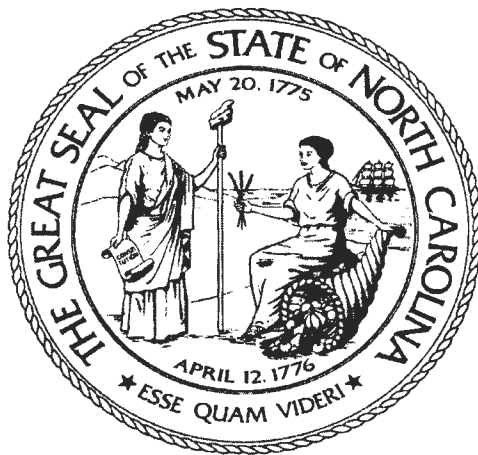


NORTH CAROLINA GENERAL ASSEMBLY



BLUE RIBBON COMMISSION TO STUDY THE BUILDING AND INFRASTRUCTURE NEEDS OF THE STATE (2013)

REPORT TO THE
2017
GENERAL ASSEMBLY
OF NORTH CAROLINA

DECEMBER, 2016

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL	5
COMMISSION PROCEEDINGS	7
FINDING AND RECOMMENDATIONS	15
APPENDICES	
<u>APPENDIX A</u>	
MEMBERSHIP OF THE BLUE RIBBON COMMISSION TO STUDY THE BUILDING AND INFRASTRUCTURE NEEDS OF THE STATE (2013)....	18
<u>APPENDIX B</u>	
COMMISSION CHARGE/STATUTORY AUTHORITY	19
* S.L. 2014-42	
* S.L. 2016-24	

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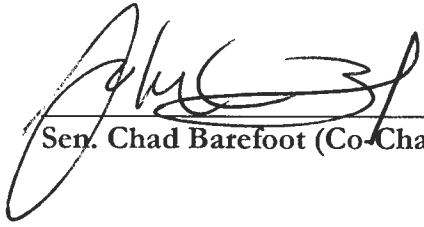
TRANSMITTAL LETTER

December 31, 2016

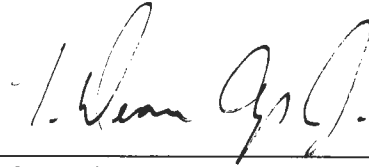
[\[Back to Top\]](#)

TO THE MEMBERS OF THE 2017
GENERAL ASSEMBLY

The BLUE RIBBON COMMISSION TO STUDY THE BUILDING AND INFRASTRUCTURE NEEDS OF THE STATE (2013), respectfully submits the following report to the 2017 General Assembly.



Sen. Chad Barefoot (Co-Chair)



Rep. Dean Arp (Co-Chair)

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COMMISSION PROCEEDINGS

[\[Back to Top\]](#)

The Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (2013) (hereinafter "Commission") met seven times after the 2015 Regular Session. The following is a brief summary of the Commission's proceedings. Detailed minutes and information from each Commission meeting are available in the Legislative Library.

February 22, 2016

The initial meeting of the Commission was February 22, 2016, at the Legislative Office Building. Senator Chad Barefoot, Commission Co-Chairman, presided.

Brian Matteson, Fiscal Research Division of the North Carolina General Assembly, presented an overview of public education capital funding followed by Mark Bondo, also of the Fiscal Research Division, who presented an overview of the budgeting and financing of capital projects and of Community College capital funding. Following these presentations, Commission members were given an opportunity to ask questions.

Senator Barefoot explained the Commission's scope, duties, and plans for future meetings. He then opened the floor for comments and questions. Representative Dean Arp, Commission Co-Chairman, suggested the Commission recommend extending its reporting deadline to ensure its statutory duties can be more fully completed.

March 28, 2016

The second meeting of the Commission was on March 28, 2016, at the Legislative Office Building. Representative Dean Arp, Commission Co-Chairman, presided.

Commission member Jennifer Haygood, Executive Vice President and Chief Financial Officer of the North Carolina Community Colleges System, gave a presentation on the capital needs of the Community Colleges System. Based upon various questions posed to Ms. Haygood by Commission members, she provided the following additional information:

- \$350 million from the Connect NC Bond Act of 2015 (S.L. 2015-943) will fund capital improvement projects in the Community College System consistent with the Act's parameters.
- Community Colleges will have to match Connect NC Bond Act funds for new construction on a sliding scale using the respective county's economic tier designation.
- The \$350 million from the Connect NC Bond Act will be distributed according to the provisions set forth in the Connect NC Bond legislation.

- Each Community College develops its own master plan for capital projects.

Dr. Dennis Massey, President of Pitt Community College, gave a presentation about the college's capital needs via WebEx. Based upon various questions posed to Dr. Massey and Ms. Haygood by Commission members, the following additional information was provided:

- Athletic facilities at Pitt Community College are supported by private fundraising and most community colleges do not have intercollegiate sports. Ms. Haygood added that intercollegiate athletics cannot use State funds to support these programs.
- Prioritizing funding for capital needs across the Community Colleges System is difficult due to size disparities between campuses, increasing enrollment and, an outdated system that does not account for increased enrollment.
- Private fundraising has played a significant role in Pitt Community College capital improvement projects.
- Deferred maintenance costs are generally not accounted for when new Community College buildings come on line.

Dr. Bob Shackelford, President of Randolph Community College, spoke about that college's capital needs. In response to questions, Dr. Shackelford noted that the college's maintenance needs are greater than can be addressed without being detrimental to other areas of need. He stated that county governments must be convinced to focus more on funding existing infrastructure maintenance needs (rather than new capital projects) to ensure that buildings do not come crumbling down. To help improve the funding prioritization process, Ms. Haygood advised that the Community College System can produce a systemwide resource for use across the State, or, the State can allocate a fund to the Community College central office for distribution to campuses across the State.

William Johnson, Associate Vice President for Finance and Capital Planning for The University of North Carolina System, gave a presentation on the system's capital funding history from 2010-2016. In response to questions, Mr. Johnson indicated that the R&R funding process varies across campuses depending upon appropriations from the State. He noted that private developers generally spend about \$15 per square foot for maintenance, but the UNC System currently spends only in the \$4-5 range. Additionally, private buildings are not kept as long as the university buildings. Mr. Johnson stated that capital projects in the UNC System are based on enrollment growth and the shifting of students based on curriculum.

April 18, 2016

The third meeting of the Commission was on April 18, 2016, at the Legislative Office Building. Senator Chad Barefoot, Commission Co-Chairman, presided.

Dr. Ken Phelps, School Planning Consultant with the North Carolina Department of Public Instruction, gave a presentation on building and infrastructure needs.

Mike Taylor, Executive Director of Growth and Planning Services for Johnston County Schools, gave a presentation entitled *High Growth District Perspective and Proposed Infrastructure Needs*.

Dr. Shelton Jeffries, Superintendent of Nash-Rocky Mount Public Schools, spoke to the Commission about the infrastructure needs in his community.

After these presentations and based upon questions posed to these three presenters, the following additional information was elicited:

- Dr. Phelps stated that while lottery sales have increased, the percentage given to the public schools has decreased because in the past the funds were allocated as a percentage of revenue but are now allocated as a net amount of \$100 million. He further stated that while a return to a percentage formula would result in more revenue for schools, it would still be a minute portion of the total school construction expenditures.
- Dr. Jeffries explained that the declining enrollment in the Nash-Rocky Mount Public Schools is due to a slow real estate market, increase in charter schools, and increase in home school enrollment.
- Mr. Taylor stated that it was advantageous to have all public schools constructed to roughly the same size and same design model because it reduces cost. Dr. Phelps commented that smaller schools generally offer better educational opportunities. Senator Barefoot commented that the Commission should compare costs of similarly sized high schools across the State to see which school systems have the best practices.
- Senator Hise asked about the impact of State regulations on construction costs to which Dr. Phelps answered that the life span of buildings may impact construction costs and noted that kitchens and lunch rooms are very expensive. Senator Hise followed by asking what specific regulation the State could do away with to which Ben Matthews, Deputy Chief Financial Officer for Operations at the Department of Public Instruction, answered that there are no specific regulations issued by the State in this regard, only guidelines.
- Dr. Phelps stated that schools set aside only a small percentage of their budgets up front for maintenance.
- Senator Hise commented that the projected needs are almost two times more than local, State, and federal governments have ever budgeted for capital.
- Dr. Phelps opined that increasing funding from the State creates more equality because there are some counties that cannot afford to address their needs. He further stated the Department of Public Instruction created a computer program for counties to use to enter their needs but prioritization requests are decided by the local school boards.

Seth Robertson, State Revolving Fund Section Chief at the Department of Environmental Quality, then gave a presentation entitled *Overview of Water and Wastewater Capital Needs*. Based upon questions from Commission members, the following additional information was elicited:

- NC Connect Bond funds will go through the State reserve programs and the State Water Infrastructure Authority. Affordability indicators are being developed and the Water Infrastructure Authority wants more reliance placed on affordability criteria rather than a mere reliance on State grant funds.
- Commission member John Solomon noted that the Water Infrastructure Authority has the final say on who gets funding and has a history of spending funds well.
- Senator Hise asked Mr. Robertson what help DEQ provides local governments to prepare their applications to which Mr. Robertson replied that DEQ travels across the State to inform and train anyone interested in applying for a grant. Mr. Robertson further iterated that more could be done to ensure that local governments are better informed and prepared and to be less reactive and more proactive.

Matthew Klein, President of Utilities, Inc., and Tom Roberts of Aqua America, Inc., gave a presentation entitled *Private Sector View Points on Water Infrastructure Needs*. Part of the presentation included the privatization of water services. The services of these private companies are more expensive than those of local governments since they are a for-profit business, but they are regulated by the Utilities Commission. Water is not the only service that could be privatized. Transportation services could be privatized. Some states have privatized their utilities such as Pennsylvania, Illinois, and maybe Indiana and New Jersey. The best practices seen from these states are better asset management planning, capital planning, and sustainable technology.

Representative Arp, Commission Co-Chair, recommended that the Commission extend its required report date to make its final report to the 2017 Session of the General Assembly rather than the 2016 Regular Session. Commission Staff explained that the General Assembly will need to amend the Session Law (S.L. 2014-42) to change the reporting date. The recommendation was unanimously approved by the Commission.

[Note: S.L. 2014-42 was amended by S.L. 2016-24 to extend the reporting date]

August 1, 2016

The fourth meeting of the Commission was on August 1, 2016, at the Legislative Office Building. Representative Dean Arp, Commission Co-Chair, presided.

Daniel Sater, Fiscal Research Division, gave a presentation, to review past Commission meetings and what remains to complete the Commission's work. Following the presentation the Commission then generally discussed going forward to accomplish its statutory charge.

Mark Bondo, formally of Fiscal Research and now a Budget Analysis with the Office of State Budget Management (OSBM), gave an update on the \$200 million in Connect *Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (2013)*

NC Bonds and reported that North Carolina's current AAA bond rate is 2.08% and that it's a good time to borrow funds. These bonds are for no more than 20 years and will be used for building design and, in some cases, for construction. The OSBM, the State Treasurer, and the State Controller are preparing to issue guidance to the recipients and establishing the appropriate budget codes. Tim Romocki, Department of State Treasurer, stated that the State's AAA rating is crucial to ensuring that the interest rates stay at 2.08%.

The Commission discussed the need for State agencies to bring their needs to the Commission. Secretary Johnston stated that OSBM and the Department of Administration can present on the anticipated needs of State agencies and that Project Phoenix will be included in that presentation.

Commission Co-Chair Arp stated that the prioritization of capital needs should be addressed at the next meeting to be followed by a meeting on the funding aspect of the Commission's work. Members expressed a desire to hear from the State Water Infrastructure Authority regarding its processes.

The Commission discussed the feasibility of establishing a building and infrastructure fund to act as a dedicated source of revenue for funding capital needs for local governments, the UNC system, community colleges, and the State's capital needs until 2025. No comparable fund currently exists in North Carolina. Commission member Juby noted that Ohio has a similar fund for local governments operating like a revolving loan fund. Member Townsend expressed a desire to know how South Carolina funds capital needs.

Secretary Johnston stated that the State must keep operating costs in mind when budgeting for capital needs. The 2016 budget requires OSBM and the Department of Administration to include five years of operating costs in their capital improvement project requests. The Treasurer's office is working on school capital needs and debt capacity and exploring whether the State should make up local school board shortfalls.

The Commission discussed the role of the State vis-à-vis that of local governments. Commission Co-Chair Arp recommended that the Commission look at the counties' capacities and capital needs for education. School funding was noted to generally be a local government responsibility and that debt service impacted local government's ability to meet regular K-12 needs.

Discussion then centered on North Carolina's need to reexamine its long term approach to repair and renovation (R&R) funding including whether such funding should go into the budgets for new buildings. The distinctions between short term "operational budgeting" and long term "capital budgeting" was noted. A question was posed as to whether the methodology used by the Department of Transportation to prioritize its funding needs could be examined to determine if it could be adapted for prioritizing building R&R by other agencies and by local governments. Secretary Johnston noted that many major cities have a prioritization process in place for capital improvement projects.

The meeting concluded by discussing the remaining work of the Commission and the scheduling of future meetings.

October 25, 2016

The fifth meeting of the Commission was on October 25, 2016, in the Legislative Office Building. Representative Dean Arp, Commission Co-Chair, presided.

Mark Bondo, Budget Analyst at the Office of State Budget Management, gave a presentation on *The Capital Improvement Program*.

A presentation entitled *The Cost of Moving Forward* was made by Bill Smith, P.E., with Stanford White, Inc., Chris Martin, Jr., P.E., with McKim & Creed, Roger Woods, Jr., P.E., with IBI Group, and Matt Parker, P.E., with Freudenburg IT. The presentation by these engineers analyzed the issues raised and costs incurred when maintenance, repair, and renovation of governmental buildings are neglected in favor of new construction. North Carolina has nearly 12,000 buildings worth approximately \$21 billion dollars. Annual maintenance of these assets should average about 3% of their total value which equates to a required annual maintenance budget of \$630 million dollars however, the State's maintenance expenditures on these assets only total approximately 0.5% of their value. Four solutions were suggested to alleviate the problem: (1) Reduce the inventory of buildings; (2) Spend approximately \$4.4 billion dollars to repair the buildings financed with bonds; (3) Budget for future maintenance; and (4) Improve the decision making process to ensure the long term costs are factored in.

Based upon questions from the Commission members, the following additional information was elicited:

- Leasing some real property assets rather than owning them is an option but while leasing may be cost effective for some measures, it may not be for others. Mark Bondo of OSBM indicated that whether to lease or own depends on the type of building. For example, a warehouse for storage could likely be leased but not a laboratory with high-tech equipment. Bondo also noted that OSBM looks at life cycle cost analysis for new buildings but not for current buildings. Secretary Johnston noted that the Government Finance Officers Association recommends that total life cycle costs be included in budgets.

Kim Colson, Division Director of the Division of Water Infrastructure in the Department of Environmental Quality, gave a presentation on water infrastructure. Water infrastructure is an economic development tool. The Department of Commerce has economic development tools for water infrastructure, and the Division of Water Infrastructure does not want to duplicate their efforts.

Kent Jackson, State Construction Director at the Department of Administration, gave a presentation on the Facilities Condition Assessment Program.

John LaPenta, Deputy Secretary at the Department of Administration, gave a presentation entitled *Project Phoenix Successes and Update*. Project Phoenix is the ***Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (2013)***

program to more effectively manage State buildings by leveraging private investment through the sale and redevelopment of existing State buildings and properties. Its purpose is to relieve some of the budget pressure on the State's limited repair & renovation funding.

November 14, 2016

The sixth meeting of the Commission was on November 14, 2016, at the Legislative Building. Representative Dean Arp, Commission Co-Chair, presided.

Daniel Sater, Fiscal Research Division, gave a presentation entitled *State Infrastructure Banks*. This is a self-replenishing fund used to support infrastructure development. Mississippi and Alabama have infrastructure banks. While there are differences in how these two states structure their respective banks (eg. loan qualifications, interest rates, matching fund requirements), the fundamental concept is the same. Both states make low interest loans to qualifying municipalities for capital projects using the loan interest to fund the program. Implementation of an infrastructure bank in North Carolina would require determination of:

- Eligibility criteria?
- Interest rates and match requirements?
- How to initially fund such a bank?
 - sale of buildings?
 - direct appropriation?
 - Bonds?
- How to handle defaults?
- Which agency would provide oversight and control?

Based upon questions from the Commission members, the following additional information was elicited:

- Mississippi's infrastructure bank is housed in the equivalent to North Carolina's Department of Commerce. The location of Pennsylvania's bank was unknown.
- South Carolina has a similar program for transportation projects. Mark Bondo, of OSBM, informed the Commission that the South Carolina Legislature introduced a bill to establish an infrastructure bank for public schools but the bill did not advance.
- Should North Carolina establish such a bank, whether its outstanding loans would count against the state's debt and whether it would be limited to making loans to municipalities would depend on how the bank was set up. The banks of Mississippi and Pennsylvania are limited to making loans to municipalities.

The Commission then began discussing the draft recommendations presented by the staff. Specific changes, modifications, additions and deletions were discussed. Much of the discussion centered around educational funding at the local level. Both Co-Chairman, Senator Barefoot and Representative Arp, encouraged members of the Commission to

work together to send specific recommendation requests to Commission staffer Daniel Sater.

December 19, 2016

The seventh meeting of the Commission was on December 19, 2016, at the Legislative Building. Senator Chad Barefoot, Commission Co-Chair, presided. The Commission approved the minutes from previous meetings. The Commission also reviewed and approved its final report.

FINDINGS AND RECOMMENDATIONS

[\[Back to Top\]](#)

Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State Findings and Recommendations

I. Needs & Costs – Findings

The Department of Public Instruction (DPI) estimates that local school boards will require \$8 billion worth of capital investment in the next five years, primarily for new schools and renovations. The Department of Environmental Quality estimates that local governments will need between \$7 billion and \$11 billion for wastewater capital needs and between \$11 billion and \$15 billion for drinking water capital needs over the next 20 years. The State and local governments must invest wisely to fund the most critical needs. Performance audits would increase the transparency of the planning process for new buildings. The public needs accurate information before voting on school bonds or the State invests funds for school construction.

Water and sewer systems are expensive to operate and maintain, especially for small or rural communities. Regionalization of the systems would allow small communities to join together to reap the benefits of scaled systems. Regionalization could include the consolidation of systems as well as the sharing of management resources, GIS data, and software. The incentives could be upfront appropriations from the General Assembly or greater priority for grants and 0% interest loans through the State's revolving funds run by the Department of Environmental Quality.

Needs & Costs – Recommendations

Needs & Costs Recommendation IA – Expand training programs for local government units, including school boards, to ensure capital improvement projects involving new building construction or water and sewer infrastructure improvements take into consideration the project's long and short impact on the unit's annual budget.

Needs & Costs Recommendation IB – Establish financial incentives for local governments demonstrating consistent improvement in fiscal stability through better cost-benefit analysis and long range planning when undertaking new building construction or water and sewer infrastructure improvements.

II. Process – Findings

The costs to purchase, lease, or renovate buildings for capital needs will vary for each project and agency. In the October 25th meeting of the Commission, the Office of State Budget and Management (OSBM) offered the examples of a textbook warehouse and a

laboratory. Warehouse space is commonly available for lease when a specialized laboratory space would not be. In this instance, it may be cheaper to lease a preexisting warehouse from a private company and build a new laboratory on State owned land. The financial model used by the State should include cost of capital, lease payments, cost of construction and design of a new facility, maintenance, operating cost, and future repairs and renovations cost to a State-owned building.

“Rule of thumb” and best practice estimates are insufficient measures. The State should invest in increased training and personnel to improve data collection and analysis. The Commission heard a presentation from the Department of Administration (DOA) that the State had two traveling teams of architects and engineers who analyzed the condition of State buildings for the State’s Facility Condition Assessment Program (FCAP). Budget cuts eliminated these positions and the program was only recently reconstituted. DOA has recreated the two teams; however, the State has an additional 40 million square feet (113M Sq Ft vs 72M Sq Ft) for the teams to survey. The original program took five years for the traveling teams to assess the condition of State buildings in all counties.

Process Recommendation IIA – Develop and utilize a uniform system for all State agencies to weigh whether it's more cost efficient for the State to lease, renovate, or construct buildings for particular agency needs and, in the case of new construction, include within such system the ability to project the total life cycle costs of building ownership.

Process Recommendation IIB – Improve the data collection process to get a well-defined picture of the true repair and renovation needs for State owned buildings.

Process Recommendation IIC – With respect to the State’s Facility Condition Assessment Program (FCAP), all of the following:

1. Addition of a third three-person FCAP team.
2. Additional funding for a Construction Cost Estimator to support the FCAP teams.
3. Addition of utility, repair, and other general facility operating cost data to the FCAP costing formula by implementing standard building automation software.
4. Adoption of APPA: Leadership in Educational Facilities Level 2 or similar standards as the benchmark for maintenance standards for State-owned buildings.

Process Recommendation IID – Require performance audits of local government units, including school boards to ensure they are utilizing existing assets and planning for future expansion in the most efficient manner and consistent with Needs & Costs Recommendation IA.

Process Recommendation IIE – Require submission of the performance audit to the appropriate reviewing authority as part of any unit of local government's application seeking public grants or approval of debt for either new building construction or water and sewer infrastructure improvements.

Process Recommendation IIF - The State should develop a uniform set of criteria to prioritize funding for school districts, community colleges and water/sewer systems.

III. Funding – Findings

Funding the repair and renovation of State owned buildings should be among the highest priorities of the General Assembly. A dedicated reserve accompanying the costs for construction would signal a commitment to maintaining the State’s assets. “The Costs of Moving Forward” presentation heard by the Commission in October suggested an annual appropriation of three percent (3%) of total building value appropriated for repairs and renovations. However, a constitutional amendment would be necessary to restrict the General Assembly in the future from raiding the fund.

Rural communities in North Carolina are more likely to face population decline and have fewer options for raising local funds than larger urban communities. The State should investigate new ways to help rural communities invest in capital improvements with a special prioritization for improvements focused on health and safety issues.

Funding – Recommendations

Funding Recommendation IIIA – The General Assembly should regularly fund the repairs and renovations of current State-owned properties and create a reserve to fund the repair and renovation as well as the operations and maintenance of all new construction projects appropriated, or consider divesting the capital asset if it is not worth the investment.

Funding Recommendation IIIB – The General Assembly should incentivize regionalization of water and sewer infrastructure in small and rural communities.

Funding Recommendation IIIC – The State should recognize the hardships faced by rural communities in funding capital improvements for school districts, community colleges, and water/sewer systems.

COMMISSION MEMBERSHIP

[\[Back to Top\]](#)

2015-2016

President Pro Tempore of the Senate
Appointments:

Sen. Chad Barefoot (Co-Chair)

Sen. Kathy Harrington
Sen. Ralph Hise
Mr. Jeffrey P. Carver (Public Member)
Mr. David T. Clancy (Public Member)
Mr. P. Michael Juby (Public Member)
Mr. Barry Shoemaker (Public Member)

Speaker of the House of Representatives
Appointments:

Rep. Dean Arp (Co-Chair)

Rep. David R. Lewis
Rep. Stephen M. Ross
Mr. Paul Davis Boney (Public Member)
Mr. Neil T. Deans (Public Member)
Hon. John S. Phillips (Public Member)
Ms. Pamela B. Townsend (Public Member)

Governor's Appointments:

The Honorable Janet Cowell (State Treasurer)
The Honorable Kathryn Johnston (Secretary of
Administration)
Mr. Charles Perusse
Ms. Jennifer Haygood
Mr. John David Solomon
Mr. Andrew Heath

COMMISSION CHARGE/STATUTORY AUTHORITY

[\[Back to Top\]](#)

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2014-42
HOUSE BILL 1043**

AN ACT TO CLARIFY THE STATUTES RELATED TO THE USE OF PREQUALIFICATION IN PUBLIC CONSTRUCTION CONTRACTING, AS STUDIED BY THE JOINT PURCHASE AND CONTRACT STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.8 reads as rewritten:

"§ 143-135.8. Prequalification.

(a) Except as provided in this section, ~~Bidders~~bidders may not be prequalified for any ~~public~~ construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:

(1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).

(2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.

(3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:

(1) Must be uniform, consistent, and transparent in its application to all bidders.

(2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.

- (3) Clearly state the prequalification criteria, which must comply with all of the following:
 - a. Be rationally related to construction or repair work.
 - b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.
 - c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.
- (4) Clearly state the assessment process of the criteria to be used.
- (5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the opening of bids under G.S. 143-129(b) and which allows sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.
- (6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

- (1) Governmental entity. – As defined in G.S. 143-128.1B(a)(6).
- (2) Prequalification. – A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work."

SECTION 2. G.S. 143-128.1 reads as rewritten:

"§ 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. The public owner shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities when selecting a construction manager at risk.

(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 construction manager at risk shall use the prequalification criteria process 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 in accordance with G.S. 143-135.8, provided that public entity and the construction manager at risk shall jointly develop the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project. 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 comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. 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(f1).

(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.

(e) Construction management at risk services may be used by the public entity only after the public entity has concluded that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method for a given project in lieu of the delivery methods identified in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3). The public entity may not delegate this determination."

SECTION 3. G.S. 143-64.31(b), (c), and (d) are recodified as G.S. 143-133.1(a), (b), and (c).

SECTION 4. G.S. 143-64.31, as amended by Section 3 of this act, is amended to add a new subsection to read:

"(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged."

SECTION 5. G.S. 143-133.1, as created by Section 3 of this act, reads as rewritten:

"§ 143-133.1. Reporting.

(a) Public-Governmental entities that contract with a construction manager at risk, design-builder, or private developer under a public-private partnership ~~under this section~~ shall report to the Secretary of Administration the following information on all projects where a construction manager at risk, design-builder, or private developer under a public-private partnership is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.
- (2) The terms of the contract with the construction manager at risk, design-builder, or private developer.
- (3) A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private developer, ~~and the amount of their proposed fees for services.~~ developer.
- (4) A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.
- (5) A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.

(b) The Secretary of Administration shall adopt rules to implement the provisions of this ~~subsection~~ section, including the format and frequency of reporting.

(c) A ~~public body~~ governmental entity letting a contract pursuant to any of the delivery methods identified in subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 shall submit the report required by ~~G.S. 143-64.31(b)~~ this section no later than 12 months from the date the ~~public body~~ governmental entity takes beneficial occupancy of the project. In the event that the ~~public body~~ governmental entity fails to do so, the ~~public body~~ governmental entity shall be prohibited from utilizing subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 until such time as the ~~public body~~ governmental entity completes the reporting requirement under this this section. Contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable. Any person, corporation or entity, however, which has submitted a bid or response to a request for proposals on any construction project previously advertised by the ~~public body~~ governmental entity shall be entitled to obtain an injunction against the ~~public body~~ governmental entity compelling the ~~public body~~ governmental entity to comply with the reporting requirements of this section and

from commencing or continuing a project let in violation of this subdivision until such time as the ~~public body~~governmental entity has complied with the reporting requirements of this section. The plaintiff in such cases shall not be entitled to recover monetary damages caused by the ~~public body's~~governmental entity's failure to comply with this reporting requirements section, and neither the plaintiff nor the defendant shall be allowed to recover attorneys fees except as otherwise allowed by G.S. 1A-11 or G.S. 6-21.5. An action seeking the injunctive relief allowed by this subdivision must be filed within four years from the date that the ~~owner~~governmental entity took beneficial occupancy of the project for which the report remains due.

(d) For purposes of this section, the term "governmental entity" shall have the same meaning as in G.S. 143-128.1B(a)(6)."

SECTION 6. G.S. 143-128.1B(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~cost and benefit~~advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 7. G.S. 143-128.1A(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~costs and benefits~~advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 8.(a) There is established a Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission).

SECTION 8.(b) The Commission shall be composed of 20 members as follows:

- (1) Seven members appointed by the Speaker of the House of Representatives, as follows:
 - a. Three members of the House of Representatives.
 - b. One person upon recommendation of the North Carolina League of Municipalities.
 - c. One member of the public, licensed as an architect in this State.
 - d. One member of the public, licensed as a professional engineer in this State.
 - e. One person upon recommendation of the North Carolina Chamber.
- (2) Seven members appointed by the President Pro Tempore of the Senate, as follows:
 - a. Three members of the Senate.
 - b. One person upon recommendation of the North Carolina County Commissioners Association.
 - c. One person upon recommendation of the North Carolina School Boards Association.
 - d. One member of the public, licensed as a general contractor in this State.
 - e. One member of the public, licensed as an attorney in this State, with experience in infrastructure financing or infrastructure bonds.

- (3) Six members appointed by the Governor, as follows:
 - a. The State Treasurer, or the Treasurer's designee.
 - b. The Secretary of Administration, or the Secretary's designee.
 - c. The President of The University of North Carolina, or the President's designee.
 - d. The President of the North Carolina System of Community Colleges, or the President's designee.
 - e. A member of the State Water Infrastructure Authority.
 - f. The Secretary of the Department of Commerce, or the Secretary's designee.

SECTION 8.(c) The Commission shall study the following matters related to building and infrastructure needs, including new repairs, renovations, expansion, and new construction, in North Carolina:

- (1) The anticipated building construction needs of State agencies, The University of North Carolina, and North Carolina System of Community Colleges until 2025.
- (2) The anticipated water and sewer infrastructure construction needs of counties and cities until 2025.
- (3) The anticipated building needs of the local school boards until 2025.
- (4) The anticipated costs of such building and infrastructure needs.
- (5) A process that would prioritize needs within each infrastructure category and among all categories, with an emphasis on developing criteria that focus on public safety and economic development.
- (6) The feasibility of establishing a building and infrastructure fund, which would be a dedicated source of revenue for capital funding for counties, cities, local school boards, The University of North Carolina, the North Carolina System of Community Colleges, and State agencies.
- (7) Funding options for meeting the anticipated capital needs until 2025.
- (8) Other matters the Commission deems relevant and related.

SECTION 8.(d) The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall be 10 members. Any vacancy on the Commission shall be filled by the appointing authority.

SECTION 8.(e) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, G.S. 138-5, or G.S. 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.4. The Commission may meet upon the call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 8.(f) The Commission may make an interim report of its findings and recommendations to the 2015 General Assembly and shall make a final report of its findings and recommendations to the 2016 Regular Session of the 2015 General Assembly. The Commission shall terminate on December 31, 2016, or upon the filing of its final report, whichever occurs first.

SECTION 10. Section 8 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2014, and applies to contracts awarded on or after that date.

In the General Assembly read three times and ratified this the 26th day of June, 2014.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:26 p.m. this 30th day of June, 2014

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2016-24
SENATE BILL 748***

AN ACT TO CHANGE THE REPORTING DATE OF THE BLUE RIBBON COMMISSION TO STUDY THE BUILDING AND INFRASTRUCTURE NEEDS OF THE STATE, AS RECOMMENDED BY THE BLUE RIBBON COMMISSION TO STUDY THE BUILDING AND INFRASTRUCTURE NEEDS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8(f) of S.L. 2014-42 reads as rewritten:

"SECTION 8.(f) The Commission may make an interim report of its findings and recommendations to the 2015 General Assembly and shall make a final report of its findings and recommendations to the ~~2016 Regular Session of the 2015-2017~~ General Assembly. The Commission shall terminate on December 31, 2016, or upon the filing of its final report, whichever occurs first."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:03 p.m. this 22nd day of June, 2016