



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 1 of 13

Amends Title [YES]
Third Edition

Date _____, 2021

Representative _____

moves to amend the bill on page 1, lines 3-4, by rewriting those lines to read:

"PROFESSIONAL LAND SURVEYOR, TO MAKE VARIOUS TECHNICAL CHANGES, TO CLARIFY THE DESIGN-BUILD AND DESIGN-BUILD BRIDGING STATUTES, TO PROHIBIT WAIVER OF FUTURE CLAIMS FOR PROGRESS PAYMENTS ON CONSTRUCTION CONTRACTS, AND TO REQUIRE ATTORNEYS' FEES IN CERTAIN LIEN CLAIMS.";

and on page 1, line 6 through page 3, line 23, by rewriting those lines to read:

"SECTION 1.(a) G.S. 89C-3 reads as rewritten:

"§ 89C-3. Definitions.

The following definitions apply in this Chapter:

...

(4) ~~Land surveyor intern. — A person who complies with the requirements for education, experience, and character and has passed an examination on the fundamentals of land surveying as provided in this Chapter.~~

(4a) Land surveyor apprenticeship. — A program of on-the-job learning that allows individuals to prepare for the land surveying profession through supervised experience combined with land surveyor related classroom instruction of 480 hours as approved by the Board.

...."

SECTION 1.(b) G.S. 89C-13 reads as rewritten:

"§ 89C-13. General requirements for licensure.

...

(b) Land Surveyor Applicant. — The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical, and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.



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**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 2 of 13

1 The following shall be considered as minimum evidence satisfactory to the Board that the
2 applicant is qualified for licensure as a professional land surveyor:

3 ~~(1) To be certified as a land surveyor intern, an applicant shall (i) pass the~~
4 ~~fundamentals of land surveying examination and make application to the~~
5 ~~Board, (ii) be of good character and reputation, (iii) submit three character~~
6 ~~references to the Board, one of whom is a professional land surveyor, (iv)~~
7 ~~comply with the requirements of this Chapter, and (v) satisfy one of the~~
8 ~~following requirements related to education and experience:~~

9 ~~a. Be a graduate of a surveying curriculum of four years or more or other~~
10 ~~equivalent curriculum in surveying approved by the Board.~~

11 ~~b. Have rightful possession of an associate degree in surveying~~
12 ~~technology approved by the Board, a record satisfactory to the Board~~
13 ~~of four years of progressive practical experience, two years of which~~
14 ~~shall have been under a practicing professional land surveyor, and~~
15 ~~have satisfactorily passed a written and oral examination as required~~
16 ~~by the Board.~~

17 ~~c. Have graduated from high school or completed a high school~~
18 ~~equivalency certificate with a record satisfactory to the Board of 10~~
19 ~~years of progressive, practical experience, six years of which shall~~
20 ~~have been under a practicing licensed land surveyor, and have~~
21 ~~satisfactorily passed any oral and written examinations required by the~~
22 ~~Board.~~

23 (1a) To be licensed as a professional land surveyor, an applicant shall (i) be of good
24 character and reputation, (ii) submit five character references to the Board,
25 three of whom are professional land surveyors or individuals acceptable to the
26 Board, with personal knowledge of the applicant's land surveying experience,
27 (iii) comply with the requirements of this Chapter, and (iv) meet one of the
28 following requirements:

29 a. Rightful possession of a bachelor of science degree in surveying or
30 other equivalent curricula, all approved by the Board and a record
31 satisfactory to the Board of two years or more of progressive practical
32 experience ~~experience, one year of which shall have been under a~~
33 ~~practicing professional land surveyor. surveyor if the applicant has~~
34 ~~successfully passed the first examination (Fundamentals of Surveying)~~
35 ~~on or before January 1, 2013, or if the applicant has not successfully~~
36 ~~passed the first examination on or before January 1, 2013, two years~~
37 ~~of which shall have been under a practicing professional land surveyor,~~
38 ~~and satisfactorily passing any oral and written examination required~~
39 ~~by the Board, all of which shall determine and indicate that the~~
40 ~~applicant is competent to practice land surveying. Upon passing the~~
41 ~~first examination (Fundamentals of Land Surveying) and successful~~
42 ~~completion of the experience required by this subdivision, the~~
43 ~~applicant may apply to take the second examination (Principles and~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 3 of 13

Practice of Land ~~Surveying~~). Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, ~~an~~ An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

- b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of five ~~four~~ years or more of progressive practical ~~experience~~ experience, ~~three years of which shall have been~~ under a practicing licensed professional land surveyor. ~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination (Fundamentals of Land Surveying) and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying) Surveying). An and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.~~

...

- d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven ~~nine~~ years or more of progressive practical ~~experience~~ experience, ~~six years of which shall have been~~ under a practicing licensed professional land surveyor. ~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first~~

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 4 of 13

1 ~~examination on or before January 1, 2013, 16 years of progressive~~
2 ~~practical experience, nine years of which shall have been under a~~
3 ~~practicing professional land surveyor, and satisfactorily passing any~~
4 ~~oral and written examinations required by the Board, all of which shall~~
5 ~~determine and indicate that the candidate is competent to practice land~~
6 ~~surveying. If the applicant has not successfully passed the first~~
7 ~~examination on or before January 1, 2013, the applicant may be~~
8 ~~qualified by the Board to take the first examination upon graduation~~
9 ~~from high school or the completion of a high school equivalency~~
10 ~~certificate and successfully completing 10 years of progressive~~
11 ~~practice experience, six of which shall have been under a practicing~~
12 ~~licensed land surveyor. Upon passing the first examination~~
13 ~~(Fundamentals of Land Surveying) and the second examination~~
14 ~~(Principles and Practice of Land Surveying) and satisfactorily passing~~
15 ~~any oral and written examination required by the Board, all of which~~
16 ~~shall determine and indicate that the applicant is competent to practice~~
17 ~~land surveying, an applicant who successfully completes the~~
18 ~~educational and experience requirements of this subdivision shall be~~
19 ~~granted licensure as a professional land surveyor.~~

20 d1. Graduation from a high school or the completion of a high school
21 equivalency certificate, completion of a Land Surveyor
22 Apprenticeship, and a record satisfactory to the Board of seven years
23 or more of progressive practical experience under a practicing
24 professional land surveyor. Upon passing the first examination
25 (Fundamentals of Land Surveying) and the second examination
26 (Principles and Practice of Land Surveying) and satisfactorily passing
27 any oral and written examination required by the Board, all of which
28 shall determine and indicate that the applicant is competent to practice
29 land surveying, an applicant who successfully completes the
30 educational and experience requirements of this subdivision shall be
31 granted licensure as a professional land surveyor.

32 "...."

33 **SECTION 1.(c)** G.S. 89C-10 reads as rewritten:"; and

34
35 on page 3, lines 35-36, by rewriting those lines to read:

36
37 "..."

38 (g1) The Board shall review and promulgate rules establishing continuing education
39 requirements for surveying apprenticeships and encourage the workforce development of the
40 profession.

41 "...."

42 **SECTION 1.(d)** G.S. 89C-11 reads as rewritten:"; and

43

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 5 of 13

on page 4, line 3, by rewriting the line to read:

" **SECTION 1.(e)** G.S. 89C-17 reads as rewritten:"; and

on page 4, line 42, by rewriting the line to read:

"**SECTION 1.(f)** G.S. 89C-22 reads as rewritten:" and

on page 4, lines 50-51, by rewriting those lines to read:

"**SECTION 1.(g)** This section becomes effective December 1, 2021, and applies to applications for licensure on or after that date.

SECTION 2.(a) G.S. 143-128.1A reads as rewritten:

"§ **143-128.1A. Design-build contracts.**

(a) Definitions for purposes of this section:

(1) Design-builder. – As defined in G.S. 143-128.1B.

(1g) Design professional. – As defined in G.S. 143-128.1B.

(1p) First-tier subcontractor. – As defined in G.S. 143-128.1B.

(2) Governmental entity. – As defined in G.S. 143-128.1B.

(3) Licensed contractor. – As defined in G.S. 143-128.1B.

(4) Licensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project requires that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.

(5) Unlicensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project does not require that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

(1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design-builder.

(2) The time constraints for the delivery of the project.

(3) The ability to ensure that a quality project can be delivered.

(4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.

(5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 6 of 13

limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.

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

(c) A governmental entity shall issue a public notice of the request for qualifications that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the qualifications criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business participation.
- (7) Other information provided by the owner to potential design-builders in submitting qualifications for the project.
- (8) A statement ~~providing that directing~~ each design-builder ~~shall to~~ submit in its response to the request for qualifications an explanation of its project team ~~selection, which selection.~~ The governmental entity may specify which one of the following project team selection options shall be used, or if not specified, the response shall consist of either of the following:
following project team selection options:

- a. A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction. If this project team selection option is used, the design-builder may self-perform some or all of the work with employees of the design-builder and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the design-builder may, but is not required to, include one or more unlicensed subcontractors the design-builder proposes to use. If this project team selection option is used, the design-builder may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors.
- b. ~~An~~ A list of the licensed contractors and design professionals whom the design-builder proposes to use for the project's design and construction and an outline of the strategy the design-builder plans to

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 7 of 13

1 use for open ~~contractor and~~ subcontractor selection based upon the
2 provisions of Article 8 of Chapter 143 of the General Statutes. If this
3 project team selection option is used, the design-builder may also
4 self-perform some of the work with employees of the design-builder.

5 (d) Following evaluation of the qualifications of the design-builders, the three most
6 highly qualified design-builders shall be ranked. If after the solicitation for design-builders not
7 as many as three responses have been received from qualified design-builders, the governmental
8 entity shall again solicit for design-builders. If as a result of such second solicitation not as many
9 as three responses are received, the governmental entity may then begin negotiations with the
10 highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses
11 were received. If the governmental entity deems it appropriate, the governmental entity may
12 invite some or all responders to interview with the governmental entity.

13 (e) The design-builder shall be selected in accordance with Article 3D of this Chapter.
14 Each design-builder shall ~~certify~~ certify, in the response to the request for qualifications in
15 subsection (c) of this section, to the governmental entity that each ~~licensed~~ design professional
16 who is a member of the design-build team, including subconsultants, was selected based upon
17 demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

18 (f) The design-builder shall provide a performance and payment bond to the
19 governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General
20 Statutes. The design-builder shall obtain written approval from the governmental entity prior to
21 changing key personnel as listed in ~~sub-subdivision~~ sub-subdivisions (c)(8)a. or (c)(8)b. of this
22 section after the contract has been awarded. For purposes of this subsection, "key personnel"
23 shall mean either of the following:

24 (1) For the project team selection option under sub-subdivision (c)(8)a. of this
25 section, the licensed contractors, licensed subcontractors, and design
26 professionals identified in the response to the request for qualifications.

27 (2) For the project team selection option under sub-subdivision (c)(8)b. of this
28 section, the licensed contractors and design professionals identified in the
29 response to the request for qualifications."

30 **SECTION 2.(b)** G.S. 143-128.1B reads as rewritten:

31 **"§ 143-128.1B. Design-build bridging contracts.**

32 (a) Definitions for purposes of this section:

33 (1a) Costs of the subcontractor work. – The sum total amount of all first-tier
34 subcontract packages bid or proposed to be bid under subsection (f) of this
35 section.

36 (1) Design-build bridging. – A design and construction delivery process whereby
37 a governmental entity contracts for design criteria services under a separate
38 agreement from the construction phase services of the design-builder.

39 (2) Design-builder. – An appropriately licensed person, corporation, or entity
40 that, under a single contract, offers to provide or provides design services and
41 general contracting services where services within the scope of the practice of
42 professional engineering or architecture are performed respectively by a
43 licensed engineer or licensed architect and where services within the scope of

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 8 of 13

- 1 the practice of general contracting are performed by a licensed general
2 contractor.
- 3 (3) Design criteria. – The requirements for a public project expressed in drawings
4 and specifications sufficient to allow the design-builder to make a responsive
5 bid proposal.
- 6 (4) Design professional. – Any professional licensed under Chapters 83A, 89A,
7 or 89C of the General Statutes.
- 8 (5) First-tier subcontractor. – A subcontractor who contracts directly with the
9 design-builder, excluding design professionals.
- 10 (5g) General conditions. – A specific list compiled by the government entity that
11 identifies items for which the design-builder is to be compensated but are not
12 ascrivable to any particular on-site construction activity. This term shall not
13 include either of the following:
- 14 a. Construction work to be bid pursuant to subsection (f) of this section.
15 b. Design services of a design professional.
- 16 (6) Governmental entity. – Every officer, board, department, commission, or
17 commissions charged with responsibility of preparation of specifications or
18 awarding or entering into contracts for the erection, construction, alteration,
19 or repair of any buildings for the State or for any county, municipality, or other
20 public body.
- 21 (7) Licensed contractor. – A person or entity whose scope of work proposed for
22 the project requires that it be licensed in accordance with the provisions of
23 Article 1 of Chapter 87 of the General Statutes.
- 24 (b) A governmental entity shall establish in writing the criteria used for determining the
25 circumstances under which engaging a design criteria design professional is appropriate for a
26 project, and such criteria shall, at a minimum, address all of the following:
- 27 (1) The extent to which the governmental entity can adequately and thoroughly
28 define the project requirements prior to the issuance of the request for
29 proposals for a design-builder.
- 30 (2) The time constraints for the delivery of the project.
- 31 (3) The ability to ensure that a quality project can be delivered.
- 32 (4) The capability of the governmental entity to manage and oversee the project,
33 including the availability of experienced staff or outside consultants who are
34 experienced with the design-build method of project delivery.
- 35 (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to
36 recruit and select small business entities. The governmental entity shall not
37 limit or otherwise preclude any respondent from submitting a response so long
38 as the respondent, itself or through its proposed team, is properly licensed and
39 qualified to perform the work defined by the public notice issued under
40 subsection (d) of this section.
- 41 (6) The criteria utilized by the governmental entity, including a comparison of the
42 advantages and disadvantages of using the design-build delivery method for a

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 9 of 13

given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(b1) The governmental entity, as a criterion in subsection (b) of this section, shall not require the design-builder to provide the costs of the subcontractor work in the design criteria package.

(c) On or before entering into a contract for design-build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design-builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full-time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143-64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design-build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty-five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall not require the design-builder to include the costs of the subcontractor work in its response and shall include all of the following:

- (1) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
- (2) Information on the physical characteristics of the site, such as a topographic survey.
- (3) Material quality standards or performance criteria.
- (4) Special material requirements.
- (5) Provisions for utilities.
- (6) Parking requirements.
- (7) The type, size, and location of adjacent structures.
- (8) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design-builder to make a proposal which is responsive to the request for proposals.
- (9) Notice of any ordinances, rules, or goals adopted by the governmental entity.
- (10) The list of general conditions prepared by the governmental entity for which the design-builder is to provide a fixed fee in accordance with sub-subdivision (10)a. of subsection (d) of this section. For this purpose, as examples, general conditions could include without exclusion the following: on-site construction office and storage trailers; electrical and other utility services during construction; on-site construction superintendent, construction supervisors, and clerical staff; trash collection; security; and other temporary measures. Unless expressly dictated by the contract, the inclusion or exclusion of any particular item in the list shall not be construed to control the means and methods used by the design-builder or eliminate any discretion on whether to use a given item in the prosecution of the work. The inclusion or exclusion of

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 10 of 13

- 1 any particular item in the list shall have no bearing on the actual amounts for
2 which the design-builder is to be compensated under the executed contract
3 documents.
- 4 (11) The form of the contract to be entered into by the successful design-builder to
5 whom the project is awarded pursuant to subsection (e) of this section. The
6 form of the contract may, upon discretion of the governmental entity, allow
7 for multiple phases, termination for convenience and rights arising therefrom,
8 and the subsequent setting of guaranteed maximum prices.
- 9 (12) A statement directing each design-builder to submit in its response to the
10 request for qualifications an explanation of its proposed plan for its good-faith
11 compliance with G.S. 143-128.2.
- 12 (d) A governmental entity shall issue a public notice of the request for proposals that
13 includes, at a minimum, general information on each of the following:
- 14 (1) The project site.
15 (2) The project scope.
16 (3) The anticipated project budget.
17 (4) The project schedule.
18 (5) The criteria to be considered for selection and the weighting of the selection
19 criteria.
20 (6) Notice of any rules, ordinances, or goals established by the governmental
21 entity, including goals for minority- and women-owned business participation
22 and small business entities.
23 (7) The thirty-five percent (35%) design criteria package prepared by the design
24 criteria design professional.
25 (8) Other information provided by the owner to design-builders in submitting
26 responses to the request for proposals for the project.
27 (9) A statement providing that each design-builder shall submit in its request for
28 proposal response an explanation of its project team selection, which shall
29 consist of a list of the licensed contractor and ~~licensed~~ design professionals
30 whom the design-builder proposes to use for the project's design and
31 construction.
- 32 (10) ~~A statement providing that each design-builder shall submit in its request for~~
33 ~~proposal a separate sealed envelope with all envelope, contemporaneously~~
34 ~~with the response to the request for proposals, the design-builder's fixed fees,~~
35 ~~excluding the costs of the subcontractor work, for designing and constructing~~
36 ~~the project in accordance with requirements set forth by the government~~
37 ~~entity's criteria and the terms and conditions set forth in the form of the~~
38 ~~contract under subdivision (11) of subsection (c) of this section for each of the~~
39 ~~following:~~ following, listed separately by item:
- 40 a. ~~The design-builder's price for providing the general conditions of the~~
41 ~~contract identified in the request for proposal.~~
42 b. ~~The design-builder's proposed fee for general construction~~
43 ~~services.~~ services not otherwise provided for in this subdivision.

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 11 of 13

c. The design-builder's ~~fee for design services~~ services necessary to complete the project.

(e) Following evaluation of the qualifications of the design-builders, the governmental entity shall rank the design-builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design-builders, the governmental entity shall select the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. Each design-builder shall certify to the governmental entity that each ~~licensed~~ design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall accept bids based upon the provisions of this Article from first-tier subcontractors for all construction work under this section.

(g) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded."

SECTION 2.(c) G.S. 143-129(e)(11) reads as rewritten:

"(11) Contracts by a public entity with any of the following:

- a. ~~a~~ A construction manager at risk executed pursuant to G.S. 143-128.1.
- b. A design-builder executed pursuant to G.S. 143-128.1A.
- c. A design-builder executed pursuant to G.S. 143-128.1B.
- d. A private developer executed pursuant to G.S. 143-128.1C."

SECTION 2.(d) This section becomes effective December 1, 2021, and applies to contracts entered into, amended, or renewed on or after that date.

SECTION 3.(a) Article 1 of Chapter 22B of the General Statutes is amended by adding a new section to read:

"§ 22B-5. Waiver of liens or claims as a condition of progress payment invalid.

(a) Provisions in lien waivers, releases, construction agreements as defined in G.S. 22B-1(f)(1), or design professional agreements as defined in G.S. 22B-1(f)(5), purporting to require a promisor to submit a waiver or release of liens or claims as a condition of receiving interim or progress payments due from a promisee under a construction agreement or design professional agreement are void and unenforceable unless limited to the specific interim or progress payment actually received by the promisor in exchange for the lien waiver.

(b) This section does not apply to the following:

- (1) Lien waivers or releases for final payments.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 12 of 13

1 (2) Agreements to settle and compromise disputed claims after the claim has been
2 identified by the claimant in writing regardless of whether the promisor has
3 initiated a civil action or arbitration proceeding."

4 **SECTION 3.(b)** This section becomes effective December 1, 2021, and applies to
5 liens attached on or after that date.

6 **SECTION 4.(a)** G.S. 44A-35 reads as rewritten:
7 "**§ 44A-35. Attorneys' fees.**

8 (a) In any suit brought or defended under the provisions of Article 2 or Article 3 of this
9 Chapter, the presiding judge or arbitrator may allow a reasonable attorneys' fee to the attorney
10 representing the prevailing party. This attorneys' fee is to be taxed as part of the court costs and
11 ~~be payable by the losing party upon a finding that there was an unreasonable refusal by the losing~~
12 ~~party to fully resolve the matter which constituted the basis of the suit or the basis of the~~
13 ~~defense costs with the final judgment or arbitration award.~~

14 (b) The court or arbitrator shall determine the prevailing party based on the principal
15 amount in controversy between the parties as of the commencement of the trial, arbitration, or
16 hearing resulting in a judgment or arbitration award, considering all relevant facts and
17 circumstances.

18 (c) If a party serves (i) an offer of judgment in accordance with G.S. 1A-1, Rule 68, or
19 (ii) a written settlement offer, so that the offer is received at least 30 days before the
20 commencement of the trial, arbitration, or hearing resulting in a judgment or award resolving all
21 matters in controversy between the parties, the last offer shall be deemed to be that party's
22 monetary position for purposes of determining the amount in controversy.

23 (d) In determining the amount of reasonable attorneys' fees and expenses under this
24 section, the court or arbitrator may consider all relevant facts and circumstances, including,
25 without limitation, the following:

26 (1) The amount in controversy and the results obtained.

27 (2) The reasonableness of the time and labor expended, and the billing rates
28 charged, by the attorneys.

29 (3) The novelty and difficulty of the questions raised in the action.

30 (4) The skill required to perform properly the legal services rendered.

31 (5) The relative economic circumstances of the parties.

32 (6) Settlement offers made prior to the commencement of the trial, arbitration, or
33 hearing.

34 (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil
35 Procedure and whether judgment finally obtained was more favorable than
36 such offers.

37 (8) Whether a party unjustly exercised superior economic bargaining power in the
38 conduct of the action or withheld payment of undisputed amounts.

39 (9) The timing of settlement offers.

40 (10) The extent to which the party seeking attorneys' fees prevailed in the action.

41 (11) The amount of attorneys' fees awarded in similar cases.

42 (e) A party may submit evidence relating to an award of attorneys' fees by affidavit or
43 declaration. The court or arbitrator may admit other evidence, including, without limitation, live

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 219

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S219-ATG-56 [v.3]

Page 13 of 13

1 or deposition testimony. A party may submit expert testimony to support an award, but the court
2 or arbitrator shall not require expert testimony.

3 (f) For purposes of this section, "prevailing party" is a~~the party plaintiff or third party~~
4 ~~plaintiff who obtains a judgment of at least fifty percent (50%) of the whose monetary amount~~
5 ~~sought in a claim or is a party defendant or third party defendant against whom a claim is asserted~~
6 ~~which results in a judgment of less than fifty percent (50%) of the amount sought in the claim~~
7 ~~defended. Notwithstanding the foregoing, in the event an offer of judgment is served in~~
8 ~~accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in~~
9 ~~an amount more favorable than the last offer or is an offeror against whom judgment is rendered~~
10 ~~in an amount less favorable than the last offer.~~position at the commencement of the trial,
11 arbitration, or hearing is closest to the amount of the judgment or arbitration award. The court or
12 arbitrator shall determine the prevailing party based upon the principal amount in controversy
13 between the parties as of the commencement of the trial, arbitration, or hearing resulting in a
14 judgment or arbitration award, considering all relevant facts and circumstances."

15 **SECTION 4.(b)** This section becomes effective December 1, 2021, and applies to
16 any claim arising on or after that date.

17 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
18 law.";

19
20 and by rewriting the short title to read: "Surveyor Lic.& Ed.Req's/Constr.Contract Rev's".
21
22

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____