UNC-CH Alumni Association president Robert Eubanks, and former UNC-CH Chancellor Christopher Fordham held a press conference about the *U.S. News & World Report* rankings, where Fordham called the magazine's guide "arbitrary, subjective, and seriously flawed."⁷

Criticisms of the *U.S. News* Rankings

The *U.S. News and World Report* rankings are so widely disseminated that they frequently inspire public debate about their proper application. The Association of Governing Boards of Colleges and Universities conducted a survey of college presidents and found that 54 percent of the 241 presidents responding said that the *U.S. News* rankings do not "accurately reflect the quality of [an] institution relative to its peers."⁸ And, nearly one-third of the presidents said they thought most institutions did not provide accurate data to *U.S. News*.

In a 2001 article appearing in *The Washington Monthly*, Amy Graham, the former director of data research for *U.S. News and World Report*, writes that the rankings fall short of delivering on the laudable goal of public accountability. Graham says, "... [the *U.S. News* ranking system] pays scant attention to measures of learning or good educational practices, even as it neatly ranks colleges in long lists of the sort that Americans love. It could be a major part of the solution; instead, it's a problem."⁹ Graham contends that the rankings primarily reflect the achieve-

ment of high school students a school admits, its wealth, and its reputation. She characterizes this bias saying, "That's like measuring the quality of a restaurant by calculating how much it paid for silverware and food: not completely useless, but pretty far from ideal."

Graham says that seven percent of a college's score comes from its average faculty salary, which she contends varies inversely with student satisfaction and learning and actually is only a reflection of the degree to which an institution focuses on research. Additionally, Graham argues that the rankings reflect academia's bias in favor of research over teaching in the twenty-five percent of a college's score that derives from a survey of university administrators about the reputation of peer schools.

In 1997, *U.S. News & World Report* commissioned a study by the National Opinion Research Council (NORC) to assess the rankings. In addition to a number of statistical and procedural recommendations, NORC suggested that the magazine focus more on learning, specifically suggesting the addition of measures to assess student experience and curriculum.¹⁰

An earlier *Washington Monthly* article by Graham's co-author on the 2001 critique, Nicholas Thompson, reported that a number of schools have changed policies and priorities as a means to improve their *U.S. News* rankings. Thompson says a number of colleges began offering "early decision" programs when the magazine began factoring in the percentage of students who accepted admission offers.¹¹ Additionally, Thompson says the "percentage of alumni who give" is a measure that colleges attempt to manipulate in order to improve their ranking. As a student at Stanford, he says he was paid to phone alumni asking for money, and he was instructed to "mention that any donation would increase our [*U.S. News & World Report*] ranking."

Based largely on the Graham and Thompson essays, the *New York Times* editorial page leveled harsh criticism at the *U.S. News & World Report* rankings, saying, "The rankings make up in visibility what they lack in precision. Not always happily, college administrators admit that the rankings influence their application flow, alumni giving and faculty recruiting. At least two schools — the University of North Carolina and Ohio State — designed institution wide strat-

egies just to boost their ratings. Such efforts will not always be in students' best interests. The easiest way to move up the tables may be to increase alumni donations, one of the rankings' seven main ingredients. But it is far from clear how much that helps current undergraduates."¹²

UNC-CH Chancellor James Moeser responded in a letter to the *New York Times*, acknowledging that UNC-CH developed a proposal to boost its rankings in the mid-1990s, but denied that the proposal became practice or policy. He emphasized that he does not wish his campus to focus on "journalistic rankings."¹³ However, the following week, UNC-CH issued a press release promoting the fact that UNC-CH had moved up in the year-to-year comparisons of the rankings.¹⁴

In Ohio, a public university is using the *U.S. News* rankings as part of an assessment system. Ohio State University has launched a new program that offers financial incentives to academic departments to improve their positions in rankings compiled by *U.S. News & World Report* and the National Research Council.¹⁵

There is a long history of public criticism of the rankings. In 1996, then-President of Stanford University Gerhard Casper wrote *U.S. News and World Report* editor James Fallows, saying, "As the president of a university that is among the top-ranked universities, I hope I have the standing to persuade you that much about these rankings — particularly their specious formulas and spurious precision — is utterly misleading. I wish I could forgo this letter since, after all, the rankings are only another newspaper story. Alas, alumni, foreign newspapers, and many others do not bring a sense of perspective to the matter. I am extremely skeptical that the quality of a university — any more than the quality of a magazine — can be measured statistically. However, even if it can, the producers of the *U.S. News* rankings remain far from discovering the method."¹⁶

In 1997, the director of public affairs for Harvard University criticized the *U.S. News and World Report* rankings because they often contain broad year-to-year jumps by respected institutions. He said, "Obviously schools like Harvard, Stanford, and Princeton do not change dramatically in a year or two — it takes decades. Everyone has a question about the beauty contest aspect of it."¹⁷ —continued

Also in 1997, Alma College president Alan J. Stone led an unsuccessful effort among peer liberal arts colleges to boycott the *U.S. News* survey, saying the data collection and weighting “simply missed the mark” and that the magazine’s updated methodology “was so subjective, it is ridiculous.” Stone added, “I don’t think they [*U.S. News & World Report*] have a clue as to what quality is.”¹⁸

However, institutions whose leaders have sharply criticized the survey are not above using positive news from the survey to their advantage. For example, in September 2001, Stone’s successor as Alma College President, Sandra J. Tracy, touted the school’s favorable movement in the *U.S. News* rankings, saying the revised rankings “contained very good news for Alma College.”¹⁹

Colin Diver, president of Reed College, says that Reed has declined to fill out *U.S. News* peer evaluations and statistical surveys for 10 years. He gives three reasons. First, *U.S. News*’ one-size-fits-all ranking scheme penalizes schools like Reed that strive to be different. Second, Diver says “the rankings reinforce a view of education as strictly instrumental to extrinsic goals such as prestige or wealth.” Third, he says the rankings create powerful incentives to manipulate data and distort institutional behavior for the sole or primary purpose of inflating one’s score.²⁰

Peterson’s, the publisher of the *Guide to Four-Year Colleges* declines to publish college rankings. The editors say, “Ranking, in addition to being statistically impossible, distorts the entire admissions process. Every student is an individual with individual needs in regard to friends, campus atmosphere, faculty attention, and available facilities. What is a great college for one student can be a disaster for another.”²¹

Other Rankings of Colleges

In addition to *U.S. News and World Report*, others rank colleges as well. For example, the *Princeton Review* has 64 lists that rank schools by academics, campus politics, demographics, extracurricular activi-

ties, and quality of life. *Black Enterprise* magazine ranks the 50 best colleges for African Americans based on academics, social life, and the number of black students who enroll and graduate.

The Washington Monthly issued its first college rankings in 2005, saying, “While other guides ask what colleges can do for students, we ask what colleges are doing for the country,” using three criteria. “Universities should be engines for social mobility, they should produce the academic minds and scientific research that advance knowledge and drive economic growth, and they should inculcate and encourage an ethic of service.”²² UNC-Chapel Hill finished 25th, N.C. State was 78th, East Carolina was 187th, and UNC-Greensboro was 218th among the 245 national universities ranked by *The Washington Monthly*. Among the 200 liberal arts colleges, UNC-Asheville was ranked 155th.

Finally, the nonprofit National Center for Public Policy and Higher Education ranks states rather than individual colleges and universities. It grades states from A to F in six categories:

- Preparation*: How adequately are students in each state being prepared for education and training beyond high school?
- Participation*: Do state residents have sufficient opportunities to enroll in education and training beyond high school?
- Affordability*: How affordable is higher education for students and their families?
- Completion*: Do students make progress toward and complete their certificates and degrees in a timely manner?
- Benefits*: What benefits does the state receive as a result of having a highly educated population?
- Learning*: What is known about student learning as a result of education and training beyond high school?

North Carolina received a B in preparation, a C+ in participation, a D- in affordability, a B in completion, a C in benefits, and, like most states, an Incomplete in learning.²³

Footnotes for Sidebar

¹ Online Edition, "America's Best Colleges 2002: Frequently asked questions (FAQ)," *U.S. News & World Report* World Wide Web site. Available online at: <http://www.usnews.com/usnews/edu/college/rankings/about/cofaq.htm> on April 2, 2002. This section also relies on Robert J. Morse and Samuel M. Flanigan, "How we rank schools," *America's Best Colleges 2002 Edition*, Washington DC: *U.S. News and World Report*, 2001, p. 67.

² Robert J. Morse and Samuel M. Flanigan, "How we rank schools," *America's Best Colleges 2002 Edition*, Washington DC: *U.S. News and World Report*, 2001, p. 67.

³ *Ibid.*

⁴ As quoted in Carol Byrne Hall and Bruce Siceloff, "Leaders clash over UNC fate," *The News & Observer*, Raleigh, NC, November 11, 2001, p. A1.

⁵ Dan Kane, "Fox's vision shapes N.C. State," *The News & Observer*, Raleigh, NC, March 4, 2001, p. A1.

⁶ Jane Stancill, "U.S. News ranks Duke 7th," *The News & Observer*, Raleigh, NC, August 20, 1999, p. B4. See also Tony Mecia, "UNC takes steps to raise ranking," *The Daily Tar Heel*, Chapel Hill, NC, March 6, 1997, p. 1 for details of UNC-CH's plan to address their ranking.

⁷ Ruth Sheehan, "Schools duke it out in U.S. rankings," *The News & Observer*, Raleigh, NC, October 1, 1991, p. B1.

⁸ Daniel J. Levin, "The Uses and Abuses of the *U.S. News* Rankings" *AGB* (Association of Governing Boards of Universities and Colleges) *Priorities*, Number 20, Fall 2002, pp. 14–15.

⁹ Amy Graham and Nicholas Thompson, "Broken Ranks: *U.S. News*' college rankings measure everything but what matters. And most universities don't seem to mind," *The Washington Monthly*, Washington, DC, September 2001, p. 10. Available online at <http://www.washingtonmonthly.com/features/2001/0109.graham.thompson.html> on 12/16/2005

¹⁰ As discussed in Nicholas Thompson, "Playing With Numbers: How *U.S. News* mismeasures higher education and what we can do about it," *The Washington Monthly*, Washington, DC, September 2000. Available online at: <http://www.washingtonmonthly.com/features/2000/0009.thompson.html> on 12/16/2005. The complete NORC study report was available online from the *Washington Monthly* at <http://www.washingtonmonthly.com/features/2000/norc.html> on April 2, 2002

¹¹ *Ibid.* Available online at: <http://www.washingtonmonthly.com/features/2000/0009.thompson.html> on 12/16/2005.

¹² Editorial, "A Reality Check for College Rankings," *New York Times*, August 27, 2001, p. A14.

¹³ Footnotes — Triangle Universities and Colleges. "UNC-CH's Moeser takes on *The Times*," *The News & Observer*, Raleigh, NC, September 5, 2001, p. B5. *The New York Times* did not actually publish the letter from Chancellor Moeser, but the UNC-CH press office provided a copy of the letter to the N.C. Center for Public Policy Research. *The Times* based its editorial on a story in the student newspaper about a proposal to boost the campus' rankings. Tony Mecia, "UNC takes steps to raise ranking," *The Daily Tar Heel*, Chapel Hill, NC, March 6, 1997, p. 1.

¹⁴ UNC-CH News Services, "Carolina fifth among publics in *U.S. News* rankings," September 6, 2001. Available online at: <http://www.unc.edu/news/newsserv/univ/sep01/usnews090601.htm> on 4/3/02.

¹⁵ Marcia Howard, Editor, "Is Higher Ed the First Casualty of a Slowing Economy?" *State Policy Reports*, Vol. 19, Issue 11, Washington, DC, June 2001, p. 16.

¹⁶ Letter from Gerhard Casper, president of Stanford University, to James Fallows, editor of *U.S. News & World Report*, September 23, 1996. Available online at <http://www.stanford.edu/dept/pres-provost/president/speeches/961206gcfallow.html> on 4/1/2002.

¹⁷ As quoted in Michael Crissey, "Changes in Annual College Guides Fail to Quell Criticisms on Their Validity," *The Chronicle of Higher Education*, Washington, DC, September 5, 1997, p. A67.

¹⁸ *Ibid.*

¹⁹ Sandra J. Tracy, "Alma College Moves Up in National Rankings," Alma College News Release, September 14, 2001.

²⁰ Colin Diver, "Is There Life After Rankings?," *The Atlantic Monthly*, Boston, MA, November 2005, p. 136.

²¹ Peterson's statement about their decision not to include colleges was available online at <http://www.petersons.com/about/ranking.html> on 4/1/2002.

²² The Editors, "The Washington Monthly College Guide," *The Washington Monthly*, Washington, DC, September 2005, pp. 24–25.

²³ *Measuring Up 2004: The State Report Card on Higher Education — North Carolina*, National Center for Public Policy and Higher Education, San Jose, CA, 2004, pp. 2–12.

CHAPTER SIX

Conclusions and Recommendations

Public university systems around the country are facing an era of unprecedented challenges — and North Carolina's 16-campus university system is no exception. A surge in enrollments, rapid advances in technology, legislative interest in increased accountability, and a changing state political climate that now includes a highly competitive two-party system are among the factors that will affect university governance in North Carolina in the coming decades. Marian Gade writes in her study of multi-campus systems that “the real challenge for multi-campus boards is how to connect their systems with public issues in a long-term systemic way. Simply reacting to outside pressures, whether responding to them or buffering institutions against them, is not enough. Trustees must help create the public agenda and make a statement about the importance of maintaining world-class universities to meet public needs.”¹

One bright spot is North Carolina's long tradition of support for higher education — both from citizens and their elected representatives. “North Carolina has a far better system of higher education than can be expected, given the wealth of the state,” notes James Leutze, former Chancellor of UNC-Wilmington.

Leutze's point is underscored by comparisons with other states. In 2004, the state's poverty rate was 11th highest in the nation, measuring 14.8 percent.² Yet, in 2005–2006, North Carolina ranked sixth among the 50

states in total state funding for higher education, with appropriations of approximately \$2.9 billion per year.³ By contrast, in 2002–03, the state ranked 39th in per capita spending on pre-kindergarten through twelfth grade education.⁴ The state's average salary for full-time faculty at four-year public universities was \$76,070 in 2003–04, ranking 11th highest in the nation.⁵ By contrast, North Carolina's per capita personal income averaged \$29,303, ranking 37th highest in the nation.⁶ Partly as a result of the N.C. Constitution's provision mandating that “the benefits of the University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense,” North Carolina's average tuition and fees for state residents ranked 13th lowest among the states in 2002–03 at \$3,097.⁷

The challenges facing the university system are daunting. Finding ways to absorb thousands of new students, keep up with the rapid pace of technological change, and secure needed resources at a time when many in the General Assembly are opposed to raising state taxes will test the strength of the university governance system.

In order to maintain and extend public support for the university system, better govern the 16 campuses, and deal with key issues facing higher education in the next decades, some aspects of how the Board of Governors is selected, how it interacts with the General Assembly,

and how it interacts with the local campus boards of trustees should be changed. Based on our research, the North Carolina Center for Public Policy Research makes the following recommendations:

Recommendations:

Selection and Composition of the Board of Governors

1. **The North Carolina General Assembly should enact legislation to change the process of selecting the UNC Board of Governors from having the legislature elect all members of the Board of Governors to a system where the Governor would appoint 24 of the 32 members with confirmation by the state Senate and House of Representatives. Four of the eight remaining appointments should be made by the state Senate and four by the House. These changes should be phased in to avoid loss of momentum and continuity on the Board.**

To recap our findings and the reasons for this recommendation from Chapter Two:

- In 46 states, governors appoint all or some members of statewide public higher education boards, with 31 of these states requiring state senate approval of the gubernatorial appointments. The UNC Board of Governors is one of only two central, state-level governing boards to which all voting members are elected by the legislature.
- The legislature is not doing its job in generating a large pool of applicants for positions on the Board, and the legislature is not doing its job in screening applicants to select the best Board members because it pays little attention to asking applicants about their qualifications for the Board, their demonstrated interest in higher education, their views on higher education policy questions, or their ideas for improving the system. Even if the legislative nominating committees ask for such information, they do not discuss it or seem to use it in their decisionmaking.
- The selection process has become highly politicized. UNC Board members and their families gave a total of \$425,720 to state political campaigns between 1995 and 2000, giving the appearance that they can buy a seat on the Board. And, at least five of the 32 members of the Board of Governors are or have been lobbyists and thus may have both the University and corporate or other clients' interests pending before legislature at the same time. The Political Action Committees of current or former employers of members of the Board of Governors gave an additional \$2 million to state campaigns in the same period.

Three members of the 2001 Board were former legislators.

- The process of election of the Board by the legislature is increasingly partisan in what is now a two-party state. Historically, the minority party has been granted four seats (or 12.5 percent) on the 32-member board, but the Republican Party now holds 78 seats, or 46 percent, of the 170-member legislature. Of the state's registered voters, 34.7 percent are Republicans, as of January 2006. This will increasingly result in higher education policy issues being turned into partisan disputes.
- Advocacy for particular campuses is increasingly coming back into the process of election of Board members by the legislature.
- Governors are more likely than the legislature to appoint a diverse slate of candidates that more accurately reflect the state's demographic make-up by race and ethnicity, gender, geographic region, and political party affiliation.
- Consistency in higher education policy is desirable, and it is counter-productive to consistent university governance to have the Governor making appointments to local campus boards but not to the statewide Board of Governors.

In their book on university trustees, Clark Kerr and Marian Gade recommend that public boards "be of mixed origin" — with more than one source of appointment as with *ex officio* members (except individuals who also control the budget), and as with some elected members supplemented by appointed or *ex officio* members or both.⁷⁸ The Center recommends that North Carolina implement a mixed approach by giving the Governor power to appoint 24 members of the 32-member UNC Board, with confirmation by the Senate and House. The current selection process for the local campus boards of trustees already allows the Governor to appoint members of *local* boards. Such a change would make the process of seeking Board membership less onerous to qualified persons, many of whom are wary of having to campaign for seats for weeks in the halls of the General Assembly. And, coupled with Recommendation #2 below, this recommendation will bring more diversity to the Board of Governors, since the Governor can more easily present a balanced slate of women, racial minorities, and members of the minority political party.

As noted earlier, North Carolina is one of only two states in the nation in which *the legislature* elects all voting members of the statewide higher education board. The most frequent practice followed in 46 states is to have either all or some members of the central higher education boards appointed by governors, with or without approval of one or both houses of the state legislature. In the two remaining states, board members are elected by the public.

Many legislators, educators, and Board of Governors members agree that the current system of election of 32 UNC Board members by the General Assembly has become too political and does not always result in the selection of the most effective or representative Board members. In addition, legislators do not have or often do not use appropriate criteria when selecting UNC Board members. One recent candidate for the Board of Governors told the Center that of the more than 70 legislators the candidate spoke with in seeking election to a Board seat, only one lawmaker asked *any* questions about the candidate's qualifications, interest in higher education, ideas for improving the university system, or positions on higher education issues. That is appalling.

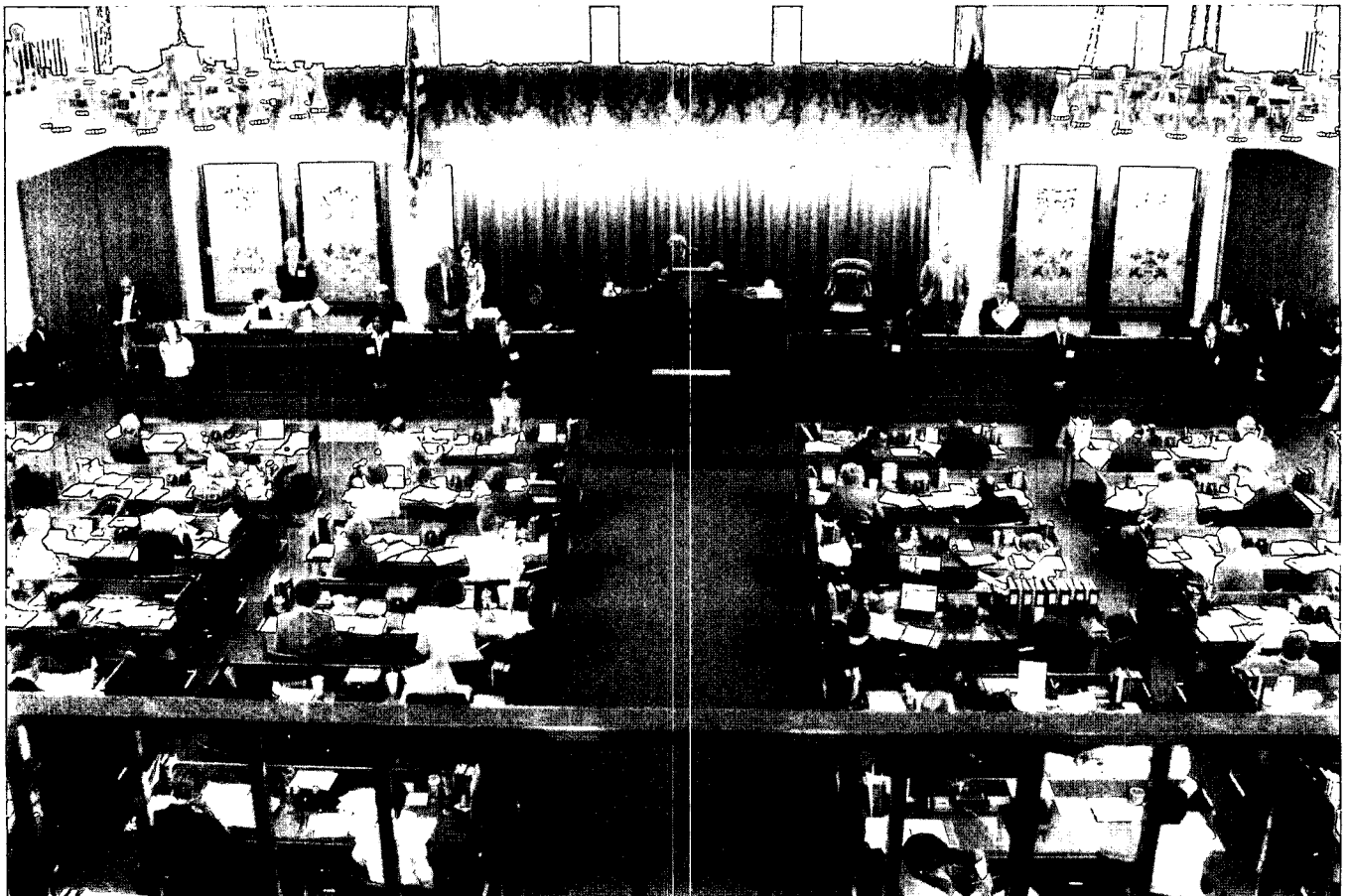
The current system for selection of Board members also has been criticized for being a system in which lobbyists have the best chance of being elected to the Board of Governors. Because they regularly roam the halls of the General Assembly and because they make financial contributions to legislators' campaigns, lobbyists have a better chance of being elected to the Board than others. By the time they first seek election to the UNC Board, many successful applicants have already established personal and professional relationships with

members of the General Assembly. Five of the 32 voting members of the 2004 Board of Governors have been registered lobbyists on behalf of corporations or other clients.

According to Bob Hall of Democracy South (a non-profit organization that examines the impact of money on North Carolina political races), only the N.C. Board of Transportation has a higher concentration of big political donors. "As a group, the UNC Board of Governors is dominated by large campaign donors, and its decisions reflect their perspective," says Hall. "The legislators who put these donors on the Board depend on them for campaign [contributions]."

As North Carolina has become a two-party state, partisan politics also has become a more noticeable factor in the legislature's choice of candidates for the UNC Board. Former Rep. Gordon Allen (D-Person) notes that when the Board of Governors system was created in 1972, the Democratic Party was firmly in power in North Carolina, and state lawmakers simply did not anticipate that partisanship would become a factor in elections for the UNC Board. Allen says, "There was no pressure by the party then [to support party-backed candidates for the Board of Governors]. And there was a fair amount of lobbying of members by members" of the General

The North Carolina House of Representatives. N.C. is one of only two states where the legislature elects all voting members of the statewide higher education board.



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Assembly. Allen says, "I can't imagine any process that has broken down as much as this one has. It's become a purely political matter." Allen was one of only three legislators serving in the 2003–2004 General Assembly who also was a legislator when the UNC Board of Governors and the 16-campus university system was created in 1971.

Upheavals in the political system have the potential to erode the power and prestige of the university Board by increasing the number of Board appointments made for political reasons rather than educational ones. And the extremely political nature of the Board selection process leads many observers to believe that a large number of highly qualified candidates do not seek seats on the Board because they view the process as demeaning and arduous.

Former House Speaker Harold Brubaker (R-Randolph), who was the Co-Chair of the 2003 House Select Committee on Board of Governors Nominating, says, "As a result, you lose good people who are intimidated by the process and do not like coming into an environment in which they are unfamiliar." In fact, William Johnson, a former university Board chair predicts, "If things continue in the way they've moved along in the

last few years, the Board of Governors will be drastically altered or abolished."

Senator Tony Rand (D-Cumberland), Chairman of the Senate Rules Committee since 1999, Majority Leader, and a former member of the Senate Education Appropriations Committee, says politicking associated with the current selection process is a key factor discouraging good candidates from seeking service on the Board of Governors. "It's an unseemly process," he says. "The people who you hope are most influential and aware and concerned about North Carolina and its institutions are not going to come up here beseeching us for entry into the kingdom of heaven."

He adds, "It would be a more stately process if the Governor was doing it. The Governor can prevail upon good people to run for seats. They wouldn't have to come up here and go through the wrenching process we have now." Rand says that having the Governor select UNC Board members also would give the system clearer lines of accountability because a single person — the Governor — would have to answer for his or her choices of University Board members, as opposed to the way legislators can now deflect criticisms by citing overall election results.

The UNC Board of Governors, meeting in Chapel Hill



Karen Tam

2. **The Governor and/or the General Assembly should make their appointments more accurately reflect the proportions of women and racial and ethnic minorities in the state's population, the proportions of registered voters in each political party and those who are not affiliated with a political party, and the proportion of the population residing in the western, Piedmont, and eastern regions of the state. North Carolina's statute should be amended to read like Kentucky's, which says the Governor must "assure broad geographical and political representation; assure equal representation of the two sexes, inasmuch as possible; assure no less than proportional representation of the two leading political parties of the [state] based on the state's voter registration; and assure that appointments reflect the minority racial composition of the [state]."**⁹

As a result of the lawsuit filed on behalf of Walter Davis, a former member of the Board of Governors,¹⁰ challenging the law setting aside all three categories of *guaranteed* seats, as discussed in Chapter Three, the General Assembly repealed the language in the statute that required four designated seats for women, four for racial minorities, and four for the minority political party. The statute, as amended in 2001, now reads, "In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity."¹¹ While this change abolishes designated seats and recognizes the value of a diverse Board, it does not give the legislature a goal and does not deal with the fact that the legislature has not done a good job historically of appointing more than just the minimum number of women, minorities, and Republicans previously required by statute.

Since 1972, the number of females actually serving on the Board of Governors has ranged from the statutory minimum of four (12.5 percent) to a high of nine (28 percent). Women have averaged 19 percent (199 of 1,024) of the Board's voting membership over that 32-year period. During the same time, the number of Board members of a minority race has ranged from five (16 percent) to nine (28 percent) Board members, and minorities have averaged 20 percent (207 of 1,024) of the Board's voting membership over that time. By contrast, the 2000 Census showed the percentage of women in the state's population was 51 percent while the proportions of African-Americans and other minorities totaled 28.9 percent.¹² Thus, in 32 years of electing members of the Board of Governors, the N.C. General Assembly has

never elected women in proportion to their numbers in the population (51 percent), and the highest number ever was 9 women or 28 percent. The legislature has elected proportional numbers of minorities (28.9 percent of the state's population) only twice in 32 years — in 1995 and 2001, when it elected nine (28 percent) minority Board members. As far as the Center can determine, no person of Hispanic or of Asian ancestry has ever served on the UNC Board of Governors.

The UNC Board of Governors was cited in a 1999 study by the Women's Forum of North Carolina as one of the most powerful state boards on which women continue to be under-represented.¹³ Legislation aimed at moving toward proportional representation for women on state boards — including the UNC Board of Governors — was adopted by the 1999 General Assembly, but that law has no teeth since it states that its purpose is to "encourage gender equity but is not to direct, mandate or require such."¹⁴ As former Z. Smith Reynolds Foundation executive director and former UNC-Chapel Hill trustee Tom Lambeth puts it, "Questions get asked in a group that includes women and minorities that are not asked if they are not on the board. That seems especially important when you are talking about higher education."

It is also important that the University system be understood and supported by members of both major political parties. Prior to legislation passed in December 2001, state law mandated that 12.5 percent (a total of four seats) of the Board's voting seats be set aside for members of the political party to which the largest minority of the members of the General Assembly belongs. With only one exception, since the minority party provision was added to the law in 1971, Republicans have been the minority party in each session of the N.C. General Assembly, but their influence is growing. The number of Republicans in the General Assembly has risen from 31 of 170 legislators in 1971, to 34 in 1981, to 53 in 1991, to 73 in 2001. Voters elected 83 Republicans to the 2003 legislature¹⁵ and 78 Republicans to the 2005 legislature. The Republican high point was 1995 when the party elected 92 of 170 legislators and controlled the 120-member state House, 68–52. In January 2006, 34.7 percent of the state's registered voters were Republicans.

The percentage of members of the UNC Board who are members of the minority party has exceeded 12.5 percent only a few times. For example, in 1997, when the N.C. House of Representatives was controlled by the GOP, seven of the House's eight appointees to the Board were Republicans — the largest group of GOP members in the Board's history. Nonetheless, the percentage of seats held by the minority party has always been significantly smaller than the minority party's percentage of registered voters in the state. If the Board of Governors does not begin to reflect North Carolina's two-party system, the Board and the University will retain only the allegiance of Democrats and lose the

support of Republicans. If former House Speaker Harold Brubaker's prediction that the Republicans will eventually control both chambers of the legislature proves correct, then the University system could suffer from being associated with Democratic control of the legislature.

The Center's recommendation also includes a component to ensure more geographical balance among the Board's membership. Currently, statutes governing higher education boards in 24 states mandate some form of geographic representation. Most of these statutes contain language requiring that persons be selected from the state at large with due consideration for geographic representation.¹⁶

The percentage of the state's population that lives in each region is 22 percent in the west, 48 percent in the Piedmont, and 30 percent in the east.¹⁷ Of the 31 members of the 1997-98 Board of Governors, (there was one vacancy) five (16 percent) were from the western portion of the state, 19 (59 percent) were from the Piedmont (Charlotte to Raleigh), and seven (22 percent) were from eastern North Carolina. Of the 32 voting members of the 1999-2000 Board of Governors, four (12.5 percent) were from the western portion of the state, 17 (53 percent) were from the Piedmont, and 11 (34 percent) were from eastern North Carolina.¹⁸ The concentration of the members from the Piedmont increased to 21 members (66 percent) on the 2001-2002 Board, with the west having two members (6 percent) and the east having nine members (28 percent). The 2003-04 Board had five from the west (16 percent), 21 from the Piedmont (66 percent), and six members (19 percent) from eastern North Carolina.

In 1993, brother and sister state Senators Dennis Winner (D-Buncombe) and Leslie Winner (D-Mecklenburg) introduced legislation (Senate Bill 464) to create "geographic equity" on the UNC Board of Governors by requiring that two members be chosen from each of the state's Congressional districts. Geographic balance is important in North Carolina, but the 1993 legislation is not a good solution. Having Board of Governors members selected by Congressional district would be akin to the process used to select members of the N.C. Board of Transportation, who represent certain transportation districts in North Carolina. The problem with that system, says a department official, is that each board member then comes to the meetings wanting a road for his district and with no sensitivity to statewide needs and issues. Geographic balance is needed for an effective UNC Board of Governors, but not to the extent of having delegates by campus or by divisions that would encourage regional loyalty over statewide needs.

The Center's research also shows that the statutory mandate of having double the number of candidates for seats available on the Board of Governors is not being met under the current process. N.C.G.S. §116-6(c) states in part that "the slate of candidates shall list at least twice

the number of candidates for the total seats open." However, in 1999, 2001, and 2005, the ballots submitted to the N.C. Senate contained only the number of candidates as there were Board positions to be elected.

In designing statutory language to encourage representation by gender, race, political party, and region, some states, such as Tennessee, go a step further than North Carolina's newly revised statutory language concerning the selection of members of the Board of Governors and have more specific requirements for proportional representation. Tennessee's statutory mandate for the composition of the Tennessee Higher Education Commission, appointed by the Governor, states that beginning in January 1995, every other appointee is to be a woman, until "the membership of the commission reflects the percentage of females in the population generally."¹⁹

New Jersey has broad statutory language concerning the composition of its higher education board, the Commission on Higher Education. The law mandates that the board's public members "shall reflect the diversity of the state."²⁰ Similarly, the law establishing the Connecticut Board of Governors for Higher Education states that the board "shall reflect the state's geographic, racial, and ethnic diversity,"²¹ while the Washington State Higher Education Coordinating Board's membership "is to be representative of the public, including women and the racial minority community."²²

Language expressing the same idea is found in the California Postsecondary Education Commission statute stating, "It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic and economic groups in the state."²³ Similarly, the South Carolina Code provides that in making appointments to the Commission on Higher Education, the Governor "shall assure that various economic interests and minority groups, especially women and blacks, are fairly represented on the commission and shall attempt to assure that the graduates of no one public or private college or technical college are dominant on the commission."²⁴ The Rhode Island statute is even more direct in that it gives the Rhode Island Board of Governors the specific legal responsibility to "make a formal request of the Governor that whenever an opportunity arises to make new appointments to the board, that the Governor make every effort to increase the number of African Americans, Native Americans, Asians and Hispanics on the board."²⁵

But, the best statutory language on Board composition found by the Center is Kentucky's, and that is what we recommend for North Carolina. Kentucky's statute outlines goals for appointments by the Governor to the Kentucky Council on Postsecondary Education. The law expressly directs the Governor to "assure broad geo-

graphical and political representation; assure equal representation of the two sexes, inasmuch as possible; assure no less than proportional representation of the two leading political parties of the Commonwealth based on the state's voter registration; and assure that appointments reflect the minority racial composition of the Commonwealth. . . ."²⁶

3. The legislature should change the status of the student member of the Board of Governors from non-voting to a voting seat on the Board.

To recap our findings and the reasons for this recommendation from Chapter Three.

- Currently, 30 central higher education boards in 27 states have a statutory requirement for student members, and on 25 of these boards, the student(s) has the right to vote. Thus, North Carolina's Board of Governors is one of only five boards with student members without voting privileges.
- It is an inconsistent principle of governance in higher education in North Carolina to grant students a voting seat on the 16 local campus boards of trustees, but not on the statewide Board of Governors.



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- Voting rights for the student have been endorsed by the Board of Governors itself and by the boards of trustees of N.C. State University, N.C. Central University, and Winston-Salem State University.
- The N.C. House of Representatives has passed legislation by large margins in three separate legislative sessions that would grant voting rights to the student on the Board of Governors.
- Granting a voting seat to the student representative on the Board of Governors is one way to assure a connection between the Board and its chief customers or consumers — the more than 196,000 students in the 16-campus system. The student representative is invaluable in gauging the effect of various policies on students and in communicating Board of Governors decisions back to the campuses.
- The student representative on the Board plays a key role (a) in developing state policy on such issues as tuition and (b) in advocating for the University system with the public and the legislature, such as in previous student participation in public TV special programs on University finances and costs. Student participation in governance also has been very important in building support for the Board's "strategic directions" and in publicly disseminating information about the rationale behind the Board's decisions, and the students merit voting rights with these responsibilities.

Currently, 30 central higher education boards in 27 states have a statutory requirement for student members. On 25 of these boards in 22 states (three states have two governing boards with student members), the student(s) has the right to vote. North Carolina is one of only five boards with student members without voting privileges.²⁷ Many of the states with students as voting members told us how student board members contributed greatly to the success of their higher education governing boards, especially in gauging the effect of various decisions on specific campuses. Students have a voting seat on 16 local campus boards of trustees in North Carolina, but not on the statewide governing board. As President of the UNC Association of Student Governments, the current student representative on the UNC Board of Governors is elected by student delegates from all 16 campuses.

At a meeting in March 1999, the Board of Governors approved a resolution recommended by its Public Affairs Committee to support students having a voting seat on the University Board. UNC Board member Jim Phillips, a Greensboro attorney who has chaired the Board's Public Affairs Committee, argued that giving

**Former student Board of Governors member
Jonathan Ducote at a meeting in Chapel Hill**



Board of Governors Chairman Brad Wilson of Cary and members Irvin Aldridge of Manteo and Ray Farris of Charlotte.

students a voting seat would be “a natural evolution of what has happened on this Board” since students were given a non-voting seat on the Board of Governors in 1991. “This just takes that another step,” he said. And, Board member Helen Rhyne Marvin, a former state Senator and retired educator who was elected to the Board of Governors in 1993, echoed the sentiments of several others when she said, “Students represent the reason we are here. . . . Denial of a vote [on the Board] is second class citizenship.”

In 2001, bills were introduced in both legislative chambers to give the student member of the Board of Governors the same voting rights as the other members of the Board.²⁸ Representative Alma Adams (D-Guilford), the primary sponsor of House Bill 169 in 2001, said the bill “would restore equity to the process” and that the [then] 164,000 students enrolled in the UNC system “have earned this vote.” Representative Carolyn Russell (R-Wayne) said that “students need a chance,” and the House approved the bill by a vote of 83–26. But, both House Bill 169 and its companion Senate Bill 188 died without a hearing in the Senate Committee on Rules and Operations upon adjournment of the 2002 legislative session.

When University leaders chose which Board members would explain the pros and cons of tuition increases

and University financial issues on a live TV special that was broadcast statewide on the public television network, student Board member Andrew Payne was one of only two of the 32 Board members chosen, along with future Board of Governors Chairman Brad Wilson. And, the student performed extremely well in explaining University financial issues and the effects of tuition increases on students in the UNC-TV special aired in 2002 called “Focus On . . . University Costs.”

In the 2003 and 2005 legislative sessions, Rep. Adams revived her measure as House Bill 506 and House Bill 92, respectively, both of which again passed the House handily (96–17 in 2003 and 82–33 in 2005). The bills so far have not made it out of the Senate Rules Committee, however.

Granting a voting seat to the student representative on the Board of Governors is one way to assure a connection between the Board and its chief customers or consumers — the more than 196,000 students in the 16-campus university system. Student participation has been very important in mustering support and disseminating information about such policies as the Board’s request for an across-the-board tuition increase in 1999. And, N.C. State students also marched down Hillsborough Street in Raleigh to the legislative building in May 2000 to protest budget cuts proposed for the University System.

Many say this is the reason budget cuts to the University system as a whole were trimmed from an original proposal of \$290 million in cuts.

Legislation giving full voting rights for the student on the Board of Governors has been endorsed by the UNC Board of Governors and by boards of trustees at N.C. Central University and Winston-Salem State University. It also has passed by large margins in the N.C. House of Representatives in three separate legislative sessions. The N.C. Senate should join them and enact legislation giving the student member of the Board of Governors the right to vote.

Terms of Board Members

- 4. The N.C. General Assembly should increase the length of terms of University Board of Governors members from four years with a three-term limit to six years with a two-term limit. These changes should be phased in to avoid loss of momentum and continuity on the Board.**

Interviews for this report showed almost unanimous support for a return to longer terms for members of the Board of Governors. Thirty-nine of the 53 central higher education boards have terms exceeding four years. Nationwide, the most common term length is six years (23 out of the 53 public university boards).²⁹

One area of strong agreement among North Carolina policymakers is that the shorter terms for UNC Board of Governors members have made the process of Board selection even more vulnerable to politics — both on the Board and in the General Assembly. Legislation passed in 1987 reduced terms on the Board from eight years with a two-term limit to four years with a three-term limit. As a result, not only do potential candidates have to campaign for seats more often, but Board leadership is subject to rapid turnover. Former Board of Governors Chairman Benjamin Ruffin, for example, had to stand for re-election to the Board one year after he won the post of Chairman. “When they shortened the terms, you win [a Board seat] one day, and you have to start campaigning the next,” says Betty McCain, former Board of Governors member and former N.C. Secretary of Cultural Resources.

Shorter terms also have meant that Board of Governors members have less time to learn the complexities of the university system they are governing, says Samuel Poole, whose service on the Board of Governors from 1983 to 1995 spanned parts of the careers of two university Presidents. “Now, a person only gets to serve on but one committee, and many members don’t have the familiarity with the campuses,” he says. “They just don’t have the institutional knowledge.”

Longer terms would allow more consistent higher education policy by insulating the university system from dramatic but perhaps temporary upheavals in the

political landscape, such as those that occurred when the 1994 elections gave Republicans control of the state House, and those that occurred again in 1998, when elections gave the Democratic party majorities in both the House and the Senate. And, if the legislature retains its authority to elect Board members, longer terms also would reduce the frequency with which nominees would have to campaign for Board seats. State House Democratic Leader and former Speaker Pro Tempore Joe Hackney says, “I didn’t like reducing the terms from eight years, so six years would be an improvement.”

Even the late state Senator Kenneth Royall, Jr., the architect of the 1987 legislation that reduced the length of terms on the university Board, was uncertain whether shorter terms ended up serving what he says was the intended purpose of his bill — to open the Board to a wider range of candidates. “We have a lot of able citizens in this state, and I just thought they ought to have an opportunity to serve on the Board,” Royall told the Center before his death. “I’m not sure now it’s the best way. There’s too much politics in it.”

In summary, lengthening the terms of Board of Governors members from four years to six years would increase continuity in higher education policy, better accommodate a steep learning curve for Board members, and diminish partisan political influence over Board selection when the Governor’s office or General Assembly leadership changes hands. Finally, longer terms would allow Board members to develop a stronger sense of institutional memory, give them more time to become acquainted with the complexities of university governance, and facilitate thinking and planning by Board members over the long term.

Governance of Flagship Universities

- 5. The Board of Governors and the N.C. General Assembly should reject any proposals to give special “flagship status” to certain universities.**

Only three central higher education boards in the United States have the power to designate certain universities as flagship institutions — the Maryland Higher Education Commission, the Oklahoma State Regents for Higher Education, and the Board of Trustees of the University of West Virginia. Among these states, only Maryland *statutorily* confers flagship status upon an institution — the College Park campus of the University of Maryland. “[The designation as the flagship campus] and my personal opinion will get a dollar fifty and a cup of coffee,” says Donald Langenberg, Chancellor of the University of Maryland System. “What is worth something is that it [the University of Maryland at College Park] is the only major research university in Maryland. What is worth something is its performance in moving up the ranks of major research universities. The substantive things are what matter, they’re the things we

look at and support. We don't question the term 'flagship,' but we don't necessarily think it means something."³⁰

At least informally (though not designated by statute), Michigan also has a flagship campus, the University of Michigan. However, Michigan State University enrolled more students and more state residents than the flagship in 1994–95, but received less money than the University of Michigan. To improve its budgetary situation in 1995, Michigan State broke an informal agreement with other higher education institutions in the state and enlisted the help of Michigan State graduate, Gov. John Engler. With direct lobbying and Engler's help, Michigan State obtained \$10.4 million in extra state funds on top of a standard budget increase. "Lobbying against other universities was a big mistake, and I think there will be a long memory of that," said Rep. Kirk A. Profit, a former chairman of the Michigan House of Representatives Higher Education Committee.³¹

The Center believes it would be counter-productive for the Board of Governors or legislature to designate some of the state's 16 public universities as flagship campuses. Although UNC-Chapel Hill likely would make the flagship list and certainly would be joined by N.C. State University, beyond that, the situation is less clear. Some observers feel that UNC-Greensboro belongs in any armada of flagships, and other campuses such as East Carolina University, N.C. A & T State University, and UNC-Charlotte would have their advocates for leading status as well.

The likely resentments that would result from a dispute over whether certain universities should be designated as flagship universities could actually damage those institutions seeking such status. UNC-Chapel Hill's political connections in the General Assembly have declined since 1939, when the percentage of state lawmakers whose degrees came from UNC-Chapel Hill was 43 percent. By 1997, that percentage had dropped to 15 percent. The percentage of lawmakers who reported receiving an undergraduate degree from Chapel Hill remained at 15 percent in 1999 and increased slightly to 16.5 percent in 2001 but dipped to 13 percent in 2003.³² In short, the political landscape has changed, so the desire for flagship status is unlikely to yield the results its advocates want — more money, more flexibility, and more prestige — and would likely trigger a large amount of fighting with other public institutions. Conferring the title of flagship campus on some campuses would give special treatment to selected schools, but it would prevent the state's public university system from achieving equitable funding formulas for all of its institutions.

6. The Center recommends that the Board of Governors, Governor, and General Assembly reject any proposal that would (i) take UNC-Chapel Hill and N.C. State out of the system governed by the Board of Governors and have them governed

solely by campus boards of trustees or (ii) that would create a separate board governing just the research universities, as the California System does.

To recap our findings and the reasons for this recommendation from Chapter Five:

- Creating a new special governance structure for the research universities or certain flagship institutions would hurt the state's ability to achieve equity within the system and ignore the reason the UNC Board of Governors was created in the first place — to end competition among the 16 campuses where the campus with the most alumni or strongest lobbyist wins.
- A special governance structure for the research universities would hurt the regional universities experiencing rapid growth — such as East Carolina University, UNC-Charlotte, and UNC-Wilmington — and it also would harm the five historically black public universities and UNC-Pembroke, as these institutions would be forced continually to battle the research universities.
- Tuition at the research universities likely would sharply increase, as chancellors of flagship schools would intensify their calls for tuition increases to fund higher faculty salaries and special funds to support research. Such tuition increases would invite a lawsuit that this violates the N.C. Constitutional mandate that "the benefits of the University . . . as far as practicable, be . . . free of expense."
- The research universities already get special treatment in that they receive higher levels of funding, higher graduate student tuition assistance, greater tuition increases, and greater flexibility to manage budgets, construction projects, and purchasing than other UNC system campuses.
- The advocates of a separate system of governance for the research universities are operating out of beliefs in four myths — (a) that the 16-campus university system's budget is flat and that it gets a substantially lower share of the state budget from the legislature than it used to; (b) that UNC-Chapel Hill and N.C. State get lesser shares of the University budget than they used to; (c) that UNC-Chapel Hill's and N.C. State's national rankings have dropped; and (d) that faculty salaries are not competitive nationally — all because of the University's governance structure. All are untrue.

The University system's appropriation from the General Fund has increased from \$163 million in 1971–72, when the 16-campus system was created, to more than \$1.87 billion in 2004–05, a 1,050 percent increase. In only three fiscal years since 1969–70 (the recession years of 1975–76, 1991–92, and 2002–03), has the University system's total appropriated budget declined. The

universities' share of the state budget was 13 percent in 1965–66 and remained steady at 11.8 percent in 2004–05.³³ The slight decline is not due to lessening support for the University system but to rapidly rising Medicaid budgets due to double-digit increases in health care costs. In addition to the General Fund appropriation, the legislature has appropriated more than \$3.5 billion in funding for capital improvements on the 16 campuses from 1995 through 2004. The legislature and voters also approved a \$3.1 billion bond issue for higher education (of which \$2.5 billion was for the universities) in 2000. And, for the next 10 years (2006–07 through 2015–16), the state's debt service payments attributable to university bonds will exceed 30 percent of the total state tax-supported debt service.

UNC-Chapel Hill and N.C. State also have fared well when competing for state dollars, especially considering they are educating an 8.8 percentage point smaller share of UNC system students now than in 1972–73. In almost half (14 of 31, or 45 percent) of recent state budget years (1972–73 to 2002–03), the percentage increase in state appropriations for operation of general academic affairs at both UNC-CH and NCSU exceeded the annual percentage increase in General Fund appropriations. Beating the average annual increase 45

percent of the time is even more remarkable considering that these two campuses now enroll a lower percentage of N.C. public university students than prior to consolidation of the 16 campuses. In 1972–73, the two major research campuses combined accounted for 37.5 percent of the public, four-year higher education enrollment and received 30.4 percent of state appropriations for public universities that year. By 2002–03, the two campuses combined enrolled 31.5 percent of all UNC system students and received 25.7 percent of state appropriations to the UNC system for general academic affairs.³⁴ UNC-Chapel Hill and N.C. State also received more than 39 percent of the \$2.5 billion in bond funds approved by voters for public universities in 2000.

UNC-Chapel Hill and N.C. State continue to rank among the top public universities in the country. *U.S. News and World Report's* rankings for 2003, 2004, and 2005 ranked UNC-Chapel Hill as the nation's fifth best public university each year, and 29th best overall each year among both public and private universities in 2003 and 2004 and 27th overall in 2005.³⁵ N.C. State ranked 39th in 2003 and 2004 and 34th in 2005 among public universities, and it ranked 84th among both public and private universities in 2003, 86th in 2004, and 78th in 2005. Since the magazine frequently changes its methodology, *U.S. News* discourages comparing its rankings over time, but, in the broadest terms, the two schools' relative positions in the rankings have changed little over the years. In January 2006, *Kiplinger's Personal Finance* magazine ranked UNC-Chapel Hill number one in its list of "100 Best Values in Public Colleges." UNC-Chapel Hill has held the top position since the magazine started its rankings in 1998. Other North Carolina public universities on Kiplinger's list were N.C. State University at 28th, UNC-Wilmington at 32nd, Appalachian State University at 33rd, and UNC Asheville at 50th.³⁶ And, in July 2000, UNC-CH was ranked as one of the top public research universities in the nation in a study conducted by the Lombardi Program on Measuring University Performance at the University of Florida, a research project that groups top universities without numerically ranking them.

The average salary for full-time faculty at North Carolina's four-year public universities was \$76,070 in 2003–04, 11th highest in the nation.³⁷ In summary, North Carolina ranks 6th among the 50 states in total state funding for higher education³⁸ (includes community colleges in all states) with total appropriations of more than \$2 billion a year in a \$17.2 billion state budget, despite being a relatively poor state with an average per capita personal income of \$29,303 ranking 37th in the nation,³⁹

Doug Dibbert, President of the UNC-CH General Alumni Association, talks with Board of Governors member Jim Babb at a meeting in Chapel Hill.



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and a poverty rate of 14.8 percent ranking 11th in the nation.⁴⁰

Since 1974, North Carolina has ranked among the top 10 states for total spending on higher education. The state has ranked sixth every year since 1996 on this measure. Since these statistics have been compiled consistently, beginning in 1961, North Carolina has ranked as high as fifth, from FY (fiscal year) 1993 through 1995, and as low as fifteenth in FY 1961, 1962, and 1964.

Data provided to the N.C. Center for Public Policy Research by the Association of State Higher Education Executive Officers (SHEEO) also show that legislative support for public higher education has flourished under the Board of Governors. According to the SHEEO figures (which compare higher education spending across the nation and take population and the size of a state's tax base into account), North Carolina has exceeded the national average of per pupil appropriations for higher education since 1977–78. In 1972–73, just after the Board of Governors was established in 1971–72, North Carolina spent 1 percent less per pupil than the national average. Since then, the state appropriation has exceeded the national per pupil average by as much as 27 percent (in 1997–98) and has not fallen below 11 percent above the national average (in 1991–92) since 1984. The most recent measure available in 2001–2002 puts North Carolina at 12 percent above the national average, or tenth in the nation in per-pupil appropriations as a percentage of tax revenue.

In summary, since the creation of the Board of Governors in 1971–72, North Carolina has managed to increase its absolute ranking among the 50 states in total higher education appropriations from tenth in 1971–72 to sixth in 2005–06 and to increase the relative per-pupil appropriation from 1 percent below the national average to a level consistently above average.

Former UNC President William Friday points out that suggestions for taking the so-called “flagship” schools out of the 16-campus system have been voiced since the system was created 34 years ago. In many cases, what advocates for those schools really want is “staying in [the system] with the comfort of different funding,” Friday says.

The Center discerns the outlines of at least three major governance proposals being floated as follows: (1) give the chancellors and boards of trustees of the flagship schools added flexibility over budgets, personnel, and academic programs; (2) pull the flagship schools (UNC-CH and N.C. State probably) out of the 16-campus system and let them be governed solely by two separate local campus boards of trustees, including allowing them to go independently to the legislature; or (3) pull the flagship campuses out of the 16-campus system and have them governed by a separate board governing only these two research institutions. The last option is modeled after California's three-tier system where that state's nine extensive research institutions are governed by the Board of Regents of the 10-campus

University of California,⁴¹ while 23 other four-year colleges and universities are governed by the Board of Trustees of the California State University, and all 109 community colleges are governed by the Board of Governors of the California Community Colleges. It should be noted that these proposals are not favored by university leaders in UNC-General Administration or by chancellors and trustees on most campuses.

California's tiered education governance system may be more appropriate for that state, with its 33 four-year public universities and 109 two-year institutions, but the differences in demographics between the two states suggest that such a system would not work better in North Carolina than our current system. California has the largest public higher education enrollment in the nation (551,871 in its public four-year institutions compared to 162,761 in N.C. in 2000)⁴² and has more than twice the number of public four-year institutions, 33 to North Carolina's 16.⁴³

Also, California officials acknowledge its shortcomings. Marge Chisholm, Legislative Coordinator for the California Postsecondary Education Commission, says, “The major advantage here . . . is also the major disadvantage — namely, the distinction between the systems. . . . That division has allowed admissions, funding, and other policies to be carefully shaped to fit each school's mission. But this arrangement also has prevented collaboration between universities in the two systems. . . . The disadvantage is that they are territorial.” And, with such divisions of governance, duplication of programs also has occurred. “For example, most of our teacher education programs are in the California State University system, but the community colleges also offer transfer curricula” in teacher education, says Chisholm. “We've urged them to try and avoid duplication and to collaborate, but I'm afraid they do duplicate,” she says. Few states other than California have such a tiered system.

The Board of Governors' own equity studies show that other institutions in the system — such as Appalachian State University, East Carolina University, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington — have lagged behind the research universities in terms of funding relative to their enrollments and program growth.⁴⁴ Recently adopted funding formulas for the 16 UNC campuses are designed to tie resources to the size, mission, and growth characteristics of each institution, as opposed to previous formulas based solely on enrollments — a methodology that would benefit the research institutions, as well as smaller institutions with lower enrollments.

The Board of Governors and the legislature are taking steps to address the particular needs of UNC's research institutions through such means as revision of funding formulas, graduate tuition assistance, and tuition increases approved in 2000, 2001, 2002, and 2003.⁴⁵ Former UNC President Molly Broad said she was in

favor of a new budget line specifically for research in the university system's annual funding requests to the General Assembly. "That will be hard, given the [current state] budget," she says. "The idea gained support just as the financial picture started going south. I do believe that needs of the research institutions are different from other campuses. We are talking about what is the best way to recognize that difference."

While supporters of UNC-Chapel Hill and N.C. State University have reasonable concerns about how to maintain academic excellence and compete with their national counterparts, it is not clear how removing them from the existing university governance system would achieve those ends. The lobbying power of those schools has diminished over time as the clout of other universities across the state grew, so the research universities should be warned that it is not a foregone conclusion that they would win. Such a change might actually harm the research universities because of the increased political and academic influence of the other 14 campuses now. "If they [the research universities] are on their own, they lose the strength of a system," says Craig Souza, a member of the Board of Governors and former Chairman of the Board of Trustees of East Carolina University in Greenville. "The 14 other campuses are not going to sit idly by. Look what ECU did in the 1960s [when it expanded rapidly]. UNC-Charlotte could do the same now. It is imperative to keep the system together."

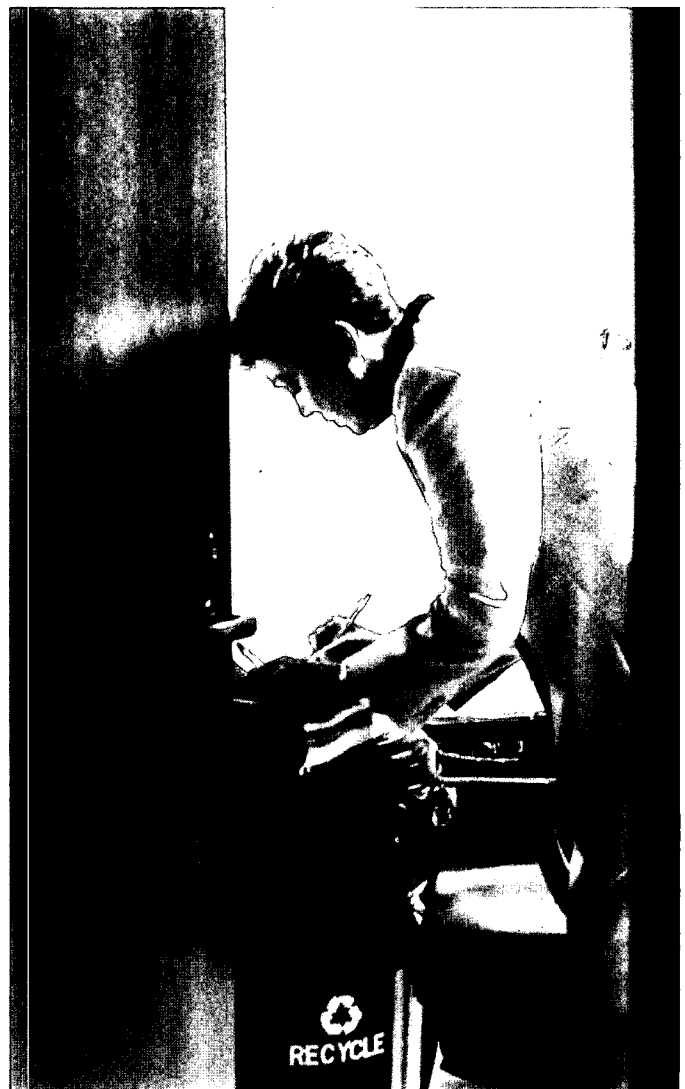
And, as stated earlier in this report, the proportion of legislators with undergraduate ties to at least one of the research universities — UNC-Chapel Hill — has steadily declined from 43 percent in 1939 to 15 percent in 1997 to 13 percent in 2003.⁴⁶ Opponents of special status and separate boards for Chapel Hill and N.C. State also point out that advocates have not made their case that the institutions have suffered under the current system. National rankings have not really dropped, and UNC-CH and N.C. State have consistently fared well in obtaining a fair share of General Fund budget increases, despite their shrinking percentage of the system's total enrollment.

Still other policymakers cite the state's historic commitment to keeping higher education affordable to state residents as the chief reason for maintaining the current multi-campus governance system. In fact, placing the research universities under a separate governing board might decrease access by students to the type of education those schools offer because tuition and admissions standards for those schools could rise well beyond the levels now set by the Board of Governors. They argue that if the research institutions were to be pulled out from under the Board of Governors, there would be even more pressure to raise tuition at these schools to make them more elite institutions and to fund new programs. Tuition for those schools would likely rise beyond the level that many North Carolina students could afford and beyond what the state Constitution mandates. "People

always think we should argue that issue on the basis of what's good for students," says former UNC President Friday. He says, "The real issue is what's good for the state" in having more of its citizens able to attend college.

A separate board for some of North Carolina's public four-year universities would inevitably undermine the benefits that have resulted from the UNC Board's central budgeting and coordination of activities undertaken by all 16 institutions. As happened in the Michigan case described above, having no central board responsible for combining and submitting a unified budget proposal to the legislature for all 16 public universities leads to cut-throat competition between the research universities and other campuses for higher education dollars. Letting the research universities be governed solely by campus boards or having one board govern two research flagship campuses with another responsible for the remainder of the 16 campuses would create a situation in which one to three high-status universities would be competing

Former UNC President Molly Corbett Broad



Karen Tam

against many more, geographically spread-out institutions for their respective shares of the state purse.

Any proposal to introduce tiers in higher education governance where none has been present before is bound to create political upheaval. One example involves the City University of New York (CUNY). In June 1999, New York City Mayor Rudolf Giuliani's Advisory Task Force on CUNY proposed a new model for the universities that immediately produced strong debate. One of the report's recommendations included creating tiered missions for CUNY colleges, designating some as flagships and creating specific, different missions for each one. Bernie Sohmer, chairman of the University Faculty Senate and a mathematics professor at City College, described the report's call for tiers as "a code word for 'ethnic cleansing.'" Dividing the colleges, he argued, would divert the bulk of resources to the few top colleges in the system and leave the others struggling. The result would be a decline in the quality of education available for many minority and economically disadvantaged students, who attend in greater numbers those institutions most likely to be placed in the lower tiers.⁴⁷ In North Carolina, this institutional competition for funds in the legislature would take the state back to many of the same conditions that caused the General

Assembly to restructure higher education governance in the first place.

Part of the impetus for the 1971 legislation that restructured university governance was that "individual campuses were adding programs and making budget requests without regard to what the other colleges and universities were doing," said the late Kenneth Royall, Jr., a powerful legislator during four decades, serving from 1967 to 1993. Royall, who was the head of the House Appropriations Committee during the restructuring in 1971, told the Center, "Listening to all 16 institutions and their requests — well, you wanted to be fair. But money was limited. What it came down to back then was who had the best lobbyist."

"There are some who would like to throw off the shackles and be free [of the 16-campus system]. But most of that comes without the institutional memory of how it was before restructuring," says former Governor and current Board of Governors member *emeritus* James Holshouser Jr., who also was a member of the state House when the restructuring legislation was enacted. "I think the state would be extremely poorly served if we had enough authority at the campus level to get the institutions fighting with each other again the way it happened before 1971," he says.

UNC Board of Governors Chairman Brad Wilson, UNC President Erskine Bowles, and Board member emeritus and former Governor Jim Holshouser



Logan Price, The Daily Tar Heel

Requests for Exceptions for Public Universities from Policies Applicable to Other State Agencies

7. (a) **The Governor and legislature should reject further requests for special treatment for some or all of the 16 universities unless and until the UNC system makes a compelling case about the specific ways these institutions are legitimately different from other agencies in the executive branch of state government, or unless such requests for flexibility are accompanied by outcome-based accountability standards that have been fully examined in an open public process.**

(b) **The Center recommends that a study commission be established by the Governor or the legislature to examine the state construction, purchasing and contracting, personnel, and budgeting systems to determine the following:**

- **whether these systems are working well and, if not, in what situations, and for which agencies the problems occur;**
- **whether changes are needed to modernize state construction, purchasing and contracting, personnel, and budgeting procedures;**
- **whether any state agency, including the University system, is disproportionately affected by weaknesses in the system such that special treatment or flexibility is justified; and**
- **whether there is a need for an overall State Capital Improvement Plan that ranks priorities in capital projects over an eight-year period for all of state government — including projects on all 16 university campuses.**

The study group could be either a legislative study commission created by the General Assembly or a blue ribbon commission created by the Governor. In any event, the study commission should be composed of at least four legislators from both chambers; representatives from at least two executive departments under the Governor; representatives from two other departments headed by other elected officials in the Council of State; the University system; the State Employees Association; outside corporate consultants with expertise in construction, purchasing and contracting, personnel, and budgeting; and representatives from the State Offices of Construction, Purchase and Contract, Personnel, and State Budget and Management. The majority of the members should be legislators.

Some university officials and members of the Board of Governors have suggested that UNC's research institutions or all 16 campuses should be given more con-

trol over policies governing construction, purchase and contract, personnel, and budget. Several state agencies are involved in making and monitoring such policies. These include the Office of State Construction, the Purchase and Contract Division, the Office of State Personnel, and the Office of State Budget and Management, among others. The Office of State Construction, along with its board; the State Building Commission, is the primary agency responsible for the management of construction, repair, and renovation projects for agencies throughout the state. The Purchase and Contract Division in the N.C. Department of Administration is the central purchasing authority for all state government agencies. The Office of State Personnel administers the rules outlined in the State Personnel Act for recruiting and hiring state employees. The Office of State Budget and Management provides fiscal advice and economic analysis for budget preparation and execution and also provides management analysis for state government agencies to assess organization, staffing, systems, processes, and delivery and quality of services. The issue of balancing control and flexibility in construction, purchase and contract, personnel, and budgeting looms larger as the new construction projects and renovations within the UNC system are underway as a result of the \$3.1 billion bond higher education issue approved by the voters in November 2000.

In at least 12 ways, the university system already receives separate or special treatment that is not accorded to most other state agencies, as follows:

Construction and Purchasing

(1) The University system has a higher threshold (\$2 million) than other state agencies (\$300,000) for construction as well as repair and renovation projects that must be subject to management by the State Construction Office.

(2) The University system was granted special authority for "construction management at risk" in contracting for 42 construction projects approved by the voters in the November 2000 bond referendum. This special exemption by the State Building Commission preceded changes by the General Assembly that allowed other agencies to use alternative construction contracts and a more flexible bidding process.

(3) Unlike other state agencies, the University system as a whole and individual campuses are exempt from the jurisdiction of the Office of Information Technology Services, which normally oversees purchases of information technology goods and services.

Personnel

(4) UNC Hospitals has special flexibility on management rules, equipment, and personnel. Also, employees of the patient care programs at both the UNC-CH and ECU Schools of Medicine, as well as employees of the UNC Health Care System, are exempt from most provisions of the State Personnel Act.

(5) The State Personnel Act does not apply to “instructional and research staff, physicians, and dentists of the University of North Carolina,” nor to “[e]mployees whose salaries are fixed under the authority vested in the Board of Governors,” thus exempting 44 percent⁴⁸ of University employees.

(6) The University system has more flexibility to reclassify personnel positions and to reallocate positions and salary levels than other state agencies.

(7) UNC-Chapel Hill employees get an additional four hours of paid time each year to prepare grievances against their bosses, compared to the eight hours granted all other state employees. About 60 employees filed grievances with UNC-Chapel Hill in 2003, which amounts to 240 hours of additional paid time, if each employee used it.

(8) University faculty have more job security than other state employees through the tenure system, and they receive the highest pay of any category of state employees. Faculty also are allowed to augment their incomes through consulting (in which they are paid by other employers for days that they also are on state government’s payroll), and their contracts typically are for nine months of work, not 12.

Revenue Sources

(9) Individual campuses within the University now have the power to initiate requests to the Board of Governors for tuition and fee increases and keep the proceeds, which, in effect, means they have the power to generate and control a source of revenue separate from General Fund appropriations.

(10) The University also can issue special obligation and revenue bonds with the approval of the General Assembly for self-liquidating projects such as dormitories, parking decks, etc., which is another source of revenue not available to most state agencies.

(11) Nonprofits controlled by public higher educational institutions have been granted an exemption to local government property taxes in North Carolina, an advantage not accorded to the nonprofits controlled by any other state agencies except the community colleges.

General

(12) All 16 UNC campuses now have been designated as “special responsibility constituent institutions,” which gives them more authority over budgeting, purchasing, and personnel and allows them to retain up to 2.5 percent of the funds not spent at the end of the fiscal year, a privilege not given to any other state agencies and one that is especially controversial during years of shortfalls in the state’s budget.

However, at least nine cases of abuses have occurred with this increased flexibility, and these instances raise questions about whether special treatment for the University system is either warranted or wise, as follows:

(1) With the budget flexibility given to “special responsibility constituent institutions,” the N.C. State University Public Safety Director used more than \$2.2 million in unspent department personnel funds to make more than 100 questionable purchases over a six-year period, including TV sets, VCRs, and a mountain bike, many of which he kept in his home or truck, prompting a State Auditor’s investigation.

(2) Fayetteville State University also was threatened with revocation of its management flexibility if it did not correct problems identified by the State Auditor in bookkeeping, management oversight, and financial reporting.

(3) UNC-Chapel Hill’s Kenan-Flagler Business School and N.C. State’s Carter Finley Stadium used the availability of a mix of public and private financing to begin construction before safety inspections by the N.C. Department of Insurance, thereby avoiding provisions of the State Building Code.

(4) The State Auditor said the University’s decentralization of the construction oversight function had negatively affected the timeliness of the flow of information to the State Construction Office and State Building Commission.

(5) UNC Hospitals’ flexibility in construction contracts and bidding procedures resulted in a 31.5 percent increase in the estimated cost and an opening date that was more than four years behind the original scheduled completion date of November 1997. When the legislation granting special flexibility to UNC Hospitals passed in 1998, President Molly Broad said, “We got relief for that entity. I’ve made it clear to them that if they can be the exemplars of some best practices, the hospital could be a demonstration project” for how greater management freedom can make the University system more efficient. This is not exactly the poster child for flexibility she hoped it would be.

(6) Inadequate oversight of spending in a scholars program for doctors at UNC-Chapel Hill is now the example that the Robert Wood Johnson Foundation (which funded the program) uses in how not to manage the proceeds from the foundation’s grants to similar programs.

(7) In the middle of an acute state budget shortfall when most state workers only got a flat pay raise of \$625, Chancellors at NCSU and UNC-Chapel Hill gave sizable pay raises ranging from \$9,375 to \$30,340 per year to some of their immediate subordinates.

(8) UNC-Chapel Hill Chancellor James Moeser signed an employment separation agreement worth \$313,908 with his former General Counsel that the Chairman of the Board of Governors described as “excessive and indefensible.”

(9) The State Auditor discovered nearly \$1 million in financial abuses at the N.C. School of the Arts that included spending on cellular phone bills, country club memberships, lease payments for a Cadillac Escalade for a Vice Chancellor, undocumented overtime expenses, special “one-time payments” to 20 employees, a down

payment on a condominium to be used as a residence for the Chancellor, undisclosed accounts, and questionable real estate transactions between the institution and its related foundation and nonprofit entities — practices the Auditor described as “Enron-style.” President Broad described the findings of the special review as “deeply troubling” and took over financial management of the school in November 2004.

These situations raise questions about special grants of flexibility being given to the University system as a whole or to the 16 campuses individually and about whether the larger research universities are any more likely to avoid problems than the smaller campuses. If the University system is to be treated differently from other state agencies, then exceptions should be made only after a study commission has examined state construction, purchase and contract, personnel, and budgeting procedures, and found either that the systems need to be modified and updated for *all* state agencies or that the University system has made a compelling case that standard state government oversight should not apply to them and that instances of special treatment or grants of flexibility can be handled efficiently and managed well. Even then, any grant of increased flexibility should

be accompanied by outcome-based accountability standards tied to the higher education goal the flexibility is designed to accomplish.

Changes in the Allocation of Powers Between the Statewide UNC Board of Governors and the 16 Local Campus Boards of Trustees

8. (a) **Refine the Delegation to Campuses on Intercollegiate Athletics — The UNC Board of Governors should refine its delegation of power to the local campuses on intercollegiate athletics. The chancellors should retain their lead role, but the Board of Governors should lead reform in governance of intercollegiate athletics by adopting system-wide guidelines on intercollegiate athletics in line with reports by the national Knight Foundation Commission on Intercollegiate Athletics reports issued in 1991 and 2001. This should include language incorporated into the University Code based on the Commission’s recommendations that would:**

(1) **require Chancellors to bar teams that do not graduate at least 50 percent of their players from conference championships or post-season play;**

UNC Board of Governors meeting in Chapel Hill.



Karen Tam

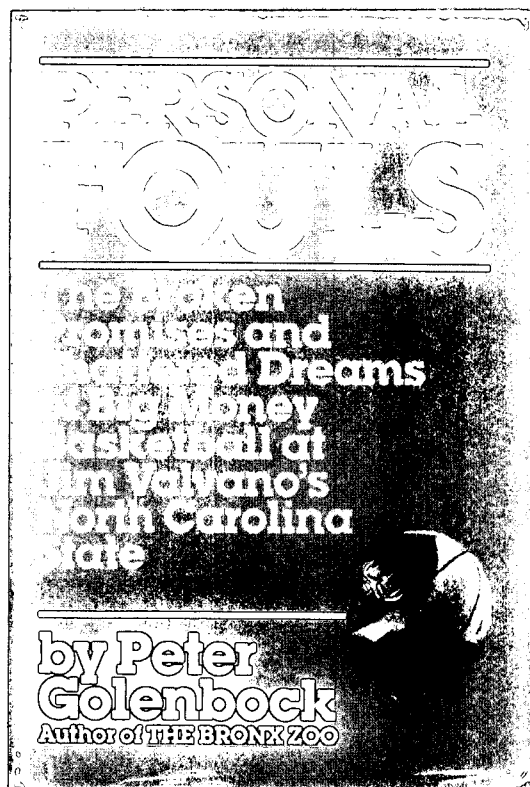
(2) require Chancellors to prohibit athletes from wearing uniforms with corporate logos for which the campus, campus employees, or athletes have received any compensation and require that any and all corporate sponsorship and product placement arrangements, such as Website advertising, be subject to open public review;

(3) forbid campuses from enacting policies or following practices that make it easier for athletes (compared to other students) to be granted exceptions to any campus policy;

(4) forbid campuses from negotiating contracts with coaches that would require exceptions to the current UNC Code and require that coaches' salaries be set in the context of other salaries in higher education;

(5) forbid campuses from participating in athletic conferences in which universities alone do not decide when games would be played and broadcast on television, and expressly forbid NCAA Division I football games from being played on school nights; and

(6) forbid campuses from participating in athletic conferences that do not encourage the NBA (National Basketball Association) and NFL (National Football League) to develop minor leagues to give young athletes a route to professional sports other than playing on college or university teams.



(b) Special Task Force of the Board of Governors on Intercollegiate Athletics — The UNC Board of Governors should appoint a special task force:

(1) to determine whether the Board's policies on intercollegiate athletics are being followed by the campus chancellors and boards of trustees. This recommendation contemplates an inquiry beyond simply reviewing the annual reports submitted by each of the 15 chancellors subject to the Board's policies on intercollegiate athletics. The special task force also should

(2) reassess the need for additional University-wide standards to ensure that the traditional academic values present in the student athlete model are maintained, and if necessary, restored on every UNC campus.

The University Code states, "Subject to such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics."⁴⁹ While responsibility for college sports is delegated to the local campuses, at times the Board of Governors and system President have stepped in to impose University-wide rules.

Intercollegiate athletics is a trouble spot historically in governance of public universities and in the relationship between local campus boards and the President and Board of Governors for the UNC system. In his history of UNC-Chapel Hill, former Greensboro newspaper editor William Snider points out that control over college athletics has been a challenge for North Carolina university leaders since the 1930s, when University President Frank Porter Graham unsuccessfully attempted to reduce "rampant professionalism" in college sports.⁵⁰ Since 1953, seven of the 16 UNC constituent institutions have been sanctioned for "major infractions" of bylaws of the National Collegiate Athletic Association.⁵¹ Elizabeth City State University, Western Carolina University, and Winston Salem State University each have been sanctioned once; East Carolina University, North Carolina Central University, and UNC-Chapel Hill have each been sanctioned twice; and North Carolina State University has been sanctioned five times, ranking it 14th on the all-time list of institutions with major violations of rules of the 1,024 member National Collegiate Athletic Association.⁵²

In 1961, UNC President William C. Friday canceled the popular Dixie Classic basketball tournament after learning that players at North Carolina State University and UNC-Chapel Hill had received money from gamblers to shave points in tournament games. In 1989, problems with college basketball arose again when publication of Peter Golenbock's book, *Personal Fouls*, led to intense scrutiny and several investigations.⁵³ The book alleged that players on the 1986–1987 N.C. State

basketball team, coached by Jim Valvano, used drugs, received improper gifts of stereos, cash, cars, and jewelry, and that their grades were “fixed” by college officials. Ultimately, most of the allegations were found to be true by the UNC Board’s Poole Commission that investigated the scandal. In 1989, the NCAA put NCSU’s men’s basketball program on probation for two years for irregularities involving the sale of players’ shoes and the use of complimentary tickets. In the mid-1990s, the University system wrestled with coaching contracts, admissions of athletes, athletes’ graduation rates, and corporate sponsorship of sports teams equipment and uniforms.

In 1985, the UNC Board of Governors adopted the comprehensive recommendations of a Special Committee on Intercollegiate Athletics.⁵⁴ The 1985 “Policy on Intercollegiate Athletics,” which forms the framework of the policy in effect today, began by reaffirming the 1972 delegation of responsibility for intercollegiate athletics to the campus chancellors. The policy stated that beginning in July 1986, each chancellor must submit an annual report on intercollegiate athletic programs to his or her institution’s board of trustees and to the UNC president. These reports must cover topics that include athlete profiles (SAT scores, high school grade point averages, etc.); the institution’s policy on admission of student athletes, including “exceptional” admissions; graduation rates and progression information; information about the majors or programs of study chosen by student athletes; and information about the structure and governance of athletic “booster” clubs and organizations.

The policy required the chancellors to study the status of former student athletes still enrolled on their campuses “to the end that graduation rates of athletes with grants-in-aid are raised to those levels that apply to the general student bodies” and to submit their findings and plans in this regard in the July 1986 report.⁵⁵ The policy also addressed freshman eligibility to participate in sports and admissions of student-athletes and asked the chancellors to study the effect of the length of sports seasons on their institutions, the number of contests, and recruitment practices, and “to conduct that study in concert with their directors of athletics and coaches, as well as with the NCAA and the athletic conferences.” The policy concluded by stating, “The chancellors shall emphasize to the coaches and athletic administrators that their appointments and their continuation in their appointments are not conditioned upon the obligation merely to win games or to achieve national standings for our teams. Coaches and athletic administrators should also be evaluated on the integrity of their programs and on their relationships to the primary purpose of the University.”⁵⁶

In May 1990, the Board adopted a resolution which explicitly defined and required trustee participation in contracts with athletics directors and head coaches by stating that no employment contract with a head coach or athletic director would be valid “unless and until all

terms and conditions of the contracts have been approved by the board of trustees.”⁵⁷ In February 1991, the Board issued four standards that all institutions are expected to follow in executing such contracts.⁵⁸ The standards set minimum requirements for buy-out clauses, length of contracts, academic values, and outside compensation.

Control of intercollegiate athletics by campus presidents or chancellors is a cornerstone of the recommendations made by the national Knight Foundation Commission on Intercollegiate Athletics, which proposed ways to prevent scandals and boost the academic performance of student athletes. Former UNC President William Friday was co-chair, and three other North Carolinians served as Commission members. The Commission’s 1991 report urged that total responsibility for control and oversight of college sports be placed in the hands of *presidents* of individual universities [or *chancellors* in the UNC system].⁵⁹ Under the Commission’s “one-plus-three” model for reform, presidents (the “one” in the “one-plus-three”) would focus on the “three” major ways to clean-up college sports — academic integrity, financial integrity, and independent certification of athletics programs. “The Commission’s bedrock conviction is that university presidents are the key to successful reform,” the 1991 report stated. “They must be in charge — and be understood to be in charge — on campuses, in conferences, and in the decision-making councils of the NCAA.”⁶⁰

In response to continuing problems with college sports, the Knight Commission reconvened in June 2000 to reassess what had happened to college sports since its initial recommendations were issued. The Commission also wanted and to examine whether the changes they recommended a decade earlier had been implemented and if so, to evaluate whether they had worked well.

The Knight Commission, again co-chaired by William Friday, issued its second report in June 2001⁶¹ and found that problems in college sports had worsened despite some NCAA rule changes. The 2001 report stated, “The Commission now finds that the NCAA has made considerable progress toward achieving the goals the Commission laid out in its earlier reports. Many reform efforts have been undertaken with sincerity and energy. It is clear, however, that good intentions and the reform measures of recent years have not been enough. We find that the problems of big-time college sports have grown rather than diminished.”⁶² The Commission found that the most glaring problems it identified — “academic transgressions, a financial arms race, and commercialization — are all evidence of the widening chasm between higher education’s ideals and big-time college sports.”⁶³

Among the 2001 Commission recommendations were: (1) barring teams that do not graduate at least 50 percent of their players from conference championships or post-season play (by 2007); (2) prohibiting athletes from wearing uniforms with corporate logos; (3) treating athletes more like other students; (4) setting coaches’

salaries in the context of other salaries in higher education, (5) universities alone would decide when games would be played and broadcast on television; and (6) encouraging the NBA (National Basketball Association) and NFL (National Football League) to develop minor leagues to give young athletes a route to professional sports other than playing on college or university teams. The panel stated its belief that “only a multilateral effort among college presidents can reduce out-of-control spending on college sports and academic transgressions” and that “if intercollegiate athletics cannot live honorably within the American college and university system, then institutions should get out of the business of big-time sports.”⁶⁴

Meanwhile, graduation rates for scholarship football players at N.C. State University and UNC-Chapel Hill are declining, according to statistics reported by the NCAA. None of the six schools in the UNC system which provide athletic scholarships has averaged football player graduation rates of 60 percent for students who entered between 1990 and 1998 and would have graduated between 2001 and 2005. Appalachian State and UNC-Chapel Hill had the highest averages at 56 and 56.5 percent, respectively, and A&T State the lowest four-year average at 31.5 percent. N.C. State’s 45 and 47 percent graduation rates for 2002 and 2003, respectively, would make it ineligible for post-season play under the proposed 2001 Knight Commission reforms. Similarly, the N.C. State men’s basketball team’s 38 percent and 44 percent graduation rates for 2002 and 2003, respectively, would have made it ineligible for the post-season as well. For example, N.C. State would not have been allowed to participate in the 2003 and 2004 NCAA basketball tournaments, the 2003 Gator Bowl, or the 2004 Tangerine Bowl.⁶⁵ NCSU netted a minimum of \$1 million for its appearance in the Gator Bowl, a figure that does not include its additional percentage of shared bowl revenue from other ACC schools.⁶⁶

One problem with the Knight Foundation Commission’s logic and the UNC Board of Governors delegation of authority is that it assumes that campus presidents or chancellors will always want to be the ones protecting the university from big-time sports. James J. Duderstat, President *Emeritus* of the University of Michigan and a staunch defender of campus CEO accountability for intercollegiate athletics, warns that “in many cases it has been the presidents themselves who have driven intercollegiate athletics with their desire for more revenue from events such as the NCAA basketball tournament or postseason play in football. Like the others associated with intercollegiate athletics, the presidents all too frequently give priority to competitive issues or revenue generation rather than to the welfare of student-athletes or the alignment of sports with the educational mission of the university.”⁶⁷

Chancellors can be part of the problem, not the solution, in wanting their sports teams to succeed at all costs. For example, N.C. State University Chancellor

Bruce Poulton was part of the problem in the 1989 basketball scandal involving NCSU Coach Jim Valvano. In 1999 and 2000, firings of two football coaches at the two largest UNC campuses raised questions among faculty and the media about whether chancellors were the best arbiters or reformers of college athletics and university priorities. In November 1999, former N.C. State Chancellor Marye Anne Fox fired coach Mike O’Cain, and in November 2000, newly-installed UNC-Chapel Hill Chancellor James Moeser fired coach Carl Torbush.

The Torbush firing disappointed and angered the school’s football team and many members of the faculty. UNC-CH English professor Trudier Harris resigned in protest from the institution’s Faculty Committee on Athletics, stating, “I consider the firing of Football Coach Carl Torbush to be incompatible with the expressed goals of our athletic program — at least our publicly expressed goals.”⁶⁸ She added that such a decision is a “public indication” that the university is “just as driven by money and powerful fans” as schools that UNC condemns. The same sentiments were expressed by an editorial in the *Raleigh News & Observer*, which commented, “The firing of UNC-Chapel Hill football coach Carl Torbush is a sad commentary on the priorities of the athletics program. The coach appears to be another victim of big-money sports boosterism.”⁶⁹ Tar Heel fans’ lack of enthusiasm for Carl Torbush’s teams had become an economic problem, said UNC-CH officials to justify the firing. During the coach’s three years, the Tar Heels won 17 games and lost 18, and empty seats in Kenan Stadium, which had a \$50 million upgrade and expansion completed in 1997, hurt the athletics department’s bottom line. According to Chancellor Moeser, Carolina needed a football program that could bring back the fans at a time when the university was embarking on a \$1.5 billion fund-raising campaign.⁷⁰

Former N.C. State Chancellor Fox and UNC-Chapel Hill Chancellor Moeser both have stated their beliefs that making a university “excellent” is integrally tied to having championship-caliber sports teams. Fox and Moeser came to the ACC from football powerhouses at the University of Texas and the University of Nebraska, respectively. Upon taking over at N.C. State, Fox asked for “a national athletics championship.”⁷¹ And, part of Nike’s \$28 million contract with UNC-Chapel Hill includes \$800,000 spread over eight years to an academic enhancement fund controlled by Chancellor Moeser, who says he plans to spend that money on undergraduate education.

Two major events in 2003 raised further questions about whether the Board of Governors has delegated too much authority for intercollegiate athletics to the campuses — a record compensation package for a UNC-CH coach involving an exemption to the 1991 Board standards on coaching contracts, and the lack of Board involvement in the decision to expand the number of schools in the Atlantic Coast Conference. In order to lure University of Kansas basketball coach Roy

Williams, UNC-Chapel Hill offered him the most lucrative compensation package in the institution's history. The package, worth \$1.6 million per year for five years, was granted a special exemption from the Board of Governor's 1991 standards on coaching contracts, even though it violated the Board's guidelines to campuses published in the University's policy manual.

The Board of Governors put guidelines on coaching contracts in place in 1991 to limit the financial responsibility of campuses and avoid excessive buyouts. The provisions were, in part, a response to the contract buyouts of former UNC-CH football coach Dick Crum and former NCSU basketball coach Jim Valvano, which totaled more than \$1.4 million. In September 2003, the Board of Governors granted an exemption to the 1991 provisions to UNC-CH for the Roy Williams contract. Specifically, the Williams contract needed the exemption because it contains provisions that would require UNC-CH to reimburse Williams for loss of outside compensation, such as the contract for his television show, if he is fired as coach by the campus. This practice was expressly forbidden by the 1991 guideline in the UNC policy manual. "What we approved was a deviation from the guidelines," says Brent Barringer, a member of the Board of Governors sitting on the committee that approved the contract. "We did not change the guidelines. We agreed it was time to revisit the guideline and see if [it] still had validity, that if it should be changed after 13 years . . . we didn't intend to open up a big exception or loophole."⁷² However, NCSU athletics direc-



Former UNC President William Friday co-chaired the Knight Foundation Commission on Intercollegiate Athletics.

tor Lee Fowler got a different signal from the exemption, saying, "Judging from what I'm being told [on the Williams contract], it could open the door for others."

The second controversy raising questions about delegation of athletics to campuses involves the decision to expand the number of schools in the Atlantic Coast Conference (ACC), which includes two public universities in the UNC system, N.C. State University and UNC-Chapel Hill — first to expand from nine to 11 teams, then three months later to expand to 12 teams. The conference expansion is designed to maximize revenue for ACC schools by increasing access to television markets and providing a future entrée into the lucrative Bowl Championship Series (BCS). For the ACC expansion to have a revenue neutral impact on the athletics budgets of its current schools, the conference will need to net at least \$30 million from the addition of a conference football championship game and renegotiated television rights packages.

Former Knight Commission Co-Chairman and UNC President *Emeritus* William C. Friday denounced the decision to expand the conference, saying, "This decision means [the ACC] has become a follower of money."⁷³ Specifically citing the influence of commercial television over college sport, Friday says, "What it adds up to is moving more and more toward becoming America's entertainment industry."

UNC President Molly Broad did not participate in the public debate on ACC expansion even though she oversees two ACC schools, N.C. State University and UNC-Chapel Hill. Broad says the controversy surrounding ACC expansion is just another example of colleges participating in an athletic arms race. "Each new major decision reveals a new low," she says. "It's quite understandable that people see intercollegiate athletics as out of control."⁷⁴

There are some encouraging signs of support for measures to support reform of athletics by those in university governance positions in North Carolina, as follows:

- In 1993, former UNC President C.D. Spangler Jr. asked the system's institutions to disclose the terms of personal services contracts between the institutions' coaches and anyone with whom they do business while using state resources — from shoe suppliers like Nike to auto dealers who supply cars to coaches.⁷⁵



Chancellors of UNC constituent institutions at a meeting of the Board of Governors in Chapel Hill

- In 1995, former UNC-Chapel Hill Chancellor Michael Hooker began overseeing the finances of the Rams Club, an athletic booster club (officially called the Educational Foundation) which then controlled \$60 million in assets. The chancellor and Rams Club reached this agreement after the Southern Association of Colleges and Universities told the university that it would have to assume control of the Rams Club before the university could be reaccredited.⁷⁶
- In 2000, former UNC-CH basketball player James E. Delaney, now commissioner of the Big Ten Conference, suggested to the Knight Commission that they back restoration of rules that required colleges to admit only those athletes who were capable of performing at the same academic level as their peers who are not athletes.⁷⁷
- In 2001, the UNC-CH Faculty Council approved a resolution urging Atlantic Coast Conference presidents and chancellors to come up with a strategy to implement the reforms of college athletics outlined in the 2001 Knight Commission.⁷⁸

To recap the problems with the current system of oversight of intercollegiate athletics by the UNC Board of Governors:

- ◻ Intercollegiate athletics has been a trouble spot historically in governance of public universities and in the relationship between local campus boards and the President and the Board of Governors of the UNC system, including the following:
 - Problems in the 1930s with football that led to University President Frank Porter Graham attempting to reduce “rampant professionalism” in college sports.
 - A point-shaving scandal that prompted UNC President Bill Friday to cancel the Dixie Classic basketball tournament in 1961.
 - Allegations of drug use, improper gifts, grade-fixing, sale of players’ shoes, and use of complimentary tickets that resulted in a two-year probation for N.C. State’s basketball team by the NCAA in 1989 and the resignation of NCSU Chancellor Bruce Poulton.
 - Firings of football coaches at Carolina and State in 1999 and 2000 over the objections of campus faculty as being incompatible with the expressed goals of university athletics and academic programs.
 - Since 1953, seven of the 16 UNC constituent institutions have been sanctioned for “major infrac-

tions” of bylaws of the National Collegiate Athletic Association. North Carolina State University has been sanctioned five times, ranking it fourteenth on the all-time list of institutions with major violations of rules of the 1,024-member NCAA (National Collegiate Athletic Association).

- Buyouts of the contracts of UNC-CH football coach Dick Crum and NCSU basketball coach Jim Valvano which totaled more than \$1.4 million.
- A \$1.6 million-a-year contract for UNC-CH basketball coach Roy Williams being allowed by the Board of Governors despite the contract exceeding the Board’s guidelines on excessive buyout clauses.
- Regular scheduling of football and basketball games on Sundays and school nights, including 9 p.m. games.
- A UNC-Chapel Hill contract with Nike sports company that requires placement of the Nike logo on the University’s Website.
- Expansion of the number of teams in the Atlantic Coast Conference with little or no input or voice by the UNC President or Board of Governors in the matter.
- Coaches’ salaries that now regularly exceed \$1 million, while UNC chancellor’s salaries average \$201,816⁷⁹ and salaries for full-time faculty at UNC’s four-year public universities average \$76,070. Even the highest-paid university employee, Dr. William Roper, CEO of UNC Health Care System, makes \$450,000,⁸⁰ or one-third to half of what many football and basketball coaches earn.
- Graduation rates for football players that consistently lag the graduation rates of the student bodies as a whole at six campuses within the system and which, at best, never average above 60 percent.

The Center believes these problems justify a change in the current policies of the UNC Board of Governors’ on intercollegiate athletics. The danger of the current policies is that sports are driving University policy, instead of the University’s three statutory missions of teaching, research, and public service. The Center believes the Knight Commission’s recommendations offer the best blueprint for the future. The UNC-Chapel Hill Faculty Council approved a resolution urging the chancellors and presidents of the ACC schools to come up with a strategy to implement the reforms outlined in the Commission’s 2001 report. We believe it is time for the Board of Governors to adopt system-wide guidelines on intercollegiate athletics in line with the Knight Commission’s 1991 and 2001 reports. This will be perhaps the most difficult recommendation to implement in this report, but if the UNC system leads, the rest of the nation will follow. No less than the University’s soul and ability to accomplish its central mission are at stake.

Policies on Private Fundraising by Public Universities

9. (a) The UNC Board of Governors should establish policies to increase equity among the local campuses on private fundraising and development staff.

(b) The UNC Board of Governors should clarify and broaden its definition of university-affiliated foundations and related entities in a manner consistent with the State Auditor’s special review of October 2004, expand reporting requirements for these foundations and related entities, and ensure that these reports are public records.

As the state’s public universities have turned to private sources of funding to help support campus operations, the UNC Board of Governors needs to adopt fundraising policies to monitor and channel such efforts. Currently, the Board of Governors receives a fundraising and endowment report annually, which specifically outlines national giving trends, tracks the results of the 16 campuses, and benchmarks their work against peer institutions. Since 2001, the Board also has required all campuses to record their fundraising results with Voluntary Support for Education and with the National Association of College and University Business Officers’ annual surveys.

However, while the Administrative Manual of The University of North Carolina includes policies regarding endowments and trust funds,⁸¹ the Board has not implemented policies or guidelines for campuses on how they approach fundraising; the relationships with other campuses that may be in pursuit of the same funds from individuals, corporations, and foundations; and how the campuses’ development activities affect the larger community in terms of competing with nonprofits in their regions. As the University continues to increase the development capacity on the 16 campuses, the Board of Governors should establish policies on private fundraising and development, especially as related to equity, transparency, appropriateness, and accountability.

In the fundraising arena, the main issue is equity among the campuses in providing development staff to seek funds from sources other than state appropriations. As shown in Chapter Five, the 16 campuses vary widely in the size of their development office staffs, the number of private foundations created on campus (UNC-Chapel Hill alone has 16 university foundations with assets of more than \$1 million), and their ability to compete for funds from sources other than state appropriations. These sources include the federal government, alumni, other individual donors, and private foundations — as well as shoe contracts, cola deals, and other arrangements available to the larger universities’ sports programs.

To its credit, the N.C. General Assembly began to deal with this equity issue in 1999 with allocations

ranging from \$260,000 for Winston-Salem State to \$308,400 for N.C. Central to beef up fundraising efforts at seven campuses, including five historically black campuses. However, the Center believes it is the Board of Governors that now needs to address this equity issue by adopting a policy that promotes equity among the campuses in fundraising efforts and staff. In a later report, the Center will examine whether there are dangers to the universities' missions in seeking corporate funding for research.

Another issue in university fundraising is transparency for university-related foundations. In October 2004, the State Auditor raised questions about proper oversight of the North Carolina School of the Arts and its university-affiliated foundations. A special review found that "[t]he school failed to exercise appropriate control or oversight over its related organizations."

The State Auditor found that state and university-affiliated foundation money was used to fund three spending accounts not reported to foundation board members. Expenses totaling \$269,224 were paid from these accounts for cell phone bills, country club memberships, and \$15,000 in lease payments for a Cadillac Escalade for former Vice Chancellor for Finance and Administration Joseph L. Dickson. Dickson also re-

ceived more than \$90,000 for consulting and expenses from the foundation over a 13-year period in violation of university policies. Dickson twice transferred foundation property without authorization to a nonprofit corporation he controlled. First, he transferred three acres of land without authorization, resulting in the misapplication of \$108,000 from the foundation. Second, he misapplied \$177,945 from the foundation related to five houses that had been donated. The entities involved included the N.C. School of the Arts Foundation, the N.C.S.A. Housing Corporation, the N.C.S.A. Unity Development Corporation, and the Program Support Corporation, which was established in 1997 to support the school. Many of the Auditor's findings focused on the nonprofit Program Support Corporation. Its three-member board was comprised only of Dickson, Chancellor Wade Hobgood, and Provost Lucinda Lavelli.

State Auditor Ralph Campbell said the School of the Arts situation created an opportunity for the UNC system "to bring some needed sunlight to the financial affairs of the foundations associated with all of our universities."⁸² The Auditor recommended that UNC require every campus in the system to submit a report to the Board of Governors outlining every foundation and related agency connected to the University, which

Board of Governors member Bob Warwick chairs the Board's Task Force on Best Financial Practices.



Karen Tam

would include activities, revenues, and expenditures.⁸³

In response, UNC President Molly Broad said that since 1990, all university-related foundations must be audited annually and the results given to her office. For the past seven years, the foundations have been required to adopt financial standards governing how they operate. The School of the Arts' foundation audit had shown no problems though. And, Broad said she and other system administrators were unaware of the existence of the Program Support Corporation, the entity that held some of the money in question. Broad responded to the Auditor's recommendation that institutions provide further information about foundations and related entities, saying, [On an annual basis, I] "will hereafter require that the chancellors list all affiliated foundations and entities, affirm that they have adequate financial control in place, and attest that no other foundations or entities exist."⁸⁴

However, President Broad and the State Auditor disagree over which entities would be defined as affiliated with UNC. For example, the Auditor says payments to the dean of the School of Filmmaking at the N.C. School of the Arts from a nonprofit called "North Carolina School of the Arts Unity Development Corporation" were a violation of UNC policy against senior administrators receiving compensation from related organizations, but UNC disagrees. The School of the Arts formed the Unity Development Corporation as a nonprofit that would sell bonds to build a corporate headquarters called "Unity Place" to lease to Krispy Kreme Doughnut Corporation.⁸⁵ In her response to the audit, Broad says, "The Office of the President does not agree with the Auditor's conclusion that the Unity Development Corporation is an entity that was intended to come within the meaning of this policy. Nonetheless, in light of this ambiguity, [I] will recommend that the Board of Governors clarify its policy."

The Center agrees. We recommend that the Board of Governors clarify and broaden its definition of university-affiliated foundations and related entities, consistent with the Auditor's special review, expand reporting requirements for these foundations and related entities, and ensure that these reports are public records.

Fulfilling the Board of Governors' Responsibility To Develop "a Long-Range Plan for a Coordinated System of Higher Education in North Carolina"

- 10. The Board of Governors should fulfill its statutory duty and exercise its authority to develop "a long-range plan for a coordinated system of higher education," as required by state law in G.S. 116-11(1). Through its Education Oversight Committee, the General Assembly should require the Board of Governors to exercise its master planning role and produce a master plan every**

four years on higher education issues of common concern to public and private institutions of higher education, including increasing the state's college-going rate, increasing manpower in fields of need such as teaching and nursing, ease of transferability between educational systems and institutions, and eliminating duplication of programs.

Centralized master planning for higher education systems is a primary reason states create higher education boards or agencies.⁸⁶ Forty-three states, including North Carolina, have higher education governing boards with authority to conduct master planning for higher education. The North Carolina statute charges the Board of Governors to "plan and develop a coordinated system of higher education in North Carolina."⁸⁷ This is an important duty which the Board is not currently fulfilling. To that end, it also is the Board's statutory duty to "maintain close liaison with the State Board of Community Colleges, the Community Colleges System office and the private colleges and universities of the State." The statute also says that, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, the Board of Governors "shall prepare and from time to time revise a long-range plan for a coordinated system of higher education. . . ."

Edgar Jenkins, former Chairman of Georgia's Board of Regents Jenkins says that state's system has an advantage over North Carolina in addressing the problem of duplication in that the Georgia Board of Regents governs both public senior colleges and universities and community colleges. He says, "So, for example, remedial education programs are now offered only by the two-year institutions or the four-year colleges that are not universities," thereby eliminating the need for those programs at the four-year universities.

Given the chronic budget crises from 2001 through 2005, a possible structural deficit in the state's tax structure and estimated future revenues, and projected enrollment increases for higher education in North Carolina, cooperative ventures between UNC and the leaders of private institutions and community colleges will play a crucial role in planning for future higher education needs. Both private institutions and community colleges are needed to help absorb an expected enrollment boom. The 16-campus university system, the 36 private colleges and universities, and the 59 community colleges are facing a projected 31.4 percent increase in the number of public high school graduates by 2017.⁸⁸ Of these additional students, 58,213 are expected to attend a public UNC campus by 2012. Historically, the UNC enrollment will account for less than one-half of the total number of students enrolled in higher education in North Carolina.⁸⁹ Better coordination among all sectors of higher education is needed if North Carolina is to raise its college-going rate, a

goal promoted by the university in campaigning for the \$3.1 higher education bond referendum in 2000. However, the state's college-going rates historically have lagged the national average. While the overall percentage of North Carolinians attending college has met or exceeded the national average recently (see Chapter Four for various measures of college-going rates), the percentage of low-income North Carolinians participating in higher education remains below the national average. "We made a very public pact with the people of North Carolina about providing an opportunity and a space for them to attend the university, and a commitment to increase the college-going rate in North Carolina," said Board member Jim W. Phillips Jr., a lobbyist and Greensboro lawyer. "We have to find a way to meet that, what I call an obligation."⁹⁰

Another reason for the Board of Governors to exercise its responsibility in master planning is the need for University involvement in addressing shortages in personnel in certain fields key to the development of the state, such as teaching and nursing. In an August 2004 study, research by the N.C. Center for Public Policy Research showed that the state will need more than 10,000 new teachers each year because of the state's growing school-age population, Gov. Mike Easley's efforts to reduce class sizes in kindergarten and grades 1–3, and the new federal requirement of a "highly qualified teacher in every classroom" under the No Child Left Behind Act. There are teacher education programs at 15 of the 16 public universities and on 32 private campuses. However, all the state's public and private colleges and universities *combined* currently produce about 3,100 teachers a year. Only 2,200 of these graduates end up teaching in North Carolina, and only about 1,400 are still teaching three years later. And, the Center found that teacher turnover for school years 1998–99 through 2002–03 averaged 13.18 percent. Though the public universities cannot solve the teacher shortage problem alone, they must be part of the solution.⁹¹

Similarly, the aging of the Baby Boom generation will exacerbate a shortage of nurses. The first Baby Boomers (born in 1946) will turn 65 in 2011, and health officials estimate that North Carolina will need 9,000 more nurses by the year 2015 and almost 18,000 by 2020, according to the N.C. Institute of Medicine's Task Force on the N.C. Nursing Workforce. The UNC system has nine bachelors degree nursing programs among the 16 public universities. There also are four such programs at private colleges and universities, as well as associate degree programs at 45 community colleges.⁹² Again, the public universities cannot solve the coming nursing shortage alone, but they must be part of the solution here too.

Some UNC leaders have argued that the Board of Governors' role in coordinating higher education is limited because, as former Board of Governors member John Sanders says that "the statutes make clear that the Board of Governors or the President as its agent cannot

*require anything of the community colleges or of the private colleges and universities but may only solicit their cooperation [emphasis his]."*⁹³ While such arguments acknowledge the political difficulties and experience of the Board of Governors when it had responsibility to review requests for state aid by private schools, they ignore the statutory charge to the Board and the benefits to the state of North Carolina of initiating coordinated planning efforts in higher education. Such efforts also could help eliminate unnecessary duplication of academic programs in public and private institutions and harmful competition between the two sectors. For example, private nonprofit Elon University, private-for-profit Florida Coastal School of Law (to be located in Charlotte), public UNC-Charlotte, and maybe even private nonprofit Queens University in Charlotte all are currently pursuing plans to establish new law schools in North Carolina. The state already has five law schools. Do we need five, six, or nine? The Board of Governors has the responsibility to answer this question.

Two other developments will heighten the need for an increased Board of Governors' role in planning. Distance education and on-line courses will provide a new way of meeting student demand and a new form of competition among public and private universities. And, for profit colleges are growing rapidly. Though for-profit colleges still enroll less than 3 percent of all postsecondary students nationally, their enrollment is growing much faster than that of higher education as a whole — an estimated 28 percent increase in 2003–04 and 22 percent in 2004–05.⁹⁴

The University of Phoenix, the nation's largest for-profit, private university system, already has entered North Carolina. At its Charlotte branch, the university serves about 700 students and offers degrees in business and information technology and management, among others. It also is applying for a license to open a branch in Raleigh. Nationally, the University of Phoenix has 55 branches or campuses and 102 learning centers in 33 states and offers much of its coursework through online programs. Another private company, Strayer University, has campuses in Cary and north Raleigh.⁹⁵

In addition to the clear statutory charge, the need for overall higher education comprehensive planning in the face of an enrollment boom, and the need to address shortages in key professions, another reason for the Board of Governors to exercise its planning powers is that since 1971, the N.C. General Assembly has provided substantial funds to private colleges and universities in North Carolina⁹⁶ to assist in the education of North Carolina students — currently through the North Carolina Legislative Tuition Grant Program and the State Contractual Scholarship program, based on the number of state residents enrolled in private colleges and universities (see Chapter 4 for additional discussion and information about these programs). The \$17.2 billion state budget enacted by the 2005 General Assembly appropriated a total of \$89.6 million in FY 2005–2006

annually in state financial aid for students attending private colleges in North Carolina.⁹⁷

In 1993, the state created two vehicles and opportunities for cooperative planning between UNC and educational institutions outside of the university system: (1) the Education Cabinet,⁹⁸ chaired by the Governor, and composed of the UNC President, state Superintendent of Public Instruction, President of the state Community College System, Chair of the State Board of Education, and (added to the statutory membership by the 2001 General Assembly), the President of North Carolina Independent Colleges and Universities⁹⁹; and (2) the State Education Commission, consisting of the UNC Board of Governors, the Board of the Community College System, and the state Board of Education.¹⁰⁰ Independent Colleges Association President Hope Williams, believes the Education Cabinet provides the best forum for cooperative planning efforts between public and private universities. "With the establishment of the Cabinet, a lot more time has been spent talking about education in this state," Williams says. "It is an excellent forum, and I think we will see the Cabinet doing more and more in the future."

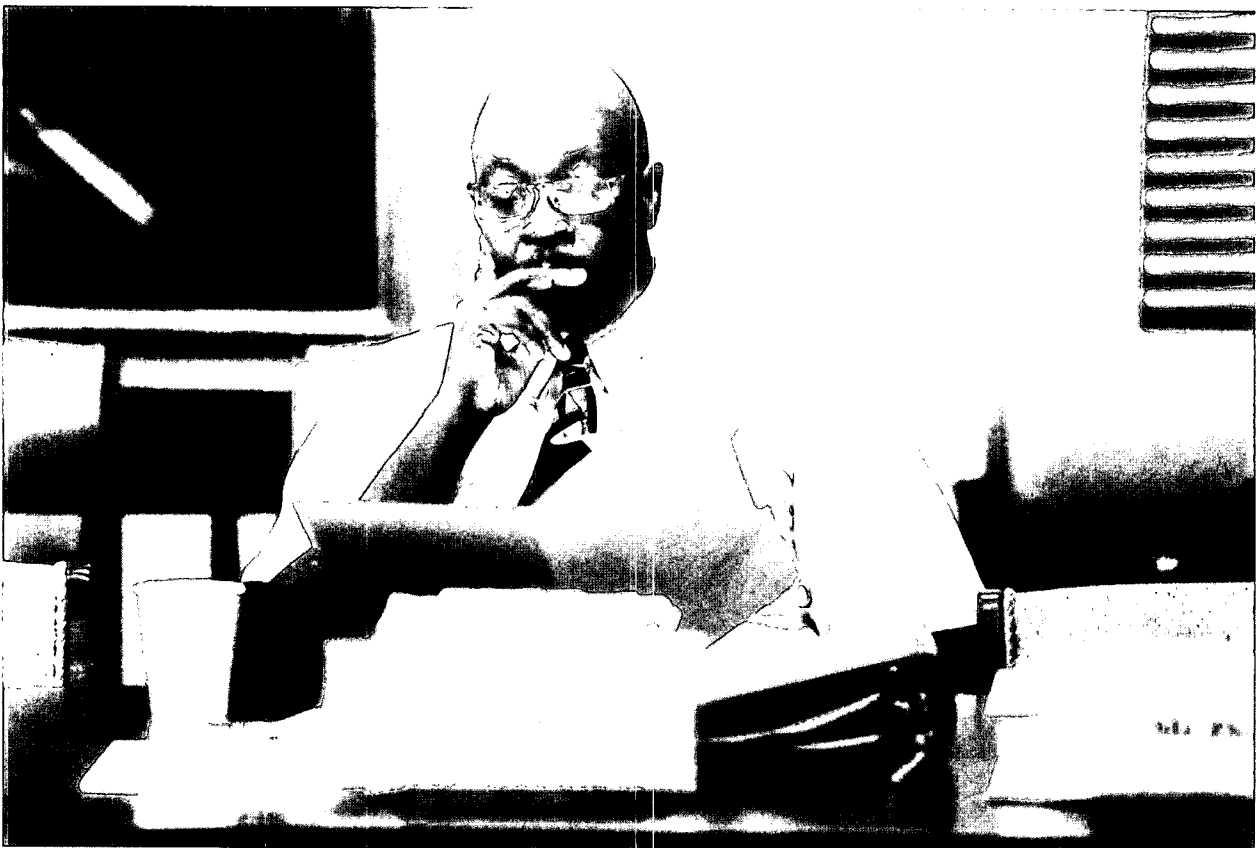
In fact, both of these forums could provide vehicles for talks with leaders of private higher educational institutions on ways to achieve the best use of state re-

sources for higher education in an era of dramatic enrollment growth. More regular meetings could produce plans for how to handle issues of mutual concern. Former Governor Robert W. Scott outlines the challenge this way: "There are now three ponds of water — the K-12 system, the community colleges, and the universities. To get from one to the other now requires some effort. There's not a free flow. What we need to have is one continuous stream."

To recap our findings from Chapter Four and the reasons for this recommendation that the Board of Governors should fulfill its statutory duty and exercise its authority for master planning in higher education:

- It is the law. The General Assembly mandated in N.C.G.S. 116-11(1) that the Board of Governors "plan and develop a coordinated system of higher education in North Carolina" and that, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, the Board of Governors "shall prepare and from time to time revise a long-range plan for a coordinated system of higher education. . . ." The vehicles for accomplishing this coordinated planning already exist in the Education Cabinet and State Education Commission.

UNC Board of Governors member Willie Gilchrist at a meeting in Chapel Hill



Karen Tam



UNC Board of Governors meeting in Chapel Hill

- Centralizing master planning for higher education is a primary reason that 43 states have created higher education boards such as the UNC Board of Governors. The need for the Board of Governors to exercise leadership is all the more important because North Carolina, unlike many other states, has no central board or agency with authority to plan or coordinate higher education policy for *both* two-year community colleges and four-year public colleges and universities. North Carolina has separate governing boards for our public university and community colleges systems, and the State Board of Community Colleges does not have nearly as much power and authority over its constituent institutions as the UNC Board of Governors has over public universities.
- Master planning is needed to plan for how the state's higher education institutions (16 public universities, 59 community colleges, and 36 private colleges and universities) are going to accommodate the future enrollment boom — a projected 31.4 percent increase in public high school graduates by 2017 in North Carolina. Master planning also is important to attain the state goal of increasing our college-going rate in a global economy that increasingly demands more than a high school education and frequent retraining.
- Master planning is needed to ease mobility and transferability of courses and credits between the three systems of higher education.
- The Board of Governors needs to exercise leadership in harnessing all of higher education to address shortages in personnel in certain fields key to the development of the state, such as teaching and nursing. North Carolina will need more than 10,000 new teachers a year for the next 10 years, but all of the state's public and private colleges and universities *combined* currently produce only 3,100 teachers a year. And, the state will need 9,000 more nurses by 2015 to serve the growing elderly population.
- Master planning is needed to help eliminate unnecessary duplication in academic programs of declining interest or effectiveness or where there is an oversupply in public or private institutions.
- Private for-profit colleges and distance education and on-line courses will be a new source of competition in higher education and heighten the need for an increased Board of Governors' role in planning.
- Planning is needed to allocate scarce resources among public universities, public community colleges, and private colleges and universities — all of which receive significant state funding. Public universities receive \$2.086 billion (plus \$16.6 million for capital improvements) from the state's General Fund in Fiscal Year 2005–2006, community colleges receive \$787 million, and private colleges and universities receive \$89.6 million a year through the

N.C. Legislative Tuition Grant Program and the State Contractual Scholarship Program. With this state money comes an obligation to help meet state goals.

The Board of Governors is in a unique position to strengthen all of higher education in North Carolina. It also has the tools it needs in statutory authority and funding. The Governor and legislature, through its Education Oversight Committee, need to send some signal to the Board of Governors to initiate more action in fulfilling its master planning role *as required by N.C. law*. As former Governor Robert Scott says, "Now that the system has matured and proved itself, Board members should exercise their role as planners."

The Board's Leadership Role on Tuition Policy and Setting Tuition Rates Within a Constitutional Restraint

11. The Board should continue its recent activities in taking a leadership role in setting system-wide tuition rates, and the General Assembly should revisit its decision to permit individual campuses to initiate additional tuition rate increases. The Center recommends that the General Assembly repeal N.C. General Statute §116.40-22(c) which permits local campus boards of trustees to propose raising tuition rates and keep the full proceeds on their campus. The Board of Governors should revise the UNC General Administration policy 1000.1.1 to remove the provisions allowing for campus-initiated tuition increases.

Thirty-four central higher education boards, including the UNC Board of Governors, have the authority to set tuition and fees at constituent institutions.¹⁰¹ North Carolina law authorizes the Board of Governors to "set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly."¹⁰² Nonetheless, one area where the Board of Governors has rarely exercised its power over its 34-year history until recently is in tuition policy. For the first 27 years of its existence — from 1972 until 1999 — the UNC Board of Governors *never* recommended a tuition increase to the General Assembly, with the sole exception of its first budget request in 1973, when the Board equalized tuition among institutions with comparable missions. During that time, actions by the General Assembly preceded any action by the Board of Governors when tuition was increased.

University Board members and Presidents historically have been governed by a directive in the state Constitution "that the benefits of The University of North Carolina and other institutions of higher education, as far as practicable, be extended to the people of the State free of expense."¹⁰³ This constitutional mandate is the main reason North Carolina has among the lowest tu-

ition rates in the country, ranking 13th lowest, on average, among the states in tuition and fees at four-year public universities in 2002–2003. In practice, the Board's decision to refrain from proposing system-wide tuition increases for North Carolina residents has by default left this decision to the legislature (See Table 4.3, UNC Tuition Increases, 1970–2003). The legislature itself initiated tuition increases in 1971, 1974, 1975, 1977, 1981, 1983, 1985, 1987, from 1989–1998, and 2003. The Board of Governors initiated tuition increases in 1973, 1999, 2000, 2001, and 2002. The Board recommended against a system-wide increase in 2003 but was overruled by the legislature. As a result of these cumulative actions, undergraduate tuition for North Carolina residents has risen by 71 percent over a five-year period (1999–2004).

In a 1998 op-ed piece written for *The News & Observer* of Raleigh, UNC President Molly Corbett Broad outlined four "unintended — and decidedly negative — consequences" of this practice. She wrote, "Over the past 10 years, tuition has risen by an average of more than 8 percent per year — a rate well above any reasonable measure of affordability."¹⁰⁴ She added that "the practice by the Board of Governors of not considering tuition increases has shifted the locus of deliberations away from the University and has forced the legislature to act without the considered advice of the Board."

In order to address the repercussions of this shift in initiative from the Board of Governors to the General Assembly — including both legislative end-runs by campus leaders and the General Assembly enacting budgets with tuition increases, used mostly to help balance the state budget — President Broad formed a Tuition Policy Task Force composed of Board of Governors members, faculty, staff, and students. The 77-page report produced by the task force and adopted by the full Board in November 1998 described a plan designed to create a more inclusive, purposeful process for setting tuition.

The report envisioned that the Board would approve tuition changes a year in advance (a practice the Board has not adopted), and the 16 campuses would come to the Board with their own proposals and justifications for increases. Students were generally supportive of the plan because individual institutions would have more input in tuition planning and because the plan was expected to help prevent last-minute tuition increases that are often a hardship for students on tight budgets.¹⁰⁵

In 1999, based on the work of this task force, UNC leaders made their first request since 1972 for higher tuition rates for in-state students. The 1999 General Assembly responded to the Board's recommendations by approving the new tuition rates as proposed.¹⁰⁶ However, the state Senate's version of the 1999 budget bill that endorsed the tuition increases recommended by the Board also contained a provision the Board of Governors did not request — one which would have permitted *local boards of trustees* to increase tuition rates for the 2000–2001 and 2001–2002 academic years. Although the

provision would have given campus boards the unilateral authority to increase tuition up to the stated amount, the institution would have been required to “notify” the Board “of the amount of increase, additional receipts anticipated, and the allocation of the funds among various programs in a format prescribed by the Board of Governors.” The state House refused to accept this Senate provision.¹⁰⁷

The Board’s 1998 task force report had included a recommendation favoring campus initiation of tuition increases “in the unusual event that exceptional circumstances” warrant. Even though the task force recommendation had never been incorporated into *The Code*, and was consequently not UNC policy, five of the 16 institutions proposed across-the-board campus-initiated tuition increases ranging from \$120 to \$300 for the academic year 2000–01 and by similar amounts for 2001–02.

In February 2000, the Board recommended that in-state tuition rates for undergraduate students at all 16 campuses be increased by 2.1 percent and that tuition rates for in-state graduate and first-professional students rise by 5.6 percent at UNC-Chapel Hill and N.C. State and by 4.1 percent at all other campuses. The 2000 General Assembly enacted these increases, which took effect in the fall of 2000.¹⁰⁸ And, at its meeting on November 10, 2000, the Board agreed to send a budget request to the 2001 General Assembly which included a 4 percent across-the-board tuition increase for all campuses, which would take effect in the fall of 2001. In addition to the five campuses which had already done so, six other campuses chose to exercise their authority to initiate tuition increases for the 2001–2002 academic year. In March 2001, the Board of Governors acted on campus-initiated tuition proposals for 2001–2002, approving tuition increases for all students attending the six schools.¹⁰⁹ These funds, which were in addition to general tuition increases adopted by the Board of Governors in November 2000, are to be kept and used by the campuses to address high-priority needs, as defined by the campus. Furthermore, each campus was required to set aside a portion of its tuition revenues for need-based financial aid and to submit a detailed spending plan for review and approval by the President.

In September 2001, the General Assembly enacted a special provision in the budget which allowed campus boards of trustees to recommend tuition and fee increases to the system Board of Governors “without regard to whether an emergency situation exists.”¹¹⁰ In 2002, the Board of Governors approved a “package” of tuition increases, which included the campus-initiated

increases for institutions not previously receiving one, system-wide increases, and additional campus-initiated increases at UNC-Chapel Hill and N.C. State, but at reduced amounts from what was submitted. Between February 2000 and March 2002, the Board of Governors approved campus-initiated tuition increases submitted by all 16 campuses. In February 2003, the Board then incorporated a procedure into *The UNC Policy Manual* for proposing these changes. The new policy reads, “Campuses may experience circumstances that suggest that an across-the-board change in undergraduate tuition may be needed.”¹¹¹ However, in 2003, the Board, publicly opposed additional system-wide tuition increases, but the 2003 legislature enacted a 5 percent tuition increase over the Board’s objection. In March 2004, over the Governor’s objection, the Board of Governors approved another package of campus-initiated tuition increases with amounts ranging from \$225 to \$450 per student per semester. The 2004 legislature enacted a budget that did not include a system-wide tuition increase, but did allow the campus-initiated tuition increases approved by the Board of Governors, with constituent institutions keeping the proceeds on their campuses.

Tuition policy is a balancing act between competing state goals. On the one hand, tight state budgets lead



*Erskine Bowles took office as
UNC President in 2006*

university policymakers to turn to tuition increases as a way to generate more revenue. Also, because UNC tuition rates are among the lowest in the country, students whose families have the ability to pay more of the full costs of their education are being subsidized by the state's population as a whole, which is poorer. On the other hand, North Carolina traditionally has not had a high college-going rate, and in an economy where more higher education is needed, low tuition might be the best policy. But, the factor which tilts the balance most toward a low tuition policy is the state's unique Constitutional requirement that a university education be "as far as practicable . . . free of expense."

Tuition policy also is a balancing act at different levels of higher education governance. At the President's and Board of Governors' level, policymakers have to balance the mandate in the state Constitution and their laudable desire to raise college-going rates with the system's need for revenue and the state's competitiveness with tuition levels at other states' public universities. At the campus level, chancellors and local boards of trustees usually want to have some source of revenue they can control, such as tuition. They closely follow tuition rates at competing higher education institutions, public and private, and they always want flexibility within a large state system. There is no answer that is right all of the time for all public universities in all states.

The Center believes that UNC Board of Governors is in the best overall position to balance the legitimate needs of the campuses while meeting the state constitutional mandate that "the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense." The Center commends the Board for developing and implementing its new, comprehensive policy for setting tuition rates at the 16 campuses. However, the Center believes the frequent and substantial tuition increases in 1999, 2000, 2001, 2002, and 2003 — five increases amounting to a 71 percent increase over a five-year period (1999–2003) — have invited a lawsuit on whether these increases violate the state constitutional guarantee of a university education that is nearly "free of expense." While the Center believes the Board is going in the right direction when it exercises its full statutory authority over tuition decisions, the Center is concerned that the Board's newly found activism in this area could be undermined by the General Assembly's decision to permit individual campuses to implement their own additional tuition increases. Allowing such a determination to be made by local boards raises the specter of another harm the 1971 University reorganization was intended to prevent — the further politicization of higher education funding. And, because it is easier for some campuses to raise tuition than it is for others, locally-determined tuition increases have the potential to widen the gap between the haves and the have-nots. The Center recommends repeal of the legislation which permits local campus boards of

trustees to propose raising tuition rates and keep the full proceeds on their campus. The Center also recommends that the Board of Governors revise its policy manual to remove the provisions allowing for campus-initiated tuition increases.

Concluding Observations:

The structure of North Carolina's university governance system reflects a delicate balance:

- among the Governor, the legislature, the UNC System President, and the UNC Board of Governors;
- between the UNC System President and Board of Governors and the chancellors and local campus boards of trustees;
- between the mandate of the state Constitution for university education "as far as practicable . . . free of expense" and the university's need for revenue; and
- among multiple missions of teaching, research, and public service.

The balance achieved by any university system depends heavily upon relations between the central governing Board and the General Assembly. UNC Board of Governors members can protect their ability to make decisions free of legislative interference by making sure that the Board does not abdicate its responsibility to deal with difficult issues such as tuition increases, accountability for management decisions made by individual campuses, or the role of the system's historically black institutions. Similarly, the Board must ensure that it does not fail to act on key issues before the General Assembly steps in.

University governance does matter. But governance issues should not be viewed in a vacuum. The UNC Board of Governors and President should take the lead in self-evaluation and review of higher education policy in order to prevent having changes imposed by a political process. The Board of Governors is in a unique position to strengthen all of higher education in North Carolina. By and large, it has the tools it needs in statutory authority and funding to guide and govern higher education in North Carolina.

UNC's historic dual commitment to educational access and excellence, as reflected in its statutory missions of teaching, research, and public service, can be a touchstone for the Board in taking on these challenges. As former UNC Board of Governors Chairman Sam Neill says, "Very few states have had the courage to do what we do in this state. The risk is that people won't look at the long-term picture. We are a 200-year institution. We're here for the duration."

Footnotes

¹ Marian L. Gade, *Four Multicampus Systems: Some Policies and Practices That Work*, Association of Governing Boards of Universities and Colleges, Washington, DC: 1993, p. 6.

² Three year average (2002–2004) in Carmen DeNavas-Walt, Bernadette D. Proctor and Cheryl Hill Lee, U.S. Census Bureau, *Current Population Reports: Consumer Income, P60-229, Income, Poverty, and Health Insurance Coverage in the United States: 2004*, U.S. Government Printing Office, Washington, DC, August, 2005, p. 25.

³ James C. Palmer, *Grapevine*, Illinois State University, Bloomington, Illinois, 2005. Available online at <http://coe.ilstu.edu/grapevine>. *Grapevine* reports annually on total state effort for higher education, including tax appropriations for universities, colleges, community colleges, and state higher education agencies. Annual *Grapevine* reports have been published since fiscal year 1961. Each of these reports includes a national overview of state tax appropriations to higher education, as well as detailed tables for each of the 50 states. Note: Figures include state tax funds appropriated for colleges and universities, for student aid, and for governing and coordinating boards. They do not include funds for capital outlays and money from sources other than state taxes, such as student fees or appropriations from local governments.

⁴ Jason Hill and Frank Johnson, “Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2002–03 (E.D. TAB),” National Center for Education Statistics, Washington, DC, October 2005, Table 5, p. 10. Elise St. John, “Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2000–01,” *Education Statistics Quarterly*, National Center for Education Statistics, Volume 5, Issue 2, June 2003, available online at http://nces.ed.gov/programs/quarterly/5_2/q3_7.asp, reported that in 2000–01, the state ranked 35th in per capita spending on pre-kindergarten through twelfth grade education. In a separate analysis, using a portion of the same base data from the National Center for Education Statistics as St. John, *Education Week* magazine factored in a “Geographic Cost of Education Index” and estimated the North Carolina rank as 32nd in the nation. See data tables accompanying Ronald A. Skinner and Lisa N. Staresina, “Quality Counts 2004 — Count Me In: State of the States,” *Education Week*, Vol. 23, Number 17, p. 118, available online at <http://www.edweek.com/sreports/qc04/>.

⁵ Faculty salary statistics are for 2003–04 from the U.S. Department of Education (www.ed.gov) as reported in *The Chronicle of Higher Education Almanac Issue 2005–2006*, August 26, 2005, Washington, DC: 2005, pp. 37–100. Figures cover full-time members of the instructional staff on 9- and 10-month contracts only.

Board of Governors members Cary Owen (left) of Asheville and Patsy Perry of Durham at a meeting in Chapel Hill



Karen Tam

Figures do not include salaries of medical school faculty members. The average for all faculty members includes the categories of instructors, lecturers, and faculty members without ranks.

⁶ Bureau of Economic Analysis News, "State Personal Income: Second Quarter 2005," U.S. Department of Commerce, Washington DC, September 28, 2005, p. 9. Figures cited are 2004 revised estimates derived from data tables underlying news release. The revised per capita personal income estimates for 2003 placed North Carolina at \$27,852 or 38th in the nation, and the revised 2002 figures placed the state at \$27,505 or 35th in the nation.

⁷ Average tuition and fees figures are the most recent figures available as a state-by-state comparison from the U.S. Department of Education, and are for the 2002–03 academic year. National Center for Education Statistics, "Digest of Education Statistics 2004: Table 316 — Average undergraduate tuition and fees and room and board rates paid by full-time-equivalent students in degree-granting institutions, by control of institution and by state." Available online at <http://nces.ed.gov>. These data originate with the U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), "Fall Enrollment" and "Institutional Characteristics" surveys.

⁸ Clark Kerr and Marian Gade, *The Guardians: Boards of Trustees of American Colleges and Universities*, Association of Governing Boards of Universities and Colleges, Washington, DC: 1989, p. 140.

⁹ Kentucky Revised Statutes §164.011(2).

¹⁰ *Walter R. Davis et al. v. State of North Carolina and the Board of Governors of the University of North Carolina, Case No. 5:01-CV-372-BO(3)*. Other plaintiffs in the lawsuit included Barbara Howe, the Libertarian candidate for governor in 2000, and Vernon Robinson, a black Republican alderman from Winston-Salem, the unsuccessful Republican nominee for N.C. Superintendent of Public Instruction in 1996 and candidate for the legislature in 2002 and for Congress in 2004. A similar suit also was filed in state court in September 2001 which named Governor Mike Easley, Senate President Pro Tempore Marc Basnight, House Speaker Jim Black, and Board of Governors Chair Ben Ruffin as additional defendants. The plaintiffs in both suits were represented by lawyers Eugene Boyce and his son Daniel, an unsuccessful GOP candidate for attorney general in 2000.

¹¹ Chapter 503 (HB 1144) of the 2001 N.C. Session Laws, codified as Chapter 116-7(a) of the N.C. General Statutes.

¹² North Carolina QuickFacts[™] from the U.S. Census Bureau, U.S. Bureau of the Census, May 9, 2001, at quickfacts.census.gov/qfd/states/37000.html.

¹³ Women's Forum of North Carolina, *Gender Balance on Boards and Commissions: Part A: North Carolina State Government Boards*, Raleigh, NC, January 1989, p. 4.

¹⁴ Chapter 457 (Senate Bill 333) of the 1999 N.C. Session Laws.

¹⁵ Voters elected 61 Republicans and 59 Democrats to the N.C. House of Representatives in 2002, and 28 Democrats and 22 Republicans to the N.C. Senate. However, in subsequent months, Rep. Michael Decker switched from the Republican Party, temporarily creating a 60–60 tie in the House and resulting in a coalition that elected Co-Speakers — one Democrat and one Republican — in the 2003 House. Decker later switched back to the Republican Party. Also, Senator Tony Moore was elected as a Democrat but switched to the Republican Party in late 2003. Thus, in 2004, there were 23 Republicans in the Senate and 61 in the House for a total of 84.

¹⁶ Carolyn Waller, Ran Coble, Joanne Scharer, and Susan Giamportone, *Governance and Coordination of Public Higher Education in All 50 States*, N.C. Center for Public Policy Research, Raleigh, NC: 2000, pp. 110–113.

¹⁷ North Carolina Office of State Budget and Management, *2000 Certified County Population Estimates*, Raleigh, NC, at demog.state.nc.us/demog/prov00cp.html.

¹⁸ UNC General Administration pamphlet, *The University of North Carolina Board of Governors, 1999–2000*, Chapel Hill, NC: August 1999.

¹⁹ Tennessee Code §49-7-204 (a)(2)(B)

²⁰ New Jersey Code §18A:3B-13(a).

²¹ Connecticut General Statutes §10a-2.

²² Washington Revised Code §28B.80.390.

²³ California Code §66901(e).

²⁴ South Carolina Code §59-103-10.

²⁵ Rhode Island General Laws §16-59-5(13).

²⁶ Kentucky Revised Statutes §164.011(2).

²⁷ Waller, *et al.*, note 16 above, Table 30, pp. 110–112.

²⁸ These measures were House Bill 169, sponsored by Representative Alma Adams (D-Guilford) and Senate Bill 188, introduced by Senator Ellie Kinnaird (D-Orange). House Bill 169 passed the House but was not debated by the Senate Rules Committee in 2002.

²⁹ Waller *et al.*, note 16 above, Appendix A.

³⁰ As quoted in *Ibid.*, pp. 71–72 and 154.

³¹ *Ibid.*, p. 32. The fight among flagships is accentuated by the fact that Michigan is the only state with both a large population and a large number of institutions that has neither a consolidated higher education governing board (like North Carolina's) nor a coordinating board. Michigan is one of only two states with just a planning agency which has no power to govern institutions and no coordination responsibilities.

³² Thad Beyle, "The Changing Political Status of 'Carolina,' or UNC-Chapel Hill," *North Carolina DataNet*, UNC-Chapel Hill, April 1999, pp. 7–8. Carolyn A. Waller, *Article II: A Guide to the 1999–2000 N.C. Legislature*, N.C. Center for Public Policy Research: Raleigh, NC, March 1999; Ann L. Hale, *Article II: A Guide to the 2001–2002 North Carolina Legislature*, N.C. Center for Public Policy Research: Raleigh, NC, March 2001; and Sam Watts, *Article II: A Guide to the 2003–2004 North Carolina Legislature*, N.C. Center for Public Policy Research: Raleigh, NC, April 2003.

³³ Official records of state budget data for this report were provided to the N.C. Center for Public Policy Research by the N.C. Office of State Budget and Management (OSBM). The Center calculated the nominal annual percentage change figures.

³⁴ Enrollment figures for the campuses are as reported by the U.S. Department of Education, Office of Civil Rights (Compliance Report of Institutions of Higher Education). Salary information statistics are 1999–00 statistics from the U.S. Department of Education (www.ed.gov) as reported in *The Chronicle of Higher Education Alamanc Issue 2003–2004*, August 29, 2003, Washington, DC: 2003, pp. 32–87. Figures cover full-time members of the instructional staff on 9- and 10-month contracts only. Those faculty members account for about 85 percent of all full-time college professors. Figures do not include medical school faculty members. The average for all faculty members includes the categories of instructors, lecturers, and faculty members without ranks.

³⁵ *U.S. News and World Report*, "America's Best Colleges 2003,"

U.S. News and World Report, August 2003, available online at <http://www.usnews.com>.

³⁶ Jane Stancill, "UNC-CH is rated No. 1 in value," *The News & Observer*, Raleigh, NC, January 10, 2006, p. 1B.

³⁷ *The Chronicle of Higher Education Almanac Issue 2005–2006*, note 5 above.

³⁸ Palmer, note 3 above.

³⁹ Bureau of Economic Analysis News, note 6 above.

⁴⁰ See note 2 above.

⁴¹ This includes the University of California — Merced, which did not formally open until 2005, as an extensive research institution. The University of California at San Francisco is an intensive research institution, as is California State University affiliate San Diego State University.

⁴² Enrollment statistics are Fall 2000 statistics from the U.S. Department of Education (www.ed.gov) as reported in *The Chronicle of Higher Education Almanac Issue 2003–2004*, August 29, 2003, Washington, DC: 2003, pp. 37–38, 69–70.

⁴³ Also see Waller *et al.*, note 16 above, pp. 64–65 and 69–70.

⁴⁴ *An Analysis of Funding Equity in the University of North Carolina: Phase I Report*, as presented at April 12, 1996 Board of Governors meeting. UNC Board of Governors, *Minutes of the April 12, 1996 Board of Governors Meeting*, p. 3.

⁴⁵ UNC Board of Governors, *Authorization of Tuition and Amendment of the 1999–2001 Budget Request, Revised March 18, 1999*, Approved by Board of Governors at March 19, 1999 meeting in Raleigh, NC.

⁴⁶ Beyle, Waller, Hale, and Watts, note 32 above.

⁴⁷ Sara Hebel, "Critical Report on CUNY Ignites Debate on Mission and Direction of the System," *The Chronicle of Higher Education*, Washington, DC, June 18, 1999, p. A38.

⁴⁸ According to data provided by UNC Office of the President, in March 2004, the University system employed 16,413 permanent employees exempt from the State Personnel Act, or 44 percent of its work force.

⁴⁹ "The Code of the Board of Governors, The University of North Carolina, Appendix 1, Section XIII, p. 43.

⁵⁰ William Snider, *Light on the Hill: A History of the University of North Carolina at Chapel Hill*, University of North Carolina Press, Chapel Hill, NC, 1992, pp. 220 and 264. Also see note 69 in Chapter Five.

⁵¹ NCAA Online Database, *Major Infractions Database*, October 11, 2004, available online http://www2.ncaa.org/legislation_and_governance/compliance/major_infractions.html.

⁵² NCAA Report, "Institutions with Major Infractions," October 11, 2004, pp. 1–7, available online at https://goomer.ncaa.org/dev60cgi/rwcgi60?p_mostinf.

⁵³ Peter Golenbock, *Personal Fouls: the broken promises and shattered dreams of big money college basketball at Jim Valvano's North Carolina State*, Carroll & Graf Publishers, New York, New York, 1989.

⁵⁴ UNC General Administration, Division of Legal Affairs, *The Administrative Manual of the University of North Carolina*, "Policy on Intercollegiate Athletics," adopted October 11, 1985, Chapel Hill, NC, pp. XI–A–1 through XI–A–4.

⁵⁵ *Ibid.*, p. XI–A–4.

⁵⁶ *Ibid.*

⁵⁷ UNC Board of Governors, "Approval of Head Coaches' and

Athletic Directors' Contracts," adopted May 11, 1990, Chapel Hill, NC, p. II–C–1.

⁵⁸ Board of Governors Guidance on Employment Contracts with Head Athletic Coaches and Related Issues, adopted February 8, 1991, Chapel Hill, NC, pp. XI–C–3 through XI–C–5.

⁵⁹ The Knight Foundation Commission on Intercollegiate Athletics, *Keeping Faith With the Student-Athlete: A New Model for Intercollegiate Athletics*, Charlotte, NC, March 1991, pp. 18 and 26, published in "The Reports of the Knight Commission on Intercollegiate Athletics" available at Web site www.knightfdn.org.

⁶⁰ *Ibid.*, p. vii.

⁶¹ The Knight Foundation Commission on Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Miami, Florida, June 2001, available at Web site www.knightfdn.org.

⁶² *Ibid.*, p. 4.

⁶³ *Ibid.*, as quoted in Knight Foundation, "News Release: Knight Commission Proposes Penalties for Colleges Whose Athletes Fail Academically; Pursues Other Major Reforms of College Sports," July 16, 2001, p. 2.

⁶⁴ *Ibid.*

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⁶⁶ Chip Alexander, "Gator grabs Wolfpack," *The News & Observer*, Raleigh, NC, November 27, 2002, p. 1C.

⁶⁷ James J. Duderstadt, *Intercollegiate Athletics and the American University: A University President's Perspective*, The University of Michigan Press, Ann Arbor, Michigan, 2003, pp. 257–258.

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⁷⁷ Welch Suggs, "Knight Commission's Game Plan Still Open to Ideas," *The Chronicle of Higher Education*, Washington, D.C., December 8, 2000, p. A43.

⁷⁸ Jane Stancill, "Faculty wants athletics reined in," *The News & Observer*, Raleigh, NC, December 8, 2001, p. 1B.

⁷⁹ Average UNC Chancellor salary is a calculation performed by the Center based on data provided by the UNC Office of the President for 2004–2005 Chancellor salaries.

⁸⁰ Jean P. Fisher and Jane Stancill, "UNC taps Roper as top doc," *The News & Observer*, Raleigh, NC, January 24, 2004, p. 1A.

⁸¹ See UNC General Administration, *The Administrative Manual of The University of North Carolina*, Chapel Hill, NC, Chapter VI, Financial Matters, Endowment and Trust Funds.

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⁸³ N.C. Department of State Auditor, *Special Review, North Carolina School of the Arts/North Carolina School of Arts Foundation, Inc.* (Audit Number: IV-2004-0274), Raleigh, N.C., October 5, 2004.

⁸⁴ *Ibid.*, p. 84.

⁸⁵ Victoria Cherrie and Mary Giunca, "Audit won't slow Unity Place development, officials say," *Winston-Salem Journal*, Winston-Salem, NC, October 6, 2004, p. 8.

⁸⁶ Waller *et al.*, note 16 above, pp. 133–134.

⁸⁷ N.C. General Statute §116-11(1).

⁸⁸ Western Interstate Commission for Higher Education, The ACT (formerly the American College Testing Program), and The College Board, "Knocking at the College Door: Projections of High School Graduates by State, Income, and Race/Ethnicity — N.C. Summary," Western Interstate Commission for Higher Education, Boulder, Colorado, December 2003, p. 1.

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⁹² N.C. Institute of Medicine, "Task Force on the North Carolina

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⁹³ John Sanders, "Authority of the Board of Governors of the University of North Carolina to Coordinate Educational Institutions Not Within the University of North Carolina," unpublished paper, Chapel Hill, NC, February 22, 1999, p. 2.

⁹⁴ "Enrollment Growth at For-Profit Colleges," *The Chronicle of Higher Education*, Washington, D.C., December 19, 2003, p. A12.

⁹⁵ Amanda Jones, "Phoenix University scouts offices to open Triangle branch," *Triangle Business Journal*, Raleigh, N.C., December 10, 2004.

⁹⁶ Chapter 744 (HB 780) of 1971 N.C. Session Laws.

⁹⁷ North Carolina Office of State Budget and Management, "2005–2007 Certified Budget (BD-307)," Raleigh, NC, October 19, 2005.

⁹⁸ Chapter 393 of the 1993 Session Laws, now codified as Chapter 116C of the N.C. General Statutes.

⁹⁹ Chapter 123 (SB 735) of the 2001 N.C. Session Laws.

¹⁰⁰ *Ibid.*

¹⁰¹ Waller *et al.*, note 16 above, pp. 116 and 121.

¹⁰² N.C. General Statute §116-11.

¹⁰³ North Carolina Constitution, Article IX, Section 9.

¹⁰⁴ Molly Corbett Broad, "A Clearer Path for UNC's Tuition Policy," *The News & Observer*, Raleigh, NC, Nov. 4, 1998, p. A21.

¹⁰⁵ Jane Stancill, "UNC panel proposes new tuition-setting policy," *The News & Observer*, Raleigh, NC, October 27, 1998, p. A3.

¹⁰⁶ UNC Board of Governors Report, Chapel Hill, NC, July 2000, Website www.northcarolina.edu/bog/reports/2001/BR2001_03.html.

¹⁰⁷ Chapter 237 of the 1999 N.C. Session Laws, Section 10.20.

¹⁰⁸ UNC Board of Governors Report, note 106 above. For 2001–02 and 2002–03 students at UNC Asheville would pay an additional \$300; students at Appalachian State University, NC A&T State University, and UNC Greensboro would pay an additional \$150; and students at UNC Pembroke would pay an additional \$80. At N.C. Central University, tuition for undergraduates would rise by \$200 in 2001–02, while rates for graduate students will rise by \$288 and rates for first-professional students will increase by \$394. Additional program-specific increases in graduate and professional student (business, accounting, dentistry, law, medicine, and pharmacy) tuition were approved for UNC-Chapel Hill.

¹⁰⁹ *Ibid.*

¹¹⁰ Chapter 424 (SB 1005) of the 2001 N.C. Session Laws, Section 31.11.

¹¹¹ Administrative Manual of the University of North Carolina, note 81 above, Policy 1000.1.1, amended February 14, 2003.

APPENDIX A

**N.C. Constitutional
Provisions Applicable to
Higher Education and
Selected Key State
Statutes in
N.C.G.S. Chapter 116 on
Higher Education**

NORTH CAROLINA STATE CONSTITUTION

ARTICLE IX

EDUCATION

Section 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Section 9. Benefits of public institutions of higher education.

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Selected Statutes from Chapter 116,
North Carolina General Statutes,
on Higher Education.

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Article 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions. (1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

- (1) "Board" means the Board of Governors of the University of North Carolina.
- (2) "Board of trustees" means the board of trustees of a constituent institution.
- (3) "Chancellor" means the chancellor of a constituent institution.
- (4) "Constituent institution" or "institution" means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University.
- (5) "President" means the President of the University of North Carolina.

- (6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171; 1995 (Reg. Sess., 1996), c. 603, s. 1.)

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers.

The Board of Trustees of the University of North Carolina is hereby redesignated, effective July 1, 1972, as the "Board of Governors of the University of North Carolina." The Board of Governors of the University of North Carolina shall be known and distinguished by the name of "the University of North Carolina" and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply to same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the University, or according to the terms of donation.

The corporation shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the deviser does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue. (1971, c. 1244, s. 1.)

§ 116-4. Constituent institutions of the University of North Carolina.

On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2.)

§ 116-5. Initial membership of Board of Governors.

(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

- (1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of

each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

- (2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", and Winston-Salem State University.
- (3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.
- (4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June 30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 3.)

§ 116-6. Election and terms of members of Board of Governors.

(a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. Sixteen members shall be elected at the regular legislative session in 1993 and every two years thereafter. The Senate and the House of Representatives shall each elect one-half of the persons necessary to fill the vacancies on the Board of Governors.

(b) Repealed by Session Laws 2001-503, s. 1.

(c) In electing members to the Board of Governors, the Senate and the House of Representatives shall select from a slate of candidates made in each house. The slate shall be prepared as provided by resolution of each house. If a sufficient number of nominees who are legally qualified are submitted, then the slate of candidates shall list at least twice the number of candidates for the total seats open. All qualified candidates shall compete against all other qualified candidates. In 1993 and biennially thereafter, each house shall hold their elections within 30 legislative days after appointments to their education committees are complete.

(d) All terms shall commence on July 1 of odd-numbered years and all members shall serve for four-year overlapping terms.

(e) No person may be elected to:

(1) More than three full four-year terms in succession;

(2) A four-year term if preceded immediately by election to two full eight-year terms in succession; or

(3) A four-year term if preceded immediately by election to an eight-year term and a four-year term in succession.

Resignation from a term of office does not constitute a break in service for the purpose of this subsection. Service prior to the beginning of those terms in 1989 shall be included in the limitations.

(f) Any person who has served at least one full term as chairman of the Board of Governors shall be a member emeritus of the Board of Governors for one four-year term beginning at the expiration of that member's regular elected term. Any person already serving as an emeritus member may serve an additional four-year term beginning July 1, 1991. Members emeriti have all the rights and privileges of membership except they do not have a vote.

(g) Effective July 1, 1991, and thereafter, any person who has served at least one term as a member of the Board of Governors after having served as Governor of North Carolina shall be a member emeritus of the Board of Governors, with all the rights and privileges of membership as in G.S. 116-6(f). (1971, c. 1244, s. 1; 1987, c. 228; 1989, c. 274; 1991, c. 220, ss. 2, 3; c. 436, s. 1; 2001-503, s. 1.)

§ 116-6.1. Student member of the Board of Governors.

(a) Commencing July 1, 1991, and during his continuance as a student in good standing at a constituent institution of The University of North Carolina, the person serving as president of the University of North Carolina Association of Student Governments (UNCASG) or his designee shall serve ex officio as a member of the Board of Governors. This student member shall be in addition to the 32 members elected to the Board of Governors.

(b) The student member shall have all the rights and privileges of membership, except that he shall not have a vote. (1991, c. 220, s. 1.)

§ 116-7. General provisions concerning members of the Board of Governors.

(a) All members of the Board of Governors shall be selected for their interest in, and their ability to contribute to the fulfillment of, the purposes of the Board of Governors, and all members shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further

the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

(b) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the Board of Governors.

(c) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the Board to inform the Speaker of the House of Representatives and the President of the Senate of the vacancy. The chamber that originally elected the vacating member shall elect a person to fill the vacancy. The vacancy shall remain unfilled until the appropriate chamber of the General Assembly elects a person to fill the vacancy.

The vacancy shall be filled not later than the adjournment sine die of the next regular session of the General Assembly. The election shall be for the remainder of the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for four successive regular meetings of the Board, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 1977, c. 875; 1982, Ex. Sess., c. 1, s. 1; 1991, c. 436, s. 2; 2001-503, s. 2.)

§ 116-8. Chairman, vice-chairman and secretary.

The Board of Governors shall elect from its membership for two-year terms, and until their successors have been elected and qualified, a chairman, a vice-chairman and a secretary. No person may serve as chairman more than four years in succession. (1971, c. 1244, s. 1.)

§ 116-9. Meetings of Board of Governors.

The Board of Governors shall meet at stated times established by the Board, but not less frequently than six times a year. The Board of Governors shall also meet with the State Board of Education and the State Board of Community Colleges at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). A quorum for the conduct of business shall consist of a majority of the members. (1971, c. 1244, s. 1; 1987 (Reg. Sess., 1988), c. 1102, s. 3.)

§ 116-10. Committees.

The Board of Governors shall have power to appoint from its own number committees which shall be clothed with such powers as the Board of Governors may confer. No committee may reverse a decision concerning policy taken by the Board of Governors at a regular meeting. (1971, c. 1244, s. 1.)

§ 116-11. Powers and duties generally.

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

- (1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.
- (2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.
- (3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.
- (4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation.

The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

- (5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.
- (5a) [Expired.]
- (5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.
- (6) The Board shall approve the establishment of any new publicly supported institution above the community college level.
- (7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.
- (8) The Board shall set enrollment levels of the constituent institutions.
- (8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.
- (9) a. The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.

- b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.
 - c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.
 - d. Repealed by Session Laws 1987, c. 795, s. 27.
- (10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Community Colleges System Office and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.
- (10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:
- a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;
 - b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and

continued enrollment in a subsequent year in the same or another institution of higher education in the State;

- c. The progress of students from one institution of higher education to another; and
- d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

- (10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.
- (11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.
- (12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission and the boards of trustees of the institutions.
- (12a) Notwithstanding any other law, the Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees in accordance with the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual written report that uses data to assess and evaluate the effectiveness of the programs for professional development offered by the Center for School Leadership Development. The report shall clearly document how the programs address the State needs identified by the State Board of Education and whether the programs are utilizing the strategies recommended by the State Board. The Board of Governors also shall submit this report to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives prior to September 15th of each year.

- (12b) The Board of Governors of The University of North Carolina shall create a Board of Directors for the UNC Center for School Leadership Development. The Board of Governors shall determine the powers and duties of the Board of Directors.
- (13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.
- (14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3; 1997-221, s. 12(b); 1997-240, s. 3; 1998-212, s. 11.12(a); 1999-84, s. 19; 2001-424, s. 31.4(b).)

§ 116-11.2. Duties regarding programs in education administration.

The Board of Governors shall direct the constituent institutions with programs in education administration to revise the programs to reflect any increased standards required for programs approved by the State Board of Education, including new requirements for school-based leadership in the public schools. The Board of Governors shall monitor the programs and devise an assessment plan for all programs leading to certification in education administration. (1991, c. 689, s. 200(e).)

§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately

prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4.)

§ 116-13. Powers of Board regarding property and services subject to general law.

(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

- (1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or
- (2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of Administration, the State Purchasing Officer, or the Board of Awards shall not be required, regardless of dollar value.

(b) Special responsibility constituent institutions shall have the authority to purchase equipment, materials, supplies, and services from sources other than those certified by the Secretary of Administration on term contracts, subject to the following conditions:

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;
- (2) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts;
- (3) The cost of the purchase shall not exceed the benchmark established under G.S. 116-31.10; and
- (4) The special responsibility constituent institution notifies the Department of Administration of purchases consistently being made under this provision so

that State term contracts may be improved. (1971, c. 1244, s. 1; 2003-228, s. 1.)

§ 116-13.1. Capital facilities; reports.

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

- (1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.
- (2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.
- (3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital facilities of the University are properly maintained to preserve the level of excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy.

(b) **Equity in University Improvements.** – The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed. (2000-3, ss. 1.1, 8.)

§ 116-13.2. Report on University Fiscal Liabilities.

The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on:

- (1) Any financing of buildings or other facilities, regardless of the ownership of those buildings or other facilities, located on land owned by The University of North Carolina or the constituent institutions of The University of North Carolina; and
- (2) All fiscal liabilities or contingent liabilities, including payments for debt service or other contractual arrangements, of The University of North Carolina or any constituent institution. (2002-126, s. 9.16.)

§ 116-14. President and staff.

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

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

(b1) The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16010 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16010 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16010, and the capital improvement projects may be established following the procedures set out in G.S. 143-18.1.

(b2) The President, in consultation with the State Auditor and the Director of the Office of State Personnel, shall ascertain that the management staff and internal financial controls are in place and continue in place to successfully administer the additional authority authorized under G.S. 116-14(b1) and G.S. 116-30.3(e). All actions taken by the President pursuant to G.S. 116-14(b1) and G.S. 116-30.3(e) are subject to audit by the State Auditor.

(c) The President, with the approval of the Board, shall appoint an advisory committee composed of representative presidents of the private colleges and universities and may appoint such additional advisory committees as are deemed necessary or desirable. (1971, c. 1244, s. 1; 1999-237, s. 10.14(b); 2000-140, s. 26.)

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

(a1) The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible

through higher education and in consonance with statutory law of this State making unlawful any “unfair or deceptive acts or practices in the conduct of any trade or commerce,” hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a2) Definitions. – As used in this section the following terms are defined as set forth in this subsection:

- (1) “Post-secondary degree”. – A credential conferring on the recipient thereof the title of “Associate”, “Bachelor”, “Master”, or “Doctor”, or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that “post-secondary degree” shall not include any honorary degree or other so-called “unearned” degree.
- (2) “Institution”. – Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.
- (3) “Post-secondary degree activity”. – Any of the following is “post-secondary degree activity”:
 - a. Awarding a post-secondary degree.
 - b. Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.
- (4) “Publicly registered name”. – The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.
- (5) “Board”. – The Board of Governors of The University of North Carolina.

(b) Required License. – No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. – Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution’s names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. – Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Military. – To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure. – To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

- (1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;
- (2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;
- (3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;
- (4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;
- (5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;
- (6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing offered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of study, equivalent

experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;

- (7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;
 - (8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;
 - (9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;
 - (10) That the institution is financially sound and capable of fulfilling its commitments to students and that the institution has provided a bond as provided in subsection (f1) of this section;
 - (11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;
 - (12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;
 - (13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;
 - (14) That the institution has a fair and equitable cancellation and refund policy; and
 - (15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.
- (f1) (1) A guaranty bond is required for each institution that is licensed. The Board may revoke the license of an institution that fails to maintain a bond pursuant to this subsection.
- If the institution has provided a bond pursuant to G.S. 115D-95, the Board may waive the bond requirement under this subsection. The Board may not waive the bond requirement under this subsection if the applicant has provided an alternative to a guaranty bond under G.S. 115D-95(c).
- (2) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the institution will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the institution to

offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of an institution's license, bankruptcy, foreclosure, or the institution ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for an institution shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the institution. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the institution showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(g) **Review of Licensure.** – Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) **Denial and Revocation of Licensure.** – Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license to conduct post-secondary degree activity in this State. Any institution holding a

license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) **Regulatory Authority in the Board.** – The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) **Enforcement Authority in the Attorney General.** – The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) **Severability.** – The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268; 1977, c. 563, ss. 1-4; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983 (Reg. Sess., 1984), c. 1006; 1989 (Reg. Sess., 1990), c. 824, s. 2; 1997-456, s. 27.)

§ 116-16. Tax exemption.

The lands and other property belonging to the University of North Carolina shall be exempt from all kinds of public taxation. (Const., art. 5, s. 5; 1789, c. 306, s. 3; P.R.; R.S., vol. 2, p. 428; Code, s. 2614; Rev., s. 4262; C.S., s. 5783; 1971, c. 1244, s. 2.)

§ 116-21.1. Financial aid for North Carolina students attending private institutions of higher education in North Carolina.

(a) Funds shall be appropriated each fiscal year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for aid to institutions and shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22.

(b) The funds appropriated in compliance with this section shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in the account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in G.S. 116-21.2. (2001-424, s. 31.1(a).)

§ 116-21.2. Legislative tuition grants to aid students attending private institutions of higher education.

(a) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the student as provided by this subsection.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student.

(c) In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on behalf of the students.

(d) In the event there are not sufficient funds to provide each eligible student with a full grant:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and
- (2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund. (2001-424, s. 31.1(a).)

§ 116-21.3. Legislative tuition grant limitations.

(a) For purposes of this section, an "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) No legislative tuition grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

(c) Any member of the armed services, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

(d) A legislative tuition grant authorized under G.S. 116-21.2 shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours. (2001-424, s. 31.1(a).)

§ 116-21.4. Limitations on expenditures.

(a) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 may be used only for secular educational purposes at nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22.

(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student who:

- (1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or
- (2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years.
(2001-424, s. 31.1(a); 2002-126, s. 9.6.)

§ 116-30.1. Special responsibility constituent institutions.

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

institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review by the President, after consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1996, 2nd Ex. Sess., c. 18, s. 7.4(k); 1997-71, s. 1.)

§ 116-30.2. Appropriations to special responsibility constituent institutions and to the North Carolina School of Science and Mathematics.

(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

(b) The North Carolina School of Science and Mathematics is authorized to be designated as a special responsibility constituent institution for the purposes of G.S. 116-30.1, G.S. 116-30.4, G.S. 116-30.5, G.S. 116-30.6, and G.S. 116-31.10. In addition, all General Fund appropriations made by the General Assembly for continuing operations of the North Carolina School of Science and Mathematics shall be made in the form of a single sum to each budget code of the School for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), the North Carolina School of Science and Mathematics may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Director of the School to be calculated to maintain and advance the programs and services of the School, consistent with the directives and policies of the Board of Trustees of the North Carolina School of Science and Mathematics. The preparation, presentation, and review of General Fund budget requests of the North Carolina School of Science and Mathematics shall be conducted in the same manner as are requests of the constituent institutions. The quarterly allotment procedure established under G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of the North Carolina School of Science and Mathematics. All General

Fund monies so appropriated to the North Carolina School of Science and Mathematics shall be recorded, reported, and audited in the same manner as are General Fund appropriations to constituent institutions of The University of North Carolina. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8; 2001-449, s. 1.)

§ 116-30.4. Position management.

The Chancellor of a special responsibility constituent institution, when he finds that to do so would help to maintain and advance the programs and services of the institution, may establish and abolish positions, acting in accordance with:

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

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel. Implementation of personnel actions shall be subject to the availability of funds within the institution's current budget to fund the full annualized costs of these actions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a).)

§ 116-30.5. Impact on education.

The Board of Governors shall require each special responsibility constituent institution to include in its institutional effectiveness plan those assessment measures that are determined by the Board to be measures that will assure some standard measure of student learning and development in general undergraduate education at the special responsibility constituent institutions. The intent of this requirement is to measure the impact of G.S. 116-30.1 through G.S. 116-30.5, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a).)

§ 116-30.6. Reports of results.

The Board of Governors shall report annually by March 31 of each year on its decisions and directives implementing this Part to the Joint Legislative Education Oversight Committee. In particular, the Board shall report on the impact on undergraduate student learning and development as demonstrated by the standard assessment measures established in the institutional effectiveness plans, fiscal savings, management initiatives, increased efficiency and effectiveness, and other outcomes made possible by the flexibility provided by this Part to the special responsibility constituent institutions. These reports shall include documentation of any reallocation of resources, the use of nonreverted appropriations, and any additional costs incurred. (1993 (Reg. Sess., 1994), c. 769, s. 17.6(a).)

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees.

(a) All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:

- (1) Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and
- (2) The president of the student government of the institution, ex officio.

(c) If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.

(d) Effective July 1, 1973, each of the 16 constituent institutions shall have board of trustees composed of 13 persons chosen as follows:

- (1) Eight elected by the Board of Governors,
- (2) Four appointed by the Governor, and
- (3) The president of the student government ex officio.

(e) From and after July 1, 1973, the term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the Governor shall appoint two persons to each such board.

(f) In electing boards of trustees to serve commencing July 1, 1973, the Board of Governors shall designate four persons for four-year terms and four for two-year terms. The Governor, in making appointments of trustees to serve commencing July 1, 1973, shall designate two persons for four-year terms and two for two-year terms.

(g) From and after July 1, 1973, any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee shall be eligible for election or appointment as a trustee. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his term commences as a member of the Board of Governors.

(j) From and after July 1, 1973, whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the Governor, it shall be the duty of the secretary of the board to inform the Governor of the existence of such vacancy, and the Governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1.)

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

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

(b) Each institution with an expenditure benchmark greater than two hundred fifty thousand dollars (\$250,000) shall comply with this subsection for any purchase greater than two hundred fifty thousand dollars (\$250,000) but not greater than five hundred thousand dollars (\$500,000). This institution shall submit to the Division of Purchase and Contract for that Division's approval or other action deemed necessary by the Division a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division. (1997-412, s. 1; 2003-312, s. 1.)

§ 116-31.11. (See editor's notes) Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars (\$2,000,000) or less:

- (1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- (2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).
- (3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

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

(e) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded pursuant to this section. (1997-412, s. 1; 2001-496, s. 8(a).)

§ 116-32. Officers and meetings of the boards of trustees.

At the first meeting after June 30 of each year each board of trustees shall elect from its membership a chairman, a vice-chairman and a secretary. Each board of trustees shall hold not less than three regular meetings a year and may hold such additional meetings as may be deemed desirable. (1971, c. 1244, s. 1.)

§ 116-33. Powers and duties of the boards of trustees.

Each board of trustees shall promote the sound development of the institution within the functions prescribed for it, helping it to serve the State in a way that will complement the activities of the other institutions and aiding it to perform at a high level of excellence in every area of endeavor. Each board shall serve as advisor to the Board of Governors on matters pertaining to the institution and shall also serve as advisor to the chancellor concerning the management and development of the institution. The powers and duties of each board of trustees, not inconsistent with other provisions of this Article, shall be defined and delegated by the Board of Governors. (1971, c. 1244, s. 1.)

§ 116-33.1. Board of trustees to permit recruiter access.

If a board of trustees provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military. (1981, c. 901, s. 3.)

§ 116-34. Duties of chancellor of institution.

(a) The chancellor shall be the administrative and executive head of the institution and shall exercise complete executive authority therein, subject to the direction of the President. He shall be responsible for carrying out policies of the Board of Governors and of the board of trustees. As of June 30 of each year he shall prepare for the Board of Governors and for the board of trustees a detailed report on the operation of the institution for the preceding year.

(b) It shall be the duty of the chancellor to attend all meetings of the board of trustees and to be responsible for keeping the board of trustees fully informed on the operation of the institution and its needs.

(c) It shall be the duty of the chancellor to keep the President, and through him the Board of Governors, fully informed concerning the operations and needs of the institution. Upon request, he shall be available to confer with the President or with the Board of Governors concerning matters that pertain to the institution.

(d) Subject to policies prescribed by the Board of Governors and by the board of trustees, the chancellor shall make recommendations for the appointment of personnel within the institution and for the development of educational programs. (1971, c. 1244, s. 1.)

§ 116-36. Endowment fund.

(a) The board of trustees of each constituent institution shall establish and maintain, pursuant to such terms and conditions, uniformly applicable to all constituent institutions, as the Board of Governors of the University of North Carolina may from time to time prescribe, an endowment fund for the constituent institution.

(b) It is not the intent of this section that the proceeds from any endowment fund shall take the place of State appropriations or any part thereof, but it is the intent of this section that those proceeds shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(c) Pursuant to the foregoing subsections and consistent with the powers and duties prescribed in this section, each board of trustees shall appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of _____" (here shall be inserted the name of the constituent institution).

(d) The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from State appropriations and from tuition and fees collected from students and used for the general operation of the institution.

(e) The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.

(f) In the process of prudent investment of the fund or to realize the statutory intent of the endowment, the board of trustees of the endowment fund may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used. To realize the statutory intent of the endowment fund, the board of trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the constituent institution; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer.

(g) The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they

shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget. Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.

(h) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired by the University of North Carolina for the benefit of the University as a whole, or for the joint benefit of any two or more constituent institutions of the University.

(i) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Press.

(il) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.

(j) Any gift, devise, or bequest of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the respective institution or agency.

(k) Whenever any property of an endowment fund authorized by this section is disposed of or otherwise transferred from the endowment fund, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the board of trustees of the endowment fund. (1971, c. 1244, s. 1; 1977, c. 506; 1979, c. 649, ss. 2, 3; 1983, c. 717, s. 31; 1985 (Reg. Sess., 1986), c. 955, ss. 28, 29.)

§ 116-36.1. Regulation of institutional trust funds.

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

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

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

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

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

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

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

- (1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;
- (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;
- (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
- (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
- (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;
- (8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

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

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g) (7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529; 1983, c. 913, s. 19; 1989 (Reg. Sess., 1990), c. 936, s. 1(c).)

§ 116-36.2. Regulation of special funds of individual institutions.

(a) Notwithstanding any provisions of law other than Article 5A of Chapter 147 of the General Statutes, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for.

(b) As used in this section, "special funds of individual institutions" means:

- (1) Moneys received from or for the operation by an institution of its program of intercollegiate athletics;
- (2) Moneys held by an institution as fiscal agent for individual students, faculty, staff members, and organizations. (1977, 2nd Sess., c. 1136, s. 31; 1983, c. 913, s. 19.)

§ 116-37. University of North Carolina Health Care System.

(a) Creation of System. –

- (1) There is hereby established the University of North Carolina Health Care System, effective November 1, 1998, which shall be governed and administered as an affiliated enterprise of The University of North Carolina in accordance with the provisions of this section, to provide patient care, facilitate the education of physicians and other health care providers, conduct research collaboratively with the health sciences schools of the University of North Carolina at Chapel Hill, and render other services designed to promote the health and well-being of the citizens of North Carolina.
- (2) As of November 1, 1998, all of the rights, privileges, liabilities, and obligations of the board of directors of the University of North Carolina Hospitals at Chapel Hill, not inconsistent with the provisions of this section, shall be transferred to and assumed by the board of directors of the University of North Carolina Health Care System.

- (3) The University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs established or maintained by the School of Medicine of the University of North Carolina at Chapel Hill shall be governed by the board of directors of the University of North Carolina Health Care System.
- (4) With respect to the provisions of subsections (d), (e), (f), (h), (i), (j), and (k) of this section, the board of directors may adopt policies that make the authorities and responsibilities established by one or more of said subsections separately applicable either to the University of North Carolina Hospitals at Chapel Hill or to the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill, or to both.
- (5) To effect an orderly transition, the policies and procedures of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill and of the University of North Carolina Hospitals at Chapel Hill effective as of October 31, 1998, shall remain effective in accordance with their terms until changed by the Board of Directors of the University of North Carolina Health Care System.

(b) Board of Directors. – There is hereby established a board of directors of the University of North Carolina Health Care System, effective November 1, 1998.

- (1) The board of directors initially shall be composed as follows:
 - a. A minimum of six members ex officio of said board shall be the President of The University of North Carolina (or the President's designee); the Chief Executive Officer of the University of North Carolina Health Care System; two administrative officers of the University of North Carolina at Chapel Hill designated by the Chancellor of that institution; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the Dean of the School of Medicine; provided, that if not such a member ex officio by virtue of holding one or more of the offices aforementioned, additional ex officio memberships shall be held by the President of the University of North Carolina Hospitals at Chapel Hill and the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, for a total potential ex officio membership of eight.
 - b. No less than nine and no more than 21 members at large, which number shall be determined by the board of directors, shall be appointed for four-year terms, commencing on November 1 of the year of appointment; provided, that the initial class of at-large members shall include the persons who hold the appointed memberships on the board of directors of the University of North Carolina Hospitals at Chapel Hill incumbent as of October 31, 1998, with their terms of membership on the board of directors of the University of North Carolina Health Care System to expire on the last day of October of the year in which their term as a member of the board of directors of the University of North Carolina Hospitals at Chapel Hill would have expired. Vacant at-large positions shall be filled by the appointment of persons from the business

and professional public at large who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of The University of North Carolina, nor officers or employees of the State. Members shall be appointed by the President of the University, and ratified by the Board of Governors, from among a slate of nominations made by the board of directors of the University of North Carolina Health Care System, said slate to include at least twice as many nominees as there are vacant positions to be filled. No member may be appointed to more than two full four-year terms in succession; provided, that persons holding appointed memberships on November 1, 1998, by virtue of their previous membership on the board of directors of the University of North Carolina Hospitals at Chapel Hill, shall not be eligible, for a period of one year following expiration of their term, to be reappointed to the board of directors of the University of North Carolina Health Care System. Any vacancy in an unexpired term shall be filled by an appointment made by the President, and ratified by the Board of Governors, upon the nomination of the board of directors, for the balance of the term remaining.

- (2) The board of directors, with each ex officio and at-large member having a vote, shall elect a chairman from among the at-large members, for a term of two years; no person shall be eligible to serve as chairman for more than three terms in succession.
- (3) The board of directors of the University of North Carolina Health Care System shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of the chairman. Board members, other than ex officio members, shall receive the same per diem and reimbursement for travel expenses as members of the State boards and commissions generally.
- (4) In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the board of directors is authorized to exercise such authority and responsibility and adopt such policies, rules, and regulations as it deems necessary and appropriate, not inconsistent with the provisions of this section or the policies of the Board of Governors. The board may authorize any component of the University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the board of directors may direct. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the Chancellor of the University of North Carolina at Chapel Hill. The board of directors shall

keep the Board of Governors and the board of trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education, and research for improvement of the health of the citizens of North Carolina.

(c) **Officers.** –

- (1) The executive and administrative head of the University of North Carolina Health Care System shall have the title of “Chief Executive Officer.” The board of directors, in cooperation with the board of trustees and the Chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the Chancellor deem appropriate, shall identify, in cooperation with the Chancellor, two or more persons as candidates for the office, who, pursuant to criteria agreed upon by the boards and the Chancellor, have the qualifications for both the positions of Chief Executive Officer and Vice-Chancellor for Medical Affairs of the University of North Carolina at Chapel Hill. The names of the candidates so identified shall be forwarded by the Chancellor to the President of The University of North Carolina, who if satisfied with the quality of one or more of the candidates, will nominate one as Chief Executive Officer, subject to selection by the Board of Governors. The Chief Executive Officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the board of directors.
- (2) The executive and administrative head of the University of North Carolina Hospitals at Chapel Hill shall have the title of “President of the University of North Carolina Hospitals at Chapel Hill.”
- (3) The board of directors shall elect, on nomination of the Chief Executive Officer, the President of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff employees as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer.

(d) **Personnel.** – Employees of the University of North Carolina Health Care System shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the University of North Carolina Health Care System, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the board of directors; provided, that with respect to such employees as may be members of the faculty of the University of North Carolina at Chapel Hill, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina.

- (1) The board of directors shall fix or approve the schedules of pay, expense allowances, and other compensation and adopt position classification plans for

- employees of the University of North Carolina Health Care System.
- (2) The board of directors may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.
 - (3) The board of directors may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the University of North Carolina Health Care System.
 - (4) The board of directors may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of directors may direct.

The board of directors shall submit all initial classification and pay plans and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(e) **Finances.** – The University of North Carolina Health Care System shall be subject to the provisions of the Executive Budget Act. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts.

(f) **Finances – Patient/Health Care System Benefit.** – The Chief Executive Officer of the University of North Carolina Health Care System, or the Chief Executive Officer's designee, may expend operating budget funds, including State funds, of the University of North Carolina Health Care System for the direct benefit of a patient, when, in the judgment of the Chief

Executive Officer or the Chief Executive Officer's designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Health Care System. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Health Care System for which the health care system may bill and pursue recovery in the same way as allowed by law for recovery of other health care systems' charges for services that are unpaid.

These expenditures shall be limited to no more than seven thousand five hundred dollars (\$7,500) per patient per admission and shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility pending approval of third-party entitlement benefits; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; or (v) to pay health insurance premiums. The Chief Executive Officer or the Chief Executive Officer's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.

To the extent that the University of North Carolina Health Care System advances anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump-sum "back-pay" award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this back pay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Health Care System, if, prior to the disbursement of the back pay, the applicable State program has received notice from the University of North Carolina Health Care System of the advancement.

(g) Reports. – The Chief Executive Officer and the President of The University of North Carolina jointly shall report by September 30 of each year on the operations and financial affairs of the University of North Carolina Health Care System to the Joint Legislative Commission on Governmental Operations. The report shall include the actions taken by the board of directors under the authority granted in subsections (d), (h), (i), and (j) of this section.

(h) Purchases. – Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the board of directors shall establish policies and regulations governing the purchasing requirements of the University of North Carolina Health Care System. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical, educational, research, and community service missions of the University of North Carolina Health Care System. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(i) Property. – The board of directors shall establish rules and regulations for acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift,

lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. This section does not authorize the board of directors to encumber real property. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, the University of North Carolina Health Care System shall promptly file a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.

(j) Property – Construction. – Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of directors shall adopt policies and procedures with respect to the design, construction, and renovation of buildings, utilities, and other property developments of the University of North Carolina Health Care System requiring the expenditure of public money for:

- (1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.
- (2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).
- (3) Using open-end design agreements.
- (4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Facility Services of the Department of Health and Human Services.
- (5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of directors shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(k) Patient Information. – The University of North Carolina Health Care System shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose the patient's social security number, if any. If the patient does not disclose that number, the University of North Carolina Health Care System shall deny benefits, rights, and privileges of the University of North Carolina Health Care System to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. The University of North Carolina Health Care System shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c). (1971, c. 762, s. 1; c. 1244, s. 6; 1981, c. 859, s. 41.5; 1983, c. 717, s. 32; 1985 (Reg. Sess., 1986), c. 955, ss. 30, 31; 1989, c. 141, s. 1; 1991, c. 550, s. 2; c. 689, s. 206.2(d); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1998-212, s. 11.8(a); 1999-252, s. 4(a).)

Part 3A. Management Flexibility for Special Responsibility Constituent Institutions.

§ 116-40.20. Legislative findings.

(a) The General Assembly finds that The University of North Carolina and its constituent institutions is one of the State's most valuable assets. The General Assembly further finds that to provide the best benefit to North Carolina, the constituent institutions of The University of North Carolina need special budgeting flexibility in order to maximize resources, to enhance competitiveness with other peer institutions regionally, nationally, and internationally, and to provide the strongest educational and economic opportunity for the citizens of North Carolina.

(b) To ensure the continued preeminence of The University of North Carolina and its constituent institutions, it is the intent of the General Assembly to strengthen and improve these assets. The General Assembly commits to responsible stewardship and improvement of The University of North Carolina and its constituent institutions as provided by this Part. (2001-424, s. 31.11(a).)

§ 116-40.21. Board of governors may authorize management flexibility.

The Board of Governors of The University of North Carolina may authorize management flexibility for any special responsibility constituent institution as provided by this Part. The procedure for that authorization is the same as that to designate a constituent institution a special responsibility constituent institution under G.S. 116-30.1. (2001-424, s. 31.11(a).)

§ 116-40.22. Management flexibility.

(a) Definition. – For purposes of this section, the term “institution” means a special responsibility constituent institution that is granted management flexibility by the Board of Governors in compliance with this Part.

(b) Appoint and Fix Compensation of Senior Personnel. – Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, the Board of Trustees of an institution shall, on recommendation of the Chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers, and any person having permanent tenure at that institution. No later than January 1, 2002, the Board of Governors shall adopt policies, compensation structures, and pay ranges concerning the appointment and compensation of senior personnel appointed by the Board of Trustees pursuant to this section. Compensation for senior personnel fixed by the Board of Trustees pursuant to this section shall be consistent with the compensation structure, policies, and pay ranges set by the Board of Governors.

(c) Tuition and Fees. – Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. The institution shall retain any tuition and fees set pursuant to this subsection for use by the institution.

(d) Information Technology. – Notwithstanding any other provision of law, the Board of Trustees of an institution shall establish policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at the institution. These policies and rules shall provide for security and encryption standards; software standards; hardware standards; acquisition of information technology consulting and contract

services; disaster recovery standards; and standards for desktop and server computing, telecommunications, networking, video services, personal digital assistants, and other wireless technologies; and other information technology matters that are necessary and appropriate to fulfill the teaching, educational, research, extension, and service missions of the institution. The Board of Trustees shall submit all initial policies and rules adopted pursuant to this subsection to the Office of Information Technology Services for review upon adoption by the Board of Trustees. Any subsequent changes to these policies and rules adopted by the Board of Trustees shall be submitted to the Office of Information Technology Services for review. Any comments by the Office of Information Technology Services shall be submitted to the Chancellor of that institution. (2001-424, s. 31.11(a).)

§ 116-40.23. Reporting requirement; effective date of reported policies, procedures, and rules.

The Board of Trustees of a special responsibility constituent institution authorized to have management flexibility under this Part shall report to the Board of Governors and to the Joint Legislative Education Oversight Committee any policies, procedures, and rules adopted pursuant to G.S. 116-40.22 prior to implementation. The report shall be submitted to both at least 30 days before the next regularly scheduled meeting of the Board of Governors and shall become effective immediately following that same meeting unless otherwise provided for by the Board of Trustees. Any subsequent changes to the policies, procedures, or rules adopted by the Board of Trustees pursuant to G.S. 116-40.22 shall be reported to the Board of Governors and to the Joint Legislative Education Oversight Committee in the same manner. Failure of the Board of Governors to accept, review, or otherwise consider the report submitted by the Board of Trustees shall not affect in any manner the effective date of the policies, procedures, and rules contained in the report. (2001-424, s. 31.11(a).)

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.2. Powers of Board of Governors generally.

In addition to the powers which the Board now has, the Board shall have the following powers subject to the provisions of this Part and subject to agreements with the holders of any revenue bonds issued hereunder:

- (1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;
- (2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;
- (3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body until January 1, 1973, and thereafter only by the North Carolina Utilities Commission) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the Board authorizing the issuance of the revenue bonds;
- (4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;

- (5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;
- (6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the Board not to be required for any public purpose by the Board;
- (7) To insure the payment of service charges with respect to the telephone, electric and water systems of the University Enterprises, as the same shall become due and payable, the Board may, in addition to any other remedies which it may have:
 - a. Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent service charges, and
 - b. At the expiration of 30 days after any such service charges become delinquent, discontinue supplying the services and facilities of such telephone, electric and water systems.
- (8) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and
- (9) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation, private or public, in connection with exercising the powers vested under this Part. (1961, c. 1078, s. 2; 1971, c. 634, s. 2; c. 636; c. 1244, s. 15.)

APPENDIX B

The Code of
The Board Of Governors

The University of North Carolina

July 1, 2001

Revised November 8, 2002

Revised May 13, 2003

Revised June 18, 2003

Revised January 1, 2004

Revised January 9, 2004

Revised February 13, 2004

Revised August 12, 2005

THE CODE

OF

THE BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

JULY 1, 2001

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Revised February 13, 2004
Revised August 12, 2005

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CHAPTER I - ESTABLISHMENT, INCORPORATION AND COMPOSITION OF THE UNIVERSITY OF NORTH CAROLINA

SECTION 100. CONSTITUTIONAL ESTABLISHMENT.

The General Assembly shall maintain a public system of higher education, comprising the University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of the University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of the University of North Carolina and the other public institutions of higher education. [North Carolina Constitution, Art. IX, Sec. 8]

SECTION 101. INCORPORATION AND CORPORATE POWERS.

The Board of Governors of the University of North Carolina shall be known and distinguished by the name of "the University of North Carolina" and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, and the profits thereof, shall be applied to and for the use and purpose of endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the University, or according to the terms of donation.

The corporation shall be able and capable in law to bargain, sell, grant, alien or dispose of, and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the deviser does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue. [See G.S. 116-3]

SECTION 102. COMPOSITION OF THE UNIVERSITY.

The University of North Carolina shall constitute a single, multi-campus university composed of the following constituent institutions:

Appalachian State University,
 East Carolina University,
 Elizabeth City State University,
 Fayetteville State University,
 North Carolina Agricultural and Technical State University,
 North Carolina Central University,
 North Carolina School of the Arts,
 North Carolina State University at Raleigh,
 The University of North Carolina at Asheville,
 The University of North Carolina at Chapel Hill,
 The University of North Carolina at Charlotte,
 The University of North Carolina at Greensboro,

The University of North Carolina at Pembroke,¹
The University of North Carolina at Wilmington,
Western Carolina University, and
Winston-Salem State University.

SECTION 103. EQUALITY OF OPPORTUNITY IN THE UNIVERSITY.

Admission to, employment by, and promotion in the University of North Carolina and all of its constituent institutions shall be on the basis of merit, and there shall be no discrimination against any person on the basis of race, color, creed, religion, sex, national origin, age, or disability or because of the person's honorable service in the armed services of the United States.

¹ Name changed from Pembroke State University effective July 1, 1996.

CHAPTER II - THE BOARD OF GOVERNORS

SECTION 200. MEMBERSHIP.

200 A. Initial Membership.

For terms specified by statute and until their successors are chosen, the Board of Governors shall consist of representatives elected in accordance with state law. [See G.S. 116-5(a), (b), (c), and (d)]

200 B. Subsequent Membership.

(1) Election of Members.

(a) Members of the Board of Governors shall be elected by the Senate and House of Representatives. Sixteen members shall be elected at the regular legislative session in 1993, and every two years thereafter. All terms shall commence on July 1 of odd-numbered years, and all members shall serve for four-year overlapping terms. No person may be elected to more than three full four-year terms in succession. Resignation from a term of office does not constitute a break in service for the purpose of applying this provision of the law. Service prior to those terms beginning in 1989 shall be included in the limitations. Members elected by the Senate and House of Representatives shall be designated as voting members. [See G.S. 116-6(a), (b) and (c)]

(b) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the secretary of the University to inform the General Assembly of the existence of the vacancy, and the General Assembly at its next regular session shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the state or nation, to be present for four successive regular meetings of the board, the individual's place as a member shall be deemed vacant. [See G.S. 116-7(c)]

(2) General Qualifications.

(a) [Repealed March 6, 2002]

(b) [Repealed March 6, 2002]

(c) No member of the General Assembly or officer or employee of the state or of any constituent institution or spouse of any such member, officer, or employee may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the state or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from membership on the Board of Governors. [See G.S. 116-7(b)]

200 C. Special Memberships.

For all purposes of this *Code*, the following members shall be designated as special members:

(1) Member Ex-Officio.

During the individual's continuance as a student in good standing at a constituent institution of the University of North Carolina, the person serving as president of the University of North Carolina Association of Student Governments (UNCASG) or designee shall serve ex-officio as a member of the Board of Governors. This student member shall be in addition to the 32 members elected to the Board of Governors. [See G.S. 116-6.1]

(2) Members Emeriti.

Any person who has served at least one full term as chair of the Board of Governors shall be a member emeritus of the Board of Governors for one four-year term beginning at the expiration of that member's regular elected term. [See G.S. 116-6 (f)]

(3) Members Emeriti - Former Governor.

Any person who has served at least one term as a member of the Board of Governors after having served as governor of North Carolina shall be a member emeritus of the Board of Governors. [See G.S. 116-6(g)]

Special members shall have all the rights and privileges of membership except that they shall not have a vote. In determining a quorum or the number of votes required in specific circumstances, special members shall not be counted. Special members may serve, by appointment from the chair of the board, on any standing or special committee but shall not have a vote or be counted in determining the presence of a quorum.

SECTION 201. OFFICERS.**201 A. Chair, Vice Chair, and Secretary.**

At its last regular meeting before July 1 in each even-numbered year, the Board of Governors shall elect from its voting membership for two-year terms commencing July 1, and serving until their successors have been elected and qualified, a chair, a vice chair, and a secretary. No person may stand for election to a board office if, having been elected by the Senate or House of Representatives for the maximum allowable number of terms on the board, the person's board membership would expire before the end of the term of office. No person may serve as chair for more than four years in succession. If for any reason an office becomes vacant before expiration of the prescribed two-year term, the unexpired balance of the term shall be filled by an election to be conducted at the first meeting of the Board of Governors held after the elapse of 30 days from the date of the occurrence of the vacancy; in the event of a vacancy in the office of chair, the vice chair shall serve as chair until the required election is held. [See G.S. 116-8]

201 B. Assistant Secretary.

The Board of Governors may elect an assistant secretary of the Board of Governors, who shall be a member of the staff of the president of the University. Copies of all minutes, papers, and documents of the Board of Governors may be certified by the assistant secretary with the same force and effect as though such certification were made by the secretary of the Board of Governors.

SECTION 202. MEETINGS AND BYLAWS.**202 A. Meetings.****(1) Regular Meetings.**

Regular meetings of the Board of Governors shall be held on the second Friday in September, October, November, January, February, March, May and July or August. Each regular meeting shall be held at such time and at such place as the chair may designate, with notice concerning the time and place to be mailed to each member of the board by the secretary of the University at least 20 days in advance of the meeting date. Either by action of the board or upon 15 days' written notice by the chair, the date specified herein for a regular meeting may be changed to another date within the designated month. Whenever the chair deems the business of the board not to require a regular meeting, the chair may cancel such meeting on five days' written notice; provided that no two consecutive regular meetings shall be so canceled. Subject to the provisions of Section 202 C(5), any matter of business relating to the University of North Carolina may be considered at any regular meeting of the Board of Governors.

(2) Special Meetings.

Special meetings of the Board of Governors may be called by the chair, at the chair's discretion, and shall be called by the secretary of the University upon the written request of not fewer than ten voting members of the board. A special meeting called by the secretary of the University shall be held within 20 days of receipt by the secretary of the tenth written request for such special meeting. A notice specifying the time and place of a special meeting of the Board of Governors shall be mailed or otherwise delivered by the secretary of the University to each member of the board in order that it would reasonably be expected to be received by the member at least 48 hours before the meeting. Subject to the provisions of Section 202 C(5), any matter of business relating to the University of North Carolina may be considered at a special meeting of the board.

(3) Emergency Meetings.

Emergency meetings of the Board of Governors may be called by the chair when generally unexpected circumstances require immediate consideration by the board. A notice specifying the time and place of an emergency meeting of the Board of Governors may be given by telephone, telegraph, or other method in sufficient time for a majority of the board to reasonably be expected to be able to attend the meeting. Only business connected with the emergency may be considered at an emergency meeting in which less than 48 hours notice is given.

202 B. Agenda.

(1) A copy of the agenda for each regular meeting of the Board of Governors, including notice of all expiring terms on or vacancies in membership of board committees and, insofar as is practicable, copies of all reports and other materials to be presented to the regular meeting as a part of the agenda, shall be mailed by the secretary of the University to each member of the board at least five days in advance of the regular meeting. If practicable, a copy of the agenda for each special meeting of the Board of Governors, with reports and other materials to be presented, shall be mailed to each member of the board at least five days in advance of the special meeting. When matters are to be considered by a committee between the time of the mailing of the agenda and the time of any regular or special meeting of the board and are expected then to be presented to the board for action at the meeting, all members of the board shall be mailed such materials as a committee may prescribe by standing rule or as the chair of a committee may designate, in order to inform the board, insofar as may be feasible, of the nature of the action that might be asked of it.

(2) The agenda for a regular or special meeting of the Board of Governors shall be prepared

by the president with the approval of the chair. All requests for inclusion of a given item on the agenda of a particular meeting shall be filed, with any supporting documents, with the secretary of the University. Any such requests from faculty, students, staff members, or other members of a constituent institution of the University must be in writing and must be filed first with the chancellor of the institution concerned in sufficient time to be reported to and filed with the president by the chancellor, prior to the regular or special meeting in question.

(3) The provisions of this Section 202 B shall not be construed to prohibit any committee or member of the Board of Governors from requesting consideration by the board, at any regular or special meeting, of any item not on the agenda of a regular or special meeting of the board. However, such an item shall not be so considered without the approval of two-thirds of the voting members of the board present at such meeting.

202 C. Conduct of Business.

(1) Quorum.

A quorum for the conduct of business of the Board of Governors shall consist of a majority of the voting membership of the board then in office. Any voting member who is present at a meeting of the board or of a committee or who attends a special or emergency meeting of the board or of any meeting of a committee by telephone, video conference, or other electronic means that allows for two-way voice interaction will be counted as present for purposes of determining a quorum.

(2) Presiding Officer.

The chair shall preside at all regular and special meetings of the Board of Governors. In the absence of the chair, the vice chair shall preside and in the absence of both, the secretary shall preside. In the absence of an elected officer, a presiding officer shall be elected by and from the voting membership of the Board of Governors.

(3) Power to Vote.

All members of the Board of Governors except special members may vote on all matters coming before the board for consideration. Any voting member of the board or of a board committee who attends a special or emergency meeting of the board or of any meeting of a committee by telephone, video conference, or other electronic means that allows for two-way voice interaction may cast the member's vote by that electronic means. No vote concerning any matter under consideration by the board or by a committee of the board may be cast in absentia by mail, , facsimile, or electronic mail.

(4) Rules of Order.

Except as modified by specific rules and regulations enacted by the Board of Governors, Robert's Rules of Order (latest edition) shall constitute the rules of parliamentary procedure applicable to all meetings of the Board of Governors and its several committees.

(5) Reference to Committees.

All matters presented to the Board of Governors, except matters of routine business, which come within the sphere of interest or activity of any standing committee of the board, shall be submitted by the board to the appropriate standing committee for investigation and report. All matters of other than routine business, which do not come within the sphere of interest or activity of any standing committee of the board, may be submitted by the board to a special committee for investigation and report in advance of any action thereon by the board. The board may proceed to consider any matter without referring it to a standing or special committee if, by two-thirds vote, immediate consideration by the board is ordered.

The reports and recommendations of standing and special committees shall be submitted to the board in writing consistent with the instructions of the board.

202 D. Minutes.

(1) The secretary of the University shall keep minutes of all meetings of the Board of Governors; shall file, index, and preserve all minutes, papers, and documents pertaining to the business and proceedings of the board; shall be custodian of the University seal and of all records of the board; and shall attest the execution by the chair of all legal documents and instruments of the University of North Carolina.

(2) Within 20 days after each meeting of the Board of Governors, the secretary of the University shall transcribe the minutes of the meeting and mail a copy to each member of the board.

202 E. Closed Sessions.

All meetings of the Board of Governors shall be open to the public unless, consistent with the requirements of state law, a meeting is closed to the public by a motion duly made and adopted by the board in an open meeting.

202 F. Amendments and Suspensions of Code Provisions.

(1) Any provision of this *Code* (except those required or governed by statutory or constitutional provisions) may be amended by a vote of two-thirds of the voting membership of the board then in office; provided that no amendment may be adopted unless its substance first has been introduced at a preceding regular or special meeting of the board.

(2) Any *Code* provision, except that contained in Section 202 F(1) (and those required or governed by statutory or constitutional provisions), may be suspended at any regular or special meeting of the Board of Governors for that meeting by affirmative vote of two-thirds of the voting membership of the board present.

SECTION 203. POWERS AND DUTIES.

203 A. Statutory Powers and Duties.¹

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the constituent institutions, subject to such powers and responsibilities as may be conferred by statute on or delegated by the Board of Governors to the boards of trustees of the constituent institutions, and to this end it shall maintain close liaison with the State Board of Education, the State Board of Community Colleges, and the private colleges and universities of the state. The board, in consultation with representatives of the State Board of Education and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the governor, members of the General Assembly, the Advisory Budget Commission, and the constituent institutions. State-wide federal or state programs that provide aid to institutions or students of post-secondary education through a state agency, except those related exclusively to the community college system, shall be administered by the board pursuant to any requirement of state or federal statute in order to ensure that all activities are consonant with the state's long-range plan for higher education. [See G.S. 116-11(1)]

(2) The Board of Governors shall be responsible for the general determination, control,

¹ Other statutory powers and duties are set forth in Chapters I, IV, V, VII, VIII and IX of this *Code*.

supervision, management, and governance of all affairs of the constituent institutions. For this purpose the board may adopt such policies and regulations as it may deem wise.² [See G.S. 116-11(2)]

(3) The Board of Governors shall determine the functions, educational activities, and academic programs of the constituent institutions. The board shall also determine the type of degrees to be awarded by each constituent institution. The powers of the board as established by law are not restricted by any other provision of law assigning specific functions or responsibilities to designated institutions, the powers of the board superseding any such provisions of law.³ The board, after giving adequate notice to the affected institutional board of trustees and affording it an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly, or unnecessarily duplicative. [See G.S. 116-11(3)]

(4) The Board of Governors shall approve the establishment of any new publicly supported institution above the community college level. [See G.S. 116-11(6)]

(5) The Board of Governors shall set enrollment levels of the constituent institutions. [See G.S. 116-11(8)]

(6) The Board of Governors shall collect and disseminate data concerning higher education in the state. To this end it shall work cooperatively with the North Carolina System of Community Colleges and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable. [See G.S. 116-11(10)]

(7) The Board of Governors, with the cooperation of other concerned organizations, shall establish, as a function of the board, an Educational Opportunities Information Center to provide information and assistance to prospective college and university students and to the several institutions, both public and private, on matters regarding student admissions, transfers, and enrollments. The public institutions shall cooperate with the center by furnishing such nonconfidential information as may assist the center in the performance of its duties. Similar cooperation shall be requested of the private institutions in the state. An applicant for admission to an institution who is not offered admission may request that the institution send to the center appropriate nonconfidential information concerning the application. The center may, at its discretion and with permission of the applicant, direct the attention of the applicant to other institutions and the attention of other institutions to the applicant. The center is authorized to conduct such studies and analyses of admissions, transfers, and enrollments as may be deemed appropriate. [See G.S. 116-18]

(8) The Board of Governors shall give advice and recommendations concerning higher education to the governor, the General Assembly, the Advisory Budget Commission, and the boards of trustees of the constituent institutions. [See G.S. 116-11(12)]

(9) The Board of Governors may delegate any part of its authority over the affairs of any constituent institution to the board of trustees or, through the president of the University, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the board at any time in whole or in part. [See G.S. 116-11(13)]

² All policies, rules, and regulations adopted and actions taken prior to July 1, 1972, by the former boards of trustees of the constituent institutions shall be effective on and after July 1, 1972, as to the respective institutions, except as modified by this *Code* or by other action of the Board of Governors or by the institutional boards of trustees. [Session Laws 1972, Ch. 124, Sec. 18]

³ See G.S. 116-40.4. See also G.S. 116-63 through -69.

203 B. Other Powers and Duties.

(1) Whenever the Board of Governors finds that there may be a need for the creation of a new campus of the University, the board shall direct that a study be made of the relevant educational needs of the state, such study to take particular account of the relevant educational needs of the area or areas of the state designated by the Board of Governors. The board shall give careful consideration to the report of the aforementioned study of educational needs, and if the board finds

- (a) that sufficient educational needs exist to justify the establishment of an additional campus of the University, and
- (b) that it appears probable that sufficient additional funds can be made available to establish and maintain such additional campus without impairing the quality and extent of the instructional and research programs at the existing campuses of the University, the Board of Governors may recommend to the General Assembly that appropriate legislation creating or adding such campus be enacted.

(2) The Board of Governors shall have such other powers and duties as may be prescribed by law or as may be set forth elsewhere in this *Code*.

203 C. Reservation of Powers.

The Board of Governors shall possess all powers not specifically given to institutional boards of trustees. [See G.S. 116-11(14)]

SECTION 204. ETHICS AND CONFLICT OF INTERESTS

It is of critical importance that decisions made on behalf of the University by its governors be in the best interest of the University and not be influenced by any potential financial gain to the decision-makers. Furthermore, to assure public confidence in the integrity of the University, it is important that the University not appear to be influenced by the personal financial interests of those in decision-making positions. In order to assure public confidence in the integrity of the University, members of the Board of Governors of the University should not use their positions, or appear to use their positions, to influence the decisions of the University for their personal financial gain. At the same time, the University should be able to take advantage of contracts that are advantageous to the citizens of North Carolina and to the University and should avoid having service to the University be so restrictive that persons with substantial financial interests will be reluctant to serve. In order to accomplish these goals, the Board of Governors shall adopt and enforce a policy governing conflicts of interest of its members. Each member of the Board of Governors shall comply with this policy.

SECTION 205. DELIVERY OF NOTICES.

All notices, documents, or materials required by the *Code* to be mailed to members of the Board of Governors may be delivered by electronic mail, facsimile transmission, or other reliable means that is available for notifying that member of the board.

CHAPTER III- COMMITTEES OF THE BOARD OF GOVERNORS

SECTION 300. ESTABLISHMENT AND MEMBERSHIP OF COMMITTEES.

- A. The Board of Governors may establish such standing committees as it may deem necessary. Standing committees shall be established and their duties prescribed by a vote of two-thirds of the voting membership of the Board of Governors then in office. Special committees may be created by the Board of Governors or the chair of the board to perform specific functions not requiring the continuous existence of a committee.
- B. Each voting member of the board shall at all times serve on one of the standing committees designated in subsections 301 B-E below.
- C. Special members of the board may be assigned to such standing or special committees as the chair of the Board of Governors may from time to time see fit.
- D. The chair of the board may, upon request of a standing committee chair, appoint any voting member to serve temporarily as a voting member of a subcommittee of a standing committee when the chair of the board deems the work of the subcommittee to require such an appointment.
- E. The vice chair of the Board of Governors shall at all times be a voting member of a standing committee. The vice chair shall be assigned to a committee by the chair of the board following consultation between the chair and the vice chair. The vice chair's membership on a standing committee shall be in addition to the prescribed regular membership of the committee.
- F. The chair of the Board of Governors shall be a voting member of all standing and special committees, but the chair's membership shall not be counted in determining a quorum.

SECTION 301. THE STANDING COMMITTEES' JURISDICTION.

301 A. The standing committees of the Board of Governors shall be: the Committee on Budget and Finance; the Committee on Educational Planning, Policies, and Programs; the Committee on Personnel and Tenure; the Committee on University Governance, and the Committee on Public Affairs.

301 B. The Committee on Budget and Finance shall consist of seven voting members. The committee shall advise and consult with the president concerning budget policy and preparation. The committee shall consider the budget proposed by the president and, upon its approval, shall submit the budget to the Board of Governors for final action. The committee shall make recommendations to the board for the allocation of funds appropriated to the board. It shall also advise and assist the president, and submit recommendations to the board, with respect to real property transactions, investments, endowments, and other fiscal and property matters in accordance with valuation limits established in board policy and within the jurisdiction of the Board of Governors.

301 C. The Committee on Educational Planning, Policies, and Programs shall consist of nine voting members. It shall receive the advice and recommendations of the president and make recommendations to the board in all areas pertaining to the development of a coordinated system of higher education in North Carolina, including: (a) the definition of mission and assignment of functions of each constituent institution; (b) the review of requests for the initiation of new degree programs and recommendations for the termination of existing programs; (c) the provision of supportive services, facilities, and other resources for the instructional, research, and public-service programs of the constituent institutions; (d) the review of policies affecting educational programs and academic affairs; (e) matters concerning the involvement of students in the University and in university life; (f) review of matters concerning health affairs in the University; and (g) review of matters concerning the utilization of

information technology in furtherance of the University's mission. The committee shall also advise and assist the president and the board in maintaining close liaison with the State Board of Education, the State Board of Community Colleges, and the private colleges and universities, including the review of all requests for state aid to the private institutions. It shall further recommend to the board procedures and standards for the licensing of non-public educational institutions.

301D. The Committee on Personnel and Tenure shall consist of seven voting members. Upon recommendation of the president, it shall review and make recommendations to the board with respect to the appointment and compensation of all vice chancellors, senior academic and administrative officers, and persons with permanent tenure. Notwithstanding the provision above, the committee shall not review or recommend the appointment and compensation of vice chancellors, senior academic and administrative officers, and persons with permanent tenure for those campuses delegated the authority to appoint and set compensation for such employees so long as the boards of trustees act consistently with the policy and compensation ranges established by the Board of Governors. Further, the committee shall advise and assist the president in the review and evaluation of tenure policies and regulations which the president shall periodically conduct, and it shall review all appeals from faculty members of the constituent institutions which involve an institution's decision to not to reappoint a faculty member, to deny tenure, to discharge a tenured faculty member, or to impose a serious sanction pursuant to the provisions of Chapter VI of this *Code*.

301 E. The Committee on University Governance shall consist of seven voting members. It shall keep under continuous review the application and interpretation of *The Code of the University of North Carolina* and all delegations of authority under that code, and it shall make such recommendations to the Board of Governors for the amending of *The Code* or delegations of authority as may seem appropriate for the effective and efficient operation of the University of North Carolina and its constituent institutions. The committee shall make nominations to the Board of Governors for elections to the boards of trustees of the constituent institutions. The committee shall receive all requests from students of the constituent institutions for appellate review by the Board of Governors pursuant to Section 502 D(3) of this *Code* and from non-faculty employees of the University who are exempt from the State Personnel Act pursuant to Section 609 C of this *Code*.

301 F. The Committee on Public Affairs shall consist of a number of voting members to be determined by the chair of the board. A voting member serving on this committee shall also serve on another standing committee. The Committee on Public Affairs shall assist the President in maintaining a positive relationship with the Governor, the North Carolina General Assembly, the United States Congress, and other governmental entities which affect the ability of the University to carry out its mission. The committee will review all state and federal non-budget legislative priorities of the University.

SECTION 302. GENERAL PROVISIONS CONCERNING STANDING COMMITTEES.

302 A. Appointment of Members.

The chair of the Board of Governors shall appoint voting members of the board to standing committees. The term of each voting member of a standing committee shall normally be two years, commencing upon the effective date of the appointment to the committee and extending until a successor is appointed. The voting membership of each committee shall be divided into two classes, with the terms of approximately one-half of the members expiring each year. To achieve balance and efficiencies in the committee system, the chair may appoint members to one-year terms or reassign members who have served one year of a two-year term. The chair shall appoint members of standing committees to take effect at the first meeting of the committee after July 1. If a voting member has served on a standing committee for four consecutive years, the member shall be, for a period of one year, ineligible for reappointment to the same standing committee. If a vacancy occurs on a standing committee during a

term, the chair of the board may appoint a voting member of the board to fill the remainder of the unexpired term.

302 B. Officers of Standing Committees.

A chair, vice chair, and secretary of each standing committee shall be elected by the committee membership each year at the first meeting after July 1. No person may serve more than two successive terms as chair of the same standing committee.

302 C. Meetings of Standing Committees.

Each standing committee shall meet at such times as either the chair of the standing committee or the Board of Governors shall designate. Written notice of each meeting of a standing committee shall be mailed to members of the Board of Governors by the Secretary of the University at least five days in advance of the meeting date; but any notice which complies with the North Carolina Open Meetings Law may be given by telephone or other reliable means when, in the judgment of the chair of the committee or the chair of the Board of Governors, a necessity exists. The agenda for a meeting of a standing committee shall be prepared by the President with the approval of the chair of the committee, and, if practicable, a copy shall be mailed to the members of the Board of Governors, or transmitted by other reliable means, at least five days in advance of the meeting date; however, if such advance notice is not practicable in the judgment of the chair, the agenda shall be presented to the members of the committee and other members of the Board of Governors who are attending the meeting at the commencement of the meeting. Such materials as the committee may designate by standing rule, or as the chair of the committee may designate in the absence of a standing rule, shall be sent with the agenda and notice of the meeting.

If notice of an agenda item is not provided to the members of the Board of Governors at least 48 hours before the committee meeting, then any recommended action resulting from that item shall not be placed on the consent agenda of the Board of Governors. In the Committee report the chair shall state that the recommended action was added to the committee agenda.

A majority of the elected committee membership shall constitute a quorum for the conduct of business of a standing committee. The chair of the standing committee shall preside at all committee meetings; in the absence of the chair, the vice chair shall preside. The procedures and rules of order governing the conduct of committee business shall be the same as those applicable to meetings of the Board of Governors. Minutes of every meeting of a standing committee shall be kept by the Secretary of the committee.

302 D. Subcommittees.

Each standing committee may establish from its elected membership such subcommittees as it may deem necessary and appropriate for the effective discharge of its assigned responsibilities. The chair of the standing committee shall appoint the chair and the members of each subcommittee and shall report to the board the establishment of any subcommittee.

302 E. Report of Standing Committees.

Each standing committee shall make a written report to the Board of Governors at least annually, reviewing the work of the committee during the preceding year.

302 F. Closed Sessions.

All meetings of committees shall be open to the public unless, consistent with the requirements of state law, a meeting of a committee is closed to the public by a motion duly made and adopted by the committee in an open meeting.

SECTION 303. SPECIAL COMMITTEES OF THE BOARD OF GOVERNORS.

Special committees may be created by the Board of Governors or the chair of the board to perform specific functions not requiring the continuous existence of a committee. The size, function, and procedures of special committees shall be determined either by majority vote of the board or by the chair of the board. The chair and members of a special committee shall be appointed by the chair of the board from the voting membership of the board unless the Board of Governors otherwise provides. Special committees shall cease to exist when their functions have been discharged; however, every special committee shall cease to exist one year after the date of its creation, unless continued by affirmative action of the board or the chair of the board. Notwithstanding the above, the size, function, procedures, membership, and selection of the chair of a presidential search committee shall be determined by majority vote of the Board of Governors.

CHAPTER IV - BOARDS OF TRUSTEES

SECTION 400. MEMBERSHIP.

400 A. General Provisions.

(1) Each constituent institution shall have a board of trustees composed of 13 persons⁴ chosen as follows: (i) eight elected by the Board of Governors, (ii) four appointed by the governor, and (iii) the president of the student government of the institution, ex-officio. [See G.S. 116-31(d)]

(2) In every odd-numbered year, the Board of Governors shall elect four persons to each board of trustees and the governor shall appoint two persons to each such board; and the term of office of all such elected or appointed trustees (excluding ex-officio trustees) shall be four years, commencing on July 1, of such odd-numbered year. [Compare G.S. 116-31(e) and (f)]

(3) Whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the governor, it shall be the duty of the secretary of the board of trustees to inform the governor of the existence of such vacancy, and the governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board of trustees to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the state or nation, to be present for three successive regular meetings of a board of trustees, the individual's place as a member shall be deemed vacant. [See G.S. 116-31(j)]

(4) Any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution. [See G.S. 116-31(g)]

(5) No member of the General Assembly or officer or employee of the state or of any constituent institution or spouse of any such member, officer, or employee shall be eligible for election or appointment as a trustee. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the state or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from membership on the board of trustees. [See G.S. 116-31(h)]

400 B. Dual Membership Prohibited.

No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected to the Board of Governors shall be deemed to have resigned as a trustee effective as of the date that the individual's term commences as a member of the Board of Governors. [See G.S. 116-31(i)]

SECTION 401. OFFICERS.

401 A. Chair, Vice Chair, and Secretary.

At the first regular meeting after June 30 of each year, each board of trustees shall elect from its membership a chair, a vice chair, and a secretary. [See G.S. 116-32] Each of these officers shall serve until his or her successor is elected. If the term of the chair on the board of trustees expires before his or

⁴ Fifteen trustees in the case of the North Carolina School of the Arts. [See G.S. 116-65]

her successor as chair is elected, then the vice chair shall become the interim chair until the chair's successor is elected.

401 B. Assistant Secretary.

Each board of trustees may also elect an assistant secretary, from among the members of the chancellor's staff. Copies of all minutes, papers, and documents of a board of trustees may be certified by its assistant secretary with the same force and effect as though such certification were made by the secretary of such board.

SECTION 402. MEETINGS.

402 A. Frequency.

Each board of trustees shall hold not fewer than three regular meetings a year and may hold such additional meetings as may be deemed desirable. [See G.S. 116-32]

402 B. Rules of Procedure.

Each board of trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate. The board of trustees may convene in closed session, consistent with state law and policy.

402 C. Keeping Board of Governors Informed.

The secretary of each board of trustees shall keep the Board of Governors, through the secretary of the University, fully and promptly informed concerning activities of the board of trustees, including notice of any changes in the membership of the board or in its committee structure or bylaws, notices of meetings, and a copy of the minutes of all meetings.

402 D. Notice of Committee Meetings

Each board of trustees shall provide timely notice of each of its meetings and committee meetings to every member of that board of trustees.

SECTION 403. POWERS AND DUTIES.

403 A. General Powers and Duties.

Each board of trustees shall promote the sound development of its institution within the functions prescribed for it, helping it to serve the people of the state in a way that will complement the activities of the other institutions and aiding it to perform at a high level of excellence in every area of endeavor. Each board of trustees shall serve as advisor to the Board of Governors on matters pertaining to its institution and shall also serve as advisor to the chancellor concerning the management and development of the institution. [See G.S. 116-33]

403 B. Other Powers and Duties.

Each board of trustees shall have such other powers and duties, not inconsistent with other provisions of this *Code* or with applicable provisions of state law, as shall be defined and delegated by the Board of Governors. [See G.S. 116-33 and G.S. 116-11(13) and (14)]

CHAPTER V - OFFICERS OF THE UNIVERSITY

SECTION 500. ELECTION OF OFFICERS.

500 A. President and Staff.

(1) The Board of Governors shall elect a president of the University of North Carolina [See G.S. 116-14(a)], whose compensation shall be fixed by the Board of Governors.

(2) The Board of Governors, on nomination of the president, shall elect and fix the compensation of such professional members of the presidential staff as may be deemed necessary to administer the affairs and execute the policies of the University of North Carolina. These staff members shall include a senior vice president and such other vice presidents and officers as may be deemed desirable. [See G.S. 116-14(b)]

(3) In addition, the president shall employ such other personnel, subject to the provisions of Chapter 126 of the General Statutes ("State Personnel System"), as may be deemed necessary to assist the officers of the University in administering the affairs and executing the policies of the University of North Carolina. [See G. S. 116-14(b)]

(4) The professional staff complement shall be established by the board on recommendation of the president to ensure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to ensure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the University of North Carolina. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public-service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for state and federal programs administered by the board. [See G.S. 116-14(b)]

500 B. Chancellors and Staffs.

(1) The Board of Governors shall elect, on nomination of the president, the chancellor of each of the constituent institutions and fix the chancellor's compensation.¹ The president shall make a nomination from a list of not fewer than two names recommended by the institutional board of trustees. [See G. S. 116-11(4)]

(2) Unless the Board of Governors has delegated this authority to an institutional board of trustees, the Board of Governors shall, on recommendation of the president and of the appropriate institutional chancellor, appoint and fix the compensation of all vice chancellors, senior academic and administrative officers, and persons having permanent tenure. [See G.S. 116-11(5) and 116-40.22(b)]

SECTION 501. PRESIDENT OF THE UNIVERSITY.

501 A. General Authority.

The president of the University of North Carolina shall be the chief administrative and executive

¹ The merger of an institution into the University of North Carolina under Chapter 1244 of the 1971 Session Laws shall not impair any term of office, appointment, or employment of any administrative, instructional, or other personnel of the institution. Effective July 1, 1972, the title president and vice president of each constituent institution shall be changed to chancellor and vice chancellor, and the tenures of persons occupying these positions shall continue subject to the other provisions of this *Code*. [See Sec. 18, Ch. 1244, 1971 Session Laws]

officer of the University. [See G.S. 116-14(a)] The president shall have complete authority to manage the affairs and execute the policies of the University of North Carolina and its constituent institutions, subject to the direction and control of the Board of Governors and the provisions of this *Code*. The president shall personally represent before the state, the region and the nation the ideals and the spirit of the University of North Carolina. As the chief executive, the president shall be the official administrative spokesperson for and the interpreter of the University to the alumni and alumnae as a whole, the news media, the educational world, and the general public. The president shall be responsible for the presentation and interpretation of all University policies, recommendations, and requests to the General Assembly, the governor, state officers and commissions, and the federal government.

501 B. Relation of the President to the Board of Governors.

(1) The president, as the chief executive officer of the University, shall perform all duties prescribed by the Board of Governors. The president shall be responsible to the Board of Governors for the prompt and effective execution of all laws relating to the University of North Carolina and of all resolutions, policies, rules, and regulations adopted by the board for the operation of the University of North Carolina and for the government of any and all of its constituent institutions, and the president's discretionary powers shall be broad enough to meet the extensive responsibilities of the presidency.

(2) The president shall make recommendations to the Board of Governors with respect to the adoption, modification, revision or reversal of policies, rules, and regulations applicable to the University of North Carolina and any or all of its constituent institutions. To this end, the president shall establish and maintain agencies of inquiry and administrative lines of communication, which include the constituent institutions, to ensure prompt perception of needs for problem identification and analysis, decision, and policy formulation.

(3) The president shall prepare and submit to the Board of Governors such reports and recommendations concerning the University of North Carolina and its constituent institutions as the president may deem wise or as the board may require.

(4) The president shall attend and may participate in, without the privilege of voting, the meetings of the Board of Governors and its various committees, and the president may attend the meetings of all the boards of trustees.

(5) The president shall be the official administrative medium of communication between the Board of Governors and all individuals, officials, agencies, and organizations, both within and without the University and its constituent institutions.

(6) The president, consistent with the provisions of Section 500 B(2), shall make nominations for all appointments that are to be acted upon by the Board of Governors and shall make recommendations for all promotions, salaries, transfers, suspensions, and dismissals that are to be acted upon by the board. The board reserves the right, in all instances, to act on its own initiative.

(7) The president shall assume, and retain at all times, control over the budget of the University of North Carolina, subject to the direction and control of the Board of Governors. The president shall prepare the proposed budget of the University of North Carolina and shall submit such proposed budget to the Board of Governors for approval; administrative procedures uniformly applicable to all institutions shall be established by the president to ensure that each institution has full opportunity to provide information and advice concerning the formulation of such proposed budget. The president shall be responsible for the presentation and explanation of budget requests approved by the Board of Governors to the director of the budget and the Advisory Budget Commission, the General Assembly and its committees, officers, and members. The president shall be responsible for the execution of the budget of the University of North Carolina as approved by the General Assembly. All revisions of the budget which require approval of the Advisory Budget Commission shall be acted upon by the Board of

Governors on recommendation of the president.

(8) The president, with the approval of the Board of Governors, shall appoint an advisory committee composed of representative presidents of the private colleges and universities of the state. [See G.S. 116-14(c)]

501 C. Relation of the President to the University.

(1) The president shall be the leader of the University of North Carolina and its constituent institutions and shall coordinate the activities of all constituent institutions in accordance with the principle of allocated functions prescribed by the Board of Governors. The president shall promote the general welfare and development of the University in its several parts and as a whole.

(2) The president shall be a member of, and shall have the privilege of attending meetings of, all faculties of the constituent institutions of the University of North Carolina.

(3) In the absence of policies prescribed by the Board of Governors, the president shall resolve all issues of jurisdiction and dispute among the constituent institutions of the University.

As of July 1, 2003 Section 501C(4) shall be deleted. However this section shall continue to be applicable to student offences committed prior to July 1, 2003 and shall also continue to be applicable to faculty and staff grievances submitted prior to January 1, 2004.

(4) *Subject to such regulations and limitations as may be prescribed by the Board of Governors, the faculties, staffs, and student bodies of the constituent institutions, or any member thereof, may have the right to appeal the disposition of grievances to the chancellor, and from the chancellor to the president, and from the president to the Board of Governors; provided, that appeals based on policies, rules, or regulations adopted by the board of trustees shall be addressed initially to the chancellor, and from the chancellor to the board of trustees, and, where allowed, from the board of trustees to the Board of Governors; however, all appeals addressed to or requests for hearings by the Board of Governors, from whatever source, shall be transmitted through the president.*

(5) The president may refer for investigation, report, and advice any question of University concern to any council, faculty, or scientific, extension, or administrative staff.

(6) The medium for official communications between the president and the constituent institutions of the University shall be the respective chancellors.

(7) The president shall establish administrative organizations to carry out the policies of the University and shall interpret these organizations to the Board of Governors and to the officers and faculties of the University. The president shall ensure that the University and its constituent institutions are properly staffed with personnel competent to discharge their responsibilities effectively. In carrying out the president's duties and responsibilities, the president shall be assisted by staff officers and by the chancellors of the constituent institutions. The president shall prescribe the duties and assignments of the staff officers reporting to the president. The president may establish and define the duties of all-University councils and committees to advise and assist the president in the execution of the president's duties. The president may delegate to other officers portions of the president's duties and responsibilities, with the required authority for their fulfillment. However, such delegation shall not reduce the president's overall responsibility for those portions of duties which the president may choose to delegate.

SECTION 502. CHANCELLORS OF CONSTITUENT INSTITUTIONS.

502 A. General Authority.

The administrative and executive head of each constituent institution shall be the chancellor, who

shall exercise complete executive authority therein, subject to the direction of the president. The chancellor shall be responsible for carrying out policies of the Board of Governors and of the board of trustees. [See G.S. 116-34(a)]

502 B. Relation of the Chancellor to the Board of Governors and the President.

(1) It shall be the duty of the chancellor to keep the president, and through the president the Board of Governors, fully informed concerning the operations and needs of the institution. Upon request, the chancellor shall be available to confer with the president or with the Board of Governors concerning matters that pertain to the institution. [See G.S. 116-34(c)] As of June 30 of each year, the chancellor shall prepare for the Board of Governors a detailed report on the operation of the institution for the preceding year. [See G.S. 116-34(a)] The chancellor shall make such additional reports to the president or the Board of Governors as the president or the Board of Governors may require.

(2) The chancellor shall make recommendations for development of the educational programs of the institution [See G.S. 116-34(d)] and shall serve as general adviser to the president, and through the president the Board of Governors, with respect to all programs and activities of the institution.

(3) The chancellor shall be responsible to the president for the administration of the institution, including the enforcement of the decisions, actions, policies, and regulations of the Board of Governors applicable to the institution.

(4) Subject to policies prescribed by the Board of Governors and by the institutional board of trustees, the chancellor shall make recommendations for the appointment of personnel within the institution. [See G.S. 116-34(d)] With respect to all personnel matters, including appointments, promotions, removals, and compensation for the institution's academic, administrative, and other staffs, which are required to be acted upon by the Board of Governors, the chancellor shall make recommendations to the president.

(5) The chancellor shall present to the president all matters concerning the institution which are to be considered by the Board of Governors or any of its committees. In accordance with prescribed administrative procedures uniformly applicable to all institutions, the chancellor shall participate in the development of the proposed budget of the University of North Carolina.

(6) The chancellor shall be the official medium of communication between the president and all deans, heads or chairs of departments, directors, and all other administrative officers, faculty members, students, and employees.

502 C. Relation of the Chancellor to the Board of Trustees.

(1) It shall be the duty of the chancellor to attend all meetings of the board of trustees and to be responsible for keeping the board of trustees fully informed on the operation of the institution and its needs. [See G.S. 116-34(b)]

(2) As of June 30 of each year, the chancellor shall prepare for the board of trustees a detailed report on the operation of the institution for the preceding year. [G.S. 116-34(a)] The chancellor shall also submit such additional reports to the board of trustees as the chancellor may deem wise or as the board may require. The chancellor shall seek the counsel of the board of trustees concerning the affairs of the institution.

(3) The chancellor shall be responsible to the board of trustees for enforcing all policies, rules, and regulations of the board of trustees.

(4) The chancellor shall be the official medium of communication between the board of trustees and all individuals, officials, agencies, and organizations, both within and without the institution.

502 D. Relation of the Chancellor to the Constituent Institution.

(1) Subject to policies established by the Board of Governors, the board of trustees, or the president, the chancellor; shall be the leader of and the official spokesperson for the institution; shall promote the educational excellence and general development and welfare of the institution; shall define the scope of authority of faculties, councils, committees, and officers of the institution; and all projects, programs, and institutional reports to be undertaken on behalf of the institution shall be subject to the chancellor's authorization and approval.

(2) The chancellor shall be a member of all faculties and other academic bodies of the institution and shall have the right to preside over the deliberations of any legislative bodies of the faculties of the institution.

The chancellor shall be responsible for ensuring that there exists in the institution a faculty council or senate, a majority of whose members are elected by and from the members of the faculty. The general faculty, however, which shall include at least all full-time faculty and appropriate administrators, may function as the council or senate. The faculty shall be served by a chair elected either by the general faculty or by the council or senate. However, the chancellor may attend and preside over all meetings of the council or senate. The council or senate may advise the chancellor on any matters pertaining to the institution that are of interest and concern to the faculty.

In addition to ensuring the establishment of a council or senate, the chancellor shall ensure the establishment of appropriate procedures within the institution to provide members of the faculty the means to give advice with respect to questions of academic policy and institutional governance, with particular emphasis upon matters of curriculum, degree requirements, instructional standards, and grading criteria. The procedures for giving advice may be through the council or senate, standing or special committees or other consultative means.

Effective July 1, 2003, Code Section 502D(3) shall read as follows and will apply to offences committed on or after that date:

(3) Subject to any policies or regulations of the Board of Governors or of the board of trustees, it shall be the duty of the chancellor to exercise full authority in the regulation of student affairs and student conduct and discipline. In the discharge of this duty, delegation of such authority may be made by the chancellor to faculty committees and to administrative or other officers of the institution, or to agencies of student government, in such manner and to such extent as may by the chancellor be deemed necessary and expedient. In the discharge of the chancellor's duty with respect to matters of student discipline, it shall be the duty of the chancellor to secure to every student the right to due process. Appeals from these disciplinary decisions are allowable only on the following grounds:

- 1) a violation of due process; or
- 2) a material deviation from Substantive and Procedural Standards adopted by the Board of Governors.

Where the sanction is suspension or expulsion, an appeal may be made to the board of trustees. No appeal to the president is permitted. When the sanction is expulsion, the final campus decision is appealable to the Board of Governors.

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

SECTION 600. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY.

(1) The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. The University therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

(2) The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

(3) Faculty and students of the University of North Carolina shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

SECTION 601. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY.

(1) It is the policy of the University of North Carolina to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institutions. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with the University and their position as men and women of learning. They should not represent themselves, without authorization, as spokespersons for the University of North Carolina or any of its constituent institutions.

(2) The University and its constituent institutions shall not penalize or discipline members of its faculties because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

SECTION 602. ACADEMIC TENURE.

(1) To promote and protect the academic freedom of its faculty, the board of trustees of each constituent institution shall adopt policies and regulations governing academic tenure. Policies adopted by a board of trustees regarding academic tenure and promotion shall be effective upon review by the senior vice president for academic affairs and the vice president and general counsel, and approved by the president. The chancellor shall review the constituent institution's tenure policies periodically, but at least every five years, and shall report to the president whether or not amendments or revisions are appropriate. The chancellor shall involve the faculty in this review.

(2) In all instances, the tenure conferred on a faculty member is held with reference to employment by a constituent institution, rather than to employment by the University of North Carolina.

(3) The tenure policies and regulations of each constituent institution¹ shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion, and the conferral of

¹ Because of the unique character and mission of the North Carolina School of the Arts, the requirement that the institution adopt tenure policies will be satisfied at that institution by an employment system based on renewable contracts, which system need not provide for the traditional faculty ranks. Wherever the phrase "tenure policies and regulations" is used in this chapter, it shall mean, for the School of the Arts, the faculty employment policies of that school. Wherever the phrase "tenured faculty" is used in this chapter, it shall mean, for that school, a faculty member holding a fixed-term contract.

permanent tenure shall be made. The length of terms of appointment that do not carry permanent tenure and those faculty ranks or titles whose holders shall be eligible for permanent tenure shall be prescribed. The institutional policies and regulations also shall prescribe the intervals at which the review of candidates for reappointment and promotion, including the conferral of permanent tenure, shall occur. The tenure policies and regulations of each institution, which shall include the complete text of Chapter VI of *The Code*, shall be published by the institution and distributed to its faculty members.

(4) The tenure policies and regulations of each institution shall set forth the general considerations upon which appointment, reappointment, promotion, and permanent tenure are to be recommended. The institutional regulations shall provide that these considerations shall include an assessment of at least the following: the faculty member's demonstrated professional competence, the faculty member's potential for future contribution, and institutional needs and resources.

(5) The institutional policies and regulations shall specify that permanent tenure may be conferred only by action of the president and the Board of Governors, or by such other agencies or officers as may be delegated such authority by the Board of Governors.

(6) Institutional tenure policies and regulations shall distinguish among the following:

- (a) the nonreappointment (or nonrenewal) of a faculty member at the expiration of a specified term of service;
- (b) the discharge or suspension of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires for reasons based on incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty;
- (c) the termination of employment for reasons of institutional financial exigency or major curtailment or elimination of a teaching, research, or public-service program of a faculty member who has permanent tenure, or of a faculty member who has been appointed to a specified term of service before that term expires; and
- (d) retirement for physical or mental disability.

(7) Institutional tenure policies and regulations shall provide that the appointment, reappointment, or promotion of a faculty member to a position funded in whole or in substantial part from sources other than continuing state budget funds or permanent trust funds shall specify in writing that the continuance of the faculty member's services, whether for a specified term or for permanent tenure, shall be contingent upon the continuing availability of such funds. The institutional tenure policies and regulations may make one or more of the following exceptions to the foregoing contingency requirement:

- (a) That such a contingency shall not be included in a promotion to a higher rank if, before the effective date of that promotion, the faculty member had permanent tenure and no such condition is attached to the tenure.
- (b) That such a contingency shall not be attached to the faculty member's contract if the faculty member held permanent tenure in that institution on July 1, 1975, and the contract was not contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.
- (c) That such a contingency may be waived for health affairs faculties because of the unusual dependence of programs in the health professions on income from

sources such as clinical receipts.

If a faculty member's appointment is terminated because of the nonavailability of these funds, the institution will make every reasonable effort to give the same notice as set forth in Section 605 B (1). This notice shall include the pertinent data upon which the termination is based.

(8) The tenure policies and regulations of each institution shall be subject to approval by the president. The president periodically shall review and re-evaluate these policies and regulations and report findings and recommendations, if any, to the Committee on Personnel and Tenure and through the committee to the Board of Governors.

SECTION 603. DUE PROCESS BEFORE DISCHARGE OR THE IMPOSITION OF SERIOUS SANCTIONS.

(1) A faculty member, who is the beneficiary of institutional guarantees of tenure, shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged or suspended from employment or diminished in rank only for reasons of incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.² These penalties may be imposed only in accordance with the procedures prescribed in this section. For purposes of these regulations, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to nonreappointment (Section 604) or termination of employment (Section 605).

(2) The chief academic officer of the institution, however titled, shall send the faculty member a written statement of intention to discharge the faculty member by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to both written specification of the reasons for the intended discharge and a hearing by an elected standing faculty committee on hearings.

(3) If, within ten days³ after receiving the notice referred to in paragraph (2) above, the faculty member makes no written request for either a specification of reasons or a hearing, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure.

(4) If, within ten days after receiving the notice referred to in paragraph (2) above, the faculty member makes written request, by a method of delivery that requires a signature for delivery, for a specification of reasons, the chief academic officer shall supply such specification in writing by a method of delivery that requires a signature for delivery, within ten days after receiving the request. If the faculty member makes no written request for a hearing within ten days after receiving the specification, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure.

(5) If the faculty member makes a timely written request for a hearing, the chief academic officer shall ensure that the hearing is accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge. The hearing committee shall accord the faculty member 20 days from the time it receives the faculty member's written request for a hearing to prepare a defense. The hearing committee may, upon the

² Retirement for reason of disability shall be in accordance with North Carolina statutes and regulations governing retirement for faculty who are members of the state retirement system. A faculty member who is not a member of the state retirement system and who is mentally or physically disabled, but refuses to retire, may be discharged because of that disability only in accordance with the procedures of this section.

³ Wherever it is used in this chapter, except when calendar day is specified, the word "day" shall mean any day except Saturday, Sunday or an institutional holiday. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

faculty member's written request and for good cause, extend this time by written notice to the faculty member.

(6) The hearing shall be closed to the public unless the faculty member and the hearing committee agree that it may be open. The faculty member shall have the right to counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, and to examine all documents and other adverse demonstrative evidence. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the institution's expense.

(7) The chief academic officer, or counsel, may participate in the hearing to present evidence, cross-examine witnesses, and make argument.

(8) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The committee shall make its written recommendations to the chancellor within ten days after its hearing concludes.

(9) If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the chancellor's decision to the board of trustees. This appeal shall be transmitted through the chancellor and be addressed to the chair of the board. Notice of appeal shall be filed within ten days after the faculty member receives the chancellor's decision. The appeal to the board of trustees shall be decided by the full board of trustees. However, the board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members. The board of trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the faculty hearing committee, but it may, in its discretion, hear such other evidence as it deems necessary. The board of trustees' decision shall be made within 45 days after the chancellor has received the faculty member's request for an appeal to the trustees. This decision shall be final except that the faculty member may, within ten days after receiving the trustees' decision, file a written petition for review with the Board of Governors if the faculty member alleges that one or more specified provisions of the *Code of the University of North Carolina* have been violated. Any such petition to the Board of Governors shall be transmitted through the president, and the board shall, within 45 days, grant or deny the petition or take such other action as it deems advisable. If it grants the petition for review, the board's decision shall be made within 45 days after it has notified the faculty member that it will review the petition.

(10) When a faculty member has been notified of the institution's intention to discharge the faculty member, the chancellor may suspend the individual at any time and continue the suspension until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension shall be exceptional and shall be with full pay.

SECTION 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW.

604 A. Notice of Reappointment or Nonreappointment.

Effective January 1, 2004, for appeals of decisions not to reappoint made on or after January 1, 2004, 604 A shall read as follows;

(1) The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given. For full-time faculty at the rank of instructor, assistant professor,

associate professor, or professor, the minimum requirement for timely notice shall be as follows:

- (a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires;
- (b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and
- (c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of nonreappointment will oblige the chancellor thereafter to offer a terminal appointment of one academic year.

604 B. Impermissible Reasons for Nonreappointment.

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, sex, religion, national origin, age, disability, or honorable service in the armed services of the United States, or (c) personal malice.

604 C. Special Faculty Appointments.

All appointments of visiting faculty, adjunct faculty, or other special categories of faculty such as lecturers, artists-in-residence, or writers-in-residence shall be for only a specified term of service. That term shall be set forth in writing when the appointment is made, and the specification of the length of the appointment shall be deemed to constitute full and timely notice of nonreappointment when that term expires. The provisions of Sections 602 (4) and 604 A shall not apply in these instances.

604 D. Subject to limitations contained in the Policies of the Board of Governors, a faculty member may appeal to the Board of Governors the decision of a chancellor not to reappoint the faculty member.

SECTION 605. TERMINATION OF FACULTY EMPLOYMENT.

605 A. Definition.

The tenure policies and regulations of each institution shall provide that the employment of faculty members with permanent tenure or of faculty members appointed to a fixed term may be terminated by the institution because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of a teaching, research, or public-service program. "Financial exigency" is defined as a significant decline in the financial resources of the institution that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public-service program shall be made by the chancellor, after consulting with the academic administrative officers and faculties as required by Section 605 C(1), subject to the concurrence by the President and then approval by the Board of Governors. If the financial exigency or curtailment or elimination of program is such that

the institution's contractual obligation to a faculty member may not be met, the employment of the faculty member may be terminated in accordance with institutional procedures that afford the faculty member a fair hearing on that decision.

605 B. Timely Notice of Termination.

(1) When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public-service program and such curtailment or elimination of program is not founded upon financial exigency, the faculty member shall be given timely notice as follows:

- (a) one who has permanent tenure shall be given not less than 12 months' notice; and
- (b) one who was appointed to a fixed term and does not have permanent tenure shall be given notice in accordance with the requirements specified in Section 604 A(1).

(2) When a faculty member's employment is to be terminated because of financial exigency, the institution will make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in Section 605 B(1).

(3) For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section 605 A, the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by a method of delivery that requires a signature for delivery, and the faculty member will be given 30 calendar days after attempted delivery of the notice to accept or reject the offer.

605 C. Institutional Procedures.

Effective January 1, 2004, for terminations arising on or after January 1, 2004, 605 C. shall read as follows;

The institution shall establish regulations governing termination procedures. These regulations shall include provisions incorporating the following requirements:

(1) If it appears that the institution will experience an institutional financial exigency or needs seriously to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

(2) In determining which faculty member's employment is to be terminated for reasons set forth in Section 605 A, the chancellor shall give consideration to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

(3) An individual faculty member whose employment is to be terminated shall be notified of this fact in writing. This notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.

(4) A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious.

(5) The institution, when requested by the faculty member, shall give reasonable assistance in finding other employment for a faculty member whose employment has been terminated.

(6) A faculty member whose employment is terminated pursuant to this Section 605 may appeal the reconsideration decision to the board of trustees of the constituent institution.

SECTION 606. RETIREMENT OF FACULTY.

Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees").

SECTION 607. FACULTY GRIEVANCE COMMITTEE FOR CONSTITUENT INSTITUTIONS.

(1) The chancellor of each constituent institution shall provide for the establishment of a faculty grievance committee. The faculty grievance committee shall be elected by the faculty with members elected from each professorial rank. No officer of administration shall serve on the committee. For purposes of this section, "officer of administration" shall be deemed to include department chairs and department heads.

(2) The committee shall be authorized to hear and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance, to facilitate voluntary adjustment by the parties, and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be given to the chancellor only after the dean, department head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.

(3) "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

(4) If any faculty member has a grievance, the faculty member may petition the faculty grievance committee for redress. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the petitioner considers pertinent to the case. The committee shall decide whether the facts merit a detailed investigation so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition.

(5) If, before this section is established, the faculty of an institution has adopted a faculty grievance procedure that in its judgment is adequate to its needs, it may retain that procedure in place of the one specified above.

(6) If neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the faculty grievance committee in favor of the aggrieved faculty member, then the faculty member may appeal to the board of trustees of the constituent institution. The decision of the board of trustees is final.

SECTION 608. STUDENTS' RIGHTS AND RESPONSIBILITIES.

(1) The University of North Carolina affirms that the first goal of each constituent institution is to educate the students admitted to its programs. The freedom of students to learn is an integral and necessary part of the academic freedom to which the University and its constituent institutions are dedicated. Each constituent institution shall provide, within allotted functions and available resources, opportunity for its students to derive educational benefits through developing their intellectual capabilities, encouraging their increased wisdom and understanding, and enhancing their knowledge and experience applicable to the effective discharge of civic, professional, and social responsibilities. No constituent institution shall abridge either the freedom of students engaged in the responsible pursuit of knowledge or their right to fair and impartial evaluation of their academic performance.

(2) All students shall be responsible for conducting themselves in a manner that helps to enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.

(3) In applying regulations in the area of student discipline, each constituent institution shall adhere to the requirements of due process as set forth in Section 502 D(3) of this *Code*.

SECTION 609. APPELLATE JURISDICTION OF THE BOARD OF GOVERNORS.

609 A. Discretionary Review.

Nothing contained in Chapter VI, or any other chapter of the *Code*, shall be construed to limit the right of the Board of Governors to make such inquiry and review into personnel actions as it may from time to time deem appropriate.

609 B. Hearings.

The Board of Governors may in its sole discretion conduct hearings. Any hearing, whether before the full board or a designated standing or special committee of the board, shall be limited to such matters as the Board of Governors shall deem appropriate.

609 C. Appeals by Non-Faculty Exempt Employees

A non-faculty employee who is exempt from the State Personnel Act whose employment is terminated and who alleges that the termination was illegal or violated a Policy of the Board of Governors may appeal the decision in accordance with procedures established by the constituent institution. If the employee is a professional member of the president's staff, as provided for in Section 500 A(2) of this *Code*, then the employee may appeal to the president. Subject to limitations contained in the Policies of the Board of Governors, an employee who alleges that the termination of the employee's employment was illegal or in violation of Board of Governors Policy may appeal the final decision of the constituent institution, or the decision of the president, to terminate the employment to the Board of Governors.

609 D. Transmission of Appeals

All appeals addressed to or requests for hearings by the Board of Governors, from whatever source, shall be transmitted through the president.

CHAPTER VII - FINANCES, PROPERTY AND OBLIGATIONS

SECTION 700. BUDGETS AND APPROPRIATIONS.

700 A. Budget Recommendations.

The Board of Governors shall develop, prepare, and present to the governor, the Advisory Budget Commission, and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act, and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation, and increases to remedy deficiencies, as well as other areas. [See G.S. 116-11(9)a]

700 B. Appropriations and Allocations.

Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board of Governors in a lump sum for allocation to the institutions. Funds for the third category in Section 700 A above, shall be appropriated to the Board of Governors in a lump sum. The Board of Governors shall allocate to the institutions any funds appropriated, said allocation to be made in accordance with the board's schedule of priorities; provided, however, that when both the board and the Director of the Budget deem it to be in the best interest of the state, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. [See G.S. 116-11(9)b]

700 C. Transfers of Appropriated Funds.

The director of the budget may, on recommendation of the Board of Governors, authorize transfer of appropriated funds from one institution to another to provide adjustments for over- or under-enrollment or may make any other adjustment among institutions that would provide for the orderly and efficient operation of the institutions. [See G.S. 116-11(9)c]

SECTION 701. TUITION AND FEES.

The Board of Governors shall set tuition and required fees at the constituent institutions, not inconsistent with actions of the General Assembly, in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term. [See G.S. 116-11(7) and 116-143] Consistent with the North Carolina constitutional mandate, the benefits of the University of North Carolina shall be extended to the people of the state free of expense, as far as practicable. [See N. C. Constitution, Art. IX, Sec. 9]

SECTION 702. GENERAL POWERS CONCERNING PROPERTY.

702 A. Corporate Powers.

The Board of Governors shall have the powers, relating to the acquisition, use and disposition of property, set forth in Chapter I, Section 101 of this *Code*.

702 B. Statutory Powers.

Subject to applicable state law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund. [See G.S. 116-11(2)]

702 C. Transfer of Property and Obligations.

All property of whatsoever kind and all rights and privileges held by the former Board of Higher Education and by the former boards of trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, University of North Carolina at Pembroke¹, Western Carolina University and Winston-Salem State University, as said property, rights and privileges may have existed immediately prior to July 1, 1972, are, effective July 1, 1972, transferred to and vested in the Board of Governors. All obligations of whatsoever kind of the former Board of Higher Education and of the former boards of trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, University of North Carolina at Pembroke, Western Carolina University and Winston-Salem State University, as said obligations may have existed immediately prior to July 1, 1972, are, effective July 1, 1972, transferred to and assumed by the Board of Governors. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall, from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries, and shall continue to be held subject to the provisions of the respective instruments, grants, or other means of process by which any property right was acquired. In case a conflict arises as to which property, rights, or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights, or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board of Governors shall constitute final administrative action. Nothing in this *Code* shall be deemed to increase or diminish the income, other revenue, or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. [See G.S. 116-12]

702 D. Limitation on Exercise of Powers.

The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes. [See G.S. 116-13]

SECTION 703. IMMUNITIES.

703 A. Tax Exemption.

The lands and other property belonging to the University of North Carolina shall be exempt from all kinds of public taxation. [See N. C. Constitution, Art. V, Sec. 2(3) and G.S. 116-16]

¹ Designated as Pembroke State University prior to July 1, 1996.

703 B. Tort Liability.

The University of North Carolina is not liable for any tort claims except as provided for by law. [See generally G.S. 143-291, et seq. and G.S. 116-40. 2]

SECTION 704. ENDOWMENT FUND.

Each board of trustees is authorized to establish and maintain, pursuant to the requirements of state law and such terms and conditions as the Board of Governors may from time to time prescribe, permanent endowment funds for its institutions. [See G.S. 116-36]

SECTION 705. ANNUITY OR RETIREMENT INCOME CONTRACTS.

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges, and institutions of higher learning as named and set forth in this *Code* and other state agencies qualified as educational institutions under 501 (c)(3) of the United States Internal Revenue Code, the Board of Governors may authorize the business officer or agent for each constituent institution of the University of North Carolina to enter into annual contracts with any of the faculty members, administrative officers, and employees of said institutions of higher learning which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer, or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer, or employee. A faculty member, administrative officer, or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer, or employee before the individual's election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the Board of Governors. The amount by which the salary of any faculty member, administrative officer, or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. [See G.S. 116-17]

SECTION 706. REVENUE BONDS.

The Board of Governors shall have authority, subject to such limitations and restrictions as may be established by state law, to issue revenue bonds and special obligation bonds. Revenue bonds may be issued for service and auxiliary facilities, student housing, student activities, physical education, and recreation facilities. [See G.S. 116-41.1 et seq., 116-175 et seq., and 116-187 et seq.] Special obligation bonds may be issued for the construction, renovation, improvement or expansion of any capital facilities located or to be located at a constituent or any affiliated institution of the University for the purposes of carrying out the mission of that institution. [See G.S. 116D-21 et seq.]

CHAPTER VIII - MATTERS INVOLVING NON-PUBLIC INSTITUTIONS

SECTION 800. LICENSING POST-SECONDARY DEGREE ACTIVITY.

800 A. Institutions Required to Be Licensed.

All institutions conducting post-secondary degree activity in this state that are not subject to Chapters 115C or 115D of the General Statutes, nor some section of Chapter 116 of the General Statutes other than G.S. 116-15, shall be subject to licensure by the Board of Governors under the standards of G.S. 116-15 unless exempt therefrom by one or another provision of G.S. 116-15. [See G.S. 116-15]

800 B. Regulatory Authority in the Board.

The Board of Governors shall establish such rules, regulations, and procedures as it may deem necessary or appropriate to effectuate the provisions of G.S. 116-15. [See G.S. 116-15(i)] These shall include the following:

(1) The form of the license by which an institution may be authorized to conduct post-secondary degree activity. [See G.S. 116-15(a) and (b)]

(2) Procedures under which an institution may seek to establish its exemption from licensure. [See G.S. 116-15(c), (d), and (e)]

(3) Procedures under which an institution may seek to prove satisfaction of the standards for licensure. [See G.S. 116-15(f)]

(4) Procedures through which the review of institutions previously licensed by the board may be conducted. [See G.S. 116-15(g)]

(5) Procedures for the denial, revocation, and continuation of licensure. [See G.S. 116-15(h)]

800 C. Enforcement Authority in the Attorney General.

The Board of Governors shall call to the attention of the attorney general, for such action as the attorney general may deem appropriate, any institution failing to comply with the requirements of G.S. 116-15. [See G.S. 116-15(j)]

SECTION 801. ASSESSMENT OF NEEDS AND REVIEW OF REQUESTS.

The Board of Governors shall assess the contributions and needs of the non-public colleges and universities of the state and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the state. [See G.S. 116-11(11)]

SECTION 802. FINANCIAL AID. DELETED – see G.S. 116-19 through 116-22

CHAPTER IX - MISCELLANEOUS PROVISIONS**SECTION 900. THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM****900 A. Composition.**

There is established the University of North Carolina Health Care System to provide patient care, facilitate the education of physicians and other health-care providers, conduct research collaboratively with the health sciences schools of the University of North Carolina at Chapel Hill, and render other services designed to promote the health and well-being of the citizens of North Carolina. The University of North Carolina Hospitals at Chapel Hill and the clinical patientcare programs established or maintained by the School of Medicine of the University of North Carolina at Chapel Hill shall be governed by the Board of Directors of the University of North Carolina Health Care System composed of both at-large and ex-officio members.

Vacant at-large positions shall be filled by the appointment of persons from the business and professional public-at-large who have special competence in business management, hospital administration, health-care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of the University of North Carolina, nor officers or employees of the state. No less than nine and no more than 21 members at large, which number to be determined by the Board of Directors, shall be appointed by the president of the University, and ratified by the Board of Governors, from among a slate of nominations made by the Board of Directors of the University of North Carolina Health Care System, said slate to include at least twice as many nominees as there are vacant positions to be filled. No at-large member may be appointed to more than two full four-year terms in succession. Any vacancy in an unexpired term shall be filled by an appointment made by the president, and ratified by the Board of Governors, upon the nomination of the Board of Directors, for the balance of the term remaining.

A minimum of six members ex-officio shall be the president of the University of North Carolina (or the president's designee); the chief executive officer of the health care system; two administrative officers of the University of North Carolina at Chapel Hill designated by the chancellor; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the dean of the School of Medicine; provided, that if not such a member ex-officio by virtue of holding one or more of the offices aforementioned, additional ex-officio memberships shall be held by the president of the University of North Carolina Hospitals at Chapel Hill and the dean of the School of Medicine of the University of North Carolina at Chapel Hill, for a total potential ex-officio membership of eight. [See G.S. 116-37(a) and (b)]

900 B. Meetings and Powers of Board.

The Board of Directors of the University of North Carolina Health Care System shall meet at least every 60 days and may hold special meetings at any time and place within the state at the call of the chair. The Board of Directors, with each ex-officio and at-large member having a vote, shall elect a chair from among the at-large members, for a term of two years; no person shall be eligible to serve as chair for more than three terms in succession. In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the Board of Directors is authorized to exercise such authority and responsibility and adopt such policies, rules and regulations as it deems necessary and appropriate, not inconsistent with the provisions of G.S. 116-37, this *Code*, or the other policies of the Board of Governors. The Board of Directors may adopt policies that make the authorities and responsibilities established herein or by statute separately applicable either to the University of North Carolina Hospitals at Chapel Hill or to the clinical patient care programs of the

School of Medicine of the University of North Carolina at Chapel Hill, or to both. The board may authorize any component of the University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the Board of Directors may direct. The Board of Directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the chancellor of the University of North Carolina at Chapel Hill. The Board of Directors shall keep the Board of Governors and the Board of Trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education and research for improvement of the health of the citizens of North Carolina. [See G.S. 116-37 (b)]

900 C. Officers.

The executive and administrative head of the University of North Carolina Health Care System shall have the title of 'chief executive officer'. The Board of Directors, in cooperation with the Board of Trustees and the chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the chancellor deem appropriate, shall identify two or more persons as candidates for the office, who, pursuant to criteria agreed upon by the boards and the chancellor, have the qualifications for both the positions of chief executive officer and vice chancellor for medical affairs of the University of North Carolina at Chapel Hill. The names of the candidates shall be forwarded by the chancellor to the president who, if satisfied with the quality of one or more of the candidates, will nominate one as chief executive officer, subject to selection by the Board of Governors. The chief executive officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the Board of Directors. [See G.S. 116-37(c)] The chief executive officer shall serve at the pleasure of the Board of Governors which may terminate the chief executive officer's appointment (as distinguished from such person's joint appointment, if any, as vice chancellor for medical affairs of the University of North Carolina at Chapel Hill) on its own initiative or upon recommendation of the Board of Directors or the president of the University: provided, that in all instances, the Board of Governors shall consult with the Board of Directors prior to terminating the appointment of the chief executive officer.

The executive and administrative head of the University of North Carolina Hospitals at Chapel Hill shall have the title of "president of the University of North Carolina Hospitals at Chapel Hill." The Board of Directors shall elect, on nomination of the chief executive officer, the president of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff employees as may be deemed necessary to assist in fulfilling the duties of the office of the chief executive officer, all of whom shall serve at the pleasure of the chief executive officer. [See G.S. 116-37(c)]

The Board of Governors, on recommendation of the president of the University and of the Board of Directors, shall fix the compensation of the chief executive officer. On recommendation of the chief executive officer and the Board of Directors, with the concurrence of the president of the University, the Board of Governors shall fix the compensation of the president of the University of North Carolina Hospitals at Chapel Hill.

900 D. Health Care System Personnel.

Employees of the University of North Carolina Health Care System shall be deemed to be employees of the state and shall be subject to all provisions of state law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the University of North Carolina Health Care System, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the Board of Directors. [See G.S. 116-37(d)]

900 E. Health System Finances.

The University of North Carolina Health Care System shall be subject to the provisions of the Executive Budget Act. The chief executive officer, subject to the Board of Directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. The preparation and execution of the budget shall be subject to the requirements of Section 501B(7) of this *Code*. [See G.S. 116-37(e)]

900 F. Health Care System Purchases.

Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the Board of Directors shall establish policies and regulations governing the purchasing requirements of the University of North Carolina Health Care System. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical, educational, research, and community service missions of the University of North Carolina Health Care System. [See G.S. 116-37(h)]

900 G. Health Care System Property.

The Board of Directors shall establish rules and regulations for acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. Acquisitions and disposition of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes. [See G.S. 116-37(i)]

900 H. Health Care System Property -- Construction.

Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board of Directors shall adopt policies and procedures with respect to the design, construction, and renovation of buildings, utilities, and other property developments of the University of North Carolina Health Care System requiring the expenditure of public money. [See G.S. 116-37(j)]

SECTION 901. NORTH CAROLINA SCHOOL OF THE ARTS.

901 A. Policy.

It is declared to be the policy of the state to foster, encourage and promote, and to provide assistance for, the cultural development of the citizens of North Carolina, and to this end the General Assembly has created and provided for a training center for instruction in the performing arts. [See G.S. 116-63]

901 B. Establishment.

There is established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the state, to serve the students of North Carolina and other states, particularly other states of the South. The school shall be designated the "North Carolina School of the Arts." [See G.S. 116-64]

901 C. Board of Trustees.

The North Carolina School of the Arts is a constituent institution of the University of North Carolina and subject to the provisions of this *Code*; provided, however, that notwithstanding the provisions of Chapter IV of this *Code*, the Board of Trustees of said school shall consist of 15 persons, 13 of whom are selected in accordance with provisions of said Chapter IV, one of whom shall be the conductor of the North Carolina Symphony and one of whom shall be the secretary of the Department of Cultural Resources, each of the latter two serving ex-officio and non-voting. [See G.S. 116-65]

901 D. Powers of Board.

The Board of Governors and the Board of Trustees of the school shall be advised and assisted by the State Board of Education. Entrance requirements shall be prescribed so that the professional training offered shall be available only to those students who possess exceptional talent in the performing arts. In developing curricula, the school shall utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction as may be needed by the students of the school, and, at the discretion of the Board of Governors, personnel may be employed jointly with any such institution or unit on a cooperative, cost-sharing basis. Curricula below the collegiate level shall be developed with the advice and approval of the State Board of Education and in consultation with the advisory board of the school. The school shall confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists. The chancellor of the school shall preferably be a noted composer or dramatist. [See G.S. 116-66]

901 E. Endowment Fund.

The Board of Trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Chapter VII of this *Code*. [See G.S. 116-68]

901 F. Purpose of School Program.

The primary purpose of the school shall be the professional training, as distinguished from liberal arts instruction, of talented students in the fields of music, drama, the dance, and allied performing arts, at both the high school and college levels of instruction, with emphasis placed upon performance of the arts, and not upon academic studies of the arts. The said school may also offer high school and college instruction in academic subjects, and such other programs as are deemed necessary to meet the needs of its students and of the state, consistent with appropriations made and gifts received therefor, and may cooperate, if it chooses, with other schools which provide such courses of instruction. The school, on occasion, may accept elementary grade students of rare talent, and shall arrange for such students, in cooperation with an elementary school, a suitable educational program. [See G.S. 116-69]

SECTION 902. NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS.

The North Carolina School of Science and Mathematics is an affiliated school of the University of North Carolina. It is governed by a Board of Trustees, which has the power and authority granted to it by law. Eleven of the 25 members of the Board of Trustees are elected by the Board of Governors, as provided by law. The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the school, which shall be transmitted by the Board of Governors to the General Assembly. The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the president of the University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all meetings. The Board of Governors, in accordance with the provisions of law, shall establish for the school an Educational Advisory Council. [See G.S. 116-230. 1 through 116-238]

Appendix 1 - DELEGATIONS OF DUTY AND AUTHORITY TO BOARDS OF TRUSTEES

Pursuant to authority vested in it by the General Statutes, and consistent with the provisions of *The Code of the University of North Carolina*, the Board of Governors hereby delegates to the boards of trustees of the constituent institutions of the University of North Carolina the following duties and powers:

I. ACADEMIC AND ADMINISTRATIVE PERSONNEL

A. Appointment and Compensation

1. Upon recommendation of the chancellor, the board of trustees of a special responsibility constituent institution with management flexibility for personnel appointments shall, for all positions exempt from the State Personnel Act except the position of the chancellor, appoint, promote, and set the compensation for such employees consistent with the policies and salary ranges set by the Board of Governors and the regulations and guidelines established by the Office of the President.

Personnel actions at a constituent institution, other than a special responsibility constituent institution with management flexibility, shall be governed as follows:

- a. With respect to all faculty positions with permanent tenure and all senior administrative positions, namely vice chancellors, provosts, deans and directors of major educational and public service activities, the chancellor, following consultation with the board of trustees, shall forward to the president recommendations with respect to such appointments, promotions, and compensation; if the president concurs in such recommendations, the president shall forward them to the Board of Governors for approval. Notwithstanding the requirements of this paragraph, a board of trustees may promote in rank a faculty member with permanent tenure, upon the recommendation of the chancellor, and without approval by the Board of Governors.
- b. With respect to all faculty and administrative positions other than those identified in subparagraph 2a above, and other than those subject to the State Personnel Act, the chancellor shall forward the chancellor's recommendations for appointment, promotion and compensation to the board of trustees; subject to applicable provisions of the *University Code* and to such policies as may be established by the Board of Governors, the action of the board of trustees with respect to such personnel actions shall be final.

B. Discharge or Suspension

Subject to regulations of the board of trustees and consistent with applicable policies of the Board of Governors, all discharges or suspensions of faculty members and administrative personnel, other than those subject to the State Personnel Act, shall be effected by the chancellor. A discharged or suspended employee shall have such rights of appeal from the action of the chancellor as may be prescribed by the *University Code*, policies of the Board of Governors, or regulations of the board of trustees.

C. Personnel Policies

The board of trustees may adopt personnel policies not otherwise prescribed by state law, the *University Code*, or policies of the Board of Governors, for personnel in all categories of university employment. Policies adopted by a board of trustees regarding academic tenure and promotion shall be effective upon review by the senior vice president for academic affairs and the vice president and general counsel, and approved by the president.

D. Chancellor Selection

In the event of a vacancy in the chancellorship, the board of trustees shall establish a search committee composed of representatives of the board of trustees, the faculty, the student body and the alumni. Upon the establishment of the search committee, the chair of the board of trustees and the president shall jointly establish a budget and identify staff for the committee.

The search committee, through its chair, shall make a preliminary report to the president when the committee is preparing a schedule of interviews of those persons it considers to constitute the final list and from among whom it anticipates the trustees' nominees will be chosen, and the president will be given an opportunity to interview each of these candidates.

The board of trustees, following receipt of the report of the search committee, shall recommend at least two names for consideration by the president in designating a nominee for the chancellorship, for approval by the Board of Governors.

II. ACADEMIC PROGRAM

The board of trustees shall be responsible for ensuring the institution's compliance with the educational, research, and public service roles assigned to it by the Board of Governors, either by express directive or by promulgated long-range plans of the Board of Governors.

III. ACADEMIC DEGREES AND GRADING

Subject to authorization by the Board of Governors of the nature and general content of specific degree programs which may be offered by an institution, each institution shall determine whether an individual student shall be entitled to receipt of a particular degree. Each institution also shall determine what grade a student will be assigned in a particular course. No appeal from any of these decisions or any other academic determination is allowable to the president or to the Board of Governors.

IV. HONORARY DEGREES, AWARDS AND DISTINCTIONS

The board of trustees shall be responsible for approving the names of all individuals on whom it is proposed that an honorary degree or other honorary or memorial distinction be conferred by the institution, subject to such policies as may be established by the Board of Governors.

V. BUDGET ADMINISTRATION

The board of trustees shall advise the chancellor with respect to the development of budget estimates for the institution and with respect to the execution and administration of the budget of the constituent institution, as approved by the General Assembly and the Board of Governors.

VI. PROPERTY AND BUILDINGS

The board of trustees of a constituent institution shall be responsible, subject to policies of the Board of Governors and all legal requirements relative to the construction of state-owned buildings, for the following matters concerning campus capital construction projects which have been approved by the Board of Governors and authorized by the state of North Carolina: (1) the selection of architects or engineers for buildings and improvements requiring such professional services; (2) the approval of building sites; (3) the approval of plans and specifications; and (4) the final acceptance of all completed buildings and projects.

The board of trustees shall be responsible to the Board of Governors for preparing and maintaining a master plan for the physical development of the institution, consistent with the total academic and service mission of the institution as defined and approved by the Board of Governors.

Any proposal involving the acquisition or disposition by an institution of any interest in real property shall be recommended by the board of trustees to and must be approved by the Board of Governors; provided, that

(a) if the proposal involves an interest in real property which is valued at less than \$50,000, the board of trustees may authorize such transaction and proceed to obtain the necessary approvals from appropriate state officials and agencies, without first obtaining the approval of the Board of Governors;

(b) if the proposal involves an interest in real property, the president may approve or execute leases with a value higher than \$50,000 up to \$150,000, and may approve or execute contracts to acquire real property with a value higher than \$50,000 up to \$250,000, without first obtaining approval of the Board of Governors; and

(c) the Board of Governors, under circumstances which it considers appropriate and following notice from it to the board of trustees, may take action necessary to effect the acquisition or disposition of an interest in real property which is related to or which affects the institution, without receipt of a recommendation from the board of trustees.¹

VII. ENDOWMENTS AND TRUST FUNDS

Subject to applicable provisions of state law and to such terms and conditions as may be prescribed from time to time by the Board of Governors, each board of trustees shall be responsible for the preservation, maintenance, and management of all properties, both real and personal, funds and other things of value which, either separately or in combination, constitute all or any part of the authorized endowment or trust funds, either currently in existence or to be established in the future, for the benefit of the individual constituent institution. [See G.S. 116-11(2); 116-12; 116-36; 116-36. 1; 116-36. 2; 116-36. 3]

¹ By resolution adopted November 13, 1981, the Board of Governors elaborated upon this provision concerning the acquisition and disposition of interest in real estate. The resolution says, among other things, that the value of an interest in real estate shall, with respect to a lease, be deemed the annual rental thereof. Further, the resolution expressly authorizes the board of trustees to delegate to their respective chancellors the power to authorize for the institutions the acquisition or disposition by lease of institutions the acquisition or disposition by lease of interests in real estate valued at less than \$25,000, subject to any necessary approval from state officials and agencies.

VIII. ADMISSIONS

Subject to such enrollment levels and minimum general criteria for admission as may be established for a constituent institution by the Board of Governors, each constituent institution of the University of North Carolina shall establish admissions policies and resolve individual admission questions for all schools and divisions within the institution. No appeal concerning an individual admission case shall lie beyond the institutional board of trustees.

IX. TUITION, FEES AND DEPOSITS

A. General Authority of Boards of Trustees

The boards of trustees of the constituent institutions shall cause to be collected from each student, at the beginning of each semester, quarter, or term, such tuition, fees, and other amounts necessary to pay other expenses for the term, as have been approved by the Board of Governors. [See G.S. 116-11(7) and G.S. 116-143]

B. Tuition and Fee Deposits

Each board of trustees shall require the payment of such advance deposits, at such times and under such conditions as it determines are appropriate or as may be required by state law or by the Board of Governors. [See G.S. 116-143]

C. Application Fee

Each board of trustees shall require the payment of such nonrefundable application fees, in connection with each application for admission, as may be required by state law or by the Board of Governors. [See G.S. 116-143]

D. Acceptance of Obligations in Lieu of Cash

Subject to policies prescribed by the Board of Governors, the boards of trustees shall establish regulations concerning the acceptance of obligations of students, together with such collateral or security as may be deemed necessary or proper, in lieu of cash, in payment of tuition and fees. [See G.S. 116-143]

E. Fee Recommendations

Subject to policies prescribed by the Board of Governors, each board of trustees, in consultation with the chancellor, shall recommend to the president the amounts to be charged at the constituent institution for application, athletics, health services, student activities, educational and technology, retirement of debt incurred for capital improvements projects authorized by the General Assembly, course, and special fees. In carrying out this responsibility, each board of trustees and the chancellor shall ascertain that the benefits of the activity or service are commensurate with the recommended fee which is required to support the activity or service. Recommended fees should be consistent with the philosophy set forth in the North Carolina Constitution which states that the benefits of the University of North Carolina should be extended to the people of the state free of expense, as far as practicable.

X. STUDENT FINANCIAL AID

All scholarships and other forms of financial aid to students which are limited in their application to or are supported from sources generated by an individual campus shall be administered by the constituent institution pursuant to such regulations as may be prescribed by the board of trustees and subject to the terms of any applicable laws and to policies of the Board of Governors.

XI. STUDENT SERVICES

Each board of trustees, upon recommendation of the chancellor, shall determine the type, level, and extent of student services (such as health care, athletic programs, and counseling) to be maintained for the benefit of students at the institution, subject to general provisions concerning types and levels of student services as may be prescribed by the Board of Governors.

XII. STUDENT CONDUCT, ACTIVITIES AND GOVERNMENT

Under such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the regulation of student conduct, the approval of organized, institutionally-recognized student activities and the definition of roles and functions of any institutionally-recognized system of student self-government and student participation in the governance of any aspect of the institutional programs and services. No appeal concerning such activities shall lie beyond the board of trustees, unless it is alleged that the policy, action, or decision being appealed violates any law or constitutional provision of North Carolina or of the United States, the University Code, or policies of the Board of Governors.

XII. STUDENT ACTIVITIES AND GOVERNMENT

Under such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the regulation and approval of organized, institutionally-recognized student activities, the definition of roles and functions of any institutionally-recognized system of student self-government and student participation in the governance of any aspect of the institutional programs and services. No appeal concerning such activities are allowable to the president or to the Board of Governors.

XIII. INTERCOLLEGIATE ATHLETICS

Subject to such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics.

XIV. TRAFFIC AND PARKING REGULATIONS²

XV. CAMPUS SECURITY

Subject to applicable provisions of state law and such policies as may be adopted by the Board of Governors or the board of trustees, the chancellor shall be responsible for the maintenance of campus security.

XVI. AUXILIARY ENTERPRISES, UTILITIES AND MISCELLANEOUS FACILITIES

Pursuant to applicable provisions of state law and policies of the Board of Governors, the boards of trustees of affected constituent institutions shall have authority and responsibility for the adoption of policies applicable to and the control and supervision of campus electric power plants and water and sewer systems, other utilities and facilities [G.S. 116-35], and child development centers [G.S. 116-38].

² Legislation adopted by the 1973 session of the General Assembly, on recommendation of the Board of Governors, gave the boards of trustees broad authority in this area and superseded the authority originally granted in this paragraph; hence it is omitted here. [See G.S. 116-44.3 et. seq.]

APPENDIX C

**N.C. Senate
and N.C. House
Resolutions Establishing
the Procedures for
Nominating and Electing
Members of the
UNC Board of Governors**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

Simple
Resolution
Adopted

SENATE RESOLUTION 174
Education/Higher Education Committee Substitute Adopted 3/12/03
Adopted 3/13/03

Sponsors:

Referred to:

February 25, 2003

1 A SENATE RESOLUTION TO ESTABLISH THE PROCEDURE FOR
2 NOMINATING AND ELECTING MEMBERS OF THE BOARD OF
3 GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

4 Be it resolved by the Senate:

5 SECTION 1. The following procedures for nominating and electing
6 members of the Board of Governors of The University of North Carolina are adopted:

7 I. COMMITTEE RESPONSIBILITIES.

8 1. It is the duty of the Senate Committee on Education/Higher Education
9 (hereinafter referred to as the "Senate Committee") to choose nominees for each
10 opening on the Board of Governors of The University of North Carolina to which the
11 Senate is to elect members.

12 2. The Senate Committee shall receive suggestions of proposed candidates for
13 nomination for election to the Board of Governors of The University of North Carolina
14 from Monday, March 17, 2003, through Friday, March 21, 2003. In 2003, the total
15 number of positions is eight. In order for a person to have standing to be considered as a
16 candidate for nomination by the Senate Committee, that person must be formally
17 proposed as a candidate for nomination by a member of the Senate. Only a written
18 nomination on a form provided by the cochairs of the Senate Committee for that
19 purpose and received in the Office of the Senate Principal Clerk on or after Monday,
20 March 17, 2003, and no later than 5:00 P.M. on Friday, March 21, 2003, shall constitute
21 formal proposal of a candidate. Delivery of a nomination form by facsimile
22 transmission shall not constitute a formal proposal of a candidate.

23 3. A Senator may propose candidates for nomination only for the openings
24 available for election by the Senate. In the 2003 Session of the General Assembly, the
25 Senate will elect eight persons for four-year terms.

26 4. On or after March 22, 2003, the Senate Committee shall list all proposed
27 candidates for nomination. The Senate Committee shall screen the proposed candidates

1 for nomination as to their qualifications and background and may interview each one to
2 make sure that suitable persons are nominated. The Senate Committee shall ascertain
3 that each candidate for nomination is willing and able to serve and has no statutory
4 disability. On completion of the screening process, the Senate Committee shall conduct
5 a vote to ensure that the slate of legally qualified candidates lists no more than twice the
6 number of candidates for the total seats open.

7 5. The cochairs of the Senate Committee shall ascertain whether the nominees
8 for election by the Senate would serve if elected. Any nominee may withdraw without
9 the approval of the sponsor.

10 6. Senate Committee nominees shall be placed before and recommended to
11 the Senate for election.

12 II. ELECTIONS IN THE SENATE.

13 1. A ballot shall be prepared under the supervision of the cochairs of the
14 Senate Committee for the use of the Senate.

15 2. The ballot shall list only the names of those nominees proposed by the
16 Senate Committee who have consented to run and for whom the Senate is entitled to
17 vote. Their names shall be arranged alphabetically by surname.

18 3. The Senate shall hold its election no later than the beginning of the daily
19 session on April 2, 2003. Before the voting begins, one of the cochairs of the Senate
20 Committee shall explain the voting rules, which are:

21 (a) No nomination shall be received from the floor.

22 (b) In order to be chosen, a nominee must receive the votes of a majority
23 of all members present and voting.

24 (c) Each member present and voting shall vote for as many nominees as
25 there are positions to be filled, and any ballot not so marked shall be
26 deemed void.

27 (d) If fewer than eight nominees receive the votes of a majority of all
28 members present and voting, a runoff to fill the open position or
29 positions shall be conducted among the nominees who were not
30 elected but who received the highest number of votes cast; and the
31 number of nominees eligible to be voted on in the runoff shall be twice
32 the number of positions to be filled.

33 (e) If there is a tie for the last position between two nominees who are
34 eligible for the next runoff, both nominees shall be included in the next
35 runoff balloting, even though there would be more than two nominees
36 per available position, unless the deciding vote is cast in accordance
37 with the North Carolina Constitution, Article II, Section 13.

38 (f) If more than eight nominees receive the votes of a majority of all
39 members present and voting, then the eight nominees receiving the
40 highest number of votes shall be deemed to have been chosen.

41 4. The Senators shall proceed to mark their ballots for eight persons, for
42 four-year terms.

43 Every ballot shall be signed by the Senator casting it, and no unsigned ballots
44 shall be counted.

1 5. The cochairmen of the Senate Committee shall be responsible for canvassing
2 the vote and declaring the results. All ballots shall be retained by the Principal Clerk as
3 part of the permanent records of the Senate and shall be open for immediate public
4 inspection.

5 6. When the cochairmen of the Senate Committee have determined that the
6 Senate has chosen eight persons to serve as members of the Board of Governors for
7 terms of four years, the President of the Senate shall declare those eight persons to have
8 been elected.

9 7. The results of the election in the Senate shall then be sent by Special
10 Messenger to the House of Representatives.

11 **III. NOTIFICATION OF ELECTION RESULTS.**

12 When the election process is complete, the cochairmen of the Senate Committee
13 shall notify the Secretary of the Board of Governors of The University of North
14 Carolina of the names of the persons elected by the Senate and of the term for which
15 each person was elected.

16 **SECTION 2.** As used in this resolution, the term "cochairmen" means the
17 Cochairmen of the Senate Committee.

18 **SECTION 3.** This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE RESOLUTION 687

Sponsors: Representative Culpepper.

Referred to: Rules, Calendar, and Operations of the House.

March 26, 2003

1 A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATION
2 FOR ELECTION OF MEMBERS OF THE BOARD OF GOVERNORS OF THE
3 UNIVERSITY OF NORTH CAROLINA.

4 Be it resolved by the House of Representatives:

5 SECTION 1. This resolution will provide procedures for nomination for
6 election of members of the Board of Governors of The University of North Carolina.

7 SECTION 2. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

Simple
Resolution
Adopted

HOUSE RESOLUTION 542

Adopted 3/15/01

Sponsors: Representatives Oldham; Alexander and Goodwin.

Referred to: University Board of Governors Nominating.

March 8, 2001

1 A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING
2 AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE
3 UNIVERSITY OF NORTH CAROLINA.

4 Be it resolved by the House of Representatives:

5 SECTION 1. The following procedures for nominating and electing nine
6 members of the Board of Governors of The University of North Carolina (hereinafter
7 the "Board of Governors") are adopted:

8 I. COMMITTEE RESPONSIBILITIES.

9 1. It is the duty of the University Board of Governors Nominating Committee
10 of the House of Representatives (hereinafter the "Committee") to conduct a process for
11 nominating and electing persons for each opening in each category of seats on the Board
12 of Governors to which the House of Representatives is to elect members.

13 2. The Committee shall receive nominations for election to the Board of
14 Governors through March 29, 2001. Each Representative may nominate up to two
15 persons. In order for a person to have standing as a nominee, that person must be
16 formally nominated by a member of the House of Representatives. Only a written
17 nomination that includes all the requested information, which is submitted on a form
18 provided by the Chair of the Committee for that purpose, and that is received in the
19 Office of the House Principal Clerk no later than 5:00 P.M. on March 29, 2001, shall
20 constitute a formal nomination. Delivery by facsimile transmission shall constitute valid
21 receipt if the communication or submission is in fact received in the Office of the House
22 Principal Clerk no later than 5:00 P.M. on March 29, 2001. An individual cannot be a
23 nominee or be nominated in more than one category. An individual is not eligible for
24 nomination if he or she was nominated and not elected to the Board of Governors by the
25 Senate during the 2001 Session.

26 3. A Representative may nominate persons only for the categories available
27 for election by the House of Representatives. In the 2001 Session, the House of
28 Representatives will elect:

- 1 (a) Six persons in the at-large category, for four-year terms;
2 (b) Two persons in the political minority party category, for four-year
3 terms; and
4 (c) One person in the minority race category, for the remainder of the
5 unexpired term that ends on June 30, 2003.
- 6 4. On or after April 3, 2001, the Committee shall list all nominees by
7 category. The Committee shall screen the nominees as to their qualifications,
8 experience, opinions, and statutory suitability. The Committee may screen nominees by
9 interviewing, or by soliciting written information, or by both means. On completion of
10 the screening process, the Committee shall conduct a vote to ensure that the slate of
11 legally qualified candidates lists no more than twice the number of candidates for the
12 total seats open in each category.
- 13 5. Each nominee shall confirm his or her willingness to serve if elected. Any
14 nominee may withdraw without the approval of the sponsor.
- 15 **II. ELECTIONS IN THE HOUSE OF REPRESENTATIVES.**
- 16 1. A ballot shall be prepared under the supervision of the Chair of the
17 Committee for the use of the House of Representatives. The ballot shall include no more
18 than twice the number of legally qualified candidates for the total seats open in each
19 category.
- 20 2. The names of the nominees shall be arranged on the ballot (a) by category
21 and (b) within each category by alphabetical order.
- 22 3. The House of Representatives shall hold its election no later than the
23 beginning of the daily session on April 5, 2001. Before the voting begins, the Speaker of
24 the House shall explain the voting rules, which are:
- 25 (a) No nomination shall be received from the floor.
26 (b) In order to be elected, a nominee must receive the votes of a majority
27 of all members present and voting in the nominee's category.
28 (c) Each member present and voting shall vote for as many nominees as
29 there are positions to be filled in each category, and any ballot not so
30 marked shall be deemed void as to that category.
31 (d) When fewer than one nominee in the minority race category, two
32 nominees in the political minority party category, or six nominees in
33 the at-large category receive the votes of a majority of all members
34 present and voting for positions in those categories, a runoff to fill the
35 open position or positions shall be conducted among the nominees
36 who were not elected but who received the highest number of votes
37 cast in each category; and the number of nominees eligible to be voted
38 on in the runoff shall be twice the number of positions to be filled.
39 (e) If there is a tie for the last position between two nominees who are
40 eligible for the next runoff, both nominees shall be included in the next
41 runoff balloting, even though there would be more than two nominees
42 per available position.
43 (f) When more than one nominee in the minority race category, two
44 nominees in the political minority party category, or six nominees in

1 the at-large category receive the votes of a majority of all members
2 present and voting for positions in those categories, then the one
3 nominee in the minority race category, two nominees in the political
4 minority party category, or the six nominees in the at-large category
5 receiving the highest number of votes in that category shall be deemed
6 to have been elected.

7 4. The members of the House of Representatives shall proceed to mark their
8 ballots for the following:

- 9 (a) Six persons in the at-large category, for four-year terms;
10 (b) Two persons in the political minority party category, for four-year
11 terms; and
12 (c) One person in the minority race category, for the remainder of the
13 unexpired term that ends on June 30, 2003.

14 Every ballot shall be signed by the member of the House of Representatives
15 casting it, and no unsigned ballots shall be counted.

16 5. The Chair of the Committee is responsible for canvassing the vote and
17 declaring the results and may designate members of the Committee to assist. All ballots
18 shall be retained by the Principal Clerk as part of the permanent records of the House of
19 Representatives and shall be open for immediate public inspection.

20 6. When the Chair of the Committee has determined that the House of
21 Representatives has elected two members from the political minority party category and
22 six members from the at-large category for terms of four years, and one member from
23 the minority race category for the remainder of the unexpired term, the Speaker of the
24 House of Representatives shall declare those nine persons to have been elected to the
25 Board of Governors by the House of Representatives to the indicated positions and for
26 the indicated terms.

27 7. The results of the election in the House of Representatives shall then be
28 sent by Special Messenger to the Senate.

29 III. NOTIFICATION OF ELECTION RESULTS.

30 When the election process is complete, the Chair of the Committee shall
31 notify the Secretary of the Board of Governors of the names of the persons elected by
32 the House of Representatives and the category and term for which each person was
33 elected.

34 **SECTION 2.** This resolution is effective upon adoption.

APPENDIX D

**Policy on
Intercollegiate Athletics**

ADOPTED 10/11/85
REPLACED 05/09/03

INTERCOLLEGIATE ATHLETICS

1. The Board of Governors has delegated the responsibility for intercollegiate athletics to the chancellors under the Code's Delegation of Duty and Authority. That delegation is subject to the requirements and mandates in this policy.
2. The chancellors shall ensure that all athletes admitted to the institution are capable of progressive academic success and graduation within six years.
3. The chancellors shall ensure that the policies for admission of student athletes are reviewed by appropriate members or bodies of the faculty and that any recommendations or advice from those members or bodies are received and considered.
4. The chancellors shall ensure that exceptions or waivers for the admission of student athletes are reviewed by appropriate members or bodies of the faculty and that any recommendation concerning these applicants are received and considered by the chancellors in a timely manner.
5. The chancellors shall ensure that student athletes follow a coherent course of study that is designed to accomplish reasonable progress toward a baccalaureate degree.
6. Chancellors shall ensure that the tutorial and remedial programs for student athletes will be administered by appropriate academic offices in cooperation with athletic department officials.
7. The chancellors shall ensure that athletes who are not making satisfactory academic progress are not allowed to continue as team players.
8. The chancellors shall ensure that a mandatory drug-testing program for student athletes is implemented and monitored.
9. The chancellors shall ensure that formal awareness programs on the dangers of gambling in athletics is implemented.
10. The chancellors shall ensure that the institutions conform with NCAA standards.
11. The chancellors shall ensure that all foundations, clubs, and associations established primarily to raise money on behalf of constituent institutions are audited annually and that those audits are reviewed by the institutional Boards of Trustees and are forwarded to the President.
12. The chancellors shall ensure that the position of director of athletics is separate and distinct from the position of a coach of any sport.

13. The chancellors shall submit an annual report to the Board of Trustees of the constituent institutions with a copy to the President, who will report to the Board of Governors. The annual report shall be designed according to criteria and format defined by the Office of the President and shall include the following elements:
- (a) organization and philosophy of athletics programs;
 - (b) the admission policy for student athletes including the definitions utilized for exceptions to campus-based criteria;
 - (c) student-athlete exceptions to the minimum course requirements set by the Board of Governors and defined in Policy 700.1.1 and Regulation 700.1.1.1[R];
 - (d) the student-athlete profiles for admitted student athletes including SAT/ACT scores, high school grade point averages and NCAA classifications;
 - (e) information about the majors or programs of study chosen by student athletes;
 - (f) academic progression information for student athletes and six-year graduation rates; and
 - (g) information about “booster” club organizations and procedures.
14. The chancellors shall report to the Board of Trustees the student-athlete exceptions to the institution’s undergraduate admissions criteria.
15. The chancellors shall ensure that the annual report is forwarded to appropriate members or bodies of the faculty and that any response from such members or bodies is received and considered by the chancellors.

This policy consolidates policies 1100.1 and 1100.2

Adopted 05/11/90

HEAD COACHES' AND ATHLETIC DIRECTORS' CONTRACTS

Consistent with the requirements of Section I-A(2) of the 1972 resolution of Delegations of Duty and Authority to the Boards of Trustees, no contract of employment between an institution and a head athletic coach or an athletic director shall be valid unless and until all terms and conditions of the contracts have been approved by the Board of Trustees.

Adopted 02/08/91

Guidance on Employment Contracts with Head Athletic Coaches and Related Issues¹

On October 13, 1989, the chairman of the Board of Governors referred questions about contractual commitments that had been made by some constituent institutions in connection with the employment of athletic coaches to the Committees on Personnel and Tenure and University Governance. Mr. William A. Dees, Jr., and Mr. Philip G. Carson were also named to the joint committee. The joint committee met a number of times and inquired at length into various questions of policy and law raised by the contracts. The committee examined the individual employment contracts of all the head coaches at Division I institutions, studied relevant NCAA regulations and had candid conversations and exchanges of ideas with chancellors from Division I institutions including Chancellors Hardin and Monteith. The joint committee and the separate committees also considered the questions raised with appropriate members of the staff of the general administration.

We determined that 15 of our institutions engage in some form of intercollegiate athletics and that among them they employ more than 150 head coaches. Our examination revealed, however, that the major areas of concern occur in connection with contracts with head coaches in revenue producing sports on Division I-A campuses. These sports include men's basketball and football at East Carolina University, North Carolina State University, and the University of North Carolina at Chapel Hill.

Our examination of the coaches' contracts disclosed that there have been contractual provisions in the area of buy-out clauses and the payment of damages, which have been particularly and painfully embarrassing to the institutions and to the University in the past.

The joint committee also found that the chancellors involved are acutely aware of the need for revision in their institutional policies and procedures for the hiring of athletic coaches if unwarranted expense and adverse consequences to the institutions are to be avoided in the future. We believe that the chancellors concur in our strong view that there is a necessity for a proper balance between the legitimate interest of a coach in job security and professional standing with the right of the institution to assure satisfactory job performance. Four specific areas of concern were identified as actual or potential sources of concern. These were:

1. The use of excessive buy-out and severance-payment clauses and an absence of specific provisions limiting the obligation of the institution by requiring the mitigation of damages if a coach is terminated. In this connection, there was also concern about the actual or apparent intrusion of booster clubs into the hiring, termination, and compensation of University employees.
2. The time length of coaches' contracts which sometimes include provisions for automatic roll-over extensions.
3. The absence in some cases of a requirement that a coach affirmatively assume the responsibility to reinforce and support the primacy of the institution's educational mission. In this connection, there was concern that there be no possible contractual questions or issues regarding the responsibility of the head coach for his or her compliance with University and NCAA policies and regulations.

¹ Adopted by the Board of Governors on February 8, 1991, as guidance and not policy.

4. The involvement of coaches with outside parties for compensated services or endorsements related to or dependent upon their status as an athletic coach at a constituent institution.

In May 1990, we reported to the Board of Governors on a preliminary conclusion we had reached in our deliberations and a remedy that we believed would help prevent future abuses. We found major differences in practices among our institutions in the procedures followed in developing and approving contracts with head athletic coaches, and particularly in the extent of the involvement of boards of trustees. Accordingly, we concluded that the University policy should be clarified. On our recommendation, the board on May 11, 1990, adopted a resolution which explicitly defines and requires trustee participation. The resolution adopted by the Board of Governors was as follows:

Consistent with the requirements of Section I-A(2) of the 1972 resolution of Delegation of Duty and Authority to the Board of Trustees, no contract of employment between an institution and a head athletic coach or an athletic director shall be valid unless and until all terms and conditions of the contracts have been approved by the Board of Trustees.

Subsequent to adoption of the above resolution, we considered additional steps which we believe should now be taken in order to responsibly respond to the four areas of concern identified by our inquiry. We believe that the 1972 Delegation of Duty and Authority in respect to athletic matters to the institutions continues to be appropriate. Implicit in that continued delegation is, however, a requirement that the chancellors and boards of trustees of the institutions acknowledge by their future actions the existence of minimum contractual standards as a part of the policy of their institution. From our considerable deliberations and conversations, we believe that there is adequate foundation for these new standards enumerated by the Board of Governors in this report and that there has developed a collegial consensus in respect to the four standards which are broadly stated as follows:

1. **Buy-out clauses.** We believe that it is acknowledged that serious problems can result from contract terms that require the payment of substantial sums of money to a coach when an institution terminates his or her employment with or without cause. Any obligation to commit substantial institutional resources or to sanction payments by others may severely limit the capacity of the institution to make needed personnel changes. Such arrangements may also be rightly viewed by the university community and by the general public as an unwise expenditure of resources. This is particularly so when the amount of the payment required by such a clause bears no clearly discernible relationship to the actual financial loss that would likely be incurred by the coach. Therefore, consistent with the need to provide job security and to recognize the legitimate financial interests of a coach who is terminated prematurely, contractual provisions to define and limit the institution's liability are deemed to be wise and necessary. These would appear to clearly encompass a limitation of the institution's financial obligation to no more than the balance of the salary the coach would have earned had he or she remained employed with appropriate provisions requiring the coach to mitigate his or her damages. In no event should the university or any party related to the university have any obligation to a coach to replace the loss of any outside compensation.
2. **Length of contracts.** We believe that there is an understanding that contracts of excessive length may limit the capacity of the institution to make needed personnel changes. In particular, the so-called "roll-over" contract by which the term of a contract is automatically renewed on an annual basis appear to be contrary to sound personnel policies in place at all of the institutions. University policies have a clear intent that any renewal of any contract be advertent, based upon a deliberate assessment of performance by the appropriate officer of the institution, and not inadvertent or automatic.

3. **Academic values.** The policy of the institution in respect to the need to foster educational values and to maintain a program of integrity should be an integral part of the contracts of all coaches. In particular, the institution's policy in reference to the recruitment and retention of qualified student athletes and the necessity that athletes progress toward a degree in a defined academic program should be addressed. The coach should have a clear obligation to contribute to the academic progress of team members under his or her supervision. In addition, the contract should clearly acknowledge that the athletic program under the direction of the coach must comply with the policies of the institution and the NCAA and that the failure of the program to so comply may, at the option of the institution, be deemed a violation of the provisions of the coach's contract.
4. **Outside compensation.** Institutional interests can be affected significantly by the practice of head coaches contracting with outside parties for compensated services, especially those involving product endorsements. Employment contracts need to clearly define the rights and obligations of a coach who enters into some such outside agreements, while addressing the interests of the institution. We take note of the NCAA Bylaw 11.2.2, which provides:

11.2.2 Report of Athletically-Related Income.

Contractual agreements, including letters of appointment, between a full-time or part-time coach and an institution shall include the stipulation that the coach is required to report annually (in writing or orally) all athletically-related income and benefits from sources outside the institution through the athletic director to the institution's chief executive officer. Sources of such income shall include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits (including preferential housing arrangements);
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletic shoes, apparel or equipment manufactures.

We believe that this bylaw, if applied under the terms of the Board of Governors' policy on external professional activities for pay, gives satisfactory protection to institutional interests in this important area. This would mean that each request to take part in such activities as those listed above would require the coach to file a Notice of Intent. That notice should be filed with the chancellor and should require his approval. This will assure that the chancellor is in a position to monitor such activities.

In our efforts to address specific current concerns about intercollegiate athletic programs, we have not forgotten that the integrity of athletic programs depends not so much on the implication of specific rules and procedures as on the good faith of the people responsible for those programs. Without a strong and shared commitment to high standards by trustees, administrators, faculty, coaches, athletes, and others in the campus community, the policies, suggestions, and safeguards addressed by this report will be of limited benefit. Our recommendation that the delegation of responsibility for athletics be continued with the standards, enumerated by the Board of Governors in this report, is made with careful consideration given to the ultimate responsibility of the Board of Governors for the integrity of the University's athletic programs. We believe, however, that the commitment of those chancellors who are most directly involved and their unequivocal acceptance of the obligations to carry out their institutional and the board's policies and standard justifies the continued delegation of these responsibilities to all of the campuses.

In conclusion, we ask the Board of Governors to endorse these recommendations and request that the President transmit this report to each chancellor and to all members of the boards of trustees. We further recommend that the chancellors be requested to promptly forward to the President an informational copy of each contract entered into with a head coach at the time the contract is approved by the board of trustees. The chancellor should be encouraged to consult with the President and through the President with the Board of Governors should the chancellor have any question about or desire any clarification of this board's policy in respect to matters discussed in this report.

APPENDIX E

Memorandum to Reviewers

June 25, 2004

TO: (Attached Recipients)
Center
Board Members:

Members of the UNC
Board of Governors:

Members of the N.C.
General Assembly:

Other Analysts:

National Analysts:

FM: Sam Watts
Policy Analyst, N.C. Center for Public Policy Research

RE: Higher Education Governance Project, Part III, Draft for Review

CC: Ran Coble, Executive Director, N.C. Center for Public Policy Research
Joanne Scharer, Consultant, N.C. Center for Public Policy Research

The N.C. Center for Public Policy Research is conducting a study of key issues in the governance of public higher education. The four-part study includes:

1. A historical review of the 1971 decision by the N.C. General Assembly to restructure higher education in the state. This first report, *Reorganizing Higher Education in North Carolina: What History Tells Us About Our Future*, was released in June 1999.
2. A comparison of the types of higher education governance structures across the country, entitled *Governance and Coordination of Public Higher Education in All 50 States*, was published in August 2000.
3. An analysis of the powers of the UNC Board of Governors and the system of election of the Board by the legislature compared to the selection process used by other states (draft enclosed); entitled *The UNC Board of Governors: Selection, Powers, and the Board's Relationship to the 16 Local Campus Boards of Trustees*.
4. An evaluation of how well the governance system has performed in North Carolina in helping the university fulfill its multiple missions.

The enclosed draft of *The UNC Board of Governors: Selection, Powers, and the Board's Relationship to the 16 Local Campus Boards of Trustees* is the third in a series of four reports that examines the selection process for the UNC Board of Governors, its composition and powers, and its relationship with the campus boards of trustees.

The Center regularly circulates drafts of materials to be published by the Center for four reasons: (1) to catch any factual errors before publication; (2) to ensure that all points of view are fairly represented; (3) to hone our analysis of policy issues; and (4) to give advance notice of the Center's research as a courtesy to those it affects. If you have any comments or suggestions about this draft, we would appreciate your feedback. The Center retains final editorial authority over its publications, but we warmly welcome and will carefully consider your ideas.

If you have suggestions, criticisms, or comments, please return your comments marked on the relevant pages of the draft in the enclosed envelope. Fax your response to (919) 832-2847, call Sam Watts at (919) 832-2839, or e-mail Sam Watts at samwatts@nccppr.org by **Friday, August 6th, 2004**. Your help and careful review on this matter is greatly appreciated.

REVIEWERS FOR:

The Statewide UNC Board of Governors: Its Selection, Powers, and Relationship to the 16 Local Campus Boards of Trustees

Center Board Members: Nigel Alston; Peggy C. Carter; Allen D. Feezor; Marilyn Foote-Hudson; Loleta Wood Foster; Sandra B. Greene; Linda McGee; Michael C. Miller.

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Members of the N.C. General Assembly: Rep. Gordon P. Allen; Rep. Jeffrey L. Barnhart; President Pro Tempore Marc Basnight; Sen. Philip E. Berger; Co-Speaker James B. Black; Rep. Joanne W. Bowie; Rep. Harold J. Brubaker; Sen. Walter H. Dalton; Sen. Linda Garrou; Sen. John A. Garwood; Rep. W. Robert Grady; Rep. Joe Hackney; Rep. R. Phillip Haire; Sen. Fletcher L. Hartsell, Jr.; Sen. Hamilton C. Horton, Jr.; Rep. Verla C. Insko; Rep. Daniel F. McComas; Rep. Marian N. McLawhorn; Rep. William Edwin McMahan; Rep. Henry M. Michaux, Jr.; Rep. David M. Miner; Co-Speaker Richard T. Morgan; Sen. Martin L. Nesbitt, Jr.; Sen. Anthony Rand; Rep. Wilma M. Sherrill; Sen. Richard Y. Stevens; Sen. Scott Thomas.

Other Analysts: James H. Ammons; Gene Arnold; David F. Ayers; George Bakolia; Steven Ballard; Anne Bander; John W. Bardo; A. Troy Barksdale; Gretchen Bataille; Thad Beyle; Daniel T. Blue; Gerald L. Boarman; Cynthia P. Bonner; Molly Corbett Broad; Keith Brown; T.J. Bryan; Austin Bunch; Mickey L. Burnim; Andrea Caldwell; Lewis Carson; Julius Chambers; Drupti Chauhan; Christopher Cooper; L.B. Corgnati, Jr.; Jeffrey R. Davies; William Dees; Rosemary DePaolo; Doug Dibbert; Phillip R. Dixon; Gov. Mike Easley; Speros J. Fleggas; R. Mark Fleming; Christopher Fordham; Marye Anne Fox; William Friday; Bob Fry; Henry Frye; Crystal Gafford Muhamad; Laura Gasaway; Dan Gerlach; Susan Giamportone; Larry Gracie; Bob Hall; Paul Hardin; Chris Heagarty; Charles Heatherly; Wade Hobgood; Gov. James B. Hunt; Darian Hybl; Linda Hollar; Audrey Jaeger; Robin Johnson; David A. Jones; Marjorie C. Jones; Nancy B. Jones; Robert Jordan, III; Felix Joyner; Sara Kamprath; Robert C. Kanoy; Phil Kirk; Tom Lambeth; Martin Lancaster; Mark Lanier; Howard Lee; Valeria Lee; Trisha Lester; James Leutze; John Levin; Danny Lineberry; Teena S. Little; Alan Mabe; Bruce Mallette; Gov. James G. Martin; Harold L. Martin, Sr.; Betty McCain; Cheryl McFadden; Willis McLeod; Michael J. McKillip; Kevin McNaughton; Allen C. Meadors; Andrew Meehan; Ken Melton; James B. Milliken; James Moeser; James H. Mullen; Charles B. Neely, Jr.; Sam Neill; Jim Newlin; Jeff Nieman; Elizabethann O'Sullivan; Jeff Passe; Dennis Patterson; Andrew Payne; Kenneth E. Peacock; Ronald G. Penny; Samuel Poole; Ann Reed; Robyn R. Render; James C. Renick; Paul Rizzo; John Sanders; Gov. Robert Scott; William Snider; Barbara Solow; Ken Sorensen; C.D. Spangler, Jr.; Patricia Sullivan; Courtney Thornton; Charlotte Todd; Vijay K. Verma; Charles Waldrup; Carolyn Waller; Lindsay Warren; Judith Wegner; Cameron P. West; David J. Whichard, II; D. Jordan Whichard, III; Hope Williams; J. Oliver Williams; Leslie J. Winner; Ruth Dial Woods; James Woodward, Jr.; Joni B. Worthington; Thomas Wright.

National Analysts: Cheryl Blanco, Western Interstate Commission for Higher Education; John Burkhardt, Kellogg Forum on Higher Education for the Public Good; Pat Callan, National Center for Public Policy and Higher Education; Keon Chi, Council of State Governments; Marge Chisholm, California Postsecondary Education Commission; Charles R. Coble, Education Commission of the States; Tom Daniel, Board of Regents of the University of Georgia; James Duderstadt, President *Emeritus*, University of Michigan; Conrad Festa, South Carolina Commission on Higher Education; Jim Horne, Florida Board of Governors; Tom Ingram, Association of Governing Boards; Richard E. Kendall, Utah State Board of Regents; Richard Lapchick, DeVos Sport Business Management Program, University of Central Florida; Tom Layzell,

Kentucky Council on Postsecondary Education; Joe Marks, Southern Regional Education Board; Pace McConkie, Maryland Higher Education Commission; Aims C. McGuinness, National Center for Higher Education Management Systems; Margaret A. Miller, National Forum on College-Level Learning; Richard P. Mills, Board of Regents of the University of the State of New York; Tom Mortenson, Postsecondary Education OPPORTUNITY; Mark Musick, Southern Regional Education Board; Jim Palmer, Center for Study of Education Policy, Illinois State University; Diane M. Piché, Citizens' Commission on Civil Rights; Richard G. Rhoda, Tennessee Higher Education Commission; James Shulman, Andrew W. Mellon Foundation; Tom Snyder, National Center for Education Statistics; Judy Temby, Board of Regents of the University of Wisconsin System; Thomas D. Watkins, Jr., Michigan State Board of Education; David Wright, State Higher Education Executive Officers.

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