

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

S

D

SENATE DRS65036-LMz-153* (05/04)

Short Title: Amend State Purchases & Contracts Laws. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"§ 18C-150. Procurements.

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose."

SECTION 2. G.S. 53-320 reads as rewritten:

"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or



1 contracts to be awarded by the Commissioner under this subsection a standard clause which
2 provides that the State Auditor and internal auditors of the Commissioner may audit the records
3 of the contractor during the term of the agreement or contract to verify accounts and data
4 affecting fees and performance. The Commissioner shall not award a cost plus percentage of
5 cost agreement or contract for any purpose.

6"

7 **SECTION 3.** G.S. 53-326 reads as rewritten:

8 "**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

9 ...

10 (d) The Commissioner may enter into agreements with bank supervisory agencies
11 supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a
12 foreign trust institution maintaining a trust office or representative trust office in this State to
13 engage the services of the bank supervisory agency's examiners at a reasonable rate of
14 compensation or to provide the services of the Commissioner's examiners to the bank
15 supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the
16 General Statutes does not apply to agreements authorized by this section. However, the
17 Commissioner shall submit proposed agreements or contracts authorized by this subsection to
18 the Attorney General or the Attorney General's designee for review as provided in
19 G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the
20 Commissioner under this subsection a standard clause which provides that the State Auditor
21 and internal auditors of the Commissioner may audit the records of the contractor during the
22 term of the agreement or contract to verify accounts and data affecting fees and performance.
23 The Commissioner shall not award a cost plus percentage of cost agreement or contract for any
24 purpose.

25"

26 **SECTION 4.** G.S. 53-391 reads as rewritten:

27 "**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

28 The Commissioner, for the purpose of exercising any power under the provisions of this
29 Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks
30 necessary to properly conduct the business of or liquidate and distribute the assets of a State
31 trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and
32 clerks; and (iii) pay the compensation of those persons out of the assets of the State trust
33 company. Provided, that all expenditures described in this section shall be approved by the
34 resident or presiding judge in the county in which the action is pending. Payments made by the
35 Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of
36 Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes
37 the Commissioner's duly appointed agents. The Commissioner shall submit proposed
38 agreements or contracts authorized by this section to the Attorney General or the Attorney
39 General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements
40 or contracts to be awarded by the Commissioner under this section a standard clause which
41 provides that the State Auditor and internal auditors of the Commissioner may audit the records
42 of the contractor during the term of the agreement or contract to verify accounts and data
43 affecting fees and performance. The Commissioner shall not award a cost plus percentage of
44 cost agreement or contract for any purpose."

45 **SECTION 5.** G.S. 53-401 reads as rewritten:

46 "**§ 53-401. Provisions for conservator; duties and powers.**

47 Whenever the Commissioner deems it necessary in order to conserve the assets of a State
48 trust company for the benefit of clients or creditors, the Commissioner may appoint a
49 conservator for the State trust company and require of the conservator a bond with any surety
50 the Commissioner deems necessary and proper in an amount deemed sufficient by the
51 Commissioner. The conservator, under the direction of the Commissioner, shall take possession

1 of the fiduciary records and other books, records, and assets of every description of the State
2 trust company placed under conservatorship and take actions necessary to conserve those assets
3 pending further disposition of its business as provided by law. Except as provided in
4 G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the
5 approval of the Commissioner, now possessed by or given to the Commissioner under the
6 provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be
7 paid out of the assets of the State trust company under conservatorship and shall be a lien
8 thereon which shall be prior to any other lien provided by law. The compensation of the
9 conservator shall be determined by the Commissioner and shall be based on the time and
10 experience of the conservator and the complexity of the conservatorship. Compensation of the
11 conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General
12 Statutes. However, the Commissioner shall submit proposed agreements or contracts authorized
13 by this section to the Attorney General or the Attorney General's designee for review as
14 provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the
15 Commissioner under this section a standard clause which provides that the State Auditor and
16 internal auditors of the Commissioner may audit the records of the conservator during the term
17 of the agreement or contract to verify accounts and data affecting fees and performance. The
18 Commissioner shall not award a cost plus percentage of cost agreement or contract for any
19 purpose."

20 **SECTION 6.** G.S. 58-2-69 reads as rewritten:

21 "**§ 58-2-69. Notification of criminal convictions and changes of address; service of notice;**
22 **contracts for online services, administrative services, or regulatory data**
23 **systems.**

24 ...

25 (g) The Commissioner may contract with the NAIC or other persons for the provision
26 of online services to licensees, for the provision of administrative services to licensees, or for
27 the provision of regulatory data systems to the Commissioner. The NAIC or other person with
28 whom the Commissioner contracts may charge licensees a reasonable fee for the costs
29 associated with the licensees' use of online services and administrative services. The fee shall
30 be agreed to by the Commissioner and the other contracting party and shall be stated in the
31 contract. Contracts for the provision of online services, contracts for the provision of
32 administrative services, and contracts for the provision of regulatory data systems shall not be
33 subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter
34 147 of the General Statutes. However, the Commissioner shall submit proposed contracts
35 authorized by this subsection to the Attorney General or the Attorney General's designee for
36 review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the
37 Commissioner under this subsection a standard clause which provides that the State Auditor
38 and internal auditors of the Commissioner may audit the records of the contractor during the
39 term of the agreement or contract to verify accounts and data affecting fees and performance.
40 The Commissioner shall not award a cost plus percentage of cost agreement or contract for any
41 purpose."

42 **SECTION 7.** G.S. 58-33-30 reads as rewritten:

43 "**§ 58-33-30. License requirements.**

44 The Commissioner shall not issue or continue any license of an agent, broker, limited
45 representative, adjuster, or motor vehicle damage appraiser except as follows:

46 ...

47 (e) Examination.

48 ...

49 (4) The answers of the applicant to the examination shall be provided by the
50 applicant under the Commissioner's supervision. The Commissioner shall
51 give examinations at such times and places within this State as the

1 Commissioner considers necessary reasonably to serve the convenience of
2 both the Commissioner and applicants: Provided that the Commissioner may
3 contract directly with persons for the processing of examination application
4 forms and for the administration and grading of the examinations required
5 by this section; the Commissioner may charge a reasonable fee in addition to
6 the registration fee charged under G.S. 58-33-125, to offset the cost of the
7 examination contract authorized by this subsection; and such contracts shall
8 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
9 the Commissioner shall submit proposed contracts authorized by this
10 subdivision to the Attorney General or the Attorney General's designee for
11 review as provided in G.S. 114-8.3, and shall include in all contracts to be
12 awarded by the Commissioner under this subdivision a standard clause
13 which provides that the State Auditor and internal auditors of the
14 Commissioner may audit the records of the contractor during the term of the
15 contract to verify accounts and data affecting fees and performance. The
16 Commissioner shall not award a cost plus percentage of cost contract for any
17 purpose.

- 18 (5) The Commissioner shall collect in advance the examination and registration
19 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
20 Commissioner shall make or cause to be made available to all applicants, for
21 a reasonable fee to offset the costs of production, materials that he considers
22 necessary for the applicants' proper preparation for examinations. The
23 Commissioner may contract directly with publishers and other suppliers for
24 the production of the preparatory materials, and contracts so let by the
25 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
26 Statutes. However, the Commissioner shall submit proposed contracts
27 authorized by this subdivision to the Attorney General or the Attorney
28 General's designee for review as provided in G.S. 114-8.3, and shall include
29 in all contracts to be awarded by the Commissioner under this subdivision a
30 standard clause which provides that the State Auditor and internal auditors
31 of the Commissioner may audit the records of the contractor during the term
32 of the contract to verify accounts and data affecting fees and performance.
33 The Commissioner shall not award a cost plus percentage of cost contract for
34 any purpose.

35"

36 **SECTION 8.** G.S. 58-33-125 reads as rewritten:

37 "**§ 58-33-125. Fees.**

38 ...

39 (e) A resident licensee may obtain a duplicate photo-bearing license at times and places
40 within this State that the Commissioner considers necessary and reasonable to serve the
41 convenience of both the Commissioner and the licensee. The Commissioner may contract
42 directly with persons for processing of duplicate photo-bearing licenses, and the contract shall
43 not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may
44 charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the
45 costs to the Department of duplicating the license, including costs associated with any contract
46 entered into pursuant to this subsection. However, the Commissioner shall submit proposed
47 contracts authorized by this subsection to the Attorney General or the Attorney General's
48 designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be
49 awarded by the Commissioner under this subsection a standard clause which provides that the
50 State Auditor and internal auditors of the Commissioner may audit the records of the contractor
51 during the term of the contract to verify accounts and data affecting fees and performance. The

1 Commissioner shall not award a cost plus percentage of cost agreement or contract for any
2 purpose.

3"

4 **SECTION 9.** G.S. 58-33-130 reads as rewritten:

5 **"§ 58-33-130. Continuing education program for licensees.**

6 (a) The Commissioner may adopt rules to provide for a program of continuing
7 education requirements for the purpose of enhancing the professional competence and
8 professional responsibility of adjusters and motor vehicle damage appraisers. The rules may
9 include criteria for:

- 10 (1) The content of continuing education courses;
- 11 (2) Accreditation of continuing education sponsors and programs;
- 12 (3) Accreditation of videotape or other audiovisual programs;
- 13 (4) Computation of credit;
- 14 (5) Special cases and exemptions;
- 15 (6) General compliance procedures; and
- 16 (7) Sanctions for noncompliance.

17 The Commissioner may contract directly with persons for the administration of the program
18 provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143
19 of the General Statutes. However, the Commissioner shall submit proposed contracts
20 authorized by this subsection to the Attorney General or the Attorney General's designee for
21 review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the
22 Commissioner under this subsection a standard clause which provides that the State Auditor
23 and internal auditors of the Commissioner may audit the records of the contractor during the
24 term of the contract to verify accounts and data affecting fees and performance. The
25 Commissioner shall not award a cost plus percentage of cost agreement or contract for any
26 purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost
27 of the program, including costs associated with contracts authorized by this subsection. The fee
28 authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As
29 used in this section and in G.S. 58-33-132, "administrator" means any person with whom the
30 Commissioner has contracted under this subsection.

31"

32 **SECTION 10.** G.S. 58-71-40 reads as rewritten:

33 **"§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications**
34 **generally.**

35 ...

36 (d) When a license is issued under this section, the Commissioner shall issue a picture
37 identification card, of design, size, and content approved by the Commissioner, to the licensee.
38 Each licensee must carry this card at all times when working in the scope of the licensee's
39 employment. A licensee whose license terminates or is terminated shall surrender the
40 identification card to the Commissioner within 10 working days after the termination. The
41 Commissioner may contract directly with persons for the processing and issuance of picture
42 identification cards required by this section and may charge a reasonable fee in addition to the
43 license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service,
44 including the costs associated with the contract authorized by this subsection. Contracts entered
45 into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General
46 Statutes. However, the Commissioner shall submit proposed contracts authorized by this
47 subsection to the Attorney General or the Attorney General's designee for review as provided in
48 G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this
49 subsection a standard clause which provides that the State Auditor and internal auditors of the
50 Commissioner may audit the records of the contractor during the term of the contract to verify

1 accounts and data affecting fees and performance. The Commissioner shall not award a cost
2 plus percentage of cost agreement or contract for any purpose.

3"

4 **SECTION 11.** G.S. 63A-24 reads as rewritten:

5 **"§ 63A-24. General laws apply to Authority; exceptions.**

6 Except as provided in this section, the general laws that apply to State agencies apply to the
7 Authority. The following general laws, to the extent provided below, do not apply to the
8 Authority:

- 9 (1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts
10 for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user
11 projects. That Article also does not apply to other contracts for projects, but,
12 with respect to these other contracts, the powers and duties established in
13 that Article shall be exercised by the Authority and the Secretary of
14 Administration, and other State officers, employees, or agencies shall have
15 no duties or responsibilities concerning the contracts. However, the
16 Authority shall submit proposed contracts authorized by this subdivision to
17 the Attorney General or the Attorney General's designee for review as
18 provided in G.S. 114-8.3, and shall include in all contracts to be awarded by
19 the Commissioner under this subdivision a standard clause which provides
20 that the State Auditor and internal auditors of the Authority may audit the
21 records of the contractor during the term of the contract to verify accounts
22 and data affecting fees and performance. The Authority shall not award a
23 cost plus percentage of cost agreement or contract for any purpose.

24"

25 **SECTION 12.** G.S. 84-23 reads as rewritten:

26 **"§ 84-23. Powers of Council.**

27 ...

28 (d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal
29 with real or personal property in the same manner as any private person or corporation, subject
30 only to the approval of the Governor and the Council of State as to the acquisition, rental,
31 encumbering, leasing and sale of real property. The Council may borrow money upon its
32 bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale
33 pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such
34 borrowing either unsecured or secured by a mortgage on the Council's interest in real or
35 personal property, and engage and contract with attorneys, underwriters, financial advisors, and
36 other parties as necessary for such borrowing, with such borrowing and security subject to the
37 approval of the Governor and the Council of State. The Council may utilize the services of the
38 Purchase and Contract Division of the Department of Administration to procure personal
39 property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.
40 However, the Council shall submit proposed contracts authorized by this subsection to the
41 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3,
42 and shall include in all contracts to be awarded by the Council under this subsection a standard
43 clause which provides that the State Auditor and internal auditors of the Council may audit the
44 records of the contractor during the term of the contract to verify accounts and data affecting
45 fees and performance. The Council shall not award a cost plus percentage of cost agreement or
46 contract for any purpose."

47 **SECTION 13.** G.S. 89E-5 reads as rewritten:

48 **"§ 89E-5. Functions and duties of the Licensing Board.**

49 ...

50 (e) The Board may authorize expenditures deemed necessary to carry out the provisions
51 of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The

1 Board treasurer shall deposit funds received by the Board in one or more funds in banks or
2 other financial institutions carrying deposit insurance and authorized to do business in North
3 Carolina. Interest earned on such funds may remain in the funds account and may be expended
4 as authorized by the Board to carry out the provisions of this Chapter. In no event may
5 expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized
6 and empowered to utilize the services of the Purchase and Contract Division of the Department
7 of Administration for the procurement of personal property, in accordance with Article 3 of
8 Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by
9 this subsection to the Attorney General or the Attorney General's designee for review as
10 provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under
11 this subsection a standard clause which provides that the State Auditor and internal auditors of
12 the Council may audit the records of the contractor during the term of the contract to verify
13 accounts and data affecting fees and performance. The Board shall not award a cost plus
14 percentage of cost agreement or contract for any purpose.

15"

16 **SECTION 14.** G.S. 89F-5 reads as rewritten:

17 **"§ 89F-5. Powers and duties of the Board.**

18 ...

19 (d) The Board may employ the necessary personnel for the performance of its functions
20 and shall fix their compensation within the limits of funds available to the Board. The Board
21 may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of
22 the General Statutes. The Board shall submit proposed contracts authorized by this subsection
23 to the Attorney General or the Attorney General's designee for review as provided in
24 G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this
25 subsection a standard clause which provides that the State Auditor and internal auditors of the
26 Council may audit the records of the contractor during the term of the contract to verify
27 accounts and data affecting fees and performance. The Board shall not award a cost plus
28 percentage of cost agreement or contract for any purpose.

29"

30 **SECTION 15.** G.S. 108A-55 reads as rewritten:

31 **"§ 108A-55. Payments.**

32 ...

33 (b) Payments shall be made only to intermediate care facilities, hospitals and nursing
34 homes licensed and approved under the laws of the State of North Carolina or under the laws of
35 another state, or to pharmacies, physicians, dentists, optometrists or other providers of
36 health-related services authorized by the Department. Payments may also be made to such
37 fiscal intermediaries and to the capitation or prepaid health service contractors as may be
38 authorized by the Department. Arrangements under which payments are made to capitation or
39 prepaid health services contracts are not subject to the provisions of Chapter 58 of the General
40 Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall
41 submit proposed agreements or contracts authorized by this subsection to the Attorney General
42 or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in
43 all agreements or contracts to be awarded by the Department under this subsection a standard
44 clause which provides that the State Auditor and internal auditors of the Council may audit the
45 records of the contractor during the term of the contract to verify accounts and data affecting
46 fees and performance. The Department shall not award a cost plus percentage of cost agreement
47 or contract for any purpose.

48"

49 **SECTION 16.** Article 1 of Chapter 114 of the General Statutes is amended by
50 adding the following new section to read as follows:

51 **"§ 114-8.3. Attorney General to review certain contracts.**

1 (a) The Attorney General or the Attorney General's designee shall review all proposed
2 statewide term contracts for supplies, materials, printing, equipment, and contractual services
3 and all proposed agency term contractual services contracts that exceed one million dollars
4 (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses
5 required by law, provide for sufficient monitoring, provide for sufficient performance penalties,
6 and accomplish the intended purposes of the proposed contract.

7 (b) The Attorney General or the Attorney General's designee shall review all proposed
8 contracts to be awarded by a department, agency, or institution of the State to ensure that the
9 proposed contracts are in proper legal form, contain all clauses required by law, provide for
10 sufficient monitoring, and provide for sufficient performance penalties. For purposes of this
11 subsection, the term "Attorney General's designee" shall include any attorney approved by the
12 Attorney General to review contracts as provided in this subsection. The Attorney General shall
13 require that any attorney designated under this subsection shall comply with any rules
14 established by the Attorney General regarding the review of contracts."

15 **SECTION 17.** G.S. 115D-67.4 reads as rewritten:

16 **"§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

17 Notwithstanding any other provision of law, all fees collected by the Applied Textile
18 Technology Center for services to the textile industry, except for regular curriculum and
19 continuing education tuition receipts, shall be retained by the Center and used for the
20 operations of the Center. Purchases made by the Center using these funds are not subject to the
21 provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall
22 submit proposed agreements or contracts to provide services authorized by this section to the
23 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3,
24 and shall include in all agreements or contracts to be awarded by the Center under this section a
25 standard clause which provides that the State Auditor and internal auditors of the Council may
26 audit the records of the contractor during the term of the contract to verify accounts and data
27 affecting fees and performance. The Department shall not award a cost plus percentage of cost
28 agreement or contract for any purpose."

29 **SECTION 18.** G.S. 135-43 reads as rewritten:

30 **"§ 135-43. Confidentiality of information and medical records; provider contracts.**

31 ...

32 (b) Notwithstanding the provisions of this Article, the Executive Administrator and
33 Board of Trustees of the State Health Plan for Teachers and State Employees may contract with
34 providers of institutional and professional medical care and services to establish preferred
35 provider networks.

36 The terms of a contract between the Plan and its third party administrator or between the
37 Plan and its pharmacy benefit manager are a public record except that the terms in those
38 contracts that contain trade secrets or proprietary or competitive information are not a public
39 record under Chapter 132 of the General Statutes, and any such proprietary or competitive
40 information and trade secrets contained in the contract shall be redacted by the Plan prior to
41 making it available to the public. This subsection shall not be construed to prevent or restrict
42 the release of any information made not a public record under this subsection to the State
43 Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive
44 Administrator, and the Committee on Employee Hospital and Medical Benefits solely and
45 exclusively for their use in the furtherance of their duties and responsibilities, and to the
46 Department of Health and Human Services solely for the purpose of implementing the
47 transition of NC Health Choice from the Plan to the Department of Health and Human
48 Services. The design, adoption, and implementation of the preferred provider contracts,
49 networks, and optional alternative comprehensive health benefit plans, and programs available
50 under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the
51 requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive

1 Administrator and Board of Trustees shall submit proposed contracts authorized by this section
2 to the Attorney General or the Attorney General's designee for review as provided in
3 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive
4 Administrator and Board of Trustees under this section a standard clause which provides that
5 the State Auditor and internal auditors of the Plan may audit the records of the contractor
6 during the term of the contract to verify accounts and data affecting fees and performance. The
7 Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost
8 agreement or contract for any purpose. The Executive Administrator and Board of Trustees
9 shall make reports as requested to the President of the Senate, the President Pro Tempore of the
10 Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital
11 and Medical Benefits.

12"

13 **SECTION 19.** G.S. 136-28.1 reads as rewritten:

14 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

15 ...

16 (h) The Department of Transportation may enter into contracts for applied research and
17 experimental work without soliciting bids or proposals; provided, however, that if the research
18 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article
19 3 of Chapter 143 of the General Statutes shall apply. However, the Department of
20 Transportation shall submit proposed contracts authorized by this section to the Attorney
21 General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall
22 include in all proposed contracts to be awarded by the Department of Transportation under this
23 subsection a standard clause which provides that the State Auditor and internal auditors of the
24 Department of Transportation may audit the records of the contractor during the term of the
25 contract to verify accounts and data affecting fees and performance. The Department of
26 Transportation shall not award a cost plus percentage of cost agreement or contract for any
27 purpose. The Department of Transportation is encouraged to solicit proposals when contracts
28 are entered into with private firms when it is in the public interest to do so.

29"

30 **SECTION 20.** G.S. 136-89.194 reads as rewritten:

31 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

32 ...

33 (g) Contract Exemptions. – The following provisions concerning the purchase of goods
34 and services by a State agency do not apply to the Turnpike Authority:

35 (1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the
36 services of the Department of Administration in procuring goods and
37 services that are not specific to establishing and operating a toll revenue
38 system. However, the Authority shall submit proposed contracts authorized
39 by this subdivision to the Attorney General or the Attorney General's
40 designee for review as provided in G.S. 114-8.3, and shall include in all
41 proposed contracts to be awarded by the Authority under this subdivision a
42 standard clause which provides that the State Auditor and internal auditors
43 of the Authority may audit the records of the contractor during the term of
44 the contract to verify accounts and data affecting fees and performance. The
45 Authority shall not award a cost plus percentage of cost agreement or
46 contract for any purpose.

47 (2) Article 3D of Chapter 147 of the General Statutes. The Authority may use
48 the services of the Office of Information Technology Services in procuring
49 goods and services that are not specific to establishing and operating a toll
50 revenue system. All contract information for contracts for information
51 technology are subject to disclosure in accordance with G.S. 147-33.95.

...."

SECTION 21. G.S. 143-49 reads as rewritten:

"§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided. Prior to the awarding of any statewide term or agency term contract for supplies, materials, equipment, or other tangible personal property exceeding a cost of one hundred thousand dollars (\$100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in the award of the contract. It shall be the duty of the representative of the office of the Attorney General to assist and advise in obtaining the most favorable contract for the State or agency, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms, and to advise the Secretary or the Secretary's representatives of the liabilities of the State or agency and the validity of the contract to be awarded. All contracts and drafts of contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by the office of the Attorney General for a period of three years following the termination of the contracts.

...

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

~~When the award~~ Prior to the awarding of any contract for contractual services exceeding a cost of one hundred thousand dollars (\$100,000) requires negotiation with prospective contractors,(\$100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in ~~negotiation for~~ the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

...

- 1 (9) To include a standard clause in all contracts awarded by the State and
2 departments, agencies, and institutions of the State, providing that the State
3 Auditor and internal auditors of the affected department, agency, or
4 institution may audit the records of the contactor during the term of the
5 contract to verify accounts and data affecting fees or performance.
- 6 (10) To monitor and enforce the terms and conditions of statewide term contracts.
7 The Secretary of Administration shall not delegate the power and authority
8 granted under this subdivision to any other department, agency, or institution
9 of the State.
- 10 (11) To develop rules, regulations, and procedures specifying the manner in
11 which departments, agencies, and institutions of the State shall monitor and
12 enforce agency term and non-term contracts.
- 13 (12) To consult with the Attorney General or the Attorney General's designee in
14 developing rules, regulations, and procedures providing for the orderly and
15 efficient submission of proposed statewide term, agency term, and non-term
16 contracts to the Attorney General for review as provided in G.S. 114-8.3 and
17 G.S. 143-52.2.
- 18 (13) To implement a quality management system equivalent to the International
19 Organization for Standardization (ISO) 9001:2008 to ensure that citizen and
20 agency customer requirements are met. By September 1 of 2012, and more
21 frequently as requested, the Secretary shall report to the Joint Legislative
22 Commission on Governmental Operations, the Program Evaluation Division,
23 and the Fiscal Research Division concerning the progress of the
24 Department's effort to comply with the provisions of this subdivision.
- 25 (14) To work in conjunction with the Office of State Personnel to create a
26 Contracting Specialist career path to provide for the designation of one or
27 more employees within each department, agency, or institution of the State
28 to serve as the Contracting Specialist for the department, agency, or
29 institution. Employees on the Contracting Specialist career path shall receive
30 training and guidance as to the provisions of this Article.
- 31 (15) To work in conjunction with the Office of State Personnel, the Division of
32 Purchase & Contract, and the University of North Carolina School of
33 Government to develop a rigorous contract management training and
34 certification program for State employees. The program shall be
35 administered by the Office of State Personnel.
- 36 (16) To work in conjunction with the University of North Carolina School of
37 Government to study and recommend improvements to State procurement
38 laws, including the feasibility of adopting the provisions of the American
39 Bar Association Model Procurement Code."

40 **SECTION 22.** G.S. 143-52 is amended to read as follows:

41 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids;**
42 **awarding of ~~contracts~~ contracts; cost plus percentage of cost contracts strictly**
43 **prohibited.**

44 ...

45 (c) Neither the Department of Administration nor any department, agency, or institution
46 of the State may award a cost plus percentage of cost contract for any purpose."

47 **SECTION 23.** Article 3 of Chapter 143 of the General Statutes is amended by
48 adding a new section to read as follows:

49 "**§ 143-52.2. Certain contracts subject to review by Attorney General.**

50 (a) The Secretary of Administration and every department, agency, and institution of
51 the State shall submit to the Attorney General or the Attorney General's designee for review all

1 proposed statewide term contracts for supplies, materials, printing, equipment, and contractual
2 services and all proposed agency term contractual services contracts that exceed one million
3 dollars (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all
4 clauses required by law, provide for sufficient monitoring, provide for sufficient performance
5 penalties, and accomplish the intended purposes of the proposed contract.

6 (b) The Secretary of Administration and every department, agency, and institution of
7 the State shall submit to the Attorney General or the Attorney General's designee for review all
8 proposed contracts to be awarded by a department, agency, or institution of the State to ensure
9 that the proposed contracts are in proper legal form, contain all clauses required by law,
10 provide for sufficient monitoring, and provide for sufficient performance penalties. For
11 purposes of this subsection, the term "Attorney General's designee" shall include any attorney
12 approved by the Attorney General to review contracts as provided in this subsection. The
13 Attorney General shall require that any attorney designated under this subsection shall comply
14 with any rules established by the Attorney General regarding the review of contracts."

15 **SECTION 24.** G.S. 143-134 reads as rewritten:

16 **"§ 143-134. Applicable to Department of Transportation and Department of Correction;**
17 **~~exceptions.~~ exceptions; all contracts subject to review by Attorney General and**
18 **State Auditor.**

19 (a) This Article shall apply to the Department of Transportation and the Department of
20 Correction except in the construction of roads, bridges and their approaches; provided however,
21 that whenever the Director of the Budget determines that the repair or construction of a
22 building by the Department of Transportation or by the Department of Correction can be done
23 more economically through use of employees of the Department of Transportation and/or
24 prison inmates than by letting such repair or building construction to contract, the provisions of
25 this Article shall not apply to such repair or construction.

26 (b) Notwithstanding the provisions of subsection (a) of this section, the Department of
27 Transportation and the Department of Correction shall submit proposed contracts authorized by
28 this section or any other provision of general law to the Attorney General or the Attorney
29 General's designee for review as provided in G.S. 114-8.3 and G.S. 143-52-2 and shall include
30 in all contracts to be awarded by the Department of Transportation or the Department of
31 Correction a standard clause which provides that the State Auditor and internal auditors of the
32 Department of Transportation or the Department of Correction may audit the records of the
33 contractor during the term of the contract to verify accounts and data affecting fees and
34 performance. Neither the Department of Transportation nor the Department of Correction shall
35 award a cost plus percentage of cost agreement or contract for any purpose."

36 **SECTION 25.** G.S. 143-151.16 reads as rewritten:

37 **"§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

38 ...

39 (d) The Board may contract with persons for the development and administration of the
40 examinations required by G.S. 143-151.13(a), for course development related to the
41 examinations, for review of a particular applicant's examination, and for other related services.
42 The person with whom the Board contracts may charge applicants a reasonable fee for the costs
43 associated with the development and administration of the examinations, for course
44 development related to the examinations, for review of the applicant's examinations, and for
45 other related services. The fee shall be agreed to by the Board and the other contracting party.
46 The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars
47 (\$175.00). Contracts for the development and administration of the examinations, for course
48 development related to the examinations, and for review of examinations shall not be subject to
49 Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the
50 General Statutes. However, the Board shall submit proposed contracts authorized by this
51 subsection to the Attorney General or the Attorney General's designee for review as provided in

1 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Board under this
2 subsection a standard clause which provides that the State Auditor and internal auditors of the
3 Board may audit the records of the contractor during the term of the contract to verify accounts
4 and data affecting fees and performance. The Board shall not award a cost plus percentage of
5 cost agreement or contract for any purpose."

6 **SECTION 26.** G.S. 143B-131.2 reads as rewritten:

7 **"§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

8 ...

9 (b) The Commission shall have the following powers and duties:

10 ...

11 (15) To procure supplies, services, and property as appropriate and to enter into
12 contracts, leases, or other legal agreements to carry out the purposes of this
13 Part and duties of the Commission. The provisions of G.S. 143-129 and
14 Article 3 of Chapter 143 of the General Statutes do not apply to purchases by
15 the Roanoke Island Commission of equipment, supplies, and services.
16 However, the Commission shall submit proposed contracts authorized by
17 this subdivision to the Attorney General or the Attorney General's designee
18 for review as provided in G.S. 114-8.3, and shall include in all proposed
19 contracts to be awarded by the Commission under this subdivision a
20 standard clause which provides that the State Auditor and internal auditors
21 of the Commission may audit the records of the contractor during the term of
22 the contract to verify accounts and data affecting fees and performance. The
23 Commission shall not award a cost plus percentage of cost agreement or
24 contract for any purpose."

25 **SECTION 27.** G.S. 147-64.6 reads as rewritten:

26 **"§ 147-64.6. Duties and responsibilities.**

27 ...

28 (c) The Auditor shall be responsible for the following acts and activities:

29 ...

30 (18) The Auditor shall, after consultation and in coordination with the State Chief
31 Information Officer, assess, confirm, and report on the security practices of
32 information technology systems. If an agency has adopted standards
33 pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those
34 standards. The Auditor's assessment of information security practices shall
35 include an assessment of network vulnerability. The Auditor may conduct
36 network penetration or any similar procedure as the Auditor may deem
37 necessary. The Auditor may enter into a contract with a State agency under
38 G.S. 147-33.111(c) for an assessment of network vulnerability, including
39 network penetration or any similar procedure. Any contract with the Auditor
40 for the assessment and testing shall be on a cost-reimbursement basis. The
41 Auditor may investigate reported information technology security breaches,
42 cyber attacks, and cyber fraud in State government. The Auditor shall issue
43 public reports on the general results of the reviews undertaken pursuant to
44 this subdivision but may provide agencies with detailed reports of the
45 security issues identified pursuant to this subdivision which shall not be
46 disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State
47 Chief Information Officer with detailed reports of the security issues
48 identified pursuant to this subdivision. For the purposes of this subdivision
49 only, the Auditor is exempt from the provisions of Article 3 of Chapter 143
50 of the General Statutes in retaining contractors. However, the Auditor shall
51 submit proposed contracts authorized by this subdivision to the Attorney

1 General or the Attorney General's designee for review as provided in
2 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by
3 the Auditor under this subdivision a standard clause which provides that the
4 Auditor may audit the records of the contractor during the term of the
5 contract to verify accounts and data affecting fees and performance. The
6 Auditor shall not award a cost plus percentage of cost agreement or contract
7 for any purpose.

8"

9 **SECTION 28.** This act becomes effective October 1, 2010, and applies to all
10 contracts proposed or awarded on or after that date.