

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 914
Education/Higher Education Committee Substitute Adopted 4/24/01
House Committee Substitute Favorable 11/27/01
Fourth Edition Engrossed 11/29/01**

Short Title: Public Construction Law Changes.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE FOR CONSTRUCTION FLEXIBILITY FOR PUBLIC
3 ENTITIES BY ALLOWING THE USE, WITHOUT LIMITATION, OF
4 SEPARATE-PRIME CONTRACTING, SINGLE-PRIME CONTRACTING, DUAL
5 BIDDING, CONSTRUCTION MANAGER AT RISK, AND ALTERNATIVE
6 CONTRACTING METHODS AUTHORIZED BY THE STATE BUILDING
7 COMMISSION; TO ENHANCE AND IMPROVE GOOD FAITH EFFORTS TO
8 RECRUIT AND SELECT MINORITY BUSINESSES FOR PARTICIPATION IN
9 PUBLIC CONSTRUCTION CONTRACTS; TO INCREASE THE MANDATORY
10 PERFORMANCE AND PAYMENT BOND THRESHOLD FOR PUBLIC
11 CONSTRUCTION PROJECTS; TO PROVIDE FOR CONSTRUCTION AND
12 DESIGN SUPERVISORY AUTHORITY FOR PROJECTS UP TO TWO
13 MILLION DOLLARS FOR THE UNIVERSITY OF NORTH CAROLINA UNTIL
14 DECEMBER 31, 2006; TO PROVIDE FOR EFFICIENCIES IN THE PLAN
15 REVIEW PROCESS FOR PUBLIC BUILDINGS; TO PROMOTE ENERGY
16 EFFICIENCY IN STATE-OWNED BUILDINGS; AND TO AMEND THE LAW
17 GOVERNING LANDSCAPE ARCHITECTURE.

18 The General Assembly of North Carolina enacts:

19
20 **PART I. CONSTRUCTION CHANGES**

21 **SECTION 1.** G.S. 143-64.31 reads as rewritten:

22 **"§ 143-64.31. Declaration of public policy.**

23 It is the public policy of this State and all public subdivisions and Local
24 Governmental Units thereof, except in cases of special emergency involving the health
25 and safety of the people or their property, to announce all requirements for architectural,
26 engineering, ~~and~~ surveying and construction management at risk services, to select
27 firms qualified to provide such services on the basis of demonstrated competence and

1 qualification for the type of professional services required without regard to fee other
2 than unit price information at this stage, and thereafter to negotiate a contract for
3 ~~architectural, engineering, or surveying those~~ services at a fair and reasonable fee with
4 the best qualified firm. If a contract cannot be negotiated with the best qualified firm,
5 negotiations with that firm shall be terminated and initiated with the next best qualified
6 firm. Selection of a firm under this Article shall include the use of good faith efforts by
7 the public entity to notify minority firms of the opportunity to submit qualifications for
8 consideration by the public entity."

9 **SECTION 2.** Article 8 of Chapter 143 of the General Statutes is amended by
10 adding the following new section to read:

11 **"§ 143-128.1. Construction management at risk contracts.**

12 (a) For purposes of this section and G.S. 143-64.31:

13 (1) "Construction management services" means services provided by a
14 construction manager, which may include preparation and
15 coordination of bid packages, scheduling, cost control, value
16 engineering, evaluation, preconstruction services, and construction
17 administration.

18 (2) "Construction management at risk services" means services provided
19 by a person, corporation, or entity that (i) provides construction
20 management services for a project throughout the preconstruction and
21 construction phases, (ii) who is licensed as a general contractor, and
22 (iii) who guarantees the cost of the project.

23 (3) "Construction manager at risk" means a person, corporation, or entity
24 that provides construction management at risk services.

25 (4) "First-tier subcontractor" means a subcontractor who contracts directly
26 with the construction manager at risk.

27 (b) The construction manager at risk shall be selected in accordance with Article
28 3D of this Chapter. Design services for a project shall be performed by a licensed
29 architect or engineer. The public owner shall contract directly with the architect or
30 engineer.

31 (c) The construction manager at risk shall contract directly with the public entity
32 for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall
33 prequalify and accept bids from first-tier subcontractors for all construction work under
34 this section. The prequalification criteria shall be determined by the public entity and
35 the construction manager at risk to address quality, performance, the time specified in
36 the bids for performance of the contract, the cost of construction oversight, time for
37 completion, capacity to perform, and other factors deemed appropriate by the public
38 entity. The public entity shall require the construction manager at risk to submit its plan
39 for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting
40 bids for the project's first-tier subcontractors. A construction manager at risk and first-
41 tier subcontractors shall make a good faith effort to recruit and select minority
42 businesses for participation in contracts pursuant to G.S. 143-128.2. A construction

1 manager at risk may perform a portion of the work only if (i) bidding produces no
2 responsible, responsive bidder for that portion of the work, the lowest responsible,
3 responsive bidder will not execute a contract for the bid portion of the work, or the
4 subcontractor defaults and a prequalified replacement cannot be obtained in a timely
5 manner, and (ii) the public entity approves of the construction manager at risk's
6 performance of the work. All bids shall be opened publicly and shall be public records
7 under Chapter 132 of the General Statutes. The construction manager at risk shall act as
8 the fiduciary of the public entity in handling and opening bids. The construction
9 manager at risk shall award the contract to the lowest responsible, responsive bidder,
10 taking into consideration quality, performance, the time specified in the bids for
11 performance of the contract, the cost of construction oversight, time for completion,
12 compliance with G.S. 143-128.2, and other factors deemed appropriate by the public
13 entity and advertised as part of the bid solicitation. The public entity may require the
14 selection of a different first-tier subcontractor for any portion of the work, consistent
15 with this section, provided that the construction manager at risk is compensated for any
16 additional cost incurred.

17 When contracts are awarded pursuant to this section, the public entity shall provide
18 for a dispute resolution procedure as provided in G.S. 143-128(g).

19 (d) The construction manager at risk shall provide a performance and payment
20 bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A
21 of the General Statutes."

22 **SECTION 3.** G.S. 143-128 reads as rewritten:

23 **"§ 143-128. Requirements for certain building contracts.**

24 (a) Preparation of specifications. – Every officer, board, department, commission
25 or commissions charged with responsibility of preparation of specifications or awarding
26 or entering into contracts for the erection, construction, alteration or repair of any
27 buildings for the State, or for any county, municipality, or other public body, ~~must~~ shall
28 have prepared separate specifications for each of the following subdivisions or branches
29 of work to be performed:

- 30 (1) Heating, ventilating, air conditioning and accessories (separately or
31 combined into one conductive ~~system~~ and/or system), refrigeration for
32 cold storage (where the cold storage cooling load is 15 tons or more of
33 refrigeration), and all ~~work kindred thereto-related work~~ work.
- 34 (2) Plumbing and gas fittings and accessories, and all ~~work kindred~~
35 ~~thereto-related work~~ work.
- 36 (3) Electrical wiring and installations, and all ~~work kindred thereto-related~~
37 work.
- 38 (4) General work not included in subdivisions (1), (2), and (3) of this
39 subsection relating to the erection, construction, alteration, or repair of
40 any building above referred to, which work is not included in the
41 above listed three subdivisions or branches building.

1 ~~All such specifications must~~ Specifications for contracts that will be bid under the
2 separate-prime system or dual bidding system shall be so drawn as to permit separate
3 and independent bidding upon each of the subdivisions ~~or branches~~ of work enumerated
4 ~~above.~~ in this subsection. The above enumeration of subdivisions or branches of work
5 shall not be construed to prevent any officer, board, department, commission or
6 commissions from preparing additional separate specifications for any other category of
7 work.

8 (a1) Construction methods. – The State, a county, municipality, or other public
9 body shall award contracts to erect, construct, alter, or repair buildings pursuant to any
10 of the following methods:

11 (1) Separate-prime bidding.

12 (2) Single-prime bidding.

13 (3) Dual bidding pursuant to subsection (d1) of this section.

14 (4) Construction management at risk contracts pursuant to G.S. 143-128.1.

15 (5) Alternative contracting methods authorized pursuant to G.S. 143-
16 135.26(9).

17 (b) ~~Building projects over five hundred thousand dollars (\$500,000); separate~~
18 ~~prime contracts.~~ Separate-prime contracts. – ~~Except as provided in subsection (d) of this~~
19 ~~section, when the entire cost of the erection, construction, alteration, or repair of a~~
20 ~~building exceeds five hundred thousand dollars (\$500,000),~~ When the State, county,
21 municipality, or other public body uses the separate-prime contract system, it shall
22 accept bids for each subdivision or branch of work for which specifications are required
23 to be prepared under subsection (a) of this section and shall award the respective work
24 specified separately to responsible and reliable persons, firms or corporations regularly
25 engaged in their respective lines of work. When the estimated cost of work to be
26 performed in any single subdivision or branch for which separate bids are required by
27 this subsection is less than twenty five thousand dollars (\$25,000), the same may be
28 included in the contract for one of the other subdivisions or branches of the work,
29 irrespective of total project cost. The contracts shall be awarded to the lowest
30 responsible, responsive bidders, taking into consideration quality, performance, the time
31 specified in the bids for performance of the contract, and compliance with G.S. 143-
32 128.2. Bids may also be accepted from and awards made to separate contractors for
33 other categories of work.

34 Each separate contractor shall be directly liable to the State of North Carolina, or to
35 ~~the county or municipality,~~ county, municipality, or other public body and to the other
36 separate contractors for the full performance of all duties and obligations due
37 respectively under the terms of the separate contracts and in accordance with the plans
38 and specifications, which shall specifically set forth the duties and obligations of each
39 separate contractor. For the purpose of this section, "separate contractor" means any
40 person, firm or corporation who shall enter into a contract with the State, or with any
41 county, municipality, or other public ~~body,~~ entity ~~for the erection, construction,~~

1 ~~alteration to erect, construct, alter or repair of any building or buildings, or parts~~
2 ~~thereof of any building or buildings.~~

3 (c) ~~Building projects five hundred thousand dollars (\$500,000) or less. When~~
4 ~~the entire cost of the erection, construction, alteration, or repair of a building is five~~
5 ~~hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other~~
6 ~~public body may accept bids under the single prime contract system, the separate prime~~
7 ~~contract system, or both. The provisions of subsection (b) of this section apply to the~~
8 ~~use of the separate prime contract system under this subsection. The provisions of~~
9 ~~subsection (d) of this section apply to the use of the single prime contract system under~~
10 ~~this section, except that bidding in the alternative between the single prime and separate~~
11 ~~prime systems is not required. Contracts bid in the alternative between the single prime~~
12 ~~and separate prime systems under this subsection must be awarded to the lowest~~
13 ~~responsible bidder or bidders, as provided in subsection (d) of this section.~~

14 (d) ~~Single-prime and alternative contracts. – The State, a county, municipality, or~~
15 ~~other public body may accept bids under the single prime contract system or a~~
16 ~~contracting method approved by the State Building Commission under G.S. 143-135.26.~~

17 ~~If the State, county, municipality, or other public body accepts bids under the single~~
18 ~~prime contract system, it must also seek bids for the project under the separate prime~~
19 ~~contract system, except as otherwise authorized under G.S. 143-135.26, and award the~~
20 ~~contract to the lowest responsible bidder or bidders for the total project, taking into~~
21 ~~consideration quality, performance and the time specified in the bids for the~~
22 ~~performance of the contract.~~

23 ~~When bids are accepted under the single prime contract system all~~All bidders must
24 in a single-prime project shall identify on their bid the contractors they have selected for
25 the subdivisions or branches of work for:

- 26 (1) Heating, ventilating, and air conditioning;
- 27 (2) Plumbing;
- 28 (3) Electrical; and
- 29 (4) General.

30 ~~No contractor whose bid is accepted~~The contract shall be awarded to the lowest
31 responsible, responsive bidder, taking into consideration quality, performance, the time
32 specified in the bids for performance of the contract, and compliance with G.S. 143-
33 128.2. A contractor whose bid is accepted shall not substitute any person as
34 subcontractor in the place of the subcontractor listed in the original bid, except (i) if the
35 listed subcontractor's bid is later determined by the contractor to be nonresponsive or
36 nonresponsive or the listed subcontractor refuses to enter into a contract for the
37 complete performance of the bid work, or (ii) with the approval of the awarding
38 authority for good cause shown by the contractor. The terms, conditions, and
39 requirements of each contract between the contractor and a subcontractor performing
40 work under a subdivision or branch of work listed in this subsection shall be
41 substantially the same asincorporate by reference the terms, conditions, and

1 requirements of the contract between the contractor and the State, county, municipality,
2 or other public body.

3 ~~The requirements of this subsection governing the identification of bidders,~~
4 ~~substitution of contractors, and the terms and conditions of subcontractor's contracts~~
5 ~~apply to all single prime bidding and single prime contracts, regardless of whether~~
6 ~~bidding in the alternative between the single prime and separate prime systems has been~~
7 ~~waived by the State Building Commission. When contracts are awarded pursuant to this~~
8 ~~section, the public body shall make available to subcontractors the dispute resolution~~
9 ~~process as provided for in subsection (g) of this section.~~

10 (d1) ~~Local school administrative units; building projects over five hundred~~
11 ~~thousand dollars (\$500,000). Dual bidding. - When the entire cost of the building~~
12 ~~project is more than five hundred thousand dollars (\$500,000), a local school~~
13 ~~administrative unit shall seek bids as provided in subsection (b) or (d) of this section or~~
14 ~~this subsection. The local school administrative unit~~ The State, a county, municipality,
15 or other public entity may accept bids to erect, construct, alter, or repair a building
16 under both the single-prime and separate-prime contracting systems and shall award the
17 contract to the lowest ~~responsible~~ responsible, responsive bidder under the single-prime
18 system or to the lowest ~~responsible~~ responsible, responsive bidder under the
19 separate-prime system, taking into consideration quality, performance, compliance with
20 G.S. 143-128.2, and time specified in the bids ~~for performance~~ to perform the
21 contract. In determining the system under which the contract will be awarded to the
22 lowest ~~responsible~~ responsible, responsive bidder, the ~~local school administrative unit~~
23 public entity may consider cost of construction oversight, time for completion, and other
24 factors it ~~deems~~ considers appropriate. ~~The local school administrative unit shall not~~
25 ~~open any bid solicited under subsection (d) of this section unless the unit receives at~~
26 ~~least three competitive bids from reputable and qualified contractors regularly engaged~~
27 ~~in their respective lines of endeavor and unless the unit receives a bid from at least one~~
28 ~~general contractor under the separate prime system. The bids received as separate-prime~~
29 ~~bids shall be submitted three hours~~ received, but not opened, one hour prior to the
30 deadline for the submission of single-prime bids. The amount of a bid submitted by a
31 subcontractor to the general contractor under the single-prime system shall not exceed
32 the amount bid, if any, for the same work by that subcontractor to the ~~local school~~
33 administrative unit public entity under the separate-prime system. ~~Each single-prime bid~~
34 ~~that identifies the contractors selected to perform the three major subdivisions or~~
35 ~~branches of work described in subsection (d) of this section and that lists the~~
36 ~~contractors' respective bid prices for those branches of work shall constitute a single~~
37 ~~competitive bid, and each full set of separate prime bids for all of the branches of work~~
38 ~~described in subsection (d) of this section shall constitute a single competitive bid. If~~
39 ~~after advertisement as required by G.S. 143-129, the local school administrative unit has~~
40 ~~not received the minimum number of competitive bids as required by this subsection,~~
41 ~~the unit shall again advertise for bids. If the required minimum number of bids is not~~
42 ~~received as a result of the second advertisement, the unit may let the contract to the~~

1 ~~lowest responsible bidder that submitted a bid for the project, even though the unit~~
2 ~~received only one bid. A contractor must provide an affidavit to the local school~~
3 ~~administrative unit that it has made the good faith effort required pursuant to G.S. 143-~~
4 ~~128(f), and failure to file the affidavit is grounds for rejection of the bid. All provisions~~
5 ~~of Article 8 of Chapter 143 of the General Statutes that are not inconsistent with this~~
6 ~~subsection shall apply to local school administrative units. The provisions of subsection~~
7 ~~(b) of this section shall apply to separate-prime contracts awarded pursuant to this~~
8 ~~section and the provisions of subsection (d) of this section shall apply to single-prime~~
9 ~~contracts awarded pursuant to this section.~~

10 (e) Project expediter; scheduling; public body to resolve project disputes. – The
11 State, county, municipality, or other public body may, if specified in the bid documents,
12 provide for assignment of responsibility for expediting the work on ~~the a~~ project to a
13 single responsible and reliable person, firm or corporation, which may be a prime
14 contractor. In executing this responsibility, the designated project expediter may
15 recommend to the State, county, municipality, or other public body whether payment to
16 a contractor should be approved. The project expediter, if required by the contract
17 documents, shall be responsible for ~~the preparation of~~ preparing the project schedule and
18 shall allow all contractors and subcontractors performing any of the branches of work
19 listed in subsection (d) of this section equal input into the preparation of the initial
20 schedule. Whenever separate contracts are awarded and separate contractors engaged
21 for a project pursuant to this section, the public body may provide in the contract
22 documents for resolution of project disputes through alternative dispute resolution
23 processes ~~such as mediation or arbitration as~~ provided for in subsection (g) of this
24 section.

25 (f) ~~Minority goals. The State shall have a verifiable ten percent (10%) goal for~~
26 ~~participation by minority businesses in the total value of work for each building project.~~
27 ~~Each city, county, or other public body shall adopt, after a notice and public hearing, an~~
28 ~~appropriate verifiable percentage goal for participation by minority businesses in the~~
29 ~~total value of work for each building.~~ As used in this subsection:

30 (1) ~~The term "minority business" means a business:~~

- 31 a. ~~In which at least fifty one percent (51%) is owned by one or~~
32 ~~more minority persons, or in the case of a corporation, in which~~
33 ~~at least fifty one percent (51%) of the stock is owned by one or~~
34 ~~more minority persons; and~~
35 b. ~~Of which the management and daily business operations are~~
36 ~~controlled by one or more of the minority persons who own it.~~

37 (2) ~~The term "minority person" means a person who is a citizen or lawful~~
38 ~~permanent resident of the United States and who is:~~

- 39 a. ~~Black, that is, a person having origins in any of the black racial~~
40 ~~groups in Africa;~~

- 1 b. ~~Hispanic, that is, a person of Spanish or Portuguese culture with~~
2 ~~origins in Mexico, South or Central America, or the Caribbean~~
3 ~~Islands, regardless of race;~~
4 e. ~~Asian American, that is, a person having origins in any of the~~
5 ~~original peoples of the Far East, Southeast Asia and Asia, the~~
6 ~~Indian subcontinent, the Pacific Islands;~~
7 d. ~~American Indian or Alaskan Native, that is, a person having~~
8 ~~origins in any of the original peoples of North America; or~~
9 e. ~~Female.~~
10 (3) ~~The term "verifiable goal" means:~~
11 a. ~~For purposes of the separate prime contract system, that the~~
12 ~~awarding authority has adopted written guidelines specifying~~
13 ~~the actions that will be taken to ensure a good faith effort in the~~
14 ~~recruitment and selection of minority businesses for~~
15 ~~participation in contracts awarded under this section.~~
16 b. ~~For purposes of the single prime contract system, that the~~
17 ~~awarding authority has adopted written guidelines specifying~~
18 ~~the actions that the prime contractor must take to ensure a good~~
19 ~~faith effort in the recruitment and selection of minority~~
20 ~~businesses for participation in contracts awarded under this~~
21 ~~section; the required actions must be documented in writing by~~
22 ~~the contractor to the appropriate awarding authority.~~
23 e. ~~For purposes of an alternative contracting system authorized by~~
24 ~~the State Building Commission under G.S. 143-135.26(9), that~~
25 ~~the awarding authority has adopted written guidelines~~
26 ~~specifying the action to be taken to ensure a good faith effort in~~
27 ~~the recruitment and selection of minority businesses for~~
28 ~~participation in contracts awarded under this section. The State,~~
29 ~~counties, municipalities, and all other public bodies shall award~~
30 ~~public building contracts without regard to race, religion, color,~~
31 ~~creed, national origin, sex, age, or handicapping condition, as~~
32 ~~defined in G.S. 168A 3. Nothing in this section shall be~~
33 ~~construed to require contractors or awarding authorities to~~
34 ~~award contracts or subcontracts to or to make purchases of~~
35 ~~materials or equipment from minority business contractors or~~
36 ~~minority business subcontractors who do not submit the lowest~~
37 ~~responsible bid or bids.~~

38 (g) Dispute resolution. – A public entity shall use the dispute resolution process
39 adopted by the State Building Commission pursuant to G.S. 143-135.26(12), or shall
40 adopt another dispute resolution process, which shall include mediation, to be used as
41 an alternative to the dispute resolution process adopted by the State Building
42 Commission. This dispute resolution process will be available to all the parties involved

1 in the public entity's construction project including the public entity, the architect, the
2 construction manager, the contractors, and the first-tier and lower-tier subcontractors
3 and shall be available for any issues arising out of the contract or construction process.
4 The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars
5 (\$15,000), concerning the amount in controversy that must be at issue before a party
6 may require other parties to participate in the dispute resolution process. The public
7 entity may require that the costs of the process be divided between the parties to the
8 dispute with at least one-third of the cost to be paid by the public entity, if the public
9 entity is a party to the dispute. The public entity may require in its contracts that a party
10 participate in mediation concerning a dispute as a precondition to initiating litigation
11 concerning the dispute.

12 ~~(g)~~(h) Exceptions. – This section shall not apply to:

- 13 (1) The purchase and erection of prefabricated or relocatable buildings or
14 portions thereof, except that portion of the work which must be
15 performed at the construction site.
- 16 (2) The erection, construction, alteration, or repair of a building when the
17 cost thereof is ~~one hundred thousand dollars (\$100,000) or less.~~ three
18 hundred thousand dollars (\$300,000) or less.

19 Notwithstanding the other provisions of this subsection, subsection (g) of this
20 section shall apply to any erection, construction, alteration, or repair of a building by a
21 public entity."

22 **SECTION 3.1.** Article 8 of Chapter 143 is amended by adding a new section
23 to read:

24 **"§ 143-128.2. Minority business participation goals.**

25 (a) The State shall have a verifiable ten percent (10%) goal for participation by
26 minority businesses in the total value of work for each State building project, including
27 building projects done by a private entity on a facility to be leased or purchased by the
28 State. A local government unit or other public or private entity that receives State
29 appropriations for a building project or other State grant funds for a building project,
30 including a building project done by a private entity on a facility to be leased or
31 purchased by the local government unit, where the project cost is one hundred thousand
32 dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for
33 participation by minority businesses in the total value of the work; provided, however, a
34 local government unit may apply a different verifiable goal that was adopted prior to
35 December 1, 2001, if the local government unit had and continues to have a sufficiently
36 strong basis in evidence to justify the use of that goal. On State building projects and
37 building projects subject to the State goal requirement, the Secretary shall identify the
38 appropriate percentage goal, based on adequate data, for each category of minority
39 business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

40 Except as otherwise provided for in this subsection, each city, county, or other local
41 public entity shall adopt, after a notice and public hearing, an appropriate verifiable
42 percentage goal for participation by minority businesses in the total value of work for

1 building projects to include water, sewer, and landscape projects where no buildings are
2 erected or repaired in accordance with this subsection.

3 Each entity required to have verifiable percentage goals under this subsection shall
4 make a good faith effort to recruit minority participation in accordance with this section
5 or G.S. 143-131(b), as applicable.

6 (b) A public entity shall establish prior to solicitation of bids the good faith
7 efforts that it will take to make it feasible for minority businesses to submit successful
8 bids or proposals for the contracts for building projects. Public entities shall make good
9 faith efforts as set forth in subsection (e) of this section. Public entities shall require
10 contractors to make good faith efforts pursuant to subsection (f) of this section. Each
11 first-tier subcontractor on a construction management at risk project shall comply with
12 the requirements applicable to contractors under this subsection.

13 (c) Each bidder, which shall mean first-tier subcontractor for construction
14 manager at risk projects for purposes of this subsection, on a project bid under any of
15 the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority
16 businesses that it will use on the project and good faith documentation required pursuant
17 to this subsection. A contractor, including a first-tier subcontractor on a construction
18 manager at risk project, that performs all of the work under a contract with its own
19 workforce may submit an affidavit to that effect in lieu of documentation otherwise
20 required under this section. Documentation of its good faith effort shall be submitted by
21 each bidder with the bid and a minority utilization plan shall be submitted in each
22 proposal for construction managers at risk and alternative bidding projects. The
23 documentation must include evidence of all good faith efforts that were implemented,
24 including any advertisements, solicitations, and evidence of other specific actions
25 demonstrating recruitment and selection of minority businesses for participation in the
26 contract. Within 30 days after award of the contract, a list of all identified
27 subcontractors that the contractor will use on the project.

28 Failure to file a required affidavit or documentation that demonstrates that the
29 contractor made the required good faith effort is grounds for rejection of the bid.

30 (d) No subcontractor who is identified and listed pursuant to subsection (c) of
31 this section may be replaced with a different subcontractor except:

32 (1) If the subcontractor's bid is later determined by the contractor or
33 construction manager at risk to be nonresponsible or nonresponsive, or
34 the listed subcontractor refuses to enter into a contract for the complete
35 performance of the bid work, or

36 (2) With the approval of the public entity for good cause.

37 Good faith efforts as set forth in G.S. 143-131(b) shall apply to the selection of a
38 substitute subcontractor. Prior to substituting a subcontractor, the contractor shall
39 identify the substitute subcontractor and inform the public entity of its good faith efforts
40 pursuant to G.S. 143-131(b).

41 (e) Before awarding a contract, a public entity shall do the following:

- 1 (1) Develop and implement a minority business participation outreach
2 plan to identify minority businesses that can perform public building
3 projects and to implement outreach efforts to encourage minority
4 business participation in these projects to include education,
5 recruitment, and interaction between minority businesses and
6 nonminority businesses.
- 7 (2) Attend the scheduled prebid conference.
- 8 (3) At least 10 days prior to the scheduled day of bid opening, notify
9 minority businesses that have requested notices from the public entity
10 for public construction or repair work and minority businesses that
11 otherwise indicated to the Office of Historically Underutilized
12 Businesses an interest in the type of work being bid or the potential
13 contracting opportunities listed in the proposal. The notification shall
14 include the following:
- 15 a. A description of the work for which the bid is being solicited.
16 b. The date, time, and location where bids are to be submitted.
17 c. The name of the individual within the public entity who will be
18 available to answer questions about the project.
19 d. Where bid documents may be reviewed.
20 e. Any special requirements that may exist.
- 21 (4) Utilize other media, as appropriate, likely to inform potential minority
22 businesses of the bid being sought.
- 23 (f) A public entity shall require bidders to undertake the following good faith
24 efforts to the extent required by the Secretary on projects subject to this section. The
25 Secretary shall adopt rules establishing points to be awarded for taking each effort and
26 the minimum number of points required, depending on project size, cost, type, and other
27 factors considered relevant by the Secretary. The public entity may require that
28 additional good faith efforts be taken, as indicated in its bid specifications. Good faith
29 efforts include:
- 30 (1) Contacting minority businesses that reasonably could have been
31 expected to submit a quote and that were known to the contractor or
32 available on State or local government maintained lists at least 10 days
33 before the bid or proposal date and notifying them of the nature and
34 scope of the work to be performed.
- 35 (2) Making the construction plans, specifications and requirements
36 available for review by prospective minority businesses, or providing
37 these documents to them at least 10 days before the bid or proposals
38 are due.
- 39 (3) Breaking down or combining elements of work into economically
40 feasible units to facilitate minority participation.
- 41 (4) Working with minority trade, community, or contractor organizations
42 identified by the Office of Historically Underutilized Businesses and

- 1 included in the bid documents that provide assistance in recruitment of
2 minority businesses.
- 3 (5) Attending any prebid meetings scheduled by the public owner.
4 (6) Providing assistance in getting required bonding or insurance or
5 providing alternatives to bonding or insurance for subcontractors.
6 (7) Negotiating in good faith with interested minority businesses and not
7 rejecting them as unqualified without sound reasons based on their
8 capabilities. Any rejection of a minority business based on lack of
9 qualification should have the reasons documented in writing.
- 10 (8) Providing assistance to an otherwise qualified minority business in
11 need of equipment, loan capital, lines of credit, or joint pay agreements
12 to secure loans, supplies, or letters of credit, including waiving credit
13 that is ordinarily required. Assisting minority businesses in obtaining
14 the same unit pricing with the bidder's suppliers in order to help
15 minority businesses in establishing credit.
- 16 (9) Negotiating joint venture and partnership arrangements with minority
17 businesses in order to increase opportunities for minority business
18 participation on a public construction or repair project when possible.
- 19 (10) Providing quick pay agreements and policies to enable minority
20 contractors and suppliers to meet cash-flow demands.
- 21 (g) As used in this section:
- 22 (1) The term "minority business" means a business:
- 23 a. In which at least fifty-one percent (51%) is owned by one or
24 more minority persons or socially and economically
25 disadvantaged individuals, or in the case of a corporation, in
26 which at least fifty-one percent (51%) of the stock is owned by
27 one or more minority persons or socially and economically
28 disadvantaged individuals; and
- 29 b. Of which the management and daily business operations are
30 controlled by one or more of the minority persons or socially
31 and economically disadvantaged individuals who own it.
- 32 (2) The term "minority person" means a person who is a citizen or lawful
33 permanent resident of the United States and who is:
- 34 a. Black, that is, a person having origins in any of the black racial
35 groups in Africa;
- 36 b. Hispanic, that is, a person of Spanish or Portuguese culture with
37 origins in Mexico, South or Central America, or the Caribbean
38 Islands, regardless of race;
- 39 c. Asian American, that is, a person having origins in any of the
40 original peoples of the Far East, Southeast Asia and Asia, the
41 Indian subcontinent, the Pacific Islands;

1 d. American Indian, that is, a person having origins in any of the
2 original Indian peoples of North America; or

3 e. Female.

4 (3) The term "socially and economically disadvantaged individual" means
5 the same as defined in 15 U.S.C. 637.

6 (h) The State, counties, municipalities, and all other public bodies shall award
7 public building contracts, including those awarded under G.S. 143-128.1, 143-129, and
8 143-131, without regard to race, religion, color, creed, national origin, sex, age, or
9 handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be
10 construed to require contractors or awarding authorities to award contracts or
11 subcontracts to or to make purchases of materials or equipment from minority-business
12 contractors or minority-business subcontractors who do not submit the lowest
13 responsible, responsive bid or bids.

14 (i) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created
15 pursuant to this section shall be maintained by the public entity for a period of not less
16 than three years from the date of the completion of the building project.

17 (j) Except as provided in subsection (a) of this section, this section shall apply to
18 building projects costing three hundred thousand dollars (\$300,000) or more. This
19 section shall not apply to the purchase and erection of prefabricated or relocatable
20 buildings or portions thereof, except that portion of the work which must be performed
21 at the construction site."

22 **SECTION 3.2.** G.S. 113-315.36 reads as rewritten:

23 **"§ 113-315.36. Building contracts.**

24 (a) The following general laws, to the extent provided below, do not apply to the
25 North Carolina Seafood Industrial Park Authority:

26 (1) Repealed by Session Laws 1999-368, s. 1.

27 (2) Except for ~~G.S. 143-128(f)~~, G.S. 143-128.2, Article 8 of Chapter 143 of
28 the General Statutes does not apply to public building contracts of the
29 Authority that require the estimated expenditure of public money in an
30 amount less than two hundred fifty thousand dollars (\$250,000). With
31 respect to a contract that is exempted from certain provisions of Article
32 8 under this subdivision, the powers and duties set out in Article 8
33 shall be exercised by the Authority, and the Secretary of
34 Administration and other State officers, employees, or agencies shall
35 have no duties or responsibilities concerning the contract.

36 (3) G.S. 143-341(3) does not apply to plans and specifications for
37 construction or renovation authorized by the Authority that require the
38 estimated expenditure of public money in an amount less than two
39 hundred fifty thousand dollars (\$250,000).

40 (b) Notwithstanding the other provisions of this section, the services of the
41 Department of Administration may be made available to the Authority, when requested
42 by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the

1 General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint
2 Legislative Commission on Governmental Operations on any building contract to which
3 this exemption is applied. The quarterly report required by this subsection shall
4 specifically include information regarding the Authority's compliance with the
5 provisions of ~~G.S. 143-128(f)~~. G.S. 143-128.2."

6 **SECTION 3.3.** G.S. 143-129.4 reads as rewritten:

7 "**§ 143-129.4. Guaranteed energy savings contracts.**

8 The solicitation and evaluation of proposals for guaranteed energy savings contracts,
9 as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these
10 proposals are governed solely by the provisions of that Part; except that guaranteed
11 energy savings contracts are subject to the requirements of ~~G.S. 143-128(f)~~.
12 G.S. 143-128.2."

13 **SECTION 3.4.** G.S. 143B-437.29 reads as rewritten:

14 "**§ 143B-437.29. Contracting with minority businesses.**

15 The Authority must comply with the policies regarding contracting with minority
16 businesses as set out in G.S. 143-48, ~~143-128(f)~~, ~~143-128.2~~, and 143-135.5 and with any
17 other applicable laws. The Authority is subject to Executive Order Number 150, issued
18 April 20, 1999, regarding contracting with historically underutilized businesses."

19 **SECTION 3.5.** G.S. 158-35(a), as amended by Section 20.13(a) of S.L.
20 2001-424, reads as rewritten:

21 "(a) Commission Membership. – The governing body of the Zone is the Global
22 TransPark Development Commission. The members of the Commission must be
23 residents of the Zone and shall be appointed as follows:

- 24 (1) The board of commissioners of each county participating in the Zone
25 shall appoint three voting members, one of whom shall be a minority
26 person as defined in ~~G.S. 143-128(f)(2)~~. G.S. 143-128.2(g)(2) and one
27 of whom may be a member of the board of commissioners.
- 28 (2) The Commission shall appoint at least three but no more than seven
29 voting members. By the appointment of these members, the
30 Commission shall ensure that the voting membership of the
31 Commission includes at least seven women and seven members of a
32 racial minority described in ~~G.S. 143-128(f)(2)~~. G.S. 143-128.2(g)(2).
33 The Commission shall appoint the fewest number of members
34 necessary to achieve these minimums.
- 35 (3) Four nonvoting members shall be appointed as follows:
 - 36 a. One appointed by the Chancellor of East Carolina University to
37 represent the University.
 - 38 b. One appointed by a majority vote of the presidents of the
39 community colleges located in the Zone, to represent the
40 community colleges.
 - 41 c. One appointed by the chair of the State Ports Authority, to
42 represent the sea ports of the State.

1 d. One member of the board of directors of the Global TransPark
2 Foundation, Inc., appointed by that board."

3 **SECTION 3.6.** Article 8 of Chapter 143 is amended by adding a new section
4 to read:

5 "**§ 143-128.3. Minority business participation administration.**

6 (a) All public entities subject to G.S. 143-128.2 shall report to the Department of
7 Administration, Office of Historically Underutilized Business, the following with
8 respect to each building project:

9 (1) The verifiable percentage goal.

10 (2) The type and total dollar value of the project, minority business
11 utilization by minority business category, trade, total dollar value of
12 contracts awarded to each minority group for each project, the
13 applicable good faith effort guidelines or rules used to recruit minority
14 business participation, and good faith documentation accepted by the
15 public entity from the successful bidder.

16 (3) The utilization of minority businesses under the various construction
17 methods under G.S. 143-128(a1).

18 The reports shall be in the format and contain the data prescribed by the Secretary of
19 Administration. The University of North Carolina and the State Board of Community
20 Colleges shall report quarterly and all other public entities shall report semiannually.
21 The Secretary of the Department of Administration shall make reports every six months
22 to the Joint Legislative Committee on Governmental Operations on information
23 reported pursuant to this subsection.

24 (b) A public entity that has been notified by the Secretary of its failure to comply
25 with G.S. 143-128.2 on a project shall develop a plan of compliance that addresses the
26 deficiencies identified by the Secretary. The corrective plan shall apply to the current
27 project or to subsequent projects under G.S. 143-128, as appropriate, provided that the
28 plan must be implemented, at a minimum, on the current project to the extent feasible. If
29 the public entity, after notification from the Secretary, fails to file a corrective plan, or if
30 the public entity does not implement the corrective plan in accordance with its terms,
31 the Secretary shall require one or both of the following:

32 (1) That the public entity consult with the Department of Administration,
33 Office of Historically Underutilized Businesses on the development of
34 a new corrective plan, subject to the approval of the Department and
35 the Attorney General. The public entity may designate a representative
36 to appear on its behalf, provided that the representative has managerial
37 responsibility for the construction project.

38 (2) That the public entity not bid another contract under G.S. 143-128
39 without prior review by the Department and the Attorney General of a
40 good faith compliance plan developed pursuant to subdivision (1) of
41 this subsection. The public entity shall be subject to the review and
42 approval of its good faith compliance plan under this subdivision with

1 respect to any projects bid pursuant to G.S. 143-128 during a period of
2 time determined by the Secretary, not to exceed one year.

3 A public entity aggrieved by the decision of the Secretary may file a contested case
4 proceeding under Chapter 150B of the General Statutes.

5 (c) The Secretary shall study and recommend to the General Assembly and other
6 State agencies ways to improve the effectiveness and efficiency of the State capital
7 facilities development, minority business participation program and good faith efforts in
8 utilizing minority businesses as set forth in G.S. 143-128.2, and other appropriate good
9 faith efforts that may result in the increased utilization of minority businesses.

10 (d) The Secretary shall appoint an advisory board to develop recommendations to
11 improve the recruitment and utilization of minority businesses. The Secretary, with the
12 input of its advisory board, shall review the State's programs for promoting the
13 recruitment and utilization of minority businesses involved in State capital projects and
14 shall recommend to the General Assembly, the State Construction Office, The
15 University of North Carolina, and the community colleges system changes in the terms
16 and conditions of State laws, rules, and policies that will enhance opportunities for
17 utilization of minority businesses on these projects. The Secretary shall provide
18 guidance to these agencies on identifying types of projects likely to attract increased
19 participation by minority businesses and breaking down or combining elements of work
20 into economically feasible units to facilitate minority business participation.

21 (e) The Secretary shall adopt rules for State entities, The University of North
22 Carolina, and community colleges and shall adopt guidelines for local government units
23 to implement the provisions of G.S. 143-128.2.

24 (f) The Secretary shall provided the following information to the Attorney
25 General:

- 26 (1) Failure by a public entity to report data to the Secretary in accordance
27 with this section.
28 (2) Upon the request of the Attorney General, any data or other
29 information collected under this section.
30 (3) False statements knowingly provided in any affidavit or
31 documentation under G.S. 143-128.2 to the State or other public entity.
32 Public entities shall provide to the Secretary information concerning
33 any false information knowingly provided to the public entity pursuant
34 to G.S. 143-128.2.

35 (g) The Secretary shall report findings and recommendations as required under
36 this section to the Joint Legislative Committee on Governmental Operations annually on
37 or before June 1, beginning June 1, 2002."

38 **SECTION 4.** G.S. 143-129(a), as amended by S.L. 2001-328, reads as
39 rewritten:

40 "(a) Bidding Required. – No construction or repair work requiring the estimated
41 expenditure of public money in an amount equal to or more than ~~one hundred thousand~~
42 dollars (\$100,000) three hundred thousand dollars (\$300,000) or purchase of apparatus,

1 supplies, materials, or equipment requiring an estimated expenditure of public money in
2 an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ninety thousand dollars
3 (\$90,000) may be performed, nor may any contract be awarded therefor, by any board
4 or governing body of the State, or of any institution of the State government, or of any
5 political subdivision of the State, unless the provisions of this section are complied with.

6 For purchases of apparatus, supplies, materials, or equipment, the governing body of
7 any political subdivision of the State may, subject to any restriction as to dollar amount,
8 or other conditions that the governing body elects to impose, delegate to the manager or
9 the chief purchasing official, or both, the authority to award contracts, reject bids, or
10 readvertise to receive bids on behalf of the unit. Any person to whom authority is
11 delegated under this subsection shall comply with the requirements of this Article that
12 would otherwise apply to the governing body."

13 **SECTION 4.1.** S.L. 1999-52 is repealed.

14 **SECTION 5.** G.S. 143-129(e), as amended by S.L. 2001-328, is amended by
15 adding a new subdivision to read:

16 "(11) Contracts by a public entity with a construction manager at risk
17 executed pursuant to G.S. 143-128.1."

18 **SECTION 5.1.** G.S. 143-131 reads as rewritten:

19 "**§ 143-131. When counties, cities, towns and other subdivisions may let contracts**
20 **on informal bids.**

21 (a) All contracts for construction or repair work or for the purchase of apparatus,
22 supplies, materials, or equipment, involving the expenditure of public money in the
23 amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in
24 G.S. 143-129, made by any officer, department, board, or commission of any county,
25 city, town, or other subdivision of this State shall be made after informal bids have been
26 secured. All such contracts shall be awarded to the lowest ~~responsible-responsible,~~
27 responsive bidder, taking into consideration quality, performance, and the time specified
28 in the bids for the performance of the contract. It shall be the duty of any officer,
29 department, board, or commission entering into such contract to keep a record of all
30 bids submitted, and such record shall not be subject to public inspection until the
31 contract has been awarded.

32 (b) All public entities shall solicit minority participation in contracts for the
33 erection, construction, alteration or repair of any building awarded pursuant to this
34 section. The public entity shall maintain a record of contractors solicited and shall
35 document efforts to recruit minority business participation in those contracts. Nothing in
36 this section shall be construed to require formal advertisement of bids. All data,
37 including the type of project, total dollar value of the project, dollar value of minority
38 business participation on each project, and documentation of efforts to recruit minority
39 participation shall be reported to the Department of Administration, Office for
40 Historically Underutilized Business, upon the completion of the project."

41 **SECTION 5.2.** G.S. 143-135.5 reads as rewritten:

1 "§ 143-135.5. State policy; cooperation in promoting the use of small, minority,
2 physically handicapped and women contractors; purpose.

3 (a) It is the policy of this State to encourage and promote the use of small,
4 minority, physically handicapped and women contractors in State construction projects.
5 All State agencies, institutions and political subdivisions shall cooperate with the
6 Department of Administration and all other State agencies, institutions and political
7 subdivisions in efforts to encourage and promote the use of small, minority, physically
8 handicapped and women contractors in achieving the purpose of this Article, which is
9 the effective and economical construction of public buildings.

10 (b) It is the policy of this State not to accept bids or proposals from, nor to
11 engage in business with, any business that, within the last two years, has been finally
12 found by a court or an administrative agency of competent jurisdiction to have
13 unlawfully discriminated on the basis of race, gender, religion, national origin, age,
14 physical disability, or any other unlawful basis in its solicitation, selection, hiring, or
15 treatment of another business."

16 **SECTION 6.** G.S. 133-1.1(a) reads as rewritten:

17 "(a) In the interest of public health, safety and economy, every officer, board,
18 department, or commission charged with the duty of approving plans and specifications
19 or awarding or entering into contracts involving the expenditure of public funds in
20 excess of:

21 (1) ~~One~~ Three hundred thousand dollars (~~\$100,000~~)(\$300,000) for the
22 repair of public buildings where such repair does not include major
23 structural change in framing or foundation support systems,

24 (1a) One hundred thousand dollars (\$100,000) for the repair of public
25 buildings affecting life safety systems,

26 (2) ~~Forty five thousand dollars (\$45,000)~~ One hundred thirty-five thousand
27 dollars (\$135,000) for the repair of public buildings where such repair
28 includes major structural change in framing or foundation support
29 systems, or

30 (3) ~~Forty five thousand dollars (\$45,000)~~ One hundred thirty-five thousand
31 dollars (\$135,000) for the construction of, or additions to, public
32 buildings or State-owned and operated utilities,

33 shall require that such plans and specifications be prepared by a registered architect, in
34 accordance with the provisions of Chapter 83A of the General Statutes, or by a
35 registered engineer, in accordance with the provisions of Chapter 89C of the General
36 Statutes, or by both architect and engineer, particularly qualified by training and
37 experience for the type of work involved, and that the North Carolina seal of such
38 architect or engineer together with the name and address of such architect or engineer,
39 or both, be placed on all ~~such~~ these plans and specifications."

40 **SECTION 7.** G.S. 44A-26(a) reads as rewritten:

41 "(a) When the total amount of construction contracts awarded for any one project
42 exceeds ~~one~~ three hundred thousand dollars (~~\$100,000~~)(\$300,000), a performance and

1 payment bond as set forth in (1) and (2) is required by the contracting body from any
2 contractor or construction manager at risk with a contract more than ~~fifteen thousand~~
3 ~~dollars (\$15,000)~~ fifty thousand dollars (\$50,000). In the discretion of the contracting
4 body, a performance and payment bond may be required on any construction contract as
5 follows:

- 6 (1) A performance bond in the amount of one hundred percent (100%) of
7 the construction contract amount, conditioned upon the faithful
8 performance of the contract in accordance with the plans,
9 specifications and conditions of the contract. Such bond shall be solely
10 for the protection of the contracting body ~~which awarded the~~
11 ~~contract~~ that is constructing the project.
- 12 (2) A payment bond in the amount of one hundred percent (100%) of the
13 construction contract amount, conditioned upon the prompt payment
14 for all labor or materials for which a contractor or subcontractor is
15 liable. The payment bond shall be solely for the protection of the
16 persons furnishing materials or performing labor for which a
17 ~~contractor or subcontractor~~ contractor, subcontractor, or construction
18 manager at risk is liable."

19 **SECTION 8.(a)** G.S. 116-31.11, as enacted and expired by S.L. 1997-412, is
20 reenacted and reads as rewritten:

21 "**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and**
22 **capital improvements.**

23 (a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with
24 respect to the design, construction, or renovation of buildings, utilities, and other
25 property developments of The University of North Carolina requiring the estimated
26 expenditure of public money of ~~five hundred thousand dollars (\$500,000)~~ two million
27 dollars (\$2,000,000) or less:

- 28 (1) Conduct the fee negotiations for all design contracts and supervise the
29 letting of all construction and design contracts.
- 30 (2) Develop procedures governing the responsibilities of The University
31 of North Carolina and its affiliated and constituent institutions to
32 perform the duties of the Department of Administration and the
33 Director or Office of State Construction under G.S. 133-1.1(d) and
34 G.S. 143-341(3).
- 35 (3) Develop procedures and reasonable limitations governing the use of
36 open-end design agreements, subject to G.S. 143-64.34 and the
37 approval of the State Building Commission.

38 (b) The Board may delegate its authority under subsection (a) of this section to a
39 constituent or affiliated institution if the institution is qualified under guidelines adopted
40 by the Board and approved by the State Building Commission and the Director of the
41 Budget.

1 (c) The University shall use the standard contracts for design and construction
2 currently in use for State capital improvement projects by the Office of State
3 Construction of the Department of Administration.

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

6 (e) Notwithstanding any other provision of this Chapter, the Department of
7 Administration shall not be the awarding authority for contracts awarded pursuant to
8 this section."

9 **SECTION 8.(b)** Section 5.1 of S.L. 1997-412 is repealed.

10 **SECTION 8.(c)** Sections 5, 7, 8, and 10 of S.L. 1997-412 are reenacted.

11 **SECTION 8.(d)** G.S. 143-341(3) reads as rewritten:

12 "(3) Architecture and Engineering:

13 a. To examine and approve all plans and specifications for the
14 construction or renovation of:

15 1. All State ~~buildings;~~buildings and buildings located on
16 State property; and

17 2. All community college buildings requiring the estimated
18 expenditure for construction or repair work for which
19 public bidding is required under G.S. 143-129 prior to
20 the awarding of a contract for such work; and to examine
21 and approve all changes in those plans and specifications
22 made after the contract for such work has been awarded.

23 b. To assist, as necessary, all agencies in the preparation of
24 requests for appropriations for the construction or renovation of
25 all State buildings.

26 b1. To certify that a statement of needs pursuant to G.S. 143-6 is
27 feasible. For purposes of this sub-subdivision, "feasible" means
28 that the proposed project is sufficiently defined in overall scope;
29 building program; site development; detailed design,
30 construction, and equipment budgets; and comprehensive
31 project scheduling so as to reasonably ensure that it may be
32 completed with the amount of funds requested. At the discretion
33 of the General Assembly, advanced planning funds may be
34 appropriated in support of this certification. This
35 sub-subdivision shall not apply to requests for appropriations of
36 less than one hundred thousand dollars (\$100,000).

37 c. To supervise the letting of all contracts for the design,
38 construction or renovation of all State buildings and all
39 community college buildings whose plans and specifications
40 must be examined and approved under a.2. of this subdivision.

41 d. To supervise and inspect all work done and materials used in
42 the construction or renovation of all State buildings and all

1 community college buildings whose plans and specifications
2 must be examined and approved under a.2. of this subdivision;
3 and no such work may be accepted by the State or by any State
4 agency until it has been approved by the Department.

5 Except for sub-subdivisions b. and b1. of this subdivision, this
6 subdivision does not apply to the design, construction, or renovation of
7 projects by The University of North Carolina pursuant to G.S. 116-
8 31.11."

9 **SECTION 9.** G.S. 143-132(b) reads as rewritten:

10 "(b) For purposes of contracts bid in the alternative between the separate-prime
11 and single-prime contracts, pursuant to ~~G.S. 143-128(e) or (d)~~, G.S. 143-128(d1) each
12 single-prime bid shall constitute a competitive bid in each of the four subdivisions or
13 branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids
14 shall constitute a competitive single-prime bid in meeting the requirements of
15 subsection (a) of this section. If there are at least three single-prime bids but there is not
16 at least one full set of separate-prime bids, no separate-prime bids shall be opened."

17 **SECTION 10.(a)** Section 2 of S.L. 1999-102 is repealed.

18 **SECTION 10.(b)** Section 3 of S.L. 1999-102 reads as rewritten:

19 "Section 3. This act is effective when it becomes law and shall expire on June 30,
20 2003-law."

21 **SECTION 10.(c)** Section 8 of S.L. 1999-207 reads as rewritten:

22 "Section 8. This act is effective when it becomes law and expires July 1, 2002-law."

23 **SECTION 10.(d)** Notwithstanding Article 8 of Chapter 143 of the General
24 Statutes, New Hanover Regional Medical Center may use force account qualified
25 personnel on its payroll to maintain, repair, renovate, and improve hospital and medical
26 facilities that it owns, operates, or manages under the following conditions:

- 27 (1) The work is primarily for purposes of ensuring compliance with the
28 Life Safety Code and other applicable codes, including requirements
29 of the Joint Commission on the Accreditation of Healthcare
30 Organizations, or involves work to the same or related components or
31 areas of the building at the time of the compliance work.
- 32 (2) The force account labor is qualified to perform and is capable of
33 performing the work in an active patient environment.

34 This subsection 10(d) expires December 31, 2007.

36 PART II. CONSTRUCTION AND DESIGN ADMINISTRATION

37 **SECTION 11.** G.S. 143-135.26 reads as rewritten:

38 "**§ 143-135.26. Powers and duties of the Commission.**

39 The State Building Commission shall have the following powers and duties with
40 regard to the State's capital facilities development and management program:

- 41 (1) To adopt rules establishing standard procedures and criteria to assure
42 that the designer selected for each State capital improvement project

1 ~~and project,~~ the consultant selected for planning and studies of an
2 architectural and engineering nature associated with a capital
3 improvement project or a future capital improvement project and a
4 construction manager at risk selected for each capital improvement
5 project has the qualifications and experience necessary for that capital
6 improvement project or the proposed planning or study project. The
7 rules shall provide that the State Building Commission, after
8 consulting with the funded agency, is responsible and accountable for
9 the final selection of the ~~designer and the final selection of the~~
10 designer, consultant or construction manager at risk except when the
11 General Assembly or The University of North Carolina is the funded
12 agency. When the General Assembly is the funded agency, the
13 Legislative Services Commission is responsible and accountable for
14 the final selection of the ~~designer and the final selection of~~
15 ~~the~~ designer, consultant, or the construction manager at risk and when
16 the University is the funded agency, it shall be subject to the rules
17 adopted hereunder, except it is responsible and accountable for the
18 final selection of the ~~designer and the final selection of the~~
19 ~~consultant.~~ designer, consultant, or construction manager at risk. All
20 designers and consultants shall be selected within 60 days of the date
21 funds are appropriated for a project by the General Assembly or the
22 date of project authorization by the Director of the Budget; provided,
23 however, the State Building Commission may grant an exception to
24 this requirement upon written request of the funded agency if (i) no
25 site was selected for the project before the funds were appropriated or
26 (ii) funds were appropriated for advance planning only; provided,
27 further, the Director of the Budget, after consultation with the State
28 Construction Office, may waive the 60-day requirement for the
29 purpose of minimizing project costs through increased competition and
30 improvements in the market availability of qualified contractors to bid
31 on State capital improvement projects. The Director of the Budget also
32 may, after consultation with the State Construction Office, schedule
33 the availability of design and construction funds for capital
34 improvement projects for the purpose of minimizing project costs
35 through increased competition and improvements in the market
36 availability of qualified contractors to bid on State capital
37 improvement projects.

38 The State Building Commission shall submit a written report to the
39 Joint Legislative Commission on Governmental Operations on the
40 Commission's selection of a designer for a project within 30 days of
41 selecting the designer.

- 1 (2) To adopt rules for coordinating the plan review, approval, and permit
2 process for State capital improvement ~~projects, and community college~~
3 buildings, as defined in subdivision (4) of this section. The rules shall
4 provide for a specific time frame for plan review and approval and
5 permit issuance by each agency, consistent with applicable laws. The
6 time frames shall be established to provide for expeditious review,
7 approval, and permitting of State capital improvement projects and
8 community college buildings.
- 9 (2a) To adopt rules exempting specified types of State capital improvement
10 projects, including community college buildings as defined in
11 subdivision (4) of this section, from plan review.
- 12 (3) To adopt rules for establishing a post-occupancy evaluation, annual
13 inspection and preventive maintenance program for all State buildings.
- 14 (4) To develop procedures for evaluating the work performed by designers
15 and contractors on State capital improvement projects and those
16 community college buildings, as defined in G.S. 143-336, requiring the
17 estimated expenditure for construction or repair work for which public
18 bidding is required under G.S. 143-129, and for use of the evaluations
19 as a factor affecting designer selections and determining qualification
20 of contractors to bid on State capital improvement projects and
21 community college buildings.
- 22 (5) To continuously study and recommend ways to improve the
23 effectiveness and efficiency of the State's capital facilities
24 development and management program.
- 25 (6) To request designers selected prior to April 14, 1987, whose plans for
26 the projects have not been approved to report to the Commission on
27 their progress on the projects. The Department of Administration shall
28 provide the Commission with a list of all such projects.
- 29 (7) To appoint an advisory board, if the Commission deems it necessary,
30 to assist the Commission in its work. No one other than the
31 Commission may appoint an advisory board to assist or advise it in its
32 ~~work; and~~work.
- 33 (8) To review the State's provisions for ensuring the safety and health of
34 employees involved with State capital improvement projects, and to
35 recommend to the appropriate agencies and to the General Assembly,
36 after consultation with the Commissioner of Labor, changes in the
37 terms and conditions of construction contracts, State regulations, or
38 State laws that will enhance employee safety and health on these
39 projects.
- 40 (9) ~~Effective July 1, 1996, to~~To authorize a State agency, a local
41 governmental unit, or any other entity subject to the provisions of G.S.
42 143-129 to use a method of contracting not authorized under ~~G.S. 143-~~

1 ~~128, including the use of the single prime contracting system without~~
2 ~~soliciting bids under both the single and separate prime contract~~
3 ~~systems.~~ G.S. 143-128. An authorization under this subdivision for an
4 alternative contracting method shall be granted only under the
5 following conditions:

- 6 a. An authorization shall apply only to a single project.
7 b. The entity seeking authorization must demonstrate to the
8 Commission that the alternative contracting method is
9 necessary because the project cannot be reasonably completed
10 under the methods authorized under G.S. 143-128 or for such
11 other reasons as the Commission, pursuant to its rules and
12 criteria, deems appropriate and in the public's interest.
13 b1. The entity includes in its bid or proposal requirements that the
14 contractor will file a plan for making a good faith effort to reach
15 the minority participation goal set out in G.S. 143-128.2.
16 c. The authorization must be approved by ~~two-thirds~~ a majority of
17 the members of the Commission present and voting.

18 The Commission shall not waive the requirements of G.S. 143-129 or
19 G.S. 143-132 for public contracts unless otherwise authorized by law.

- 20 (10) To adopt rules governing review and final approval of plans that are
21 submitted to the State Construction Office pursuant to G.S. 58-31-40.
22 The rules shall provide for the manner of submission of the plan by the
23 owner, the type of structural work that may be completed by the owner
24 pursuant to G.S. 58-31-40(c), and the expeditious review or
25 completion of review of the plan in a manner that ensures that the
26 building will meet the fire safety requirements of G.S. 58-31-40(b).
27 (11) To direct the Department in the development of rules for agency
28 evaluation of energy savings contracts pursuant to G.S. 143-64.17F.
29 (12) To develop dispute resolution procedures, including mediation, for
30 subcontractors under any of the construction methods authorized under
31 G.S. 143-128(a1) on State capital improvement projects, including
32 building projects of The University of North Carolina, and community
33 college buildings as defined in subdivision (4) of this section, for use
34 by any public entity that has not developed its own dispute resolution
35 process.
36 (13) To adopt rules governing the use of open-end design agreements for
37 State capital improvement projects and community college buildings
38 as defined in subdivision (4) of this section, where the fee does not
39 exceed the amount specified in G.S. 143-64.34(b).
40 (14) ~~The Commission shall~~ To submit an annual report of its activities to
41 the Governor and the Joint Legislative Commission on Governmental
42 Operations."

1 **SECTION 11.1.** G.S. 58-31-40 is amended by adding the following new
2 subsection to read:

3 "(c) The Commissioner shall review a plan subject to subsection (b) of this section
4 within 30 days of submission, provided that the Commissioner may require one
5 additional 30-day extension if necessary to complete the review. If the Commissioner
6 has neither approved nor denied the plan during the initial 30-day review period, the
7 owner may proceed with the building site preparation, the building foundation, and any
8 structural components of the building that are not subject to inspection for the purposes
9 set forth in subsection (b) of this section. If the Commissioner has neither approved nor
10 denied the plan within 60 days of submission, the owner may request review and final
11 approval under subsection (b) of this section by the Department of Administration, State
12 Construction Office, pursuant to rules adopted under G.S. 143-135.26."

14 **PART III. ENERGY EFFICIENCY IN STATE BUILDINGS**

15 **SECTION 12.(a)** The title of Part 2 of Article 3B of Chapter 143 of the
16 General Statutes reads as rewritten:

17 "Part 2. Guaranteed Energy Savings Contracts for ~~Local~~ Governmental Units."

18 **SECTION 12.(b)** G.S. 143-64.17 reads as rewritten:

19 **"§ 143-64.17. Definitions.**

20 As used in this Part:

- 21 (1) "Energy conservation measure" means a facility alteration, training, or
22 services related to the operation of the facility, when the alteration,
23 training, or services provide anticipated energy savings. Energy
24 conservation measure includes any of the following:
- 25 a. Insulation of the building structure and systems within the
26 building.
 - 27 b. Storm windows or doors, caulking, weatherstripping,
28 multiglazed windows or doors, heat-absorbing or heat-reflective
29 glazed or coated window or door systems, additional glazing,
30 reductions in glass area, or other window or door system
31 modifications that reduce energy consumption.
 - 32 c. Automatic energy control systems.
 - 33 d. Heating, ventilating, or air-conditioning system modifications
34 or replacements.
 - 35 e. Replacement or modification of lighting fixtures to increase the
36 energy efficiency of a lighting system without increasing the
37 overall illumination of a facility, unless an increase in
38 illumination is necessary to conform to the applicable State or
39 local building code or is required by the light system after the
40 proposed modifications are made.
 - 41 f. Energy recovery systems.

1 g. Cogeneration systems that produce steam or forms of energy
2 such as heat, as well as electricity, for use primarily within a
3 building or complex of buildings.

4 h. Other energy conservation measures.

5 (2) "Energy savings" means a measured reduction in fuel costs, energy
6 costs, or operating costs created from the implementation of one or
7 more energy conservation measures when compared with an
8 established baseline of previous fuel costs, energy costs, or operating
9 costs developed by the local governmental unit.

10 (3) "Guaranteed energy savings contract" means a contract for the
11 evaluation, recommendation, or implementation of energy
12 conservation measures, including the design and installation of
13 equipment or the repair or replacement of existing equipment, in which
14 all payments, except obligations on termination of the contract before
15 its expiration, are to be made over time, and in which energy savings
16 are guaranteed to exceed costs.

17 (4) ~~"Local governmental"~~ "Governmental unit" means an agency, board, or
18 commission of the State or any board or governing body of a political
19 subdivision of the State, including any board of a community college,
20 any school board, or an agency, commission, or authority of a political
21 subdivision of the State.

22 (5) "Qualified provider" means a person or business experienced in the
23 design, implementation, and installation of energy conservation
24 measures.

25 (6) "Request for proposals" means a negotiated procurement initiated by a
26 local governmental unit by way of a published notice that includes the
27 following:

28 a. The name and address of the local governmental unit.

29 b. The name, address, title, and telephone number of a contact
30 person in the local governmental unit.

31 c. Notice indicating that the local governmental unit is requesting
32 qualified providers to propose energy conservation measures
33 through a guaranteed energy savings contract.

34 d. The date, time, and place where proposals must be received.

35 e. The evaluation criteria for assessing the proposals.

36 f. A statement reserving the right of the ~~local~~ governmental unit to
37 reject any or all the proposals.

38 g. Any other stipulations and clarifications the ~~local~~ governmental
39 unit may require."

40 **SECTION 12.(c)** G.S. 143-64.17A reads as rewritten:

41 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

1 (a) Before entering into a guaranteed energy savings contract, a local
2 governmental unit shall issue a request for proposals. Notice of the request shall be
3 published at least 15 days in advance of the time specified for opening of the proposals
4 in at least one newspaper of general circulation in the geographic area for which the
5 local governmental unit is responsible. No guaranteed energy savings contract shall be
6 awarded by any ~~governing body governmental unit~~ unless at least two proposals have
7 been received from qualified providers. Provided that if after the publication of the
8 notice of the request for proposals, fewer than two proposals have been received from
9 qualified providers, the ~~governing body of the local~~ governmental unit shall again
10 publish notice of the request and if as a result of the second notice, one or more
11 proposals by qualified providers are received, the ~~governing body~~ governmental unit
12 may then open the proposals and select a qualified provider even if only one proposal is
13 received.

14 (b) The ~~local~~ governmental unit shall evaluate a sealed proposal from any
15 qualified provider. Proposals shall contain estimates of all costs of installation,
16 modification, or remodeling, including costs of design, engineering, installation,
17 maintenance, repairs, and debt service, ~~and~~ estimates of energy savings.

18 (c) Proposals received pursuant to this section shall be opened by a member or an
19 employee of the ~~governing body of the local~~ governmental unit at a public opening at
20 which the contents of the proposals shall be announced and recorded in the minutes of
21 the ~~governing body governmental unit~~. Proposals shall be evaluated for the ~~local~~
22 governmental unit by a licensed architect or engineer on the basis of:

- 23 (1) The information required in subsection (b) of this section; and
- 24 (2) The criteria stated in the request for proposals.

25 The ~~local~~ governmental unit may require a qualified provider to include in calculating
26 the cost of a proposal for a guaranteed energy savings contract any reasonable fee
27 payable by the ~~local~~ governmental unit for evaluation of the proposal by a licensed
28 architect or professional engineer not employed as a member of the staff of the ~~local~~
29 governmental unit or the qualified provider.

30 (d) The ~~local~~ governmental unit shall select the qualified provider that it
31 determines to best meet the needs of the ~~local~~ governmental unit by evaluating the
32 following:

- 33 (1) Prices offered;
- 34 (2) Proposed costs of construction, financing, maintenance, and training;
- 35 (3) Quality of the products proposed;
- 36 (4) Amount of energy savings;
- 37 (5) General reputation and performance capabilities of the qualified
38 providers;
- 39 (6) Substantial conformity with the specifications and other conditions set
40 forth in the request for proposals;
- 41 (7) Time specified in the proposals for the performance of the contract;
42 and

1 (8) Any other factors the ~~local~~ governmental unit deems necessary, which
2 factors shall be made a matter of record.

3 (e) Nothing in this section shall limit the authority of local governmental units as
4 set forth in Article 3D of this Chapter."

5 **SECTION 12.(d)** G.S. 143-64.17B reads as rewritten:

6 **"§ 143-64.17B. Guaranteed energy savings contracts.**

7 (a) A ~~local~~-governmental unit may enter into a guaranteed energy savings
8 contract with a qualified provider if all of the following apply:

9 (1) The term of the contract does not exceed 12 years from the date of the
10 installation and acceptance by the ~~local~~ governmental unit of the
11 energy conservation measures provided for under the contract.

12 (2) The ~~local~~-governmental unit finds that the energy savings resulting
13 from the performance of the contract will equal or exceed the total cost
14 of the contract.

15 (3) The energy conservation measures to be installed under the contract
16 are for an existing building.

17 (b) Before entering into a guaranteed energy savings contract, the ~~local~~
18 governmental unit shall provide published notice of the meeting at which it proposes to
19 award the contract, the names of the parties to the proposed contract, and the contract's
20 purpose. The notice must be published at least 15 days before the date of the meeting.

21 (c) A qualified provider entering into a guaranteed energy savings contract under
22 this Part shall provide a bond to the ~~local~~-governmental unit in the amount equal to one
23 hundred percent (100%) of the total cost of the guaranteed energy savings contract to
24 assure the provider's faithful performance. Any bonds required by this subsection shall
25 be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the
26 savings resulting from a guaranteed energy savings contract are not as great as projected
27 under the contract and all required shortfall payments to the ~~local~~-governmental unit
28 have not been made, the ~~local~~-governmental unit may terminate the contract without
29 incurring any additional obligation to the qualified provider.

30 (d) As used in this section, "total cost" shall include, but not be limited to, costs
31 of construction, costs of financing, and costs of maintenance and training during the
32 term of the contract. "Total cost" does not include any obligations on termination of the
33 contract before its expiration, provided that those obligations are disclosed when the
34 contract is executed.

35 (e) A guaranteed energy savings contract may not require the ~~local~~ governmental
36 unit to purchase a maintenance contract or other maintenance agreement from the
37 qualified provider who installs energy conservation measures under the contract if the
38 ~~local~~-unit of government takes appropriate action to budget for its own forces or another
39 provider to maintain new systems installed and existing systems affected by the
40 guaranteed energy savings contract."

41 **SECTION 12.(e)** G.S. 143-64.17D reads as rewritten:

42 **"§ 143-64.17D. Contract continuance.**

1 A guaranteed energy savings contract may extend beyond the fiscal year in which it
2 becomes effective. Such a contract shall stipulate that it does not constitute a debt,
3 liability, or obligation of any local governmental unit or a pledge of the faith and credit
4 of any ~~unit of local government~~ governmental unit."

5 **SECTION 12.(f)** Part 2 of Article 3B of Chapter 143 of the General Statutes
6 is amended by adding the following new section to read:

7 "**§ 143-64.17F. State agencies to use contracts when feasible.**

8 State governmental units, including State universities, shall evaluate the use of
9 guaranteed energy savings contracts in reducing energy costs and may use those
10 contracts when feasible and practical. The Department of Administration, under the
11 direction of the State Building Commission, shall develop rules for agency evaluation of
12 guaranteed energy savings contracts."

13 **SECTION 12.(g)** The Department of Administration shall develop a plan for
14 establishing and implementing an energy efficiency goal for all State buildings. The
15 Department shall report the plan to the General Assembly no later than December 31,
16 2002, by filing copies with the Office of the President Pro Tempore of the Senate, the
17 Office of the Speaker of the House of Representatives, the legislative Fiscal Research
18 Division, and the Legislative Library.

19 **SECTION 13.** Nothing in this act limits the use of any method of
20 contracting authorized by local law or other applicable laws.

21
22 **PART IV. LANDSCAPE ARCHITECTURE LAW CHANGES**

23 **SECTION 13.1.(a)** G.S. 89A-1(3) reads as rewritten:

24 "(3) Landscape architecture or the practice of landscape architecture. – The
25 performance of services in connection with the development of land
26 areas where, and to the extent that the dominant purpose of the
27 services is the preservation, enhancement or determination of proper
28 land uses, natural land features, ground cover and planting, naturalistic
29 and aesthetic values, the settings, approaches or environment for
30 structures or other improvements, natural drainage and the
31 consideration and determination of inherent problems of the land
32 relating to the erosion, wear and tear, blight or other hazards. This
33 practice shall include the preparation of plans and specifications and
34 supervising the execution of projects involving the arranging of land
35 and the elements set forth in this subsection used ~~thereon~~ in connection
36 with the land for public and private use and enjoyment, embracing the
37 following, all drainage, soil conservation, grading and planting plans
38 and erosion control, in accordance with the accepted professional
39 standards of public health, safety and ~~welfare~~ welfare:

40 a. The location and orientation of buildings and other similar site
41 elements.

- 1 **b.** The location, routing and design of public and private streets,
2 residential and commercial subdivision roads, or roads in and
3 providing access to private or public developments. This does
4 not include the preparation of construction plans for proposed
5 roads classified as major thoroughfares or a higher
6 classification.
- 7 **c.** The location, routing and design of private and public pathways
8 and other travelways.
- 9 **d.** The preparation of planting plans.
- 10 **e.** The design of surface or incidental subsurface drainage
11 systems, soil conservation and erosion control measures
12 necessary to an overall landscape plan and site design."

13 **SECTION 13.1.(b)** The State Board of Examiners for Engineers and
14 Surveyors and the Board of Landscape Architects shall agree to a Memorandum of
15 Understanding that identifies areas of overlap or common practice regarding the scope
16 of their respective professions and means for resolving disputes concerning standards of
17 practice, qualifications, and jurisdiction regarding the identified areas of overlap. The
18 parties shall send a joint written report to the General Assembly no later than April 30,
19 2002, concerning the Memorandum of Understanding and whether the changes in
20 Section 13.1(a) of this act should be repealed or modified, and the General Assembly
21 may consider and take action on the report during its session in 2002 or at any other
22 time as it may consider appropriate.

23 **SECTION 13.1.(c)** The Legislative Research Commission is authorized to
24 study the relationship between the professions of engineering and landscape
25 architecture.

26 This study shall include an examination of:

- 27 (1) The qualifications and education of landscape architects.
28 (2) The definition of landscape architecture in G.S. 89A-1(3), as amended
29 by subsection 13.1(a) of this act, and whether the changes made in
30 subsection 13.1(a) of this act should be repealed or modified.
31 (3) The areas of overlap or common practice regarding the scope of the
32 professions of engineering and landscape architecture.
33 (4) The governance and procedures of the State Board of Examiners for
34 Engineers and Surveyors and the Board of Landscape Architects in
35 their respective roles in protecting the public health, safety, and
36 welfare of the people of the State.

37 In considering appointees to the committee to study this matter, the
38 appointing authorities shall consider inclusion of representatives of the following
39 groups:

- 40 (1) The State Board of Landscape Architects.
41 (2) The State Board of Examiners for Engineers and Surveyors.
42 (3) The Consulting Engineers Council of North Carolina.

- 1 (4) The North Carolina Chapter of the American Society of Landscape
2 Architects.
- 3 (5) The Professional Engineers of North Carolina, Inc.
- 4 (6) The North Carolina League of Landscape Architects.
- 5 (7) The academic community involved in instruction in the area of
6 engineering and landscape architecture.

7 The Legislative Research Commission may make an interim report to the
8 2001 General Assembly, Regular Session 2002, and shall make a final report to the
9 2003 General Assembly upon its convening. The reports may include proposed
10 legislation to carry out the recommendations of the study.

11 **SECTION 13.1.(d)** This section is effective when this act becomes law.
12

13 **PART V. MISCELLANEOUS PROVISIONS**

14 **SECTION 14.** Annually, on or before April 1st, beginning April 1, 2003,
15 The University of North Carolina and all other public entities shall report to the
16 Secretary of the Department of Administration on the effectiveness and cost-benefit of
17 utilization of each of the construction methods authorized in G.S. 143-128(a1) that are
18 used by the public entity. The reports, which shall be initially filed in the year in which
19 the project is completed, shall be in the format and contain the data prescribed by the
20 Secretary of Administration and shall include at least the following:

- 21 (1) The total dollar value of building projects by specific project with
22 costs.
- 23 (2) The bid costs and relevant post-bid costs.

24 The Secretary of the Department of Administration shall report to the General
25 Assembly on or before May 1st each year on the information collected pursuant to this
26 section.

27 **SECTION 14.1.** The provisions of this act are severable. In the event that
28 any provision of this act shall be declared invalid, that invalidity shall not affect the
29 remaining provisions of this act.

30 **SECTION 14.3.** The Legislative Research Commission may authorize a
31 study of the issue of certification of minority businesses for public construction
32 purposes and the problem of substitution of non-minority businesses in place of
33 minority businesses in public construction project and the effect of frustrating the public
34 purpose of attempting to lawfully increase minority business participation in public
35 construction projects. The Legislative Research Commission may file an interim report
36 to the 2002 Session of the 2001 General Assembly and shall file a final report to the
37 2003 General Assembly.

38 **PART VI. EFFECTIVE DATE**

39 **SECTION 15.(a)** Sections 8(a) through 8(d) of this act become effective
40 July 1, 2001. Section 11.1 of this act becomes effective March 1, 2002. The remaining
41 sections of Parts I and II of this act become effective January 1, 2002, and apply to
42 construction projects for which bids or proposals are solicited on or after that date. The

1 remainder of this act is effective when it becomes law. Sections 8(a) through 8(d) of this
2 act expire December 31, 2006.

3 **SECTION 15.(b)** The State Building Commission shall adopt temporary
4 rules to implement G.S. 143-135.26(10) and G.S. 143-135.26(12) as enacted by Section
5 11 of this act no later than 60 days following the effective date of Section 11 of this act.
6 The Secretary of Administration shall adopt rules to implement G.S. 143-128.2(f) as
7 enacted by Section 3.1 of this act no later than June 30, 2002. Prior to July 1, 2002, a
8 bidder must show compliance with at least five of the 10 efforts as set forth in G.S.
9 143-128.2(f) as enacted by Section 3.1 of this act.

10 **SECTION 15.(c)** A city, county, or other public entity, other than the State,
11 may apply verifiable percentage goals enacted prior to the effective date of Section 3.1
12 of this act to building projects undertaken on or after the effective date of Section 3.1 of
13 this act.