

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 51

Short Title: Highway Contract Bonding Req'ments.

(Public)

Sponsors: Senator Shaw of Cumberland.

Referred to: Commerce.

February 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR RESOLVING STATE CONTRACT DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.10(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund projects of ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or less, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation."

Section 2. G.S. 143-135.3 reads as rewritten:

**"§ 143-135.3. Adjustment and resolution of State ~~board construction~~ contract claim.**

(a) Definitions. – The following definitions apply in this section:

(1) ~~The word "board" as used in this section shall mean the State of North Carolina~~ The State or any board, bureau, commission, institution, or

1 other agency of the State, as distinguished from a board or governing  
2 body of a subdivision of the State.

3 (2) ~~"A contract for construction or repair work," as used in this section, is~~  
4 ~~defined as any contract for the construction of buildings and~~  
5 ~~appurtenances thereto, including, but not by way of limitation, utilities,~~  
6 ~~plumbing, heating, electrical, air conditioning, elevator, excavation,~~  
7 ~~grading, paving, roofing, masonry work, tile work and painting, and~~  
8 ~~repair work as well as any contract for the construction of airport~~  
9 ~~runways, taxiways and parking aprons, sewer and water mains, power~~  
10 ~~lines, docks, wharves, dams, drainage canals, telephone lines, streets,~~  
11 ~~site preparation, parking areas and other types of construction on which~~  
12 ~~the Department of Administration or The University of North Carolina~~  
13 ~~enters into contracts.~~

14 ~~"Contractor" as used in this section includes any person, firm,~~  
15 ~~association or corporation which has contracted with a State board for~~  
16 ~~architectural, engineering or other professional services in connection~~  
17 ~~with construction or repair work as well as those persons who have~~  
18 ~~contracted to perform such construction or repair work. Construction~~  
19 ~~contract. – A contract for any of the following:~~

20 a. The construction or repair of buildings or appurtenances  
21 to those buildings, including utilities, plumbing, heating,  
22 electrical, air conditioning, elevator, excavation, grading,  
23 paving, roofing, masonry work, tile work, and painting.

24 b. The construction or repair of airport runways, taxiways  
25 and parking aprons, sewer and water mains, power lines,  
26 docks, wharves, dams, drainage canals, telephone lines,  
27 streets, site preparation, parking areas, and other capital  
28 improvements.

29 c. Architectural, engineering, or other professional services  
30 in connection with a contract described in this subdivision.

31 (3) Contract. – A contract for goods, services, construction, or repair  
32 administered by the Department of Administration.

33 (4) Contractor. – A person who submits a bid on or enters into a  
34 contract with a board.

35 (b) Uncompleted Construction Contract. – A contractor who has not completed a  
36 contract with a board ~~for construction or repair work~~ and who has not received the amount  
37 ~~he~~ the contractor claims is due under the contract may submit a verified written claim to  
38 the Director of the Office of State Construction of the Department of Administration for  
39 the amount the contractor claims is due. The Director may deny, allow, or compromise  
40 the claim, in whole or in part. A The Director's decision is not a final decision of the  
41 Department of Administration under subsection (d) of this section and a claim under this  
42 subsection is not a contested case under Chapter 150B of the General Statutes.

1 (c) Completed Construction Contract. – A contractor who has completed a  
2 contract with a board ~~for construction or repair work~~ and who has not received the amount  
3 ~~he~~ the contractor claims is due under the contract may submit a verified written claim to  
4 the Director of the Office of State Construction of the Department of Administration for  
5 the amount the contractor claims is due. The claim shall be submitted within 60 days after  
6 the contractor receives a final statement of the board's disposition of ~~his~~ the contractor's  
7 claim and shall state the factual basis for the claim.

8 The Director shall investigate a submitted claim within 90 days of receiving the claim,  
9 or within any longer time period upon which the Director and the contractor agree. The  
10 contractor may appear before the Director, either in person or through counsel, to present  
11 facts and arguments in support of his claim. The Director may allow, deny, or  
12 compromise the claim, in whole or in part. The Director shall give the contractor a  
13 written statement of the Director's decision on the contractor's claim.

14 A contractor who is dissatisfied with the Director's decision on a claim submitted  
15 under this subsection may commence a contested case on the claim under Chapter 150B  
16 of the General Statutes. The contested case shall be commenced within 60 days of  
17 receiving the Director's written statement of the decision.

18 ~~(c1) A contractor who is dissatisfied with the Director's decision on a claim~~  
19 ~~submitted under subsection (c) of this section may commence a contested case on the~~  
20 ~~claim under Chapter 150B of the General Statutes. The contested case shall be~~  
21 ~~commenced within 60 days of receiving the Director's written statement of the decision.~~

22 (d) ~~As to any portion of a claim that is denied by the Director, the contractor may,~~  
23 ~~in lieu of the procedures set forth in the preceding subsection of this section,~~ Alternate  
24 Procedure. – Notwithstanding the provisions of subsection (c) of this section and of  
25 Chapter 150B of the General Statutes, in the case of any contract dispute between a board  
26 and a contractor, if the contractor and the Department of Administration cannot agree to a  
27 resolution through informal procedures, the contractor may, in lieu of filing a petition for  
28 a contested case under Article 3 of Chapter 150B of the General Statutes, within six  
29 months of receipt of the Director's final decision, after a final decision by the Department  
30 of Administration, institute a civil action for the sum he claims to be entitled to determine  
31 the contractor's rights, duties, or privileges under the contract by filing a verified  
32 complaint and the issuance of a summons in the Superior Court of Wake County or in the  
33 superior court of any county where the work under the contract was performed. The  
34 procedure shall be the same as in all civil actions except that all issues shall be tried by  
35 the judge, without a jury.

36 (e) Incorporation in Contracts. – The provisions of this section are part of every  
37 contract ~~for construction or repair work~~ made by a board and a contractor. A provision in a  
38 contract that conflicts with this section is invalid."

39 Section 3. Section 2 of this act becomes effective January 1, 2000, and applies  
40 to contract disputes arising on or after that date. The remainder of this act is effective  
41 when it becomes law.