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SENATE BILL 219
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S219-PCS35340-TG-42

Short Title: Surveyor Lic.& Ed.Req's/Constr.Contract Rev's. (Public)

Sponsors:

Referred to:

March 10, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE EDUCATION REQUIREMENTS FOR LICENSURE OF A
3 PROFESSIONAL LAND SURVEYOR, TO MAKE VARIOUS TECHNICAL CHANGES,
4 TO CLARIFY THE DESIGN-BUILD AND DESIGN-BUILD BRIDGING STATUTES, TO
5 PROHIBIT WAIVER OF FUTURE CLAIMS FOR PROGRESS PAYMENTS ON
6 CONSTRUCTION CONTRACTS, AND TO REQUIRE ATTORNEYS' FEES IN
7 CERTAIN LIEN CLAIMS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** G.S. 89C-3 reads as rewritten:

10 "**§ 89C-3. Definitions.**

11 The following definitions apply in this Chapter:

12 ...

13 (4) ~~Land surveyor intern.— A person who complies with the requirements for~~
14 ~~education, experience, and character and has passed an examination on the~~
15 ~~fundamentals of land surveying as provided in this Chapter.~~

16 (4a) Land surveyor apprenticeship. – A program of on-the-job learning that allows
17 individuals to prepare for the land surveying profession through supervised
18 experience combined with land surveyor–related classroom instruction of 480
19 hours as approved by the Board.

20"

21 **SECTION 1.(b)** G.S. 89C-13 reads as rewritten:

22 "**§ 89C-13. General requirements for licensure.**

23 ...

24 (b) Land Surveyor Applicant. – The evaluation of a land surveyor applicant's
25 qualifications shall involve a consideration of the applicant's education, technical, and land
26 surveying experience, exhibits of land surveying projects with which the applicant has been
27 associated, and recommendations by references. The land surveyor applicant's qualifications may
28 be reviewed at an interview if the Board determines it necessary. Educational credit for institute
29 courses, correspondence courses, or other courses shall be determined by the Board.

30 The following shall be considered as minimum evidence satisfactory to the Board that the
31 applicant is qualified for licensure as a professional land surveyor:

32 (1) ~~To be certified as a land surveyor intern, an applicant shall (i) pass the~~
33 ~~fundamentals of land surveying examination and make application to the~~
34 ~~Board, (ii) be of good character and reputation, (iii) submit three character~~



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1 references to the Board, one of whom is a professional land surveyor, (iv)
2 comply with the requirements of this Chapter, and (v) satisfy one of the
3 following requirements related to education and experience:

4 a. ~~Be a graduate of a surveying curriculum of four years or more or other
5 equivalent curriculum in surveying approved by the Board.~~

6 b. ~~Have rightful possession of an associate degree in surveying
7 technology approved by the Board, a record satisfactory to the Board
8 of four years of progressive practical experience, two years of which
9 shall have been under a practicing professional land surveyor, and
10 have satisfactorily passed a written and oral examination as required
11 by the Board.~~

12 e. ~~Have graduated from high school or completed a high school
13 equivalency certificate with a record satisfactory to the Board of 10
14 years of progressive, practical experience, six years of which shall
15 have been under a practicing licensed land surveyor, and have
16 satisfactorily passed any oral and written examinations required by the
17 Board.~~

18 (1a) To be licensed as a professional land surveyor, an applicant shall (i) be of good
19 character and reputation, (ii) submit five character references to the Board,
20 three of whom are professional land surveyors or individuals acceptable to the
21 Board, with personal knowledge of the applicant's land surveying experience,
22 (iii) comply with the requirements of this Chapter, and (iv) meet one of the
23 following requirements:

24 a. ~~Rightful possession of a bachelor of science degree in surveying or
25 other equivalent curricula, all approved by the Board and a record
26 satisfactory to the Board of two years or more of progressive practical
27 experience, one year of which shall have been experience under a
28 practicing professional land surveyor if the applicant has successfully
29 passed the first examination (Fundamentals of Surveying) on or before
30 January 1, 2013, or if the applicant has not successfully passed the first
31 examination on or before January 1, 2013, two years of which shall
32 have been under a practicing professional land surveyor, and
33 satisfactorily passing any oral and written examination required by the
34 Board, all of which shall determine and indicate that the applicant is
35 competent to practice land surveying. surveyor. Upon passing the first
36 examination (Fundamentals of Land Surveying) and successful
37 completion of the experience required by this subdivision, the
38 applicant may apply to take the second examination (Principles and
39 Practice of Land Surveying). An Surveying) and satisfactorily passing
40 any oral and written examination required by the Board, all of which
41 shall determine and indicate that the applicant is competent to practice
42 land surveying, an applicant who passes both examinations and
43 successfully completes the educational and experience requirements
44 of this subdivision shall be granted licensure as a professional land
45 surveyor.~~

46 b. ~~Rightful possession of an associate degree in surveying technology
47 approved by the Board and a record satisfactory to the Board of ~~four~~
48 five years or more of progressive practical experience, ~~three years of~~
49 ~~which shall have been experience~~ under a practicing licensed
50 professional land surveyor if the applicant has successfully passed the
51 first examination (Fundamentals of Surveying) on or before January~~

1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

...

- d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven nine years or more of progressive practical experience, six years of which shall have been experience under a practicing licensed professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination upon graduation from high school or the completion of a high school equivalency certificate and successfully completing 10 years of progressive practice experience, six of which shall have been under a practicing licensed land surveyor. surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and the second examination (Principles and Practice of Land Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.
- d1. Graduation from a high school or the completion of a high school equivalency certificate, completion of a Land Surveyor

1 Apprenticeship, and a record satisfactory to the Board of seven years
2 or more of progressive practical experience under a practicing
3 professional land surveyor. Upon passing the first examination
4 (Fundamentals of Land Surveying) and the second examination
5 (Principles and Practice of Land Surveying) and satisfactorily passing
6 any oral and written examination required by the Board, all of which
7 shall determine and indicate that the applicant is competent to practice
8 land surveying, an applicant who successfully completes the
9 educational and experience requirements of this subdivision shall be
10 granted licensure as a professional land surveyor.

11 "

12 **SECTION 1.(c)** G.S. 89C-10 reads as rewritten:

13 "**§ 89C-10. Board powers.**

14 ...

15 (f) It shall be the responsibility and duty of the Board to conduct a regular program of
16 investigation concerning all matters within its jurisdiction under the provisions of this Chapter.
17 The investigation of a licensee is confidential until the Board issues a citation to the licensee. The
18 investigation of a nonlicensee is confidential until the Board approves any action authorized
19 under this Chapter against the nonlicensee. The Board may expend its funds for salaries, fees,
20 and per diem expenses, in connection with its investigations, provided that no funds other than
21 per diem expenses shall be paid to any member of the Board in connection with its investigations,
22 nor may any member of the Board give testimony and later sit in deciding on any matter which
23 may directly involve punitive action for the testimony.

24 ...

25 (g1) The Board shall review and promulgate rules establishing continuing education
26 requirements for surveying apprenticeships and encourage the workforce development of the
27 profession.

28 "

29 **SECTION 1.(d)** G.S. 89C-11 reads as rewritten:

30 "**§ 89C-11. Secretary; duties and liabilities; expenditures.**

31 The secretary of the Board shall receive and account for all moneys derived from the
32 operation of the Board as provided in this Chapter, and shall deposit them in one or more special
33 funds in banks or other financial institutions carrying deposit insurance and authorized to do
34 business in North Carolina. The fund or funds shall be designated as "Fund of the Board of
35 Examiners for Engineers and Surveyors" and shall be drawn against only for the purpose of
36 implementing provisions of this Chapter as herein provided. All expenses certified by the Board
37 as properly and necessarily incurred in the discharge of its duties, including authorized
38 compensation, shall be paid out of this ~~fund on the warrant signed by the secretary of the Board-~~
39 fund. At no time shall the total of ~~warrants~~ such certified expenses issued exceed the total amount
40 of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond
41 satisfactory to the State Board of Examiners for Engineers and Surveyors, conditioned upon the
42 faithful performance of the duties assigned. The premium on the bond is a proper and necessary
43 expense of the Board. The secretary of the Board may delegate to the executive director certain
44 routine duties, such as receipt and disbursement of funds in stated amounts by a written
45 authorization, which has the majority approval of the Board."

46 **SECTION 1.(e)** G.S. 89C-17 reads as rewritten:

47 "**§ 89C-17. Expirations and renewals of certificates.**

48 Certificates for licensure of corporations and business firms that engage in the practice of
49 engineering or land surveying shall expire on the last day of the month of June following their
50 issuance or renewal and shall become invalid on that date unless renewed. All other certificates
51 for licensure shall expire on the last day of the month of December next following their issuance

1 or renewal, and shall become invalid on that date unless renewed. When necessary to protect the
2 public health, safety, or welfare, the Board shall require any evidence necessary to establish the
3 continuing competency of engineers and land surveyors as a condition of renewal of licenses.
4 When the Board is satisfied as to the continuing competency of an applicant, it shall issue a
5 renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to
6 exceed seventy-five dollars (\$75.00). The secretary of the Board shall notify by mail or email
7 every person licensed under this Chapter of the date of expiration of the certificate, the amount
8 of the fee required for its renewal for one year, and any requirement as to evidence of continued
9 competency. The notice shall be sent by email or mailed at least one month in advance of the
10 expiration date of the certificate. Renewal shall be effected at any time during the month
11 immediately following the month of expiration, by payment to the secretary of the Board of a
12 renewal fee, as determined by the Board, which shall not exceed seventy-five dollars (\$75.00).
13 Failure on the part of any licensee to renew the certificate annually in the month immediately
14 following the month of expiration, as required above, shall deprive the licensee of the right to
15 practice until reinstatement of the license. The license may be reinstated at anytime during the
16 first 12 months immediately following the date the license became invalid by payment of a
17 reinstatement fee of one hundred dollars (\$100.00) in addition to the established renewal fee.
18 Failure of a licensee to reinstate the license during the first 12 months immediately following the
19 date the license became invalid shall require the individual, prior to resuming practice in North
20 Carolina, to submit an application on the prescribed form, and to meet all other requirements for
21 licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the
22 official roster of engineers and land surveyors the names of all licensees who have not effected
23 their renewal by the first day of the month immediately following the renewal period. The Board
24 may adopt rules to provide for renewals in distress or hardship cases due to military service,
25 prolonged illness, or prolonged absence from the State, where the applicant for renewal
26 demonstrates to the Board that the applicant has maintained active knowledge and professional
27 status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each
28 licensee to inform the Board promptly concerning change in address. A licensee may request and
29 be granted inactive status. No inactive licensee may practice in this State unless otherwise
30 exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but
31 shall not be subject to annual continuing professional competency requirements. A licensee
32 granted inactive status may return to active status by meeting all requirements of the Board,
33 including demonstration of continuing professional competency as a condition of reinstatement."

34 **SECTION 1.(f)** G.S. 89C-22 reads as rewritten:

35 "**§ 89C-22. Disciplinary action – Charges; procedure.**

36 (a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence,
37 misconduct, or violations of this Chapter, the rules of professional conduct, or any rules adopted
38 by the Board against any Board licensee. The charges shall be in writing ~~and shall be sworn to~~
39 ~~by the person or persons making them and or submitted electronically and~~ shall be filed with the
40 Board.

41"

42 **SECTION 1.(g)** This section becomes effective December 1, 2021, and applies to
43 applications for licensure on or after that date.

44 **SECTION 2.(a)** G.S. 143-128.1A reads as rewritten:

45 "**§ 143-128.1A. Design-build contracts.**

46 (a) Definitions for purposes of this section:

47 (1) Design-builder. – As defined in G.S. 143-128.1B.

48 (1g) Design professional. – As defined in G.S. 143-128.1B.

49 (1p) First-tier subcontractor. – As defined in G.S. 143-128.1B.

50 (2) Governmental entity. – As defined in G.S. 143-128.1B.

51 (3) Licensed contractor. – As defined in G.S. 143-128.1B.

1 (4) Licensed subcontractor. – A person or entity, not including design
2 professionals or employees of the design-builder, that will be performing work
3 under the design-builder and whose scope of work proposed for the project
4 requires that it be licensed in accordance with Article 2 or Article 4 of Chapter
5 87 of the General Statutes.

6 (5) Unlicensed subcontractor. – A person or entity, not including design
7 professionals or employees of the design-builder, that will be performing work
8 under the design-builder and whose scope of work proposed for the project
9 does not require that it be licensed in accordance with Article 2 or Article 4 of
10 Chapter 87 of the General Statutes.

11 (b) A governmental entity shall establish in writing the criteria used for determining the
12 circumstances under which the design-build method is appropriate for a project, and such criteria
13 shall, at a minimum, address all of the following:

14 (1) The extent to which the governmental entity can adequately and thoroughly
15 define the project requirements prior to the issuance of the request for
16 qualifications for a design-builder.

17 (2) The time constraints for the delivery of the project.

18 (3) The ability to ensure that a quality project can be delivered.

19 (4) The capability of the governmental entity to manage and oversee the project,
20 including the availability of experienced staff or outside consultants who are
21 experienced with the design-build method of project delivery.

22 (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to
23 recruit and select small business entities. The governmental entity shall not
24 limit or otherwise preclude any respondent from submitting a response so long
25 as the respondent, itself or through its proposed team, is properly licensed and
26 qualified to perform the work defined by the public notice issued under
27 subsection (c) of this section.

28 (6) The criteria utilized by the governmental entity, including a comparison of the
29 advantages and disadvantages of using the design-build delivery method for a
30 given project in lieu of the delivery methods identified in subdivisions (1), (2),
31 and (4) of G.S. 143-128(a1).

32 (c) A governmental entity shall issue a public notice of the request for qualifications that
33 includes, at a minimum, general information on each of the following:

34 (1) The project site.

35 (2) The project scope.

36 (3) The anticipated project budget.

37 (4) The project schedule.

38 (5) The criteria to be considered for selection and the weighting of the
39 qualifications criteria.

40 (6) Notice of any rules, ordinances, or goals established by the governmental
41 entity, including goals for minority- and women-owned business participation
42 and small business participation.

43 (7) Other information provided by the owner to potential design-builders in
44 submitting qualifications for the project.

45 (8) A statement ~~providing that directing~~ each design-builder ~~shall to~~ submit in its
46 response to the request for qualifications an explanation of its project team
47 selection, which selection. The governmental entity may specify which one of
48 the following project team selection options shall be used or, if not specified,
49 the response shall consist of either of the following: following project team
50 selection options:

1 a. A list of the licensed contractors, licensed subcontractors, and licensed
 2 design professionals whom the design-builder proposes to use for the
 3 project's design and construction. If this project team selection option
 4 is used, the design-builder may self-perform some or all of the work
 5 with employees of the design-builder and, without bidding, also enter
 6 into negotiated subcontracts to perform some or all of the work with
 7 subcontractors, including, but not exclusively with, those identified in
 8 the list. In submitting its list, the design-builder may, but is not
 9 required to, include one or more unlicensed subcontractors the
 10 design-builder proposes to use. If this project team selection option is
 11 used, the design-builder may, at its election and with or without the
 12 use of negotiated subcontracts, accept bids for the selection of one or
 13 more of its first-tier subcontractors.

14 b. ~~An~~ A list of the licensed contractors and design professionals whom
 15 the design-builder proposes to use for the project's design and
 16 construction and an outline of the strategy the design-builder plans to
 17 use for open contractor and subcontractor selection based upon the
 18 provisions of Article 8 of Chapter 143 of the General Statutes. If this
 19 project team selection option is used, the design-builder may also
 20 self-perform some of the work with employees of the design-builder.

21 (d) Following evaluation of the qualifications of the design-builders, the three most
 22 highly qualified design-builders shall be ranked. If after the solicitation for design-builders not
 23 as many as three responses have been received from qualified design-builders, the governmental
 24 entity shall again solicit for design-builders. If as a result of such second solicitation not as many
 25 as three responses are received, the governmental entity may then begin negotiations with the
 26 highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses
 27 were received. If the governmental entity deems it appropriate, the governmental entity may
 28 invite some or all responders to interview with the governmental entity.

29 (e) The design-builder shall be selected in accordance with Article 3D of this Chapter.
 30 Each design-builder shall ~~certify~~ certify, in the response to the request for qualifications in
 31 subsection (c) of this section, to the governmental entity that each licensed design professional
 32 who is a member of the design-build team, including subconsultants, was selected based upon
 33 demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

34 (f) The design-builder shall provide a performance and payment bond to the
 35 governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General
 36 Statutes. The design-builder shall obtain written approval from the governmental entity prior to
 37 changing key personnel as listed in sub-subdivision (c)(8)a. or (c)(8)b. of this section after the
 38 contract has been awarded. For purposes of this subsection, "key personnel" shall mean either of
 39 the following:

40 (1) For the project team selection option under sub-subdivision (c)(8)a. of this
 41 section, the licensed contractors, licensed subcontractors, and design
 42 professionals identified in the response to the request for qualifications.

43 (2) For the project team selection option under sub-subdivision (c)(8)b. of this
 44 section, the licensed contractors and design professionals identified in the
 45 response to the request for qualifications."

46 **SECTION 2.(b)** G.S. 143-128.1B reads as rewritten:

47 **"§ 143-128.1B. Design-build bridging contracts.**

48 (a) Definitions for purposes of this section:

49 (1a) Costs of the subcontractor work. – The sum total amount of all first-tier
 50 subcontract packages bid or proposed to be bid under subsection (f) of this
 51 section.

- 1 (1) Design-build bridging. – A design and construction delivery process whereby
2 a governmental entity contracts for design criteria services under a separate
3 agreement from the construction phase services of the design-builder.
- 4 (2) Design-builder. – An appropriately licensed person, corporation, or entity
5 that, under a single contract, offers to provide or provides design services and
6 general contracting services where services within the scope of the practice of
7 professional engineering or architecture are performed respectively by a
8 licensed engineer or licensed architect and where services within the scope of
9 the practice of general contracting are performed by a licensed general
10 contractor.
- 11 (3) Design criteria. – The requirements for a public project expressed in drawings
12 and specifications sufficient to allow the design-builder to make a responsive
13 bid proposal.
- 14 (4) Design professional. – Any professional licensed under Chapters 83A, 89A,
15 or 89C of the General Statutes.
- 16 (5) First-tier subcontractor. – A subcontractor who contracts directly with the
17 design-builder, excluding design professionals.
- 18 (5g) General conditions. – A specific list compiled by the government entity that
19 identifies items for which the design-builder is to be compensated but are not
20 ascrivable to any particular on-site construction activity. This term shall not
21 include either of the following:
- 22 a. Construction work to be bid pursuant to subsection (f) of this section.
23 b. Design services of a design professional.
- 24 (6) Governmental entity. – Every officer, board, department, commission, or
25 commissions charged with responsibility of preparation of specifications or
26 awarding or entering into contracts for the erection, construction, alteration,
27 or repair of any buildings for the State or for any county, municipality, or other
28 public body.
- 29 (7) Licensed contractor. – A person or entity whose scope of work proposed for
30 the project requires that it be licensed in accordance with the provisions of
31 Article 1 of Chapter 87 of the General Statutes.
- 32 (b) A governmental entity shall establish in writing the criteria used for determining the
33 circumstances under which engaging a design criteria design professional is appropriate for a
34 project, and such criteria shall, at a minimum, address all of the following:
- 35 (1) The extent to which the governmental entity can adequately and thoroughly
36 define the project requirements prior to the issuance of the request for
37 proposals for a design-builder.
- 38 (2) The time constraints for the delivery of the project.
- 39 (3) The ability to ensure that a quality project can be delivered.
- 40 (4) The capability of the governmental entity to manage and oversee the project,
41 including the availability of experienced staff or outside consultants who are
42 experienced with the design-build method of project delivery.
- 43 (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to
44 recruit and select small business entities. The governmental entity shall not
45 limit or otherwise preclude any respondent from submitting a response so long
46 as the respondent, itself or through its proposed team, is properly licensed and
47 qualified to perform the work defined by the public notice issued under
48 subsection (d) of this section.
- 49 (6) The criteria utilized by the governmental entity, including a comparison of the
50 advantages and disadvantages of using the design-build delivery method for a

1 given project in lieu of the delivery methods identified in subdivisions (1), (2),
2 and (4) of G.S. 143-128(a1).

3 (b1) The governmental entity, as a criterion in subsection (b) of this section, shall not
4 require the design-builder to provide the costs of the subcontractor work in the design criteria
5 package.

6 (c) On or before entering into a contract for design-build services under this section, the
7 governmental entity shall select or designate a staff design professional, or a design professional
8 who is independent of the design-builder, to act as its design criteria design professional as its
9 representative for the procurement process and for the duration of the design and construction. If
10 the design professional is not a full-time employee of the governmental entity, the governmental
11 entity shall select the design professional on the basis of demonstrated competence and
12 qualifications as provided by G.S. 143-64.31. The design criteria design professional shall
13 develop design criteria in consultation with the governmental entity. The design criteria design
14 professional shall not be eligible to submit a response to the request for proposals nor provide
15 design input to a design-build response to the request for proposals. The design criteria design
16 professional shall prepare a design criteria package equal to thirty-five percent (35%) of the
17 completed design documentation for the entire construction project. The design criteria package
18 shall not require the design-builder to include the costs of the subcontractor work in its response
19 and shall include all of the following:

- 20 (1) Programmatic needs, interior space requirements, intended space utilization,
21 and other capacity requirements.
- 22 (2) Information on the physical characteristics of the site, such as a topographic
23 survey.
- 24 (3) Material quality standards or performance criteria.
- 25 (4) Special material requirements.
- 26 (5) Provisions for utilities.
- 27 (6) Parking requirements.
- 28 (7) The type, size, and location of adjacent structures.
- 29 (8) Preliminary or conceptual drawings and specifications sufficient in detail to
30 allow the design-builder to make a proposal which is responsive to the request
31 for proposals.
- 32 (9) Notice of any ordinances, rules, or goals adopted by the governmental entity.
- 33 (10) The list of general conditions prepared by the governmental entity for which
34 the design-builder is to provide a fixed fee in accordance with sub-subdivision
35 (10)a. of subsection (d) of this section. For this purpose, as examples, general
36 conditions could include without exclusion the following: on-site construction
37 office and storage trailers; electrical and other utility services during
38 construction; on-site construction superintendent, construction supervisors,
39 and clerical staff; trash collection; security; and other temporary measures.
40 Unless expressly dictated by the contract, the inclusion or exclusion of any
41 particular item in the list shall not be construed to control the means and
42 methods used by the design-builder or eliminate any discretion on whether to
43 use a given item in the prosecution of the work. The inclusion or exclusion of
44 any particular item in the list shall have no bearing on the actual amounts for
45 which the design-builder is to be compensated under the executed contract
46 documents.
- 47 (11) The form of the contract to be entered into by the successful design-builder to
48 whom the project is awarded pursuant to subsection (e) of this section. The
49 form of the contract may, upon discretion of the governmental entity, allow
50 for multiple phases, termination for convenience and rights arising therefrom,
51 and the subsequent setting of guaranteed maximum prices.

1 (12) A statement directing each design-builder to submit in its response to the
2 request for qualifications an explanation of its proposed plan for its good-faith
3 compliance with G.S. 143-128.2.

4 (d) A governmental entity shall issue a public notice of the request for proposals that
5 includes, at a minimum, general information on each of the following:

6 (1) The project site.

7 (2) The project scope.

8 (3) The anticipated project budget.

9 (4) The project schedule.

10 (5) The criteria to be considered for selection and the weighting of the selection
11 criteria.

12 (6) Notice of any rules, ordinances, or goals established by the governmental
13 entity, including goals for minority- and women-owned business participation
14 and small business entities.

15 (7) The thirty-five percent (35%) design criteria package prepared by the design
16 criteria design professional.

17 (8) Other information provided by the owner to design-builders in submitting
18 responses to the request for proposals for the project.

19 (9) A statement providing that each design-builder shall submit in its request for
20 proposal response an explanation of its project team selection, which shall
21 consist of a list of the licensed contractor and ~~licensed~~ design professionals
22 whom the design-builder proposes to use for the project's design and
23 construction.

24 (10) A statement providing that each design-builder shall submit in ~~its request for~~
25 ~~proposal~~ a separate sealed envelope with all envelope, contemporaneously
26 with the response to the request for proposals, the design-builder's fixed fees,
27 excluding the costs of the subcontractor work, for designing and constructing
28 the project in accordance with requirements set forth by the government
29 entity's criteria and the terms and conditions set forth in the form of the
30 contract under subdivision (11) of subsection (c) of this section for each of the
31 ~~following:~~ following, listed separately by item:

32 a. ~~The design-builder's price for providing the general conditions of the~~
33 ~~contract identified in the request for proposal.~~

34 b. ~~The design-builder's proposed fee for general construction~~
35 ~~services.~~ services not otherwise provided for in this subdivision.

36 c. ~~The design-builder's fee for design services.~~ services necessary to
37 complete the project.

38 (e) Following evaluation of the qualifications of the design-builders, the governmental
39 entity shall rank the design-builders who have provided responses, grouping the top three without
40 ordinal ranking. If after the solicitation for design-builders not as many as three responses have
41 been received from qualified design-builders, the governmental entity shall again solicit for
42 design-builders. If as a result of such second solicitation not as many as three responses are
43 received, the governmental entity may then make its selection. From the grouping of the top three
44 design-builders, the governmental entity shall select the design-builder who is the lowest
45 responsive, responsible bidder based on the cumulative amount of fees provided in accordance
46 with subdivision (d)(10) of this section and taking into consideration quality, performance, and
47 the time specified in the proposals for the performance of the contract. Each design-builder shall
48 certify to the governmental entity that each ~~licensed~~ design professional who is a member of the
49 design-build team, including subconsultants, was selected based upon demonstrated competence
50 and qualifications in the manner provided by G.S. 143-64.31.

1 (f) The design-builder shall accept bids based upon the provisions of this Article from
2 first-tier subcontractors for all construction work under this section.

3 (g) The design-builder shall provide a performance and payment bond to the
4 governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General
5 Statutes. The design-builder shall obtain written approval from the governmental entity prior to
6 changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has
7 been awarded."

8 **SECTION 2.(c)** G.S. 143-129(e)(11) reads as rewritten:

9 "(11) Contracts by a public entity with any of the following:

- 10 a. ~~a~~A construction manager at risk executed pursuant to G.S. 143-128.1.
11 b. A design-builder executed pursuant to G.S. 143-128.1A.
12 c. A design-builder executed pursuant to G.S. 143-128.1B.
13 d. A private developer executed pursuant to G.S. 143-128.1C."

14 **SECTION 2.(d)** This section becomes effective December 1, 2021, and applies to
15 contracts entered into, amended, or renewed on or after that date.

16 **SECTION 3.(a)** Article 1 of Chapter 22B of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 22B-5. Waiver of liens or claims as a condition of progress payment invalid.**

19 (a) Provisions in lien waivers, releases, construction agreements as defined in
20 G.S. 22B-1(f)(1), or design professional agreements as defined in G.S. 22B-1(f)(5) purporting to
21 require a promisor to submit a waiver or release of liens or claims as a condition of receiving
22 interim or progress payments due from a promisee under a construction agreement or design
23 professional agreement are void and unenforceable unless limited to the specific interim or
24 progress payment actually received by the promisor in exchange for the lien waiver.

25 (b) This section does not apply to the following:

- 26 (1) Lien waivers or releases for final payments.
27 (2) Agreements to settle and compromise disputed claims after the claim has been
28 identified by the claimant in writing regardless of whether the promisor has
29 initiated a civil action or arbitration proceeding."

30 **SECTION 3.(b)** This section becomes effective December 1, 2021, and applies to
31 liens attached on or after that date.

32 **SECTION 4.(a)** G.S. 44A-35 reads as rewritten:

33 "**§ 44A-35. Attorneys' fees.**

34 (a) In any suit brought or defended under the provisions of Article 2 or Article 3 of this
35 Chapter, the presiding judge or arbitrator may allow a reasonable attorneys' fee to the attorney
36 representing the prevailing party. This attorneys' fee is to be taxed as part of the court costs and
37 be payable by the losing party upon a finding that there was an unreasonable refusal by the losing
38 party to fully resolve the matter which constituted the basis of the suit or the basis of the defense.
39 costs with the final judgment or arbitration award.

40 (b) The court or arbitrator shall determine the prevailing party based on the principal
41 amount in controversy between the parties as of the commencement of the trial, arbitration, or
42 hearing resulting in a judgment or arbitration award, considering all relevant facts and
43 circumstances.

44 (c) If a party serves (i) an offer of judgment in accordance with G.S. 1A-1, Rule 68, or
45 (ii) a written settlement offer, so that the offer is received at least 30 days before the
46 commencement of the trial, arbitration, or hearing resulting in a judgment or award resolving all
47 matters in controversy between the parties, the last offer shall be deemed to be that party's
48 monetary position for purposes of determining the amount in controversy.

49 (d) In determining the amount of reasonable attorneys' fees and expenses under this
50 section, the court or arbitrator may consider all relevant facts and circumstances, including,
51 without limitation, the following:

- 1 (1) The amount in controversy and the results obtained.
- 2 (2) The reasonableness of the time and labor expended, and the billing rates
- 3 charged, by the attorneys.
- 4 (3) The novelty and difficulty of the questions raised in the action.
- 5 (4) The skill required to perform properly the legal services rendered.
- 6 (5) The relative economic circumstances of the parties.
- 7 (6) Settlement offers made prior to the commencement of the trial, arbitration, or
- 8 hearing.
- 9 (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil
- 10 Procedure and whether judgment finally obtained was more favorable than
- 11 such offers.
- 12 (8) Whether a party unjustly exercised superior economic bargaining power in the
- 13 conduct of the action or withheld payment of undisputed amounts.
- 14 (9) The timing of settlement offers.
- 15 (10) The extent to which the party seeking attorneys' fees prevailed in the action.
- 16 (11) The amount of attorneys' fees awarded in similar cases.

17 (e) A party may submit evidence relating to an award of attorneys' fees by affidavit or

18 declaration. The court or arbitrator may admit other evidence, including, without limitation, live

19 or deposition testimony. A party may submit expert testimony to support an award, but the court

20 or arbitrator shall not require expert testimony.

21 (f) ~~For purposes of this section, "prevailing party" is a~~the party plaintiff or third party

22 ~~plaintiff who obtains a judgment of at least fifty percent (50%) of the~~whose monetary amount

23 ~~sought in a claim or is a party defendant or third party defendant against whom a claim is asserted~~

24 ~~which results in a judgment of less than fifty percent (50%) of the amount sought in the claim~~

25 ~~defended. Notwithstanding the foregoing, in the event an offer of judgment is served in~~

26 ~~accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in~~

27 ~~an amount more favorable than the last offer or is an offeror against whom judgment is rendered~~

28 ~~in an amount less favorable than the last offer.~~position at the commencement of the trial,

29 arbitration, or hearing is closest to the amount of the judgment or arbitration award. The court or

30 arbitrator shall determine the prevailing party based upon the principal amount in controversy

31 between the parties as of the commencement of the trial, arbitration, or hearing resulting in a

32 judgment or arbitration award, considering all relevant facts and circumstances."

33 **SECTION 4.(b)** This section becomes effective December 1, 2021, and applies to

34 any claim arising on or after that date.

35 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes

36 law.