

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1035
Senate Commerce Committee Substitute Adopted 7/7/10
Third Edition Engrossed 7/8/10

Short Title: Performance & Payment Bond Modification.

(Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERFORMANCE AND PAYMENT BONDING
REQUIREMENT FOR CONSTRUCTION PROJECT CONTRACTS AWARDED BY
STATE DEPARTMENTS, STATE AGENCIES, AND THE UNIVERSITY OF NORTH
CAROLINA THAT EXCEED FIVE HUNDRED THOUSAND DOLLARS.

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)~~ (\$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."

SECTION 1.1. The Department of Administration, State Building Commission, is directed to simplify the process of prequalification for publicly funded construction projects and to report to the Joint Legislative Commission on Governmental Operations on the steps it is taking to implement this objective by December 31, 2010.



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1 **SECTION 1.2.** The Department of Transportation ("DOT"), The University of
2 North Carolina and its constituent institutions ("UNC"), and the Department of Administration
3 ("DOA") shall monitor all projects in those agencies and institutions that are let without a
4 performance or payment bond to determine the number of defaults on those projects, the cost to
5 complete each defaulted project, and each project's contract price. Beginning March 1, 2011,
6 and annually thereafter, DOT, UNC, and DOA shall report this information to the Joint
7 Legislative Committee on Governmental Operations.

8 **SECTION 2.** This act becomes effective October 1, 2010, and applies to
9 construction contracts awarded on or after that date.