

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

Short Title: Public Construction Law Changes.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**PART I. CONSTRUCTION CHANGES**

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

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

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, ~~and~~-surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other

1 than unit price information at this stage, and thereafter to negotiate a contract for  
2 ~~architectural, engineering, or surveying those services~~ at a fair and reasonable fee with  
3 the best qualified firm. If a contract cannot be negotiated with the best qualified firm,  
4 negotiations with that firm shall be terminated and initiated with the next best qualified  
5 firm. Selection of a firm under this Article shall include the use of good faith efforts by  
6 the public entity to notify minority firms of the opportunity to submit qualifications for  
7 consideration by the public entity."

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

10 **"§ 143-128.1. Construction management at risk contracts.**

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

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

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

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

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

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

30 (c) The construction manager at risk shall contract directly with the public entity  
31 for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall  
32 prequalify and accept bids from first-tier subcontractors for all construction work under  
33 this section. The prequalification criteria shall be determined by the public entity and  
34 the construction manager at risk to address quality, performance, the time specified in  
35 the bids for performance of the contract, the cost of construction oversight, time for  
36 completion, capacity to perform, and other factors deemed appropriate by the public  
37 entity. The public entity shall require the construction manager at risk to submit its plan  
38 for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting  
39 bids for the project's first-tier subcontractors. A construction manager at risk and first-  
40 tier subcontractors shall make a good faith effort to recruit and select minority  
41 businesses for participation in contracts pursuant to G.S. 143-128.2. A construction  
42 manager at risk may perform a portion of the work only if (i) bidding produces no

1 responsible, responsive bidder for that portion of the work, the lowest responsible,  
2 responsive bidder will not execute a contract for the bid portion of the work, or the  
3 subcontractor defaults and a prequalified replacement cannot be obtained in a timely  
4 manner, and (ii) the public entity approves of the construction manager at risk's  
5 performance of the work. All bids shall be opened publicly and shall be public records  
6 under Chapter 132 of the General Statutes. The construction manager at risk shall act as  
7 the fiduciary of the public entity in handling and opening bids. The construction  
8 manager at risk shall award the contract to the lowest responsible, responsive bidder,  
9 taking into consideration quality, performance, the time specified in the bids for  
10 performance of the contract, the cost of construction oversight, time for completion,  
11 compliance with G.S. 143-128.2, and other factors deemed appropriate by the public  
12 entity and advertised as part of the bid solicitation. The public entity may require the  
13 selection of a different first-tier subcontractor for any portion of the work, consistent  
14 with this section, provided that the construction manager at risk is compensated for any  
15 additional cost incurred.

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

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

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

22 **"§ 143-128. Requirements for certain building contracts.**

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

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

41 All such specifications must Specifications for contracts that will be bid under the  
42 separate-prime system or dual bidding system shall be so drawn as to permit separate

1 and independent bidding upon each of the subdivisions ~~or branches~~ of work enumerated  
2 ~~above, in this subsection.~~ The above enumeration of subdivisions or branches of work  
3 shall not be construed to prevent any officer, board, department, commission or  
4 commissions from preparing additional separate specifications for any other category of  
5 work.

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

9 (1) Separate-prime bidding.

10 (2) Single-prime bidding.

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

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

13 (5) Alternative contracting methods authorized pursuant to G.S. 143-  
14 135.26(9).

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

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

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

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

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

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

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

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

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

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

1 administrative unit that it has made the good faith effort required pursuant to G.S. 143-  
2 128(f), and failure to file the affidavit is grounds for rejection of the bid. All provisions  
3 of Article 8 of Chapter 143 of the General Statutes that are not inconsistent with this  
4 subsection shall apply to local school administrative units. The provisions of subsection  
5 (b) of this section shall apply to separate-prime contracts awarded pursuant to this  
6 section and the provisions of subsection (d) of this section shall apply to single-prime  
7 contracts awarded pursuant to this section.

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

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

28 (1) The term "minority business" means a business:

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

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

- 37 a. Black, that is, a person having origins in any of the black racial  
38 groups in Africa;  
39 b. Hispanic, that is, a person of Spanish or Portuguese culture with  
40 origins in Mexico, South or Central America, or the Caribbean  
41 Islands, regardless of race;

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

35 (g) Dispute resolution. – A public entity shall use the dispute resolution process  
36 adopted by the State Building Commission pursuant to G.S. 143-135.26(12), or shall  
37 adopt another dispute resolution process, which shall include mediation, to be used as  
38 an alternative to the dispute resolution process adopted by the State Building  
39 Commission. This dispute resolution process will be available to all the parties involved  
40 in the public entity's construction project including the public entity, the architect, the  
41 construction manager, the contractors, and the first-tier and lower-tier subcontractors  
42 and shall be available for any issues arising out of the contract or construction process.



1 The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars  
2 (\$15,000), concerning the amount in controversy that must be at issue before a party  
3 may require other parties to participate in the dispute resolution process. The public  
4 entity may require that the costs of the process be divided between the parties to the  
5 dispute with at least one-third of the cost to be paid by the public entity, if the public  
6 entity is a party to the dispute. The public entity may require in its contracts that a party  
7 participate in mediation concerning a dispute as a precondition to initiating litigation  
8 concerning the dispute.

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

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

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

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

21 **"§ 143-128.2. Minority business participation goals.**

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

37 Except as otherwise provided for in this subsection, each city, county, or other local  
38 public entity shall adopt, after a notice and public hearing, an appropriate verifiable  
39 percentage goal for participation by minority businesses in the total value of work for  
40 building projects in accordance with this subsection.

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

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

11 (c) Each bidder, which shall mean first-tier subcontractor for construction  
12 manager at risk projects for purposes of this subsection, on a project bid under any of  
13 the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority  
14 businesses that it will use on the project and shall include with the bid an affidavit  
15 attesting that it has made the good faith effort required pursuant to this subsection. A  
16 contractor, including a first-tier subcontractor on a construction manager at risk project,  
17 that performs all of the work under a contract with its own workforce may submit an  
18 affidavit to that effect in lieu of an affidavit and documentation otherwise required  
19 under this subsection. The apparent lowest responsible, responsive bidder shall also file  
20 the following:

21 (1) Within the time specified in the bid documents, either:

22 a. An affidavit that includes a description of the portion of work to  
23 be executed by minority businesses, expressed as a percentage  
24 of the total contract price, which is equal to or more than the  
25 applicable goal. An affidavit under this sub-subdivision shall  
26 give rise to a presumption that the bidder has made the required  
27 good faith efforts; or

28 b. Documentation of its good faith effort to meet the goal. The  
29 documentation must include evidence of all good faith efforts  
30 that were implemented, including any advertisements,  
31 solicitations, and evidence of other specific actions  
32 demonstrating recruitment and selection of minority businesses  
33 for participation in the contract.

34 (2) Within 30 days after award of the contract, a list of all identified  
35 subcontractors that the contractor will use on the project.

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

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

40 (1) If the subcontractor's bid is later determined by the contractor or  
41 construction manager at risk to be nonresponsible or nonresponsive, or

1 the listed subcontractor refuses to enter into a contract for the complete  
2 performance of the bid work, or

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

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

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

9 (1) Develop and implement a minority business participation outreach  
10 plan to identify minority businesses that can perform public building  
11 projects and to implement outreach efforts to encourage minority  
12 business participation in these projects to include education,  
13 recruitment, and interaction between minority businesses and  
14 nonminority businesses.

15 (2) Attend the scheduled prebid conference.

16 (3) At least 10 days prior to the scheduled day of bid opening, notify  
17 minority businesses that have requested notices from the public entity  
18 for public construction or repair work and minority businesses that  
19 otherwise indicated to the Office of Historically Underutilized  
20 Businesses an interest in the type of work being bid or the potential  
21 contracting opportunities listed in the proposal. The notification shall  
22 include the following:

23 a. A description of the work for which the bid is being solicited.

24 b. The date, time, and location where bids are to be submitted.

25 c. The name of the individual within the public entity who will be  
26 available to answer questions about the project.

27 d. Where bid documents may be reviewed.

28 e. Any special requirements that may exist.

29 (4) Utilize other media, as appropriate, likely to inform potential minority  
30 businesses of the bid being sought.

31 (f) A public entity shall require bidders to undertake the following good faith  
32 efforts to the extent required by the Secretary on projects subject to this section. The  
33 Secretary shall adopt rules establishing points to be awarded for taking each effort and  
34 the minimum number of points required, depending on project size, cost, type, and other  
35 factors considered relevant by the Secretary. The public entity may require that  
36 additional good faith efforts be taken, as indicated in its bid specifications. Good faith  
37 efforts include:

38 (1) Contacting minority businesses that reasonably could have been  
39 expected to submit a quote and that were known to the contractor or  
40 available on State or local government maintained lists at least 10 days  
41 before the bid or proposal date and notifying them of the nature and  
42 scope of the work to be performed.

- 1           (2) Making the construction plans, specifications and requirements  
2 available for review by prospective minority businesses, or providing  
3 these documents to them at least 10 days before the bid or proposals  
4 are due.
- 5           (3) Breaking down or combining elements of work into economically  
6 feasible units to facilitate minority participation.
- 7           (4) Working with minority trade, community, or contractor organizations  
8 identified by the Office of Historically Underutilized Businesses and  
9 included in the bid documents that provide assistance in recruitment of  
10 minority businesses.
- 11           (5) Attending any prebid meetings scheduled by the public owner.
- 12           (6) Providing assistance in getting required bonding or insurance or  
13 providing alternatives to bonding or insurance for subcontractors.
- 14           (7) Negotiating in good faith with interested minority businesses and not  
15 rejecting them as unqualified without sound reasons based on their  
16 capabilities. Any rejection of a minority business based on lack of  
17 qualification should have the reasons documented in writing.
- 18           (8) Providing assistance to an otherwise qualified minority business in  
19 need of equipment, loan capital, lines of credit, or joint pay agreements  
20 to secure loans, supplies, or letters of credit, including waiving credit  
21 that is ordinarily required. Assisting minority businesses in obtaining  
22 the same unit pricing with the bidder's suppliers in order to help  
23 minority businesses in establishing credit.
- 24           (9) Negotiating joint venture and partnership arrangements with minority  
25 businesses in order to increase opportunities for minority business  
26 participation on a public construction or repair project when possible.
- 27           (10) Providing quick pay agreements and policies to enable minority  
28 contractors and suppliers to meet cash-flow demands.
- 29       (g) As used in this section:
- 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 socially and economically  
33 disadvantaged individuals, or in the case of a corporation, in  
34 which at least fifty-one percent (51%) of the stock is owned by  
35 one or more minority persons or socially and economically  
36 disadvantaged individuals; and
- 37               b. Of which the management and daily business operations are  
38 controlled by one or more of the minority persons or socially  
39 and economically disadvantaged individuals who own it.
- 40           (2) The term "minority person" means a person who is a citizen or lawful  
41 permanent resident of the United States and who is:

- 1           a.    Black, that is, a person having origins in any of the black racial  
2                   groups in Africa;  
3           b.    Hispanic, that is, a person of Spanish or Portuguese culture with  
4                   origins in Mexico, South or Central America, or the Caribbean  
5                   Islands, regardless of race;  
6           c.    Asian American, that is, a person having origins in any of the  
7                   original peoples of the Far East, Southeast Asia and Asia, the  
8                   Indian subcontinent, the Pacific Islands;  
9           d.    American Indian, that is, a person having origins in any of the  
10                  original Indian peoples of North America; or  
11           e.    Female.

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

14           (h)   The State, counties, municipalities, and all other public bodies shall award  
15                  public building contracts, including those awarded under G.S. 143-128.1, 143-129, and  
16                  143-131, without regard to race, religion, color, creed, national origin, sex, age, or  
17                  handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be  
18                  construed to require contractors or awarding authorities to award contracts or  
19                  subcontracts to or to make purchases of materials or equipment from minority-business  
20                  contractors or minority-business subcontractors who do not submit the lowest  
21                  responsible, responsive bid or bids.

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

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

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

31           **"§ 113-315.36. Building contracts.**

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

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

35                  (2)   Except for ~~G.S. 143-128(f)~~, G.S. 143-128.2, Article 8 of Chapter 143 of  
36                          the General Statutes does not apply to public building contracts of the  
37                          Authority that require the estimated expenditure of public money in an  
38                          amount less than two hundred fifty thousand dollars (\$250,000). With  
39                          respect to a contract that is exempted from certain provisions of Article  
40                          8 under this subdivision, the powers and duties set out in Article 8  
41                          shall be exercised by the Authority, and the Secretary of

1 Administration and other State officers, employees, or agencies shall  
2 have no duties or responsibilities concerning the contract.

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

7 (b) Notwithstanding the other provisions of this section, the services of the  
8 Department of Administration may be made available to the Authority, when requested  
9 by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the  
10 General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint  
11 Legislative Commission on Governmental Operations on any building contract to which  
12 this exemption is applied. The quarterly report required by this subsection shall  
13 specifically include information regarding the Authority's compliance with the  
14 provisions of ~~G.S. 143-128(f)~~. G.S. 143-128.2."

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

16 "**§ 143-129.4. Guaranteed energy savings contracts.**

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

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

23 "**§ 143B-437.29. Contracting with minority businesses.**

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

28 **SECTION 3.5.** G.S. 158-35(a), as amended by Section 20.13(a) of S.L.  
29 2001-424, reads as rewritten:

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

- 33 (1) The board of commissioners of each county participating in the Zone  
34 shall appoint three voting members, one of whom shall be a minority  
35 person as defined in ~~G.S. 143-128(f)(2)~~ G.S. 143-128.2(g)(2) and one  
36 of whom may be a member of the board of commissioners.
- 37 (2) The Commission shall appoint at least three but no more than seven  
38 voting members. By the appointment of these members, the  
39 Commission shall ensure that the voting membership of the  
40 Commission includes at least seven women and seven members of a  
41 racial minority described in ~~G.S. 143-128(f)(2)~~. G.S. 143-128.2(g)(2).

1 The Commission shall appoint the fewest number of members  
2 necessary to achieve these minimums.

3 (3) Four nonvoting members shall be appointed as follows:

4 a. One appointed by the Chancellor of East Carolina University to  
5 represent the University.

6 b. One appointed by a majority vote of the presidents of the  
7 community colleges located in the Zone, to represent the  
8 community colleges.

9 c. One appointed by the chair of the State Ports Authority, to  
10 represent the sea ports of the State.

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

13 **SECTION 3.6.** Article 8 of Chapter 143 is amended by adding a new section

14 to read:

15 "**§ 143-128.3. Minority business participation administration.**

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

19 (1) The verifiable percentage goal.

20 (2) The type and total dollar value of the project, minority business  
21 utilization by minority business category, trade, total dollar value of  
22 contracts awarded to each minority group for each project, the  
23 applicable good faith effort guidelines or rules used to recruit minority  
24 business participation, and good faith documentation accepted by the  
25 public entity from the successful bidder.

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

28 The reports shall be in the format and contain the data prescribed by the Secretary of  
29 Administration. The University of North Carolina and the State Board of Community  
30 Colleges shall report quarterly and all other public entities shall report semiannually.  
31 The Secretary of the Department of Administration shall make reports every six months  
32 to the Joint Legislative Committee on Governmental Operations on information  
33 reported pursuant to this subsection.

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

1           (1) That the public entity consult with the Department of Administration,  
2 Office of Historically Underutilized Businesses on the development of  
3 a new corrective plan, subject to the approval of the Department. The  
4 public entity may designate a representative to appear on its behalf,  
5 provided that the representative has managerial responsibility for the  
6 construction project.

7           (2) That the public entity not bid another contract under G.S. 143-128  
8 without prior review by the Department of a good faith compliance  
9 plan developed pursuant to subdivision (1) of this subsection. The  
10 public entity shall be subject to the review and approval of its good  
11 faith compliance plan under this subdivision with respect to any  
12 projects bid pursuant to G.S. 143-128 during a period of time  
13 determined by the Secretary, not to exceed one year.

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

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

21           (d) The Secretary shall appoint an advisory board to develop recommendations to  
22 improve the recruitment and utilization of minority businesses. The Secretary, with the  
23 input of its advisory board, shall review the State's programs for promoting the  
24 recruitment and utilization of minority businesses involved in State capital projects and  
25 shall recommend to the General Assembly, the State Construction Office, The  
26 University of North Carolina, and the community colleges system changes in the terms  
27 and conditions of State laws, rules, and policies that will enhance opportunities for  
28 utilization of minority businesses on these projects. The Secretary shall provide  
29 guidance to these agencies on identifying types of projects likely to attract increased  
30 participation by minority businesses and breaking down or combining elements of work  
31 into economically feasible units to facilitate minority business participation.

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

35           (f) 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; and  
16 2. All community college buildings requiring the estimated  
17 expenditure for construction or repair work for which  
18 public bidding is required under G.S. 143-129 prior to  
19 the awarding of a contract for such work; and to examine  
20 and approve all changes in those plans and specifications  
21 made after the contract for such work has been awarded.
- 22 b. To assist, as necessary, all agencies in the preparation of  
23 requests for appropriations for the construction or renovation of  
24 all State buildings.
- 25 b1. To certify that a statement of needs pursuant to G.S. 143-6 is  
26 feasible. For purposes of this sub-subdivision, "feasible" means  
27 that the proposed project is sufficiently defined in overall scope;  
28 building program; site development; detailed design,  
29 construction, and equipment budgets; and comprehensive  
30 project scheduling so as to reasonably ensure that it may be  
31 completed with the amount of funds requested. At the discretion  
32 of the General Assembly, advanced planning funds may be  
33 appropriated in support of this certification. This  
34 sub-subdivision shall not apply to requests for appropriations of  
35 less than one hundred thousand dollars (\$100,000).
- 36 c. To supervise the letting of all contracts for the design,  
37 construction or renovation of all State buildings and all  
38 community college buildings whose plans and specifications  
39 must be examined and approved under a.2. of this subdivision.
- 40 d. To supervise and inspect all work done and materials used in  
41 the construction or renovation of all State buildings and all  
42 community college buildings whose plans and specifications

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

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

8 **SECTION 8.(e)** G.S. 133-1.1(d) reads as rewritten:

9 "(d) On projects on which no registered architect or engineer is required pursuant  
10 to the provisions of this section, the governing board or awarding authority shall require  
11 a certificate of compliance with the State Building Code from the city or county  
12 inspector for the specific trade or trades involved or from a registered architect or  
13 engineer, except that the provisions of this subsection shall not apply ~~on~~ to projects  
14 where any of the following apply:

- 15 (1) ~~wherein~~ Where plans and specifications are approved by the  
16 Department of Administration, Division of State Construction, and the  
17 completed project is inspected by the Division of State Construction  
18 and the State Electrical Inspector, or on projects Inspector.
- 19 (2) That are exempt from the State Building Code.
- 20 (3) That are subject to G.S. 116-31.11 and the completed project is  
21 inspected by the State Electrical Inspector and by The University of  
22 North Carolina or its constituent or affiliated institution.
- 23 (4) That are subject to G.S. 116-37(j) and the completed project is  
24 inspected by the State Electrical Inspector and by the University of  
25 North Carolina Health Care System.
- 26 (5) That are subject to G.S. 116-37(a)(4) and the completed project is  
27 inspected by the State Electrical Inspector and by the University of  
28 North Carolina Hospitals at Chapel Hill.
- 29 (6) That are subject to G.S. 116-37(a)(4) and the completed project is  
30 inspected by the State Electrical Inspector and the University of North  
31 Carolina at Chapel Hill on behalf of the clinical patient care programs  
32 of the School of Medicine of the University of North Carolina.
- 33 (7) That are subject to G.S. 116-40.6(e) and the completed project is  
34 inspected by the State Electrical Inspector and by East Carolina  
35 University on behalf of the Medical Faculty Practice Plan."

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

37 "(b) For purposes of contracts bid in the alternative between the separate-prime  
38 and single-prime contracts, pursuant to ~~G.S. 143-128(e) or (d)~~, G.S. 143-128(d1) each  
39 single-prime bid shall constitute a competitive bid in each of the four subdivisions or  
40 branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids  
41 shall constitute a competitive single-prime bid in meeting the requirements of

1 subsection (a) of this section. If there are at least three single-prime bids but there is not  
2 at least one full set of separate-prime bids, no separate-prime bids shall be opened."

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

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

5 "Section 3. This act is effective when it becomes ~~law and shall expire on June 30,~~  
6 2003-law."

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

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

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

- 13 (1) The work is primarily for purposes of ensuring compliance with the  
14 Life Safety Code and other applicable codes, including requirements  
15 of the Joint Commission on the Accreditation of Healthcare  
16 Organizations, or involves work to the same or related components or  
17 areas of the building at the time of the compliance work.
- 18 (2) The force account labor is qualified to perform and is capable of  
19 performing the work in an active patient environment.

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

## 21 **PART II. CONSTRUCTION AND DESIGN ADMINISTRATION**

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

### 23 **"§ 143-135.26. Powers and duties of the Commission.**

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

- 26 (1) To adopt rules establishing standard procedures and criteria to assure  
27 that the designer selected for each State capital improvement ~~project~~  
28 and project, the consultant selected for planning and studies of an  
29 architectural and engineering nature associated with a capital  
30 improvement project or a future capital improvement project and a  
31 construction manager at risk selected for each capital improvement  
32 project has the qualifications and experience necessary for that capital  
33 improvement project or the proposed planning or study project. The  
34 rules shall provide that the State Building Commission, after  
35 consulting with the funded agency, is responsible and accountable for  
36 the final selection of the ~~designer and the final selection of the~~  
37 designer, consultant or construction manager at risk except when the  
38 General Assembly or The University of North Carolina is the funded  
39 agency. When the General Assembly is the funded agency, the  
40 Legislative Services Commission is responsible and accountable for  
41 the final selection of the ~~designer and the final selection of~~  
42

1 ~~the designer, consultant, or the construction manager at risk~~ and when  
2 the University is the funded agency, it shall be subject to the rules  
3 adopted hereunder, except it is responsible and accountable for the  
4 final selection of the ~~designer and the final selection of the~~  
5 ~~consultant.~~ designer, consultant, or construction manager at risk. All  
6 designers and consultants shall be selected within 60 days of the date  
7 funds are appropriated for a project by the General Assembly or the  
8 date of project authorization by the Director of the Budget; provided,  
9 however, the State Building Commission may grant an exception to  
10 this requirement upon written request of the funded agency if (i) no  
11 site was selected for the project before the funds were appropriated or  
12 (ii) funds were appropriated for advance planning only; provided,  
13 further, the Director of the Budget, after consultation with the State  
14 Construction Office, may waive the 60-day requirement for the  
15 purpose of minimizing project costs through increased competition and  
16 improvements in the market availability of qualified contractors to bid  
17 on State capital improvement projects. The Director of the Budget also  
18 may, after consultation with the State Construction Office, schedule  
19 the availability of design and construction funds for capital  
20 improvement projects for the purpose of minimizing project costs  
21 through increased competition and improvements in the market  
22 availability of qualified contractors to bid on State capital  
23 improvement projects.

24 The State Building Commission shall submit a written report to the  
25 Joint Legislative Commission on Governmental Operations on the  
26 Commission's selection of a designer for a project within 30 days of  
27 selecting the designer.

- 28 (2) To adopt rules for coordinating the plan review, approval, and permit  
29 process for State capital improvement ~~projects~~ and community college  
30 buildings, as defined in subdivision (4) of this section. The rules shall  
31 provide for a specific time frame for plan review and approval and  
32 permit issuance by each agency, consistent with applicable laws. The  
33 time frames shall be established to provide for expeditious review,  
34 approval, and permitting of State capital improvement projects and  
35 community college buildings.
- 36 (2a) To adopt rules exempting specified types of State capital improvement  
37 projects, including community college buildings as defined in  
38 subdivision (4) of this section, from plan review.
- 39 (3) To adopt rules for establishing a post-occupancy evaluation, annual  
40 inspection and preventive maintenance program for all State buildings.
- 41 (4) To develop procedures for evaluating the work performed by designers  
42 and contractors on State capital improvement projects and those

1 community college buildings, as defined in G.S. 143-336, requiring the  
2 estimated expenditure for construction or repair work for which public  
3 bidding is required under G.S. 143-129, and for use of the evaluations  
4 as a factor affecting designer selections and determining qualification  
5 of contractors to bid on State capital improvement projects and  
6 community college buildings.

7 (5) To continuously study and recommend ways to improve the  
8 effectiveness and efficiency of the State's capital facilities  
9 development and management program.

10 (6) To request designers selected prior to April 14, 1987, whose plans for  
11 the projects have not been approved to report to the Commission on  
12 their progress on the projects. The Department of Administration shall  
13 provide the Commission with a list of all such projects.

14 (7) To appoint an advisory board, if the Commission deems it necessary,  
15 to assist the Commission in its work. No one other than the  
16 Commission may appoint an advisory board to assist or advise it in its  
17 ~~work; and work.~~

18 (8) To review the State's provisions for ensuring the safety and health of  
19 employees involved with State capital improvement projects, and to  
20 recommend to the appropriate agencies and to the General Assembly,  
21 after consultation with the Commissioner of Labor, changes in the  
22 terms and conditions of construction contracts, State regulations, or  
23 State laws that will enhance employee safety and health on these  
24 projects.

25 (9) ~~Effective July 1, 1996, to~~To authorize a State agency, a local  
26 governmental unit, or any other entity subject to the provisions of G.S.  
27 143-129 to use a method of contracting not authorized under ~~G.S. 143-~~  
28 ~~128, including the use of the single prime contracting system without~~  
29 ~~soliciting bids under both the single and separate prime contract~~  
30 ~~systems.~~G.S. 143-128. An authorization under this subdivision for an  
31 alternative contracting method shall be granted only under the  
32 following conditions:

33 a. An authorization shall apply only to a single project.

34 b. The entity seeking authorization must demonstrate to the  
35 Commission that the alternative contracting method is  
36 necessary because the project cannot be reasonably completed  
37 under the methods authorized under G.S. 143-128 or for such  
38 other reasons as the Commission, pursuant to its rules and  
39 criteria, deems appropriate and in the public's interest.

40 b1. The entity includes in its bid or proposal requirements that the  
41 contractor will file a plan for making a good faith effort to reach  
42 the minority participation goal set out in G.S. 143-128.2.



1 c. The authorization must be approved by ~~two-thirds~~ a majority of  
2 the members of the Commission present and voting.

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

5 (10) To adopt rules governing review and final approval of plans that are  
6 submitted to the State Construction Office pursuant to G.S. 58-31-40.  
7 The rules shall provide for the manner of submission of the plan by the  
8 owner, the type of structural work that may be completed by the owner  
9 pursuant to G.S. 58-31-40(c), and the expeditious review or  
10 completion of review of the plan in a manner that ensures that the  
11 building will meet the fire safety requirements of G.S. 58-31-40(b).

12 (11) To direct the Department in the development of rules for agency  
13 evaluation of energy savings contracts pursuant to G.S. 143-64.17F.

14 (12) To develop dispute resolution procedures, including mediation, for  
15 subcontractors under any of the construction methods authorized under  
16 G.S. 143-128(a1) on State capital improvement projects, including  
17 building projects of The University of North Carolina, and community  
18 college buildings as defined in subdivision (4) of this section, for use  
19 by any public entity that has not developed its own dispute resolution  
20 process.

21 (13) To adopt rules governing the use of open-end design agreements for  
22 State capital improvement projects and community college buildings  
23 as defined in subdivision (4) of this section, where the fee does not  
24 exceed the amount specified in G.S. 143-64.34(b).

25 (14) ~~The Commission shall~~ To submit an annual report of its activities to  
26 the Governor and the Joint Legislative Commission on Governmental  
27 Operations."

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

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

### 40 41 **PART III. ENERGY EFFICIENCY IN STATE BUILDINGS**

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

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

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

5   "**§ 143-64.17. Definitions.**

6       As used in this Part:

7           (1) "Energy conservation measure" means a facility alteration, training, or  
8 services related to the operation of the facility, when the alteration,  
9 training, or services provide anticipated energy savings. Energy  
10 conservation measure includes any of the following:

11           a. Insulation of the building structure and systems within the  
12 building.

13           b. Storm windows or doors, caulking, weatherstripping,  
14 multiglazed windows or doors, heat-absorbing or heat-reflective  
15 glazed or coated window or door systems, additional glazing,  
16 reductions in glass area, or other window or door system  
17 modifications that reduce energy consumption.

18           c. Automatic energy control systems.

19           d. Heating, ventilating, or air-conditioning system modifications  
20 or replacements.

21           e. Replacement or modification of lighting fixtures to increase the  
22 energy efficiency of a lighting system without increasing the  
23 overall illumination of a facility, unless an increase in  
24 illumination is necessary to conform to the applicable State or  
25 local building code or is required by the light system after the  
26 proposed modifications are made.

27           f. Energy recovery systems.

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

31           h. Other energy conservation measures.

32           (2) "Energy savings" means a measured reduction in fuel costs, energy  
33 costs, or operating costs created from the implementation of one or  
34 more energy conservation measures when compared with an  
35 established baseline of previous fuel costs, energy costs, or operating  
36 costs developed by the local governmental unit.

37           (3) "Guaranteed energy savings contract" means a contract for the  
38 evaluation, recommendation, or implementation of energy  
39 conservation measures, including the design and installation of  
40 equipment or the repair or replacement of existing equipment, in which  
41 all payments, except obligations on termination of the contract before

1 its expiration, are to be made over time, and in which energy savings  
2 are guaranteed to exceed costs.

3 (4) ~~"Local governmental"~~ "Governmental unit" means an agency, board, or  
4 commission of the State or any board or governing body of a political  
5 subdivision of the State, including any board of a community college,  
6 any school board, or an agency, commission, or authority of a political  
7 subdivision of the State.

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

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

- 14 a. The name and address of the local governmental unit.
- 15 b. The name, address, title, and telephone number of a contact  
16 person in the local governmental unit.
- 17 c. Notice indicating that the local governmental unit is requesting  
18 qualified providers to propose energy conservation measures  
19 through a guaranteed energy savings contract.
- 20 d. The date, time, and place where proposals must be received.
- 21 e. The evaluation criteria for assessing the proposals.
- 22 f. A statement reserving the right of the ~~local~~ governmental unit to  
23 reject any or all the proposals.
- 24 g. Any other stipulations and clarifications the ~~local~~ governmental  
25 unit may require."

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

27 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

28 (a) Before entering into a guaranteed energy savings contract, a local  
29 governmental unit shall issue a request for proposals. Notice of the request shall be  
30 published at least 15 days in advance of the time specified for opening of the proposals  
31 in at least one newspaper of general circulation in the geographic area for which the  
32 local governmental unit is responsible. No guaranteed energy savings contract shall be  
33 awarded by any ~~governing body~~ governmental unit unless at least two proposals have  
34 been received from qualified providers. Provided that if after the publication of the  
35 notice of the request for proposals, fewer than two proposals have been received from  
36 qualified providers, the ~~governing body of the local~~ governmental unit shall again  
37 publish notice of the request and if as a result of the second notice, one or more  
38 proposals by qualified providers are received, the ~~governing body~~ governmental unit  
39 may then open the proposals and select a qualified provider even if only one proposal is  
40 received.

41 (b) The ~~local~~ governmental unit shall evaluate a sealed proposal from any  
42 qualified provider. Proposals shall contain estimates of all costs of installation,

1 modification, or remodeling, including costs of design, engineering, installation,  
2 maintenance, repairs, and debt service, ~~and~~ estimates of energy savings.

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

8 (1) The information required in subsection (b) of this section; and

9 (2) The criteria stated in the request for proposals.

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

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

18 (1) Prices offered;

19 (2) Proposed costs of construction, financing, maintenance, and training;

20 (3) Quality of the products proposed;

21 (4) Amount of energy savings;

22 (5) General reputation and performance capabilities of the qualified  
23 providers;

24 (6) Substantial conformity with the specifications and other conditions set  
25 forth in the request for proposals;

26 (7) Time specified in the proposals for the performance of the contract;  
27 and

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

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

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

33 "**§ 143-64.17B. Guaranteed energy savings contracts.**

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

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

39 (2) The ~~local~~ governmental unit finds that the energy savings resulting  
40 from the performance of the contract will equal or exceed the total cost  
41 of the contract.

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

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

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

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

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

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

28 "**§ 143-64.17D. Contract continuance.**

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

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

35 "**§ 143-64.17F. State agencies to use contracts when feasible.**

36 State governmental units, including State universities, shall evaluate the use of  
37 guaranteed energy savings contracts in reducing energy costs and may use those  
38 contracts when feasible and practical. The Department of Administration, under the  
39 direction of the State Building Commission, shall develop rules for agency evaluation of  
40 guaranteed energy savings contracts."

41 **SECTION 12.(g)** The Department of Administration shall develop a plan for  
42 establishing and implementing an energy efficiency goal for all State buildings. The

1 Department shall report the plan to the General Assembly no later than December 31,  
2 2002, by filing copies with the Office of the President Pro Tempore of the Senate, the  
3 Office of the Speaker of the House of Representatives, the legislative Fiscal Research  
4 Division, and the Legislative Library.

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

#### 8 **PART IV. LANDSCAPE ARCHITECTURE LAW CHANGES**

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

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

26 a. The location and orientation of buildings and other similar site  
27 elements.

28 b. The location, routing and design of public and private streets,  
29 residential and commercial subdivision roads, or roads in and  
30 providing access to private or public developments. This does  
31 not include the preparation of construction plans for proposed  
32 roads classified as major thoroughfares or a higher  
33 classification.

34 c. The location, routing and design of private and public pathways  
35 and other travelways.

36 d. The preparation of planting plans.

37 e. The design of surface or incidental subsurface drainage  
38 systems, soil conservation and erosion control measures  
39 necessary to an overall landscape plan and site design."

40 **SECTION 13.1.(b)** The State Board of Examiners for Engineers and  
41 Surveyors and the Board of Landscape Architects shall agree to a Memorandum of  
42 Understanding that identifies areas of overlap or common practice regarding the scope

1 of their respective professions and means for resolving disputes concerning standards of  
2 practice, qualifications, and jurisdiction regarding the identified areas of overlap. The  
3 parties shall send a joint written report to the General Assembly no later than April 30,  
4 2002, concerning the Memorandum of Understanding and whether the changes in  
5 Section 13.1(a) of this act should be repealed or modified, and the General Assembly  
6 may consider and take action on the report during its session in 2002 or at any other  
7 time as it may consider appropriate.

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

11 This study shall include an examination of:

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

22 In considering appointees to the committee to study this matter, the  
23 appointing authorities shall consider inclusion of representatives of the following  
24 groups:

- 25 (1) The State Board of Landscape Architects.
- 26 (2) The State Board of Examiners for Engineers and Surveyors.
- 27 (3) The Consulting Engineers Council of North Carolina.
- 28 (4) The North Carolina Chapter of the American Society of Landscape  
29 Architects.
- 30 (5) The Professional Engineers of North Carolina, Inc.
- 31 (6) The North Carolina League of Landscape Architects.
- 32 (7) The academic community involved in instruction in the area of  
33 engineering and landscape architecture.

34 The Legislative Research Commission may make an interim report to the  
35 2001 General Assembly, Regular Session 2002, and shall make a final report to the  
36 2003 General Assembly upon its convening. The reports may include proposed  
37 legislation to carry out the recommendations of the study.

38 **SECTION 13.1.(d)** This section is effective when this act becomes law.  
39

#### 40 **PART V. MISCELLANEOUS PROVISIONS**

41 **SECTION 14.** Annually, on or before April 1<sup>st</sup>, beginning April 1, 2003,  
42 The University of North Carolina and all other public entities shall report to the

1 Secretary of the Department of Administration on the effectiveness and cost-benefit of  
2 utilization of each of the construction methods authorized in G.S. 143-128(a1) that are  
3 used by the public entity. The reports, which shall be initially filed in the year in which  
4 the project is completed, shall be in the format and contain the data prescribed by the  
5 Secretary of Administration and shall include at least the following:

6 (1) The total dollar value of building projects by specific project with  
7 costs.

8 (2) The bid costs and relevant post-bid costs.

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

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

## 15 **PART VI. EFFECTIVE DATE**

16 **SECTION 15.(a)** Sections 8(a) through 8(e) of this act become effective  
17 July 1, 2001. Section 11.1 of this act becomes effective March 1, 2002. The remaining  
18 sections of Parts I and II of this act become effective January 1, 2002, and apply to  
19 construction projects for which bids or proposals are solicited on or after that date. The  
20 remainder of this act is effective when it becomes law. Sections 8(a) through 8(e) of this  
21 act expire December 31, 2006.

22 **SECTION 15.(b)** The State Building Commission shall adopt temporary  
23 rules to implement G.S. 143-135.26(10) and G.S. 143-135.26(12) as enacted by Section  
24 11 of this act no later than 60 days following the effective date of Section 11 of this act.  
25 The Secretary of Administration shall adopt rules to implement G.S. 143-128.2(f) as  
26 enacted by Section 3.1 of this act no later than June 30, 2002. Prior to July 1, 2002, a  
27 bidder must show compliance with at least five of the 10 efforts as set forth in G.S.  
28 143-128.2(f) as enacted by Section 3.1 of this act.

29 **SECTION 15.(c)** A city, county, or other public entity, other than the State,  
30 may apply verifiable percentage goals enacted prior to the effective date of Section 3.1  
31 of this act to building projects undertaken on or after the effective date of Section 3.1 of  
32 this act.  
33