16CV015607

STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff NORTH CAROLINA STATE BOARD OF EDUCATION	**CIVIL SUMMONS** ☐ **ALIAS AND PLURIES SUMMONS (ASSESS FEE)** G.S. 1A-1, Rules 3, 4
Address	
City, State, Zip	
VERSUS	
Name Of Defendant(s) THE STATE OF NORTH CAROLINA	Date Original Summons Issued
	Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1 THE STATE OF NORTH CAROLINA c/o Roy Cooper, Attorney General of the State of North Carolina 9001 Mail Service Center Raleigh NC 27699-9001	Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff) Andrew H. Erteschik Poyner Spruill LLP 301 Fayetteville Street, Suite 1900 Raleigh NC 27601	Date Issued 12/29/16	Time 9 ☐ AM ☐ PM
	Signature CB	
	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

☐ ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	Date Of Endorsement	Time ☐ AM ☐ PM
	Signature	
	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

NOTE TO PARTIES: *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

(Over)

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RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason.

Service Fee Paid	Signature Of Deputy Sheriff Making Return
$	
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

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16CV015607

NORTH CAROLINA

WAKE COUNTY

NORTH CAROLINA STATE BOARD OF EDUCATION,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA,

Defendant.

FILED

2016 DEC 29 A 9:16

WAKE COUNTY, C.S.C.

BY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16-CVS-_____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

INTRODUCTION

1. This declaratory judgment action seeks a judicial determination on whether the North Carolina Constitution prohibits the General Assembly from attempting to transfer the State Board of Education's constitutional powers and duties to the Superintendent of Public Instruction ("the SPI").

2. Article IX, Section 5 of the North Carolina Constitution expressly confers certain "powers and duties" on the Board. Those constitutional powers and duties include:

- the power and duty to "supervise . . . the free public school system";
- the power and duty to "administer the free public school system";
- the power and duty to "supervise . . . the educational funds provided for [the free public school system's] support"; and
- the power and duty to "administer . . . the educational funds provided for [the free public school system's] support."

3. On December 16, 2016, for the first time in the Board's 148-year history, the General Assembly attempted to transfer these powers and duties from the Board to a single individual: the SPI.

4. The constitutional conflict caused by this attempted transfer is readily apparent:

Article IX, Section 5 of the North Carolina Constitution	**House Bill 17, Section 4 (N.C. Sess. Law 2016-126 § 4)**
It shall be the "duty" of "***the State Board of Education*** . . . [to] supervise and administer the free public school system." (Emphasis added).	"It shall be the duty of ***the Superintendent of Public Instruction*** . . . to have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system." (Emphasis added).

5. The members of the Board swore an oath to support and maintain the North Carolina Constitution. They also swore an oath to faithfully discharge the duties of their office, which include supervising and administering North Carolina's $10 billion public school system in the best interests of its 1.5 million students. Compelled by those duties to the people of North Carolina, the Board brings this action for declaratory and injunctive relief.

PARTIES

6. The Board is a constitutional body that derives its powers and duties directly from the people through the North Carolina Constitution. This makes the Board unique among state government entities in North Carolina.

7. The State of North Carolina, through its General Assembly, enacts legislation, including the legislation described in this complaint.

8. Mark Johnson is a resident of Winston-Salem and the current SPI-Elect. As of the date of this complaint, Mark Johnson holds no relevant public office and has no relevant official capacity. Therefore, as of the date of this complaint, he is not a proper party.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action because the Board seeks declaratory and injunctive relief pursuant to the North Carolina Constitution, N.C. Gen. Stat. § 1-253, and N.C. Gen. Stat. § 7A-245. The purpose of a declaratory judgment is "to settle and afford relief from uncertainty and insecurity, with respect to rights, status, and other legal relations." *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 287, 134 S.E.2d 654, 657 (1964). In a declaratory judgment action, "'[i]f there is a conflict between a statute and the Constitution, [the] Court must determine the rights and liabilities or duties of the litigants before it in accordance with the Constitution, because the Constitution is the superior rule of law in that situation.'" *City of Asheville v. North Carolina*, No. 391PA15, slip op. at 13 (N.C. Dec. 21, 2016).

10. Venue is proper in Wake County Superior Court pursuant to N.C. Gen. Stat. § 1-77 because the Board seeks a declaratory judgment regarding legislation enacted by the General Assembly in Wake County.

FACTUAL ALLEGATIONS

The Constitutional Powers and Duties of the Board

11. Article I, Section 15 of the North Carolina Constitution states that "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." These words first appeared in the 1868 North Carolina Constitution, and they have remained unchanged. These words are unique to North Carolina: No other state constitution includes these words or includes any right to education in its citizens' bill of rights.

12. To ensure that the State lived up to this promise to "guard and maintain" the right to public education, the people of North Carolina in their 1868 Constitution established the public school system and created the Board. Article IX, Section 2 of the 1868 Constitution

required the General Assembly to "provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State." In turn, Article IX conferred broad, sweeping power on a State Board of Education composed of "[t]he Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction, and Attorney General." Article IX, Section 9 of the 1868 Constitution, entitled "Power of Board," conferred on the Board the "full power to legislate and make all needful rules and regulations in relation to Free Public Schools, and the Educational Fund of the State."

13. Thus, the people of North Carolina in their 1868 Constitution "establishe[d] the public school system," then required that the "General Assembly provid[e] for it" and "the State Board of Education . . . manage it." *Lane v. Stanly*, 65 N.C. 153, 157 (1871). For the past 148 years, this constitutional structure has remained unchanged. Since 1868, the Board has supervised and administered all facets of public education in North Carolina.

14. Today, the North Carolina Constitution continues to confer these broad, sweeping powers and duties on the Board. The current North Carolina Constitution was ratified by the voters in 1971. Article IX, Section 5 of the current North Carolina Constitution states:

> The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

15. Today, the Board's composition continues to reflect the weight of the Board's constitutional responsibility to the people. Under Article IX, Section 4 of the North Carolina Constitution, the Board is composed of "the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint

session." Article IX, Section 4 requires that these Board members serve "overlapping terms of eight years." These lengthy, overlapping terms ensure that the Board maintains its institutional knowledge and expertise in public education. In addition, Article IX, Section 4 requires that eight of the Governor's eleven appointments must be made from each of the eight educational districts. This geographic diversity ensures that the Board is representative of the people.

16. In contrast to the broad, sweeping powers and duties conferred on the Board, the North Carolina Constitution has always confined the SPI to a limited role. Article IX, Section 8 of the 1868 Constitution established the SPI as a member "*of* the Board" (emphasis added), who served as the Board's "Secretary." Today, Article IX, Section 4 of the North Carolina Constitution clarifies that the SPI is not even a voting member of the Board, and serves only as the "secretary and chief administrative officer *of* the State Board of Education." (Emphasis added).

17. In short, the constitutional powers and duties of the Board are fixed by the North Carolina Constitution. It is a bedrock principle of constitutional law that when a constitution expressly confers certain powers and duties on an entity, those powers and duties cannot be transferred to someone else without a constitutional amendment.

The Transfer Legislation

18. In 2004, June Atkinson was elected SPI. She was re-elected in 2008 and 2012.

19. On November 8, 2016, Mark Johnson was elected SPI.

20. On December 14, 2016, House Bill 17 was introduced in the General Assembly. Within two days, it passed both the House of Representatives and the Senate.

21. Three days later, on December 19, 2016, House Bill 17 was signed into law as Session Law 2016-126. A copy of Session Law 2016-126 is attached as Exhibit A.

22. Part I, Sections 1-6 and 8-32 of Session Law 2016-126 have an effective date of January 1, 2017. The remaining portions of Session Law 2016-126 became effective when it was signed into law on December 19, 2016.

23. As described above, the North Carolina Constitution expressly confers certain "powers and duties" on the Board: to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, § 5. Session Law 2016-126 contains provisions, however, that attempt to transfer those powers and duties from the Board to the SPI ("the Transfer Legislation").

24. The Transfer Legislation appears in Part I, Sections 1-12, 14-16, 24-25, and 28-30 of Session Law 2016-126, which amend existing statutes. Historically, these statutes stood as a legislative recognition—albeit an unnecessary one—that the North Carolina Constitution expressly confers certain powers and duties on the Board. The Transfer Legislation amends these statutes with precision, however, to replace the words "State Board of Education" with "Superintendent of Public Instruction." Thus, the Transfer Legislation attempts to use the same statutes that recognize the Board's constitutional powers and duties as a vehicle for transferring those powers and duties away.

25. The Transfer Legislation attempts to accomplish two unconstitutional objectives:

(a) First, the Transfer Legislation attempts to transfer the powers and duties of the Board to supervise and administer the public schools. Most notably, Section 4 of Session Law 2016-126 states: "It shall be the duty of the Superintendent of Public Instruction . . . to have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system." N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen.

Stat. § 115C-21(a)(5)). Thus, the Transfer Legislation attempts to transfer the same powers and duties that the people expressly conferred on the Board in their Constitution.

(b) In addition to this full transfer, the Transfer Legislation includes other provisions that attempt to transfer the powers and duties of the Board to supervise and administer the public school system. Those provisions include:

- N.C. Sess. Law 2016-126 § 1 (creating N.C. Gen. Stat. § 115C-11(i));
- N.C. Sess. Law 2016-126 § 1 (creating N.C. Gen. Stat. § 115C-11(j));
- N.C. Sess. Law 2016-126 § 2 (amending N.C. Gen. Stat. § 115C-12);
- N.C. Sess. Law 2016-126 § 3 (amending N.C. Gen. Stat. § 115C-19);
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(1));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(2));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(3));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(4));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(5));
- N.C. Sess. Law 2016-126 § 4 (creating N.C. Gen. Stat. § 115C-21(a)(8));
- N.C. Sess. Law 2016-126 § 4 (creating N.C. Gen. Stat. § 115C-21(a)(9));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(2));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(3));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(4));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(5));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(6));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(7));

- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(8));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(9));
- N.C. Sess. Law 2016-126 § 6 (amending N.C. Gen. Stat. § 115C-410);
- N.C. Sess. Law 2016-126 § 7 (amending N.C. Gen. Stat. § 126-5(d));
- N.C. Sess. Law 2016-126 § 8 (amending N.C. Gen. Stat. § 126-5(d)(2));
- N.C. Sess. Law 2016-126 § 8 (amending N.C. Gen. Stat. § 126-5(d)(2a));
- N.C. Sess. Law 2016-126 § 8 (amending N.C. Gen. Stat. § 126-5(d)(4));
- N.C. Sess. Law 2016-126 § 8 (amending N.C. Gen. Stat. § 126-5(d)(5));
- N.C. Sess. Law 2016-126 § 8 (amending N.C. Gen. Stat. § 126-5(d)(6));
- N.C. Sess. Law 2016-126 § 9 (amending N.C. Gen. Stat. § 143-745(a)(1));
- N.C. Sess. Law 2016-126 § 10 (amending N.C. Gen. Stat. § 143A-44.1);
- N.C. Sess. Law 2016-126 § 11 (repealing N.C. Gen. Stat. § 143A-44.2);
- N.C. Sess. Law 2016-126 § 12 (amending N.C. Gen. Stat. § 143A-44.3);
- N.C. Sess. Law 2016-126 § 14 (amending N.C. Gen. Stat. § 115C-75.5(4));
- N.C. Sess. Law 2016-126 § 15 (amending N.C. Gen. Stat. § 115C-75.6);
- N.C. Sess. Law 2016-126 § 16 (amending N.C. Gen. Stat. § 115C-150.11);
- N.C. Sess. Law 2016-126 § 24 (amending N.C. Gen. Stat. § 115C-521);
- N.C. Sess. Law 2016-126 § 25 (amending N.C. Gen. Stat. § 115C-535);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(a) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 29; and
- N.C. Sess. Law 2016-126 § 30.

(c) Second, the Transfer Legislation attempts to transfer the powers and duties of the Board to supervise and administer the educational funds provided for the public school system's

support. Most notably, Session Law 2016-126 states that "it shall be the duty of the Superintendent of Public Instruction to . . . administer funds appropriated for the operations of the State Board of Education and for aid to local school administrative units." N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(1b)). Likewise, Sections 3 and 4 state that the SPI, as the head of the Department of Public Instruction, will "administer the funds appropriated for [the Department's] operation." *Id.* § 3 (amending N.C. Gen. Stat. § 115C-19); *id.* § 4 (amending N.C. Gen. Stat. § 115C-21(a)(1)). Thus, the Transfer Legislation attempts to transfer the same powers and duties that the people expressly conferred on the Board in their Constitution.

(d) In addition to this full transfer, the Transfer Legislation includes other provisions that attempt to transfer the Board's constitutional powers and duties to supervise and administer the educational funds provided for the public school system's support. Those provisions include:

- N.C. Sess. Law 2016-126 § 1 (creating N.C. Gen. Stat. § 115C-11(i));
- N.C. Sess. Law 2016-126 § 1 (creating N.C. Gen. Stat. § 115C-11(j));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(1));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(6));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(a)(9));
- N.C. Sess. Law 2016-126 § 4 (creating N.C. Gen. Stat. § 115C-21(b)(1b));
- N.C. Sess. Law 2016-126 § 4 (amending N.C. Gen. Stat. § 115C-21(b)(5));
- N.C. Sess. Law 2016-126 § 5 (amending N.C. Gen. Stat. § 115C-408(a));
- N.C. Sess. Law 2016-126 § 6 (amending N.C. Gen. Stat. § 115C-410);
- N.C. Sess. Law 2016-126 § 7 (amending N.C. Gen. Stat. § 126-5(d));
- N.C. Sess. Law 2016-126 § 12 (amending N.C. Gen. Stat. § 143A-44.3);

- N.C. Sess. Law 2016-126 § 14 (amending N.C. Gen. Stat. § 115C-75.5(4));
- N.C. Sess. Law 2016-126 § 15 (amending N.C. Gen. Stat. § 115C-75.6);
- N.C. Sess. Law 2016-126 § 16 (amending N.C. Gen. Stat. § 115C-150.11);
- N.C. Sess. Law 2016-126 § 24 (amending N.C. Gen. Stat. § 115C-521);
- N.C. Sess. Law 2016-126 § 25 (amending N.C. Gen. Stat. § 115C-535);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(a) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(b) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(c) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 29; and
- N.C. Sess. Law 2016-126 § 30.

26. In sum, the Transfer Legislation attempts to transfer the Board's constitutional powers and duties to the SPI. This transfer is in direct conflict with Article IX, Section 5 of the North Carolina Constitution. The Board seeks a judicial determination resolving this conflict.

COUNT 1 – DECLARATORY AND INJUNCTIVE RELIEF
Article IX, Section 5 of the North Carolina Constitution

27. The Board re-alleges and incorporates by reference all preceding paragraphs.

28. Article IX, Section 5 expressly confers on the Board the "power and duty" to "supervise . . . the free public school system." N.C. Const. art. IX, § 5. As described above, however, the Transfer Legislation attempts to transfer that power and duty from the Board to the SPI.

29. Accordingly, the Board is entitled to a declaratory judgment and permanent injunction on the grounds that the Transfer Legislation violates Article IX, Section 5 of the North Carolina Constitution.

COUNT 2 – DECLARATORY AND INJUNCTIVE RELIEF
Article IX, Section 5 of the North Carolina Constitution

30. The Board re-alleges and incorporates by reference all preceding paragraphs.

31. Article IX, Section 5 expressly confers on the Board the "power and duty" to "administer the free public school system." N.C. Const. art. IX, § 5. As described above, however, the Transfer Legislation attempts to transfer that power and duty from the Board to the SPI.

32. Accordingly, the Board is entitled to a declaratory judgment and permanent injunction on the grounds that the Transfer Legislation violates Article IX, Section 5 of the North Carolina Constitution.

COUNT 3 – DECLARATORY AND INJUNCTIVE RELIEF
Article IX, Section 5 of the North Carolina Constitution

33. The Board re-alleges and incorporates by reference all preceding paragraphs.

34. Article IX, Section 5 expressly confers on the Board the "power and duty" to "supervise . . . the educational funds provided for [the free public school system's] support." N.C. Const. art. IX, § 5. As described above, however, the Transfer Legislation attempts to transfer that power and duty from the Board to the SPI.

35. Accordingly, the Board is entitled to a declaratory judgment and permanent injunction on the grounds that the Transfer Legislation violates Article IX, Section 5 of the North Carolina Constitution.

COUNT 4 – DECLARATORY AND INJUNCTIVE RELIEF
Article IX, Section 5 of the North Carolina Constitution

36. The Board re-alleges and incorporates by reference all preceding paragraphs.

37. Article IX, Section 5 expressly confers on the Board the "power and duty" to "administer . . . the educational funds provided for [the free public school system's] support."

N.C. Const. art. IX, § 5. As described above, however, the Transfer Legislation attempts to transfer that power and duty from the Board to the SPI.

38. Accordingly, the Board is entitled to a declaratory judgment and permanent injunction on the grounds that the Transfer Legislation violates Article IX, Section 5 of the North Carolina Constitution.

MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

39. The Board re-alleges and incorporates by reference all preceding paragraphs.

40. As described above, the Transfer Legislation violates the North Carolina Constitution. As a matter of law, this constitutional violation constitutes *per se* irreparable harm. Thus, no further showing of irreparable harm is required.

41. Moreover, even if a further showing of irreparable harm were required, the Transfer Legislation threatens to cause irreparable harm to the Board, the employees of the public school system, and—most importantly—North Carolina's 1.5 million public school students. That irreparable harm includes:

- uncertainty over whether the Board will continue to supervise and administer the public school system's $10 billion budget, or whether the SPI-Elect, Mark Johnson, will do so instead;
- uncertainty in employment status for dozens of state employees;
- uncertainty for the nearly 1,000 state employees whose job responsibilities will be implicated by the Transfer Legislation;
- the harm to North Carolina's 1.5 million students caused by the uncertainties described above.

42. Accordingly, the Board seeks a temporary restraining order and preliminary injunction enjoining the effectiveness, implementation, and enforcement of the Transfer Legislation.

REQUEST FOR RELIEF

The Board respectfully requests that the Court:

(a) declare that the Transfer Legislation violates Article IX, Section 5 of the North Carolina Constitution and issue a permanent injunction enjoining its implementation or enforcement;

(b) grant the Board's motion for temporary restraining order and preliminary injunction and issue a temporary restraining order and preliminary injunction enjoining the Transfer Legislation during the pendency of this action;

(c) assess costs against the State pursuant to N.C. Gen. Stat. § 1-263;

(d) award reasonable attorneys' fees to the Board, as permitted by law; and

(e) grant the Board any and all other relief which the Court deems just and proper.

Respectfully submitted the 29th day of December, 2016.

ROBERT F. ORR, PLLC

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for Robert F. Orr by AHE w/express permission
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COUNSEL FOR PLAINTIFF NORTH CAROLINA STATE BOARD OF EDUCATION

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF WAKE

William W. Cobey, Jr., being first duly sworn, deposes and says:

That he is the Chairman of the State Board of Education, the Plaintiff in this action; that he has read the foregoing *Verified Complaint for Declaratory and Injunctive Relief and Motion for Preliminary Injunctive Relief* and knows the contents thereof; that the allegations therein are true of his own knowledge, except as to those things therein stated upon information and belief; and that as to those matters and things stated upon information and belief, he believes them to be true.

This the 28th day of December, 2016.

WILLIAM W. COBEY, JR.

WAKE COUNTY, NORTH CAROLINA

Sworn to and subscribed before me this the 28 day of December, 2016.

Joan P. Champagne
Notary Public

My commission expires: Jan. 9, 2018

[SEAL]

JOAN P. CHAMPAGNE NOTARY PUBLIC DURHAM COUNTY, NC

GENERAL ASSEMBLY OF NORTH CAROLINA
FOURTH EXTRA SESSION 2016

SESSION LAW 2016-126
HOUSE BILL 17

AN ACT TO CLARIFY THE SUPERINTENDENT OF PUBLIC INSTRUCTION'S ROLE AS THE ADMINISTRATIVE HEAD OF THE DEPARTMENT OF PUBLIC INSTRUCTION, TO CHANGE THE APPOINTMENTS PROCESS FOR THE BOARDS OF TRUSTEES FOR THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA, TO MODIFY THE APPOINTMENT OF HEADS OF PRINCIPAL STATE DEPARTMENTS, AND TO ESTABLISH TASK FORCE FOR SAFER SCHOOLS.

The General Assembly of North Carolina enacts:

PART I. CLARIFY ROLES/DPI/SBE

SECTION 1. G.S. 115C-11 reads as rewritten:

"**§ 115C-11. Organization and internal procedures of Board.**

…

(a1) Student advisors. – The ~~Governor~~ Superintendent of Public Instruction is hereby authorized to appoint two high school students who are enrolled in the public schools of North Carolina as advisors to the State Board of Education. The student advisors shall participate in State Board deliberations in an advisory capacity only. The State Board may, in its discretion, exclude the student advisors from executive sessions.

~~The Governor shall make initial appointments of student advisors to the State Board as follows:~~

~~(1) One high school junior shall be appointed for a two year term beginning September 1, 1986, and expiring June 14, 1988; and~~

~~(2) One high school senior shall be appointed for a one year term beginning September 1, 1986, and expiring June 14, 1987. When an initial or subsequent term expires, the Governor~~The Superintendent of Public Instruction shall ~~appoint a~~ stagger the appointments of the two student advisors so that a high school junior ~~for~~ is serving in the first year of a two-year term and a high school senior is serving in the second year of a two-year term simultaneously. The appointment of a high school junior shall be made beginning June 15 of ~~that~~ each year. If a student advisor is no longer enrolled in the public schools of North Carolina or if a vacancy otherwise occurs, the ~~Governor~~ Superintendent of Public Instruction shall appoint a student advisor for the remainder of the unexpired term.

Student advisors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

…

(a3) Superintendent Advisor. – The ~~Governor~~ Superintendent of Public Instruction shall appoint a superintendent of a local school administrative unit as an advisor to the State Board of Education. The superintendent advisor shall serve for a term of one year. The superintendent advisor shall participate in State Board deliberations and committee meetings in an advisory

Ex. A

capacity only. The State Board may, in its discretion, exclude the superintendent advisor from executive sessions.

In the event that a superintendent advisor ceases to be a superintendent in a local school administrative unit, the position of superintendent advisor shall be deemed vacant. In the event that a vacancy occurs in the position for whatever reason, the ~~Governor~~ Superintendent of Public Instruction shall appoint a superintendent advisor for the remainder of the unexpired term. The superintendent advisor to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

…

(i) Administrative Assistance. – The Superintendent of Public Instruction shall provide technical assistance and administrative assistance, including all personnel except as otherwise provided in subsection (j) of this section, to the State Board of Education through the Department of Public Instruction.

(j) Certain Personnel Appointed by the State Board. – The State Board may appoint only the following personnel positions to support the operations of the State Board of Education through the Department of Public Instruction:

	Position number	Title
(1)	65023576	Attorney I.
(2)	60009384	Attorney II.
(3)	65003194	Paralegal II.
(4)	60095070	Administrative Assistant I."

SECTION 2. G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish ~~policy~~all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. In accordance with Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction, as an elected officer and Council of State member, shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction. The powers and duties of the State Board of Education are defined as follows:

…."

SECTION 3. G.S. 115C-19 reads as rewritten:

"**§ 115C-19. Chief administrative officer of the State Board of Education.**

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. ~~As secretary and chief administrative officer of the State Board of Education, the Superintendent manages on a day-to-day basis the administration of the free public school system, subject to the direction, control, and approval of the State Board. Subject to the direction, control, and approval of the State Board of Education, the Superintendent of Public Instruction~~ As provided in Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction shall be an elected officer and Council of State member and shall carry out the duties prescribed under ~~G.S. 115C-21.~~G.S. 115C-21 as the administrative head of the Department of Public Instruction. The Superintendent of Public Instruction shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction."

SECTION 4. G.S. 115C-21 reads as rewritten:

"**§ 115C-21. Powers and duties generally.**

(a) Administrative Duties. – ~~Subject to the direction, control, and approval of the State Board of Education, it~~It shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include~~ such~~ divisions and departments ~~as the State Board considers necessary~~ for supervision and administration of the public school ~~system.~~system, to administer the funds appropriated for the operation of the Department of Public Instruction, in accordance with all needed rules and regulations adopted by the State Board of Education, and to enter into contracts for the operations of the Department of Public Instruction. All appointments of administrative and supervisory personnel to the staff of the Department of Public ~~Instruction are subject to the approval of the State Board of Education, which~~Instruction and the State Board of Education, except for certain personnel appointed by the State Board of Education as provided in G.S. 115C-11(j), shall be under the control and management of the Superintendent of Public Instruction who may terminate these appointments ~~for cause~~ in conformity with Chapter 126 of the General Statutes, the North Carolina Human Resources Act.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for changes in the school law.

(4) To have printed and distributed such educational bulletins as are necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To ~~manage~~ have under his or her direction and control, all ~~those~~ matters relating to the direct supervision and administration of the public school ~~system that the State Board delegates to the Superintendent of Public Instruction.~~system.

(6) To create ~~a~~and administer special ~~fund~~funds within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public ~~education. Effective July 1, 1995, this special fund is transferred to the State Board of Education and shall be administered by the State Board~~education in accordance with G.S. 115C-410.

(7) Repealed by Session Laws 1995, c. 72, s. 2.

(8) To administer, through the Department of Public Instruction, all needed rules and regulations established by the State Board of Education.

(9) To have under his or her direction and control all matters relating to the provision of staff services, except certain personnel appointed by the State Board as provided in G.S. 115C-11(j), and support of the State Board of Education, including implementation of federal programs on behalf of the State Board.

(b) Duties as Secretary to the State Board of Education. – ~~Subject to the direction, control, and approval of the State Board of Education,~~As secretary to the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

~~(1) To administer through the Department of Public Instruction, the instructional policies established by the Board.~~

(1a) Repealed by Session Laws 1995, c. 72, s. 2.

(1b) To administer funds appropriated for the operations of the State Board of Education and for aid to local school administrative units.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he or she shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding ~~instructional policies and procedures~~needed rules and regulations adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.

(9) To perform such other duties as may be necessary and appropriate for the Superintendent of Public Instruction in the role as secretary to the ~~Board may assign to him from time to time.~~Board."

SECTION 5. G.S. 115C-408(a) reads as rewritten:

"(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Section 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district. The Superintendent of Public Instruction shall administer any available educational funds through the Department of Public Instruction in accordance with all needed rules and regulations adopted by the State Board of Education."

SECTION 6. G.S. 115C-410 reads as rewritten:

"**§ 115C-410. Power to accept gifts and grants.**

The Board is authorized to adopt all needed rules and regulations related to the creation and administration of special funds within the Department of Public Instruction to manage any funds received as grants from nongovernmental sources in support of public education. In accordance with the State Board's rules and regulations, the Superintendent of Public Instruction is authorized to create and administer such special funds and to accept, receive, use, or reallocate to local school administrative units any gifts, donations, grants, devises, or other forms of voluntary contributions."

SECTION 7. G.S. 126-5(d) reads as rewritten:

"(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the North Carolina Human Resources Act, the

Governor may designate a total of ~~1,500~~ 425 exempt positions throughout the following departments and offices:

a. Department of Administration.
b. Department of Commerce.
c. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
d. Department of Public Safety.
e. Department of Natural and Cultural Resources.
f. Department of Health and Human Services.
g. Department of Environmental Quality.
h. Department of Revenue.
i. Department of Transportation.
j. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
k. Department of Information Technology.
~~l. Office of State Budget and Management.~~
~~m. Office of State Human Resources.~~
n. Department of Military and Veterans Affairs.

(2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this ~~sub-subdivision~~sub-subdivision, other than the Department of Public Instruction, shall be limited to ~~20~~ 25 exempt policymaking positions or ~~one~~ two percent ~~(1%)~~(2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to ~~20~~ 25 positions or ~~one~~ two percent ~~(1%)~~(2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt policymaking positions designated by the State Board of Education shall be limited to 70 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions designated by the State Board of Education shall be limited to 70 exempt managerial positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater.

…

(2c) Changes in Cabinet Department Exempt Position Designation. – If the status of a position designated exempt pursuant to subsection (d)(1) of this section is changed and the position is made subject to the provisions of this Chapter, an employee occupying the position who has been continuously employed in a permanent position for the immediate 12 preceding months, shall be deemed a career State employee as defined by G.S. 126-1.1(a) upon the effective date of the change in designation.

...."

SECTION 8. G.S. 126-5(d), as amended by Section 7 of this act, reads as rewritten:

"(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the North Carolina Human Resources Act, the Governor may designate a total of 425 exempt positions throughout the following departments and offices:

a. Department of Administration.
b. Department of Commerce.
c. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
d. Department of Public Safety.
e. Department of Natural and Cultural Resources.
f. Department of Health and Human Services.
g. Department of Environmental Quality.
h. Department of Revenue.
i. Department of Transportation.
j. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
k. Department of Information Technology.
l. Repealed.
m. Repealed.
n. Department of Military and Veterans Affairs.

(2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. ~~The State Board of Education may designate exempt positions in the Department of Public Instruction.~~ The number of exempt policymaking positions in each department headed by an elected department head listed above in this ~~sub-subdivision, other than the Department of Public Instruction,~~sub-subdivision shall be limited to 25 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 25 positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt policymaking positions designated by the ~~State Board of Education~~Superintendent of Public Instruction shall be limited to 70 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions designated by the ~~State Board of Education~~Superintendent of Public Instruction shall be limited to 70 exempt managerial positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. – The ~~Governor,~~Governor or elected department ~~head, or State Board of Education~~head may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the Director of the Office of State Human Resources. The General Assembly may authorize all, or part of, the additional positions to be

designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environmental Quality, and Transportation are designated as exempt.

(2c) Changes in Cabinet Department Exempt Position Designation. – If the status of a position designated exempt pursuant to subsection (d)(1) of this section is changed and the position is made subject to the provisions of this Chapter, an employee occupying the position who has been continuously employed in a permanent position for the immediate 12 preceding months, shall be deemed a career State employee as defined by G.S. 126-1.1(a) upon the effective date of the change in designation.

(3) Letter. – These positions shall be designated in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate by July 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. – In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate within 180 days after the oath of office is administered to that person. ~~In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate within 180 days after the oath of office is administered to the Governor.~~

(5) Creation, Transfer, or Reorganization. – The ~~Governor,~~Governor or elected department ~~head, or State Board of Education~~head may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after October 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 180 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. – Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the ~~Governor,~~Governor or by an elected department ~~head, or by the State Board~~

~~of Education~~head in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. – Except for deputy commissioners appointed pursuant to G.S. 97-79 and as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

SECTION 9. G.S. 143-745(a)(1) reads as rewritten:

"(1) "Agency head" means the Governor, a Council of State member, a cabinet secretary, the President of The University of North Carolina, the President of the Community College System, the State Controller, and other independent appointed officers with authority over a State agency.~~ The agency head for the Department of Public Instruction shall be the State Board of Education.~~"

SECTION 10. G.S. 143A-44.1 reads as rewritten:

"**§ 143A-44.1. Creation.**

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the ~~State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1) of the Constitution.~~Superintendent of Public Instruction."

SECTION 11. G.S. 143A-44.2 is repealed.

SECTION 12. G.S. 143A-44.3 reads as rewritten:

"**§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.**

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by this Chapter and the Constitution, delegated to him or her by the Governor and by the State Board of Education, and conferred by Chapter 115C of the General ~~Statutes,~~Statutes and the laws of this State."

SECTION 13. G.S. 14-234(d6) is repealed.

SECTION 14. G.S. 115C-75.5(4) reads as rewritten:

"(4) ASD Superintendent. – The superintendent of the ASD appointed by the ~~State Board of Education~~Superintendent of Public Instruction in accordance with G.S. 115C-75.6(b)."

SECTION 15. G.S. 115C-75.6 reads as rewritten:

"**§ 115C-75.6. Achievement School District.**

(a) There is established the Achievement School District (ASD) under the administration of the State Board of ~~Education.~~Education and the Superintendent of Public Instruction. The ASD shall assume the supervision, management, and operation of elementary schools that have been selected as achievement schools pursuant to this Article.

~~(b) An ASD Superintendent Selection Advisory Committee shall be established to make a recommendation to the State Board of Education on appointment of a superintendent to serve as the executive officer of the ASD. The Committee shall ensure that the individual recommended has qualifications consistent with G.S. 115C-271(a). The Lieutenant Governor shall serve as chair of the Committee and shall appoint the following additional members:~~

~~(1) Three members of the State Board of Education.~~
~~(2) One teacher or retired teacher.~~
~~(3) One principal or retired principal.~~
~~(4) One superintendent or retired superintendent.~~
~~(5) One parent of a student currently enrolled in a low-performing school, as defined in G.S. 115C-105.37.~~

(c) The ~~State Board of Education shall consider the recommendation of the ASD Superintendent Selection Advisory Committee and~~ Superintendent of Public Instruction shall appoint a superintendent to serve as the executive officer of the ASD. The ASD Superintendent shall serve at the pleasure of the ~~State Board of Education~~Superintendent of Public Instruction at a salary established by the ~~State Board of Education~~Superintendent of Public Instruction within the funds appropriated for this purpose. The ASD Superintendent shall have qualifications consistent with G.S. 115C-271(a) and report directly to the ~~State Board of Education.~~Superintendent of Public Instruction.

(d) By January 15 annually, the State Board of ~~Education~~Education, Superintendent of Public Instruction, and the ASD Superintendent shall report to the Joint Legislative Education Oversight Committee on all aspects of operation of ASD, including the selection of achievement schools and their progress."

SECTION 16. G.S. 115C-150.11 reads as rewritten:

"**§ 115C-150.11. State Board of Education as governing agency.**

The State Board of Education shall be the sole governing agency for the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf. The ~~Department~~Superintendent of Public Instruction through the Department of Public Instruction shall be responsible for the ~~administration~~administration, including appointment of staff, and oversight of a school governed by this Article."

SECTION 17. G.S. 115C-218 reads as rewritten:

"**§ 115C-218. Purpose of charter schools; establishment of North Carolina Charter Schools Advisory Board and North Carolina Office of Charter Schools.**

…

(b) North Carolina Charter Schools Advisory Board. –

(1) Advisory Board. – There is created the North Carolina Charter Schools Advisory Board, hereinafter referred to in this Article as the Advisory Board. The Advisory Board shall be located administratively within the Department of Public Instruction and shall report to the State Board of Education.

(2) Membership. – The State Superintendent of Public Instruction, or the Superintendent's designee, shall be the secretary of the Advisory Board and a nonvoting member. ~~The Chair of the State Board of Education shall appoint a member of the State Board to serve as a nonvoting member of the Advisory Board.~~ The Advisory Board shall consist of the following 11 voting members:

~~a. Three members appointed by the Governor, including the chair of the Advisory Board.~~

b. ~~Three~~Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121.

c. ~~Three~~Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.

d. ~~One member~~Two members appointed by the State Board of Education who ~~is~~are not ~~a~~ current ~~member~~members of the State

Board of Education and who ~~is a~~are charter school ~~advocate~~advocates in North Carolina.

e. The Lieutenant Governor or the Lieutenant Governor's designee.

(3) Covered board. – The Advisory Board shall be treated as a board for purposes of Chapter 138A of the General Statutes.

(4) Qualifications of members. – Members appointed to the Advisory Board shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, assessment, curriculum and instruction, public charter schools, and public education law. All appointed members of the Advisory Board shall have demonstrated an understanding of and a commitment to charter schools as a strategy for strengthening public education.

(5) Terms of office and vacancy appointments. – Appointed members shall serve four-year terms of office beginning on July 1. No appointed member shall serve more than eight consecutive years. Vacancy appointments shall be made by the appointing authority for the remainder of the term of office.

(6) Presiding officers and quorum. – The Advisory Board shall annually elect a chair and a vice-chair from among its membership. The chair shall preside over the Advisory Board's meetings. In the absence of the chair, the vice-chair shall preside over the Advisory Board's meetings. A majority of the Advisory Board constitutes a quorum.

(7) Presiding officers and quorum. – Meetings. – Meetings of the Advisory Board shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(8) Expenses. – Members of the Advisory Board shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

(9) Removal. – Any appointed member of the Advisory Board may be removed by a vote of at least two-thirds of the members of the Advisory Board at any duly held meeting for any cause that renders the member incapable or unfit to discharge the duties of the office.

(10) Powers and duties. – The Advisory Board shall have the following duties:

a. To make recommendations to the State Board of Education on the adoption of rules regarding all aspects of charter school operation, including time lines, standards, and criteria for acceptance and approval of applications, monitoring of charter schools, and grounds for revocation of charters.

b. To review applications and make recommendations to the State Board for final approval of charter applications.

c. To make recommendations to the State Board on actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocations of charters.

d. To undertake any other duties and responsibilities as assigned by the State Board.

(11) Duties of the chair of the Advisory Board. – In addition to any other duties prescribed in this Article, the chair of the Advisory Board, or the chair's designee, shall advocate for the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.

(c) North Carolina Office of Charter Schools. –

(1) Establishment of the North Carolina Office of Charter Schools. – There is established the North Carolina Office of Charter Schools, hereinafter

referred to in this Article as the Office of Charter Schools. The Office of Charter Schools shall be administratively located in the Department of Public ~~Instruction, subject to the supervision, direction, and control of the State Board of Education.~~Instruction. The Office of Charter Schools shall consist of an executive director appointed by the ~~State Board of Education~~Superintendent of Public Instruction and such other professional, administrative, technical, and clerical personnel as may be necessary to assist the Office of Charter Schools in carrying out its powers and duties.

(2) Executive Director. – The Executive Director shall report to and serve at the pleasure of the ~~State Board of Education~~Superintendent of Public Instruction at a salary established by the ~~State Board~~Superintendent within the funds appropriated for this purpose. The duties of the Executive Director shall include presenting the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.

(3) Powers and duties. – The Office of Charter Schools shall have the following powers and duties:

a. Serve as staff to the Advisory Board and fulfill any task and duties assigned to it by the Advisory Board.

b. Provide technical assistance and guidance to charter schools operating within the State.

c. Provide technical assistance and guidance to nonprofit corporations seeking to operate charter schools within the State.

d. Provide or arrange for training for charter schools that have received preliminary approval from the State Board.

e. Assist approved charter schools and charter schools seeking approval from the State Board in coordinating services with the Department of Public Instruction.

f. Other duties as assigned by the ~~State Board.~~Superintendent of Public Instruction.

(4) Agency cooperation. – All State agencies and departments shall cooperate with the Office of Charter Schools in carrying out its powers and duties as necessary in accordance with this Article."

SECTION 18. G.S. 115C-218.20(b) reads as rewritten:

"(b) No civil liability shall attach to the State Board of Education, the Superintendent of Public Instruction, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school."

SECTION 19. G.S. 115C-238.73(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the board of directors, or its employees, or the State Board of Education, the Superintendent of Public Instruction, or ~~its~~any of their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 20. G.S. 115C-332(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, the Superintendent of Public Instruction, or ~~its~~any of their members or employees, individually or collectively, arising from any act taken

or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes."

SECTION 21. G.S. 115C-333(e) reads as rewritten:

"(e) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 22. G.S. 115C-333.1(g) reads as rewritten:

"(g) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 23. G.S. 115C-390.3(c) reads as rewritten:

"(c) Notwithstanding any other law, no ~~officer~~officer, member, or employee of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or of a local board of ~~education~~education, individually or collectively, shall be civilly liable for using reasonable force in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable."

SECTION 24. G.S. 115C-521 reads as rewritten:

"**§ 115C-521. Erection of school buildings.**

…

(b) It shall be the duty of the local boards of education ~~of the several local school administrative school units of the State~~ to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the

operation of the school, relocatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the ~~State Board of Education,~~Department of Public Instruction, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

…

(f) A local board of education may use prototype designs from the clearinghouse established under subsection (e) of this section that is a previously approved and constructed project by the School Planning Division of the ~~State Board of Education,~~Department of Public Instruction and other appropriate review agencies. The local board of education may contract with the architect of record to make changes and upgrades as necessary for regulatory approval.

…."

SECTION 25. G.S. 115C-535 reads as rewritten:

"**§ 115C-535. Authority and rules for organization of system.**

The ~~State Board of Education~~Superintendent of Public Instruction is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school ~~property.~~property in accordance with all needed rules and regulations adopted by the State Board of Education. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The ~~Board~~Superintendent of Public Instruction shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in ~~its~~his or her opinion is necessary to insure and protect effectively public school property, and ~~it~~he or she shall fix their compensation consistent with the ~~approval~~policies of the ~~Personnel~~State Human Resources Commission."

SECTION 26. G.S. 116-239.12(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the board of trustees, or its employees, or the State Board of ~~Education,~~Education, the Superintendent of Public Instruction, or ~~its~~their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 27. G.S. 143B-146.16(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of ~~Education~~Education, Superintendent of Public Instruction, or ~~its~~their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance,

indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 28. Section 8.37 of S.L. 2015-241, as amended by Section 8.30 of S.L. 2016-94, reads as rewritten:

"**BUDGET REDUCTIONS/DEPARTMENT OF PUBLIC INSTRUCTION**

"**SECTION 8.37.(a)** Notwithstanding G.S. 143C-6-4, the ~~State Board of Education~~ Department of Public Instruction may, after consultation with the Office of State Budget and Management and the Fiscal Research Division, reorganize the Department of Public Instruction, if necessary, to implement the budget reductions for the 2015-2017 fiscal biennium. Consultation shall occur prior to requesting budgetary and personnel changes through the budget revision process. The ~~State Board~~Department of Public Instruction shall provide a current organization chart for the Department of Public Instruction in the consultation process and shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

"**SECTION 8.37.(b)** In implementing budget reductions for the 2015-2017 fiscal biennium, the ~~State Board of Education~~Department of Public Instruction shall make no reduction to funding or positions for (i) the North Carolina Center for Advancement of Teaching and (ii) the Eastern North Carolina School for the Deaf, the North Carolina School for the Deaf, and the Governor Morehead School, except that the ~~State Board~~Superintendent of Public Instruction may, in its discretion, reduce positions at these institutions that have been vacant for more than 16 months. The ~~State Board~~Department of Public Instruction shall also make no reduction in funding to any of the following entities:

(1) Communities in Schools of North Carolina, Inc.
(2) Teach For America, Inc.
(3) Beginnings for Parents of Children who are Deaf or Hard of Hearing, Inc.

"**SECTION 8.37.(c)** In implementing budget reductions for the 2016-2017 fiscal year, the Department of Public Instruction shall do all of the following:

(1) In addition to the prohibition on a reduction to funding and positions for the items listed in subsection (b) of this section, the Department shall make no transfers from or reduction to funding or positions for the following:
    a. The Excellent Public Schools Act, Read to Achieve Program, initially established under Section 7A.1 of S.L. 2012-142.
    b. The North Carolina School Connectivity Program.
(2) The Department shall transfer the sum of fifty thousand dollars ($50,000) to the Office of Administrative Hearings to be allocated to the Rules Review Commission, created by G.S. 143B-30.1, to pay for any litigation costs incurred in the defense of *North Carolina State Board of Education v. The State of North Carolina and The Rules Review Commission*, Wake County Superior Court, File No. 14 CVS 14791 (filed November 7, 2014). These funds shall not revert at the end of the 2016-2017 fiscal year but shall remain available during the 2017-2018 fiscal year for expenditure in accordance with the provisions of this subdivision."

SECTION 29. By May 15, 2017, the State Board of Education shall revise, as necessary, any of its rules and regulations to comply with the provisions of this Part.

SECTION 30. The Department of Public Instruction shall review all State laws and rules and regulations governing the public school system to ensure compliance with the intent of this Part to restore authority to the Superintendent of Public Instruction as the administrative head of the Department of Public Instruction and the Superintendent's role in the direct supervision of the public school system. By April 15, 2017, the Department of Public

Instruction shall report to the 2017 General Assembly on the results of its review, including any recommended legislation.

SECTION 31. Notwithstanding G.S. 115C-11, as amended by this act, the current student advisor and the local superintendent advisor members serving on the State Board of Education as of the effective date of this Part shall serve the remainder of their terms. Thereafter, as terms expire, or when a vacancy occurs prior to the expiration of a term, the student advisor and local superintendent advisor members on the State Board shall be appointed by the Superintendent of Public Instruction in accordance with G.S. 115C-11, as amended by this act.

SECTION 32. Notwithstanding G.S. 115C-218, as amended by this act, the current members serving on the North Carolina Charter Schools Advisory Board as of the effective date of this Part shall serve the remainder of their terms. For the two terms appointed by the Governor expiring in 2017, one member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121, and one member shall be appointed by the State Board of Education in accordance with G.S. 115C-218. For the one term appointed by the Governor expiring in 2019, that member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. As terms expire thereafter or as vacancies occur prior to the expiration of a term, the members on the North Carolina Charter Schools Advisory Board shall be appointed in accordance with G.S. 115C-218, as amended by this act. If a vacancy occurs in a seat appointed by the Governor, the State Board of Education shall fill that vacancy for the reminder of that term. Upon expiration of that term, the member shall be appointed in accordance with G.S. 115C-218.

SECTION 33. Sections 1 through 6 and Sections 8 through 32 of this Part become effective January 1, 2017. The remainder of this Part is effective when it becomes law.

PART II. MODIFY APPOINTMENT OF UNC BOARDS OF TRUSTEES

SECTION 35. G.S. 116-31 reads as rewritten:

"**§ 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, redesignated effective August 1, 2008, as the "University of 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) Except as provided in G.S. 116-65, ~~effective July 1, 1973,~~ each of the 16 institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of ~~Governors,~~Governors.

~~(2) Four appointed by the Governor, and~~

(2a) Four members appointed by the General Assembly under G.S. 120-121, two of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and two of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives.

(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233.

(e) ~~From and after July 1, 1973, the~~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~~ General Assembly shall appoint ~~two persons~~ one person upon the recommendation of the President Pro Tempore of the Senate and one person upon the recommendation of the Speaker of the House of Representatives to each such board.

(g) ~~From and after July 1, 1973, any~~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) No member of the General Assembly or officer or employee of the State, The University of North Carolina, or any constituent institution shall be eligible for election or appointment as a trustee. No spouse of a member of the General Assembly, or of an officer or employee of a constituent institution may be a trustee of that constituent institution. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, The University of North Carolina, or any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes an officer or employee of that constituent institution shall be deemed thereupon to resign from his or her 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 or her term commences as a member of the Board of Governors.

(j) ~~From and after July 1, 1973, whenever~~Whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the ~~Governor,~~General Assembly, it shall be the duty of the secretary of the board to inform the ~~Governor~~ General Assembly of the existence of such vacancy, and the ~~Governor shall appoint a person to fill the unexpired term,~~ vacancy shall be filled as provided in G.S. 120-122, 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 or her place as a member shall be deemed vacant."

SECTION 36. G.S. 116-233 reads as rewritten:

"**§ 116-233. Board of Trustees; appointment; terms of office.**

(a) Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of up to 30 members as follows:

(1) Thirteen members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.

(3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.

(4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.

(5) ~~Two~~ Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) ~~Two~~ Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

~~(7) Two members appointed by the Governor.~~

(8) The president of the student government, ex officio, who shall be a nonvoting member.

(9) Up to two additional nonvoting members selected at the discretion of the chancellor and the Board of Trustees, with terms expiring June 30 of each year.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, 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.

(c) No member of the General Assembly or officer or employee of the State, the School, The University of North Carolina, or of any constituent institution of The University of North Carolina, shall be eligible to be appointed to the Board of Trustees except as specified under subdivision (3) of subsection (a) of this section. No spouse of a member of the General Assembly, or of an officer or employee of the school may be a member of the Board of Trustees. Any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, except as specified under subdivision (3) of subsection (a) of this section, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee of the School, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve staggered four-year terms expiring June 30 of odd numbered years.

(d1) Only an ex officio member shall be eligible to serve more than two successive terms.

(d2) Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. ~~Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term.~~ Reapportionment of

congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) Of the initial members appointed under ~~G.S. 116-233(a)(5),~~ G.S. 116-233(a)(5) in 1985, one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under ~~G.S. 116-233(a)(6),~~G.S. 116-233(a)(6) in 1985 shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year ~~terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.~~terms until January 15, 2017, at which point subsequent appointments shall be for four-year terms.

(e1) The initial members appointed under G.S. 116-233(a)(5) and (6) in 2017, and successors of those members, shall serve four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant."

SECTION 37. This Part is effective when it becomes law and applies to (i) vacancy appointments made on or after that date and (ii) appointments to fill terms expiring January 15, 2017, and thereafter. A vacancy by any board member appointed by the Governor to any board affected by this Part shall be filled by joint recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as provided in G.S. 120-121. The terms of members holding office as of the effective date of this Part shall not be affected.

PART III. SENATE CONFIRMATION OF CABINET APPOINTEES

SECTION 38. G.S. 143B-9 reads as rewritten:

"**§ 143B-9. Appointment of officers and employees.**

(a) The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at ~~his~~ the Governor's pleasure. The salary of the head of each of the principal State departments shall be set by the Governor, and the salary of elected officials shall be as provided by law.

For each head of each principal State department covered by this subsection, the Governor shall notify the President of the Senate of the name of each person to be appointed, and the appointment shall be subject to senatorial advice and consent in conformance with Section 5(8) of Article III of the North Carolina Constitution unless (i) the senatorial advice and consent is expressly waived by an enactment of the General Assembly or (ii) a vacancy occurs when the General Assembly is not in regular session. Any person appointed to fill a vacancy when the General Assembly is not in regular session may serve without senatorial advice and consent for no longer than the earlier of the following:

(1) The date on which the Senate adopts a simple resolution that specifically disapproves the person appointed.

(2) The date on which the General Assembly shall adjourn pursuant to a joint resolution for a period longer than 30 days without the Senate adopting a simple resolution specifically approving the person appointed.

(b) The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the North Carolina Human Resources Act. The salary of such chief deputy or chief assistant shall be set by the Governor. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the ~~Personnel~~ Human Resources Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department."

SECTION 39. This Part is effective when it becomes law.

PART IV. ESTABLISH TASK FORCE FOR SAFER SCHOOLS; TRANSFER CENTER FOR SAFER SCHOOLS

SECTION 41.1.(a) Effective December 15, 2016, the Center for Safer Schools is hereby moved to the Department of Public Instruction, Division of Safe and Healthy Schools Support. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 41.1.(b) Article 8C of Chapter 115C of the General Statutes is amended by adding two new sections to read:

"**§ 115C-105.55. Establish Task Force for Safer Schools.**

(a) Task Force Established. – There is hereby created the Task Force for Safer Schools within the North Carolina Department of Public Instruction.

(b) Membership. – The Task Force shall consist of 25 members. The composition of the Task Force shall include all of the following:

(1) The Secretary of the Department of Public Safety or the Secretary's designee.
(2) The Secretary of the Department of Health and Human Services or the Secretary's designee.
(3) A member of the State Board of Education appointed by the Governor.
(4) Two local school board members appointed by the Chair of the State Board of Education.
(5) A representative from the North Carolina Department of Public Safety, Division of Emergency Management, appointed by the Secretary of the Department of Public Safety.
(6) A representative from the North Carolina Justice Academy appointed by the Attorney General.
(7) A member of the Governor's Crime Commission appointed by the Governor.
(8) Two local law enforcement officers appointed by the Governor.
(9) Two public school administrators appointed by the Chair of the State Board of Education.
(10) A public school teacher appointed by the Chair of the State Board of Education.
(11) A public school psychologist appointed by the Governor.
(12) A public school resource officer appointed by the Governor.
(13) Two high school students currently enrolled at public high schools appointed by the Governor.
(14) A parent of a currently enrolled public school student appointed by the Governor.
(15) A juvenile justice professional appointed by the Governor.
(16) A North Carolina licensed social worker appointed by the Governor.
(17) A North Carolina licensed school counselor appointed by the Governor.
(18) An expert in gang intervention and prevention in schools appointed by the Governor.
(19) Three at-large members appointed by the Governor.

(c) Appointment of Chair and Vice-Chair. – The Governor shall appoint a Chair and Vice-Chair from among the membership of the Task Force. The Chair and Vice-Chair shall serve at the pleasure of the Governor.

(d) Terms; Vacancies. – Effective December 1, 2016, all members shall be appointed for a term of four years. Members may be reappointed to successive terms. Any appointment to

fill a vacancy on the Task Force created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(e) Removal. – The Governor shall have the authority to remove any member of the Task Force for misfeasance, malfeasance, or nonfeasance, pursuant to the provisions of G.S. 143B-13.

(f) Per Diem, Etc. – Members of the Task Force may receive necessary per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"**§ 115C-105.56. Task Force for Safer Schools; powers and duties.**

The Task Force shall have all of the following duties:

(1) To serve as an advisory board to the Center for Safer Schools.

(2) To provide guidance and recommendations to the Governor, Superintendent of Public Instruction, and the General Assembly to improve statewide policy to enhance statewide and local capacities to create safer schools.

(3) To encourage interagency collaboration among State and local government agencies to achieve effective policies and streamline efforts to create safer schools.

(4) To Assist the Center for Safer Schools in collecting and disseminating information on recommended best practices and community needs related to creating safer schools in North Carolina.

(5) Other duties as assigned by the State Board of Education."

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 42. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

SECTION 43. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of December, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:30 p.m. this 19th day of December, 2016