

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH60020-RFz-8A* (01/18)

Short Title: Improve State Construction Process. (Public)

Sponsors: Representatives Owens, Justice, and Michaux (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY
3 DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE
4 PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND
5 INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN
6 AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING,
7 BONDING, AND DESIGNER SELECTION THRESHOLDS FOR STATE
8 CONSTRUCTION CONTRACTS, BY DIRECTING THE STATE PERSONNEL
9 OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND
10 ENGINEERING POSITION CLASSIFICATIONS, AND BY APPROPRIATING
11 FUNDS FOR ADDITIONAL PLAN REVIEW AND ENFORCEMENT
12 PERSONNEL AT THE DEPARTMENT OF INSURANCE.

13 Whereas, delays in the completion of State capital improvement projects that
14 occur during designer selection, the construction plan review process, construction, and
15 the construction inspection process can result in millions of dollars in increased
16 construction costs due to inflation; and

17 Whereas, the State Building Commission was created within the Department
18 of Administration to direct and guide the State's capital facilities development and
19 management program; and

20 Whereas, the State Building Commission has the responsibility for
21 establishing the criteria for and overseeing designer selection for State facilities,
22 adopting rules, coordinating the plan review, approval, and permit process for State
23 capital improvements, and studying and recommending ways to improve the
24 effectiveness and efficiency of the State's capital facilities development and
25 management programs; and

26 Whereas, greater clarity, coordination, and accountability among the agencies
27 responsible for the examination of plans and specifications for the construction and

1 renovation of State facilities and for the construction inspections of those facilities, the
2 owning agencies/institutions as defined in the State Construction Manual, designers, and
3 contractors could reduce these delays and facilitate the timely completion of such
4 projects resulting in significant dollar savings to the State; and

5 Whereas, the influx of project reviews occasioned by the 2000 Higher
6 Education Bond Act created serious workload and resource issues for the State
7 Construction Office and the Department of Insurance; and

8 Whereas, costly delays in the plan review and inspections process for State
9 construction projects are occurring in part due to the inability of the State to attract
10 qualified architects and engineers to conduct such reviews and inspections, and there are
11 no plans at this time for a State Personnel Office market study of architect and
12 engineering positions; Now, therefore,

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** The State Building Commission shall examine the State capital
15 improvement process and shall establish or modify, as necessary, the guidelines for the
16 selection of designers and the rules governing the design, plan review, and inspection of
17 State building projects. In carrying out its examination and proposing and modifying its
18 guidelines and rules, the Commission shall consult with all of the State departments
19 involved in the capital improvement process, including (i) the agencies responsible for
20 the examination of plans and specifications for the construction and renovation of State
21 facilities and for the supervision and inspection of all work done and materials used in
22 the construction or renovation of State facilities ("review and inspection agencies"), (ii)
23 the owning agencies/institutions as defined in the State Construction Manual ("owning
24 agencies"), (iii) the Board of Governors of The University of North Carolina, and (iv)
25 the State Board of Community Colleges. In carrying out the provisions of this section,
26 the Commission shall:

- 27 (1) Examine the State Construction Manual for opportunities to increase
28 the accountability of all parties to the State capital improvement
29 process.
- 30 (2) Determine whether the review and inspection agencies have
31 sufficiently formalized and documented their review standards and
32 processes.
- 33 (3) Oversee the proper documentation of review standards and processes
34 where necessary.
- 35 (4) Facilitate the establishment of clear expectations for all parties to the
36 process, including the owning agencies, review and inspection
37 agencies, designers, and contractors. The Commission shall work with
38 owning agencies and review and inspection agencies to develop a
39 standard set of time measurements for the design process and the
40 construction process and shall consider the development of other
41 standard measures of performance for all the parties to the design,
42 review, inspection, and construction process.
- 43 (5) Review the State's standard design contract for opportunities to
44 strengthen the accountability of design firms to the owning agencies.

1 In particular, the Commission shall consider the inclusion of a
2 designer's e-mail address as a requirement of the standard design
3 contract.

4 **SECTION 2.** The State Building Commission shall file an interim report on
5 or before April 30, 2008, and a final report on or before December 31, 2008, with the
6 Joint Legislative Commission on Governmental Operations, the Joint Legislative
7 Oversight Committee on Capital Improvements, the Appropriations Committees of the
8 House of Representatives and Senate, and the Fiscal Research Division of the General
9 Assembly. The report shall cover the activities of the Commission in implementing the
10 provisions of Section 1 of this act and any recommendations to improve the
11 coordination and efficacy of the design, review, inspection, and construction process.
12 The report also shall cover the implementation of the recommendations from the
13 Legislative Study Commission on State Construction Inspections, including:

- 14 (1) Efforts to include owning agencies on all correspondence between
15 review and inspection agencies, designers, and contractors.
- 16 (2) Implementation of new services by review and inspection agencies,
17 including the use of face-to-face meetings.
- 18 (3) The impact of any statutory changes providing State agencies with
19 greater flexibility in design and construction contracts.

20 **SECTION 3.** The State Personnel Office shall work with the Department of
21 Administration, the Department of Insurance, and other State agencies employing
22 architects and engineers to perform a market study of architect and engineer salaries and
23 position classifications. The State Personnel Office shall complete the study as soon as
24 possible, but in no event later than six months from the effective date of this section.

25 **SECTION 4.** G.S. 143-129(a) reads as rewritten:

26 "(a) Bidding Required. – No construction or repair work requiring the estimated
27 expenditure of public money in an amount equal to or more than ~~three hundred thousand~~
28 ~~dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or purchase of apparatus,
29 supplies, materials, or equipment requiring an estimated expenditure of public money in
30 an amount equal to or more than ninety thousand dollars (\$90,000) may be performed,
31 nor may any contract be awarded therefor, by any board or governing body of the State,
32 or of any institution of the State government, or of any political subdivision of the State,
33 unless the provisions of this section are complied with.

34 For purchases of apparatus, supplies, materials, or equipment, the governing body of
35 any political subdivision of the State may, subject to any restriction as to dollar amount,
36 or other conditions that the governing body elects to impose, delegate to the manager,
37 school superintendent, chief purchasing official, or other employee the authority to
38 award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any
39 person to whom authority is delegated under this subsection shall comply with the
40 requirements of this Article that would otherwise apply to the governing body."

41 **SECTION 5.** G.S. 44A-26(a) reads as rewritten:

42 "(a) When the total amount of construction contracts awarded for any one project
43 exceeds ~~three hundred thousand dollars (\$300,000)~~, five hundred thousand dollars
44 (\$500,000), a performance and payment bond as set forth in (1) and (2) is required by

1 the contracting body from any contractor or construction manager at risk with a contract
2 more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a
3 performance and payment bond may be required on any construction contract as
4 follows:

- 5 (1) A performance bond in the amount of one hundred percent (100%) of
6 the construction contract amount, conditioned upon the faithful
7 performance of the contract in accordance with the plans,
8 specifications and conditions of the contract. Such bond shall be solely
9 for the protection of the contracting body that is constructing the
10 project.
- 11 (2) A payment bond in the amount of one hundred percent (100%) of the
12 construction contract amount, conditioned upon the prompt payment
13 for all labor or materials for which a contractor or subcontractor is
14 liable. The payment bond shall be solely for the protection of the
15 persons furnishing materials or performing labor for which a
16 contractor, subcontractor, or construction manager at risk is liable."

17 **SECTION 6.** G.S. 143-64.34 reads as rewritten:

18 **"§ 143-64.34. Exemption of certain projects.**

19 (a) ~~State capital improvement projects under the jurisdiction of the State Building~~
20 ~~Commission—Commission, capital improvement projects of The University of North~~
21 ~~Carolina, and community college capital improvement projects, where the estimated~~
22 ~~expenditure of public money is less than one hundred thousand dollars (\$100,000),~~ five
23 hundred thousand dollars (\$500,000), are exempt from the provisions of this Article.

24 (b) ~~A capital improvement project of The University of North Carolina under~~
25 ~~G.S. 116-31.11 where the estimated expenditure of public money is less than three~~
26 ~~hundred thousand dollars (\$300,000) is exempt from this Article if all of the following~~
27 ~~apply:~~

- 28 (1) ~~The architectural, engineering, or surveying services to be rendered are~~
29 ~~under an open end design agreement.~~
- 30 (2) ~~The open end design agreement has been publicly announced.~~
- 31 (3) ~~The open end design agreement complies with procedures adopted by~~
32 ~~the University and approved by the State Building Commission under~~
33 ~~G.S. 116-31.11(a)(3).~~

34 (c) ~~A community college capital improvement project where the estimated~~
35 ~~expenditure of public money is less than three hundred thousand dollars (\$300,000) is~~
36 ~~exempt from this Article if all of the following apply:~~

- 37 (1) ~~The architectural, engineering, or surveying services to be rendered are~~
38 ~~under an open end design agreement.~~
- 39 (2) ~~The open end design agreement has been publicly announced.~~
- 40 (3) ~~The open end design agreement complies with procedures adopted by~~
41 ~~the State Board of Community Colleges and approved by the State~~
42 ~~Building Commission."~~

43 **SECTION 7.** There is appropriated from the General Fund to the
44 Department of Insurance the sum of seven hundred seventy-seven thousand three

1 hundred eighty-six dollars (\$777,386) for the 2007-2008 fiscal year and the sum of
2 seven hundred twenty-nine thousand three hundred eighty six dollars (\$729,386) for the
3 2008-2009 fiscal year to establish one building systems engineer III position, five
4 building systems engineer II positions, and two State Building Code enforcement officer
5 positions.

6 **SECTION 8.** Sections 1, 2, and 3 of this act are effective when they become
7 law. Sections 4, 5, and 6 are effective when they become law and apply to projects that
8 are funded by the General Assembly on or after July 1, 2007. Section 7 of this act
9 becomes effective July 1, 2007.