

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 960
PROPOSED COMMITTEE SUBSTITUTE S960-PCS55489-RO-74

Short Title: Ensure Accountability Re: Stimulus Funds.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO FACILITATE EXPEDITED USE AND EXPENDITURE OF FEDERAL FUNDS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

(a) As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the



1 rules adopted by the Secretary. All contract information shall be made a matter of public record
2 after the award of contract. Provided, that trade secrets, test data and similar proprietary
3 information may remain confidential. A bond for the faithful performance of any contract may
4 be required of the successful bidder at bidder's expense and in the discretion of the Secretary of
5 Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of
6 equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the
7 contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the
8 contract being awarded. After contracts have been awarded, the Secretary of Administration
9 shall certify to the departments, institutions and agencies of the State government the sources of
10 supply and the contract price of the supplies, materials and equipment so contracted for.

11 (b) All contracts for goods, equipment, or services awarded by the Department of
12 Administration, State departments, institutions, agencies, universities, and community colleges
13 using funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law
14 111-5) shall be awarded to the maximum extent practicable using fixed-priced contracts and
15 competitive procedures. The Secretary of Administration, in coordination with the Office of
16 Economic Recovery (OERI) shall adopt rules, regulations, and policies that will promote the
17 efficient and expeditious award of ARRA contracts in compliance with the requirements of
18 ARRA and ARRA's rules, regulations, directives, and guidance, as well as directives issued by
19 OERI."

20 **SECTION 2.** G.S. 143-53 is amended by adding a new subsection to read:

21 "(e) The Secretary of Administration, in coordination with the Office of Economic
22 Recovery (OERI) shall adopt rules, policies, and regulations regarding the requisition, issuance,
23 advertising, opening, evaluation, award, protests, contract performance, contract
24 administration, default, termination, and debarment for all contracts for goods, equipment, or
25 services to be awarded by the Department of Administration, State departments, institutions,
26 agencies, universities, and community colleges using funds from and to meet the goals of the
27 American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5). The rules
28 adopted under this subsection shall be adopted in accordance with G.S. 150B-21.1B."

29 **SECTION 3.** Chapter 150B of the General Statutes is amended by adding a new
30 section to read:

31 **"§ 150B-21.1B. Adoption of rules to implement the American Recovery and Reinvestment**
32 **Act.**

33 (a) Purpose. – This section establishes an expedited procedure for the adoption of new
34 or the amendment of existing rules implementing the American Recovery and Reinvestment
35 Act of 2009 (ARRA) (Public Law 111-5), including any federal rules, regulations, policies,
36 guidance, or goals for the implementation of the ARRA. It is the policy of the State to provide
37 fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and
38 efficiently complete the awards of grants and contracts under the ARRA. The provisions of this
39 section shall be liberally construed to allow agencies maximum flexibility in implementing the
40 ARRA.

41 (b) Adoption. – An agency may adopt a rule under this section by using the procedure
42 for adoption of an emergency rule set forth in G.S. 150B-21.1A(a) and (b). The provision in
43 subsection (a) of G.S. 150B-21.1A that requires a finding of a serious or unforeseen threat to
44 public health or safety shall not apply to rules adopted under this section. In lieu of the written
45 statement of its findings of need as provided in subsection (b) of G.S. 150B-21.1A, the agency
46 must prepare a written statement of its findings that the rule is needed to implement the ARRA.
47 The emergency rule becomes effective when it is entered into the North Carolina
48 Administrative Code. When an agency adopts an emergency rule under this section, the agency
49 must simultaneously commence the process for adopting a temporary rule by submitting the
50 rule to the Codifier of Rules for publication on the Internet in accordance with
51 G.S. 150B-21.1(a3). For purposes of this section, all references to business days in

1 G.S. 150B-21.1(a3) shall be deemed to be calendar days. If the agency receives written
2 comment objecting to the temporary rule, the temporary rule shall be reviewed in accordance
3 with subsection (c) of this section. If the agency receives no written comment objecting to the
4 temporary rule, the agency shall deliver the rule to the Codifier of Rules. The Codifier of Rules
5 shall enter the temporary rule into the North Carolina Administrative Code on the sixth
6 business day after receipt of the rule and the temporary rule becomes effective upon entry into
7 the Code.

8 (c) Review. – If the agency receives written objection to the temporary rule, the agency
9 must submit the temporary rule and a written statement of its findings that the rule is needed to
10 implement the ARRA to the Director of the Office of Economic Recovery (Director). The
11 Director shall have 14 calendar days to review the statement and the rule to determine whether
12 the rule meets the following criteria:

- 13 (1) It is within the authority delegated to the agency by the General Assembly.
- 14 (2) It is clear and unambiguous.
- 15 (3) It is reasonably necessary to implement or interpret an enactment of the
16 General Assembly or Congress, including the ARRA and any federal rules,
17 regulations, policies, guidance, or goals for the implementation of the
18 ARRA. The Director shall consider the cumulative effect of all rules adopted
19 by the agency related to the specific purpose for which the rule is proposed.
- 20 (4) It was adopted in accordance with this section.

21 If the Director finds that the temporary rule meets all of the criteria set forth in this subsection,
22 the Director shall deliver the rule to the Codifier of Rules for entry into the North Carolina
23 Administrative Code. If the Director finds that the temporary rule fails to meet any of the
24 criteria set forth in this subsection, the Director shall return the rule to the agency with a
25 statement of the Director's objections. The agency may change the rule to satisfy the Director's
26 objections and submit the revised rule to the Director. If the agency fails to satisfy the
27 Director's objections, the rule shall not be entered in the North Carolina Administrative Code. If
28 the Director fails to make a final finding within 14 calendar days of receipt of the statement and
29 rule, the rule shall not be entered in the North Carolina Administrative Code.

30 (d) Emergency Rule Expiration Date. – An emergency rule adopted in accordance with
31 this section expires on the earliest of the following dates:

- 32 (1) The date specified in the rule.
- 33 (2) The effective date of the temporary rule adopted to replace the emergency
34 rule, if the Director approves the temporary rule.
- 35 (3) The date the Director returns to an agency a temporary rule adopted to
36 replace the emergency rule, if the agency fails to satisfy the Director's
37 objections.
- 38 (4) Sixty days from the date the emergency rule was published in the North
39 Carolina Register, unless the temporary rule adopted to replace the
40 emergency rule has been submitted to the Codifier of Rules.

41 (e) Temporary Rule Expiration Date. – A temporary rule adopted in accordance with
42 this section expires on the earliest of the following dates:

- 43 (1) The date specified in the rule.
- 44 (2) The effective date of a permanent rule adopted in accordance with
45 G.S. 150B-21.2 to replace the temporary rule.
- 46 (3) June 30, 2012.

47 (f) The Director's determination that a temporary rule meets the criteria set forth in
48 subsection (c) of this section and that the rule is required by ARRA is a final agency decision
49 and may be reviewed in accordance with Article 4 of this Chapter."

50 **SECTION 4.** G.S. 150B-1(c) is amended by adding a new subdivision to read:

1 "(8) Any agency with respect to contracts, disputes, protests, and/or claims
2 arising out of or relating to the implementation of the American Recovery
3 and Reinvestment Act of 2009 (Public Law 111-5)."

4 **SECTION 5.** G.S. 143-53.1 reads as rewritten:

5 **"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

6 (a) On and after July 1, 1997, the procedures prescribed by G.S. 143-52 with respect to
7 competitive bids and the bid value benchmark authorized by G.S. 143-53(a)(2) with respect to
8 rule making by the Secretary of Administration for competitive bidding shall be no more than
9 twenty-five thousand dollars (\$25,000); provided, the Secretary of Administration may, in his
10 or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium
11 of the State commencing after June 30, 1999, in an amount whose increase, expressed as a
12 percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium
13 next preceding the effective date of the benchmark increase. For a special responsibility
14 constituent institution of The University of North Carolina, the benchmark prescribed in this
15 section shall be as provided in G.S. 116-31.10. For community colleges, the benchmark
16 prescribed in this section shall be as provided in G.S. 115D-58.14.

17 (b) The benchmarks set by the Secretary of Administration, The University of North
18 Carolina, and the State Board of Community Colleges in subsection (a) of this section shall be
19 applicable to all contracts for goods, equipment, or services awarded by the Department of
20 Administration, State departments, institutions, agencies, universities, and community colleges
21 using funds from the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

22 **SECTION 6.** G.S. 143-54 reads as rewritten:

23 **"§ 143-54. Certification that bids were submitted without collusion.**

24 (a) The Director of Administration shall require bidders to certify that each bid is
25 submitted competitively and without collusion. False certification is a Class I felony.

26 (b) The certification required by subsection (a) of this section shall be applicable to all
27 bids and proposals for contracts for goods, equipment, or services awarded by the Department
28 of Administration, State departments, institutions, agencies, universities, and community
29 colleges using funds from the American Recovery and Reinvestment Act of 2009 (Public Law
30 111-5)."

31 **SECTION 7.** G.S. 143-55 reads as rewritten:

32 **"§ 143-55. Requisitioning for supplies by agencies; must purchase through sources**
33 **certified.**

34 (a) Unless otherwise provided by law, after sources of supply have been established by
35 contract and certified by the Secretary of Administration to the said departments, institutions
36 and agencies as herein provided for, it shall be the duty of all departments, institutions and
37 agencies to make requisition or issue orders on forms to be prescribed by the Secretary of
38 Administration, for all supplies, materials and equipment required by them upon the sources of
39 supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them,
40 or any of them, to purchase any supplies, materials or equipment from other sources than those
41 certified by the Secretary of Administration. One copy of such requisition or order shall be
42 furnished to and when requested by the Secretary of Administration.

43 (b) The acquisition of supplies, materials, goods, equipment, or services using funds
44 from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) shall
45 be exempt from the contracts certified by the Secretary of Administration in subsection (a) of
46 this section. However, the Secretary of Administration, in coordination with (the Office of
47 Economic Recovery) , may approve the use of term contracts in limited circumstances where
48 such contracts provide the best means to accomplish the goals of ARRA. In addition, the
49 Secretary of Administration shall provide notice to the vendors on the certified contracts of the
50 opportunity to submit bids or proposals for contracts using ARRA funds."

51 **SECTION 8.** G.S. 6-19.1 reads as rewritten:

1 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

2 (a) In any civil action, other than an adjudication for the purpose of establishing or
3 fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a
4 party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate
5 provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow
6 the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to
7 the administrative review portion of the case, in contested cases arising under Article 3 of
8 Chapter 150B, to be taxed as court costs against the appropriate agency if:

9 (1) The court finds that the agency acted without substantial justification in
10 pressing its claim against the party; and

11 (2) The court finds that there are no special circumstances that would make the
12 award of attorney's fees unjust. The party shall petition for the attorney's fees
13 within 30 days following final disposition of the case. The petition shall be
14 supported by an affidavit setting forth the basis for the request.

15 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the
16 administrative review portion of the case in contested cases arising under Article 9 of Chapter
17 131E of the General Statutes.

18 Nothing in this section grants permission to bring an action against an agency otherwise
19 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
20 bring the action.

21 Any attorney's fees assessed against an agency under this section shall be charged against
22 the operating expenses of the agency and shall not be reimbursed from any other source.

23 (b) No party shall be entitled to recover attorneys' fees in any civil action regarding any
24 claim, dispute, and/or protest relating to: (i) the implementation of the American Recovery and
25 Reinvestment Act of 2009 (ARRA) (Public Law 111-5); (ii) the award of contracts or grants
26 thereunder by the State and its departments, institutions, offices, agencies, universities,
27 community colleges, counties, municipalities, and local education authorities; (iii) a vendor's
28 default under an ARRA contract; and/or (iv) a vendor's debarment resulting from a default of
29 an ARRA contract."

30 **SECTION 9.** G.S. 66-58(b) is amended by adding a new subdivision to read:

31 "(26) The North Carolina Office of Economic Recovery and Investment and State
32 agencies in the implementation of the American Recovery and Reinvestment
33 Act of 2009 (Public Law 111-5) funded projects."

34 **SECTION 10.** Recovery funds not specified in the American Recovery and
35 Reinvestment Act of 2009 (ARRA) may be expended upon approval by the Office of Economic
36 Recovery and Investment. The Office of Economic Recovery and Investment will report any
37 authorizations of ARRA funds to the Joint Legislative Commission on Governmental
38 Operations at its next meeting.

39 **SECTION 11.** Contracts or grants entered into for the use of funds from the
40 American Recovery and Reinvestment Act of 2009 (ARRA) may include remedies sufficient to
41 protect the State in the event such funds are not used in a manner consistent with ARRA or
42 State requirements. Such remedies may include, but are not limited to, withholding State
43 revenues to local governments and monetary penalties for nonprofits or for-profit entities.

44 **SECTION 11.1.** Notwithstanding any other provision of law, the Department of
45 Transportation may solicit proposals under rules and regulations adopted by the Department of
46 Transportation for all contracts for professional engineering services and other kinds of
47 professional or specialized services necessary in connection with the planning, design,
48 maintenance, repair, and construction of transportation infrastructure. In order to promote
49 engineering and design quality and ensure maximum competition by professional firms of all
50 sizes, the Department may establish fiscal guidelines and limitations necessary to promote

1 cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any
2 and all proposals is reserved to the Board of Transportation.

3 **SECTION 12.** If Senate Bill 828, 2009 Regular Session becomes law, then
4 G.S. 136-28.1(a) and (b), as amended by that act, read as rewritten:

5 "**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

6 (a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the
7 Department of Transportation may let for construction, maintenance, operations, or repair
8 necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after
9 public advertising under rules and regulations to be made and published by the Department of
10 Transportation. The right to reject any and all bids shall be reserved to the Board of
11 Transportation. Contracts for construction or repair for federal aid projects entered into
12 pursuant to this section shall not contain the standardized contract clauses prescribed by 23
13 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work
14 ordered by the engineer or significant changes in the character of the work. For those federal
15 aid projects, the Department of Transportation shall use only the contract provisions for
16 differing site conditions, suspensions of work ordered by the engineer, or significant changes in
17 the character of the work developed by the North Carolina Department of Transportation and
18 approved by the Board of Transportation.

19 (b) For contracts let to carry out the provisions of this Chapter in which the amount of
20 work to be let to contract for transportation infrastructure construction or repair is one million
21 two hundred thousand dollars (\$1,200,000) or less, and for transportation infrastructure
22 maintenance, excluding resurfacing, that is one million two hundred thousand dollars
23 (\$1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal
24 bids" is defined as bids in writing, received pursuant to a written request, without public
25 advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary
26 of Transportation shall keep a record of all bids submitted, which record shall be subject to
27 public inspection at any time after the bids are opened.

28"

29 **SECTION 13.** Part 3 of Article 36 of Chapter 143 of the General Statutes reads as
30 rewritten:

31 "Part 3. Energy ~~Improvement Loan Program Fund.~~

32 "**§ 143-345.16. Short title.**

33 This Part shall be known as the Energy ~~Improvement Loan Program Fund.~~

34 "**§ 143-345.17. Legislative findings and purpose.**

35 The General Assembly finds and declares that it is in the best interest of the citizens of
36 North Carolina to promote and encourage energy efficiency within the State in order to
37 conserve energy, promote economic competitiveness, and expand employment in the State.

38 "**§ 143-345.18. Lead agency; powers and duties.**

39 (a) For the purposes of this Part, the Department of Administration, State Energy
40 Office, is designated as the lead State agency in matters pertaining to energy efficiency.

41 (b) The Department shall have the following powers and duties with respect to this Part:

42 (1) To provide industrial and commercial concerns doing business in North
43 Carolina, local governmental units, ~~and nonprofit organizations operating~~
44 organizations, and residents in North Carolina with information and
45 assistance in undertaking energy conserving capital improvement projects to
46 enhance efficiency.

47 (2) ~~To establish a revolving fund within the Department for the purpose of~~
48 ~~providing secured loans in amounts not greater than five hundred thousand~~
49 ~~dollars (\$500,000) per entity to install energy-efficient capital improvements~~
50 ~~(i) within businesses or nonprofit organizations located within or~~
51 ~~translocating to North Carolina, and (ii) within local governmental units. To~~

1 establish one or more revolving funds within the Department for the purpose
2 of providing secured loans in amounts not greater than one million dollars
3 (\$1,000,000) per entity to install or entity that installs energy-efficient and
4 renewable energy improvements (i) within business or nonprofit
5 organizations located within or translocating to North Carolina, (ii) within
6 local governmental units, (iii) within buildings classified as multifamily
7 residential, (iv) within buildings designated as multiuse that include
8 residential units, and (v) within single family residences, however, in this
9 instance the amount of the loan shall not exceed fifty thousand dollars
10 (\$50,000). In providing these loans, priority shall be given to entities already
11 located in the State.

12 (2a) To develop and adopt rules to allow State-regulated financial institutions to
13 provide secured loans to corporate entities, nonprofit organizations, and
14 local governmental units and residents in accordance with terms and criteria
15 established by the ~~Department~~ State Energy Office.

16 (3) To work with appropriate State and federal agencies to develop and
17 implement rules and regulations to facilitate this program.

18 (4) To contract with persons or entities, including other State agencies and
19 United States Treasury certified Community Development Financial
20 Institutions (CDFI), to administer the Energy Loan Fund. Contracts for the
21 procurement of services to manage, administer, and operate the Energy Loan
22 Fund shall be awarded on a competitive basis through the solicitation of
23 proposals and through the procedures established by statute and the Division
24 of Purchase and Contract.

25 (c) The annual interest rate charged for the use of the funds from the revolving fund
26 established pursuant to subdivision (b)(2) of this section shall be a percentage not to exceed
27 three percent (3%) per annum, to be established by the State Energy Office, excluding other
28 fees required for loan application review and origination. The term of any loan originated under
29 this section may not be greater than ~~40~~ 20 years.

30 (c1) Notwithstanding subsection (c) of this section, the ~~Department~~ State Energy Office
31 shall adopt rules to allow loans to be made from the revolving loan fund and by State-regulated
32 financial institutions at interest rates as low as ~~one percent (1%)~~ zero percent (0%) per annum
33 for certain renewable energy, recycling, and energy efficient and conservation projects such as
34 ~~recycling and renewable energy~~ to encourage their development and use.

35 (d) In accordance with the terms of the Stripper Well Settlement, administrative
36 expenses for activities under this section that are subject to the Stripper Well Settlement shall
37 be limited to five percent (5%) of funds ~~appropriated~~ allocated for this purpose. In accordance
38 with the provisions of the American Recovery and Reinvestment Act of 2009 (Public Law
39 111-5), administrative expenses for activities under this section that are subject to the ARRA
40 shall be limited to ten percent (10%) of funds allocated for this purpose.

41 (e) For purposes of this section:

42 (1) "Local governmental unit" means any board or governing body of a political
43 subdivision of the State, including any board of a community college, any
44 school board, or an agency, commission, or authority of a political
45 subdivision of the State.

46 (2) "Nonprofit organization" means an organization that is exempt from federal
47 income taxation under section 501(c)(3) of the Internal Revenue Code."

48 **SECTION 14.(a)** G.S. 62-133.8 is amended by adding a new subsection to read:

49 "(k) Tracking and Trading of Renewable Energy Certificates. – No later than April 1,
50 2010, the Commission shall develop, implement, and maintain an Internet Web site for the
51 online tracking and trading of renewable energy certificates in order to verify the compliance of

1 electric power suppliers with the REPS requirements of this section and to facilitate the
2 establishment of a market for the purchase and sale of renewable energy certificates."

3 **SECTION 14.(b)** The North Carolina Utilities Commission shall use available
4 funds for the 2009-2010 fiscal year to implement this section.

5 **SECTION 15.** The General Assembly finds that it is in the public interest of the
6 State of North Carolina to ensure expeditious awards of ARRA funds to maximize the
7 economic recovery impact of the ARRA. It is the policy of the State to provide fair regulation,
8 oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete
9 the awards of grants and contracts under the ARRA. It is also the policy of this State that, due
10 to the historic level of federal and State oversight of ARRA grant and contract awards, restraint
11 should be exercised in the granting of legal and injunctive relief that might forestall awards to
12 programs and contractors.

13 **SECTION 16.** This act becomes effective February 17, 2009. Sections 1 through 8
14 of this act expire June 30, 2012.