

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 332*

Short Title: Zoo and Zoo Funds Modifications. (Public)

Sponsors: Senators Brunstetter, Dorsett, Jones, Tillman, Weinstein; Albertson, Apodaca, Atwater, Berger of Rockingham, Bingham, Clodfelter, Davis, Foriest, Forrester, Garrou, Jacumin, Kinnaird, Preston, Purcell, Stevens, and Vaughan.

Referred to: State and Local Government.

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS ACT; AND TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

PART I: PURCHASING AND CONTRACTING AUTHORITY ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK

SECTION 1.1. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological Park.

(a) Exemption. – The North Carolina Zoological Park is a State entity whose primary purpose is the attraction of, interaction with, and education of the public regarding issues of global conservation, ecological preservation, and scientific exploration, and that purpose presents unique challenges requiring greater flexibility and faster responsiveness in meeting the needs of and creating the attractions for the Park. Accordingly, the Department of Environment and Natural Resources may use the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law, to contract with a non-State entity on behalf of the Park for the acquisition of goods and services where: (i) the contract directly results in the generation of revenue for the State of North Carolina; or (ii) the use of the acquired goods and services by the Park results in increased revenue or decreased expenditures for the State of North Carolina.

(b) Limitation. – Contracts executed pursuant to the exemption of subsection (a) of this section may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be



1 considered in awarding contracts shall be identified in the request for
 2 proposals.

3 (c) Procurement Methods. – The Department may use procurement methods set forth
 4 in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The
 5 Department may negotiate with any proposer in order to obtain a final contract that best meets
 6 the needs of the awarding authority. Negotiations allowed under this section shall not alter the
 7 contract beyond the scope of the original request for proposals in a manner that: (i) deprives the
 8 proposers or potential proposers of a fair opportunity to compete for the contract; and (ii)
 9 would have resulted in the award of the contract to a different person or entity if the alterations
 10 had been included in the request for proposals.

11 (d) Promotional Rights. – Subject to the approval of the Department, a non-State entity
 12 awarded a contract that results in increased revenue or decreased expenditures for the Park may
 13 advertise, announce, or otherwise publicize the provision of services pursuant to award of the
 14 contract."

15 **SECTION 1.2.** G.S. 143-135.9 reads as rewritten:

16 "**§ 143-135.9. ~~"Best Value" information technology procurements.~~Best Value**
 17 **procurements.**

18 (a) ~~For purposes of this section:~~Definitions. – The following definitions apply in this
 19 section:

20 (1) ~~"Best Value" procurement means the~~Best Value procurement. – The
 21 selection of a contractor based on a determination of which proposal offers
 22 the best trade-off between price and performance, where quality is
 23 considered an integral performance factor. The award decision is made
 24 based on multiple factors, including: total cost of ownership, meaning the
 25 cost of acquiring, operating, maintaining, and supporting a product or
 26 service over its projected lifetime; the evaluated technical merit of the
 27 vendor's proposal; the vendor's past performance; and the evaluated
 28 probability of performing the requirements stated in the solicitation on time,
 29 with high quality, and in a manner that accomplishes the stated business
 30 objectives and maintains industry standards compliance.

31 (2) ~~"Government Vendor Partnership" means a~~Government-Vendor partnership.
 32 – A mutually beneficial contractual relationship between State government
 33 and a contractor, wherein the two share risk and reward, and value is added
 34 to the procurement of ~~complex technology-needed goods or services.~~

35 (3) ~~"Information technology" includes electronic~~Information technology. –
 36 Electronic data processing and telecommunications goods and services,
 37 microelectronics, software, information processing, office systems, any
 38 services related to the foregoing, and consulting or other services for design
 39 and/or redesign of business processes.

40 (4) ~~"Solution-Based Solicitation" means a~~Solution-Based solicitation. – A
 41 solicitation in which the requirements are stated in terms of how the product
 42 or service being purchased should accomplish the business objectives, rather
 43 than in terms of the technical design of the product or service.

44 (b) Intent. – The intent of ~~"Best Value" Information Technology~~Best Value
 45 procurement is to enable contractors to offer and the agency to select the most appropriate
 46 solution to meet the business objectives defined in the solicitation and to keep all parties
 47 focused on the desired outcome of a procurement. ~~Business process reengineering, system~~
 48 design, and technology implementation may be combined into a single solicitation.

49 (c) Information Technology. – The acquisition of information technology by the State
 50 of North Carolina shall be conducted using the ~~"Best Value"~~Best Value procurement method.
 51 For purposes of this section, business process reengineering, system design, and technology

1 implementation may be combined into a single solicitation. For acquisitions which the
2 procuring agency and the Division of Purchase and Contracts or the Office of Information
3 Technology Services, as applicable, deem to be highly complex or determine that the optimal
4 solution to the business problem at hand is not known, the use of Solution-Based Solicitation
5 and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or
6 subdivision of the State may acquire information technology pursuant to this section.

7 ~~(d) Any county, city, town or subdivision of the State may acquire information~~
8 ~~technology pursuant to this section.~~

9 (e) North Carolina Zoological Park. – The acquisition of goods and services under a
10 contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of
11 Environment and Natural Resources on behalf of the North Carolina Zoological Park may be
12 conducted using the Best Value procurement method. For acquisitions which the procuring
13 agency deems to be highly complex, the use of Government-Vendor partnership is authorized."

15 **PART II: EXPANSION OF UMSTEAD ACT EXEMPTION FOR THE NORTH** 16 **CAROLINA ZOOLOGICAL PARK**

17 **SECTION 2.1.** G.S. 66-58(b) is amended by adding a new subdivision to read:

18 "(b) The provisions of subsection (a) of this section shall not apply to:

19 ...

20 (26) The North Carolina Zoological Park."

21 **SECTION 2.2.** G.S. 66-58(c)(18) is repealed.

23 **PART III: ADMINISTRATIVE IMPROVEMENTS TO THE NORTH CAROLINA** 24 **ZOOLOGICAL PARK OPERATIONS**

25 **SECTION 3.1.** The Secretary of the Department of Environment and Natural
26 Resources shall work with the North Carolina Zoological Park to do the following:

27 (1) Examine all purchasing and contracting policies and procedures. The
28 Department shall identify opportunities for delegating purchasing and
29 contracting responsibilities to the Park where appropriate. For purchases and
30 contracts involving promotion and advertising, the Department shall
31 consider increasing the amount over which the Park must solicit competitive
32 bids or quotes to five thousand dollars (\$5,000).

33 (2) Continue negotiations with the Office of Information Technology Services
34 regarding the implementation of Article 3D of Chapter 147 of the General
35 Statutes.

36 (3) Identify and address any other administrative concerns of the Park.

37 **SECTION 3.2.** The Secretary of the Department of Environment and Natural
38 Resources shall review the current Memorandum of Understanding between the Department
39 and the North Carolina Zoological Society. The Secretary shall work with the Society to make
40 appropriate revisions to or replace the Memorandum, as needed.

42 **PART IV: REPORT**

43 **SECTION 4.** The Department of Environment and Natural Resources shall report
44 to the North Carolina Zoological Park Funding and Organization Study Committee and to the
45 Fiscal Research Division of the Legislative Services Office on the progress and implementation
46 of Parts I and III of this act no later than January 15, 2010.

48 **PART V: ESTABLISHMENT OF COMMITTEE**

49 **SECTION 5.1.** Committee Established. – The North Carolina Zoological Park
50 Funding and Organization Study Committee is hereby established.

1 **SECTION 5.2.** Membership. – The Committee shall consist of 22 members as
2 follows:

- 3 (1) Five members of the Senate appointed by the President Pro Tempore of the
4 Senate.
- 5 (2) Five members of the House appointed by the Speaker of the House of
6 Representatives.
- 7 (3) The Secretary of Environment and Natural Resources, or the Secretary's
8 designee.
- 9 (4) The Director of the Zoological Park, or the Director's designee.
- 10 (5) The Secretary of Commerce, or the Secretary's designee.
- 11 (6) The Executive Director of the Division of Tourism, Film and Sports
12 Development of the Department of Commerce, or the Executive Director's
13 designee.
- 14 (7) The Chair of the North Carolina Zoological Park Council, or the Chair's
15 designee.
- 16 (8) The Chair of the board of directors of the North Carolina Zoological Society,
17 Inc., or the Chair's designee.
- 18 (9) Two additional representatives of the Zoo Society Board, who may be
19 comprised of current or former members, one appointed by the President Pro
20 Tempore of the Senate upon recommendation of the Chair of the Zoo
21 Society Board, one appointed by the Speaker of the House of
22 Representatives upon recommendation of the Chair of the Zoo Society
23 Board.
- 24 (10) Two representatives from the public at large appointed by the President Pro
25 Tempore of the Senate.
- 26 (11) Two representatives from the public at large appointed by the Speaker of the
27 House of Representatives.

28 **SECTION 5.3.** Cochairs. – The Committee shall have three cochairs, one
29 designated by the President Pro Tempore of the Senate and two designated by the Speaker of
30 the House of Representatives from among their respective appointees. The Committee shall
31 meet upon the call of the cochairs.

32 **SECTION 5.4.** Quorum. – A quorum of the Committee shall consist of 10
33 members.

34 **SECTION 5.5.** Vacancies. – Any vacancy on the Committee shall be filled by the
35 original appointing authority.

36 **SECTION 5.6.** Purpose and Duties. – The Committee shall study: (i) funding
37 issues associated with the Zoological Park, including current and expected capital and
38 operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the
39 current organizational structure of the Zoological Park, and other potential organizational
40 structures, including, but not limited to, reorganization as an authority, as a private nonprofit
41 corporation, or other entity to determine which organizational structure would most effectively
42 achieve the mission of the Zoological Park.

43 **SECTION 5.7.** Expenses of Members. – Members of the Committee shall receive
44 per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6,
45 as appropriate.

46 **SECTION 5.8.** Staff. – Upon the prior approval of the Legislative Services
47 Commission, the Legislative Services Officer shall assign professional staff to the Committee
48 to aid in its work.

49 **SECTION 5.9.** Consultants. – The Committee may hire consultants to assist with
50 the study as provided in G.S. 120-32.02(b).

1 **SECTION 5.10.** Meetings. – The Committee may meet in the Legislative Building
2 or the Legislative Office Building upon the approval of the Legislative Services Commission.

3 **SECTION 5.11.** Report. – The Committee shall report its findings and
4 recommendations to the 2010 Regular Session of the 2009 General Assembly and the
5 Environmental Review Commission on or before May 1, 2010, at which time the Committee
6 shall terminate.

7 **SECTION 5.12.** Funding. – From funds appropriated to the General Assembly, the
8 Legislative Services Commission shall allocate funds for the purpose of conducting the study
9 provided for in this act.

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11 **PART VI: EFFECTIVE DATE**

12 **SECTION 6.** This act is effective when it becomes law.