

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 1213 (Second Edition)

**SHORT TITLE:** Amend State Purchases & Contracts Laws.

**SPONSOR(S):** Senator Clodfelter

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>	<b><u>FY 2014-15</u></b>
<b>REVENUES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>EXPENDITURES</b>					
<b><u>General Fund</u></b>					
<b>Dept. of Justice:</b>	\$362,922	\$441,685	\$471,949	\$498,257	\$524,102
<b>Dept. of Admin.:</b>	\$818,272	\$776,550	\$834,919	\$885,593	\$924,427
<b>State Personnel:</b>	\$88,756	\$124,084	\$131,221	\$137,441	\$142,382
<b>DHHS, UNC System, Transportation Entities &amp; Dept. of Corrections:</b>	<b>SEE ASSUMPTIONS AND METHODOLOGY</b>				
<b>POSITIONS (cumulative)</b>					
<b>Dept. of Justice:</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Dept. of Admin.:</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
<b>State Personnel:</b>	<b>0.75</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>DHHS, UNC System, Transportation Entities &amp; Dept. of Corrections:</b>	<b>SEE ASSUMPTIONS AND METHODOLOGY</b>				

**PRINCIPAL DEPARTMENT(S) &**

**PROGRAM(S) AFFECTED:** Department of Justice, Department of Administration, Office of State Auditor, and Office of State Personnel.

**EFFECTIVE DATE:** October 1, 2010

**BILL SUMMARY:**

Senate Bill 1213 would require State agencies and institutions exempt from Article 3 of Chapter 143 to comply with certain requirements regarding the review and award of contracts.

**Attorney General Review Responsibility**

The bill enacts new GS 114-8.3 directing the Attorney General (AG) or any attorney approved by the AG to review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services that exceed \$1,000,000. Such contracts of constituent institutions of the University of North Carolina would need to be reviewed by the institution's General Counsel (or designee).

Review of the specified contracts is to ensure the following: 1) they are in proper legal form; 2) they contain all clauses required by law; 3) they provide for sufficient monitoring; 4) they provide for sufficient performance penalties; and 5) they accomplish the intended purposes.

**Obligation to Seek Attorney General Review**

The bill amends the following sections of the General Statutes to require the contracting authority to submit certain proposed contracts that exceed \$1,000,000 to the Attorney General for review and to require that contracts contain a standard clause providing that the State Auditor and internal auditors of the agency may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance:

GS 18C-150 (State Lottery Commission);

GS 53-320, 53-391, 53-326, and 53-401 (Commissioner of Banks);

GS 58-2-69, 58-33-30, 58-33-125, 58-33-130, 58-71-40 (Commissioner of Insurance);

GS 63A-24 (Global Transpark Authority);

GS 84-23 (State Bar Council);

GS 89E-5 (Board for Licensing of Geologists);

GS 89F-5 (Board for Licensing of Soil Scientists);

GS 108A-55 (Department of Health and Human Services);

GS 115D-67.4 (Applied Textile Technology Center);

GS 135-43 (Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees);

GS 136-28.1 (Department of Transportation);

GS 136-89.194 (North Carolina Turnpike Authority);

GS 143-48.1 [Medical Assistance program (Medicaid)];

GS 143-49 (Secretary of Administration)  
GS 143-134 (Departments of Transportation and Correction);  
GS 143-151.16 (North Carolina Code Officials Qualification Board);  
GS 143-131.2 (Roanoke Island Commission); and  
GS 147-64.6 (State Auditor).

The contracting authority is prohibited from awarding a cost plus percentage of cost agreement or contract for any purpose in each of these instances except for the State Lottery Commission.

### **Obligations of the Secretary of Administration**

The bill expands existing responsibilities of the Attorney General to assist the Secretary of Administration with contracting responsibilities. The bill also requires the Secretary to include a standard clause in all contracts providing that the State Auditor and internal auditors of the agency may audit the records of the contractor during the term of the contract. The bill also requires the Secretary to monitor and enforce the terms and conditions of statewide contracts and develop rules to implement the provisions of the bill.

The bill requires the Secretary to work with the Office of State Personnel (OSP) to create a Contracting Specialist career path. The bill directs the Secretary to work in conjunction with OSP and the University of North Carolina School of Government to develop a contract management training and certification program for State employees. The program shall be administered by OSP. Further, the bill requires the Secretary to work with the University of North School of Government to study and recommend improvements to State procurement laws.

The effective date of the bill is October 1, 2010; the bill applies to all contracts proposed or awarded on or after that date.

*Source: Bill Digest S.B. 1213 (05/18/2010) and Bill Summary PCS to SB 1213 (06/15/2010).*

### **ASSUMPTIONS AND METHODOLOGY:**

Although required by the bill to submit proposed contracts to the Attorney General for review, Fiscal Research estimates that the bill will have no fiscal impact on the following institutions:

- State Lottery Commission
- State Banking Commission
- Roanoke Island Commission
- Executive Administrator & Board of Trustees of the State Health Plan
- Department of Insurance
- State Bar Council
- Board for Licensing of Geologists
- Board for Licensing of Soil Scientists
- Office of State Auditor

*Department of Justice*

The bill enacts G.S. 114-8.3 directing the Attorney General (AG) or any attorney approved by the AG to review certain contracts that exceed \$1,000,000. DOJ anticipates that the volume and complexity of the work submitted to the DOJ Legal Division will increase and require additional resources in order to provide client agencies with high quality and timely legal services related to contract management and oversight. At a minimum, DOJ estimates a need for two additional attorneys and two paralegals to effectively administer the bill.

The table below provides a breakdown of the total cost estimated for DOJ to implement the bill:

<b>TABLE 1. Department of Justice Estimated Costs to Administer SB 1213</b>					
<b>Description</b>	<b>Estimated Costs FY 2010-11</b>	<b>Estimated Costs FY 2011-12</b>	<b>Estimated Costs FY 2012-13</b>	<b>Estimated Costs FY 2013-14</b>	<b>Estimated Costs FY 2014-15</b>
Attorney II & III	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	\$212,874	\$227,665	\$246,298	\$262,464	\$278,212
Paralegal 1	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	\$108,809	\$116,034	\$125,117	\$132,997	\$140,977
Rentals/Leases	\$11,400	\$11,701	\$12,005	\$12,275	\$12,528
Travel	\$12,600	\$19,707	\$20,219	\$20,674	\$21,100
Communications & Data Processing	\$14,564	\$56,509	\$57,979	\$59,283	\$60,504
Other Services	\$1,626	\$1,668	\$1,712	\$1,750	\$1,786
General Admin Supplies	\$1,050	\$8,400	\$8,618	\$8,812	\$8,994
Equipment (Furniture, Office Equip., Computers)	\$17,624				
Intangible Assets	\$4,435				
<b>TOTAL COST</b>	<b>\$384,982</b>	<b>\$441,685</b>	<b>\$471,949</b>	<b>\$498,257</b>	<b>\$524,102</b>
<b>TOTAL FTEs</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
*Benefits include Social Security, Retirement, and Health Insurance.					

*Department of Health and Human Services*

Section 15 amends G.S. 108A-55 and Section 20.1 amends G.S. 143-48.1 to require that the Department of Health and Human Services (DHHS) submit certain term agreements or contracts that exceed \$1,000,000 to the Attorney General or the Attorney General's designee for review as

provided in G.S. 114-8.3. It also prohibits DHHS from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the bill may impact the workload of the attorneys currently responsible for preparing and/or reviewing DHHS' contracts; however, no estimate is available at this time on the number of FTE's, if any, that may be necessary to complete the requirements of this bill.

#### *Applied Textile Technology Center*

Section 17 amends G.S. 115D-67.5 to require that the Applied Textile Technology Center (the Textile Center), located at Gaston College, submit certain term agreements or contracts that exceed \$1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits the Center from awarding a cost plus percentage of cost agreement or contract for any purpose.

This bill would have minimal to no fiscal impact on the Textile Center. According to the NC Community College System Office, the college reports that they do not have any contracts that are being supported by the retained Textile fees and therefore, the number of contracts falling under this review would be minimal, if not zero. Retained fees are currently being used to purchase equipment and supplies, primarily through the E-procurement System.

#### *Department of Administration*

Section 21 amends G.S. 143-49 to increase the authority of the Secretary of Administration to provide oversight of the review and award of contracts. The Department of Administration (DOA) indicates that its current staff will not be able to absorb the additional workload required in order to administer SB 1213. DOA anticipates that it will need 4 Compliance Monitors, 2 Procurement Training Specialists, 1 Compliance Manager, and 1 Procurement Standards position to fulfill the requirements of this legislation.

DOA estimates that it will need 6 Compliance Monitors after FY 2010-11. DOA currently has 2 time-limited FTEs handling compliance for ARRA responsibilities and DOA anticipates that these 2 FTEs could absorb some of the work during FY 2010-11. After the 2 time-limited positions are removed, DOA anticipates that it will need the full complement of compliance monitors to meet the compliance expectation provided by the bill. DOA budgets the Compliance Monitors at the midpoint salary; however, these positions are not managerial positions and Fiscal Research budgets these positions at the minimum salary.

In total, Fiscal Research estimates that DOA will need \$818,272 for the 8 FTEs in FY 2010-11 (a breakdown of these expenses is provided in Table 2 on page 6).

**TABLE 2. Department of Administration Estimated Costs to Administer SB 1213**

Description	Estimated Costs FY 2010-11	Estimated Costs FY 2011-12	Estimated Costs FY 2012-13	Estimated Costs FY 2013-14	Estimated Costs FY 2014-15
Procurement Compliance Specialists	4 Positions	6 Positions	6 Positions	6 Positions	6 Positions
Salary and Benefits	\$249,674	\$398,566	\$430,132	\$457,519	\$478,365
Procurement Training Specialists	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	\$120,066	\$127,751	\$137,837	\$146,587	\$153,247
Compliance & Analysis Manager	1 Position	1 Position	1 Position	1 Position	1 Position
Salary and Benefits	\$92,749	\$98,873	\$106,910	\$113,882	\$119,190
Procurement Standards Position	1 Position	1 Position	1 Position	1 Position	1 Position
Salary and Benefits	\$81,471	\$86,808	\$93,813	\$99,890	\$104,516
Purchased Services					
Contractual Services	\$207,432	\$9,535	\$9,783	\$10,003	\$10,209
Repair Services	\$480	\$616	\$632	\$646	\$659
Maintenance Agreements	\$1,600	\$2,053	\$2,106	\$2,153	\$2,197
Travel	\$19,200	\$24,634	\$25,274	\$25,843	\$26,375
Communications & Data Processing	\$12,000	\$15,396	\$15,796	\$16,151	\$16,484
Other Services	\$1,600	\$2,053	\$2,106	\$2,153	\$2,197
Supplies					
General Admin Supplies	\$4,000	\$5,132	\$5,265	\$5,383	\$5,494
Equipment	\$28,000	\$5,132	\$5,265	\$5,383	\$5,494
<b>TOTAL COST</b>	<b>\$818,272</b>	<b>\$776,550</b>	<b>\$834,919</b>	<b>\$885,593</b>	<b>\$924,427</b>
<b>TOTAL FTEs</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
*Benefits include Social Security, Retirement, and Health Insurance.					

*Office of State Personnel*

Section 21 amends G.S. 143-49 to require the Office of State Personnel (OSP) to work with DOA and the University of North Carolina School of Government to develop a contract management training and certification program for State employees. OSP estimates that the bill would require \$51,256 for one Human Resource Consultant position to run this program.<sup>1</sup> OSP also anticipates that the bill would require \$37,500 for the following administrative supplies:

- Virtual classroom for training and telephone minutes for participants to connect virtually
- Written materials including copies, binders, and CDs
- An Electronic Learning Authoring Tool to develop and maintain the course
- Possible purchase of third party material to enhance certification process

<sup>1</sup> The proposed legislation is not effective until October 1, 2010. The FTE is prorated for FY 2010-11, but 1.0 FTE will be needed for subsequent years.

In total, OSP estimates that it will need \$88,756 to administer the bill in FY 2010-11. Fiscal Research concurs with these estimates.

#### *University of North Carolina System*

Section 16 amends G.S. 114-8.3 to require that the constituent institutions of the University of North Carolina (UNC) submit certain term agreements or contracts that exceed \$1,000,000 to the institution's General Counsel (or designee). The constituent institutions of UNC do not anticipate any fiscal impact regarding submitting contracts to the Attorney General or designee.

Section 21 amends G.S. 143-49 to require the UNC School of Government to work with DOA and OSP to develop a contract management training and certification program for State employees. With respect to the School of Government's role, if the School of Government were assisting the projects, there would likely be minimal impact. If the School of Government were actually conducting and leading the projects, then there could be an undetermined amount of fiscal impact.

#### *Department of Corrections*

Section 24 amends G.S. 143-134 to require that the Department of Corrections (DOC) submit certain term agreements or contracts that exceed \$1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits DOC from awarding a cost plus percentage of cost agreement or contract for any purpose.

DOC anticipates the bill will lengthen the procurement process, which is dependent upon the available resources within the office of the AG. DOC anticipates that there could be an undetermined amount of fiscal impact.

### **Transportation Entities**

#### *Global Transpark Authority*

Section 11 amends G.S. 63A-24 to require that the Global Transpark Authority (GTA) submit certain term agreements or contracts that exceed \$1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits GTA from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the bill may impact the workload of the attorneys currently responsible for preparing and/or reviewing GTA's contracts; however, no estimate is available at this time on the number of FTE's, if any, that may be necessary to complete the requirements of this bill.

#### *Department of Transportation*

Section 19 amends G.S. 136-28.1 and Section 24 amends G.S. 143-134 to require that the Department of Transportation (DOT) submit certain term agreements or contracts that exceed

\$1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits DOT from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the bill may impact the workload of the attorneys currently responsible for preparing and/or reviewing DOT's contracts; however, no estimate is available at this time on the number of FTE's, if any, that may be necessary to complete the requirements of this bill.

*North Carolina Turnpike Authority*

Section 20.1 amends G.S.136-89.194 to require that the North Carolina Turnpike Authority (NCTA) submit certain term agreements or contracts that exceed \$1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits NCTA from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the bill may impact the workload of the attorneys currently responsible for preparing and/or reviewing NCTA's contracts; however, no estimate is available at this time on the number of FTE's, if any, that may be necessary to complete the requirements of this bill.

**SOURCES OF DATA:** Department of Cultural Resources, Department of Administration, Department of Transportation, Department of Health and Human Services, Department of Justice, Department of Insurance, State Bar Council, Office of State Auditor, Office of State Personnel, Board for Licensing of Geologists, Applied Textile Technology Center, UNC System, and the Board for Licensing of Soil Scientists.

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Tazra Mitchell   Bob Weiss   Andrea Poole   Sarah Stone

Lisa Hollowell

**APPROVED BY:** Marilyn Chism, Director  
Fiscal Research Division

**DATE:** June 23, 2010



**Signed Copy Located in the NCGA Principal Clerk's Offices**