

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 1101  
Committee Substitute Favorable 5/28/14

Short Title: Mechanics Liens - Leased Public Property. (Public)

Sponsors:

Referred to:

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION PROVIDED TO PERSONS MAKING IMPROVEMENTS TO LEASED REAL PROPERTY UNDER ARTICLE 3 OF CHAPTER 44A OF THE GENERAL STATUTES, AS RECOMMENDED BY THE LRC COMMITTEE ON MECHANICS LIENS AND LEASEHOLD IMPROVEMENTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-26 reads as rewritten:

**"§ 44A-26. Bonds required.**

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000); provided that, for State departments, State agencies, and The University of North Carolina and its constituent institutions, a performance and payment bond is required in accordance with this subsection if the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars (\$500,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract.

(c) No lease or other contract provision shall be effective to exempt, from the requirements of this Article, a project otherwise subject to the requirements of subsection (a) of this section, and any contract provision that purports to do so is void and unenforceable as against public policy.



1        (d) A person that leases real property from a contracting body shall require performance  
2 and payment bonds meeting the requirements of subdivisions (1) and (2) of subsection (a) of  
3 this section for construction, reconstruction, alteration, or repair of any public building or  
4 public work on the leased real property if all of the following apply:

5            (1) The contracting body requires the lessee to construct, reconstruct, alter, or  
6 repair the public building or other public work or public improvement on the  
7 leased real property.

8            (2) This Article would require the contracting body to require performance and  
9 payment bonds from contractors or construction managers if the contracting  
10 body had entered into a construction contract for the work required of the  
11 lessee.

12 For purposes of this subsection, any building or other work or improvement constructed upon  
13 land owned by a contracting body shall be deemed to be a public building or other public work  
14 or public improvement.

15        (e) Subsections (c) and (d) of this section do not apply to public-private partnership  
16 construction contracts that are subject to G.S. 143-128.1C."

17            **SECTION 2.** This act becomes effective October 1, 2014, and applies to leases or  
18 other contracts entered into on or after that date.