

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1213*
PROPOSED COMMITTEE SUBSTITUTE S1213-PCS65078-RI-64

Short Title: Amend State Purchases & Contracts Laws.

(Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"§ 18C-150. Procurements.

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose. For purposes of this provision, "cost plus percentage of cost contract" is defined as a contract under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This provision shall not apply to Commission contracts that require costs to be predetermined and approved by the Commission and a total not to exceed the amount specified in each contract to be paid to the contractor."

SECTION 2. G.S. 53-320(d) reads as rewritten:

"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of



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1 compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements
2 authorized by this subsection. However, the Commissioner shall: (i) submit all proposed
3 statewide and agency term agreements or contracts for supplies, materials, printing, equipment,
4 and contractual services that exceed one million dollars (\$1,000,000) authorized by this
5 subsection to the Attorney General or the Attorney General's designee for review as provided in
6 G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the
7 Commissioner under this subsection a standard clause which provides that the State Auditor
8 and internal auditors of the Commissioner may audit the records of the contractor during the
9 term of the agreement or contract to verify accounts and data affecting fees and performance.
10 The Commissioner shall not award a cost plus percentage of cost agreement or contract for any
11 purpose.

12"

13 **SECTION 3.** G.S. 53-326(d) reads as rewritten:

14 "**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

15 ...

16 (d) The Commissioner may enter into agreements with bank supervisory agencies
17 supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a
18 foreign trust institution maintaining a trust office or representative trust office in this State to
19 engage the services of the bank supervisory agency's examiners at a reasonable rate of
20 compensation or to provide the services of the Commissioner's examiners to the bank
21 supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the
22 General Statutes does not apply to agreements authorized by this section. However, the
23 Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts
24 for supplies, materials, printing, equipment, and contractual services that exceed one million
25 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney
26 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or
27 contracts to be awarded by the Commissioner under this subsection a standard clause which
28 provides that the State Auditor and internal auditors of the Commissioner may audit the records
29 of the contractor during the term of the agreement or contract to verify accounts and data
30 affecting fees and performance. The Commissioner shall not award a cost plus percentage of
31 cost agreement or contract for any purpose.

32"

33 **SECTION 4.** G.S. 53-391 reads as rewritten:

34 "**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

35 The Commissioner, for the purpose of exercising any power under the provisions of this
36 Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks
37 necessary to properly conduct the business of or liquidate and distribute the assets of a State
38 trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and
39 clerks; and (iii) pay the compensation of those persons out of the assets of the State trust
40 company. Provided, that all expenditures described in this section shall be approved by the
41 resident or presiding judge in the county in which the action is pending. Payments made by the
42 Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of
43 Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes
44 the Commissioner's duly appointed agents. The Commissioner shall: (i) submit all proposed
45 statewide and agency term agreements or contracts for supplies, materials, printing, equipment,
46 and contractual services that exceed one million dollars (\$1,000,000) authorized by this section
47 to the Attorney General or the Attorney General's designee for review as provided in
48 G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the
49 Commissioner under this section a standard clause which provides that the State Auditor and
50 internal auditors of the Commissioner may audit the records of the contractor during the term
51 of the agreement or contract to verify accounts and data affecting fees and performance. The

1 Commissioner shall not award a cost plus percentage of cost agreement or contract for any
2 purpose."

3 **SECTION 5.** G.S. 53-401 reads as rewritten:

4 **"§ 53-401. Provisions for conservator; duties and powers.**

5 Whenever the Commissioner deems it necessary in order to conserve the assets of a State
6 trust company for the benefit of clients or creditors, the Commissioner may appoint a
7 conservator for the State trust company and require of the conservator a bond with any surety
8 the Commissioner deems necessary and proper in an amount deemed sufficient by the
9 Commissioner. The conservator, under the direction of the Commissioner, shall take possession
10 of the fiduciary records and other books, records, and assets of every description of the State
11 trust company placed under conservatorship and take actions necessary to conserve those assets
12 pending further disposition of its business as provided by law. Except as provided in
13 G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the
14 approval of the Commissioner, now possessed by or given to the Commissioner under the
15 provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be
16 paid out of the assets of the State trust company under conservatorship and shall be a lien
17 thereon which shall be prior to any other lien provided by law. The compensation of the
18 conservator shall be determined by the Commissioner and shall be based on the time and
19 experience of the conservator and the complexity of the conservatorship. Compensation of the
20 conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General
21 Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term
22 agreements or contracts for supplies, materials, printing, equipment, and contractual services
23 that exceed one million dollars (\$1,000,000) authorized by this section to the Attorney General
24 or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in
25 all agreements or contracts to be awarded by the Commissioner under this section a standard
26 clause which provides that the State Auditor and internal auditors of the Commissioner may
27 audit the records of the conservator during the term of the agreement or contract to verify
28 accounts and data affecting fees and performance. The Commissioner shall not award a cost
29 plus percentage of cost agreement or contract for any purpose."

30 **SECTION 6.** G.S. 58-2-69(g) reads as rewritten:

31 **"§ 58-2-69. Notification of criminal convictions and changes of address; service of notice;**
32 **contracts for online services, administrative services, or regulatory data**
33 **systems.**

34 ...

35 (g) The Commissioner may contract with the NAIC or other persons for the provision
36 of online services to licensees, for the provision of administrative services to licensees, or for
37 the provision of regulatory data systems to the Commissioner. The NAIC or other person with
38 whom the Commissioner contracts may charge licensees a reasonable fee for the costs
39 associated with the licensees' use of online services and administrative services. The fee shall
40 be agreed to by the Commissioner and the other contracting party and shall be stated in the
41 contract. Contracts for the provision of online services, contracts for the provision of
42 administrative services, and contracts for the provision of regulatory data systems shall not be
43 subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter
44 147 of the General Statutes. However, the Commissioner shall: (i) submit all proposed
45 statewide and agency term contracts for supplies, materials, printing, equipment, and
46 contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection
47 to the Attorney General or the Attorney General's designee for review as provided in
48 G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this
49 subsection a standard clause which provides that the State Auditor and internal auditors of the
50 Commissioner may audit the records of the contractor during the term of the agreement or

1 contract to verify accounts and data affecting fees and performance. The Commissioner shall
 2 not award a cost plus percentage of cost agreement or contract for any purpose."

3 **SECTION 7.** G.S. 58-33-30(e) reads as rewritten:

4 **"§ 58-33-30. License requirements.**

5 The Commissioner shall not issue or continue any license of an agent, broker, limited
 6 representative, adjuster, or motor vehicle damage appraiser except as follows:

7 ...
 8 (e) Examination.

9 ...
 10 (4) The answers of the applicant to the examination shall be provided by the
 11 applicant under the Commissioner's supervision. The Commissioner shall
 12 give examinations at such times and places within this State as the
 13 Commissioner considers necessary reasonably to serve the convenience of
 14 both the Commissioner and applicants: Provided that the Commissioner may
 15 contract directly with persons for the processing of examination application
 16 forms and for the administration and grading of the examinations required
 17 by this section; the Commissioner may charge a reasonable fee in addition to
 18 the registration fee charged under G.S. 58-33-125, to offset the cost of the
 19 examination contract authorized by this subsection; and such contracts shall
 20 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
 21 the Commissioner shall: (i) submit all proposed statewide and agency term
 22 agreements or contracts for supplies, materials, printing, equipment, and
 23 contractual services that exceed one million dollars (\$1,000,000) authorized
 24 by this subdivision to the Attorney General or the Attorney General's
 25 designee for review as provided in G.S. 114-8.3; and (ii) include in all
 26 contracts to be awarded by the Commissioner under this subdivision a
 27 standard clause which provides that the State Auditor and internal auditors
 28 of the Commissioner may audit the records of the contractor during the term
 29 of the contract to verify accounts and data affecting fees and performance.
 30 The Commissioner shall not award a cost plus percentage of cost contract for
 31 any purpose.

32 (5) The Commissioner shall collect in advance the examination and registration
 33 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
 34 Commissioner shall make or cause to be made available to all applicants, for
 35 a reasonable fee to offset the costs of production, materials that he considers
 36 necessary for the applicants' proper preparation for examinations. The
 37 Commissioner may contract directly with publishers and other suppliers for
 38 the production of the preparatory materials, and contracts so let by the
 39 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
 40 Statutes. However, the Commissioner shall: (i) submit all proposed
 41 statewide and agency term contracts for supplies, materials, printing,
 42 equipment, and contractual services that exceed one million dollars
 43 (\$1,000,000) authorized by this subdivision to the Attorney General or the
 44 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
 45 include in all contracts to be awarded by the Commissioner under this
 46 subdivision a standard clause which provides that the State Auditor and
 47 internal auditors of the Commissioner may audit the records of the
 48 contractor during the term of the contract to verify accounts and data
 49 affecting fees and performance. The Commissioner shall not award a cost
 50 plus percentage of cost contract for any purpose.

51"

1 **SECTION 8.** G.S. 58-33-125(e) reads as rewritten:

2 "**§ 58-33-125. Fees.**

3 ...

4 (e) A resident licensee may obtain a duplicate photo-bearing license at times and places
5 within this State that the Commissioner considers necessary and reasonable to serve the
6 convenience of both the Commissioner and the licensee. The Commissioner may contract
7 directly with persons for processing of duplicate photo-bearing licenses, and the contract shall
8 not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may
9 charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the
10 costs to the Department of duplicating the license, including costs associated with any contract
11 entered into pursuant to this subsection. However, the Commissioner shall: (i) submit all
12 proposed statewide and agency term contracts for supplies, materials, printing, equipment, and
13 contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection
14 to the Attorney General or the Attorney General's designee for review as provided in
15 G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this
16 subsection a standard clause which provides that the State Auditor and internal auditors of the
17 Commissioner may audit the records of the contractor during the term of the contract to verify
18 accounts and data affecting fees and performance. The Commissioner shall not award a cost
19 plus percentage of cost agreement or contract for any purpose.

20 "

21 **SECTION 9.** G.S. 58-33-130(a) reads as rewritten:

22 "**§ 58-33-130. Continuing education program for licensees.**

23 (a) The Commissioner may adopt rules to provide for a program of continuing
24 education requirements for the purpose of enhancing the professional competence and
25 professional responsibility of adjusters and motor vehicle damage appraisers. The rules may
26 include criteria for:

- 27 (1) The content of continuing education courses;
- 28 (2) Accreditation of continuing education sponsors and programs;
- 29 (3) Accreditation of videotape or other audiovisual programs;
- 30 (4) Computation of credit;
- 31 (5) Special cases and exemptions;
- 32 (6) General compliance procedures; and
- 33 (7) Sanctions for noncompliance.

34 The Commissioner may contract directly with persons for the administration of the program
35 provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143
36 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide
37 and agency term contracts for supplies, materials, printing, equipment, and contractual services
38 that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney
39 General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
40 include in all contracts to be awarded by the Commissioner under this subsection a standard
41 clause which provides that the State Auditor and internal auditors of the Commissioner may
42 audit the records of the contractor during the term of the contract to verify accounts and data
43 affecting fees and performance. The Commissioner shall not award a cost plus percentage of
44 cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to
45 course providers to offset the cost of the program, including costs associated with contracts
46 authorized by this subsection. The fee authorized by this subsection shall be in addition to the
47 fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator"
48 means any person with whom the Commissioner has contracted under this subsection.

49 "

50 **SECTION 10.** G.S. 58-71-40(d) reads as rewritten:

1 "§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications
2 generally.

3 ...

4 (d) When a license is issued under this section, the Commissioner shall issue a picture
5 identification card, of design, size, and content approved by the Commissioner, to the licensee.
6 Each licensee must carry this card at all times when working in the scope of the licensee's
7 employment. A licensee whose license terminates or is terminated shall surrender the
8 identification card to the Commissioner within 10 working days after the termination. The
9 Commissioner may contract directly with persons for the processing and issuance of picture
10 identification cards required by this section and may charge a reasonable fee in addition to the
11 license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service,
12 including the costs associated with the contract authorized by this subsection. Contracts entered
13 into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General
14 Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term
15 contracts for supplies, materials, printing, equipment, and contractual services that exceed one
16 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the
17 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all
18 contracts to be awarded by the Commissioner under this subsection a standard clause which
19 provides that the State Auditor and internal auditors of the Commissioner may audit the records
20 of the contractor during the term of the contract to verify accounts and data affecting fees and
21 performance. The Commissioner shall not award a cost plus percentage of cost agreement or
22 contract for any purpose.

23"

24 **SECTION 11.** G.S. 63A-24(1) reads as rewritten:

25 "**§ 63A-24. General laws apply to Authority; exceptions.**

26 Except as provided in this section, the general laws that apply to State agencies apply to the
27 Authority. The following general laws, to the extent provided below, do not apply to the
28 Authority:

- 29 (1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts
30 for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user
31 projects. That Article also does not apply to other contracts for projects, but,
32 with respect to these other contracts, the powers and duties established in
33 that Article shall be exercised by the Authority and the Secretary of
34 Administration, and other State officers, employees, or agencies shall have
35 no duties or responsibilities concerning the contracts. However, the
36 Authority shall: (i) submit all proposed statewide and agency term contracts
37 for supplies, materials, printing, equipment, and contractual services that
38 exceed one million dollars (\$1,000,000) authorized by this subdivision to the
39 Attorney General or the Attorney General's designee for review as provided
40 in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the
41 Authority under this subdivision a standard clause which provides that the
42 State Auditor and internal auditors of the Authority may audit the records of
43 the contractor during the term of the contract to verify accounts and data
44 affecting fees and performance. The Authority shall not award a cost plus
45 percentage of cost agreement or contract for any purpose.

46"

47 **SECTION 12.** G.S. 84-23(d) reads as rewritten:

48 "**§ 84-23. Powers of Council.**

49 ...

50 (d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal
51 with real or personal property in the same manner as any private person or corporation, subject

1 only to the approval of the Governor and the Council of State as to the acquisition, rental,
2 encumbering, leasing and sale of real property. The Council may borrow money upon its
3 bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale
4 pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such
5 borrowing either unsecured or secured by a mortgage on the Council's interest in real or
6 personal property, and engage and contract with attorneys, underwriters, financial advisors, and
7 other parties as necessary for such borrowing, with such borrowing and security subject to the
8 approval of the Governor and the Council of State. The Council may utilize the services of the
9 Purchase and Contract Division of the Department of Administration to procure personal
10 property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.
11 However, the Council shall: (i) submit all proposed statewide and agency term contracts for
12 supplies, materials, printing, equipment, and contractual services that exceed one million
13 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney
14 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be
15 awarded by the Council under this subsection a standard clause which provides that the State
16 Auditor and internal auditors of the Council may audit the records of the contractor during the
17 term of the contract to verify accounts and data affecting fees and performance. The Council
18 shall not award a cost plus percentage of cost agreement or contract for any purpose."

19 **SECTION 13.** G.S. 89E-5(e) reads as rewritten:

20 "**§ 89E-5. Functions and duties of the Licensing Board.**

21 ...

22 (e) The Board may authorize expenditures deemed necessary to carry out the provisions
23 of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The
24 Board treasurer shall deposit funds received by the Board in one or more funds in banks or
25 other financial institutions carrying deposit insurance and authorized to do business in North
26 Carolina. Interest earned on such funds may remain in the funds account and may be expended
27 as authorized by the Board to carry out the provisions of this Chapter. In no event may
28 expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized
29 and empowered to utilize the services of the Purchase and Contract Division of the Department
30 of Administration for the procurement of personal property, in accordance with Article 3 of
31 Chapter 143 of the General Statutes. The Board shall: (i) submit all proposed statewide and
32 agency term contracts for supplies, materials, printing, equipment, and contractual services that
33 exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General
34 or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in
35 all contracts to be awarded by the Board under this subsection a standard clause which provides
36 that the State Auditor and internal auditors of the Board may audit the records of the contractor
37 during the term of the contract to verify accounts and data affecting fees and performance. The
38 Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

39"

40 **SECTION 14.** G.S. 89F-5(d) reads as rewritten:

41 "**§ 89F-5. Powers and duties of the Board.**

42 ...

43 (d) The Board may employ the necessary personnel for the performance of its functions
44 and shall fix their compensation within the limits of funds available to the Board. The Board
45 may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of
46 the General Statutes. The Board shall: (i) submit all proposed statewide and agency term
47 contracts for supplies, materials, printing, equipment, and contractual services that exceed one
48 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the
49 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all
50 contracts to be awarded by the Board under this subsection a standard clause which provides
51 that the State Auditor and internal auditors of the Board may audit the records of the contractor

1 during the term of the contract to verify accounts and data affecting fees and performance. The
2 Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

3"

4 **SECTION 15.** G.S. 108A-55(b) reads as rewritten:

5 **"§ 108A-55. Payments.**

6 ...

7 (b) Payments shall be made only to intermediate care facilities, hospitals and nursing
8 homes licensed and approved under the laws of the State of North Carolina or under the laws of
9 another state, or to pharmacies, physicians, dentists, optometrists or other providers of
10 health-related services authorized by the Department. Payments may also be made to such
11 fiscal intermediaries and to the capitation or prepaid health service contractors as may be
12 authorized by the Department. Arrangements under which payments are made to capitation or
13 prepaid health services contracts are not subject to the provisions of Chapter 58 of the General
14 Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall:
15 (i) submit all proposed statewide and agency term contracts for supplies, materials, printing,
16 equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by
17 this subsection to the Attorney General or the Attorney General's designee for review as
18 provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the
19 Department under this subsection a standard clause which provides that the State Auditor and
20 internal auditors of the Department may audit the records of the contractor during the term of
21 the contract to verify accounts and data affecting fees and performance. The Department shall
22 not award a cost plus percentage of cost agreement or contract for any purpose.

23"

24 **SECTION 16.** Article 1 of Chapter 114 of the General Statutes is amended by
25 adding the following new section to read as follows:

26 **"§ 114-8.3. Attorney General to review certain contracts.**

27 (a) Except as provided in subsection (b) of this section, the Attorney General or the
28 Attorney General's designee shall review all proposed statewide and agency term contracts for
29 supplies, materials, printing, equipment, and contractual services that exceed one million
30 dollars (\$1,000,000) to ensure that the proposed contracts are in proper legal form, contain all
31 clauses required by law, are legally enforceable, and accomplish the intended purposes of the
32 proposed contract. The term "review" as used in this section shall not constitute approval or
33 disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this
34 subsection, the term "Attorney General's designee" shall include any attorney approved by the
35 Attorney General to review contracts as provided in this subsection. The Attorney General shall
36 require that any attorney designated under this subsection comply with any rules established by
37 the Attorney General or the Department of Administration regarding the review of contracts.

38 (b) For the constituent institutions of The University of North Carolina, the General
39 Counsel of each institution or the General Counsel's designee shall review all proposed
40 statewide and agency term contracts for supplies, materials, printing, equipment, and
41 contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed
42 contracts are in proper legal form, contain all clauses required by law, are legally enforceable,
43 and accomplish the intended purposes of the proposed contract. The term "review" as used in
44 this section shall not constitute approval or disapproval of the policy merit or lack thereof of the
45 proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall
46 include any attorney approved by the General Counsel to review contracts as provided in this
47 subsection. The General Counsel shall require that any attorney designated under this
48 subsection comply with any rules established by the Attorney General or the Department of
49 Administration regarding the review of contracts."

50 **SECTION 17.** G.S. 115D-67.4 reads as rewritten:

51 **"§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

1 Notwithstanding any other provision of law, all fees collected by the Applied Textile
2 Technology Center for services to the textile industry, except for regular curriculum and
3 continuing education tuition receipts, shall be retained by the Center and used for the
4 operations of the Center. Purchases made by the Center using these funds are not subject to the
5 provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall: (i)
6 submit all proposed statewide and agency term agreements or contracts for supplies, materials,
7 printing, equipment, and contractual services that exceed one million dollars (\$1,000,000)
8 authorized by this section to the Attorney General or the Attorney General's designee for
9 review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be
10 awarded by the Center under this section a standard clause which provides that the State
11 Auditor and internal auditors of the Center may audit the records of the contractor during the
12 term of the contract to verify accounts and data affecting fees and performance. The Center
13 shall not award a cost plus percentage of cost agreement or contract for any purpose."

14 **SECTION 18.(a)** G.S. 135-43(b) reads as rewritten:

15 **"§ 135-43. Confidentiality of information and medical records; provider contracts.**

16 ...

17 (b) Notwithstanding the provisions of this Article, the Executive Administrator and
18 Board of Trustees of the State Health Plan for Teachers and State Employees may contract with
19 providers of institutional and professional medical care and services to establish preferred
20 provider networks.

21 The terms of a contract between the Plan and its third party administrator or between the
22 Plan and its pharmacy benefit manager are a public record except that the terms in those
23 contracts that contain trade secrets or proprietary or competitive information are not a public
24 record under Chapter 132 of the General Statutes, and any such proprietary or competitive
25 information and trade secrets contained in the contract shall be redacted by the Plan prior to
26 making it available to the public. This subsection shall not be construed to prevent or restrict
27 the release of any information made not a public record under this subsection to the State
28 Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive
29 Administrator, and the Committee on Employee Hospital and Medical Benefits solely and
30 exclusively for their use in the furtherance of their duties and responsibilities, and to the
31 Department of Health and Human Services solely for the purpose of implementing the
32 transition of NC Health Choice from the Plan to the Department of Health and Human
33 Services. The design, adoption, and implementation of the preferred provider contracts,
34 networks, and optional alternative comprehensive health benefit plans, and programs available
35 under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the
36 requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive
37 Administrator and Board of Trustees shall: (i) submit all proposed statewide and agency term
38 contracts for supplies, materials, printing, equipment, and contractual services that exceed one
39 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the
40 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all
41 proposed contracts to be awarded by the Executive Administrator and Board of Trustees under
42 this section a standard clause which provides that the State Auditor and internal auditors of the
43 Plan may audit the records of the contractor during the term of the contract to verify accounts
44 and data affecting fees and performance. The Executive Administrator and Board of Trustees
45 shall not award a cost plus percentage of cost agreement or contract for any purpose. The
46 Executive Administrator and Board of Trustees shall make reports as requested to the President
47 of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of
48 Representatives, and the Committee on Employee Hospital and Medical Benefits.

49"

50 **SECTION 18.(b)** G.S. 135-45 is amended by adding a new subsection to read:

1 "(d1) The Executive Administrator and Board of Trustees shall: (i) submit all proposed
2 statewide and agency term contracts for supplies, materials, printing, equipment, and
3 contractual services that exceed one million dollars (\$1,000,000) authorized by subsection (d)
4 of this section to the Attorney General or the Attorney General's designee for review as
5 provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the
6 Executive Administrator and Board of Trustees under this section a standard clause which
7 provides that the State Auditor and internal auditors of the Plan may audit the records of the
8 contractor during the term of the contract to verify accounts and data affecting fees and
9 performance. The Executive Administrator and Board of Trustees shall not award a cost plus
10 percentage of cost agreement or contract for any purpose."

11 **SECTION 19.** G.S. 136-28.1(h) reads as rewritten:

12 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

13 ...

14 (h) The Department of Transportation may enter into contracts for applied research and
15 experimental work without soliciting bids or proposals; provided, however, that if the research
16 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article
17 3 of Chapter 143 of the General Statutes shall apply. However, the Department of
18 Transportation shall: (i) submit all proposed statewide and agency term contracts for supplies,
19 materials, printing, equipment, and contractual services that exceed one million dollars
20 (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's
21 designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be
22 awarded by the Department of Transportation under this subsection a standard clause which
23 provides that the State Auditor and internal auditors of the Department of Transportation may
24 audit the records of the contractor during the term of the contract to verify accounts and data
25 affecting fees and performance. The Department of Transportation shall not award a cost plus
26 percentage of cost agreement or contract for any purpose. The Department of Transportation is
27 encouraged to solicit proposals when contracts are entered into with private firms when it is in
28 the public interest to do so.

29 "

30 **SECTION 20.1.** G.S. 136-89.194(g) reads as rewritten:

31 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

32 ...

33 (g) Contract Exemptions. – The following provisions concerning the purchase of goods
34 and services by a State agency do not apply to the Turnpike Authority:

35 (1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the
36 services of the Department of Administration in procuring goods and
37 services that are not specific to establishing and operating a toll revenue
38 system. However, the Authority shall: (i) submit all proposed statewide and
39 agency term contracts for supplies, materials, printing, equipment, and
40 contractual services that exceed one million dollars (\$1,000,000) authorized
41 by this subdivision to the Attorney General or the Attorney General's
42 designee for review as provided in G.S. 114-8.3; and, (ii) include in all
43 proposed contracts to be awarded by the Authority under this subdivision a
44 standard clause which provides that the State Auditor and internal auditors
45 of the Authority may audit the records of the contractor during the term of
46 the contract to verify accounts and data affecting fees and performance. The
47 Authority shall not award a cost plus percentage of cost agreement or
48 contract for any purpose.

49 "

50 **SECTION 20.2.** G.S. 143-48.1 is amended by adding a new subsection to read:

51 **"§ 143-48.1. Medicaid program exemption.**

1 (a) This Article shall not apply to any capitation arrangement or prepaid health service
2 arrangement implemented or administered by the North Carolina Department of Health and
3 Human Services or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. §
4 1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.

5 (b) As used in this section, the following definitions apply:

6 (1) "Capitation arrangement" means an agreement whereby the Department of
7 Health and Human Services pays a periodic per enrollee fee to a contract
8 entity that provides medical services to Medicaid recipients during their
9 enrollment period.

10 (2) "Prepaid health services" means services provided to Medicaid recipients
11 that are paid on the basis of a prepaid capitation fee, pursuant to an
12 agreement between the Department of Health and Human Services and a
13 contract entity.

14 (c) The Department of Health and Human Services shall: (i) submit all proposed
15 statewide and agency term contracts for a capitation arrangement or prepaid health services, as
16 defined by this section, that exceed one million dollars (\$1,000,000) to the Attorney General or
17 the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all
18 agreements or contracts to be awarded by the Department under this section a standard clause
19 which provides that the State Auditor and internal auditors of the Department may audit the
20 records of the contractor during the term of the contract to verify accounts and data affecting
21 fees and performance. The Department shall not award a cost plus percentage of cost agreement
22 or contract for any purpose."

23 **SECTION 21.** G.S. 143-49 is amended by adding the following new subdivision to
24 read:

25 "**§ 143-49. Powers and duties of Secretary.**

- 26 ...
- 27 (9) To include a standard clause in all contracts awarded by the State and
28 departments, agencies, and institutions of the State, providing that the State
29 Auditor and internal auditors of the affected department, agency, or
30 institution may audit the records of the contactor during the term of the
31 contract to verify accounts and data affecting fees or performance.
- 32 (10) To monitor and enforce the terms and conditions of statewide term contracts.
33 The Secretary of Administration shall not delegate the power and authority
34 granted under this subdivision to any other department, agency, or institution
35 of the State.
- 36 (11) To develop rules, regulations, and procedures specifying the manner in
37 which departments, agencies, and institutions of the State shall monitor and
38 enforce agency term and non-term contracts.
- 39 (12) To consult with the Attorney General or the Attorney General's designee in
40 developing rules, regulations, and procedures providing for the orderly and
41 efficient submission of proposed statewide term, agency term, and non-term
42 contracts to the Attorney General for review as provided in G.S. 114-8.3 and
43 G.S. 143-52.2.
- 44 (13) To implement a quality management system equivalent to the International
45 Organization for Standardization (ISO) 9001:2008 to ensure that citizen and
46 agency customer requirements are met. By September 1, 2012, and more
47 frequently as requested, the Secretary shall report to the Joint Legislative
48 Commission on Governmental Operations, the Program Evaluation Division,
49 and the Fiscal Research Division concerning the progress of the
50 Department's effort to comply with the provisions of this subdivision.

1 (14) To work in conjunction with the Office of State Personnel to create a
2 Contracting Specialist career path to provide for the designation of one or
3 more employees within each department, agency, or institution of the State
4 to serve as the Contracting Specialist for the department, agency, or
5 institution. Employees on the Contracting Specialist career path shall receive
6 training and guidance as to the provisions of this Article.

7 (15) To work in conjunction with the Office of State Personnel, the Division of
8 Purchase and Contract, and the University of North Carolina School of
9 Government to develop a rigorous contract management training and
10 certification program for State employees. The program shall be
11 administered by the Office of State Personnel.

12 (16) To work in conjunction with the University of North Carolina School of
13 Government to study and recommend improvements to State procurement
14 laws, including the feasibility of adopting the provisions of the American
15 Bar Association Model Procurement Code."

16 **SECTION 22.** G.S. 143-52 reads as rewritten:

17 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids;**
18 **awarding of ~~contracts~~contracts; cost plus percentage of cost contracts strictly**
19 **prohibited.**

20 ...

21 (c) Neither the Department of Administration nor any department, agency, or institution
22 of the State may award a cost plus percentage of cost contract for any purpose, except as
23 provided in G.S. 18C-150."

24 **SECTION 23.** Article 3 of Chapter 143 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 143-52.2. Certain contracts subject to review by Attorney General.**

27 The Secretary of Administration and every department, agency, and institution of the State
28 shall submit all proposed statewide and agency term contracts for supplies, materials, printing,
29 equipment, and contractual services that exceed one million dollars (\$1,000,000) to the
30 Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3(a).
31 This section shall not apply to the constituent institutions of The University of North Carolina."

32 **SECTION 24.** G.S. 143-134 reads as rewritten:

33 **"§ 143-134. Applicable to Department of Transportation and Department of Correction;**
34 **exceptions.~~exceptions~~; all contracts subject to review by Attorney General and**
35 **State Auditor.**

36 (a) This Article shall apply to the Department of Transportation and the Department of
37 Correction except in the construction of roads, bridges and their approaches; provided however,
38 that whenever the Director of the Budget determines that the repair or construction of a
39 building by the Department of Transportation or by the Department of Correction can be done
40 more economically through use of employees of the Department of Transportation and/or
41 prison inmates than by letting such repair or building construction to contract, the provisions of
42 this Article shall not apply to such repair or construction.

43 (b) Notwithstanding the provisions of subsection (a) of this section, the Department of
44 Transportation and the Department of Correction shall: (i) submit all proposed statewide and
45 agency term contracts for supplies, materials, printing, equipment, and contractual services that
46 exceed one million dollars (\$1,000,000) to the Attorney General or the Attorney General's
47 designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded
48 by the Department of Transportation or the Department of Correction a standard clause which
49 provides that the State Auditor and internal auditors of the Department of Transportation or the
50 Department of Correction may audit the records of the contractor during the term of the
51 contract to verify accounts and data affecting fees and performance. Neither the Department of

1 Transportation nor the Department of Correction shall award a cost plus percentage of cost
2 agreement or contract for any purpose."

3 **SECTION 25.** G.S. 143-151.16(d) reads as rewritten:

4 "**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

5 ...

6 (d) The Board may contract with persons for the development and administration of the
7 examinations required by G.S. 143-151.13(a), for course development related to the
8 examinations, for review of a particular applicant's examination, and for other related services.
9 The person with whom the Board contracts may charge applicants a reasonable fee for the costs
10 associated with the development and administration of the examinations, for course
11 development related to the examinations, for review of the applicant's examinations, and for
12 other related services. The fee shall be agreed to by the Board and the other contracting party.
13 The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars
14 (\$175.00). Contracts for the development and administration of the examinations, for course
15 development related to the examinations, and for review of examinations shall not be subject to
16 Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the
17 General Statutes. However, the Board shall: (i) submit all proposed statewide and agency term
18 contracts for supplies, materials, printing, equipment, and contractual services that exceed one
19 million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the
20 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all
21 proposed contracts to be awarded by the Board under this subsection a standard clause which
22 provides that the State Auditor and internal auditors of the Board may audit the records of the
23 contractor during the term of the contract to verify accounts and data affecting fees and
24 performance. The Board shall not award a cost plus percentage of cost agreement or contract
25 for any purpose."

26 **SECTION 26.** G.S. 143B-131.2(b)(15) reads as rewritten:

27 "**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

28 ...

29 (b) The Commission shall have the following powers and duties:

30 ...

31 (15) To procure supplies, services, and property as appropriate and to enter into
32 contracts, leases, or other legal agreements to carry out the purposes of this
33 Part and duties of the Commission. The provisions of G.S. 143-129 and
34 Article 3 of Chapter 143 of the General Statutes do not apply to purchases by
35 the Roanoke Island Commission of equipment, supplies, and services.
36 However, the Commission shall: (i) submit all proposed statewide and
37 agency term contracts for supplies, materials, printing, equipment, and
38 contractual services that exceed one million dollars (\$1,000,000) authorized
39 by this subdivision to the Attorney General or the Attorney General's
40 designee for review as provided in G.S. 114-8.3; and (ii) include in all
41 proposed contracts to be awarded by the Commission under this subdivision
42 a standard clause which provides that the State Auditor and internal auditors
43 of the Commission may audit the records of the contractor during the term of
44 the contract to verify accounts and data affecting fees and performance. The
45 Commission shall not award a cost plus percentage of cost agreement or
46 contract for any purpose."

47 **SECTION 27.** G.S. 147-64.6(c)(18) reads as rewritten:

48 "**§ 147-64.6. Duties and responsibilities.**

49 ...

50 (c) The Auditor shall be responsible for the following acts and activities:

51 ...

1 (18) The Auditor shall, after consultation and in coordination with the State Chief
2 Information Officer, assess, confirm, and report on the security practices of
3 information technology systems. If an agency has adopted standards
4 pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those
5 standards. The Auditor's assessment of information security practices shall
6 include an assessment of network vulnerability. The Auditor may conduct
7 network penetration or any similar procedure as the Auditor may deem
8 necessary. The Auditor may enter into a contract with a State agency under
9 G.S. 147-33.111(c) for an assessment of network vulnerability, including
10 network penetration or any similar procedure. Any contract with the Auditor
11 for the assessment and testing shall be on a cost-reimbursement basis. The
12 Auditor may investigate reported information technology security breaches,
13 cyber attacks, and cyber fraud in State government. The Auditor shall issue
14 public reports on the general results of the reviews undertaken pursuant to
15 this subdivision but may provide agencies with detailed reports of the
16 security issues identified pursuant to this subdivision which shall not be
17 disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State
18 Chief Information Officer with detailed reports of the security issues
19 identified pursuant to this subdivision. For the purposes of this subdivision
20 only, the Auditor is exempt from the provisions of Article 3 of Chapter 143
21 of the General Statutes in retaining contractors. However, the Auditor shall:
22 (i) submit all proposed statewide and agency term contracts for supplies,
23 materials, printing, equipment, and contractual services that exceed one
24 million dollars (\$1,000,000) authorized by this subdivision to the Attorney
25 General or the Attorney General's designee for review as provided in
26 G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the
27 Auditor under this subdivision a standard clause which provides that the
28 Auditor may audit the records of the contractor during the term of the
29 contract to verify accounts and data affecting fees and performance. The
30 Auditor shall not award a cost plus percentage of cost agreement or contract
31 for any purpose.

32"

33 **SECTION 28.** This act becomes effective October 1, 2010, and applies to all
34 contracts proposed or awarded on or after that date.