

1 be required of the successful bidder at bidder's expense and in the discretion of the Secretary of
2 Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of
3 equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the
4 contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the
5 contract being awarded. After contracts have been awarded, the Secretary of Administration
6 shall certify to the departments, institutions and agencies of the State government the sources of
7 supply and the contract price of the supplies, materials and equipment so contracted for.

8 (b) All contracts for goods, equipment, or services awarded by the Department of
9 Administration, State departments, institutions, agencies, universities, and community colleges
10 using funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law
11 111-5) shall be awarded to the maximum extent practicable using fixed-priced contracts and
12 competitive procedures. The Secretary of Administration, in coordination with the Office of
13 Economic Recovery (OERI) shall adopt rules, regulations, and policies that will promote the
14 efficient and expeditious award of ARRA contracts in compliance with the requirements of
15 ARRA and ARRA's rules, regulations, directives, and guidance, as well as directives issued by
16 OERI."

17 **SECTION 2.** G.S. 143-53 is amended by adding a new subsection to read:

18 "(e) The Secretary of Administration, in coordination with the Office of Economic
19 Recovery (OERI) shall adopt rules, policies, and regulations regarding the requisition, issuance,
20 advertising, opening, evaluation, award, protests, contract performance, contract
21 administration, default, termination, and debarment for all contracts for goods, equipment, or
22 services to be awarded by the Department of Administration, State departments, institutions,
23 agencies, universities, and community colleges using funds from and to meet the goals of the
24 American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5). The rules
25 adopted under this subsection shall be adopted in accordance with G.S. 150B-21.1B."

26 **SECTION 3.** Chapter 150B of the General Statutes is amended by adding a new
27 section to read:

28 **"§ 150B-21.1B. Adoption of rules to implement the American Recovery and Reinvestment**
29 **Act.**

30 (a) Purpose. – This section establishes an expedited procedure for the adoption of new
31 or the amendment of existing rules implementing the American Recovery and Reinvestment
32 Act of 2009 (ARRA) (Public Law 111-5), including any federal rules, regulations, policies,
33 guidance, or goals for the implementation of the ARRA. It is the policy of the State to provide
34 fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and
35 efficiently complete the awards of grants and contracts under the ARRA. The provisions of this
36 section shall be liberally construed to allow agencies maximum flexibility in implementing the
37 ARRA.

38 (b) Adoption. – An agency may adopt a rule under this section by using the procedure
39 for adoption of an emergency rule set forth in G.S. 150B-21.1A(a) and (b). The provision in
40 subsection (a) of G.S. 150B-21.1A that requires a finding of a serious or unforeseen threat to
41 public health or safety shall not apply to rules adopted under this section. In lieu of the written
42 statement of its findings of need as provided in subsection (b) of G.S. 150B-21.1A, the agency
43 must prepare a written statement of its findings that the rule is needed to implement the ARRA.
44 The emergency rule becomes effective when it is entered into the North Carolina
45 Administrative Code. When an agency adopts an emergency rule under this section, the agency
46 must simultaneously commence the process for adopting a temporary rule by submitting the
47 rule to the Codifier of Rules for publication on the Internet in accordance with
48 G.S. 150B-21.1(a3). For purposes of this section, all references to business days in
49 G.S. 150B-21.1(a3) shall be deemed to be calendar days. If the agency receives written
50 comment objecting to the temporary rule, the temporary rule shall be reviewed in accordance
51 with subsection (c) of this section. If the agency receives no written comment objecting to the

1 temporary rule, the agency shall deliver the rule to the Codifier of Rules. The Codifier of Rules
2 shall enter the temporary rule into the North Carolina Administrative Code on the sixth
3 business day after receipt of the rule and the temporary rule becomes effective upon entry into
4 the Code.

5 (c) Review. – If the agency receives written objection to the temporary rule, the agency
6 must submit the temporary rule and a written statement of its findings that the rule is needed to
7 implement the ARRA to the Director of the Office of Economic Recovery (Director). The
8 Director shall have 14 calendar days to review the statement and the rule to determine whether
9 the rule meets the following criteria:

10 (1) It is within the authority delegated to the agency by the General Assembly.

11 (2) It is clear and unambiguous.

12 (3) It is reasonably necessary to implement or interpret an enactment of the
13 General Assembly or Congress, including the ARRA and any federal rules,
14 regulations, policies, guidance, or goals for the implementation of the
15 ARRA. The Director shall consider the cumulative effect of all rules adopted
16 by the agency related to the specific purpose for which the rule is proposed.

17 (4) It was adopted in accordance with this section.

18 If the Director finds that the temporary rule meets all of the criteria set forth in this subsection,
19 the Director shall deliver the rule to the Codifier of Rules for entry into the North Carolina
20 Administrative Code. If the Director finds that the temporary rule fails to meet any of the
21 criteria set forth in this subsection, the Director shall return the rule to the agency with a
22 statement of the Director's objections. The agency may change the rule to satisfy the Director's
23 objections and submit the revised rule to the Director. If the agency fails to satisfy the
24 Director's objections, the rule shall not be entered in the North Carolina Administrative Code. If
25 the Director fails to make a final finding within 14 calendar days of receipt of the statement and
26 rule, the rule shall not be entered in the North Carolina Administrative Code.

27 (d) Emergency Rule Expiration Date. – An emergency rule adopted in accordance with
28 this section expires on the earliest of the following dates:

29 (1) The date specified in the rule.

30 (2) The effective date of the temporary rule adopted to replace the emergency
31 rule, if the Director approves the temporary rule.

32 (3) The date the Director returns to an agency a temporary rule adopted to
33 replace the emergency rule, if the agency fails to satisfy the Director's
34 objections.

35 (4) Sixty days from the date the emergency rule was published in the North
36 Carolina Register, unless the temporary rule adopted to replace the
37 emergency rule has been submitted to the Codifier of Rules.

38 (e) Temporary Rule Expiration Date. – A temporary rule adopted in accordance with
39 this section expires on the earliest of the following dates:

40 (1) The date specified in the rule.

41 (2) The effective date of a permanent rule adopted in accordance with
42 G.S. 150B-21.2 to replace the temporary rule.

43 (3) June 30, 2012.

44 (f) The Director's determination that a temporary rule meets the criteria set forth in
45 subsection (c) of this section and that the rule is required by ARRA is a final agency decision
46 and may be reviewed in accordance with Article 4 of this Chapter."

47 **SECTION 4.** G.S. 150B-1(c) is amended by adding a new subdivision to read:

48 "(8) Any agency with respect to contracts, disputes, protests, and/or claims
49 arising out of or relating to the implementation of the American Recovery
50 and Reinvestment Act of 2009 (Public Law 111-5)."

51 **SECTION 5.** G.S. 143-53.1 reads as rewritten:

1 **"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

2 (a) On and after July 1, 1997, the procedures prescribed by G.S. 143-52 with respect to
3 competitive bids and the bid value benchmark authorized by G.S. 143-53(a)(2) with respect to
4 rule making by the Secretary of Administration for competitive bidding shall be no more than
5 twenty-five thousand dollars (\$25,000); provided, the Secretary of Administration may, in his
6 or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium
7 of the State commencing after June 30, 1999, in an amount whose increase, expressed as a
8 percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium
9 next preceding the effective date of the benchmark increase. For a special responsibility
10 constituent institution of The University of North Carolina, the benchmark prescribed in this
11 section shall be as provided in G.S. 116-31.10. For community colleges, the benchmark
12 prescribed in this section shall be as provided in G.S. 115D-58.14.

13 (b) The benchmarks set by the Secretary of Administration, The University of North
14 Carolina, and the State Board of Community Colleges in subsection (a) of this section shall be
15 applicable to all contracts for goods, equipment, or services awarded by the Department of
16 Administration, State departments, institutions, agencies, universities, and community colleges
17 using funds from the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

18 **SECTION 6.** G.S. 143-54 reads as rewritten:

19 **"§ 143-54. Certification that bids were submitted without collusion.**

20 (a) The Director of Administration shall require bidders to certify that each bid is
21 submitted competitively and without collusion. False certification is a Class I felony.

22 (b) The certification required by subsection (a) of this section shall be applicable to all
23 bids and proposals for contracts for goods, equipment, or services awarded by the Department
24 of Administration, State departments, institutions, agencies, universities, and community
25 colleges using funds from the American Recovery and Reinvestment Act of 2009 (Public Law
26 111-5)."

27 **SECTION 7.** G.S. 143-55 reads as rewritten:

28 **"§ 143-55. Requisitioning for supplies by agencies; must purchase through sources**
29 **certified.**

30 (a) Unless otherwise provided by law, after sources of supply have been established by
31 contract and certified by the Secretary of Administration to the said departments, institutions
32 and agencies as herein provided for, it shall be the duty of all departments, institutions and
33 agencies to make requisition or issue orders on forms to be prescribed by the Secretary of
34 Administration, for all supplies, materials and equipment required by them upon the sources of
35 supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them,
36 or any of them, to purchase any supplies, materials or equipment from other sources than those
37 certified by the Secretary of Administration. One copy of such requisition or order shall be
38 furnished to and when requested by the Secretary of Administration.

39 (b) The acquisition of supplies, materials, goods, equipment, or services using funds
40 from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) shall
41 be exempt from the contracts certified by the Secretary of Administration in subsection (a) of
42 this section. However, the Secretary of Administration, in coordination with (the Office of
43 Economic Recovery) , may approve the use of term contracts in limited circumstances where
44 such contracts provide the best means to accomplish the goals of ARRA. In addition, the
45 Secretary of Administration shall provide notice to the vendors on the certified contracts of the
46 opportunity to submit bids or proposals for contracts using ARRA funds."

47 **SECTION 8.** G.S. 6-19.1 reads as rewritten:

48 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

49 (a) In any civil action, other than an adjudication for the purpose of establishing or
50 fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a
51 party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate

1 provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow
2 the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to
3 the administrative review portion of the case, in contested cases arising under Article 3 of
4 Chapter 150B, to be taxed as court costs against the appropriate agency if:

- 5 (1) The court finds that the agency acted without substantial justification in
6 pressing its claim against the party; and
- 7 (2) The court finds that there are no special circumstances that would make the
8 award of attorney's fees unjust. The party shall petition for the attorney's fees
9 within 30 days following final disposition of the case. The petition shall be
10 supported by an affidavit setting forth the basis for the request.

11 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the
12 administrative review portion of the case in contested cases arising under Article 9 of Chapter
13 131E of the General Statutes.

14 Nothing in this section grants permission to bring an action against an agency otherwise
15 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
16 bring the action.

17 Any attorney's fees assessed against an agency under this section shall be charged against
18 the operating expenses of the agency and shall not be reimbursed from any other source.

19 (b) No party shall be entitled to recover attorneys' fees in any civil action regarding any
20 claim, dispute, and/or protest relating to: (i) the implementation of the American Recovery and
21 Reinvestment Act of 2009 (ARRA) (Public Law 111-5); (ii) the award of contracts or grants
22 thereunder by the State and its departments, institutions, offices, agencies, universities,
23 community colleges, counties, municipalities, and local education authorities; (iii) a vendor's
24 default under an ARRA contract; and/or (iv) a vendor's debarment resulting from a default of
25 an ARRA contract."

26 **SECTION 9.** G.S. 66-58(b) is amended by adding a new subdivision to read:

27 "(26) The North Carolina Office of Economic Recovery and Investment and State
28 agencies in the implementation of the American Recovery and Reinvestment
29 Act of 2009 (Public Law 111-5) funded projects."

30 **SECTION 10.** Recovery funds not specified in the American Recovery and
31 Reinvestment Act of 2009 (ARRA) may be expended upon approval by the Office of Economic
32 Recovery and Investment. The Office of Economic Recovery and Investment will report any
33 authorizations of ARRA funds to the Joint Legislative Commission on Governmental
34 Operations at its next meeting.

35 **SECTION 11.** Contracts or grants entered into for the use of funds from the
36 American Recovery and Reinvestment Act of 2009 (ARRA) may include remedies sufficient to
37 protect the State in the event such funds are not used in a manner consistent with ARRA or
38 State requirements. Such remedies may include, but are not limited to, withholding State
39 revenues to local governments and monetary penalties for nonprofits or for-profit entities.

40 **SECTION 11.1.** Notwithstanding any other provision of law, the Department of
41 Transportation may solicit proposals under rules and regulations adopted by the Department of
42 Transportation for all contracts for professional engineering services and other kinds of
43 professional or specialized services necessary in connection with the planning, design,
44 maintenance, repair, and construction of transportation infrastructure. In order to promote
45 engineering and design quality and ensure maximum competition by professional firms of all
46 sizes, the Department may establish fiscal guidelines and limitations necessary to promote
47 cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any
48 and all proposals is reserved to the Board of Transportation.

49 **SECTION 12.** If Senate Bill 828, 2009 Regular Session becomes law, then
50 G.S. 136-28.1(a) and (b), as amended by that act, read as rewritten:

51 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

1 (a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the
2 Department of Transportation may let for construction, maintenance, operations, or repair
3 necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after
4 public advertising under rules and regulations to be made and published by the Department of
5 Transportation. The right to reject any and all bids shall be reserved to the Board of
6 Transportation. Contracts for construction or repair for federal aid projects entered into
7 pursuant to this section shall not contain the standardized contract clauses prescribed by 23
8 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work
9 ordered by the engineer or significant changes in the character of the work. For those federal
10 aid projects, the Department of Transportation shall use only the contract provisions for
11 differing site conditions, suspensions of work ordered by the engineer, or significant changes in
12 the character of the work developed by the North Carolina Department of Transportation and
13 approved by the Board of Transportation.

14 (b) For contracts let to carry out the provisions of this Chapter in which the amount of
15 work to be let to contract for transportation infrastructure construction or repair is one million
16 two hundred thousand dollars (\$1,200,000) or less, and for transportation infrastructure
17 maintenance, excluding resurfacing, that is one million two hundred thousand dollars
18 (\$1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal
19 bids" is defined as bids in writing, received pursuant to a written request, without public
20 advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary
21 of Transportation shall keep a record of all bids submitted, which record shall be subject to
22 public inspection at any time after the bids are opened.

23"

24 **SECTION 13.** Part 3 of Article 36 of Chapter 143 of the General Statutes reads as
25 rewritten:

26 "Part 3. Energy ~~Improvement-Loan Program-Fund.~~

27 "**§ 143-345.16. Short title.**

28 This Part shall be known as the Energy ~~Improvement-Loan Program-Fund.~~

29 "**§ 143-345.17. Legislative findings and purpose.**

30 The General Assembly finds and declares that it is in the best interest of the citizens of
31 North Carolina to promote and encourage energy efficiency within the State in order to
32 conserve energy, promote economic competitiveness, and expand employment in the State.

33 "**§ 143-345.18. Lead agency; powers and duties.**

34 (a) For the purposes of this Part, the Department of Administration, State Energy
35 Office, is designated as the lead State agency in matters pertaining to energy efficiency.

36 (b) The Department shall have the following powers and duties with respect to this Part:

37 (1) To provide industrial and commercial concerns doing business in North
38 Carolina, local governmental units, ~~and nonprofit organizations operating~~
39 organizations, and residents in North Carolina with information and
40 assistance in undertaking energy conserving capital improvement projects to
41 enhance efficiency.

42 (2) ~~To establish a revolving fund within the Department for the purpose of~~
43 ~~providing secured loans in amounts not greater than five hundred thousand~~
44 ~~dollars (\$500,000) per entity to install energy efficient capital improvements~~
45 ~~(i) within businesses or nonprofit organizations located within or~~
46 ~~translocating to North Carolina, and (ii) within local governmental units. To~~
47 establish one or more revolving funds within the Department for the purpose
48 of providing secured loans in amounts not greater than one million dollars
49 (\$1,000,000) per entity to install or entity that installs energy-efficient and
50 renewable energy improvements (i) within business or nonprofit
51 organizations located within or translocating to North Carolina, (ii) within

1 local governmental units, (iii) within buildings classified as multifamily
2 residential, (iv) within buildings designated as multiuse that include
3 residential units, and (v) within single family residences, however, in this
4 instance the amount of the loan shall not exceed fifty thousand dollars
5 (\$50,000). In providing these loans, priority shall be given to entities already
6 located in the State.

7 (2a) To develop and adopt rules to allow State-regulated financial institutions to
8 provide secured loans to corporate entities, nonprofit organizations, and
9 local governmental units and residents in accordance with terms and criteria
10 established by the ~~Department~~ State Energy Office.

11 (3) To work with appropriate State and federal agencies to develop and
12 implement rules and regulations to facilitate this program.

13 (4) To contract with persons or entities, including other State agencies and
14 United States Treasury certified Community Development Financial
15 Institutions (CDFI), to administer the Energy Loan Fund. Contracts for the
16 procurement of services to manage, administer, and operate the Energy Loan
17 Fund shall be awarded on a competitive basis through the solicitation of
18 proposals and through the procedures established by statute and the Division
19 of Purchase and Contract.

20 (c) The annual interest rate charged for the use of the funds from the revolving fund
21 established pursuant to subdivision (b)(2) of this section shall be a percentage not to exceed
22 three percent (3%) per annum, to be established by the State Energy Office, excluding other
23 fees required for loan application review and origination. The term of any loan originated under
24 this section may not be greater than ~~40~~ 20 years.

25 (c1) Notwithstanding subsection (c) of this section, the ~~Department~~ State Energy Office
26 shall adopt rules to allow loans to be made from the revolving loan fund and by State-regulated
27 financial institutions at interest rates as low as one percent (1%) zero percent (0%) per annum
28 for certain renewable energy, recycling, and energy efficient and conservation projects such as
29 recycling and renewable energy to encourage their development and use.

30 (d) In accordance with the terms of the Stripper Well Settlement, administrative
31 expenses for activities under this section that are subject to the Stripper Well Settlement shall
32 be limited to five percent (5%) of funds ~~appropriated~~ allocated for this purpose. In accordance
33 with the provisions of the American Recovery and Reinvestment Act of 2009 (Public Law
34 111-5), administrative expenses for activities under this section that are subject to the ARRA
35 shall be limited to ten percent (10%) of funds allocated for this purpose.

36 (e) For purposes of this section:

37 (1) "Local governmental unit" means any board or governing body of a political
38 subdivision of the State, including any board of a community college, any
39 school board, or an agency, commission, or authority of a political
40 subdivision of the State.

41 (2) "Nonprofit organization" means an organization that is exempt from federal
42 income taxation under section 501(c)(3) of the Internal Revenue Code."

43 **SECTION 14.(a)** G.S. 62-133.8 is amended by adding a new subsection to read:

44 "(k) Tracking and Trading of Renewable Energy Certificates. – No later than April 1,
45 2010, the Commission shall develop, implement, and maintain an Internet Web site for the
46 online tracking and trading of renewable energy certificates in order to verify the compliance of
47 electric power suppliers with the REPS requirements of this section and to facilitate the
48 establishment of a market for the purchase and sale of renewable energy certificates."

49 **SECTION 14.(b)** The North Carolina Utilities Commission shall use available
50 funds for the 2009-2010 fiscal year to implement this section.

1 **SECTION 15.** The General Assembly finds that it is in the public interest of the
2 State of North Carolina to ensure expeditious awards of ARRA funds to maximize the
3 economic recovery impact of the ARRA. It is the policy of the State to provide fair regulation,
4 oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete
5 the awards of grants and contracts under the ARRA. It is also the policy of this State that, due
6 to the historic level of federal and State oversight of ARRA grant and contract awards, restraint
7 should be exercised in the granting of legal and injunctive relief that might forestall awards to
8 programs and contractors.

9 **SECTION 16.** This act becomes effective February 17, 2009. Sections 1 through 8
10 of this act expire June 30, 2012.