

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 1204\*  
PROPOSED COMMITTEE SUBSTITUTE H1204-PCS11366-ST-99**

Short Title: Union County Construction Methods.

(Local)

---

Sponsors:

---

Referred to:

---

May 31, 2012

A BILL TO BE ENTITLED

1 AN ACT AUTHORIZING UNION COUNTY TO CONSTRUCT LAW ENFORCEMENT  
2 AND HUMAN SERVICES FACILITIES USING DESIGN-BUILD DELIVERY  
3 METHODS.  
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Union County may contract for the design and construction or  
7 design, construction, and operation of law enforcement facilities including, without limitation,  
8 a jail and emergency dispatch center and human services facilities including, without limitation,  
9 social services and public health buildings, without being subject to the requirements of Article  
10 3D (Procurement of Architectural, Engineering, and Surveying Services) or Article 8 (Public  
11 Contracts) of Chapter 143 of the General Statutes. The authorization includes, if deemed  
12 appropriate by the Union County Board of Commissioners, the use of the single-prime  
13 contractor method of design and construction, the design-build or design-build-operate method  
14 of construction, or a request for proposals and negotiation as an alternative design and  
15 construction method.

16 **SECTION 2.** Pursuant to the authority to conduct a request for proposals and  
17 negotiation as an alternative design and construction method, Union County may enter into  
18 build-to-suit capital leases of real or personal property for use as law enforcement facilities or  
19 human services facilities. For purposes of this act, (i) the term "build-to-suit capital lease"  
20 means a capital lease, as defined by generally accepted accounting principles, regardless of  
21 how the parties describe the agreement, which provides for the construction of new facilities or  
22 the renovation of existing facilities by a private developer at a cost estimated to be greater than  
23 three hundred thousand dollars (\$300,000); and (ii) the term "private developer" means the  
24 entity with which the Board of Commissioners enters into a build-to-suit capital lease under the  
25 provisions of this act. A build-to-suit capital lease may provide that the private developer is  
26 responsible for providing or contracting for construction, repair, or renovation work. The lease  
27 may include contractual provisions by the private developer regarding the provision of  
28 products, services, and guaranties related to a facility that is the subject of a build-to-suit capital  
29 lease. The Board of Commissioners may also enter into a separate agreement or a series of  
30 related agreements regarding the provision of products, services, and guaranties related to a  
31 facility that is the subject of a build-to-suit capital lease. Construction, repair, or renovation  
32 work undertaken or contracted by a private developer is not subject to the requirements of  
33 Article 3D or Article 8 of Chapter 143 of the General Statutes.



\* H 1 2 0 4 - P C S 1 1 3 6 6 - S T - 9 9 \*

1           **SECTION 3.** In recognition of the potential economic and technical utility of  
2 build-to-suit capital leases, which may include in their scope combinations of design,  
3 construction, operation, management, and maintenance responsibilities over prolonged periods  
4 of time, and the potential desirability of a single point of responsibility for these matters in  
5 connection with build-to-suit capital leases, any build-to-suit capital lease may include  
6 provisions imposing responsibility on the private developer or any identified affiliated entity  
7 for any of the following matters:

- 8           (1) Site selection, land acquisition, and site preparation, including wetlands  
9 delineation, archaeological review, and State and local government land-use  
10 permitting.
- 11           (2) Facility programming, planning, and design, including both architectural and  
12 engineering services.
- 13           (3) Qualification and prequalification of contractors and subcontractors.
- 14           (4) Construction and construction management.
- 15           (5) Financing.
- 16           (6) Facility maintenance and repairs.
- 17           (7) Energy usage guaranties.
- 18           (8) Transfer of ownership of the leased property to Union County at the end of  
19 the lease term.
- 20           (9) Any other guaranties, products, and services the Board of Commissioners  
21 deem appropriate.

22           **SECTION 4.** The Board of Commissioners may enter into predevelopment  
23 agreements with a private developer in advance of entering into a build-to-suit capital lease.  
24 Predevelopment agreements may include, without limitation, provisions for each of the  
25 following: (i) site selection, land acquisition, and site preparation, including services such as  
26 wetlands delineation, archaeological review, and State and local government land-use  
27 permitting; and (ii) building programming and design, including both architectural and  
28 engineering services.

29           **SECTION 5.** Notwithstanding any provisions of law to the contrary, the Board of  
30 Commissioners may, pursuant to the provisions of G.S. 160A-267, and without limitation as to  
31 value of the interest conveyed or the consideration received, sell, lease, or otherwise transfer  
32 real or personal property to any private developer for construction, repair, or renovation of the  
33 facilities subject to a build-to-suit capital lease. The Board of Commissioners may subject the  
34 property to any covenants, conditions, or restrictions it deems necessary to carry out the  
35 purposes of this act. The facilities subject to a build-to-suit capital lease may be constructed on  
36 real property owned by Union County or real property owned by the private developer.

37           **SECTION 6.** A build-to-suit capital lease shall also be subject to the following  
38 requirements:

- 39           (1) The lease shall not contain a nonsubstitution clause that restricts the right of  
40 the Board of Commissioners to continue to provide a service or activity or to  
41 replace or provide a substitute for any property financed or purchased by the  
42 capital lease.
- 43           (2) No deficiency judgment may be rendered against Union County or the Board  
44 of Commissioners in any action for breach of a contractual obligation in a  
45 lease authorized by this act, and the taxing power of Union County is not  
46 and may not be pledged directly or indirectly to secure any moneys due  
47 under a lease authorized by this act. A build-to-suit capital lease shall state  
48 that it does not constitute a pledge of the taxing power or full faith and credit  
49 of the Board of Commissioners.
- 50           (3) A build-to-suit capital lease entered into pursuant to this act is subject to  
51 approval by the Local Government Commission under Article 8 of Chapter

1 159 of the General Statutes if it meets the standards provided in  
2 G.S. 159-148(a)(2) and G.S. 159-148(a)(3). For purposes of determining  
3 whether the standards provided in G.S. 159-148(a)(3) have been met, only  
4 the five hundred thousand dollar (\$500,000) threshold shall apply.

- 5 (4) The Board of Commissioners, in its discretion, may require the private  
6 developer to provide a performance and payment bond for construction work  
7 in accordance with the provisions of Article 3 of Chapter 44A of the General  
8 Statutes and may require the private developer to provide a bond or other  
9 appropriate guaranty to cover any other guaranties, products, or services to  
10 be provided by the private developer. In addition, the Board of  
11 Commissioners may require that the private developer (i) provide an  
12 irrevocable letter of credit for the benefit of laborers and materialmen in an  
13 amount not less than five percent (5%) of the total cost of the improvements  
14 that are the subject of the build-to-suit capital lease; and (ii) maintain the  
15 letter of credit throughout the construction of the project and for the  
16 succeeding six-month period.

17 **SECTION 7.** Union County shall request proposals from and interview at least  
18 three design-build teams, design-build-operate teams, or private developers, as appropriate, that  
19 have submitted proposals for a project authorized under the provisions of this act. If three  
20 proposals are not received and the project has been publicly advertised for a minimum of 30  
21 days, the County may proceed with the proposal or proposals received. If it determines to  
22 proceed, the Board of Commissioners shall award the contract to the best qualified contractor  
23 or private developer for the project as deemed by the Board of Commissioners, in its sole  
24 discretion, to be in the county's best interests under all the circumstances, taking into account  
25 (i) the knowledge, skill, and reputation of the contractor or private developer and its associated  
26 persons; (ii) the time, cost, and quality of design, engineering, and construction, including the  
27 time required to begin and the time required to complete a particular activity; (iii) occupancy  
28 costs, including lease payments, life-cycle maintenance, repair, and energy costs; (iv) any other  
29 factors and information set forth in the request for proposals that the county determines to have  
30 a material bearing on the ability to evaluate any proposal; and (v) any other factors the Board of  
31 Commissioners deems relevant.

32 **SECTION 8.** This act is effective when it becomes law and expires on December  
33 31, 2017.