

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 78\*  
Corrected Copy 4/15/13

Short Title: Amend State Contract Review Laws. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Apodaca, Clodfelter, Daniel, Graham,  
Gunn, Hise, Hunt, and Randleman.

Referred to: Program Evaluation.

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF  
CERTAIN STATE CONTRACTS, AND TO PROVIDE FOR CONTRACT  
MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. ~~Attorney General~~General/General Counsel; ~~to review certain contracts.~~

(a) Except as provided in subsection (b) of this section, the Attorney General or the Attorney General's designee shall review all proposed contracts for supplies, materials, printing, equipment, ~~and~~or contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General, in consultation with the Department of Administration, shall establish procedures regarding the review of contracts subject to this section, and shall provide any attorney designated under this subsection with guidelines to be used in reviewing contracts. ~~shall require that any~~ Any attorney designated under this subsection shall comply with any ~~rules~~procedures established by the Attorney General ~~or the Department of Administration~~ regarding the review of contracts.

(a1) Any contract for services that exceeds five million dollars (\$5,000,000), which requires that a representative from within the office of the Attorney General advise and assist in the negotiation of contract for services pursuant to G.S. 143-49(3a), must include the signature and title of the Attorney General's representative in order to be valid.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection.



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1 The General Counsel shall establish procedures regarding the review of contracts subject to this  
2 section, and shall require that any attorney designated under this subsection comply with any  
3 rules-procedures established by the Attorney General or the Department of Administration  
4 regarding the review of contracts.

5 (c) All State agencies, the constituent institutions of The University of North Carolina,  
6 or any person who will be entering into a contract on behalf of the State for supplies, materials,  
7 printing, equipment, or contractual services that exceed one million dollars (\$1,000,000) shall  
8 notify the Secretary of the Department of Administration or the Secretary's designee of the  
9 intent to enter into the contract, and provide information as required by the Secretary or the  
10 Secretary's designee, including, but not limited to, the name and title of the attorney designated  
11 to conduct the review required by this section.

12 (d) The Department of Administration shall adopt procedures for the identification and  
13 record keeping of contracts subject to review under this section. The records shall be kept by  
14 the Department and shall include a log identifying all contracts subject to review under this  
15 section. The log shall include, at a minimum, (i) the name of the contracting agency,  
16 constituent institution of The University of North Carolina, or the party that is contracting on  
17 behalf of the State and (ii) the name and title of the attorney designated to conduct the review  
18 required by this section."

19 **SECTION 2.** G.S. 143-49 reads as rewritten:

20 "**§ 143-49. Powers and duties of Secretary.**

21 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the  
22 Secretary's duty, subject to the provisions of this Article:

23 ...

24 (3a) To ~~request, notify and~~ the Attorney General of pending contracts for  
25 contractual services exceeding a cost of five million dollars (\$5,000,000).  
26 Upon notification, the Attorney General shall assign a representative of from  
27 within the office of the Attorney General to assist in negotiation for the  
28 award of any the contract. contract for contractual services exceeding a cost  
29 of one hundred thousand dollars (\$100,000) that requires negotiation with  
30 prospective contractors. It shall be the duty of such representative to assist  
31 and advise in obtaining the most favorable contract for the State, to evaluate  
32 all proposals available from prospective contractors for that purpose, to  
33 interpret proposed contract terms and to advise the Secretary or his  
34 representatives of the liabilities of the State and validity of the contract to be  
35 awarded. All contracts and drafts of such contracts shall be prepared by the  
36 office of the Attorney General and copies thereof shall be retained by such  
37 office for a period of three years following the termination of such contracts.  
38 The term "contractual services" as used in this subsection and G.S. 143-52.2  
39 shall mean work performed by an independent contractor requiring  
40 specialized knowledge, experience, expertise or similar capabilities wherein  
41 the service rendered does not consist primarily of acquisition by this State of  
42 equipment or materials and the rental of equipment, materials and supplies.  
43 The term "negotiation" as used in this This subdivision shall not apply be  
44 deemed to refer to contracts entered into or to be entered into as a result of a  
45 competitive bidding process. This subdivision does not require the Secretary  
46 to notify the Attorney General for the appointment of a representative from  
47 within the office of the Attorney General for any contracts for contractual  
48 services to be entered into by the constituent institutions of The University  
49 of North Carolina unless requested to do so by the General Counsel of The  
50 University of North Carolina.

51 ...."

1           **SECTION 3.** The Department of Administration shall provide an individualized  
2 notice to the following State entities to ensure that the entities are aware of how the statutory  
3 amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- 4           (1) The North Carolina State Lottery Commission, which is subject to  
5           G.S. 18C-150.
- 6           (2) The Commissioner of Banks, who is subject to G.S. 53-320(d),  
7           G.S. 53-326(d), G.S. 53-391, and G.S. 53-401.
- 8           (3) The Commissioner of Insurance, who is subject to G.S. 53-401,  
9           G.S. 58-33-30(e)(4) and (5), G.S. 58-33-125(e), G.S. 58-33-130(a), and  
10           G.S. 58-71-40(d).
- 11           (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
12           Secretary of Transportation shall be copied on the notice sent to the Global  
13           TransPark Authority.
- 14           (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- 15           (6) The North Carolina Board for Licensing of Geologists, which is subject to  
16           G.S. 89E-5(e).
- 17           (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
18           to G.S. 89F-5(d).
- 19           (8) The constituent institutions of the University of North Carolina, which are  
20           subject to G.S. 114-8.3(b). For notification under this subdivision, the  
21           Department of Administration may provide the University of North Carolina  
22           system a notification to distribute to all of its constituent institutions. If the  
23           Department of Administration does so, the University of North Carolina  
24           system shall distribute those notifications to the system's constituent  
25           institutions.
- 26           (9) The North Carolina Center for Applied Textile Technology, which is subject  
27           to G.S. 115D-67.4.
- 28           (10) The North Carolina State Health Plan for Teachers and State Employees,  
29           which is subject to G.S. 135-48.33(b).
- 30           (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
31           G.S. 143-134(b).
- 32           (12) The North Carolina Turnpike Authority, which is subject to  
33           G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
34           the notice sent to the Turnpike Authority.
- 35           (13) The Department of Health and Human Services, which is subject to  
36           G.S. 143-48.1(c).
- 37           (14) The Division of Adult Correction of the Department of Public Safety, which  
38           is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
39           on the notice sent to the Division of Adult Correction.
- 40           (15) The North Carolina Code Officials Qualification Board, which is subject to  
41           G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
42           notice sent to the Code Officials Qualification Board.
- 43           (16) The Roanoke Island Commission, which is subject to  
44           G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
45           copied on the notice sent to the Roanoke Island Commission.
- 46           (17) Any other State entity subject to contract review under G.S. 114-8.3.

47           The Department of Administration, as part of its notice, shall provide a means by  
48 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
49 Administration has not received an acknowledgement from a State entity within 30 days of  
50 sending the notice, the Department of Administration shall send a second notice. If the  
51 Department of Administration has not received an acknowledgement from a State entity within

1 30 days of sending the second notice, the Department of Administration shall notify (i) the  
2 Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations  
3 Subcommittee on General Government and the Senate Appropriations Committee on General  
4 Government and Information Technology.

5 **SECTION 4.** The Attorney General's Office, the Department of Administration,  
6 and the Office of the General Counsel for The University of North Carolina shall establish  
7 procedures to implement the provisions of this act no later than June 30, 2013.

8 **SECTION 5.** G.S. 143-49 reads as rewritten:

9 **"§ 143-49. Powers and duties of Secretary.**

10 The Secretary of Administration shall have power and authority, and it shall be his duty,  
11 subject to the provisions of this Article:

12 ...

13 (13) To ~~implement~~implement, by September 1, 2013, a quality management  
14 system equivalent to the International Organization for Standardization  
15 (ISO) 9001:2008 to ensure that citizen and agency customer requirements  
16 are met. By ~~September 1, 2012,~~April 1, 2013, and more frequently as  
17 requested, the Secretary shall report to the Joint Legislative Commission on  
18 Governmental Operations, the Program Evaluation Division, and the Fiscal  
19 Research Division concerning the progress of the Department's effort to  
20 comply with the provisions of this subdivision.

21 (14) To work in conjunction with the Office of State Personnel to create a  
22 Contracting Specialist career path to provide for the ~~designation~~designation,  
23 by April 1, 2013, of one or more employees within each department,  
24 agency, or institution of the State to serve as the Contracting Specialist for  
25 the department, agency, or institution. Employees on the Contracting  
26 Specialist career path shall receive training and guidance as to the provisions  
27 of this Article.

28 (15) To work in conjunction with the Office of State Personnel, the Division of  
29 Purchase and Contract, and the University of North Carolina School of  
30 Government to ~~develop~~implement, by September 1, 2013, a rigorous  
31 contract management training and certification program for State employees.  
32 The program shall be administered by the Office of State Personnel.

33 (16) To work in conjunction with the University of North Carolina School of  
34 Government to study and recommend improvements to State procurement  
35 laws, including the feasibility of adopting the provisions of the American  
36 Bar Association Model Procurement Code. The recommendations shall be  
37 reported by the Secretary to the Joint Legislative Commission on  
38 Governmental Operations and the Program Evaluation Division by  
39 September 1, 2013.

40 (17) To establish procedures to permit State government, or any of its  
41 departments, institutions, or agencies, to join with any federal, State, or local  
42 government agency, entity, or subdivision, or any nonprofit organization in  
43 cooperative purchasing plans, projects, arrangements, or agreements if the  
44 interest of the State would be served thereby. Any procedures established  
45 under this subdivision shall be reported to the Joint Legislative Commission  
46 on Governmental Operations and the Program Evaluation Division no later  
47 than 30 days prior to the effective date of the procedures."

48 **SECTION 6.** Sections 1 and 2 of this act become effective July 1, 2013, and apply  
49 to contracts entered into on or after that date. The remainder of this act is effective when it  
50 becomes law.