

March 26, 2009

S 960. ENSURE ACCOUNTABILITY RE: STIMULUS FUNDS. Filed 3/25/09. *TO ENSURE ACCOUNTABILITY IN THE USE OF FEDERAL STIMULUS FUNDS BY LOCAL GOVERNMENTS AND NONPROFIT ENTITIES.*

Directs state agencies administering pass-through grant funds to report to the General Assembly by May 1, 2009, on recommendations regarding ways to ensure accountability in expenditures of federal stimulus money and whether it would be appropriate for the state to accept the required federal reports in lieu of state reports currently required by law.

Intro. by Nesbitt.

UNCODIFIED

July 23, 2009

S 960. ENSURE ACCOUNTABILITY RE: STIMULUS FUNDS. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Deletes entire contents of the previous edition and replaces it with *AN ACT TO FACILITATE EXPEDITED USE AND EXPENDITURE OF FEDERAL FUNDS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT.*

Enacts new GS 150B-21.1B to establish an expedited procedure for adopting new or amending existing rules implementing the American Recovery and Reinvestment Act of 2009 (ARRA). Provides that the provisions of the statute are to be liberally construed to allow agencies maximum flexibility in implementing ARRA. Allows agencies to use the procedure for the adoption of an emergency rule in GS 150B-21.1A(a) and (b) to adopt a rule under this statute. Specifies that the requirement for finding a serious or unforeseen threat to public health and safety does not apply to the adoption of these rules. Requires the agency to prepare a written statement of its findings that the rule is needed to implement ARRA, in lieu of providing a statement of its findings of need as required by GS 150B-21.1A(b). Provides for (1) adoption of a temporary rule simultaneously with the agency's adoption of an emergency rule and (2) the effective date of those rules.

Requires an agency to submit a temporary rule and its written statement of findings to the Director of the Office of Economic Recovery (Director) if the agency receives a written objection to the temporary rule. Requires the Director to review the statement and the rule within 14 calendar days to determine whether the rule (1) is within the authority delegated to the agency by the General Assembly; (2) is clear and unambiguous; (3) is reasonably necessary to implement or interpret an enactment of the General Assembly or Congress, including ARRA and any federal rules, regulations, policies, guidance, or goals for implementation of ARRA; and (4) was adopted in accordance with this statute. Allows for delivery of the rule to the Codifier of Rules if the criteria are determined to be satisfied or otherwise returned to the agency for an opportunity to revise the rule. Prohibits a rule from being entered into the NC Administrative Code if (1) an agency fails to satisfy the Director's objections to the rule or (2) if the Director fails to make a finding within 14 calendar days. Specifies that the Director's determination that a temporary rule meets the statutory criteria and is required by ARRA is a final agency decision and may be reviewed in accordance with Article 4 of GS Chapter 150B.

Provides that an emergency rule expires on the earliest of the following dates: (1) the date specified in the rule; (2) the effective date of the replacement temporary rule if the Director approves that rule; (3) the date the Director returns a replacement temporary rule to an agency if the agency fails to satisfy the Director's objections; or (4) 60 days from the date the emergency rule is published in the NC Register, unless the replacement temporary rule has been submitted to the Codifier of Rules. Provides that a temporary rule expires on the earliest of the following dates: (1) the date specified in the rule; (2) the effective date of a permanent rule adopted in accordance with GS 150B-21.2 to replace the temporary rule; or (3) June 30, 2012.

Makes a conforming change to GS 150B-1(c).

Enacts new GS 143-52(b) to provide that all contracts for goods, equipment, or services awarded by the Department of Administration (Department), state departments, institutions, agencies, universities, and community colleges (hereinafter referred to as specified entities) using ARRA funds are to be awarded to the maximum extent practicable using fixed-price contracts and competitive procedures. Requires the Secretary of Administration (Secretary), in coordination with

the Office of Economic Recovery and Investment (OERI), to adopt rules, regulations, and policies to promote the efficient and expeditious award of ARRA contracts.

Enacts new GS 143-53(e) to require the Secretary and OERI to adopt rules, policies, and regulations in accordance with proposed GS 150B-21.1B regarding specified issues for all contracts for goods, equipment, or services to be awarded by specified entities using ARRA funds.

Amends GS 143-53.1 to provide that benchmarks set by the Secretary, UNC, and the State Board of Community Colleges under this statute are applicable to all contracts for goods, equipment, or services awarded by specified entities using ARRA funds. Also provides that the benchmarks prescribed for community colleges are as provided in GS 115D-58.14 (Purchasing flexibility).

Amends GS 143-54 to provide that the certification required by the Director of Administration that each bid is submitted competitively and without collusion applies to all contracts for goods, equipment, or services awarded by specified entities using ARRA funds.

Amends GS 143-55 to exempt the acquisition of supplies, materials, goods, equipment, or services using ARRA funds from the contracts certified by the Secretary under this statute. Allows the Secretary, in coordination with OERI, to approve the use of term contracts in limited circumstances where such contracts are the best means to accomplish the goals of ARRA. Also requires the Secretary to provide notice to vendors on the certified contracts of the opportunity to submit bids or proposals for contracts using ARRA funds.

Amends GS 6-19.1 to prohibit a party from recovering attorneys' fees in any civil action regarding any claim, dispute, or protest relating to (1) the implementation of ARRA; (2) the award of contracts or grants thereunder by the state and its departments, institutions, offices, agencies, universities, community colleges, counties, municipalities, and local education authorities; (3) a vendor's default under ARRA; and/or (4) a vendor's debarment resulting from a default under an ARRA contract.

Amends GS 66-58(b) to add that OERI and state agencies are exempt from the statute's prohibition on the sale of merchandise or services by governmental units when implementing ARRA funded projects.

Provides that recovery funds not specified in ARRA may be expended upon approval by OERI. Requires OERI to report any authorizations of ARRA funds to the Joint Legislative Commission on Governmental Operations at its next meeting. Authorizes that contracts or grants entered into for the use of ARRA funds may include remedies sufficient to protect the state in the event such funds are not used in a manner consistent with ARRA or state requirements, including withholding state revenues to local governments and monetary penalties for nonprofits or for-profit entities.

Allows the Department of Transportation (DOT) to solicit proposals under rules and regulations adopted by DOT for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with the planning, design, maintenance, repair, and construction of transportation infrastructure. Specifies that the right to reject any and all proposals is reserved to the Board of Transportation. If Senate Bill 828 becomes law, amends GS 136-28.1 to provide that all contracts over \$1.2 million that DOT lets for *operations* necessary to carry out GS Chapter 136 are to be let to a responsible bidder after public advertising under the rules and regulations of DOT. Provides that at least three informal bids must be solicited for contracts where the amount of work to be let for *transportation infrastructure* construction or repair is \$1.2 million or less and for *transportation infrastructure* maintenance, excluding resurfacing, is \$1.2 million per year or less.

Renames Part 3 of Article 36 of GS Chapter 143 as *Energy Loan Fund* (was, *Energy Improvement Loan Program*). Amends GS 143-345.18 to add that the Department must provide state residents with information and assistance in undertaking energy conserving capital improvement projects to enhance efficiency. Provides that the Department must establish *one or more* revolving funds within the Department to provide secured loans up to \$1 million (was, \$500,000) per entity to install *or entity that installs* energy efficient and renewable energy improvements within (1) business or nonprofit organizations located within or translocating to the state; (2) local governmental units; (3) *buildings classified as multifamily residential*; (4) *buildings designated as multiuse that include residential units*; and (5) *single family residences, with a*

\$50,000 limit placed on those loans. Requires the Department to (1) develop and adopt rules to allow state-regulated financial institutions to provide secured loans to corporate entities, nonprofit organizations, and local government and *residents* in accordance with terms and criteria established by the State Energy Office (was, Department) and (2) contract, on a competitive basis through solicitation of proposals and procedures established by statute and the Division of Purchase and Contract, with persons or entities, including other state agencies and US Treasury-certified Community Development Financial Institutions to administer the Energy Loan Fund. Provides that the annual interest rate for use of funds from the revolving fund must not exceed 3% (was, set at 3%), which is to be established by the State Energy Office (SEO), excluding other fees for loan application review and origination. Limits loan terms to not more than 20 (was, 10) years. Requires SEO (was, Department) to adopt rules to allow loans to be made from the revolving fund and state-regulated financial institutions at interest rates as low as 0% (was, 1%) per annum for certain renewable energy, recycling, and energy efficient and conservation projects. Provides that administrative expenses for activities under this statute that are subject to ARRA are limited to 10% of funds allocated for that purpose. Makes other clarifying changes.

Enacts new GS 62-133.8(k) to require that the Utilities Commission develop, implement, and maintain a website for the online tracking and trading of renewable energy certificates by April 1, 2010, in order to verify the compliance of electric power suppliers with the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) requirements of the statute and to facilitate the establishment of a market for the purchase and sale of the certificates. Requires the Utilities Commission to use available funds for 2009-10 to implement the provision.

Includes General Assembly findings and policy statements related to ARRA funds.

Effective February 17, 2009. Specifies that Sections 1 through 8 of the act expire June 30, 2012.

July 30, 2009

S 960. ENSURE ACCOUNTABILITY RE: STIMULUS FUNDS. Filed 3/25/09. House committee substitute makes the following changes to 2nd edition. Deletes the provision that allowed the Department of Transportation (DOT) to solicit proposals under rules and regulations adopted by DOT for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with the planning, design, maintenance, repair, and construction of transportation infrastructure.

Modifies proposed GS 62-133.8(k) to require that, no later than July 1, 2010 (was, April 1, 2010), the Utilities Commission (Commission) must develop, implement, and maintain a website for the online tracking (was, tracking and trading) of renewable energy certificates in order to verify the compliance of electric power suppliers with the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) requirements of the statute and to facilitate the establishment of a market for the purchase and sale of the certificates. Instead, requires the Commission to study the issue of *trading* renewable energy certificates in order to achieve these purposes and report to the General Assembly by the commencement of the 2010 Regular Session.

Makes clarifying changes to proposed GS 150B-1(c)(8) and proposed amended GS 143-345.18(b)(2).

August 3, 2009

S 960. ENSURE ACCOUNTABILITY RE: STIMULUS FUNDS. Filed 3/25/09. House amendment makes the following changes to 3rd edition. Makes technical changes only.

August 6, 2009

S 960. ENSURE ACCOUNTABILITY RE: STIMULUS FUNDS. Filed 3/25/09. Conference report recommends the following changes to 4th edition to reconcile matters in controversy. Provides that the Energy Policy Council (Council) and the Utilities Commission must jointly study and design an online renewable energy certificates trading exchange to facilitate the establishment of a market for purchase and sale of renewable energy certificates (was, the Utilities Commission to study trading renewable energy certificates in order to verify compliance with Renewable Energy

and Energy Efficiency Portfolio Standard (REPS) requirements and to facilitate the establishment of a market). Requires that the study (1) explore how to implement exchange without appropriating state funds and (2) examine all costs to the consumer. Directs the Council and the Utilities Commission to report to the General Assembly by April 1, 2010.

September 1, 2009

SL 2009-475 (S 960). ENSURE ACCOUNTABILITY REGARDING STIMULUS FUNDS. AN ACT TO FACILITATE EXPEDITED USE AND EXPENDITURE OF FEDERAL FUNDS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT. Summarized in *Daily Bulletin* 3/26/09, 7/23/09, 7/30/09, 8/3/09, and 8/6/09. Enacted August 26, 2009. Effective February 17, 2009.