

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 914
Education/Higher Education Committee Substitute Adopted 4/24/01
House Committee Substitute Favorable 11/27/01
Fourth Edition Engrossed 11/29/01
House Committee Substitute #2 Favorable 12/3/01
Sixth Edition Engrossed 12/5/01**

Short Title: Public Construction Law Changes.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE FOR CONSTRUCTION FLEXIBILITY FOR PUBLIC
3 ENTITIES BY ALLOWING THE USE, WITHOUT LIMITATION, OF
4 SEPARATE-PRIME CONTRACTING, SINGLE-PRIME CONTRACTING, DUAL
5 BIDDING, CONSTRUCTION MANAGER AT RISK, AND ALTERNATIVE
6 CONTRACTING METHODS AUTHORIZED BY THE STATE BUILDING
7 COMMISSION; TO ENHANCE AND IMPROVE GOOD FAITH EFFORTS TO
8 RECRUIT AND SELECT MINORITY BUSINESSES FOR PARTICIPATION IN
9 PUBLIC CONSTRUCTION CONTRACTS; TO INCREASE THE MANDATORY
10 PERFORMANCE AND PAYMENT BOND THRESHOLD FOR PUBLIC
11 CONSTRUCTION PROJECTS; TO PROVIDE FOR CONSTRUCTION AND
12 DESIGN SUPERVISORY AUTHORITY FOR PROJECTS UP TO TWO
13 MILLION DOLLARS FOR THE UNIVERSITY OF NORTH CAROLINA UNTIL
14 DECEMBER 31, 2006; TO PROVIDE FOR EFFICIENCIES IN THE PLAN
15 REVIEW PROCESS FOR PUBLIC BUILDINGS; TO AMEND THE LAW
16 GOVERNING LANDSCAPE ARCHITECTURE; AND TO APPROPRIATE
17 FUNDS TO IMPLEMENT THE PUBLIC CONSTRUCTION LAW CHANGES.

18 The General Assembly of North Carolina enacts:

19
20 **PART I. CONSTRUCTION CHANGES**

21 **SECTION 1.** G.S. 143-64.31 reads as rewritten:

22 "§ 143-64.31. **Declaration of public policy.**

23 (a) It is the public policy of this State and all public subdivisions and Local
24 Governmental Units thereof, except in cases of special emergency involving the health
25 and safety of the people or their property, to announce all requirements for architectural,

1 engineering, ~~and~~ surveying and construction management at risk services, to select
2 firms qualified to provide such services on the basis of demonstrated competence and
3 qualification for the type of professional services required without regard to fee other
4 than unit price information at this stage, and thereafter to negotiate a contract for
5 ~~architectural, engineering, or surveying those services~~ at a fair and reasonable fee with
6 the best qualified firm. If a contract cannot be negotiated with the best qualified firm,
7 negotiations with that firm shall be terminated and initiated with the next best qualified
8 firm. Selection of a firm under this Article shall include the use of good faith efforts by
9 the public entity to notify minority firms of the opportunity to submit qualifications for
10 consideration by the public entity.

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

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

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

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

25 **"§ 143-128.1. Construction management at risk contracts.**

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

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

41 (b) The construction manager at risk shall be selected in accordance with Article
42 3D of this Chapter. Design services for a project shall be performed by a licensed

1 architect or engineer. The public owner shall contract directly with the architect or
2 engineer.

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

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

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

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

37 **"§ 143-128. Requirements for certain building contracts.**

38 (a) Preparation of specifications. – Every officer, board, department, commission
39 or commissions charged with responsibility of preparation of specifications or awarding
40 or entering into contracts for the erection, construction, alteration or repair of any
41 buildings for the State, or for any county, municipality, or other public body, ~~must~~ shall

1 have prepared separate specifications for each of the following subdivisions or branches
2 of work to be performed:

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

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

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

- 25 (1) Separate-prime bidding.
- 26 (2) Single-prime bidding.
- 27 (3) Dual bidding pursuant to subsection (d1) of this section.
- 28 (4) Construction management at risk contracts pursuant to G.S. 143-128.1.
- 29 (5) Alternative contracting methods authorized pursuant to G.S. 143-
30 135.26(9).

31 (b) ~~Building projects over five hundred thousand dollars (\$500,000); separate~~
32 ~~prime contracts. Separate-prime contracts. – Except as provided in subsection (d) of this~~
33 ~~section, when the entire cost of the erection, construction, alteration, or repair of a~~
34 ~~building exceeds five hundred thousand dollars (\$500,000),~~ When the State, county,
35 municipality, or other public body uses the separate-prime contract system, it shall
36 accept bids for each subdivision or branch of work for which specifications are required
37 to be prepared under subsection (a) of this section and shall award the respective work
38 specified separately to responsible and reliable persons, firms or corporations regularly
39 engaged in their respective lines of work. When the estimated cost of work to be
40 performed in any single subdivision or branch for which separate bids are required by
41 this subsection is less than twenty five thousand dollars (\$25,000), the same may be
42 included in the contract for one of the other subdivisions or branches of the work,

1 ~~irrespective of total project cost.~~The contracts shall be awarded to the lowest
2 responsible, responsive bidders, taking into consideration quality, performance, the time
3 specified in the bids for performance of the contract, and compliance with G.S. 143-
4 128.2. Bids may also be accepted from and awards made to separate contractors for
5 other categories of work.

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

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

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

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

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

- 39 (1) Heating, ventilating, and air conditioning;
- 40 (2) Plumbing;
- 41 (3) Electrical; and
- 42 (4) General.

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

~~The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts apply to all single prime bidding and single prime contracts, regardless of whether bidding in the alternative between the single prime and separate prime systems has been waived by the State Building Commission.~~When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (g) of this section.

(d1) ~~Local school administrative units; building projects over five hundred thousand dollars (\$500,000).~~ Dual bidding. – When the entire cost of the building project is more than five hundred thousand dollars (\$500,000), a local school administrative unit shall seek bids as provided in subsection (b) or (d) of this section or this subsection. ~~The local school administrative unit~~ The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest ~~responsible~~ responsible, responsive bidder under the single-prime system or to the lowest ~~responsible~~ responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids for ~~performance~~ to perform the contract. In determining the system under which the contract will be awarded to the lowest ~~responsible~~ responsible, responsive bidder, the ~~local school administrative unit~~ public entity may consider cost of construction oversight, time for completion, and other factors it ~~deems~~ considers appropriate. ~~The local school administrative unit shall not open any bid solicited under subsection (d) of this section unless the unit receives at least three competitive bids from reputable and qualified contractors regularly engaged in their respective lines of endeavor and unless the unit receives a bid from at least one general contractor under the separate-prime system.~~ The bids received as separate-prime bids shall be ~~submitted three hours~~ received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a

1 subcontractor to the general contractor under the single-prime system shall not exceed
2 the amount bid, if any, for the same work by that subcontractor to the local school
3 administrative unit public entity under the separate-prime system. Each single-prime bid
4 that identifies the contractors selected to perform the three major subdivisions or
5 branches of work described in subsection (d) of this section and that lists the
6 contractors' respective bid prices for those branches of work shall constitute a single
7 competitive bid, and each full set of separate prime bids for all of the branches of work
8 described in subsection (d) of this section shall constitute a single competitive bid. If
9 after advertisement as required by G.S. 143-129, the local school administrative unit has
10 not received the minimum number of competitive bids as required by this subsection,
11 the unit shall again advertise for bids. If the required minimum number of bids is not
12 received as a result of the second advertisement, the unit may let the contract to the
13 lowest responsible bidder that submitted a bid for the project, even though the unit
14 received only one bid. A contractor must provide an affidavit to the local school
15 administrative unit that it has made the good faith effort required pursuant to G.S. 143-
16 128(f), and failure to file the affidavit is grounds for rejection of the bid. All provisions
17 of Article 8 of Chapter 143 of the General Statutes that are not inconsistent with this
18 subsection shall apply to local school administrative units. The provisions of subsection
19 (b) of this section shall apply to separate-prime contracts awarded pursuant to this
20 section and the provisions of subsection (d) of this section shall apply to single-prime
21 contracts awarded pursuant to this section.

22 (e) Project expediter; scheduling; public body to resolve project disputes. – The
23 State, county, municipality, or other public body may, if specified in the bid documents,
24 provide for assignment of responsibility for expediting the work on the a project to a
25 single responsible and reliable person, firm or corporation, which may be a prime
26 contractor. In executing this responsibility, the designated project expediter may
27 recommend to the State, county, municipality, or other public body whether payment to
28 a contractor should be approved. The project expediter, if required by the contract
29 documents, shall be responsible for the preparation of preparing the project schedule and
30 shall allow all contractors and subcontractors performing any of the branches of work
31 listed in subsection (d) of this section equal input into the preparation of the initial
32 schedule. Whenever separate contracts are awarded and separate contractors engaged
33 for a project pursuant to this section, the public body may provide in the contract
34 documents for resolution of project disputes through alternative dispute resolution
35 processes such as mediation or arbitration as provided for in subsection (g) of this
36 section.

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

42 (1) The term "minority business" means a business:

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

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

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

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

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

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

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

34 **"§ 143-128.2. Minority business participation goals.**

35 (a) The State shall have a verifiable ten percent (10%) goal for participation by
36 minority businesses in the total value of work for each State building project, including
37 building projects done by a private entity on a facility to be leased or purchased by the
38 State. A local government unit or other public or private entity that receives State
39 appropriations for a building project or other State grant funds for a building project,
40 including a building project done by a private entity on a facility to be leased or
41 purchased by the local government unit, where the project cost is one hundred thousand
42 dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for

1 participation by minority businesses in the total value of the work; provided, however, a
2 local government unit may apply a different verifiable goal that was adopted prior to
3 December 1, 2001, if the local government unit had and continues to have a sufficiently
4 strong basis in evidence to justify the use of that goal. On State building projects and
5 building projects subject to the State goal requirement, the Secretary shall identify the
6 appropriate percentage goal, based on adequate data, for each category of minority
7 business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

8 Except as otherwise provided for in this subsection, each city, county, or other local
9 public entity shall adopt, after a notice and public hearing, an appropriate verifiable
10 percentage goal for participation by minority businesses in the total value of work for
11 building projects to include water, sewer, and landscape projects where no buildings are
12 erected or repaired in accordance with this subsection.

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

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

23 (c) Each bidder, which shall mean first-tier subcontractor for construction
24 manager at risk projects for purposes of this subsection, on a project bid under any of
25 the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority
26 businesses that it will use on the project and good faith documentation required pursuant
27 to this subsection. A contractor, including a first-tier subcontractor on a construction
28 manager at risk project, that performs all of the work under a contract with its own
29 workforce may submit an affidavit to that effect in lieu of documentation otherwise
30 required under this section. Documentation of its good faith effort shall be submitted by
31 each bidder with the bid and a minority utilization plan shall be submitted in each
32 proposal for construction managers at risk and alternative bidding projects. The
33 documentation must include evidence of all good faith efforts that were implemented,
34 including any advertisements, solicitations, and evidence of other specific actions
35 demonstrating recruitment and selection of minority businesses for participation in the
36 contract. Within 30 days after award of the contract, the apparent lowest responsible
37 responsive bidder shall also file a list of all identified subcontractors that the contractor
38 will use on the project.

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

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

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

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

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

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

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

17 (2) Attend the scheduled prebid conference.

18 (3) At least 10 days prior to the scheduled day of bid opening, notify
19 minority businesses that have requested notices from the public entity
20 for public construction or repair work and minority businesses that
21 otherwise indicated to the Office of Historically Underutilized
22 Businesses an interest in the type of work being bid or the potential
23 contracting opportunities listed in the proposal. The notification shall
24 include the following:

25 a. A description of the work for which the bid is being solicited.

26 b. The date, time, and location where bids are to be submitted.

27 c. The name of the individual within the public entity who will be
28 available to answer questions about the project.

29 d. Where bid documents may be reviewed.

30 e. Any special requirements that may exist.

31 (4) Utilize other media, as appropriate, likely to inform potential minority
32 businesses of the bid being sought.

33 (f) A public entity shall require bidders to undertake the following good faith
34 efforts to the extent required by the Secretary on projects subject to this section. The
35 Secretary shall adopt rules establishing points to be awarded for taking each effort and
36 the minimum number of points required, depending on project size, cost, type, and other
37 factors considered relevant by the Secretary. The public entity may require that
38 additional good faith efforts be taken, as indicated in its bid specifications. Good faith
39 efforts include:

40 (1) Contacting minority businesses that reasonably could have been
41 expected to submit a quote and that were known to the contractor or
42 available on State or local government maintained lists at least 10 days

- 1 before the bid or proposal date and notifying them of the nature and
2 scope of the work to be performed.
- 3 (2) Making the construction plans, specifications and requirements
4 available for review by prospective minority businesses, or providing
5 these documents to them at least 10 days before the bid or proposals
6 are due.
- 7 (3) Breaking down or combining elements of work into economically
8 feasible units to facilitate minority participation.
- 9 (4) Working with minority trade, community, or contractor organizations
10 identified by the Office of Historically Underutilized Businesses and
11 included in the bid documents that provide assistance in recruitment of
12 minority businesses.
- 13 (5) Attending any prebid meetings scheduled by the public owner.
- 14 (6) Providing assistance in getting required bonding or insurance or
15 providing alternatives to bonding or insurance for subcontractors.
- 16 (7) Negotiating in good faith with interested minority businesses and not
17 rejecting them as unqualified without sound reasons based on their
18 capabilities. Any rejection of a minority business based on lack of
19 qualification should have the reasons documented in writing.
- 20 (8) Providing assistance to an otherwise qualified minority business in
21 need of equipment, loan capital, lines of credit, or joint pay agreements
22 to secure loans, supplies, or letters of credit, including waiving credit
23 that is ordinarily required. Assisting minority businesses in obtaining
24 the same unit pricing with the bidder's suppliers in order to help
25 minority businesses in establishing credit.
- 26 (9) Negotiating joint venture and partnership arrangements with minority
27 businesses in order to increase opportunities for minority business
28 participation on a public construction or repair project when possible.
- 29 (10) Providing quick pay agreements and policies to enable minority
30 contractors and suppliers to meet cash-flow demands.
- 31 (g) As used in this section:
- 32 (1) The term "minority business" means a business:
- 33 a. In which at least fifty-one percent (51%) is owned by one or
34 more minority persons or socially and economically
35 disadvantaged individuals, or in the case of a corporation, in
36 which at least fifty-one percent (51%) of the stock is owned by
37 one or more minority persons or socially and economically
38 disadvantaged individuals; and
- 39 b. Of which the management and daily business operations are
40 controlled by one or more of the minority persons or socially
41 and economically disadvantaged individuals who own it.

1 (2) The term "minority person" means a person who is a citizen or lawful
2 permanent resident of the United States and who is:

3 a. Black, that is, a person having origins in any of the black racial
4 groups in Africa;

5 b. Hispanic, that is, a person of Spanish or Portuguese culture with
6 origins in Mexico, South or Central America, or the Caribbean
7 Islands, regardless of race;

8 c. Asian American, that is, a person having origins in any of the
9 original peoples of the Far East, Southeast Asia and Asia, the
10 Indian subcontinent, the Pacific Islands;

11 d. American Indian, that is, a person having origins in any of the
12 original Indian peoples of North America; or

13 e. Female.

14 (3) The term "socially and economically disadvantaged individual" means
15 the same as defined in 15 U.S.C. 637.

16 (h) The State, counties, municipalities, and all other public bodies shall award
17 public building contracts, including those awarded under G.S. 143-128.1, 143-129, and
18 143-131, without regard to race, religion, color, creed, national origin, sex, age, or
19 handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be
20 construed to require contractors or awarding authorities to award contracts or
21 subcontracts to or to make purchases of materials or equipment from minority-business
22 contractors or minority-business subcontractors who do not submit the lowest
23 responsible, responsive bid or bids.

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

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

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

33 **"§ 113-315.36. Building contracts.**

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

36 (1) Repealed by Session Laws 1999-368, s. 1.

37 (2) Except for ~~G.S. 143-128(f)~~, G.S. 143-128.2, Article 8 of Chapter 143 of
38 the General Statutes does not apply to public building contracts of the
39 Authority that require the estimated expenditure of public money in an
40 amount less than two hundred fifty thousand dollars (\$250,000). With
41 respect to a contract that is exempted from certain provisions of Article
42 8 under this subdivision, the powers and duties set out in Article 8

1 shall be exercised by the Authority, and the Secretary of
2 Administration and other State officers, employees, or agencies shall
3 have no duties or responsibilities concerning the contract.

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

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

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

17 "**§ 143-129.4. Guaranteed energy savings contracts.**

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

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

24 "**§ 143B-437.29. Contracting with minority businesses.**

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

29 **SECTION 3.5.** G.S. 158-35(a), as amended by Section 20.13(a) of S.L.
30 2001-424, reads as rewritten:

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

34 (1) The board of commissioners of each county participating in the Zone
35 shall appoint three voting members, one of whom shall be a minority
36 person as defined in ~~G.S. 143-128(f)(2)~~ G.S. 143-128.2(g)(2) and one
37 of whom may be a member of the board of commissioners.

38 (2) The Commission shall appoint at least three but no more than seven
39 voting members. By the appointment of these members, the
40 Commission shall ensure that the voting membership of the
41 Commission includes at least seven women and seven members of a
42 racial minority described in ~~G.S. 143-128(f)(2)~~. G.S. 143-128.2(g)(2).

1 The Commission shall appoint the fewest number of members
2 necessary to achieve these minimums.

3 (3) Four nonvoting members shall be appointed as follows:

4 a. One appointed by the Chancellor of East Carolina University to
5 represent the University.

6 b. One appointed by a majority vote of the presidents of the
7 community colleges located in the Zone, to represent the
8 community colleges.

9 c. One appointed by the chair of the State Ports Authority, to
10 represent the sea ports of the State.

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

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

14 to read:

15 "**§ 143-128.3. Minority business participation administration.**

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

19 (1) The verifiable percentage goal.

20 (2) The type and total dollar value of the project, minority business
21 utilization by minority business category, trade, total dollar value of
22 contracts awarded to each minority group for each project, the
23 applicable good faith effort guidelines or rules used to recruit minority
24 business participation, and good faith documentation accepted by the
25 public entity from the successful bidder.

26 (3) The utilization of minority businesses under the various construction
27 methods under G.S. 143-128(a1).

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

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

1 (1) That the public entity consult with the Department of Administration,
2 Office of Historically Underutilized Businesses on the development of
3 a new corrective plan, subject to the approval of the Department and
4 the Attorney General. The public entity may designate a representative
5 to appear on its behalf, provided that the representative has managerial
6 responsibility for the construction project.

7 (2) That the public entity not bid another contract under G.S. 143-128
8 without prior review by the Department and the Attorney General of a
9 good faith compliance plan developed pursuant to subdivision (1) of
10 this subsection. The public entity shall be subject to the review and
11 approval of its good faith compliance plan under this subdivision with
12 respect to any projects bid pursuant to G.S. 143-128 during a period of
13 time determined by the Secretary, not to exceed one year.

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

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

21 (d) The Secretary shall appoint an advisory board to develop recommendations to
22 improve the recruitment and utilization of minority businesses. The Secretary, with the
23 input of its advisory board, shall review the State's programs for promoting the
24 recruitment and utilization of minority businesses involved in State capital projects and
25 shall recommend to the General Assembly, the State Construction Office, The
26 University of North Carolina, and the community colleges system changes in the terms
27 and conditions of State laws, rules, and policies that will enhance opportunities for
28 utilization of minority businesses on these projects. The Secretary shall provide
29 guidance to these agencies on identifying types of projects likely to attract increased
30 participation by minority businesses and breaking down or combining elements of work
31 into economically feasible units to facilitate minority business participation.

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

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

37 (1) Failure by a public entity to report data to the Secretary in accordance
38 with this section.

39 (2) Upon the request of the Attorney General, any data or other
40 information collected under this section.

41 (3) False statements knowingly provided in any affidavit or
42 documentation under G.S. 143-128.2 to the State or other public entity.

1 Public entities shall provide to the Secretary information concerning
2 any false information knowingly provided to the public entity pursuant
3 to G.S. 143-128.2.

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

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

9 "(a) Bidding Required. – No construction or repair work requiring the estimated
10 expenditure of public money in an amount equal to or more than ~~one hundred thousand~~
11 ~~dollars (\$100,000)~~ three hundred thousand dollars (\$300,000) or purchase of apparatus,
12 supplies, materials, or equipment requiring an estimated expenditure of public money in
13 an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ ninety thousand dollars
14 (\$90,000) may be performed, nor may any contract be awarded therefor, by any board
15 or governing body of the State, or of any institution of the State government, or of any
16 political subdivision of the State, unless the provisions of this section are complied with.

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

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

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

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

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

30 **"§ 143-131. When counties, cities, towns and other subdivisions may let contracts**
31 **on informal bids.**

32 (a) All contracts for construction or repair work or for the purchase of apparatus,
33 supplies, materials, or equipment, involving the expenditure of public money in the
34 amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in
35 G.S. 143-129, made by any officer, department, board, or commission of any county,
36 city, town, or other subdivision of this State shall be made after informal bids have been
37 secured. All such contracts shall be awarded to the lowest ~~responsible~~ responsible,
38 responsive bidder, taking into consideration quality, performance, and the time specified
39 in the bids for the performance of the contract. It shall be the duty of any officer,
40 department, board, or commission entering into such contract to keep a record of all
41 bids submitted, and such record shall not be subject to public inspection until the
42 contract has been awarded.

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

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

11 "**§ 143-135.5. State policy; cooperation in promoting the use of small, minority,**
12 **physically handicapped and women contractors; purpose.**

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

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

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

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

31 (1) ~~One Three hundred thousand dollars (\$100,000)(\$300,000)~~ for the
32 repair of public buildings where such repair does not include major
33 structural change in framing or foundation support systems,

34 (1a) One hundred thousand dollars (\$100,000) for the repair of public
35 buildings affecting life safety systems,

36 (2) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand
37 dollars (\$135,000) for the repair of public buildings where such repair
38 includes major structural change in framing or foundation support
39 systems, or

40 (3) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand
41 dollars (\$135,000) for the construction of, or additions to, public
42 buildings or State-owned and operated utilities,

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

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

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

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

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

31 "**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and**
32 **capital improvements.**

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

- 38 (1) Conduct the fee negotiations for all design contracts and supervise the
39 letting of all construction and design contracts.
- 40 (2) Develop procedures governing the responsibilities of The University
41 of North Carolina and its affiliated and constituent institutions to
42 perform the duties of the Department of Administration and the

1 Director or Office of State Construction under G.S. 133-1.1(d) and
2 G.S. 143-341(3).

- 3 (3) Develop procedures and reasonable limitations governing the use of
4 open-end design agreements, subject to G.S. 143-64.34 and the
5 approval of the State Building Commission.

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

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

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

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

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

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

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

21 "(3) Architecture and Engineering:

22 a. To examine and approve all plans and specifications for the
23 construction or renovation of:

24 1. All State ~~buildings;~~buildings and buildings located on
25 State property; and

26 2. All community college buildings requiring the estimated
27 expenditure for construction or repair work for which
28 public bidding is required under G.S. 143-129 prior to
29 the awarding of a contract for such work; and to examine
30 and approve all changes in those plans and specifications
31 made after the contract for such work has been awarded.

32 b. To assist, as necessary, all agencies in the preparation of
33 requests for appropriations for the construction or renovation of
34 all State buildings.

35 b1. To certify that a statement of needs pursuant to G.S. 143-6 is
36 feasible. For purposes of this sub-subdivision, "feasible" means
37 that the proposed project is sufficiently defined in overall scope;
38 building program; site development; detailed design,
39 construction, and equipment budgets; and comprehensive
40 project scheduling so as to reasonably ensure that it may be
41 completed with the amount of funds requested. At the discretion
42 of the General Assembly, advanced planning funds may be

1 appropriated in support of this certification. This
2 sub-subdivision shall not apply to requests for appropriations of
3 less than one hundred thousand dollars (\$100,000).

4 c. To supervise the letting of all contracts for the design,
5 construction or renovation of all State buildings and all
6 community college buildings whose plans and specifications
7 must be examined and approved under a.2. of this subdivision.

8 d. To supervise and inspect all work done and materials used in
9 the construction or renovation of all State buildings and all
10 community college buildings whose plans and specifications
11 must be examined and approved under a.2. of this subdivision;
12 and no such work may be accepted by the State or by any State
13 agency until it has been approved by the Department.

14 Except for sub-subdivisions b. and b1. of this subdivision, this
15 subdivision does not apply to the design, construction, or renovation of
16 projects by The University of North Carolina pursuant to G.S. 116-
17 31.11."

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

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

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

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

28 "Section 3. This act is effective when it becomes ~~law and shall expire on June 30,~~
29 ~~2003.law.~~"

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

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

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

36 (1) The work is primarily for purposes of ensuring compliance with the
37 Life Safety Code and other applicable codes, including requirements
38 of the Joint Commission on the Accreditation of Healthcare
39 Organizations, or involves work to the same or related components or
40 areas of the building at the time of the compliance work.

41 (2) The force account labor is qualified to perform and is capable of
42 performing the work in an active patient environment.

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

2
3 **PART II. CONSTRUCTION AND DESIGN ADMINISTRATION**

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

5 **"§ 143-135.26. Powers and duties of the Commission.**

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

- 8 (1) To adopt rules establishing standard procedures and criteria to assure
9 that the designer selected for each State capital improvement ~~project~~
10 ~~and project~~, the consultant selected for planning and studies of an
11 architectural and engineering nature associated with a capital
12 improvement project or a future capital improvement project ~~and a~~
13 construction manager at risk selected for each capital improvement
14 project has the qualifications and experience necessary for that capital
15 improvement project or the proposed planning or study project. The
16 rules shall provide that the State Building Commission, after
17 consulting with the funded agency, is responsible and accountable for
18 the final selection of the ~~designer and the final selection of the~~
19 designer, consultant or construction manager at risk except when the
20 General Assembly or The University of North Carolina is the funded
21 agency. When the General Assembly is the funded agency, the
22 Legislative Services Commission is responsible and accountable for
23 the final selection of the ~~designer and the final selection of the~~
24 ~~designer~~, consultant, or the construction manager at risk and when
25 the University is the funded agency, it shall be subject to the rules
26 adopted hereunder, except it is responsible and accountable for the
27 final selection of the ~~designer and the final selection of the~~
28 ~~consultant~~ designer, consultant, or construction manager at risk. All
29 designers and consultants shall be selected within 60 days of the date
30 funds are appropriated for a project by the General Assembly or the
31 date of project authorization by the Director of the Budget; provided,
32 however, the State Building Commission may grant an exception to
33 this requirement upon written request of the funded agency if (i) no
34 site was selected for the project before the funds were appropriated or
35 (ii) funds were appropriated for advance planning only; provided,
36 further, the Director of the Budget, after consultation with the State
37 Construction Office, may waive the 60-day requirement for the
38 purpose of minimizing project costs through increased competition and
39 improvements in the market availability of qualified contractors to bid
40 on State capital improvement projects. The Director of the Budget also
41 may, after consultation with the State Construction Office, schedule
42 the availability of design and construction funds for capital

1 improvement projects for the purpose of minimizing project costs
2 through increased competition and improvements in the market
3 availability of qualified contractors to bid on State capital
4 improvement projects.

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

- 9 (2) To adopt rules for coordinating the plan review, approval, and permit
10 process for State capital improvement ~~projects, and community college~~
11 buildings, as defined in subdivision (4) of this section. The rules shall
12 provide for a specific time frame for plan review and approval and
13 permit issuance by each agency, consistent with applicable laws. The
14 time frames shall be established to provide for expeditious review,
15 approval, and permitting of State capital improvement projects and
16 community college buildings.
- 17 (2a) To adopt rules exempting specified types of State capital improvement
18 projects, including community college buildings as defined in
19 subdivision (4) of this section, from plan review.
- 20 (3) To adopt rules for establishing a post-occupancy evaluation, annual
21 inspection and preventive maintenance program for all State buildings.
- 22 (4) To develop procedures for evaluating the work performed by designers
23 and contractors on State capital improvement projects and those
24 community college buildings, as defined in G.S. 143-336, requiring the
25 estimated expenditure for construction or repair work for which public
26 bidding is required under G.S. 143-129, and for use of the evaluations
27 as a factor affecting designer selections and determining qualification
28 of contractors to bid on State capital improvement projects and
29 community college buildings.
- 30 (5) To continuously study and recommend ways to improve the
31 effectiveness and efficiency of the State's capital facilities
32 development and management program.
- 33 (6) To request designers selected prior to April 14, 1987, whose plans for
34 the projects have not been approved to report to the Commission on
35 their progress on the projects. The Department of Administration shall
36 provide the Commission with a list of all such projects.
- 37 (7) To appoint an advisory board, if the Commission deems it necessary,
38 to assist the Commission in its work. No one other than the
39 Commission may appoint an advisory board to assist or advise it in its
40 ~~work; and~~work.
- 41 (8) To review the State's provisions for ensuring the safety and health of
42 employees involved with State capital improvement projects, and to

1 recommend to the appropriate agencies and to the General Assembly,
2 after consultation with the Commissioner of Labor, changes in the
3 terms and conditions of construction contracts, State regulations, or
4 State laws that will enhance employee safety and health on these
5 projects.

6 (9) ~~Effective July 1, 1996, to~~To authorize a State agency, a local
7 governmental unit, or any other entity subject to the provisions of G.S.
8 143-129 to use a method of contracting not authorized under ~~G.S. 143-~~
9 ~~128, including the use of the single prime contracting system without~~
10 ~~soliciting bids under both the single and separate prime contract~~
11 ~~systems.~~G.S. 143-128. An authorization under this subdivision for an
12 alternative contracting method shall be granted only under the
13 following conditions:

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

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

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

35 (11) To direct the Department in the development of rules for agency
36 evaluation of energy savings contracts pursuant to G.S. 143-64.17F.

37 (12) To develop dispute resolution procedures, including mediation, for
38 subcontractors under any of the construction methods authorized under
39 G.S. 143-128(a1) on State capital improvement projects, including
40 building projects of The University of North Carolina, and community
41 college buildings as defined in subdivision (4) of this section, for use

1 by any public entity that has not developed its own dispute resolution
2 process.

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

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

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

12 "(c) The Commissioner shall review a plan subject to subsection (b) of this section
13 within 30 days of submission, provided that the Commissioner may require one
14 additional 30-day extension if necessary to complete the review. If the Commissioner
15 has neither approved nor denied the plan during the initial 30-day review period, the
16 owner may proceed with the building site preparation, the building foundation, and any
17 structural components of the building that are not subject to inspection for the purposes
18 set forth in subsection (b) of this section. If the Commissioner has neither approved nor
19 denied the plan within 60 days of submission, the owner may request review and final
20 approval under subsection (b) of this section by the Department of Administration, State
21 Construction Office, pursuant to rules adopted under G.S. 143-135.26."

23 PART III. LANDSCAPE ARCHITECTURE LAW CHANGES

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

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

41 a. The location and orientation of buildings and other similar site
42 elements.

- 1 **b.** The location, routing and design of public and private streets,
2 residential and commercial subdivision roads, or roads in and
3 providing access to private or public developments. This does
4 not include the preparation of construction plans for proposed
5 roads classified as major thoroughfares or a higher
6 classification.
- 7 **c.** The location, routing and design of private and public pathways
8 and other travelways.
- 9 **d.** The preparation of planting plans.
- 10 **e.** The design of surface or incidental subsurface drainage
11 systems, soil conservation and erosion control measures
12 necessary to an overall landscape plan and site design."

13 **SECTION 12.1.(b)** The State Board of Examiners for Engineers and
14 Surveyors and the Board of Landscape Architects shall agree to a Memorandum of
15 Understanding that identifies areas of overlap or common practice regarding the scope
16 of their respective professions and means for resolving disputes concerning standards of
17 practice, qualifications, and jurisdiction regarding the identified areas of overlap. The
18 parties shall send a joint written report to the General Assembly no later than April 30,
19 2002, concerning the Memorandum of Understanding and whether the changes in
20 Section 13.1(a) of this act should be repealed or modified, and the General Assembly
21 may consider and take action on the report during its session in 2002 or at any other
22 time as it may consider appropriate.

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

26 This study shall include an examination of:

- 27 (1) The qualifications and education of landscape architects.
28 (2) The definition of landscape architecture in G.S. 89A-1(3), as amended
29 by subsection 13.1(a) of this act, and whether the changes made in
30 subsection 13.1(a) of this act should be repealed or modified.
31 (3) The areas of overlap or common practice regarding the scope of the
32 professions of engineering and landscape architecture.
33 (4) The governance and procedures of the State Board of Examiners for
34 Engineers and Surveyors and the Board of Landscape Architects in
35 their respective roles in protecting the public health, safety, and
36 welfare of the people of the State.

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

- 40 (1) The State Board of Landscape Architects.
41 (2) The State Board of Examiners for Engineers and Surveyors.
42 (3) The Consulting Engineers Council of North Carolina.

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

7 The Legislative Research Commission may make an interim report to the
8 2001 General Assembly, Regular Session 2002, and shall make a final report to the
9 2003 General Assembly upon its convening. The reports may include proposed
10 legislation to carry out the recommendations of the study.

11 **SECTION 12.1.(d)** This section is effective when this act becomes law.
12

13 **PART IV. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

3 **SECTION 13.3.(a)** There is appropriated from the General Fund to the
4 Department of Administration the sum of one million twelve thousand seven hundred
5 forty-six dollars (\$1,012,746) for the 2001-2002 fiscal year and the sum of six hundred
6 twenty-three thousand three hundred eighty-three dollars (\$623,383) for the 2002-2003
7 fiscal year to implement the provisions of this act. The funds shall be allocated as
8 follows:

	<u>Fiscal Year 2001-2002</u>	<u>Fiscal Year 2002-2003</u>
9		
10		
11	Office of the Secretary	\$ 32,396
12	State Construction Office	\$ 64,791
13	Office of Historically	\$224,715
14	Underutilized Business	\$506,098
15		\$333,877.

16 **SECTION 13.3.(b)** There is appropriated from the General Fund to the
17 Department of Justice the sum of sixty-four thousand seven hundred ninety-one dollars
18 (\$64,791) for the 2002-2003 fiscal year to implement the provisions of this act.

19 **PART V. EFFECTIVE DATE**

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

26 **SECTION 14.(b)** The State Building Commission shall adopt temporary
27 rules to implement G.S. 143-135.26(10) and G.S. 143-135.26(12) as enacted by Section
28 11 of this act no later than 60 days following the effective date of Section 11 of this act.
29 The Secretary of Administration shall adopt rules to implement G.S. 143-128.2(f) as
30 enacted by Section 3.1 of this act no later than June 30, 2002. A bidder must show
31 compliance with at least five of the 10 efforts, as set forth in G.S. 143-128.2(f) as
32 enacted by Section 3.1 of this act, until 60 days following the adoption of rules to
33 implement G.S. 143-128.2(f) by the Secretary of Administration as required in this
34 section.

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