

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-496
SENATE BILL 914**

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 AMEND THE LAW GOVERNING LANDSCAPE ARCHITECTURE; AND TO APPROPRIATE FUNDS TO IMPLEMENT THE PUBLIC CONSTRUCTION LAW CHANGES.

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.

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

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk was selected.
- (2) The terms of the contract with the construction manager at risk.
- (3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.
- (4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting."

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

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

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

- (1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- (2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.
- (3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.
- (4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

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

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The prequalification criteria shall be determined by the public entity and the construction manager at risk to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the public entity. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to G.S. 143-128.2. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

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

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

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

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

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

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

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

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

- (1) Separate-prime bidding.
- (2) Single-prime bidding.
- (3) Dual bidding pursuant to subsection (d1) of this section.
- (4) Construction management at risk contracts pursuant to G.S. 143-128.1.
- (5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).

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

128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

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

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

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

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

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

- ~~(1) Heating, ventilating, and air conditioning;~~
- ~~(2) Plumbing;~~
- ~~(3) Electrical; and~~
- ~~(4) General.~~

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

~~The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts~~

apply to all single prime bidding and single prime contracts, regardless of whether bidding in the alternative between the single prime and separate prime systems has been waived by the State Building Commission. When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (g) of this section.

~~(d1) Local school administrative units; building projects over five hundred thousand dollars (\$500,000). Dual bidding. – When the entire cost of the building project is more than five hundred thousand dollars (\$500,000), a local school administrative unit shall seek bids as provided in subsection (b) or (d) of this section or this subsection. The local school administrative unit The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest ~~responsible~~ responsible, responsive bidder under the single-prime system or to the lowest ~~responsible~~ responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids ~~for performance~~ to perform the contract. In determining the system under which the contract will be awarded to the lowest ~~responsible~~ responsible, responsive bidder, the local school administrative unit public entity may consider cost of construction oversight, time for completion, and other factors it ~~deems~~ considers appropriate. The local school administrative unit shall not ~~open any bid solicited under subsection (d) of this section unless the unit receives at least three competitive bids from reputable and qualified contractors regularly engaged in their respective lines of endeavor and unless the unit receives a bid from at least one general contractor under the separate prime system.~~ The bids received as separate-prime bids shall be submitted ~~three hours~~ received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the local school administrative unit public entity under the separate-prime system. Each ~~single prime bid that identifies the contractors selected to perform the three major subdivisions or branches of work described in subsection (d) of this section and that lists the contractors' respective bid prices for those branches of work shall constitute a single competitive bid, and each full set of separate prime bids for all of the branches of work described in subsection (d) of this section shall constitute a single competitive bid.~~ If after advertisement as required by G.S. 143-129, the local school administrative unit has not received the minimum number of competitive bids as required by this subsection, the unit shall again advertise for bids. If the required minimum number of bids is not received as a result of the second advertisement, the unit may let the contract to the lowest ~~responsible~~ bidder that submitted a bid for the project, even though the unit received only one bid. A contractor must provide an affidavit to the local school administrative unit that it has made the good faith effort required pursuant to G.S. 143-128(f), and failure to file the affidavit is grounds for rejection of the bid. All provisions of Article 8 of Chapter 143 of the General Statutes that are not inconsistent with this subsection shall apply to local school administrative units. The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded pursuant to this section and the provisions of subsection (d) of this section shall apply to single-prime contracts awarded pursuant to this section.~~

(e) Project expeditor; scheduling; public body to resolve project disputes. – The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on ~~the a~~ project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expeditor may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expeditor, if required by the contract documents, shall be responsible for ~~the preparation of~~ preparing the project schedule and

shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may provide in the contract documents for resolution of project disputes through alternative dispute resolution processes ~~such as mediation or arbitration as~~ provided for in subsection (g) of this section.

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

- ~~(1) The term "minority business" means a business:~~
 - ~~a. In which at least fifty one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty one percent (51%) of the stock is owned by one or more minority persons; and~~
 - ~~b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.~~
- ~~(2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:~~
 - ~~a. Black, that is, a person having origins in any of the black racial groups in Africa;~~
 - ~~b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;~~
 - ~~c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;~~
 - ~~d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or~~
 - ~~e. Female.~~
- ~~(3) The term "verifiable goal" means:~~
 - ~~a. For purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.~~
 - ~~b. For purposes of the single prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.~~
 - ~~c. For purposes of an alternative contracting system authorized by the State Building Commission under G.S. 143-135.26(9), that the awarding authority has adopted written guidelines specifying the action to be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section. The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be~~

~~construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority business contractors or minority business subcontractors who do not submit the lowest responsible bid or bids.~~

(g) Dispute resolution. – A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(12), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the parties involved in the public entity's construction project including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars (\$15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.

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

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

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

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

"§ 143-128.2. Minority business participation goals.

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

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

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

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

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (f) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

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

- a. An affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith effort; or
- b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

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

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

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

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

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

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

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

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

- (2) Attend the scheduled prebid conference.
- (3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time, and location where bids are to be submitted.
 - c. The name of the individual within the public entity who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist.
- (4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

(f) A public entity shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The public entity may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- (5) Attending any prebid meetings scheduled by the public owner.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

(g) As used in this section:

- (1) The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
- (3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

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

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

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

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

"§ 113-315.36. Building contracts.

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

- (1) Repealed by Session Laws 1999-368, s. 1.
- (2) Except for ~~G.S. 143-128(f)~~, G.S. 143-128.2, Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority that require the estimated expenditure of public money in an

amount less than two hundred fifty thousand dollars (\$250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contract.

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

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

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

"§ 143-129.4. Guaranteed energy savings contracts.

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

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

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

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

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

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

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

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

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

to read:

"§ 143-128.3. Minority business participation administration.

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

- (1) The verifiable percentage goal.
- (2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.
- (3) The utilization of minority businesses under the various construction methods under G.S. 143-128(a1).

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

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

- (1) That the public entity consult with the Department of Administration, Office of Historically Underutilized Businesses on the development of a new corrective plan, subject to the approval of the Department and the Attorney General. The public entity may designate a representative to appear on its behalf, provided that the representative has managerial responsibility for the construction project.
- (2) That the public entity not bid another contract under G.S. 143-128 without prior review by the Department and the Attorney General of a good faith compliance plan developed pursuant to subdivision (1) of this subsection. The public entity shall be subject to the review and approval of its good faith compliance plan under this subdivision with respect to any projects bid pursuant to G.S. 143-128 during a period of time determined by the Secretary, not to exceed one year.

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

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

(d) The Secretary shall appoint an advisory board to develop recommendations to improve the recruitment and utilization of minority businesses. The Secretary, with the input of its advisory board, shall review the State's programs for promoting the recruitment and utilization of minority businesses involved in State capital projects and

shall recommend to the General Assembly, the State Construction Office, The University of North Carolina, and the community colleges system changes in the terms and conditions of State laws, rules, and policies that will enhance opportunities for utilization of minority businesses on these projects. The Secretary shall provide guidance to these agencies on identifying types of projects likely to attract increased participation by minority businesses and breaking down or combining elements of work into economically feasible units to facilitate minority business participation.

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

(f) The Secretary shall provide the following information to the Attorney General:

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

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

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

"(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~one hundred thousand dollars (\$100,000)~~ three hundred thousand dollars (\$300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

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

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

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

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

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

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

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest ~~responsible~~ responsible.

responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

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

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

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

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

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

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

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

- (1) ~~One Three hundred thousand dollars (\$100,000)(\$300,000)~~ for the repair of public buildings where such repair does not include major structural change in framing or foundation support systems,
- (1a) One hundred thousand dollars (\$100,000) for the repair of public buildings affecting life safety systems,
- (2) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand dollars (\$135,000) for the repair of public buildings where such repair includes major structural change in framing or foundation support systems, or
- (3) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand dollars (\$135,000) for the construction of, or additions to, public buildings or State-owned and operated utilities,

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

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

"(a) When the total amount of construction contracts awarded for any one project exceeds ~~one hundred~~ ~~three hundred thousand dollars (\$100,000)~~ ~~(\$300,000)~~, a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than ~~fifteen thousand dollars (\$15,000)~~ fifty thousand dollars (\$50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

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

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

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

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

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

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

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

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

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

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

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

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

"(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 - 1. All State buildings; buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and
 - 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to G.S. 143-6 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

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

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

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

- (1) ~~wherein~~ The plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, or on projects ~~Inspector.~~
- (2) The project is exempt from the State Building Code.
- (3) The project has a total projected cost of less than \$100,000 and does not alter life safety systems."

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

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

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

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

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

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

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

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

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

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

PART II. CONSTRUCTION AND DESIGN ADMINISTRATION

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

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

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

- (1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement ~~project and project~~, the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project and a construction manager at risk selected for each capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the ~~designer and the final selection of the designer, consultant or construction manager at risk~~ except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the ~~designer and the final selection of the designer, consultant, or the construction manager at risk~~ and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible and accountable for the final selection of the ~~designer and the final selection of the consultant, designer, consultant, or construction manager at risk~~. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided,

however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning only; provided, further, the Director of the Budget, after consultation with the State Construction Office, may waive the 60-day requirement for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects. The Director of the Budget also may, after consultation with the State Construction Office, schedule the availability of design and construction funds for capital improvement projects for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects.

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

- (2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement ~~projects, and community college buildings, as defined in subdivision (4) of this section. The rules shall provide for a specific time frame for plan review and approval and permit issuance by each agency, consistent with applicable laws. The time frames shall be established to provide for expeditious review, approval, and permitting of State capital improvement projects and community college buildings.~~
- (2a) To adopt rules exempting specified types of State capital improvement projects, including community college buildings as defined in subdivision (4) of this section, from plan review.
- (3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.
- (4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings, as defined in G.S. 143-336, requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129, and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects and community college buildings.
- (5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.
- (6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.
- (7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its ~~work, and work.~~
- (8) To review the State's provisions for ensuring the safety and health of employees involved with State capital improvement projects, and to recommend to the appropriate agencies and to the General Assembly, after consultation with the Commissioner of Labor, changes in the

terms and conditions of construction contracts, State regulations, or State laws that will enhance employee safety and health on these projects.

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

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

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

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

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

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

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

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

"(c) The Commissioner shall review a plan subject to subsection (b) of this section within 30 days of submission, provided that the Commissioner may require one additional 30-day extension if necessary to complete the review. If the Commissioner has neither approved nor denied the plan during the initial 30-day review period, the owner may proceed with the building site preparation, the building foundation, and any structural components of the building that are not subject to inspection for the purposes set forth in subsection (b) of this section. If the Commissioner has neither approved nor

denied the plan within 60 days of submission, the owner may request review and final approval under subsection (b) of this section by the Department of Administration, State Construction Office, pursuant to rules adopted under G.S. 143-135.26."

PART III. LANDSCAPE ARCHITECTURE LAW CHANGES

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

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

- a. The location and orientation of buildings and other similar site elements.
- b. The location, routing and design of public and private streets, residential and commercial subdivision roads, or roads in and providing access to private or public developments. This does not include the preparation of construction plans for proposed roads classified as major thoroughfares or a higher classification.
- c. The location, routing and design of private and public pathways and other travelways.
- d. The preparation of planting plans.
- e. The design of surface or incidental subsurface drainage systems, soil conservation and erosion control measures necessary to an overall landscape plan and site design."

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

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

This study shall include an examination of:

- (1) The qualifications and education of landscape architects.
- (2) The definition of landscape architecture in G.S. 89A-1(3), as amended by subsection 13.1(a) of this act, and whether the changes made in subsection 13.1(a) of this act should be repealed or modified.

- (3) The areas of overlap or common practice regarding the scope of the professions of engineering and landscape architecture.
- (4) The governance and procedures of the State Board of Examiners for Engineers and Surveyors and the Board of Landscape Architects in their respective roles in protecting the public health, safety, and welfare of the people of the State.

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

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

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

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

PART IV. MISCELLANEOUS PROVISIONS

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

- (1) The type of construction method used on the project.
- (2) The total dollar value of building projects by specific project with costs.
- (3) The bid costs and relevant post-bid costs.
- (4) A detailed listing of all contractors and subcontractors used on the project indicating whether the contractor or subcontractor was an out-of-state contractor or subcontractor.
- (5) If any contractor or subcontractor was an out-of-state contractor or subcontractor, the reasons why the contractor or subcontractor was selected.

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

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

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

Session of the 2001 General Assembly and shall file a final report to the 2003 General Assembly.

SECTION 13.3.(a) There is appropriated from the General Fund to the Department of Administration the sum of seven hundred seventy-one thousand two hundred sixty-four dollars (\$771,264) for the 2001-2002 fiscal year and the sum of seven hundred forty-eight thousand four hundred seventy-eight dollars (\$748,478) for the 2002-2003 fiscal year to implement the provisions of this act. The funds shall be allocated as follows:

	<u>Fiscal Year 2001-2002</u>	<u>Fiscal Year 2002-2003</u>
Office of the Secretary	\$ 32,396	\$ 64,791
State Construction Office	\$232,800	\$349,810
Office of Historically Underutilized Business	\$506,098	\$333,877.

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

PART V. EFFECTIVE DATE

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

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

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

In the General Assembly read three times and ratified this the 6th day of December, 2001.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:23 p.m. this 19th day of December, 2001