

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  
House Committee Substitute #2 Favorable 12/3/01

Short Title: Public Construction Law Changes.

(Public)

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Sponsors:

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Referred to:

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April 5, 2001

A BILL TO BE ENTITLED

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

17 The General Assembly of North Carolina enacts:

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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

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

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

12 **"§ 143-128.1. Construction management at risk contracts.**

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

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

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

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

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

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

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

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

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

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

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

24 **"§ 143-128. Requirements for certain building contracts.**

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

31 (1) Heating, ventilating, air conditioning and accessories (separately or  
32 combined into one conductive ~~system) and/or system), refrigeration for~~  
33 cold storage (where the cold storage cooling load is 15 tons or more of  
34 refrigeration), and all ~~work kindred thereto-related work.~~

35 (2) Plumbing and gas fittings and accessories, and all ~~work kindred~~  
36 ~~thereto-related work.~~

37 (3) Electrical wiring and installations, and all ~~work kindred thereto-related~~  
38 ~~work.~~

39 (4) General work not included in subdivisions (1), (2), and (3) of this  
40 subsection relating to the erection, construction, alteration, or repair of  
41 any building above referred to, which work is not included in the  
42 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 as~~incorporate 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, the apparent lowest responsible  
27 responsive bidder shall also file a list of all identified subcontractors that the contractor  
28 will use on the project.

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

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

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

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

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

42 (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 provide 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. LANDSCAPE ARCHITECTURE LAW CHANGES**

15           **SECTION 12.1.(a)** G.S. 89A-1(3) reads as rewritten:

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

- 32           a.     The location and orientation of buildings and other similar site  
33                 elements.  
34           b.     The location, routing and design of public and private streets,  
35                 residential and commercial subdivision roads, or roads in and  
36                 providing access to private or public developments. This does  
37                 not include the preparation of construction plans for proposed  
38                 roads classified as major thoroughfares or a higher  
39                 classification.  
40           c.     The location, routing and design of private and public pathways  
41                 and other travelways.  
42           d.     The preparation of planting plans.

- 1 e. The design of surface or incidental subsurface drainage  
2 systems, soil conservation and erosion control measures  
3 necessary to an overall landscape plan and site design."

4 **SECTION 12.1.(b)** The State Board of Examiners for Engineers and  
5 Surveyors and the Board of Landscape Architects shall agree to a Memorandum of  
6 Understanding that identifies areas of overlap or common practice regarding the scope  
7 of their respective professions and means for resolving disputes concerning standards of  
8 practice, qualifications, and jurisdiction regarding the identified areas of overlap. The  
9 parties shall send a joint written report to the General Assembly no later than April 30,  
10 2002, concerning the Memorandum of Understanding and whether the changes in  
11 Section 13.1(a) of this act should be repealed or modified, and the General Assembly  
12 may consider and take action on the report during its session in 2002 or at any other  
13 time as it may consider appropriate.

14 **SECTION 12.1.(c)** The Legislative Research Commission is authorized to  
15 study the relationship between the professions of engineering and landscape  
16 architecture.

17 This study shall include an examination of:

- 18 (1) The qualifications and education of landscape architects.  
19 (2) The definition of landscape architecture in G.S. 89A-1(3), as amended  
20 by subsection 13.1(a) of this act, and whether the changes made in  
21 subsection 13.1(a) of this act should be repealed or modified.  
22 (3) The areas of overlap or common practice regarding the scope of the  
23 professions of engineering and landscape architecture.  
24 (4) The governance and procedures of the State Board of Examiners for  
25 Engineers and Surveyors and the Board of Landscape Architects in  
26 their respective roles in protecting the public health, safety, and  
27 welfare of the people of the State.

28 In considering appointees to the committee to study this matter, the  
29 appointing authorities shall consider inclusion of representatives of the following  
30 groups:

- 31 (1) The State Board of Landscape Architects.  
32 (2) The State Board of Examiners for Engineers and Surveyors.  
33 (3) The Consulting Engineers Council of North Carolina.  
34 (4) The North Carolina Chapter of the American Society of Landscape  
35 Architects.  
36 (5) The Professional Engineers of North Carolina, Inc.  
37 (6) The North Carolina League of Landscape Architects.  
38 (7) The academic community involved in instruction in the area of  
39 engineering and landscape architecture.

40 The Legislative Research Commission may make an interim report to the  
41 2001 General Assembly, Regular Session 2002, and shall make a final report to the

2003 General Assembly upon its convening. The reports may include proposed legislation to carry out the recommendations of the study.

**SECTION 12.1.(d)** This section is effective when this act becomes law.

**PART IV. MISCELLANEOUS PROVISIONS**

**SECTION 13.** Annually, on or before April 1<sup>st</sup>, beginning April 1, 2003, The University of North Carolina and all other public entities shall report to the Secretary of the Department of Administration on the effectiveness and cost-benefit of utilization of each of the construction methods authorized in G.S. 143-128(a1) that are used by the public entity. The reports, which shall be initially filed in the year in which the project is completed, shall be in the format and contain the data prescribed by the Secretary of Administration and shall include at least the following:

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

The Secretary of the Department of Administration shall report to the General Assembly on or before May 1<sup>st</sup> each year on the information collected pursuant to this section.

**SECTION 13.1.** The provisions of this act are severable. In the event that any provision of this act shall be declared invalid, that invalidity shall not affect the remaining provisions of this act.

**SECTION 13.2.** The Legislative Research Commission may authorize a study of the issue of certification of minority businesses for public construction purposes and the problem of substitution of nonminority businesses in place of minority businesses in public construction projects and the effect of frustrating the public purpose of attempting to lawfully increase minority business participation in public construction projects. The Legislative Research Commission may file an interim report to the 2002 Session of the 2001 General Assembly and shall file a final report to the 2003 General Assembly.

**SECTION 13.3.(a)** There is appropriated from the General Fund to the Department of Administration the sum of one million twelve thousand seven hundred forty-six dollars (\$1,012,746) for the 2001-2002 fiscal year and the sum of six hundred twenty-three thousand three hundred eighty-three dollars (\$623,383) for the 2002-2003 fiscal year to implement the provisions of this act. The funds shall be allocated as follows:

	<u>Fiscal Year 2001-2002</u>	<u>Fiscal Year 2002-2003</u>
Office of the Secretary	\$ 32,396	\$ 64,791
State Construction Office	\$474,252	\$224,715
Office of Historically Underutilized Business	\$506,098	\$333,877.

1           **SECTION 13.3.(b)**     There is appropriated from the General Fund to the  
2 Department of Justice the sum of sixty-four thousand seven hundred ninety-one dollars  
3 (\$64,791) for the 2002-2003 fiscal year to implement the provisions of this act.

4 **PART V. EFFECTIVE DATE**

5           **SECTION 14.(a)**     Sections 8(a) through 8(d) of this act become effective  
6 July 1, 2001. Section 11.1 of this act becomes effective March 1, 2002. The remaining  
7 sections of Parts I and II of this act become effective January 1, 2002, and apply to  
8 construction projects for which bids or proposals are solicited on or after that date. The  
9 remainder of this act is effective when it becomes law. Sections 8(a) through 8(d) of this  
10 act expire December 31, 2006.

11           **SECTION 14.(b)**     The State Building Commission shall adopt temporary  
12 rules to implement G.S. 143-135.26(10) and G.S. 143-135.26(12) as enacted by Section  
13 11 of this act no later than 60 days following the effective date of Section 11 of this act.  
14 The Secretary of Administration shall adopt rules to implement G.S. 143-128.2(f) as  
15 enacted by Section 3.1 of this act no later than June 30, 2002. A bidder must show  
16 compliance with at least five of the 10 efforts, as set forth in G.S. 143-128.2(f) as  
17 enacted by Section 3.1 of this act, until 60 days following the adoption of rules to  
18 implement G.S. 143-128.2(f) by the Secretary of Administration as required in this  
19 section.

20           **SECTION 14.(c)**     A city, county, or other public entity, other than the State,  
21 may apply verifiable percentage goals enacted prior to the effective date of Section 3.1  
22 of this act to building projects undertaken on or after the effective date of Section 3.1 of  
23 this act.