

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

S

2

**SENATE BILL 1213\*  
Judiciary II Committee Substitute Adopted 6/16/10**

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

---

Sponsors:

---

Referred to:

---

May 19, 2010

A BILL TO BE ENTITLED

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

11 The General Assembly of North Carolina enacts:

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

13 **"§ 18C-150. Procurements.**

14 The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but  
15 may use the services of the Department of Administration in procuring goods and services for  
16 the Commission. However, the Commission shall include in all contracts to be awarded by the  
17 Commission under this section a standard clause which provides that the State Auditor and  
18 internal auditors of the Commission may audit the records of the contractor during the term of  
19 the contract to verify accounts and data affecting fees and performance. The Commission shall  
20 not award a cost plus percentage of cost contract for any purpose. For purposes of this  
21 provision, "cost plus percentage of cost contract" is defined as a contract under which the  
22 contractor receives payment for indeterminate costs plus a stated percentage or amount of profit  
23 based upon such costs. This provision shall not apply to Commission contracts that require  
24 costs to be predetermined and approved by the Commission and a total not to exceed the  
25 amount specified in each contract to be paid to the contractor."

26 **SECTION 2.** G.S. 53-320(d) reads as rewritten:

27 **"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

28 ...

29 (d) The Commissioner may enter into agreements with any bank supervisory agency  
30 supervising (i) a State trust institution engaging in trust business outside this State or (ii) an  
31 out-of-state trust institution maintaining a trust office or representative trust office in this State  
32 to engage the services of the agency's examiners at a reasonable rate of compensation or to  
33 provide the services of the Commissioner's examiners to the agency at a reasonable rate of  
34 compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements  
35 authorized by this subsection. However, the Commissioner shall: (i) submit all proposed  
36 statewide and agency term agreements or contracts for supplies, materials, printing, equipment,  
37



1 and contractual services that exceed one million dollars (\$1,000,000) authorized by this  
2 subsection to the Attorney General or the Attorney General's designee for review as provided in  
3 G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the  
4 Commissioner under this subsection a standard clause which provides that the State Auditor  
5 and internal auditors of the Commissioner may audit the records of the contractor during the  
6 term of the agreement or contract to verify accounts and data affecting fees and performance.  
7 The Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
8 purpose.

9 ...."

10 **SECTION 3.** G.S. 53-326(d) reads as rewritten:

11 **"§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

12 ...

13 (d) The Commissioner may enter into agreements with bank supervisory agencies  
14 supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a  
15 foreign trust institution maintaining a trust office or representative trust office in this State to  
16 engage the services of the bank supervisory agency's examiners at a reasonable rate of  
17 compensation or to provide the services of the Commissioner's examiners to the bank  
18 supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the  
19 General Statutes does not apply to agreements authorized by this section. However, the  
20 Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts  
21 for supplies, materials, printing, equipment, and contractual services that exceed one million  
22 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney  
23 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or  
24 contracts to be awarded by the Commissioner under this subsection a standard clause which  
25 provides that the State Auditor and internal auditors of the Commissioner may audit the records  
26 of the contractor during the term of the agreement or contract to verify accounts and data  
27 affecting fees and performance. The Commissioner shall not award a cost plus percentage of  
28 cost agreement or contract for any purpose.

29 ...."

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

31 **"§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

32 The Commissioner, for the purpose of exercising any power under the provisions of this  
33 Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks  
34 necessary to properly conduct the business of or liquidate and distribute the assets of a State  
35 trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and  
36 clerks; and (iii) pay the compensation of those persons out of the assets of the State trust  
37 company. Provided, that all expenditures described in this section shall be approved by the  
38 resident or presiding judge in the county in which the action is pending. Payments made by the  
39 Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of  
40 Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes  
41 the Commissioner's duly appointed agents. The Commissioner shall: (i) submit all proposed  
42 statewide and agency term agreements or contracts for supplies, materials, printing, equipment,  
43 and contractual services that exceed one million dollars (\$1,000,000) authorized by this section  
44 to the Attorney General or the Attorney General's designee for review as provided in  
45 G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the  
46 Commissioner under this section a standard clause which provides that the State Auditor and  
47 internal auditors of the Commissioner may audit the records of the contractor during the term  
48 of the agreement or contract to verify accounts and data affecting fees and performance. The  
49 Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
50 purpose."

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

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

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

**SECTION 6.** G.S. 58-2-69(g) reads as rewritten:

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

...

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to licensees, for the provision of administrative services to licensees, or for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge licensees a reasonable fee for the costs associated with the licensees' use of online services and administrative services. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

**SECTION 7.** G.S. 58-33-30(e) reads as rewritten:

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

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

3 ...

4 (e) Examination.

5 ...

6 (4) The answers of the applicant to the examination shall be provided by the  
7 applicant under the Commissioner's supervision. The Commissioner shall  
8 give examinations at such times and places within this State as the  
9 Commissioner considers necessary reasonably to serve the convenience of  
10 both the Commissioner and applicants: Provided that the Commissioner may  
11 contract directly with persons for the processing of examination application  
12 forms and for the administration and grading of the examinations required  
13 by this section; the Commissioner may charge a reasonable fee in addition to  
14 the registration fee charged under G.S. 58-33-125, to offset the cost of the  
15 examination contract authorized by this subsection; and such contracts shall  
16 not be subject to Article 3 of Chapter 143 of the General Statutes. However,  
17 the Commissioner shall: (i) submit all proposed statewide and agency term  
18 agreements or contracts for supplies, materials, printing, equipment, and  
19 contractual services that exceed one million dollars (\$1,000,000) authorized  
20 by this subdivision to the Attorney General or the Attorney General's  
21 designee for review as provided in G.S. 114-8.3; and (ii) include in all  
22 contracts to be awarded by the Commissioner under this subdivision a  
23 standard clause which provides that the State Auditor and internal auditors  
24 of the Commissioner may audit the records of the contractor during the term  
25 of the contract to verify accounts and data affecting fees and performance.  
26 The Commissioner shall not award a cost plus percentage of cost contract for  
27 any purpose.

28 (5) The Commissioner shall collect in advance the examination and registration  
29 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The  
30 Commissioner shall make or cause to be made available to all applicants, for  
31 a reasonable fee to offset the costs of production, materials that he considers  
32 necessary for the applicants' proper preparation for examinations. The  
33 Commissioner may contract directly with publishers and other suppliers for  
34 the production of the preparatory materials, and contracts so let by the  
35 Commissioner shall not be subject to Article 3 of Chapter 143 of the General  
36 Statutes. However, the Commissioner shall: (i) submit all proposed  
37 statewide and agency term contracts for supplies, materials, printing,  
38 equipment, and contractual services that exceed one million dollars  
39 (\$1,000,000) authorized by this subdivision to the Attorney General or the  
40 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)  
41 include in all contracts to be awarded by the Commissioner under this  
42 subdivision a standard clause which provides that the State Auditor and  
43 internal auditors of the Commissioner may audit the records of the  
44 contractor during the term of the contract to verify accounts and data  
45 affecting fees and performance. The Commissioner shall not award a cost  
46 plus percentage of cost contract for any purpose.

47 ...."

48 **SECTION 8.** G.S. 58-33-125(e) reads as rewritten:

49 "§ 58-33-125. Fees.

50 ...

1 (e) A resident licensee may obtain a duplicate photo-bearing license at times and places  
2 within this State that the Commissioner considers necessary and reasonable to serve the  
3 convenience of both the Commissioner and the licensee. The Commissioner may contract  
4 directly with persons for processing of duplicate photo-bearing licenses, and the contract shall  
5 not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may  
6 charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the  
7 costs to the Department of duplicating the license, including costs associated with any contract  
8 entered into pursuant to this subsection. However, the Commissioner shall: (i) submit all  
9 proposed statewide and agency term contracts for supplies, materials, printing, equipment, and  
10 contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection  
11 to the Attorney General or the Attorney General's designee for review as provided in  
12 G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this  
13 subsection a standard clause which provides that the State Auditor and internal auditors of the  
14 Commissioner may audit the records of the contractor during the term of the contract to verify  
15 accounts and data affecting fees and performance. The Commissioner shall not award a cost  
16 plus percentage of cost agreement or contract for any purpose.

17 ...."

18 **SECTION 9.** G.S. 58-33-130(a) reads as rewritten:

19 **"§ 58-33-130. Continuing education program for licensees.**

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

- 24 (1) The content of continuing education courses;
- 25 (2) Accreditation of continuing education sponsors and programs;
- 26 (3) Accreditation of videotape or other audiovisual programs;
- 27 (4) Computation of credit;
- 28 (5) Special cases and exemptions;
- 29 (6) General compliance procedures; and
- 30 (7) Sanctions for noncompliance.

31 The Commissioner may contract directly with persons for the administration of the program  
32 provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143  
33 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide  
34 and agency term contracts for supplies, materials, printing, equipment, and contractual services  
35 that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney  
36 General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)  
37 include in all contracts to be awarded by the Commissioner under this subsection a standard  
38 clause which provides that the State Auditor and internal auditors of the Commissioner may  
39 audit the records of the contractor during the term of the contract to verify accounts and data  
40 affecting fees and performance. The Commissioner shall not award a cost plus percentage of  
41 cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to  
42 course providers to offset the cost of the program, including costs associated with contracts  
43 authorized by this subsection. The fee authorized by this subsection shall be in addition to the  
44 fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator"  
45 means any person with whom the Commissioner has contracted under this subsection.

46 ...."

47 **SECTION 10.** G.S. 58-71-40(d) reads as rewritten:

48 **"§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications**  
49 **generally.**

50 ...

1 (d) When a license is issued under this section, the Commissioner shall issue a picture  
2 identification card, of design, size, and content approved by the Commissioner, to the licensee.  
3 Each licensee must carry this card at all times when working in the scope of the licensee's  
4 employment. A licensee whose license terminates or is terminated shall surrender the  
5 identification card to the Commissioner within 10 working days after the termination. The  
6 Commissioner may contract directly with persons for the processing and issuance of picture  
7 identification cards required by this section and may charge a reasonable fee in addition to the  
8 license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service,  
9 including the costs associated with the contract authorized by this subsection. Contracts entered  
10 into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General  
11 Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term  
12 contracts for supplies, materials, printing, equipment, and contractual services that exceed one  
13 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the  
14 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all  
15 contracts to be awarded by the Commissioner under this subsection a standard clause which  
16 provides that the State Auditor and internal auditors of the Commissioner may audit the records  
17 of the contractor during the term of the contract to verify accounts and data affecting fees and  
18 performance. The Commissioner shall not award a cost plus percentage of cost agreement or  
19 contract for any purpose.

20 ...."

21 **SECTION 11.** G.S. 63A-24((1) reads as rewritten:

22 "**§ 63A-24. General laws apply to Authority; exceptions.**

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

- 26 (1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts  
27 for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user  
28 projects. That Article also does not apply to other contracts for projects, but,  
29 with respect to these other contracts, the powers and duties established in  
30 that Article shall be exercised by the Authority and the Secretary of  
31 Administration, and other State officers, employees, or agencies shall have  
32 no duties or responsibilities concerning the contracts. However, the  
33 Authority shall: (i) submit all proposed statewide and agency term contracts  
34 for supplies, materials, printing, equipment, and contractual services that  
35 exceed one million dollars (\$1,000,000) authorized by this subdivision to the  
36 Attorney General or the Attorney General's designee for review as provided  
37 in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the  
38 Authority under this subdivision a standard clause which provides that the  
39 State Auditor and internal auditors of the Authority may audit the records of  
40 the contractor during the term of the contract to verify accounts and data  
41 affecting fees and performance. The Authority shall not award a cost plus  
42 percentage of cost agreement or contract for any purpose.

43 ...."

44 **SECTION 12.** G.S. 84-23(d) reads as rewritten:

45 "**§ 84-23. Powers of Council.**

46 ...

47 (d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal  
48 with real or personal property in the same manner as any private person or corporation, subject  
49 only to the approval of the Governor and the Council of State as to the acquisition, rental,  
50 encumbering, leasing and sale of real property. The Council may borrow money upon its  
51 bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale

1 pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such  
2 borrowing either unsecured or secured by a mortgage on the Council's interest in real or  
3 personal property, and engage and contract with attorneys, underwriters, financial advisors, and  
4 other parties as necessary for such borrowing, with such borrowing and security subject to the  
5 approval of the Governor and the Council of State. The Council may utilize the services of the  
6 Purchase and Contract Division of the Department of Administration to procure personal  
7 property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.  
8 However, the Council shall: (i) submit all proposed statewide and agency term contracts for  
9 supplies, materials, printing, equipment, and contractual services that exceed one million  
10 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney  
11 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be  
12 awarded by the Council under this subsection a standard clause which provides that the State  
13 Auditor and internal auditors of the Council may audit the records of the contractor during the  
14 term of the contract to verify accounts and data affecting fees and performance. The Council  
15 shall not award a cost plus percentage of cost agreement or contract for any purpose."

16 **SECTION 13.** G.S. 89E-5(e) reads as rewritten:

17 **"§ 89E-5. Functions and duties of the Licensing Board.**

18 ...

19 (e) The Board may authorize expenditures deemed necessary to carry out the provisions  
20 of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The  
21 Board treasurer shall deposit funds received by the Board in one or more funds in banks or  
22 other financial institutions carrying deposit insurance and authorized to do business in North  
23 Carolina. Interest earned on such funds may remain in the funds account and may be expended  
24 as authorized by the Board to carry out the provisions of this Chapter. In no event may  
25 expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized  
26 and empowered to utilize the services of the Purchase and Contract Division of the Department  
27 of Administration for the procurement of personal property, in accordance with Article 3 of  
28 Chapter 143 of the General Statutes. The Board shall: (i) submit all proposed statewide and  
29 agency term contracts for supplies, materials, printing, equipment, and contractual services that  
30 exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General  
31 or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in  
32 all contracts to be awarded by the Board under this subsection a standard clause which provides  
33 that the State Auditor and internal auditors of the Board may audit the records of the contractor  
34 during the term of the contract to verify accounts and data affecting fees and performance. The  
35 Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

36 ...."

37 **SECTION 14.** G.S. 89F-5(d) reads as rewritten:

38 **"§ 89F-5. Powers and duties of the Board.**

39 ...

40 (d) The Board may employ the necessary personnel for the performance of its functions  
41 and shall fix their compensation within the limits of funds available to the Board. The Board  
42 may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of  
43 the General Statutes. The Board shall: (i) submit all proposed statewide and agency term  
44 contracts for supplies, materials, printing, equipment, and contractual services that exceed one  
45 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the  
46 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all  
47 contracts to be awarded by the Board under this subsection a standard clause which provides  
48 that the State Auditor and internal auditors of the Board may audit the records of the contractor  
49 during the term of the contract to verify accounts and data affecting fees and performance. The  
50 Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

51 ...."

1           **SECTION 15.** G.S. 108A-55(b) reads as rewritten:

2   "**§ 108A-55. Payments.**

3       ...

4       (b) Payments shall be made only to intermediate care facilities, hospitals and nursing  
5 homes licensed and approved under the laws of the State of North Carolina or under the laws of  
6 another state, or to pharmacies, physicians, dentists, optometrists or other providers of  
7 health-related services authorized by the Department. Payments may also be made to such  
8 fiscal intermediaries and to the capitation or prepaid health service contractors as may be  
9 authorized by the Department. Arrangements under which payments are made to capitation or  
10 prepaid health services contracts are not subject to the provisions of Chapter 58 of the General  
11 Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall:  
12 (i) submit all proposed statewide and agency term contracts for supplies, materials, printing,  
13 equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by  
14 this subsection to the Attorney General or the Attorney General's designee for review as  
15 provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the  
16 Department under this subsection a standard clause which provides that the State Auditor and  
17 internal auditors of the Department may audit the records of the contractor during the term of  
18 the contract to verify accounts and data affecting fees and performance. The Department shall  
19 not award a cost plus percentage of cost agreement or contract for any purpose.

20       ...."

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

23   "**§ 114-8.3. Attorney General to review certain contracts.**

24       (a) Except as provided in subsection (b) of this section, the Attorney General or the  
25 Attorney General's designee shall review all proposed statewide and agency term contracts for  
26 supplies, materials, printing, equipment, and contractual services that exceed one million  
27 dollars (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all  
28 clauses required by law, are legally enforceable, and accomplish the intended purposes of the  
29 proposed contract. The term "review" as used in this section shall not constitute approval or  
30 disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this  
31 subsection, the term "Attorney General's designee" shall include any attorney approved by the  
32 Attorney General to review contracts as provided in this subsection. The Attorney General shall  
33 require that any attorney designated under this subsection comply with any rules established by  
34 the Attorney General or the Department of Administration regarding the review of contracts.

35       (b) For the constituent institutions of The University of North Carolina, the General  
36 Counsel of each institution or the General Counsel's designee shall review all proposed  
37 statewide and agency term contracts for supplies, materials, printing, equipment, and  
38 contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed  
39 contracts are in proper legal form, contain all clauses required by law, are legally enforceable,  
40 and accomplish the intended purposes of the proposed contract. The term "review" as used in  
41 this section shall not constitute approval or disapproval of the policy merit or lack thereof of the  
42 proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall  
43 include any attorney approved by the General Counsel to review contracts as provided in this  
44 subsection. The General Counsel shall require that any attorney designated under this  
45 subsection comply with any rules established by the Attorney General or the Department of  
46 Administration regarding the review of contracts."

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

48   "**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

49       Notwithstanding any other provision of law, all fees collected by the Applied Textile  
50 Technology Center for services to the textile industry, except for regular curriculum and  
51 continuing education tuition receipts, shall be retained by the Center and used for the



1 operations of the Center. Purchases made by the Center using these funds are not subject to the  
2 provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall: (i)  
3 submit all proposed statewide and agency term agreements or contracts for supplies, materials,  
4 printing, equipment, and contractual services that exceed one million dollars (\$1,000,000)  
5 authorized by this section to the Attorney General or the Attorney General's designee for  
6 review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be  
7 awarded by the Center under this section a standard clause which provides that the State  
8 Auditor and internal auditors of the Center may audit the records of the contractor during the  
9 term of the contract to verify accounts and data affecting fees and performance. The Center  
10 shall not award a cost plus percentage of cost agreement or contract for any purpose."

11 **SECTION 18.(a)** G.S. 135-43(b) reads as rewritten:

12 **"§ 135-43. Confidentiality of information and medical records; provider contracts.**

13 ...

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

18 The terms of a contract between the Plan and its third party administrator or between the  
19 Plan and its pharmacy benefit manager are a public record except that the terms in those  
20 contracts that contain trade secrets or proprietary or competitive information are not a public  
21 record under Chapter 132 of the General Statutes, and any such proprietary or competitive  
22 information and trade secrets contained in the contract shall be redacted by the Plan prior to  
23 making it available to the public. This subsection shall not be construed to prevent or restrict  
24 the release of any information made not a public record under this subsection to the State  
25 Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive  
26 Administrator, and the Committee on Employee Hospital and Medical Benefits solely and  
27 exclusively for their use in the furtherance of their duties and responsibilities, and to the  
28 Department of Health and Human Services solely for the purpose of implementing the  
29 transition of NC Health Choice from the Plan to the Department of Health and Human  
30 Services. The design, adoption, and implementation of the preferred provider contracts,  
31 networks, and optional alternative comprehensive health benefit plans, and programs available  
32 under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the  
33 requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive  
34 Administrator and Board of Trustees shall: (i) submit all proposed statewide and agency term  
35 contracts for supplies, materials, printing, equipment, and contractual services that exceed one  
36 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the  
37 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all  
38 proposed contracts to be awarded by the Executive Administrator and Board of Trustees under  
39 this section a standard clause which provides that the State Auditor and internal auditors of the  
40 Plan may audit the records of the contractor during the term of the contract to verify accounts  
41 and data affecting fees and performance. The Executive Administrator and Board of Trustees  
42 shall not award a cost plus percentage of cost agreement or contract for any purpose. The  
43 Executive Administrator and Board of Trustees shall make reports as requested to the President  
44 of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of  
45 Representatives, and the Committee on Employee Hospital and Medical Benefits.

46 ...."

47 **SECTION 18.(b)** G.S. 135-45 is amended by adding a new subsection to read:

48 "(d1) The Executive Administrator and Board of Trustees shall: (i) submit all proposed  
49 statewide and agency term contracts for supplies, materials, printing, equipment, and  
50 contractual services that exceed one million dollars (\$1,000,000) authorized by subsection (d)  
51 of this section to the Attorney General or the Attorney General's designee for review as

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

7 **SECTION 19.** G.S. 136-28.1(h) reads as rewritten:

8 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

9 ...

10 (h) The Department of Transportation may enter into contracts for applied research and  
11 experimental work without soliciting bids or proposals; provided, however, that if the research  
12 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article  
13 3 of Chapter 143 of the General Statutes shall apply. However, the Department of  
14 Transportation shall: (i) submit all proposed statewide and agency term contracts for supplies,  
15 materials, printing, equipment, and contractual services that exceed one million dollars  
16 (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's  
17 designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be  
18 awarded by the Department of Transportation under this subsection a standard clause which  
19 provides that the State Auditor and internal auditors of the Department of Transportation may  
20 audit the records of the contractor during the term of the contract to verify accounts and data  
21 affecting fees and performance. The Department of Transportation shall not award a cost plus  
22 percentage of cost agreement or contract for any purpose. The Department of Transportation is  
23 encouraged to solicit proposals when contracts are entered into with private firms when it is in  
24 the public interest to do so.

25 ...."

26 **SECTION 20.1.** G.S. 136-89.194(g) reads as rewritten:

27 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

28 ...

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

31 (1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the  
32 services of the Department of Administration in procuring goods and  
33 services that are not specific to establishing and operating a toll revenue  
34 system. However, the Authority shall: (i) submit all proposed statewide and  
35 agency term contracts for supplies, materials, printing, equipment, and  
36 contractual services that exceed one million dollars (\$1,000,000) authorized  
37 by this subdivision to the Attorney General or the Attorney General's  
38 designee for review as provided in G.S. 114-8.3; and, (ii) include in all  
39 proposed contracts to be awarded by the Authority under this subdivision a  
40 standard clause which provides that the State Auditor and internal auditors  
41 of the Authority may audit the records of the contractor during the term of  
42 the contract to verify accounts and data affecting fees and performance. The  
43 Authority shall not award a cost plus percentage of cost agreement or  
44 contract for any purpose.

45 ...."

46 **SECTION 20.2.** G.S. 143-48.1 is amended by adding a new subsection to read:

47 **"§ 143-48.1. Medicaid program exemption.**

48 (a) This Article shall not apply to any capitation arrangement or prepaid health service  
49 arrangement implemented or administered by the North Carolina Department of Health and  
50 Human Services or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. §  
51 1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.

1 (b) As used in this section, the following definitions apply:

2 (1) "Capitation arrangement" means an agreement whereby the Department of  
3 Health and Human Services pays a periodic per enrollee fee to a contract  
4 entity that provides medical services to Medicaid recipients during their  
5 enrollment period.

6 (2) "Prepaid health services" means services provided to Medicaid recipients  
7 that are paid on the basis of a prepaid capitation fee, pursuant to an  
8 agreement between the Department of Health and Human Services and a  
9 contract entity.

10 (c) The Department of Health and Human Services shall: (i) submit all proposed  
11 statewide and agency term contracts for a capitation arrangement or prepaid health services, as  
12 defined by this section, that exceed one million dollars (\$1,000,000) to the Attorney General or  
13 the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all  
14 agreements or contracts to be awarded by the Department under this section a standard clause  
15 which provides that the State Auditor and internal auditors of the Department may audit the  
16 records of the contractor during the term of the contract to verify accounts and data affecting  
17 fees and performance. The Department shall not award a cost plus percentage of cost agreement  
18 or contract for any purpose."

19 **SECTION 21.** G.S. 143-49 is amended by adding the following new subdivision to  
20 read:

21 **"§ 143-49. Powers and duties of Secretary.**

22 ...

23 (9) To include a standard clause in all contracts awarded by the State and  
24 departments, agencies, and institutions of the State, providing that the State  
25 Auditor and internal auditors of the affected department, agency, or  
26 institution may audit the records of the contractor during the term of the  
27 contract to verify accounts and data affecting fees or performance.

28 (10) To monitor and enforce the terms and conditions of statewide term contracts.  
29 The Secretary of Administration shall not delegate the power and authority  
30 granted under this subdivision to any other department, agency, or institution  
31 of the State.

32 (11) To develop rules, regulations, and procedures specifying the manner in  
33 which departments, agencies, and institutions of the State shall monitor and  
34 enforce agency term and non-term contracts.

35 (12) To consult with the Attorney General or the Attorney General's designee in  
36 developing rules, regulations, and procedures providing for the orderly and  
37 efficient submission of proposed statewide term, agency term, and non-term  
38 contracts to the Attorney General for review as provided in G.S. 114-8.3 and  
39 G.S. 143-52.2.

40 (13) To implement a quality management system equivalent to the International  
41 Organization for Standardization (ISO) 9001:2008 to ensure that citizen and  
42 agency customer requirements are met. By September 1, 2012, and more  
43 frequently as requested, the Secretary shall report to the Joint Legislative  
44 Commission on Governmental Operations, the Program Evaluation Division,  
45 and the Fiscal Research Division concerning the progress of the  
46 Department's effort to comply with the provisions of this subdivision.

47 (14) To work in conjunction with the Office of State Personnel to create a  
48 Contracting Specialist career path to provide for the designation of one or  
49 more employees within each department, agency, or institution of the State  
50 to serve as the Contracting Specialist for the department, agency, or

1 institution. Employees on the Contracting Specialist career path shall receive  
2 training and guidance as to the provisions of this Article.

3 (15) To work in conjunction with the Office of State Personnel, the Division of  
4 Purchase and Contract, and the University of North Carolina School of  
5 Government to develop a rigorous contract management training and  
6 certification program for State employees. The program shall be  
7 administered by the Office of State Personnel.

8 (16) To work in conjunction with the University of North Carolina School of  
9 Government to study and recommend improvements to State procurement  
10 laws, including the feasibility of adopting the provisions of the American  
11 Bar Association Model Procurement Code."

12 SECTION 22. G.S. 143-52 reads as rewritten:

13 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids;**  
14 **awarding of ~~contracts.~~contracts; cost plus percentage of cost contracts strictly**  
15 **prohibited.**

16 ...

17 (c) Neither the Department of Administration nor any department, agency, or institution  
18 of the State may award a cost plus percentage of cost contract for any purpose, except as  
19 provided in G.S. 18C-150."

20 SECTION 23. Article 3 of Chapter 143 of the General Statutes is amended by  
21 adding a new section to read:

22 "**§ 143-52.2. Certain contracts subject to review by Attorney General.**

23 The Secretary of Administration and every department, agency, and institution of the State  
24 shall submit all proposed statewide and agency term contracts for supplies, materials, printing,  
25 equipment, and contractual services that exceed one million dollars (\$1,000,000) to the  
26 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3(a).  
27 This section shall not apply to the constituent institutions of The University of North Carolina."

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

29 "**§ 143-134. Applicable to Department of Transportation and Department of Correction;**  
30 **~~exceptions.~~exceptions; all contracts subject to review by Attorney General and**  
31 **State Auditor.**

32 (a) This Article shall apply to the Department of Transportation and the Department of  
33 Correction except in the construction of roads, bridges and their approaches; provided however,  
34 that whenever the Director of the Budget determines that the repair or construction of a  
35 building by the Department of Transportation or by the Department of Correction can be done  
36 more economically through use of employees of the Department of Transportation and/or  
37 prison inmates than by letting such repair or building construction to contract, the provisions of  
38 this Article shall not apply to such repair or construction.

39 (b) Notwithstanding the provisions of subsection (a) of this section, the Department of  
40 Transportation and the Department of Correction shall: (i) submit all proposed statewide and  
41 agency term contracts for supplies, materials, printing, equipment, and contractual services that  
42 exceed one million dollars (\$1,000,000) to the Attorney General or the Attorney General's  
43 designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded  
44 by the Department of Transportation or the Department of Correction a standard clause which  
45 provides that the State Auditor and internal auditors of the Department of Transportation or the  
46 Department of Correction may audit the records of the contractor during the term of the  
47 contract to verify accounts and data affecting fees and performance. Neither the Department of  
48 Transportation nor the Department of Correction shall award a cost plus percentage of cost  
49 agreement or contract for any purpose."

50 SECTION 25. G.S. 143-151.16(d) reads as rewritten:

51 "**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

1 ...  
2 (d) The Board may contract with persons for the development and administration of the  
3 examinations required by G.S. 143-151.13(a), for course development related to the  
4 examinations, for review of a particular applicant's examination, and for other related services.  
5 The person with whom the Board contracts may charge applicants a reasonable fee for the costs  
6 associated with the development and administration of the examinations, for course  
7 development related to the examinations, for review of the applicant's examinations, and for  
8 other related services. The fee shall be agreed to by the Board and the other contracting party.  
9 The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars  
10 (\$175.00). Contracts for the development and administration of the examinations, for course  
11 development related to the examinations, and for review of examinations shall not be subject to  
12 Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the  
13 General Statutes. However, the Board shall: (i) submit all proposed statewide and agency term  
14 contracts for supplies, materials, printing, equipment, and contractual services that exceed one  
15 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the  
16 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all  
17 proposed contracts to be awarded by the Board under this subsection a standard clause which  
18 provides that the State Auditor and internal auditors of the Board may audit the records of the  
19 contractor during the term of the contract to verify accounts and data affecting fees and  
20 performance. The Board shall not award a cost plus percentage of cost agreement or contract  
21 for any purpose."

22 **SECTION 26.** G.S. 143B-131.2(b)(15) reads as rewritten:

23 **"§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

24 ...  
25 (b) The Commission shall have the following powers and duties:

26 ...  
27 (15) To procure supplies, services, and property as appropriate and to enter into  
28 contracts, leases, or other legal agreements to carry out the purposes of this  
29 Part and duties of the Commission. The provisions of G.S. 143-129 and  
30 Article 3 of Chapter 143 of the General Statutes do not apply to purchases by  
31 the Roanoke Island Commission of equipment, supplies, and services.  
32 However, the Commission shall: (i) submit all proposed statewide and  
33 agency term contracts for supplies, materials, printing, equipment, and  
34 contractual services that exceed one million dollars (\$1,000,000) authorized  
35 by this subdivision to the Attorney General or the Attorney General's  
36 designee for review as provided in G.S. 114-8.3; and (ii) include in all  
37 proposed contracts to be awarded by the Commission under this subdivision  
38 a standard clause which provides that the State Auditor and internal auditors  
39 of the Commission may audit the records of the contractor during the term of  
40 the contract to verify accounts and data affecting fees and performance. The  
41 Commission shall not award a cost plus percentage of cost agreement or  
42 contract for any purpose."

43 **SECTION 27.** G.S. 147-64.6(c)(18) reads as rewritten:

44 **"§ 147-64.6. Duties and responsibilities.**

45 ...  
46 (c) The Auditor shall be responsible for the following acts and activities:

47 ...  
48 (18) The Auditor shall, after consultation and in coordination with the State Chief  
49 Information Officer, assess, confirm, and report on the security practices of  
50 information technology systems. If an agency has adopted standards  
51 pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those

1 standards. The Auditor's assessment of information security practices shall  
2 include an assessment of network vulnerability. The Auditor may conduct  
3 network penetration or any similar procedure as the Auditor may deem  
4 necessary. The Auditor may enter into a contract with a State agency under  
5 G.S. 147-33.111(c) for an assessment of network vulnerability, including  
6 network penetration or any similar procedure. Any contract with the Auditor  
7 for the assessment and testing shall be on a cost-reimbursement basis. The  
8 Auditor may investigate reported information technology security breaches,  
9 cyber attacks, and cyber fraud in State government. The Auditor shall issue  
10 public reports on the general results of the reviews undertaken pursuant to  
11 this subdivision but may provide agencies with detailed reports of the  
12 security issues identified pursuant to this subdivision which shall not be  
13 disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State  
14 Chief Information Officer with detailed reports of the security issues  
15 identified pursuant to this subdivision. For the purposes of this subdivision  
16 only, the Auditor is exempt from the provisions of Article 3 of Chapter 143  
17 of the General Statutes in retaining contractors. However, the Auditor shall:  
18 (i) submit all proposed statewide and agency term contracts for supplies,  
19 materials, printing, equipment, and contractual services that exceed one  
20 million dollars (\$1,000,000) authorized by this subdivision to the Attorney  
21 General or the Attorney General's designee for review as provided in  
22 G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the  
23 Auditor under this subdivision a standard clause which provides that the  
24 Auditor may audit the records of the contractor during the term of the  
25 contract to verify accounts and data affecting fees and performance. The  
26 Auditor shall not award a cost plus percentage of cost agreement or contract  
27 for any purpose.

28 ...."

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