

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1851\*

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

Sponsors: Representatives Cole, Crawford (Primary Sponsors); Gill and Hughes.

Referred to: State Government/State Personnel, if favorable, Judiciary II.

May 20, 2010

A BILL TO BE ENTITLED

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

11 The General Assembly of North Carolina enacts:

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

13 **"§ 18C-150. Procurements.**

14 The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but  
15 may use the services of the Department of Administration in procuring goods and services for  
16 the Commission. However, the Commission shall submit proposed contracts authorized by this  
17 section to the Attorney General or the Attorney General's designee for review as provided in  
18 G.S. 114-8.3, and shall include in all contracts to be awarded by the Commission under this  
19 section a standard clause which provides that the State Auditor and internal auditors of the  
20 Commission may audit the records of the contractor during the term of the contract to verify  
21 accounts and data affecting fees and performance. The Commission shall not award a cost plus  
22 percentage of cost contract for any purpose."

23 **SECTION 2.** G.S. 53-320 reads as rewritten:

24 **"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

25 ...

26  
27 (d) The Commissioner may enter into agreements with any bank supervisory agency  
28 supervising (i) a State trust institution engaging in trust business outside this State or (ii) an  
29 out-of-state trust institution maintaining a trust office or representative trust office in this State  
30 to engage the services of the agency's examiners at a reasonable rate of compensation or to  
31 provide the services of the Commissioner's examiners to the agency at a reasonable rate of  
32 compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements  
33 authorized by this subsection. However, the Commissioner shall submit proposed agreements  
34 or contracts authorized by this subsection to the Attorney General or the Attorney General's  
35 designee for review as provided in G.S. 114-8.3, and shall include in all agreements or  
36 contracts to be awarded by the Commissioner under this subsection a standard clause which  
37 provides that the State Auditor and internal auditors of the Commissioner may audit the records



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1 of the contractor during the term of the agreement or contract to verify accounts and data  
2 affecting fees and performance. The Commissioner shall not award a cost plus percentage of  
3 cost agreement or contract for any purpose.

4 ...."

5 **SECTION 3.** G.S. 53-326 reads as rewritten:

6 "**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

7 ...

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

23 ...."

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

25 "**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

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

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

44 "**§ 53-401. Provisions for conservator; duties and powers.**

45 Whenever the Commissioner deems it necessary in order to conserve the assets of a State  
46 trust company for the benefit of clients or creditors, the Commissioner may appoint a  
47 conservator for the State trust company and require of the conservator a bond with any surety  
48 the Commissioner deems necessary and proper in an amount deemed sufficient by the  
49 Commissioner. The conservator, under the direction of the Commissioner, shall take possession  
50 of the fiduciary records and other books, records, and assets of every description of the State  
51 trust company placed under conservatorship and take actions necessary to conserve those assets

1 pending further disposition of its business as provided by law. Except as provided in  
2 G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the  
3 approval of the Commissioner, now possessed by or given to the Commissioner under the  
4 provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be  
5 paid out of the assets of the State trust company under conservatorship and shall be a lien  
6 thereon which shall be prior to any other lien provided by law. The compensation of the  
7 conservator shall be determined by the Commissioner and shall be based on the time and  
8 experience of the conservator and the complexity of the conservatorship. Compensation of the  
9 conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General  
10 Statutes. However, the Commissioner shall submit proposed agreements or contracts authorized  
11 by this section to the Attorney General or the Attorney General's designee for review as  
12 provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the  
13 Commissioner under this section a standard clause which provides that the State Auditor and  
14 internal auditors of the Commissioner may audit the records of the conservator during the term  
15 of the agreement or contract to verify accounts and data affecting fees and performance. The  
16 Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
17 purpose."

18 **SECTION 6.** G.S. 58-2-69 reads as rewritten:

19 **"§ 58-2-69. Notification of criminal convictions and changes of address; service of notice;**  
20 **contracts for online services, administrative services, or regulatory data**  
21 **systems.**

22 ...

23 (g) The Commissioner may contract with the NAIC or other persons for the provision  
24 of online services to licensees, for the provision of administrative services to licensees, or for  
25 the provision of regulatory data systems to the Commissioner. The NAIC or other person with  
26 whom the Commissioner contracts may charge licensees a reasonable fee for the costs  
27 associated with the licensees' use of online services and administrative services. The fee shall  
28 be agreed to by the Commissioner and the other contracting party and shall be stated in the  
29 contract. Contracts for the provision of online services, contracts for the provision of  
30 administrative services, and contracts for the provision of regulatory data systems shall not be  
31 subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter  
32 147 of the General Statutes. However, the Commissioner shall submit proposed contracts  
33 authorized by this subsection to the Attorney General or the Attorney General's designee for  
34 review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the  
35 Commissioner under this subsection a standard clause which provides that the State Auditor  
36 and internal auditors of the Commissioner may audit the records of the contractor during the  
37 term of the agreement or contract to verify accounts and data affecting fees and performance.  
38 The Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
39 purpose."

40 **SECTION 7.** G.S. 58-33-30 reads as rewritten:

41 **"§ 58-33-30. License requirements.**

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

44 ...

45 (e) Examination.

46 ...

47 (4) The answers of the applicant to the examination shall be provided by the  
48 applicant under the Commissioner's supervision. The Commissioner shall  
49 give examinations at such times and places within this State as the  
50 Commissioner considers necessary reasonably to serve the convenience of  
51 both the Commissioner and applicants: Provided that the Commissioner may

1 contract directly with persons for the processing of examination application  
2 forms and for the administration and grading of the examinations required  
3 by this section; the Commissioner may charge a reasonable fee in addition to  
4 the registration fee charged under G.S. 58-33-125, to offset the cost of the  
5 examination contract authorized by this subsection; and such contracts shall  
6 not be subject to Article 3 of Chapter 143 of the General Statutes. However,  
7 the Commissioner shall submit proposed contracts authorized by this  
8 subdivision to the Attorney General or the Attorney General's designee for  
9 review as provided in G.S. 114-8.3, and shall include in all contracts to be  
10 awarded by the Commissioner under this subdivision a standard clause  
11 which provides that the State Auditor and internal auditors of the  
12 Commissioner may audit the records of the contractor during the term of the  
13 contract to verify accounts and data affecting fees and performance. The  
14 Commissioner shall not award a cost plus percentage of cost contract for any  
15 purpose.

- 16 (5) The Commissioner shall collect in advance the examination and registration  
17 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The  
18 Commissioner shall make or cause to be made available to all applicants, for  
19 a reasonable fee to offset the costs of production, materials that he considers  
20 necessary for the applicants' proper preparation for examinations. The  
21 Commissioner may contract directly with publishers and other suppliers for  
22 the production of the preparatory materials, and contracts so let by the  
23 Commissioner shall not be subject to Article 3 of Chapter 143 of the General  
24 Statutes. However, the Commissioner shall submit proposed contracts  
25 authorized by this subdivision to the Attorney General or the Attorney  
26 General's designee for review as provided in G.S. 114-8.3, and shall include  
27 in all contracts to be awarded by the Commissioner under this subdivision a  
28 standard clause which provides that the State Auditor and internal auditors  
29 of the Commissioner may audit the records of the contractor during the term  
30 of the contract to verify accounts and data affecting fees and performance.  
31 The Commissioner shall not award a cost plus percentage of cost contract for  
32 any purpose.

33 ...."

34 **SECTION 8.** G.S. 58-33-125 reads as rewritten:

35 "**§ 58-33-125. Fees.**

36 ...

37 (e) A resident licensee may obtain a duplicate photo-bearing license at times and places  
38 within this State that the Commissioner considers necessary and reasonable to serve the  
39 convenience of both the Commissioner and the licensee. The Commissioner may contract  
40 directly with persons for processing of duplicate photo-bearing licenses, and the contract shall  
41 not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may  
42 charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the  
43 costs to the Department of duplicating the license, including costs associated with any contract  
44 entered into pursuant to this subsection. However, the Commissioner shall submit proposed  
45 contracts authorized by this subsection to the Attorney General or the Attorney General's  
46 designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be  
47 awarded by the Commissioner under this subsection a standard clause which provides that the  
48 State Auditor and internal auditors of the Commissioner may audit the records of the contractor  
49 during the term of the contract to verify accounts and data affecting fees and performance. The  
50 Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
51 purpose.

1 ...."

2 **SECTION 9.** G.S. 58-33-130 reads as rewritten:

3 **"§ 58-33-130. Continuing education program for licensees.**

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

- 8 (1) The content of continuing education courses;
- 9 (2) Accreditation of continuing education sponsors and programs;
- 10 (3) Accreditation of videotape or other audiovisual programs;
- 11 (4) Computation of credit;
- 12 (5) Special cases and exemptions;
- 13 (6) General compliance procedures; and
- 14 (7) Sanctions for noncompliance.

15 The Commissioner may contract directly with persons for the administration of the program  
16 provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143  
17 of the General Statutes. However, the Commissioner shall submit proposed contracts  
18 authorized by this subsection to the Attorney General or the Attorney General's designee for  
19 review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the  
20 Commissioner under this subsection a standard clause which provides that the State Auditor  
21 and internal auditors of the Commissioner may audit the records of the contractor during the  
22 term of the contract to verify accounts and data affecting fees and performance. The  
23 Commissioner shall not award a cost plus percentage of cost agreement or contract for any  
24 purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost  
25 of the program, including costs associated with contracts authorized by this subsection. The fee  
26 authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As  
27 used in this section and in G.S. 58-33-132, "administrator" means any person with whom the  
28 Commissioner has contracted under this subsection.

29 ...."

30 **SECTION 10.** G.S. 58-71-40 reads as rewritten:

31 **"§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications**  
32 **generally.**

33 ...

34 (d) When a license is issued under this section, the Commissioner shall issue a picture  
35 identification card, of design, size, and content approved by the Commissioner, to the licensee.  
36 Each licensee must carry this card at all times when working in the scope of the licensee's  
37 employment. A licensee whose license terminates or is terminated shall surrender the  
38 identification card to the Commissioner within 10 working days after the termination. The  
39 Commissioner may contract directly with persons for the processing and issuance of picture  
40 identification cards required by this section and may charge a reasonable fee in addition to the  
41 license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service,  
42 including the costs associated with the contract authorized by this subsection. Contracts entered  
43 into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General  
44 Statutes. However, the Commissioner shall submit proposed contracts authorized by this  
45 subsection to the Attorney General or the Attorney General's designee for review as provided in  
46 G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this  
47 subsection a standard clause which provides that the State Auditor and internal auditors of the  
48 Commissioner may audit the records of the contractor during the term of the contract to verify  
49 accounts and data affecting fees and performance. The Commissioner shall not award a cost  
50 plus percentage of cost agreement or contract for any purpose.

51 ...."

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

2   "**§ 63A-24. General laws apply to Authority; exceptions.**

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

- 6           (1)     Article 3 of Chapter 143 of the General Statutes does not apply to contracts  
7 for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user  
8 projects. That Article also does not apply to other contracts for projects, but,  
9 with respect to these other contracts, the powers and duties established in  
10 that Article shall be exercised by the Authority and the Secretary of  
11 Administration, and other State officers, employees, or agencies shall have  
12 no duties or responsibilities concerning the contracts. However, the  
13 Authority shall submit proposed contracts authorized by this subdivision to  
14 the Attorney General or the Attorney General's designee for review as  
15 provided in G.S. 114-8.3, and shall include in all contracts to be awarded by  
16 the Commissioner under this subdivision a standard clause which provides  
17 that the State Auditor and internal auditors of the Authority may audit the  
18 records of the contractor during the term of the contract to verify accounts  
19 and data affecting fees and performance. The Authority shall not award a  
20 cost plus percentage of cost agreement or contract for any purpose.

21       ...."

22           **SECTION 12.** G.S. 84-23 reads as rewritten:

23   "**§ 84-23. Powers of Council.**

24       ...

25       (d)     The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal  
26 with real or personal property in the same manner as any private person or corporation, subject  
27 only to the approval of the Governor and the Council of State as to the acquisition, rental,  
28 encumbering, leasing and sale of real property. The Council may borrow money upon its  
29 bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale  
30 pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such  
31 borrowing either unsecured or secured by a mortgage on the Council's interest in real or  
32 personal property, and engage and contract with attorneys, underwriters, financial advisors, and  
33 other parties as necessary for such borrowing, with such borrowing and security subject to the  
34 approval of the Governor and the Council of State. The Council may utilize the services of the  
35 Purchase and Contract Division of the Department of Administration to procure personal  
36 property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.  
37 However, the Council shall submit proposed contracts authorized by this subsection to the  
38 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3,  
39 and shall include in all contracts to be awarded by the Council under this subsection a standard  
40 clause which provides that the State Auditor and internal auditors of the Council may audit the  
41 records of the contractor during the term of the contract to verify accounts and data affecting  
42 fees and performance. The Council shall not award a cost plus percentage of cost agreement or  
43 contract for any purpose."

44           **SECTION 13.** G.S. 89E-5 reads as rewritten:

45   "**§ 89E-5. Functions and duties of the Licensing Board.**

46       ...

47       (e)     The Board may authorize expenditures deemed necessary to carry out the provisions  
48 of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The  
49 Board treasurer shall deposit funds received by the Board in one or more funds in banks or  
50 other financial institutions carrying deposit insurance and authorized to do business in North  
51 Carolina. Interest earned on such funds may remain in the funds account and may be expended

1 as authorized by the Board to carry out the provisions of this Chapter. In no event may  
2 expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized  
3 and empowered to utilize the services of the Purchase and Contract Division of the Department  
4 of Administration for the procurement of personal property, in accordance with Article 3 of  
5 Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by  
6 this subsection to the Attorney General or the Attorney General's designee for review as  
7 provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under  
8 this subsection a standard clause which provides that the State Auditor and internal auditors of  
9 the Council may audit the records of the contractor during the term of the contract to verify  
10 accounts and data affecting fees and performance. The Board shall not award a cost plus  
11 percentage of cost agreement or contract for any purpose.

12 ...."

13 **SECTION 14.** G.S. 89F-5 reads as rewritten:

14 **"§ 89F-5. Powers and duties of the Board.**

15 ...

16 (d) The Board may employ the necessary personnel for the performance of its functions  
17 and shall fix their compensation within the limits of funds available to the Board. The Board  
18 may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of  
19 the General Statutes. The Board shall submit proposed contracts authorized by this subsection  
20 to the Attorney General or the Attorney General's designee for review as provided in  
21 G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this  
22 subsection a standard clause which provides that the State Auditor and internal auditors of the  
23 Council may audit the records of the contractor during the term of the contract to verify  
24 accounts and data affecting fees and performance. The Board shall not award a cost plus  
25 percentage of cost agreement or contract for any purpose.

26 ...."

27 **SECTION 15.** G.S. 108A-55 reads as rewritten:

28 **"§ 108A-55. Payments.**

29 ...

30 (b) Payments shall be made only to intermediate care facilities, hospitals and nursing  
31 homes licensed and approved under the laws of the State of North Carolina or under the laws of  
32 another state, or to pharmacies, physicians, dentists, optometrists or other providers of  
33 health-related services authorized by the Department. Payments may also be made to such  
34 fiscal intermediaries and to the capitation or prepaid health service contractors as may be  
35 authorized by the Department. Arrangements under which payments are made to capitation or  
36 prepaid health services contracts are not subject to the provisions of Chapter 58 of the General  
37 Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall  
38 submit proposed agreements or contracts authorized by this subsection to the Attorney General  
39 or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in  
40 all agreements or contracts to be awarded by the Department under this subsection a standard  
41 clause which provides that the State Auditor and internal auditors of the Council may audit the  
42 records of the contractor during the term of the contract to verify accounts and data affecting  
43 fees and performance. The Department shall not award a cost plus percentage of cost agreement  
44 or contract for any purpose.

45 ...."

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

48 **"§ 114-8.3. Attorney General to review certain contracts.**

49 (a) The Attorney General or the Attorney General's designee shall review all proposed  
50 statewide term contracts for supplies, materials, printing, equipment, and contractual services  
51 and all proposed agency term contractual services contracts that exceed one million dollars

1 (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses  
2 required by law, provide for sufficient monitoring, provide for sufficient performance penalties,  
3 and accomplish the intended purposes of the proposed contract.

4 (b) The Attorney General or the Attorney General's designee shall review all proposed  
5 contracts to be awarded by a department, agency, or institution of the State to ensure that the  
6 proposed contracts are in proper legal form, contain all clauses required by law, provide for  
7 sufficient monitoring, and provide for sufficient performance penalties. For purposes of this  
8 subsection, the term "Attorney General's designee" shall include any attorney approved by the  
9 Attorney General to review contracts as provided in this subsection. The Attorney General shall  
10 require that any attorney designated under this subsection shall comply with any rules  
11 established by the Attorney General regarding the review of contracts."

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

13 **"§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

14 Notwithstanding any other provision of law, all fees collected by the Applied Textile  
15 Technology Center for services to the textile industry, except for regular curriculum and  
16 continuing education tuition receipts, shall be retained by the Center and used for the  
17 operations of the Center. Purchases made by the Center using these funds are not subject to the  
18 provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall  
19 submit proposed agreements or contracts to provide services authorized by this section to the  
20 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3,  
21 and shall include in all agreements or contracts to be awarded by the Center under this section a  
22 standard clause which provides that the State Auditor and internal auditors of the Council may  
23 audit the records of the contractor during the term of the contract to verify accounts and data  
24 affecting fees and performance. The Department shall not award a cost plus percentage of cost  
25 agreement or contract for any purpose."

26 **SECTION 18.** G.S. 135-43 reads as rewritten:

27 **"§ 135-43. Confidentiality of information and medical records; provider contracts.**

28 ...

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

33 The terms of a contract between the Plan and its third party administrator or between the  
34 Plan and its pharmacy benefit manager are a public record except that the terms in those  
35 contracts that contain trade secrets or proprietary or competitive information are not a public  
36 record under Chapter 132 of the General Statutes, and any such proprietary or competitive  
37 information and trade secrets contained in the contract shall be redacted by the Plan prior to  
38 making it available to the public. This subsection shall not be construed to prevent or restrict  
39 the release of any information made not a public record under this subsection to the State  
40 Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive  
41 Administrator, and the Committee on Employee Hospital and Medical Benefits solely and  
42 exclusively for their use in the furtherance of their duties and responsibilities, and to the  
43 Department of Health and Human Services solely for the purpose of implementing the  
44 transition of NC Health Choice from the Plan to the Department of Health and Human  
45 Services. The design, adoption, and implementation of the preferred provider contracts,  
46 networks, and optional alternative comprehensive health benefit plans, and programs available  
47 under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the  
48 requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive  
49 Administrator and Board of Trustees shall submit proposed contracts authorized by this section  
50 to the Attorney General or the Attorney General's designee for review as provided in  
51 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive



1 Administrator and Board of Trustees under this section a standard clause which provides that  
2 the State Auditor and internal auditors of the Plan may audit the records of the contractor  
3 during the term of the contract to verify accounts and data affecting fees and performance. The  
4 Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost  
5 agreement or contract for any purpose. The Executive Administrator and Board of Trustees  
6 shall make reports as requested to the President of the Senate, the President Pro Tempore of the  
7 Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital  
8 and Medical Benefits.

9 ...."

10 **SECTION 19.** G.S. 136-28.1 reads as rewritten:

11 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

12 ...

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

26 ...."

27 **SECTION 20.** G.S. 136-89.194 reads as rewritten:

28 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

29 ...

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

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

44 (2) Article 3D of Chapter 147 of the General Statutes. The Authority may use  
45 the services of the Office of Information Technology Services in procuring  
46 goods and services that are not specific to establishing and operating a toll  
47 revenue system. All contract information for contracts for information  
48 technology are subject to disclosure in accordance with G.S. 147-33.95.

49 ...."

50 **SECTION 21.** G.S. 143-49 reads as rewritten:

51 **"§ 143-49. Powers and duties of Secretary.**

1 The Secretary of Administration shall have power and authority, and it shall be his duty,  
 2 subject to the provisions of this Article:

3 (1) To canvass sources of supply, including sources of supply of materials and  
 4 supplies with recycled content, and to purchase or to contract for the  
 5 purchase, lease and lease-purchase of all supplies, materials, equipment and  
 6 other tangible personal property required by the State government, or any of  
 7 its departments, institutions or agencies under competitive bidding or  
 8 otherwise as hereinafter provided. Prior to the awarding of any statewide  
 9 term or agency term contract for supplies, materials, equipment, or other  
 10 tangible personal property exceeding a cost of one hundred thousand dollars  
 11 (\$100,000), the Secretary shall request and the Attorney General shall assign  
 12 a representative of the office of the Attorney General to assist in the award  
 13 of the contract. It shall be the duty of the representative of the office of the  
 14 Attorney General to assist and advise in obtaining the most favorable  
 15 contract for the State or agency, to evaluate all proposals available from  
 16 prospective contractors for that purpose, to interpret proposed contract  
 17 terms, and to advise the Secretary or the Secretary's representatives of the  
 18 liabilities of the State or agency and the validity of the contract to be  
 19 awarded. All contracts and drafts of contracts shall be prepared by the office  
 20 of the Attorney General and copies thereof shall be retained by the office of  
 21 the Attorney General for a period of three years following the termination of  
 22 the contracts.

23 ...

24 (3) To purchase or to contract for, by sealed, competitive bidding or other  
 25 suitable means, all contractual services and needs of the State government,  
 26 or any of its departments, institutions, or agencies; or to authorize any  
 27 department, institution or agency to purchase or contract for such services.

28 ~~When the award~~ Prior to the awarding of any contract for contractual  
 29 services exceeding a cost of one hundred thousand dollars ~~(\$100,000)~~  
 30 ~~requires negotiation with prospective contractors, (\$100,000),~~ the Secretary  
 31 shall request and the Attorney General shall assign a representative of the  
 32 office of the Attorney General to assist in ~~negotiation for~~ the award of the  
 33 contract. It shall be the duty of such representative to assist and advise in  
 34 obtaining the most favorable contract for the State, to evaluate all proposals  
 35 available from prospective contractors for that purpose, to interpret proposed  
 36 contract terms and to advise the Secretary or his representatives of the  
 37 liabilities of the State and validity of the contract to be awarded. All  
 38 contracts and drafts of such contracts shall be prepared by the office of the  
 39 Attorney General and copies thereof shall be retained by such office for a  
 40 period of three years following the termination of such contracts. The term  
 41 "contractual services" as used in this subsection shall mean work performed  
 42 by an independent contractor requiring specialized knowledge, experience,  
 43 expertise or similar capabilities wherein the service rendered does not  
 44 consist primarily of acquisition by this State of equipment or materials and  
 45 the rental of equipment, materials and supplies. The term "negotiation" as  
 46 used herein shall not be deemed to refer to contracts entered into or to be  
 47 entered into as a result of a competitive bidding process.

48 ...

49 (9) To include a standard clause in all contracts awarded by the State and  
 50 departments, agencies, and institutions of the State, providing that the State  
 51 Auditor and internal auditors of the affected department, agency, or

1 institution may audit the records of the contactor during the term of the  
2 contract to verify accounts and data affecting fees or performance.

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

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

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

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

22 (14) To work in conjunction with the Office of State Personnel to create a  
23 Contracting Specialist career path to provide for the designation of one or  
24 more employees within each department, agency, or institution of the State  
25 to serve as the Contracting Specialist for the department, agency, or  
26 institution. Employees on the Contracting Specialist career path shall receive  
27 training and guidance as to the provisions of this Article.

28 (15) To work in conjunction with the Office of State Personnel, the Division of  
29 Purchase & Contract, and the University of North Carolina School of  
30 Government to develop a rigorous contract management training and  
31 certification program for State employees. The program shall be  
32 administered by the Office of State Personnel.

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

37 **SECTION 22.** G.S. 143-52 is amended to read as follows:

38 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids;**  
39 **awarding of ~~contracts~~contracts; cost plus percentage of cost contracts strictly**  
40 **prohibited.**

41 ...

42 (c) Neither the Department of Administration nor any department, agency, or institution  
43 of the State may award a cost plus percentage of cost contract for any purpose."

44 **SECTION 23.** Article 3 of Chapter 143 of the General Statutes is amended by  
45 adding a new section to read as follows:

46 "**§ 143-52.2. Certain contracts subject to review by Attorney General.**

47 (a) The Secretary of Administration and every department, agency, and institution of  
48 the State shall submit to the Attorney General or the Attorney General's designee for review all  
49 proposed statewide term contracts for supplies, materials, printing, equipment, and contractual  
50 services and all proposed agency term contractual services contracts that exceed one million  
51 dollars (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all

1 clauses required by law, provide for sufficient monitoring, provide for sufficient performance  
2 penalties, and accomplish the intended purposes of the proposed contract.

3 (b) The Secretary of Administration and every department, agency, and institution of  
4 the State shall submit to the Attorney General or the Attorney General's designee for review all  
5 proposed contracts to be awarded by a department, agency, or institution of the State to ensure  
6 that the proposed contracts are in proper legal form, contain all clauses required by law,  
7 provide for sufficient monitoring, and provide for sufficient performance penalties. For  
8 purposes of this subsection, the term "Attorney General's designee" shall include any attorney  
9 approved by the Attorney General to review contracts as provided in this subsection. The  
10 Attorney General shall require that any attorney designated under this subsection shall comply  
11 with any rules established by the Attorney General regarding the review of contracts."

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

13 **"§ 143-134. Applicable to Department of Transportation and Department of Correction;**  
14 **exceptions.-exceptions; all contracts subject to review by Attorney General and**  
15 **State Auditor.**

16 (a) This Article shall apply to the Department of Transportation and the Department of  
17 Correction except in the construction of roads, bridges and their approaches; provided however,  
18 that whenever the Director of the Budget determines that the repair or construction of a  
19 building by the Department of Transportation or by the Department of Correction can be done  
20 more economically through use of employees of the Department of Transportation and/or  
21 prison inmates than by letting such repair or building construction to contract, the provisions of  
22 this Article shall not apply to such repair or construction.

23 (b) Notwithstanding the provisions of subsection (a) of this section, the Department of  
24 Transportation and the Department of Correction shall submit proposed contracts authorized by  
25 this section or any other provision of general law to the Attorney General or the Attorney  
26 General's designee for review as provided in G.S. 114-8.3 and G.S. 143-52-2 and shall include  
27 in all contracts to be awarded by the Department of Transportation or the Department of  
28 Correction a standard clause which provides that the State Auditor and internal auditors of the  
29 Department of Transportation or the Department of Correction may audit the records of the  
30 contractor during the term of the contract to verify accounts and data affecting fees and  
31 performance. Neither the Department of Transportation nor the Department of Correction shall  
32 award a cost plus percentage of cost agreement or contract for any purpose."

33 **SECTION 25.** G.S. 143-151.16 reads as rewritten:

34 **"§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

35 ...

36 (d) The Board may contract with persons for the development and administration of the  
37 examinations required by G.S. 143-151.13(a), for course development related to the  
38 examinations, for review of a particular applicant's examination, and for other related services.  
39 The person with whom the Board contracts may charge applicants a reasonable fee for the costs  
40 associated with the development and administration of the examinations, for course  
41 development related to the examinations, for review of the applicant's examinations, and for  
42 other related services. The fee shall be agreed to by the Board and the other contracting party.  
43 The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars  
44 (\$175.00). Contracts for the development and administration of the examinations, for course  
45 development related to the examinations, and for review of examinations shall not be subject to  
46 Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the  
47 General Statutes. However, the Board shall submit proposed contracts authorized by this  
48 subsection to the Attorney General or the Attorney General's designee for review as provided in  
49 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Board under this  
50 subsection a standard clause which provides that the State Auditor and internal auditors of the  
51 Board may audit the records of the contractor during the term of the contract to verify accounts

1 and data affecting fees and performance. The Board shall not award a cost plus percentage of  
2 cost agreement or contract for any purpose."

3 **SECTION 26.** G.S. 143B-131.2 reads as rewritten:

4 **"§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

5 ...

6 (b) The Commission shall have the following powers and duties:

7 ...

8 (15) To procure supplies, services, and property as appropriate and to enter into  
9 contracts, leases, or other legal agreements to carry out the purposes of this  
10 Part and duties of the Commission. The provisions of G.S. 143-129 and  
11 Article 3 of Chapter 143 of the General Statutes do not apply to purchases by  
12 the Roanoke Island Commission of equipment, supplies, and services.  
13 However, the Commission shall submit proposed contracts authorized by  
14 this subdivision to the Attorney General or the Attorney General's designee  
15 for review as provided in G.S. 114-8.3, and shall include in all proposed  
16 contracts to be awarded by the Commission under this subdivision a  
17 standard clause which provides that the State Auditor and internal auditors  
18 of the Commission may audit the records of the contractor during the term of  
19 the contract to verify accounts and data affecting fees and performance. The  
20 Commission shall not award a cost plus percentage of cost agreement or  
21 contract for any purpose."

22 **SECTION 27.** G.S. 147-64.6 reads as rewritten:

23 **"§ 147-64.6. Duties and responsibilities.**

24 ...

25 (c) The Auditor shall be responsible for the following acts and activities:

26 ...

27 (18) The Auditor shall, after consultation and in coordination with the State Chief  
28 Information Officer, assess, confirm, and report on the security practices of  
29 information technology systems. If an agency has adopted standards  
30 pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those  
31 standards. The Auditor's assessment of information security practices shall  
32 include an assessment of network vulnerability. The Auditor may conduct  
33 network penetration or any similar procedure as the Auditor may deem  
34 necessary. The Auditor may enter into a contract with a State agency under  
35 G.S. 147-33.111(c) for an assessment of network vulnerability, including  
36 network penetration or any similar procedure. Any contract with the Auditor  
37 for the assessment and testing shall be on a cost-reimbursement basis. The  
38 Auditor may investigate reported information technology security breaches,  
39 cyber attacks, and cyber fraud in State government. The Auditor shall issue  
40 public reports on the general results of the reviews undertaken pursuant to  
41 this subdivision but may provide agencies with detailed reports of the  
42 security issues identified pursuant to this subdivision which shall not be  
43 disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State  
44 Chief Information Officer with detailed reports of the security issues  
45 identified pursuant to this subdivision. For the purposes of this subdivision  
46 only, the Auditor is exempt from the provisions of Article 3 of Chapter 143  
47 of the General Statutes in retaining contractors. However, the Auditor shall  
48 submit proposed contracts authorized by this subdivision to the Attorney  
49 General or the Attorney General's designee for review as provided in  
50 G.S. 114-8.3, and shall include in all proposed contracts to be awarded by  
51 the Auditor under this subdivision a standard clause which provides that the

1                   Auditor may audit the records of the contractor during the term of the  
2                   contract to verify accounts and data affecting fees and performance. The  
3                   Auditor shall not award a cost plus percentage of cost agreement or contract  
4                   for any purpose.

5                   ...."

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