HOUSE SCIENCE & TECHNOLOGY

MINUTES

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

MEMBER	ASSISTANT	PHONE	OFFICE
SAUNDERS, Drew, Chair	Ruth Fish	733-5606	2217 LB
TOLSON, Joe	Gayle Christian	715-3024	402 LOB
MILLER, Paul, Vice Chair	Eryn Gee	733-5956	640 LOB
BOYD-McINTYRE, Flossie	Mia Bailey	733-5974	506 LOB
CLARY, Debbie	Elena Askey	733-5654	1211 LB
GIBSON, Pryor	Shirlyn MacPherson	715-3007	419A LOB
GRAY, Lyons	Cindy Brooks	733-5820	533 LOB
HARRINGTON, Mike	Joyce Langdon	733-5823	1305 LB
HILTON, Mark	Esther Corbett	733-5609	1409 LB
JOHNSON, Linda	Debbie Pons	733-5605	1209 LB
TUCKER, Russell	Surena Henderson	715-3015	417C LOB
WAINWRIGHT, William	Blinda Edwards	733-5662	530 LOB
WALEND, Trudi	Ken Walend	715-3012	418A LOB

Peter Capriglione, Information Systems

Brenda Carter, Committee Counsel Phyllis Pickett, Committee Counsel

Dwayne Pickney, Fiscal Research

Gayle Christian, Committee Assistant Ruth Fish, Committee Assistant

ATTENDANCE

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

(Name of Committee)

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2/28	3/14	4/8	49	5/16	5/ 23	6/20	6/2						
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North Carolina General Assembly Through House Committee on Science and Technology Date: 11/30/2001 Time: 12:20 Page: 001 of 001

2001-2002	2 Biennium				Leg.	Day: H-1	L75/S-169
Bill	Introducer	Short Title		Latest		<u> In Date</u>	
H0231	Allen	EDUCATION REVENUE ACT.	* H	Conf Co	m Appointed	02-26-01	03-28-01
0330	Tolson	INFORMATION SYSTEMS	H	Ref To	Com On	03-01-01	
		AUDITS.		Science	and		
				Technol	.ogy		
н0331	Tolson	IRMC PUBLIC MEMBERS.	HR	Ch. SL	2001-166	03-01-01	03-14-01
H0478 =	Ellis	CHILDREN'S INTERNET	Н	Ref To	Com On	03-05-01	
		SAFETY-NET.		Science	e and		
				Technol	.ogy		
н1169	Saunders	AMEND LOCAL GOV'T.	HR	Ch. SL	2001-328	04-17-01	04-18-01
		PURCHASING LAWS.					
S1023	Kay R. Hagan	REVISE UNIFORM	*HR	Ch. SL	2001-295	05-15-01	06-28-01
		ELECTRONIC					
		TRANSACTIONS ACT.					
S1070	Kay R. Hagan	ITS DISPUTE	*HR	Ch. SL	2001-142	04-26-01	05-16-01
		RESOLUTION.					

AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

February 28, 2001 Room 425 LOB 12:00 Noon

OPENING REMARKS

Representative Drew Saunders, Chair Science and Technology Committee

INTRODUCTIONS

DISCUSSION

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

February 28, 2001

The House Committee on Science and Technology met on Wednesday, February 28, 2001, in Room 425 of the Legislative Office Building at 12:00 Noon. The following members were present: Chair Drew Saunders, Vice-Chair Paul Miller, Representatives Boyd-McIntyre, Harrington, Hilton, and Tucker. Mr. Peter Capriglione with Information Systems and Ms. Brenda Carter, Committee Counsel were also in attendance. A visitor registration list is attached and made a part of the minutes.

Representative Saunders, Chair, called the meeting to order and recognized Mr. Shannon Batten and Mr. Freeman from the Sergeant At Arms office. He, also, recognized Pages: Rita Terell from Caswell County, sponsored by Representative Cole, and Tracie Davis from New Hanover County, sponsored by Representative Wright.

Since this was an organizational meeting, each member was asked by Chairman Saunders to introduce himself or herself and state their experiences as they related to Science and Technology.

There being no further business, the meeting adjourned at 12:15 P.M.

Respectfully submitted,

Representative Drew Saunders

Presiding Chair

Ruth Fish

Committee Assistant

VISITOR REGISTRATION SHEET

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Name of	C	ommi	ttee	7	1

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VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
DAVIN M Barnes	Pagner Spaniell
Caroline Jackson	DHHS
Ben Mclawhorn	osc
Ken Melton	Alley Associates
NIC HEINKE	NCEITA
RobHillman	α s A
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AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

March 14, 2001

OPENING REMARKS

Representative Drew Saunders, Chair

BILLS TO BE DISCUSSED

HB 330 Information Systems Audits

Representative Joe Tolson, Bill Sponsor

HB 331 IRMC Public Members

Representatiave Joe Tolson, Bill Sponsor

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

March 14, 2001

The House Committee on Science and Technology met on March 14, 2001, at 12:00 Noon in Room 425 of the Legislative Office Building. The following members were present: Chairman Drew Saunders, Chairman Joe Tolson, Vice-Chair Paul Miller, Representatives Boyd-McIntyre, Gibson, Harrington, Hilton, Tucker, and Walend. Brenda Carter, Staff Counsel, and Peter Capriglione with Information Systems were in attendance. A Visitor Registration list is attached and made part of these minutes.

The meeting was called to order by Representative Saunders, Chair, who introduced Sergeant At Arms staff members, James Worth and Walter Spell, and Pages: Jacob Evans of Wake County, sponsored by Representative Fitch, and Guy Seronce of Catawba County, sponsored by Representative Hilton.

Representative Tolson, bill sponsor, was recognized to explain HB 331 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE APPOINTMENT OF TWO ADDITIONAL PUBLIC MEMBERS OF THE INFORMATION RESOURCE MANAGEMENT COMMISSION. A discussion followed the explanation. Upon motion made by Representative Tucker, the bill received a favorable report.

There being no further business, Representative Saunders adjourned the meeting at 12:07 P.M.

Respectfully submitted,

Representative Drew Saunders

Presiding Chair

Ruth Fish

Committee Assistant

2001 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **SAUNDERS & TOLSON** (Chair/Chairs) for the Committee on

_	Committee Substitute for 3. 331 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE APPOINTMENT OF TWO ADDITIONAL PUBLIC MEMBERS OF THE INFORMATION RESOURCE MANAGEMENT COMMISSION.
X	With a favorable report.
	With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations [Finance [].
	With a favorable report, as amended.
	With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations Finance .
	With a favorable report as to committee substitute bill (#), \square which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
	With a favorable report as to House committee substitute bill (#), \square which changes the title, unfavorable as to Senate committee substitute bill.
	With an unfavorable report.
	With recommendation that the House concur.
	With recommendation that the House do not concur.
	With recommendation that the House do not concur; request conferees.
	With recommendation that the House concur; committee believes bill to be material.
	With an unfavorable report, with a Minority Report attached.
	Without prejudice.
	With an indefinite postponement report.
	With an indefinite postponement report, with a Minority Report attached.
	With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

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Council.

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HOUSE BILL 331

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Short Title: IRMC Public Members. (Public)

Sponsors: Representative Tolson.

Referred to: Science and Technology.

March 1, 2001

		Watch 1, 2001
1		A BILL TO BE ENTITLED
2	AN ACT TO	PROVIDE FOR THE APPOINTMENT OF TWO ADDITIONAL
3		EMBERS OF THE INFORMATION RESOURCE MANAGEMENT
4	COMMISSI	ON.
5	The General Ass	sembly of North Carolina enacts:
6		FION 1. G.S. 147-33.78(a) reads as rewritten:
7		ion; Membership The Information Resource Management
8	Commission is	established and shall be located within the Office for organizational,
9		administrative purposes. The Commission consists of the following
10	members:	• •
11	(1)	Four members of the Council of State, appointed by the Governor.
12	(2)	The Secretary of State.
13	(3)	The Secretary of Administration.
14	(4)	The State Budget Officer.
15	(5)	Two members of the Governor's cabinet, appointed by the Governor.
16	(6)	One citizen Two citizens of the State of North Carolina with a
17		background in and familiarity with information systems or
18		telecommunications, appointed by the General Assembly upon the
19		recommendation of the President Pro Tempore of the Senate in
20		accordance with G.S. 120-121.
21	(7)	One citizen Two citizens of the State of North Carolina with a
22		background in and familiarity with information systems or
23		telecommunications, appointed by the General Assembly upon the
24		recommendation of the Speaker of the House of Representatives in
25		accordance with G.S. 120-121.

The Chair of the Information Technology Management Advisory

The Chair of the Criminal Justice Information Network Governing (9) 1 2 Board. 3 (10)The State Controller. The Director of the Administrative Office of the Courts or the 4 (11)5 Director's designee. The President of The University of North Carolina or the President's 6 (12)7 designee. The President of the Community Colleges System Office or the 8 (13)9 President's designee. The Executive Director of the North Carolina League of Municipalities 10 (14)or the Executive Director's designee, who shall be a nonvoting 11 12 member. The Executive Director of the North Carolina Association of County 13 (15)Commissioners or the Executive Director's designee, who shall be a 14 nonvoting member. 15 The State Chief Information Officer, who shall be a nonvoting 16 (16)member. 17

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The initial appointed members of the Commission shall be the members appointed to the Information Resource Management Commission who are serving unexpired terms as of July 1, 2000, who shall serve for a period equal to the remainder of their current terms on the Information Resource Management Commission. Upon the expiration of the current terms of the appointed members, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service on the Commission if they are no longer cabinet members. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two four legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The State Chief Information Officer shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency."

SECTION 2. This act is effective when it becomes law.

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HOUSE BILL 331: IRMC Public Members

Date:

Committee: House Science and Technology

March 14, 2001

Version: 1st Edition **Introduced by:** Representative Tolson

Summary by: Brenda J. Carter

Committee Counsel

SUMMARY: House Bill 331 provides for the appointment of two additional citizen members of the Information Resource Management Commission.

CURRENT LAW: The Information Resource Management Commission (IRMC) is located administratively within the Office of Information Technology Services. The Commission consists of 20 members. Two of the members are private citizens of the State who have a background in and familiarity with information systems or telecommunications. The two citizen members are appointed by the General Assembly, one upon recommendation of the President Pro Tempore of the Senate, and the other upon recommendation of the Speaker of the House. The IRMC was established to provide increased emphasis for strategic information technology planning and policy development. Its powers and duties are assigned by statute, and include the following:

- To develop biennially a statewide information technology strategy
- To development and sponsor statewide technology initiatives
- To review and approve biennially the information technology plans of the executive agencies and the Administrative Office of the Courts.
- To recommend to the Governor and the Office of State Budget, Planning, and Management the relative priorities across executive agency and Administrative Office of the Courts information technology plans.
- To issue certification of any State agency information technology project that requires or is expected to require the expenditure of funds in excess of five hundred thousand dollars (\$500,000).
- To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation.
- To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.
- To review and approve expenditures from appropriations made to the Office of State Budget, Planning, and Management for the purpose of creating a Computer Reserve Fund.
- To develop and promote technical requirements for the fair and competitive procurement of information technology in cooperation with the Office of Information Technology Services

BILL ANALYSIS: House Bill 331 expands the membership of the IRMC by providing for the appointment of two additional private citizens to serve on the Commission. This would make a total of four appointments by the General Assembly -- two upon recommendation of the President Pro Tempore of the Senate, and two upon recommendation of the Speaker of the House. The bill would be effective when it becomes law.

VISITOR REGISTRATION SHEET

SCIENCE AND TECHNOLOGY

-Feb. 28, 2001

Name of Committee

March Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bennclawhorn	OSC
RICH WILDER	NCEITA
Rob Hillman	054
Martin Vernon	OSA
Lee Mandell	NCLM
Por Howley	175.
Ken Melton	Alley Associates
Ruth Sappie	NCDOT
BILL COX	DHHS

AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

April 18, 2001

OPENING REMARKS

Representative Joe Tolson, Chair

BILLS TO BE DISCUSSED

HB 1169 Amend Local Gov't. Purchasing Laws

Bill Sponsor – Representative Drew Saunders

ADJOURNMENT

HOUSE SCIENCE and TECHNOLOGY COMMITTEE

Minutes April 18, 2001

The House Committee on Science and Technology met on Wednesday, April 18, 2001, at 12:00 noon in Room 425 in the Legislative Office Building (LOB). The following members were present: Representatives Drew Saunders and Joe Tolson, chairs; Representative P. Miller, Vice-Chair; Representatives Boyd-McIntyre, Clary, Gray, Harrington, Hilton, Tucker and Walend.

Representative Tolson, presiding chair, called the meeting to order.

<u>Page</u>: Mia Moore, Wake County, sponsored by Representative Jennifer Weiss <u>Sgt. at Arms</u>: <u>Dusty Rhodes and James Worth</u>.

HB 1169 Amend Local Government Purchasing Laws

Representative Drew Saunders explained his bill. He said the bill was requested by the League of Municipalities. It deals with e-procurement within the League and tracks some of the e-procurement that larger municipalities are dealing with today. He explained the Bill (Attachment I) and the Summary of HB1169 (Attachment II). These attachments become a part of these minutes by reference. The bill also makes it easier for the League to tap into the State's current project.

Dr. Lee Mandell, League of Municipalities, was present to answer questions. Both Dr. Mandell and Representative Saunders said they knew of no opposition to the bill.

After discussion, <u>Representative Walend moved for a Favorable Report. All</u> members of the Committee voting aye, the motion was adopted.

The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

Gavle W. Christian, Committee Assistant

Representative Joe Tolson, Chair

Summary of HB1169: Amend Local Government Purchasing Laws

(Developed by NC League of Municipalities, NC Association of County Commissioners, Institute of Government faculty, Carolinas Association of Government Purchasing, and other city and county representatives)

- 1) Increases formal bid threshold for purchase contracts from \$30,000 to \$50,000.
- 2) Authorizes use of electronic advertisement at the option of the local government. Requires notice and governing board action if electronic advertisement is used instead of (as opposed to in addition to) newspaper advertisement.
- 3) Clarifies minimum time for advertisement of bid opportunities (in newspaper or electronically).
- 4) Specifies that bids may be rejected for any reason determined by the governing board to be in the best interest of the unit.
- 5) Eliminates requirement that full bids be recorded in the board minutes. (Current practice is to records a summary of the bid, rather than the bids themselves; a record is kept of board decisions and the requirements for records retention schedule apply to bids.)
- 6) Specifies that negotiation option (when bids exceed the funds available) applies to purchase as well as construction contracts.
- 7) Eliminates bid bond, performance, and payment bond requirement for purchase contracts in the formal bidding range. (Currently may be waived and usually is for purchase contracts. May be required at local government option.) Eliminates requirement to give notice of contract alternations to sureties, making it consistent with G.S. 44A-33.
- 8) Reorganizes formal bid statute so that all exceptions are listed under subsection (e).
- 9) Expands competitive bidding group purchasing exception to apply to any political subdivision (was only hospitals).
- 10) Adds new exception for purchases from state contracts where contractor is willing to extend the same prices, terms, and conditions to a local government.
- 11) Adds new exception for used items (not ones that are reconditioned or refabricated).
- 12) Specifies that withdrawal procedures apply to purchase as well as construction contracts. Authorizes local governments to extend the period within which a bidder must request withdrawal (currently 72 hours).
- 13) Adds new statute establishing an optional "request for proposals" procedure for information technology goods and services.
- 14) Adds new subsection to property disposal law to specify that a local government may discard property that has no value, that remains unsold after a sale procedure has been completed, or that poses a potential threat to public health or safety.
- 15) Adds new subsection to public auction statute authorizing electronic auctions of surplus property.
- 16) Corrects the court of appeals reading of the statute in Carter v. Stanly County, 125 N.C. App. 628. In that case the court seemed to hold that the statute did not authorize one government to convey property to another—that it only applied to property jointly used by two or more governments.
- 17) Makes other technical and conforming changes.

AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

April 18, 2001

OPENING REMARKS

Representative Joe Tolson, Chair

BILLS TO BE DISCUSSED

HB 1169 Amend Local Gov't. Purchasing Laws

Bill Sponsor – Representative Drew Saunders

ADJOURNMENT

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

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Peter Capriglione, Information Systems

Brenda Carter, Committee Counsel

Dwayne Pickney, Fiscal Research

Gayle Christian, Committee Assistant Ruth Fish, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

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HOUSE BILL 1169

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Short Title: Amend Local Gov't. Purchasing Laws. (Public)

Sponsors: Representative Saunders.

Referred to: Local Government I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS AND THE SALE OF PROPERTY FOR CITIES AND TOWNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129 reads as rewritten:

"§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.contracts.

Bidding Required. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shallfifty thousand dollars (\$50,000) may be performed, nor shall may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or otherpolitical subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any

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27 28 restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official or both, the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement of the letting of such contracts shall be as follows: and Letting of Contracts. — Where the contract is to be let by a board or governing body of the State government, government or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board. Provided that the

The advertisements for bidders required by this section shall be published appear at such a time that where at least seven full days shall lapse between the date of publication of on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof shallmay assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made the board or governing body shall

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<u>award the contract</u> to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In

In the event the lowest responsible bids are in excess of the funds available for the project, project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall-for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the oblige upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) <u>Contract Execution and Security.</u> All contracts to which this section applies shall be executed in writing, and the writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due

for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no suchthe contract shall not be altered except by written agreement of the contractor, the sureties on his bond, contractor and the board or governing body. Such The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, saidthe board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of a paratus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

- (d) <u>Use of Unemployment Relief Labor.</u> Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.
 - (e) Exceptions. The requirements of this Article do not apply to:
 - Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof, thereof; or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article. States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or

1		payment in full that may be required by regulations of the
2		governmental unit or agency disposing of the property.
3	<u>(2)</u>	Cases of special emergency involving the health and safety of the
4		people or their property.
5	<u>(3)</u>	Purchases made through a competitive bidding group purchasing
6		program, which is a formally organized program that offers
7		competitively bid purchasing services at discount prices to two or
8		more public agencies.
9	<u>(4)</u>	Construction or repair work undertaken during the progress of a
10		construction or repair project initially begun pursuant to this section.
11	<u>(5)</u>	Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or
12		natural gas. These purchases are subject to G.S. 143-131.
13	<u>(6)</u>	Purchases of apparatus, supplies, materials, or equipment when: (i
14	•	performance or price competition for a product are not available; (ii) a
15		needed product is available from only one source of supply; or (iii
16		standardization or compatibility is the overriding consideration
17		Notwithstanding any other provision of this section, the governing
18		board of a political subdivision of the State shall approve the purchases
19		listed in the preceding sentence prior to the award of the contract.
20		In the case of purchases by hospitals, in addition to the other
21		exceptions in this subsection, the provisions of this Article shall no
22		apply when: (i) a particular medical item or prosthetic appliance is
23		needed; (ii) a particular product is ordered by an attending physiciar
24		for his patients; (iii) additional products are needed to complete ar
25		ongoing job or task; (iv) products are purchased for "over-the-counter"
26		resale; (v) a particular product is needed or desired for experimental
27		developmental, or research work; or (vi) equipment is already
28		installed, connected, and in service under a lease or other agreemen
29		and the governing body of the hospital determines that the equipmen
30		should be purchased. The governing body of a hospital shall keep a
31		record of all purchases made pursuant to this subsection. These records
32		are subject to public inspection.
33	<u>(7)</u>	Purchases of information technology through contracts established by
34		the State Office of Information Technology Services as provided in
35		G.S. 147-33.82(b) and G.S. 147-33.92(b).
36	<u>(8)</u>	Guaranteed energy savings contracts, which are governed by Article
37		3B of Chapter 143 of the General Statutes.
38	<u>(9)</u>	Purchases from contracts established by the State or any agency of the
39		State, if the contractor is willing to extend to a political subdivision of
40		the State the same or more favorable prices, terms, or conditions as
41		established in the State contract.

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(10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured or refabricated apparatus, supplies, materials, or equipment are not included in the exception.

The Secretary of Administration or the governing board of any county, city, town, or

other subdivision of the State may designate any officer or employee of the State,

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40 41 county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property.

(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. Notwithstanding

- supplies, materials, or equipment when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over the counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this subsection. These records are subject to public inspection.
- of any municipality, county, or otherpolitical subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
 - (1) The United States of America or any federal agency;
 - (2) The State of North Carolina or any agency or political subdivision of the State; or
 - (3) Any other state or any agency or political subdivision of that state,

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if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) <u>Transportation Authority Purchases.</u>—Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

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(5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection."

SECTION 2. G.S. 143-129.1 reads as rewritten:

"§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S. 143-129 for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material orapparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids.bids, or for a longer period as may be specified in the instructions to bidders provided prior to the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event If the work or purchase is relet for bids, under no circumstances shall may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel,

may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor."

SECTION 3. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

12.

"§ 143-129.8. Purchase of information technology goods and services.

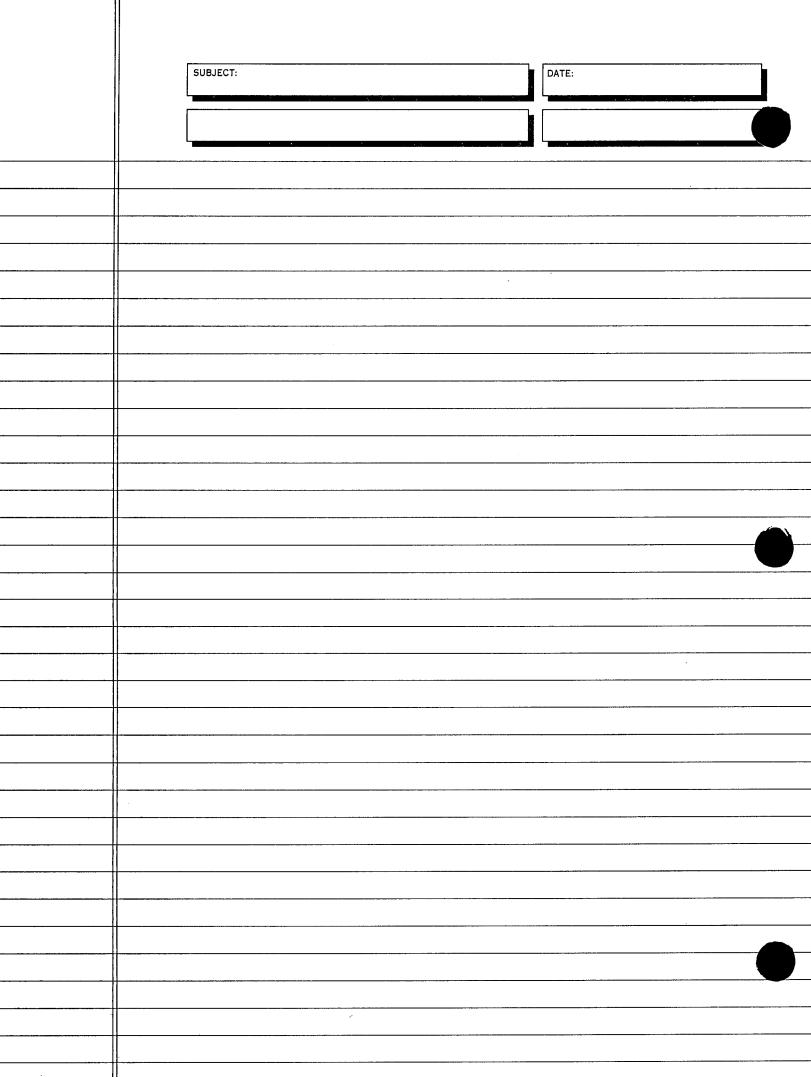
- (a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 147-33.81(2), using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.
- (b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:
 - (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(a).
 - (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.
- (c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.
- (d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded."
- **SECTION 4.** G.S. 160A-266 is amended by adding a new subsection to read:
- "(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety."
- **SECTION 5.** G.S. 160A-270 is amended by adding a new subsection to read:
- 36 "(c) The council may conduct auctions of real or personal property electronically
 37 by authorizing the establishment of an electronic auction procedure or by authorizing
 38 the use of existing private or public electronic auction services. Notice of an electronic
 39 auction of property shall identify, in addition to the information required in subsections
 40 (a) and (b) of this section, the electronic address where information about the property
 41 to be sold can be found and the electronic address where electronic bids may be posted.
 42 All requirements of subsections (a) and (b) of this section employed electronic auctions "
- 42 All requirements of subsections (a) and (b) of this section apply to electronic auctions."

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DECEMBER 1011 0. C.D. 10011 27 NOTICE	SECTION 6.	G.S. 160A-2	!74(b) reads	as rewritten
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2	"(b) Any governmental unit may, upon such terms and conditions as it deems
3	wise, with or without consideration, exchange with, lease to, lease from, sell to, or
4	purchase from, or enter into agreements regarding the joint use byfrom any other
5	governmental unit of any interest in real or personal property that it may own property."
6	SECTION 7 This act is effective when it becomes law

SUBJECT: DATE: Byron Morre Wake County Rep. Weiss



2001 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented: By Representative(s) Tolson and Saunders (Chair/Chairs) for the Committee on Science and Technology.				
	Committee Substitute for B. 1169 A BILL TO BE ENTITLED AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS AND THE SALE OF PROPERTY FOR CITIES AND TOWNS.			
X	With a favorable report.			
	With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations Finance .			
	With a favorable report, as amended.			
	With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations Finance .			
	With a favorable report as to committee substitute bill (#), which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)			
	With a favorable report as to House committee substitute bill (#), \square which changes the title, unfavorable as to Senate committee substitute bill.			
	With an unfavorable report.			
	With recommendation that the House concur.			
	With recommendation that the House do not concur.			
	With recommendation that the House do not concur; request conferees.			
	With recommendation that the House concur; committee believes bill to be material.			
	With an unfavorable report, with a Minority Report attached.			
	Without prejudice.			
	With an indefinite postponement report.			
	With an indefinite postponement report, with a Minority Report attached.			
	With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)			

FOR JOURNAL USE ONLY

 Pursuant to Rule 36(b), the bill is placed on the Calendar of
The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) rereferred to the Committee on
The bill/resolution is re-referred to the Committee on
On motion of (Rep
Pursuant to Rule 36(b), the (House)committee substitute bill (No)/resolution is placed on the Calendar of (The original bill) (House Committee Substitute Bill No)/resolution is placed on the Unfavorable Calendar.
On motion of Rep, (the rules are suspended) (Rule is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)
On motion of Rep, Committee Amendment No.(s) is/are adopted (by EV).
On motion of Rep, Committee Amendment No.(s) is/are adopted (by EV).
Rep offers Amendment No which (is adopted.) (fails of adoption.) (by EV) () This amendment changes the title.
The bill/resolution (, as amended,) passes its second reading (by following vote, RC) (, by EV,) and (remains on the Calendar,) (and there being no objection is read a third time).
The bill/resolution (, as amended,) passes its third reading (by the following vote,
without engrossment by Special message sent to the Senate for concurrence in House amendment (s).
House committee substituteenrolled.
On motion of Rep, the House concurs in the (material) Senate, and, and
the bill is ordered enrolled.

Summary of HB1169: Amend Local Government Purchasing Laws

(Developed by NC League of Municipalities, NC Association of County Commissioners, Institute of Government faculty, Carolinas Association of Government Purchasing, and other city and county representatives)

- 1) Increases formal bid threshold for purchase contracts from \$30,000 to \$50,000.
- 2) Authorizes use of electronic advertisement at the option of the local government. Requires notice and governing board action if electronic advertisement is used instead of (as opposed to in addition to) newspaper advertisement.
- 3) Clarifies minimum time for advertisement of bid opportunities (in newspaper or electronically).
- 4) Specifies that bids may be rejected for any reason determined by the governing board to be in the best interest of the unit.
- 5) Eliminates requirement that full bids be recorded in the board minutes. (Current practice is to records a summary of the bid, rather than the bids themselves; a record is kept of board decisions and the requirements for records retention schedule apply to bids.)
- 6) Specifies that negotiation option (when bids exceed the funds available) applies to purchase as well as construction contracts.
- 7) Eliminates bid bond, performance, and payment bond requirement for purchase contracts in the formal bidding range. (Currently may be waived and usually is for purchase contracts. May be required at local government option.) Eliminates requirement to give notice of contract alternations to sureties, making it consistent with G.S. 44A-33.
- 8) Reorganizes formal bid statute so that all exceptions are listed under subsection (e).
- 9) Expands competitive bidding group purchasing exception to apply to any political subdivision (was only hospitals).
- 10) Adds new exception for purchases from state contracts where contractor is willing to extend the same prices, terms, and conditions to a local government.
- 11) Adds new exception for used items (not ones that are reconditioned or refabricated).
- 12) Specifies that withdrawal procedures apply to purchase as well as construction contracts. Authorizes local governments to extend the period within which a bidder must request withdrawal (currently 72 hours).
- 13) Adds new statute establishing an optional "request for proposals" procedure for information technology goods and services.
- 14) Adds new subsection to property disposal law to specify that a local government may discard property that has no value, that remains unsold after a sale procedure has been completed, or that poses a potential threat to public health or safety.
- 15) Adds new subsection to public auction statute authorizing electronic auctions of surplus property.
- 16) Corrects the court of appeals reading of the statute in Carter v. Stanly County, 125 N.C. App. 628. In that case the court seemed to hold that the statute did not authorize one government to convey property to another—that it only applied to property jointly used by two or more governments.
- 17) Makes other technical and conforming changes.

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

H

HOUSE BILL 1169

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Short Title: Amend Local Gov't. Purchasing Laws. (Public)

Sponsors: Representative Saunders.

Referred to: Local Government I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS AND THE SALE OF PROPERTY FOR CITIES AND TOWNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129 reads as rewritten:

"§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.contracts.

Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shallfifty thousand dollars (\$50,000) may be performed, nor shall may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or otherpolitical subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any

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restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official or both, the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements.unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement of the letting of such contracts shall be as follows: and Letting of Contracts. — Where the contract is to be let by a board or governing body of the State government, government or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board. Provided that the

The advertisements for bidders required by this section shall be published appear at such a time that where at least seven full days shall lapse between the date of publication of on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof shallmay assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made the board or governing body shall

 <u>award the contract</u> to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In

In the event the lowest responsible bids are in excess of the funds available for the project, project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall-for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the oblige upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) <u>Contract Execution and Security.</u> All contracts to which this section applies shall be executed in writing, and the writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due

for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such the contract shall not be altered except by written agreement of the contractor, the sureties on his bond, contractor and the board or governing body. Such The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

- (d) <u>Use of Unemployment Relief Labor.</u> Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.
 - (e) Exceptions. The requirements of this Article do not apply to:
 - Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; thereof; or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article. States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or

1		payment in full that may be required by regulations of the
2		governmental unit or agency disposing of the property.
3	(2)	Cases of special emergency involving the health and safety of the
4		people or their property.
5	<u>(3)</u>	Purchases made through a competitive bidding group purchasing
6		program, which is a formally organized program that offers
7		competitively bid purchasing services at discount prices to two or
8		more public agencies.
9	<u>(4)</u>	Construction or repair work undertaken during the progress of a
10		construction or repair project initially begun pursuant to this section.
11	<u>(5)</u>	Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or
12		natural gas. These purchases are subject to G.S. 143-131.
13	<u>(6)</u>	Purchases of apparatus, supplies, materials, or equipment when: (i)
14		performance or price competition for a product are not available; (ii) a
15		needed product is available from only one source of supply; or (iii)
16		standardization or compatibility is the overriding consideration.
17		Notwithstanding any other provision of this section, the governing
18		board of a political subdivision of the State shall approve the purchases
19		listed in the preceding sentence prior to the award of the contract.
20		In the case of purchases by hospitals, in addition to the other
21		exceptions in this subsection, the provisions of this Article shall not
22		apply when: (i) a particular medical item or prosthetic appliance is
23		needed; (ii) a particular product is ordered by an attending physician
24		for his patients; (iii) additional products are needed to complete an
25		ongoing job or task; (iv) products are purchased for "over-the-counter"
26		resale; (v) a particular product is needed or desired for experimental.
27	•	developmental, or research work; or (vi) equipment is already
28	,	installed, connected, and in service under a lease or other agreement
29		and the governing body of the hospital determines that the equipment
30		should be purchased. The governing body of a hospital shall keep a
31		record of all purchases made pursuant to this subsection. These records
32		are subject to public inspection.
33	<u>(7)</u>	Purchases of information technology through contracts established by
34		the State Office of Information Technology Services as provided in
35		G.S. 147-33.82(b) and G.S. 147-33.92(b).
36	(8)	Guaranteed energy savings contracts, which are governed by Article
37	- 	3B of Chapter 143 of the General Statutes.
38	<u>(9)</u>	Purchases from contracts established by the State or any agency of the
39		State, if the contractor is willing to extend to a political subdivision of
40		the State the same or more favorable prices, terms, or conditions as
41		established in the State contract.

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(10)<u>Purchase of used apparatus</u>, supplies, materials, or equipment. For purposes of this subdivision, remanufactured or refabricated apparatus, supplies, materials, or equipment are not included in the exception.

The Secretary of Administration or the governing board of any county, city, town, or

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other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (f) The provisions of this Article shall not apply to purchases of apparatus,

- supplies, materials, or equipment when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over-the-counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this subsection. These records are subject to public inspection.
- Waiver of Bidding for Previously Bid Contracts. When the governing board of any municipality, county, or other political subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
 - The United States of America or any federal agency; (1)
 - The State of North Carolina or any agency or political subdivision of **(2)** the State; or
 - Any other state or any agency or political subdivision of that state, (3)

if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) <u>Transportation Authority Purchases.</u>—Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

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(5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection."

SECTION 2. G.S. 143-129.1 reads as rewritten:

"§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S. 143-129 for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material orapparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids bids, or for a longer period as may be specified in the instructions to bidders provided prior to the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event or purchase is relet for bids, under no circumstances shall may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel,

may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor."

SECTION 3. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.8. Purchase of information technology goods and services.

- (a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 147-33.81(2), using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.
- (b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:
 - (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(a).
 - (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.
- (c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.
- (d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded."
- **SECTION 4.** G.S. 160A-266 is amended by adding a new subsection to read:
- "(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety."
- **SECTION 5.** G.S. 160A-270 is amended by adding a new subsection to read:
- "(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. All requirements of subsections (a) and (b) of this section apply to electronic auctions."

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SECTION	ON 6.	G.S.	160A-274(b)	reads	as rewritten:
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"(b) Any governmental unit may, upon such terms and conditions as it deems
wise, with or without consideration, exchange with, lease to, lease from, sell to, or
purchase from, or enter into agreements regarding the joint use byfrom any other
governmental unit of any interest in real or personal property that it may own.property."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1169 - First Edition

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

H

HOUSE BILL 1169

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Short Title: Amend Local Gov't. Purchasing Laws. (Public)

Sponsors: Representative Saunders.

Referred to: Local Government I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS AND THE SALE OF PROPERTY FOR CITIES AND TOWNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129 reads as rewritten:

"§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.contracts.

Bidding Required. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shallfifty thousand dollars (\$50,000) may be performed, nor shall may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government. or of any county, city, town, or otherpolitical subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any

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25 26 27 restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official or both, the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement of the letting of such contracts shall be as follows: and Letting of Contracts. — Where the contract is to be let by a board or governing body of the State government, government or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board. Provided that the

The advertisements for bidders required by this section shall be published appear at such a time that where at least seven full days shall lapse between the date of publication of on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof shallmay assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be madethe board or governing body shall

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<u>award the contract</u> to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In

In the event the lowest responsible bids are in excess of the funds available for the project, project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the oblige upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) <u>Contract Execution and Security.</u> All contracts to which this section applies shall be executed in writing, and the writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due

for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such the contract shall not be altered except by written agreement of the contractor, the sureties on his bond, contractor and the board or governing body. Such The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

- (d) <u>Use of Unemployment Relief Labor.</u> Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.
 - (e) Exceptions. The requirements of this Article do not apply to:
 - Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof, thereof; or (ii) any other government unit or agency thereof within the United States. for the purchase, lease, or other acquisition of any apparatus, supplies. materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article. States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or

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1		payment in full that may be required by regulations of the
2		governmental unit or agency disposing of the property.
3	<u>(2)</u>	Cases of special emergency involving the health and safety of the
4		people or their property.
5	<u>(3)</u>	Purchases made through a competitive bidding group purchasing
6	-	program, which is a formally organized program that offers
7		competitively bid purchasing services at discount prices to two or
8	·	more public agencies.
9	<u>(4)</u>	Construction or repair work undertaken during the progress of a
10		construction or repair project initially begun pursuant to this section.
11	<u>(5)</u>	Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or
12		natural gas. These purchases are subject to G.S. 143-131.
13	(6)	Purchases of apparatus, supplies, materials, or equipment when: (i)
14		performance or price competition for a product are not available; (ii) a
15		needed product is available from only one source of supply; or (iii)
16		standardization or compatibility is the overriding consideration.
17		Notwithstanding any other provision of this section, the governing
18		board of a political subdivision of the State shall approve the purchases
19		listed in the preceding sentence prior to the award of the contract.
20		In the case of purchases by hospitals, in addition to the other
21		exceptions in this subsection, the provisions of this Article shall not
22		apply when: (i) a particular medical item or prosthetic appliance is
23		needed; (ii) a particular product is ordered by an attending physician
24		for his patients; (iii) additional products are needed to complete an
25		ongoing job or task; (iv) products are purchased for "over-the-counter"
26		resale; (v) a particular product is needed or desired for experimental,
27		developmental, or research work; or (vi) equipment is already
28		installed, connected, and in service under a lease or other agreement
29		and the governing body of the hospital determines that the equipment
30		should be purchased. The governing body of a hospital shall keep a
31		record of all purchases made pursuant to this subsection. These records
32		are subject to public inspection.
33	(7)	Purchases of information technology through contracts established by
34	17	the State Office of Information Technology Services as provided in
35	•	G.S. 147-33.82(b) and G.S. 147-33.92(b).
36	<u>(8)</u>	Guaranteed energy savings contracts, which are governed by Article
37	لمبتبد	3B of Chapter 143 of the General Statutes.
38	<u>(9)</u>	Purchases from contracts established by the State or any agency of the
39	1/	State, if the contractor is willing to extend to a political subdivision of
40		the State the same or more favorable prices, terms, or conditions as
41		established in the State contract

(10)<u>Purchase of used apparatus</u>, supplies, materials, or equipment. For purposes of this subdivision, remanufactured or refabricated apparatus, supplies, materials, or equipment are not included in the exception.

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The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property.

- (f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over-the-counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this subsection. These records are subject to public inspection.
- Waiver of Bidding for Previously Bid Contracts. When the governing board of any municipality, county, or other political subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
 - The United States of America or any federal agency; (1)
 - (2) The State of North Carolina or any agency or political subdivision of the State; or
 - Any other state or any agency or political subdivision of that state, (3)

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 if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) <u>Transportation Authority Purchases.</u>—Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

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(5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection."

SECTION 2. G.S. 143-129.1 reads as rewritten:

"§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S. 143-129 for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material orapparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids.bids, or for a longer period as may be specified in the instructions to bidders provided prior to the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event of the work or purchase is relet for bids, under no circumstances shall may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel,

may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor."

SECTION 3. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.8. Purchase of information technology goods and services.

- 2 (a) In recognition of the complex and innovative nature of information
 3 technology goods and services and of the desirability of a single point of responsibility
 4 for contracts that include combinations of purchase of goods, design, installation,
 5 training, operation, maintenance, and related services, a political subdivision of the
 6 State may contract for information technology, as defined in G.S. 147-33.81(2), using
 7 the procedure set forth in this section, in addition to or instead of any other procedure
 8 available under North Carolina law.
 - (b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:
 - (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(a).
 - (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.
 - (c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.
 - (d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded."
 - **SECTION 4.** G.S. 160A-266 is amended by adding a new subsection to read:
 - "(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety."
 - **SECTION 5.** G.S. 160A-270 is amended by adding a new subsection to read:
 - "(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. All requirements of subsections (a) and (b) of this section apply to electronic auctions."

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SECTION 6. G	:.S. 160A-274(b)) reads as rewritten:
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"(b) Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from, or enter into agreements regarding the joint use by from any other governmental unit of any interest in real or personal property that it may own property."

SECTION 7. This act is effective when it becomes law.

AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

May 9, 2001

OPENING REMARKS

Representative Drew Saunders, Chair

PRESENTATION BY N.C. BIOTECH CENTER

Kenneth Tindall, Vice President

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

May 9, 2001

The House Committee on Science and Technology met at 12:00 Noon on May 9, 2001, in Room 424 of the Legislative Office Building. Members present were: Representative Drew Saunders, Chair, Representative Paul Miller, Vice Chair, and Representatives Gibson and Johnson. Brenda Carter, Committee Counsel, and Peter Capriglione with Information Systems were also in attendance. Sergeant At Arms Staff Members Ann Lassiter and Donnell Leathers assisted in the meeting. A Visitor Registration List is attached and made a part of the minutes.

Representative Saunders, Chair, called the meeting to order. Representative Miller, Vice Chair who had made arrangements for the presentation, was recognized and introduced guests: Dr. Kenneth Tindall, Senior Vice President for Science and Business Development, Dr. Charles Hamner, President, and Ms. Susan Carroll from the North Carolina Biotechnology Center. Dr. Tindall gave a power point presentation on the North Carolina Genomics and Bioinformatics Consortium. He provided information about the goals, organization, and benefits of the Consortium. (See Attachment.) A discussion period followed the presentation.

The meeting adjourned at 12:38 P.M.

Representative Drew Saunders, Presiding Chair

Ruth Fish, Committee Assistant



State seeks lead role in new field of genomics

Emerging science hints at becoming the kind of investment magnet that spurred growth of the Net

By JIM SHAMP

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Movers and shakers from North Carolina's political, business, education and nonprofit sectors made waves in the state's gene pool Monday, throwing their collective weight behind a new "buddy system" to help the state make a splash in the future of science.

Now they hope some collective money will also be pooled for the endeavor.

The gathering at Research Triangle Park's N.C. Biotechnology Center gave Gov. Jim Hunt and other state leaders a forum to announce support for a statewide consortium to serve as a global hub for the newly emerging sciences called genomics and bioinformatics.

"I don't even know exactly what they're going to do or how it's going to work," he said, but as he prepares to turn over his role as governor to his recently elected successor, Mike Easley, "nothing gives me more excitement and anticipation than this."

Most dictionaries and even spellchecking computer programs don't even contain the words "genomics" and "bioinformatics." But during the past decade, an ever-faster race has developed to capitalize on the dewfound understanding of genomes — especially those of humans and plants.

As the new millennium opens, genomics and bioinformatics hint at becoming the kind of investment and imagination magnet that animated the Internet explosion in the 1990s. That's why it's the kind of brass ring North Carolina should grab, said Hunt in addressing some 200 scientists and community lead-

Some 3 billion bits of information form the human genetic code. Clumped together, the information for a total organism such as a human is called a genome. This array of information is finally being sorted out and understood by federal and private scientists competing with super-fast computers to unravel its complexities in the famed "human genome project."

The study of a genome — genomics — opens the door to decades of future developments and quandaries, including individually customized drugs, tests and gene therapies to potentially diagnose and treat everything from cancer to heart disease to birth defects to acne.

Though some people argue that bioinformatics is just part of genomics, it's evolving as an independent field using computers to sift and crunch huge volumes of information from biological studies — database analysis using computer wizardry to spin "info-gold" from biological and statistical information.

Hunt said some states are already putting hundreds of millions of dollars into genomics and bioinformatics, including money from recent settlements with the tobacco industry.

The consortium was initiated several months ago, helped by funding from the biotech center. Key members have been gathering monthly to plan for its creation. Ken Tindall, senior vice president for science and business development at the biotechnology center, has been named coordinator of the project.

Though it's expected to grow and evolve, membership so far includes 16 corporations, 11 foundations and not-for-profit service organizations and 11 university members, including Duke, UNC and NCCU.

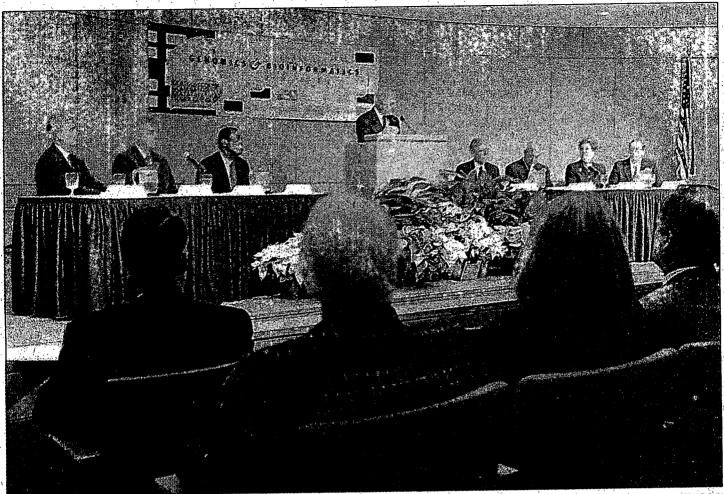
Sharing the podium with Hunt were Gov. elect Easley; Bob Ingram, chairman of Glaxo Wellcome; Jim Goodnight, CEO and chairman of SAS Institute; Rod Adkins, general manager of IBM Web servers and partnership executive for the UNC System; Molly Broad, president of the UNC System; Ralph Snyderman, chancellor for health affairs at Duke University Medical Center; and Charles Hamner, president and CEO of the N.C. Biotechnology Center.

Ingram, who noted with relief that his company's merger with SmithKline was approved by the Federal Trade Commission earlier in the day, added that the firm intends to make major investments in six research centers around the globe. Research Triangle Park will be one of those sites, he said, adding that the state's expansion of genomics and bioinformatics capabilities with Monday's consortium announcement is among the influences supporting expansion here.

Ingram said the consortium can erase boundaries between universities and scientists through a constant exchange of information.

"It's like we're all in one big library, which contains all the books we need, but they're all in piles on the floor in different rooms." Each member of the consortium will shelve the books in his or her room, Ingram said. And everyone will need to share the information in the books because volume 1 and volume 2 of a series might be in different rooms. Only by sharing does the information become useful he said.

Broad noted that the consortium puts North Carolina in a good position to compete for \$2.5 billion in upcoming National Institutes of Health funding for genomics initiatives. Michigan has committed \$1 billion to its "life sciences corridor" linking the University of Michigan in Ann Arbor with Michigan State University in East Lansing, she said. Gov. Gray Davis has committed California to a \$300 million investment in the field, as has Wisconsin, said Broad. "And they've made it clear their goal is



PHOTOS BY ELLEN OZIER/THE HERALD-SUN

to beat North Carolina."

Snyderman said North Carolina's consortium represents membership by "a powerful group of people, a powerful set of leaders.'

"It's almost like a poker game," he said to laughter as he pointed around the room. "You put in \$200 million, and you put in \$225 million. We're putting up \$250 million, so if anybody will help ...," referring to Duke's recent announcement of its own genomics initiative. "But there's more work than any institution can do on their own."

Goodnight noted that SAS has already become deeply entrenched in bioinformatics. He said the Carybased SAS software systems are already in use in more than 1,000 pharmaceutical company sites around the world and have been selected by the U.S. Food and Drug Administration.

SAS has also established a subsidiary, iBiomatics, to help develop and market bioinformatics products and services.

On the Net: www.ncgbc.org



The audience listened to the following guest speakers discuss the N.C. Genomics and **Bioinformatics** Consortium on Monday (top photo from left): Governor-elect

Mike Easley; SAS Institute CEO and Chairman James Goodnight; Rod Adkins, general manager of IBM Web servers and partnership executive for the **UNC System;**

Gov. Jim Hunt: Duke Chancellor President Molly for Health Affairs Broad; and and Executive Dean of the Duke School of Medicine Ralph Snyderman: Robert Ingram, chairman of Glaxo Wellcome;

UNC System Charles Hamner, president and CEO of the N.C. Biotechnology Center. In the lower photo (from right), Hamner, Broad.

Ingram and Snyderman listen to the discussion. The state leaders were pushing to make North Carolina a force in the field of genomes and bioinformatics.



NORTH CAROLINA

GENOMICS & BIOINFORMATICS

CONSORTIUM

Outline of Consortium Goals and Outcomes

Biotechnology has already yielded extraordinary benefits for economic and societal advancement. More benefits will come, for biotechnology has barely begun to reveal its promise. To gain those benefits, however, requires smart attention to the unfolding sciences and techniques on which biotechnology rests.

Bioinformatics and genomics are key new areas of attention. Understanding and effectively applying both will prove pivotal to the development of products and industry. As a result, North Carolina is well advised to move early and aggressively to leadership in both areas. Doing so requires purposeful partnership among universities, corporations, state government, and policy-leaders.

The Consortium works for this leadership and resulting economic gain by:

- Creating a nationally unique *public/private partnership* to leverage the capabilities of all members and of North Carolina's business infrastructure.
- Strengthening university capabilities to interact with industry for research and development, technical support, and technical workforce development.
- Merging the biopharmaceutical and agricultural chemical industries with the computing, telecommunications, and informational technology industries for maximum leverage of resources and maximum attention to new outcomes.
- Enabling North Carolina's technology development agencies including MCNC, with its high-performance computing capabilities, and the North Carolina Biotechnology Center to work together for leveraged gain.
- Preparing North Carolina for leadership in inevitable new realms of science, technology, health care, and agriculture.

Charles E. Hamner, DVM, PhD, President, North Carolina Biotechnology Center Kenneth R. Tindall, PhD, Project Director and Senior Vice President, Science and Business Development, North Carolina Biotechnology Center



NORTH CAROLINA

GENOMICS & BIOINFORMATICS

CONSORTIUM

Concept

Introduction

Over the last century, the biosciences have made considerable progress in understanding how animals and plants metabolize, synthesize, and utilize chemical nutrients for cell and organism function. Such progress has involved advances in both the physical and biological sciences and has led to products and services from industries ranging from health care and agriculture to computing and telecommunications. These evolving products and services have greatly improved our quality of life.

We are now on the verge of a revolution of new knowledge, technology innovation and product development through advancements in disciplines that contribute to the understanding of the structure and function of all genes and proteins, potentially in all organisms. The study of the structure, function and interaction of the complement of genes in a living cell is termed genomics. Likewise, the study of the complement of proteins in a cell is termed proteomics. Finally, bioinformatics is defined as the large-scale storage, retrieval and assessment of data from biological studies. The next great advancement in the biological sciences will come from the integration of genomics, proteomics and bioinformatics.

Such integration requires new approaches in research, education and biotechnology business development. University research programs are moving boldly on many fronts, developing multidisciplinary, interdisciplinary and inter-institutional affiliations. Adaptation of biotechnology to include genomics-related approaches is now widespread in many industries. In addition, multidisciplinary training of a workforce is crucial. The breadth and overlap of product ideas and use is expanding.

In this complex and rapidly changing environment, a neutral coordinator, integrator, and arbitrator can play a productive role. Therefore, the North Carolina Biotechnology Center, working with public and private universities in North Carolina, is proposing to form the *North Carolina Genomics and Bioinformatics Consortium*. This Consortium will bring together the universities with the bioscience industry, service organizations, foundations, and non-profit public interest organizations. Through the Consortium, participants will be better able to share information and resources, plan strategic initiatives, and form alliances.

Goals

The goal of the Research and Development Advisory Committee is to establish the North Carolina Genomics and Bioinformatics Consortium. The goal of the Consortium is to bring together the key elements of research, development, commercialization and support infrastructure in North Carolina that use or focus on genomics, proteomics or bioinformatics in order to plan strategic research and development initiatives, and to build infrastructure, synergy and community.

The Research and Development Advisory Committee will engage in a series of meetings of members for information gathering, surveying of capabilities and strategic planning. The objectives will be customized to allow each member to play an essential role based on each organization's purpose and capabilities. Such an approach will be implemented to yield a productive and useful model for Consortium function. The resulting Consortium will be tailored to provide general long-term benefits to the membership and to North Carolina by establishing strong interdisciplinary interactions and by strengthening academic-industrial ties.

Organization And Operation

The North Carolina Biotechnology Center, working with public and private North Carolina universities, will:

- Establish the Research and Development Advisory Committee on Genomics and Bioinformatics to establish a Genomics and Bioinformatics Consortium (see attached organizational chart).
- Function as the coordinator, implementer, and convener of Advisory Committee meetings and of the resulting Consortium.
- Run the day-to-day administration and operations of the Consortium with input from the Consortium Board.

Benefits To The Bioscience Community And To North Carolina

- The *universities* will serve as unifier and provider of research, training and development. In addition, the university community will provide input to the bioscience industry in the general areas of life science research, policy development (legal) and business; intellectual property protection; public/biomedical health; and the humanities.
- Industry will receive support and services necessary for enhancing the implementation of genomics, proteomics and bioinformatics in their business. Industrial investment in the Consortium for a specific purpose will provide a return on investment through new information and innovation or improved production and efficiency.
- Service and non-profit public interest organizations will provide unique support services for a holistic approach to genomics and bioinformatics applications in biosciences research, development and commercialization.
- Foundations will be able to select specific programs of interest for funding and development.

Strategic Focus

Strategic planning for the Consortium may involve any of the seven challenges and opportunities quoted in the U.S. Human Genome Program goals for 1998–2003 (*Science*, Vol. 282, PP. 682–689, 23 Oct. 1998), but planning may involve plants or animals and the application of technology innovation relevant to any applicable industry or affiliation between members. These challenges include:

Sequencing Technology: "In the future, de novo sequencing of additional genomes, comparative sequencing of closely related genomes, and sequencing to assess variation within genomes will become increasingly indispensable tools for biological and medical research Research must be supported on new technologies that will make even higher throughput DNA sequencing efficient,

accurate, and cost-effective, thus providing the foundation for other advanced genomic analysis tools."

Human Genome Sequence Variation: "Natural sequence variation is a fundamental property of all genomes Basic information about the types, frequencies, and distribution of polymorphisms in the human genome and in human populations is critical for progress in human genetics. Better high-throughput methods for using such information in the study of human disease are also needed."

Technology for Functional Genomics: "The availability of entire genome sequences is enabling a new approach to biology often called functional genomics — the interpretation of the function of DNA sequence on a genomic scale Many genes and other functional elements of the genome are discovered only when the full DNA sequence is known However, knowing the structure of a gene or other element is only part of the answer. The next step is to elucidate function, which results from the interaction of genomes with their environment Large-scale characterization of the gene transcripts and their protein products underpins functional analysis Improved technologies are [also] needed for global approaches to the study of non-protein-coding sequences...."

Comparative Genomics: "Because all organisms are related through a common evolutionary tree, the study of one organism can provide valuable information about others. Much of the power of molecular genetics arises from the ability to isolate and understand genes from one species based on knowledge about related genes in another species. Comparisons between genomes ... provide insight into the universality of biologic mechanisms and ... into the details of gene structure and function."

BioInformatics and Computational Biology: "Bioinformatics support is essential to the implementation of genome projects and for public access to their output Collection, analysis, annotation, and storage of the ever-increasing amounts of mapping, sequencing, and expression data in publicly accessible, user-friendly databases is critical to the project's success. In addition, the community needs computational methods that will allow scientists to extract, view, annotate, and analyze genomic information efficiently."

Funding

Funding for grants, alliances, and administration/operations will come from a variety of sources: a leveraged State appropriation in addition to foundations, industry and federal support as appropriate.

These funds may be restricted or non-restricted. The Biotechnology Center will manage these funds according to guidelines and agreements with the donors/grantors.

The Biotechnology Center has three ongoing funding programs that can be used to support and distribute funds among Consortium members: a Multidisciplinary Grants Program, a Collaborative Funding Assistance Program, and a Program Initiation Grants Program.

Such an arrangement will allow members to seek grants and other funds on their own for specific projects that may include:

- Federal designation as Center of Excellence in Genomic Science
- Federal NIH or NSF grants
- · Other federal, industry, foundation funds

Outcome

Biotechnology is interdisciplinary, multidisciplinary and transdisciplinary. Therefore, it is also transindustrial and transsocietal. Genomics and Bioinformatics can serve as a unifier since the information and knowledge gained can be applied to all industries for new products/profits and simultaneously benefit the public with a better quality of life.

Implementation

4th Quarter 2000

- 1. Start organizational tasks for Consortium
- 2. Establish Advisory Committee and begin Advisory Committee meetings
- 3. Work with MCNC and the NC Supercomputing Center to prepare an NIH Planning Grant to establish a National Program of Excellence in Biomedical Computing in North Carolina.
- 4. Gain acceptance of potential members

1st Quarter 2001

- 1. Continue Advisory Committee meetings to establish goals, objectives, etc.
- 2. Work with Universities on Planning Grant(s) they wish to submit
- 3. Start work with Governor and Legislature for support

2nd and 3rd Quarter 2001

- Complete establishment of Consortium
 — begin operation
- Continue to work with State Legislature to secure funding
- 3. Start work on preparing grant for CEGS with universities
- 4. Secure funding from foundations and industry for research and development projects per interest in given strategic plan element or specific grantor interest

4th Quarter 2001 and beyond

- 1. Full-scale operation of Consortium
 - Administration
 - Funding
 - Grants management
 - Consortium meetings

Project Director

Kenneth R. Tindall, PhD, Senior Vice President for Science and Business Development, North Carolina Biotechnology Center

Project Administration

Kristi Grabow, Special Projects Coordinator, North Carolina Biotechnology Center Corey Waters, Administrative Assistant, North Carolina Biotechnology Center



Administration/Coordination Biotechnology Center **North Carolina**

Ali Member Groups Represented **Consortium Board**

Member oversight group

- 3 members/member group
 - Ex-Officio:
- 1- Biotechnology Center
- 1– Office of the President of the UNC System
- 1- Private Universities and other

8.Support Service Academic Institutions

Industry

Senior Researcher and Development Executive

from each member

Research and Development

WE

Advisory Committee

Senior Researcher

East Carolina University NC Central University **Duke University**

Genome Consortium for Active Teaching

Center for the Public Domain

Service

MEMBER

SECTOR

North Carolina Biosciences Organization

Parker, Poe, Adams & Bernstein LLP

Research Triangle Institute

NC Association for Biomedical Research

MCNC-NC Supercomputing Center

UNC-Greensboro

UNC-Wilmington

Burroughs Wellcome Fund

Womble Carlyle Sandridge & Rice, PLLC

National Institute of Environmental Health National Humanities Center

North Carolina Biotechnology Center U.S. EPA National Health and Nuffield Council on Bioethics

MEMBER

LabCorp of America MWG Biotech, Inc. Nonlinear USA Inc. Lines Technologies & Associates, LLC Becton, Dickinson & Aventis CropScience A.M. Pappas Company

Corporation

O'Brien/Atkins Associates, Paradigm Genetics PPD Inc. Cogent Neuroscience Inc. CaroTech, LLC Biogen

EMC Corporation

The Freelon Group, Inc. Flad & Associates

GlaxoSmithKline Inc. Biomatics

Incellico, Inc

nceutica, Inc. incu Vest

RCH Products, Inc.

Quintiles, Inc.

PPGx Inc.

RMF Engineering, Inc. Ribonomics, Inc.

SAS Institute

Syngenta Xanthon

UNIVERSITY

NC Community College System NC A&T State University NC State University UNC-Chapel Hill JNC-Charlotte

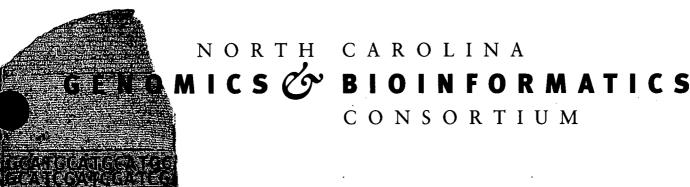
Nake Forest University

Support

CIIT Centers for Health Research

National Institute of Statistical Sciences Sciences

Environmental Effects Research Laboratory



Strategic Goals

Background

At the January 22, 2001 meeting of the Research Development and Advisory Committee for the North Carolina Genomics and Bioinformatics Consortium, the following set of strategic goals was presented for consideration by the attending member representatives. We discussed these five strategic goals as a basis for coordinating research and development activities within the Consortium and as a basis for writing the Consortium strategic plan. Specific details, activities and a time-line for the implementation of these goals will be developed in one of several Consortium focus groups.

Goals

1. To develop a world-class facility for bioinformatics and data storage at the NC Supercomputing Center that will serve as a shared resource for Consortium members.

The NC Supercomputing Center will serve as a shared resource for both public/private databases to be used by Consortium members and the scientific community. Issues to be resolved include: development of a computing software/hardware system optimized for bioinformatics, development and porting of public and proprietary databases, development of novel approaches to data management, resolution of security issues, and development of effective and efficient data transport between the storage resource and the campuses.

2. To implement university-based research and university-industry-based partnerships in order to derive new bioinformatics algorithms for genomics and proteomics data annotation and analysis.

Research opportunities for the development of novel approaches to solving common problems will be explored. Initial efforts will focus on algorithm development for the analysis of DNA sequence data, gene expression data, and protein structure/function data. Such an approach should lead to new and more sophisticated methods of data analysis. It is expected that through this effort North Carolina will emerge as a leader in shaping evolving international standards for data annotation and analysis.

3. To develop novel systems and approaches for the management, storage, analysis of clinical genomic data.

The ability to combine clinical data information, when appropriate, among four medical centers in NC provides an opportunity to develop new strategies for clinical data management and for integrating clinical genomic data in the practice of medicine. This goal seeks to develop novel software, storage, retrieval and dissemination systems required for clinical information management. Both patient privacy and security issues must be addressed.

(over)

4. To develop a platform for academic, industry and government debate regarding the societal, ethical and cultural impact of genomics and bioinformatics data manipulation and storage.

Through the Consortium we have an opportunity to provide leadership in the debate concerning the ethical and societal implications of the use, storage and application of genetic information. In turn, these activities are expected to provide a forum for shaping public policy as it is applied to genomics and bioinformatics.

5. To develop a coordinated education and training initiative in Bioinformatics, Biomedical Computing and the Genomic Sciences.

Coordination of degree programs within the public and private universities as well as with the North Carolina Community College System (NCCCS) will provide for the leveraging of resources and the elimination of unnecessary duplication of effort in workforce training and in the education of new scientists. Coordination will involve i) assessment of current or planned degree programs, ii) evaluation of a role for industrial involvement, iii) consideration of funding resources for a coordinated program.

The implementation of these strategic goals will require the involvement and participation of North Carolina public and private universities, the NCCCS, industry, NCNI, NCREN and the NC Supercomputing Center at MCNC. The North Carolina Biotechnology Center will serve to administer and coordinate activities required to implement these five strategic goals as described in a detailed strategic plan.



NORTH CAROLINA

CS O BIOINFORMATICS

CONSORTIUM

Genomics and Bioinformatics Primer

A question and answer guide to the Consortium

What is a gene? A gene is a section of DNA (deoxyribonucleic acid, the blueprint for life) that makes a specific protein. Proteins are large molecules that determine a cell's structure and function. DNA and genes are present in all living things.

What is genomics? Genomics is the study of all the genes in an organism, also known as its genome. The science includes identifying the specific building blocks of all the genes in a cell, mapping their locations in relation to the rest of the DNA, and studying the function of those genes or combinations of genes.

What is proteomics? Proteomics is the study of the composition, structure, function and interactions of all the proteins in a cell.

How does bioinformatics fit in? Genomic information is too voluminous for even a large team of researchers to remember or analyze, so the information is placed in complex databases in which the gene and protein structures and functions can be easily accessed, cross-referenced or queried. Bioinformatics is defined as the large-scale storage, retrieval and assessment of data from biological studies. This field draws on high-performance computing, software and information technology.

What are the potential applications of these technologies? Applications are vast. Researchers can focus on treating the cause of disease, rather than alleviating the symptoms. Through pharmacogenomics, existing medications can be tailored to an individual based on his or her body's ability to respond to the treatment, as determined by individual genetic makeup. The time to discover and develop drugs, now typically seven to 10 years, could be cut in half, possibly reducing the cost of drugs paid by consumers.

Medicine is not the only application. Genomics can lead to the development of hardier crop plants to benefit farmers, more nutritious foods to fight hunger and malnutrition, and plants and natural systems to clean up toxic waste, oil spills or polluted air. All of this is possible by understanding how organisms, based on their genetic makeup, carry out their daily functions.

What is the role of the Consortium? Genomics and bioinformatics research relies on many participants from many different fields. Integrating these players is crucial in producing the next scientific advances. The North Carolina Genomics and Bioinformatics Consortium will bring together these parties to exchange information, share resources, form alliances and create strategic initiatives.

How will the Consortium accomplish those goals? A Research and Development Advisory Committee has begun meeting at the North Carolina Biotechnology Center to map out strategies to achieve these goals. Eleven universities, 16 corporations and nine non-profit institutions from throughout North Carolina have participated in the discussions so far. The group has established several subcommittees to pursue specific activities, including communication among members and to the public.

What social, ethical or cultural issues are impacted by genomics? The technology does not come without ethical questions. Who will have access to all of this genetic information? How will that information be used? The Consortium will establish a forum for discussing these issues.

Why should North Carolina pursue a genomics initiative? Throughout the country, public and private labs are racing to make sense of the information coming from the effort to map the entire human genome and the genomes of other organisms. North Carolina must move strategically and aggressively now to compete effectively and to establish leadership in genomics and bioinformatics.

Like any technology, genomics will follow a logical progression from the laboratory to the marketplace. The infrastructure needed to support that progression is similar to that necessary for the growth of the biotechnology industry, which the North Carolina Biotechnology Center has worked to support since 1984. Genomics and bioinformatics are a natural offshoot of the Center's mission, and the technology stands to bring great benefits to North Carolina.

At its initial stage, research and development will be the center of the state's genomics and bioinformatics efforts. As marketable ideas begin to spin out from university and industrial laboratories, high-paying jobs will become available for North Carolina residents. Sale of products and growing businesses will then bring in more tax money for the state. The Consortium, with the help of the Center, is the key to forging the relationships that will make this economic vision a reality and put the state at the forefront of the genomics and bioinformatics revolution.

For more information, contact Ken Tindall, Ph.D., Senior Vice President for Science and Business Development and project coordinator for the Consortium, at 919-541-9366 or ken_tindall@nchiotech.org.

VISITOR REGISTRATION SHEET

•		
Science and Te	Chnology	May. 9,-2001
Name of Committee		Data
rame of committee	,	Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Col Colan	Parker Por Odam Bounta LCF
(host Hanner	NC, Riotech, Center.
Ken Walnut for Rep	r. Trudi Walend
Robert Burgin	Dept Cottonal Resources
NIC HEINEE	NCEHA
Margaret Westerast	Kennedy Covington
Alfred M: MAYS	UNC- office of the President
Jeff VAN DYKE	BELLSouth
Bill Pittman	Kilpatrick Stockton LLP
FRAN NOLAN	GRASSROOTS SCIENCE MUSEUMS
Susan Carrou	Ne Biotechnology Center
Ken Tindall	NC Bistechnology Center
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AGENDA

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

May 16, 2001

OPENING REMARKS

Representative Drew Saunders, Chair

BILLS TO BE DISCUSSED

SB 1070 ITS Dispute Resolution

Senator Kay Hagan, Bill Sponsor

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

May 16, 2001

The House Committee on Science and Technology met at 12:00 Noon on May 16, 2001, in Room 425 of the Legislative Office Building. Members present were: Representative Joe Tolson, Chair, Representative Paul Miller, Vice Chair, and Representatives Boyd-McIntyre, Harrington, Hilton, Tucker, and Walend. Brenda Carter, Committee Counsel, and Peter Capriglione with Information Systems were also in attendance. A Visitor Registration Sheet is attached and made a part of the minutes.

Representative Joe Tolson, Chair, called the meeting to order, and introduced Pages: Ashley Hitt of Pender County, sponsored by Representative Wright, and Zack Tyler of Wake County, sponsored by Representative Eddins, and Sergeant At Arms Staff Members, James Worth and Jack Dossenbach.

The only bill to be discussed was SB 1070 AN ACT ESTABLISHING A DISPUTE RESOLUTION PROCEDURE TO ASSIST THE OFFICE OF INFORMATION TECHNOLOGY IN THE COLLECTION OF FEES RELATED TO INFORMATION TECHNOLOGY SERVICES PROVIDED BY THE OFFICE. Senator Kay Hagan, Bill Sponsor, was recognized to explain the bill. A question and answer period followed the explanation. Senator Hagan was assisted in answering questions by Brenda Carter, Committee Counsel, Rob Hillman with the State Auditor's Office, Ben McLawhorn with Office of State Controller, and Ron Hawley with Information Technology Service. Representative Miller moved for a favorable report on the bill, and the motion was approved by vote.

Representative Tolson, Chair, adjourned the meeting at 12:25 P.M.

Representative Joe Tolson, Presiding Chair

Ruth Fish, Committee Assistant

2001 COMMITTEE REPORT **HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

	By Representative(s) SAUNDERS & TOLSON (Chair/Chairs) for the Committee on SCIENCE AND TECHNOLOGY.
	Committee Substitute for 1. 1070 A BILL TO BE ENTITLED AN ACT ESTABLISHING A DISPUTE RESOLUTION PROCEDURE TO ASSIST THE OFFICE OF INFORMATION TECHNOLOGY IN THE COLLECTION OF FEES RELATED TO INFORMATION TECHNOLOGY SERVICES PROVIDED BY THE OFFICE.
X	With a favorable report.
	With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations Finance .
	With a favorable report, as amended.
	With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations Finance .
	With a favorable report as to committee substitute bill (#), \square which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
	With a favorable report as to House committee substitute bill (#), which changes the title, unfavorable as to Senate committee substitute bill.
	With an unfavorable report.
	With recommendation that the House concur.
	With recommendation that the House do not concur.
	With recommendation that the House do not concur; request conferees.
	With recommendation that the House concur; committee believes bill to be material.
	With an unfavorable report, with a Minority Report attached.
	Without prejudice.
	With an indefinite postponement report.
	With an indefinite postponement report, with a Minority Report attached.
	With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

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GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

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SENATE BILL 1070 Information Technology Committee Substitute Adopted 4/23/01

	Short Title: ITS Dispute Resolution. (Public)
	Sponsors:
	Referred to:
	April 5, 2001
1	A BILL TO BE ENTITLED
2	AN ACT ESTABLISHING A DISPUTE RESOLUTION PROCEDURE TO ASSIST
3	THE OFFICE OF INFORMATION TECHNOLOGY IN THE COLLECTION OF
4	FEES RELATED TO INFORMATION TECHNOLOGY SERVICES PROVIDED
5	BY THE OFFICE.
6	The General Assembly of North Carolina enacts:
7	SECTION 1. Article 3D of Chapter 147 of the General Statutes is amended
8	by adding a new section to read:
9	"§ 147-33.93. Fees; dispute resolution panel.
10	In addition to the powers granted pursuant to Article 6B of this Chapter or by any
11	other provision of law, the Office of Information Technology Services may go before a
12	panel consisting of the State Auditor, the State Controller, and the State Budget Officer,
13	or their designees, to resolve disputes concerning services, fees, and charges incurred by
14	State government agencies receiving information technology services from the Office.
15	The State Auditor shall adopt rules for the dispute resolution process pursuant to G.S.
16	147-64.9. The decisions of the panel shall be final in the settlement of all fee disputes
17	that come before it."
18	SECTION 2. G.S. 147-64.6(c) is amended by adding a new subdivision to
19	read:
20	"(17) The Auditor or the Auditor's designee, in conjunction with the State
21	Controller and the State Budget Officer or their designees, shall handle
22	the resolution of fee disputes between the Office of Information
23	Technology Services and the State agencies receiving information
24	technology services from the Office."
25	SECTION 3. This act is effective when it becomes law.



SENATE BILL 1070: ITS Dispute Resolution

BILL ANALYSIS

Senate Information Technology Committee:

Date: Version: May 16, 2001 2nd Edition

Introduced by: Senator Hagan

Brenda J. Carter

Summary by:

Committee Counsel

SUMMARY: Senate Bill 1070 establishes a dispute resolution procedure intended to assist the Office of Information Technology in the collection of fees related to services provided to State agencies by the Office.

BILL ANALYSIS: Senate Bill 1070 authorizes the Office of Information Technology Services (ITS) to go before a panel consisting of the State Auditor, the State Controller, and the State Budget Officer to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving services from ITS. The State Auditor is directed to adopt rules for the dispute resolution procedure. Decisions of the panel will be final in the settlement of all fee disputes that come before it.

The bill would be effective when it becomes law.

3/22/01

INFORMATION TECHNOLOGY SERVICES
CUSTOMER ACCOUNT BALANCES OF \$100,000 OR MORE
OVER 90 DAYS PAST DUE
As Of March 21, 2001

	TOTAL PAST	DUE	115,897	132,014	189,354	196,079	223,574	291,593	318,876	399,137	793,936	913,860
-	TOTA		s	s	S	S	S	s	s	s	s,	\$
,	NC Information	Highway ,	6.733/	67,951		18,065	-	-	1		28,938	
	NC In	Ħ	\$	69		s			_		es	
Business	Technology	Services			150,167		223,574	53,622		,		886,378
	•				8	67	8	8 29			78	€\$
	Computing	Services				6,967		102,967			450,278	
	_		4	8	2	\$ 2		8	9	_	8	
	Telecommunication	Services	109,164	64,063	23,242	168,557		135,004	318,876	399,137	280,573 \$	27,481
	Tele		ક્ર	ક્ક	69	ક		₩	s	ક્ક	s	s
Network	Security	System			12,422	528					20,742	
_	••		_	_	3	\$	L	_	_	_	8	
		IRMC			\$ 3,523	\$ 642					\$ 4,382	
						,321		_			9,022	Н
		IRM				-					6	
					_	8					8	Н
		CUSTOMER NAME	566000756 NC State University	Dept. of Community Colleges	561130957 Dept. of Administration	Dept of Crime Control & PS	Dept. of Econ/Comm Dev		UNC Charlotte	Pender County Schools	Dept. of Correction	NC State Board of Election
		CUSTOMER NO.	566000756	561288079	561130957	566000004	561611847	562033116	560791228	566001599	566017634	561935214

3,574,318

1,313,740

1,526,097 \$

33,692

8,547

10,342 \$

VISITOR REGISTRATION SHEET

HOUSE COM. ON SCIENCE & TECHNOLOGY May 16, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ben mclawhon	OSC
Joan Myers	NCEITA
Rob Hillmen	OSA
MIKE MESSER	TIMB WALVER CABLE
BILL DEPAGNIER	TIME WASNER CABLE
LENNY MADERIEN	TIME WARNER -
John Terry	Time WARNER
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Ray Hawley	175
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Nic HEINILE	NETTA

VISITOR REGISTRATION SHEET

HOUSE COM. ON SCIENCE & TECHNOLOGY May 16, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL COX	DHAS
BILL COX Ken Melton	DHHS Alley Associates

Ruth Fish (Rep. Saunders)

From: Gayle Christian (Rep. Tolson)

Sent: Tuesday, May 22, 2001 1:11 PM

Subject: House Committee on Science and Technoloogy Cancellation

CANCELLATION NOTICE

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE 2001-2002 SESSION

on:	You are hereb	y notified that the House Committee on Science and Technology will NOT meet
DAY &	& DATE:	Wednesday, May 23, 2001
TIME	:	12:00 Noon
LOCA	TION:	Room 425

The following will be considered.

S 1023: Revise Uniform Electronic Transaction Act

Respectfully,

Representatives Saunders and Tolson Chairman

I hereby certify this notice was:	filed by the committee	e assistant at the following	ig offices at 3:00
p.m. on May 21, 2001		•	_

Principal Clerk	
Reading Clerk - House Cham	ıbeı

Gayle Christian (Committee Assistant) 715-3024 – tolsonla@ncleg.net

Ruth Fish (Rep. Saunders)

From:

Gayle Christian (Rep. Tolson)

Sent:

Tuesday, June 19, 2001 11:17

Subject: Committee Notice - June 14, 2001

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE 2001-2002 SESSION

MEETING CANCELLED

You are hereby notified that the	Committee on Scien	nce and Technology	will meet as follow	ws:
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DAY & DATE:

Wednesday, June 20, 2001

TIME:

12:00 noon

LOCATION:

425 LOB

The following bills will be considered (Bill # & Short Title & Bill Sponsor): S 1023 Revise Uniform Electronic Transactions Act.

Respectfully,

Representatives Saunders and Tolson Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at 3:00 PM on June 14, 2001.

___Principal Clerk ___Reading Clerk - House Chamber

Gayle Christian (Committee Assistant)

Ruth Fish (Rep. Saunders)

From:

Gayle Christian (Rep. Tolson)

Sent:

Monday, June 25, 2001 1:56 PM

Subject: Committee Notice -June 27,

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE 2001-2002 SESSION

DAY & DATE:

Wednesday, June 27, 2000

TIME:

12:00 noon

LOCATION:

425 LOB

The following bills will be considered (Bill # & Short Title & Bill Sponsor): S 1023 Revise Uniform Electronic Transactions Act.

Respectfully,

Representatives Saunders and Tolson Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at 3:00 PM on June 25, 2001.

Principal Clerk	
Reading Clerk - House Cham	ber

Gayle Christian (Committee Assistant)

HOUSE SCIENCE and TECHNOLOGY COMMITTEE Minutes June 27, 2001

The House Science and Technology Committee met on Wednesday, June 27, 2001, at 12:00 noon in Room 425 in the Legislative Office Building (LOB). The following members were present: Representatives Drew Saunders and Joe Tolson, chairs; Representative P. Miller, Vice-Chair; Representatives Flossie Boyd-McIntyre, Gibson, Gray, Harrington, Hilton, Tucker and Wainwright. Staff attending: Dwayne Pinckney, fiscal staff; Peter Capriglione, technology analysis; Phyllis Pickett, staff counsel; and Gayle Christian, committee assistant.

Representative Tolson, presiding chair, called the meeting to order and gave introductions of Pages, and Sgt. at Arms:

Pages: Margaret Johnson

Alamance County

Sponsor: Rep. Nelson Cole

Sondra Hoyle Will Jones

Rockingham County Sponsor: Rep. Doug Yongue Rep. Mike Harrington

Gaston County

House Sgt. at Arms: Jack Dossenbach, Maxine Holley, and Francis Poole

SB1023: Revise Uniform Electronic Transactions Act

Representative Tolson recognized Senator Hagan to explain her bill. Senator Hagan explained how the bill had brought forth long hours of study to met the concerns of the various departments within State Government and those who opposed the bill. Among those speaking in favor of the bill were Paul Stock, NC Bankers Association, and Josh Cline, Attorney General's Office. Henry Jones voiced some objection. This bill is a consumer projection bill. Senator Hagan reviewed the Bill Analysis (attachment) and offered a Proposed Committee Substitute (PCS) (attachment) as a compromise. She expressed her appreciation to all the persons who worked so diligently. (The attachments become a part of these minutes by reference.)

Representative Miller asked if the definition of electronic signature was the same on the federal level as on the state level. After discussion, counsel assured the Committee that it was the same.

After discussion, Representative Tucker moved to give a Favorable Report to the Proposed Committee Substitute and an Unfavorable Report to the bill. All members of the Committee present voting aye, the motion was adopted.

The meeting was adjourned at 12:35 p.m.,

Respectfully submitted,

Christian, Committee Assistant

Représentative Joe P Tolson, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

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SENATE BILL 1023 PROPOSED HOUSE COMMITTEE SUBSTITUTE S1023-CSRV-24 [v.1]

6/18/2001 5:57:21 PM

	Short Title: Revise Uniform Electronic Transactions Act. (Public)				
	Sponsors:				
	Referred to:				
	April 5, 2001				
1	A BILL TO BE ENTITLED				
2	AN ACT TO REVISE THE UNIFORM ELECTRONIC TRANSACTIONS ACT.				
3	The General Assembly of North Carolina enacts:				
4	SECTION 1. G.S. 66-312(17) reads as rewritten:				
5	"(17) "Transaction" means an action or set of actions occurring between two				
6	or more persons relating to the conduct of consumer, business,				
7	commercial, or governmental affairs."				
8	SECTION 2. G.S. 66-313 reads as rewritten:				
9	"§ 66-313. Scope.				
10	(a) Except as otherwise provided in subsections (b) and (c) (b), (c), and (e) of				
11	this section, this Article applies to electronic records and electronic signatures relating				
12	to a transaction.				
13	(b) This Article does not apply to a transaction to the extent it is governed by:				
14	(1) A law governing the creation and execution of wills, codicils, or				
15	testamentary trusts.				
16	(2) Chapter 25 of the General Statutes other than G.S. 25-1-107 and G.S.				
17	25-1-206, Article 2, and Article 2A.				
18	(3) Article 11A of Chapter 66 of the General Statutes.				
19	(c) This Article applies to an electronic record or electronic signature otherwise				
20	excluded from the application of this Article under subsection (b) of this section to the				
21	extent it is governed by a law other than those specified in subsection (b) of this section.				
22	(d) A transaction subject to this Article is also subject to other applicable				
23	substantive law.				
24	(e) This Article shall not apply to:				
25	(1) Any notice of the cancellation or termination of utility services,				
26	including water, heat, and power.				
27	(2) Any notice of default, acceleration, repossession, foreclosure or				
28 29	eviction, or the right to cure, under a credit agreement secured by, or a				
2 9	rental agreement for, a primary residence of an individual.				

GENERAL ASSEMBLY OF NORTH CAROLINA

			
1	<u>(3)</u>	Any notice of the cancellation or termination of health insurance or	
2		benefits, or life insurance or benefits, excluding annuities.	
3	<u>(4)</u>	Any notice of the recall of a product, or material failure of a product	
4		that risks endangering health or safety.	
5	<u>(5)</u>	Any document required to accompany the transportation or handling of	
6		hazardous materials, pesticides, or other toxic or dangerous materials."	
7		TION 3. G.S. 66-318(a) reads as rewritten:	
8	"§ 66-318. Pro	ovision of information in writing; presentation of records.	
9	(a) If par	rties have agreed to conduct a transaction by electronic means and a law	
10	requires a perso	on to provide, send, or deliver information in writing to another person,	
11	the requirement is satisfied if the information is provided, sent, or delivered, as the case		
12	may be, in an electronic record capable of retention by the recipient at the time of		
13	receipt. An elec	tronic record is not capable of retention by the recipient if the if:	
14	<u>(1)</u>	The sender or its information processing system inhibits the ability of	
15		the recipient to print or store the electronic record; or	
16	(2)	It is not capable of being accurately reproduced for later reference by	
17		all parties or persons who are entitled to retain the contract or other	
18		record.	
19	SEC	TION 4. G.S. 66-325 reads as rewritten:	
20	"§ 66-325. Tin	ne and place of sending and receipt.	
21	(a) Unle	ss the sender and the recipient agree to a different method of sending that	
22	is reasonable u	nder the circumstances, Unless otherwise agreed between a sender and a	
23	recipient, which	n in a consumer transaction must be reasonable under the circumstances,	
24		cord is sent when it:	
25	(1)	Is addressed properly or otherwise directed properly to an information	
26		processing system that the recipient has designated or uses for the	
27		purpose of receiving electronic records or information of the type sent	
28		and from which the recipient is able to retrieve the electronic record;	
29	(2)	Is in a form capable of being processed by that system; and	
30	(3)	Enters an information processing system outside the control of the	
31	• • • • • • • • • • • • • • • • • • • •	sender or of a person that sent the electronic record on behalf of the	
32		sender or enters a region of the information processing system	
33		designated or used by the recipient which is under the control of the	
34		recipient.	
35	(b) Unle	ss the sender and the recipient agree to a different method of sending that	
36	` '	nder the circumstances, Unless otherwise agreed between a sender and a	
37		n in a consumer transaction must be reasonable under the circumstances,	
38		cord is received when:	
39	(1)	It enters an information processing system that the recipient has	
40	(-)	designated or uses for the purpose of receiving electronic records or	
41		information of the type sent and from which the recipient is able to	
42		retrieve the electronic record; and	

GENERAL ASSEMBLY OF NORTH CAROLINA

- (2) It is in a form capable of being processed by that system.
- (c) Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.
- (d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:
 - (1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
 - (2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.
- (e) Notwithstanding any other sections of this Article, An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt; provided, however, in a consumer transaction, a record has not been received unless it is received by the intended recipient in a manner in which the sender has a reasonable basis to believe that the record can be opened and read by the recipient.
- (f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
- (g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement."

SECTION 5. G.S. 66-327 reads as rewritten:

"§ 66-327. Consumer transactions; alternative procedures for use or acceptance of electronic records or electronic signatures.

- (a) Consistent with the provisions of Section 102(a)2A of the federal Electronic Signatures in Global and National Commerce Act, the use and acceptance of electronic records or electronic signatures in consumer transactions shall be subject to the requirements set out in this section. The requirements of this section may not be varied by agreement of the parties.
 - (b) Limitation. This Article shall not apply to:
 - (1) Any notice of the cancellation or termination of utility services, including water, heat, and power.
 - (2) Any notice of default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.

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- (3) Any notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits (excluding annuities).
 - (4) Any notice of the recall of a product, or material failure of a product that risks endangering health or safety.
- (5) Any document required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.
- (c) Consent to Electronic Records. In a consumer transaction, transaction in which a statute, regulation, or rule of law of this State requires that information relating to a transaction or transactions in or affecting commerce be made available in writing or be disclosed to a consumer, the consumer's agreement to conduct a transaction by electronic means shall be evidenced as provided in G.S. 66-315, and shall be found only when accomplished in compliance with this section. The consumer's agreement to conduct the transaction by electronic means shall be found only when the following apply: the following provisions:
 - (1) The consumer has affirmatively consented to the use of electronic means, and the consumer has not withdrawn consent.
 - (2) The consumer, prior to consenting to the use of electronic means, is provided with a clear and conspicuous statement:
 - a. Informing the consumer of any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form.
 - b. Informing the consumer of the right to withdraw consent to have the record provided or made available in an electronic form and of any conditions or consequences of such withdrawal. Those consequences may include termination of the parties' relationship but may not include the imposition of fees.
 - c. Informing the consumer of whether the consent to have the record provided or made available in an electronic form applies only to the particular transaction which gave rise to the obligation to provide the record, or to identified categories of records that may be provided or made available during the course of the parties' relationship.
 - d. Describing the procedures the consumer must use to withdraw consent as provided in sub-subdivision (2)b. of this subsection or to update information needed to contact the consumer electronically.
 - e. Informing the consumer how, after the consent to have the record provided or made available in an electronic form, the consumer may request and obtain a paper copy of an electronic record.

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- The consumer, prior to consenting to the use of electronic means, is (3) provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and the consumer consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.
- After the consent of a consumer in accordance with subdivision (1) of (4) this subsection, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record provides the consumer with a statement of the revised hardware and software requirements for access to and retention of the electronic records, provides a statement of the right to withdraw consent without the imposition of any condition or consequence that was not disclosed under sub-subdivision (2)b. of this subsection, and again complies with subdivision (3) of this subsection.
- Written Copy Required. Notwithstanding G.S. 66-315(b), in a consumer transaction in which a statute, regulation, or rule of law of this State requires that information relating to a transaction or transactions be made available in writing or be disclosed to a consumer, where the consumer conducts the transaction on electronic equipment provided by or through the seller, the consumer shall be given a written copy of the contract or disclosure which is not in electronic form. A consumer's consent to receive future notices regarding the transaction in an electronic form is valid only if the consumer confirms electronically, using equipment other than that provided by the seller, that (i) the consumer has the software specified by the seller as necessary to read future notices, and (ii) the consumer agrees to receive the notices in an electronic form. If an individual enters into a consumer transaction that is created or documented by an electronic record, the transaction shall be deemed to have been made or to have occurred at the individual's residence.
- Oral Communications. -- An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section, except as other provided under applicable law.
- Consumer Transaction Entered Into In North Carolina. If a consumer located in North Carolina enters into a consumer transaction which is created or documented by an electronic record, the transaction shall be deemed to have been entered into in North Carolina for purpose of G.S. 22B-3 which shall apply to the transaction."
- **SECTION 6.** Article 40 of Chapter 66 of the General Statutes is amended by adding a new section to read:
- "§ 66-328. Procedures consistent with federal law.

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Consistent with the provisions of section 7002(a) of the Electronic Signatures in the Global and National Commerce Act, 15 U.S.C. § 7002(a), this Article sets forth alternative procedures or requirements for the use of electronic records to establish the legal effect or validity of records in electronic transactions."

SECTION 7. Article 40 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-329. Choice of law in computer information agreement.

A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the Uniform Computer Information Transactions Act, as proposed by the National Conference of Commissioners on Uniform State Laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this State if the party against whom enforcement of the choice of law provisions is sought is a resident of this State or has its principal place of business located in this State. For purposes of this section, a "computer information agreement" means an agreement that would be governed by the Uniform Computer Information Transactions Act or substantially similar law as enacted in the state specified in the choice of law provisions if that state's law were applied to the agreement. This section may not be varied by agreement of the parties. This section shall remain in force until such time as the North Carolina General Assembly enacts the Uniform Computer Information Transactions Act or any substantially similar law and that law becomes effective."

SECTION 8. This act becomes effective October 1, 2001.

Page 6 Senate Bill 1023 S1023-CSRV-24



SENATE BILL 1023: **Revise Uniform Electronic Transactions Act**

Committee: House Science & Technology

Date:

June 27, 2001

Version:

Proposed Committee Sub

S1023-CSRV-24

Introduced by: Senator Hagan Summary by:

Brenda J. Carter

Committee Counsel

SUMMARY: Senate Bill 1023 amends Article 40 of Chapter 66 (the Uniform Electronic Transactions Act), to provide greater conformity with the federal Electronic Signatures in Global and National Commerce Act. Both acts were passed in 2000, and are designed to regulate electronic commerce. The federal act preempts any state statutes except those that effect interstate commerce, are consistent with the Uniform Electronic Transactions Act and those that are not inconsistent with the federal act. Senate Bill 1023 would become effective October 1, 2001.

BILL ANALYSIS: Section 1 of the bill clarifies that the word "transaction" as used in the Uniform Electronic Transactions Act (UETA) refers to consumer transactions as well as business, commercial, or governmental affairs.

Section 2 of the bill amends G.S. 66-313, which defines the scope of UETA. The bill specifies that UETA does not apply to any notice of the cancellation of utility services or to any notice concerning foreclosure or eviction for a person's primary residence. It also provides that UETA does not apply to cancellation of health insurance or life insurance, to notices of product recalls notices, or to documents required to accompany hazardous materials. These exceptions were previously set out in G.S. 66-327. which is amended in Section 5 of the bill.

Section 3 of the bill amends G.S. 66-318, which provides that when parties agree to conduct a transaction by electronic means, any law requiring written notice is satisfied if the information is provided in an electronic record capable of retention by the recipient. The bill specifies that an electronic record does not meet the retention requirement if it cannot be accurately reproduced for later reference by all parties who are entitled to the contract or record.

Section 4 of the bill amends G.S. 66-325, which permits the sender and recipient to agree to alternative methods of sending and receipt that are reasonable under the circumstances. The amendment makes the "reasonable under the circumstances" requirement applicable only to consumer transactions. The bill also makes it clear that except for consumer transactions, an electronic record is "received" when it meets UETA specifications even if no individual is aware of its receipt. In consumer transactions a record is not received unless it is received by the intended recipient in a manner in which the sender has a reasonable basis to believe the record can be opened and read by the recipient.

Section 5 of the bill makes a conforming amendment to delete language that is now set out elsewhere in UETA. It also clarifies that a consumer transaction which is required by state statute or rule to be in writing must comply with the provisions of G.S. 66-315, which spells out how parties may agree to electronic transactions. This section also amends the law to specify that in a consumer transaction where a State statute, regulation, rule, or law requires that information of the transaction be provided to a consumer in writing, and the consumer uses electronic equipment provided by the seller, the consumer must receive a written copy of the transaction not in electronic form. It also adds specific language that oral communications or recordings do not qualify as electronic records for purposes of consumer

SENATE BILL 1023

Page 2

transactions. This section of the bill provides that where a consumer located in North Carolina enters into a consumer transaction that is created or documented by an electronic record, the transaction is deemed to have been entered into in North Carolina for purposes of G.S. 22B-3, which states that any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable.

Section 6 of the bill adds a new section to Article 40, G.S. 66-328, stating that North Carolina's enactment of UETA sets forth alternative procedures for electronic records consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.

Section 7 of the bill prevents a company from trying to enforce the provisions of the Uniform Computer Information Transactions Act (UCITA) as enacted in another state, by inserting into contracts entered into by a North Carolina resident a choice of law provision for the law of a state that has passed UCITA. The section also provides that this section shall only remain in force until such time as North Carolina passes UCITA or a similar law.

Section 8 makes the act effective October 1, 2001.

S1023-SMRV-001

*Kory Goldsmith contributed to this summary

Paul Stock

From: Sent:

Cc:

Paul Stock

Wednesday, June 27, 2001 8:31 AM

'Vreunesday, June 27, 2001 8:31 AM
'Drew Saunders'; 'Joe Tolson'; 'Flossie Boyd-McIntyre'; 'Debbie Clary'; 'Pryor Gibson'; 'Lyons Gray'; 'Russell Tucker'; 'William Wainwright'; 'Trudi Walend'; 'Paulm@ncleg.net'; 'MikeH@ncleg.net'; 'Indaj@ncleg.net'
Don Lampe (E-mail); Ed Winslow (E-mail); Harriet Worley (E-mail);
'JSTEIN@mail.jus.state.nc.us'; Bill Scoggin (E-mail)

Senate Bill 1023: NCUETA Revisions Subject:

MEMORANDUM

TO:

HOUSE SCIENCE & TECHNOLOGY COMMITTEE

FROM:

Paul H. Stock, North Carolina Bankers Association

RE:

Senate Bill 1023: Revisions to NC UETA

The General Assembly passed the Uniform Electronic Transactions Act (UETA) last year at about the same time that Congress was enacting E-SIGN (Electronic Signatures in Global and National Commerce Act). E-SIGN contains some very ambiguous and confusing preemption language. An oversimplified explanation of the federal preemption provision would be to state that anything other than a "pure" UETA as recommended by the National Conference of Commissioners on Uniform State Laws is preempted unless the differences are "consistent" with E-SIGN. As adopted in North Carolina, UETA contains quite a few consumer protections, some of which are clearly not consistent with E-SIGN. The North Parolina Bankers Association, representatives of the bar and others have been orking with the Consumer Protection Division of the Attorney General's Office o craft revisions to NCUETA that eliminate the more obvious inconsistencies with E-SIGN while retaining the most important consumer protections.

The Proposed Committee Substitute for Senate Bill 1023, calendared for consideration by the House Science & Technology Committee at noon today, is the result of those efforts over many months. It is a compromise that we believe strikes a reasonable balance and has good prospects of not being deemed preempted by E-SIGN should it be the subject of litigation. Electronic commerce is of the utmost importance to North Carolina's banks and many other businesses in this state. We urge you to vote in favor of the Proposed Committee Substitute for Senate Bill 1023.

Thank you for your consideration.



Paul H. Stock (E-mail).vcf

VISITOR REGISTRATION SHEET

House Committee on Science and Technology

June 27, 2001

Name of Committee

Date

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House Committee on Science and Technology	June 27, 2001	
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