

May 18, 2010

**S 1213. AMEND STATE PURCHASES AND CONTRACTS LAWS.** Filed 5/18/10. *INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.*

*Attorney General review responsibility.* Enacts new GS 114-8.3 directing the Attorney General (or designee) to review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed \$1 million to ensure they are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes. Requires Attorney General (or designee) to review all proposed contracts to be awarded by a department, agency, or institution of the state. Adds new GS 143-52.2 directing the Secretary of Administration and all state agencies to submit all contracts to the Attorney General for review.

*Obligation to seek Attorney General review.* Amends the following sections of the General Statutes to require the contracting authority to submit proposed contracts to the Attorney General for review and to require that contracts contain a standard clause providing that the state auditor and internal auditors of the agency may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance:

GS 18C-150 (State Lottery Commission);  
GS 53-320, 53-391, 53-326, and 53-401 (Commissioner of Banks);  
GS 58-2-69, 58-33-30, 58-33-125, 58-33-130, 58-71-40 (Commissioner of Insurance);  
GS 63A-24 (Global Transpark Authority);  
GS 84-23 (State Bar Council);  
GS 89E-5 (Board for Licensing of Geologists);  
GS 89F-5 (Board for Licensing of Soil Scientists);  
GS 108A-55 (Department of Health and Human Services);  
GS 115D-67.4 (Applied Textile Technology Center);  
GS 135-43 (Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees);  
GS 136-28.1 (Department of Transportation);  
GS 136-89.194 (North Carolina Turnpike Authority);  
GS 143-49 (Secretary of Administration)  
GS 143-134 (Departments of Transportation and Commerce);  
GS 143-151.16 (North Carolina Code Officials Qualification Board);  
GS 143-131.2 (Roanoke Island Commission); and  
GS 147-64.6 (State Auditor).

In each of these instances, and in GS 143-52, the contracting authority is prohibited from awarding a cost plus percentage of cost agreement or contract for any purpose.

*Obligations of the Secretary of Administration.* Amends GS 143-49 to specify new obligations of the Secretary of Administration:

- (i) Before awarding any contract in excess of \$100,000, to request the assistance of the Attorney General (and the attorney general must assign an attorney from his or her office to provide the assistance) in obtaining the most favorable contract for the state or agency, to evaluate all proposals, to interpret contract terms, and to advise on contract validity.
- (ii) Include the standard clause described above in all contracts awarded by the state.
- (iii) To monitor enforcement of statewide contracts.
- (iv) To carry out other duties specified in the bill.

Effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date.

**Intro. by Clodfelter.**

GS 18C, 53, 58, 63A, 84, 89E, 89F, 108A, 114, 115D, 135, 136, 143, 143B, 147

June 16, 2010

**S 1213. AMEND STATE PURCHASES & CONTRACTS LAWS.** Filed 5/18/10. Senate committee substitute makes the following changes to 1st edition.

*Attorney General Review Responsibility.* Amends proposed GS 114-8.3 to clarify that, except as otherwise provided in new subsection (b) of the statute, the Attorney General or designee will review all proposed statewide and agency term contracts for listed items exceeding \$1 million to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable (was, provide for sufficient monitoring and performance penalties), and accomplish intended purposes. Emphasizes that the term "review," as used in the section, does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. Enacts new subsection (b) to proposed GS 114-8.3, directing the General Counsel or the General Counsel's designee of each constituent institution of the University of North Carolina to review all proposed statewide and agency term contracts, following guidelines identical to those proposed for the Attorney General. Deletes language requiring the Attorney General to review all proposed contracts to be awarded by a state department agency or institution to ensure specified parameters are met.

Makes conforming and clarifying changes to proposed GS 143-52.2, stating that the section (requiring compliance with GS 114-8.3(a)) does not apply to constituent institutions of the University of North Carolina.

*Obligation to seek Attorney General Review.* Makes clarifying and conforming changes to the following sections of the General Statutes, requiring the submission of all proposed statewide and agency term contracts for supplies, materials, printing equipment and contractual services exceeding \$1 million, to the Attorney General for review, and requiring the inclusion of a standard clause providing designated auditors the authority to audit records during the term of the agreement or contract to verify accounts and data affecting fees and performance.

GS 53-320, 53-391, 53-326, and 53-401 (Commissioner of Banks);  
GS 58-2-69, 58-33-30, 58-33-125, 58-33-130, 58-71-40 (Commissioner of Insurance);  
GS 63A-24 (Global Transpark Authority);  
GS 84-23 (State Bar Council);  
GS 89E-5 (Board for Licensing of Geologists);  
GS 89F-5 (Board for Licensing of Soil Scientists);  
GS 108A-55 (Department of Health and Human Services);  
GS 115D-67.4 (Applied Textile Technology Center);  
GS 135-43; enacts *new* GS 135-45(d1) (Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees);  
GS 136-28.1 (Department of Transportation);  
GS 136-89.194 (North Carolina Turnpike Authority);  
*Adds* GS 143.48.1 (Medicaid program exemption; capitation or prepaid health service arrangement);  
GS 143-134 (Departments of Transportation and Commerce);  
GS 143-151.16 (North Carolina Code Officials Qualification Board);  
GS 143-131.2 (Roanoke Island Commission); and  
GS 147-64.6 (State Auditor).

Amends GS 18C-150 (State Lottery Commission), removing the requirement that the Commission submit proposed contracts to the Attorney General for review. Further amends GS 18C-150 to define *cost plus percentage of cost contract*, for the purposes of that provision, as a contract under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based on such costs. Exempts State Lottery Commission contracts that require costs to be predetermined and approved by that Commission with a total not to exceed the amount specified in each contract to be paid by the contractor, from the general

prohibition against awarding a cost plus percentage of cost contract. Makes a conforming change to GS 143-52.

*Powers and Duties of the Secretary of Administration.* Deletes added language in GS 143-49(1), requiring that the Attorney General assist the Secretary, prior to awarding any statewide or agency term contract exceeding \$100,000, to obtain the most favorable contract for the state or agency.

August 12, 2010

**SL 2010-194 (S 1213). AMEND STATE PURCHASES AND CONTRACTS LAWS. AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.** Summarized in *Daily Bulletin* 5/18/10 and 6/16/10. Enacted August 5, 2010. Effective October 1, 2010.