

**2013-2014**

**SENATE  
PROGRAM  
EVALUATION**

**MINUTES**

## **MEMBERSHIP**

### **SENATE PROGRAM EVALUATION COMMITTEE 2013 - 2014**

**Senator Fletcher Hartsell, Chair**  
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**919-733-7223**

**Senator Neal Hunt**  
**Room 309, LOB**  
**919-733-5850**

**Senator Stan Bingham**  
**Room 2117, LB**  
**919-733-5665**

**Senator Floyd McKissick**  
**Room 516, LOB**  
**919-733-4599**

**Senator Andrew Brock**  
**Room 521, LOB**  
**919-715-0690**

**Senator Martin Nesbitt**  
**Room 1129, LB**  
**919-715-3001**

**Senator Ben Clark**  
**Room 1121, LB**  
**919-733-9349**

**Senator Shirley Randleman**  
**Room 308, LOB**  
**919-733-5743**

**Senator Dan Clodfelter**  
**Room 620, LOB**  
**919-715-8331**

**Senator Norman Sanderson**  
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**919-733-5706**

**Senator Bill Cook**  
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**919-715-8331**

**Senator Mike Woodard**  
**Room 515, LOB**  
**919-733-4809**

**Senator Rick Gunn**  
**Room 312, LOB**  
**919-301-1446**

#### **Committee Assistant**

**Gerry Johnson**

#### **Research Staff**

**Hal Pell -Research**  
**Jan Paul - Research**

**NORTH CAROLINA GENERAL ASSEMBLY**  
**SENATE PROGRAM EVALUATION COMMITTEE**  
**2013 – 2014 SESSION**



**Sen. Fletcher Hartsell**  
**Chair**



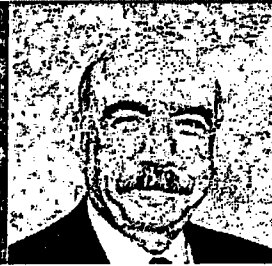
**Sen. Stan Bingham**



**Sen. Andrew Brock**



**Sen. Ben Clark**



**Sen. Dan Clodfelter**



**Sen. Bill Cook**



**Sen. Rick Gunn**



**Sen. Neal Hunt**



**Sen. Floyd McKissick**



**Sen. Martin Nesbitt**



**Sen. Shirley Randleman**



**Sen. Norman Sanderson**



**Sen. Mike Woodard**

North Carolina General Assembly  
Through Senate Committee on  
Program Evaluation

2013-2014 Biennium  
Leg. Day: H-102/S-102

Date: 07/24/2013  
Time: 10:58:27 AM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 13	Howard	State Agency Property Use/Biennial Report.	*H	Conferee Added	02/20/2013	04/30/2013
H 834	Collins	Modern State Human Resources Management/RTR.	*S	Re-ref Com On Rules and Operations of the Senate	05/16/2013	06/05/2013
S 29	Hartsell	NC Railroad Company Reporting and Dividends.	*S	Re-ref Com On Appropriations/Base Budget	02/04/2013	04/17/2013
S 32	Hartsell	Periodic Review and Expiration of Rules.	S	Re-ref Com On Program Evaluation	02/04/2013	05/07/2013
S 32	Hartsell	Periodic Review and Expiration of Rules.	S	Re-ref Com On Program Evaluation	05/14/2013	
S 78	Hartsell	Amend State Contract Review Laws.	*H	Ref To Com On Finance	02/13/2013	05/08/2013
S 144	Hartsell	Nonprofit Grants/Increase Accountability.	*S	Re-ref Com On Appropriations/Base Budget	02/28/2013	04/23/2013
S 193	Hartsell	Child Nutrition Program Solvency and Support.	*H	Ref to the Com on Education, if favorable, Finance	03/06/2013	04/30/2013
S 426	Davis	Change Deadline/Auditee Response.-AB	*H	Re-assigned To Regulatory Reform	03/27/2013	04/16/2013
S 446	Brock	Modify Internal Auditing Statutes.	S	Ref to Program Evaluation. If fav, re-ref to Judiciary II	03/27/2013	
S 448	Brock	Omnibus State IT Governance Changes.	S	Ref To Com On Program Evaluation	03/27/2013	

'\$' indicates the bill is an appropriations bill.

A bold line indicates that the bill is an appropriations bill.

'\*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is dential to another bill

**Senate Committee on Program Evaluation  
Tuesday, April 9, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 29	NC Railroad Company Reporting and Dividends.	Senator Hartsell
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 78	Amend State Contract Review Laws.	Senator Hartsell
SB 144	Nonprofit Grants/Increase Accountability.	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell

**Presentations**

1. John Turcotte, Director of Program Evaluation Division, will give comments regarding Program Evaluation Studies, State Government Accountability and Organization.
2. Bills are for brief discussion only and/or introduction of proposed committee substitutes or amendments.

**Other Business**

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, April 9, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 13	State Agency Property Use/Biennial Report.	Representative Howard Representative W. Brawley Representative Moffitt Representative Wray
SB 29	NC Railroad Company Reporting and Dividends.	Senator Hartsell
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 78	Amend State Contract Review Laws.	Senator Hartsell
SB 144	Nonprofit Grants/Increase Accountability.	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell
SB 426	Change Deadline/Auditee Response.- AB	Senator J. Davis
SB 446	Modify Internal Auditing Statutes.	Senator Brock
SB 448	Omnibus State IT Governance Changes.	Senator Brock

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, April 9, 2013 at 12:00 PM  
Room 421 of the Legislative Office Building**

**MINUTES**

The Senate Committee on Program Evaluation met at 12:00 PM on April 9, 2013, in Room 421 of the Legislative Office Building with eleven members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced the Sergeant-at-Arms and thanked them for their assistance. He then recognized pages Shyheem Carmon, Jamar Jones, Ruan Warren, Brett Shackleford and thanked them for their assistance to the committee.

Senator Hartsell gave an introduction and brief commentary of the purpose and accomplishments of the Program Evaluation Division. He also reminded the committee that all of the bills on the calendar were for discussion only and no votes would be taken at this meeting.

As all of the bills on the committee calendar were Senator Hartsell's bills, he asked Senator Dan Clodfelter to preside as he had a background with Program Evaluation.

**SB 29 – NC Railroad Company Reporting and Dividends.** Senator Hartsell noted the bill and presented an amendment which he then explained. Senator Hartsell answered questions from Senators Gunn and McKissick. Mr. Scott Saylor, President of the North Carolina Railroad Company, noted that he was in agreement with the amendment. Senator Hartsell moved for adoption of the amendment and rolled into a new Proposed Committee Substitute. All voted and the motion carried. The bill will be heard at a future meeting.

**SB 32 – Periodic Review and Expiration of Rules.** Senator Hartsell explained the bill and Senator McKissick gave comments. Senator Hartsell noted that this bill came from the Rules Review Commission as a recommendation. The bill was displaced for a future meeting.

**SB 78 – Amend State Contract Review Laws.** Senator Hartsell presented a Proposed Committee Substitute. Senator Brock moved for adoption for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill and asked that the committee take a serious look at it. The bill was displaced for a future meeting.

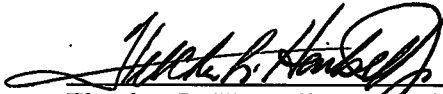
**SB 144 – Nonprofit Grants/Increase Accountability.** Senator Hartsell explained the bill and recommended that each member of the committee take the opportunity to review the report that came from Program Evaluation. It was displaced for a future meeting.

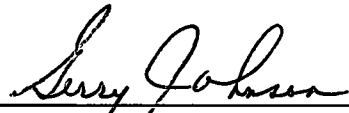
**SB 193 – Child Nutrition Program Solvency and Support.** Senator Hartsell commented on the bill. Senator Clodfelter recognized Dr. Lynn Harvey, Section Chief of Child Nutrition for the Department of Instruction, who gave brief comments on the program. Senator Hartsell asked that some member of the committee volunteer to focus on the issues of the bill. The bill was displaced for a future meeting.

Senator Clodfelter then turned the meeting back to Senator Hartsell.

Senator Hartsell recognized mr. John Turcotte, Director of Program Evaluation Division, who presented a power point overview of the State Government Accountability and the Program Evaluation Division. (Attachment 1)

There being no further business, the meeting was adjourned.

  
Fletcher L. Hartsell, Jr., Chairman

  
Gerry Johnson, Committee Assistant



Principal Clerk \_\_\_\_\_

Reading Clerk \_\_\_\_\_

**Corrected #1: HB 13, SB 426 ,446 and 448 Removed**

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

**The Senate Committee on Program Evaluation will meet at the following time:**

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	April 9, 2013	12:00 PM	421 LOB

**The following will be considered:**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
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SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 78	Amend State Contract Review Laws.	Senator Hartsell
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1. John Turcotte, Director of Program Evaluation Division, will give comments regarding Program Evaluation Studies, State Government Accountability and Organization.

2. Bills are for brief discussion only and/or introduction of proposed committee substitutes or amendments.

**Senator Fletcher L. Hartsell, Jr., Chair**

Principal Clerk  
Reading Clerk

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will meet at the following time:

DAY	DATE	TIME	ROOM
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SB 448	Omnibus State IT Governance Changes.	Senator Brock

Senator Fletcher L. Hartsell, Jr., Chair

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 29\*

Short Title: NC Railroad Company Reporting and Dividends. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); and Randleman.

Referred to: Program Evaluation.

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) STRENGTHEN OVERSIGHT, ANNUAL REPORTING, AND STRATEGIC PLANNING BY THE NORTH CAROLINA RAILROAD COMPANY, (2) REQUIRE A ONE-TIME CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE GENERAL FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE GENERAL FUND, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NON-CORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO THE STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1. Reporting and Oversight.** – (a) G.S. 124-1 reads as rewritten:

**"§ 124-1. Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in ~~G.S. 124-3.~~ G.S. 124-17."

**SECTION 1.(b)** Article 2 of Chapter 124 of the General Statutes is amended by adding a new section, G.S. 124-15. G.S. 124-6(b), as amended by Section 3.3(a) of S.L. 1999-431, is recodified as G.S. 124-15(a). G.S. 124-5(b) is recodified as G.S. 124-15(b). G.S. 124-15, as created and amended by this subsection, reads as rewritten:

**"§ 124-15. Board of directors; appointment and approval of encumbrances.**

(a) Notwithstanding subsection (a) of ~~this section,~~ G.S. 124-6, for any State-owned railroad company ~~organized as a corporation in which the State is the owner of all the voting stock and which~~ that has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, two shall also be appointees to the Board of Transportation. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General



\* S 2 9 - V - 1 \*

1 Assembly by the President Pro Tempore of the Senate, two shall be appointed for terms of four  
2 years and one shall be appointed for a term of two years. Thereafter all Board members shall  
3 serve four-year terms. The Board shall elect the chairman from among its membership.

4 (b) No State-owned railroad company shall sell, lease, mortgage, or otherwise  
5 encumber its franchise, right-of-way, or other property, except by and with the approval and  
6 consent of the Board of Directors of that corporation. The president or other chief officer of the  
7 State-owned railroad company shall report any acquisitions and dispositions in accordance with  
8 G.S. 124-3(10)."

9 SECTION 1.(c) Article 2 of Chapter 124 of the General Statutes is amended by  
10 adding a new section to read as follows:

11 **"§ 124-16. Strategic plan required of State-owned railroad company; performance**  
12 **management system.**

13 (a) Any State-owned railroad company shall prepare and maintain a comprehensive  
14 strategic plan that includes a mission statement describing the purpose of the company and  
15 clear goals that address the strategic issues facing the company.

16 (b) Any State-owned railroad company shall develop and implement a formalized  
17 performance management system based on its strategic plan. The performance management  
18 system shall measure and monitor progress toward achieving strategic objectives. When  
19 performance fails to achieve strategic objectives within the time period established in the plan,  
20 a State-owned railroad company shall take corrective action."

21 SECTION 1.(d) Article 2 of Chapter 124 of the General Statutes is amended by  
22 adding a new section, G.S. 124-17. G.S. 124-3(b) is recodified as G.S. 124-17(b). G.S. 124-3(c)  
23 is recodified as G.S. 124-17(c). G.S. 124-17, as created and amended by this subsection, reads  
24 as rewritten:

25 **"§ 124-17. Enhanced annual report of State-owned railroad company; additional**  
26 **reporting requirements to Governor and General Assembly.**

27 (a) A State-owned railroad company shall submit an annual report to the Joint  
28 Legislative Commission on Governmental Operations and the Joint Legislative Transportation  
29 Oversight Committee. The report shall include the following:

30 (1) The information required under G.S. 124-3.

31 (2) A copy of the strategic plan required under G.S. 124-16.

32 (3) Any failures to meet strategic objectives and what corrective actions were  
33 taken under G.S. 124-16(b).

34 (4) The information required by Form 10-K that public companies must file  
35 with the U.S. Securities and Exchange Commission pursuant to sections 13  
36 and 15(d) of the Securities Exchange Act of 1934, as amended. If a  
37 particular reporting requirement of Form 10-K is not relevant to the railroad  
38 company, the report shall include an explanation why.

39 (5) Anticipated dividends for the next three fiscal years.

40 (b) Upon the request of the Governor or any committee of the General Assembly, a  
41 State-owned railroad company shall provide all additional information and data within its  
42 possession or ascertainable from its records. The State-owned railroad company shall not be  
43 deemed to have waived any attorney-client privilege when complying with this subsection. At  
44 the time a State-owned railroad company provides information under this section, it shall  
45 indicate whether the information is confidential. Confidential information shall be subject to  
46 subsection (c) of this section.

47 (c) Confidential information includes (i) information related to a proposed specific  
48 business transaction where inspection, examination, or copying of the records would frustrate  
49 the purpose for which the records were created, or (ii) information that is subject to  
50 confidentiality obligations of a railroad company. Confidential information is exempt from  
51 Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

SECTION 2. One-time cash dividend. – Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a cash dividend in the amount of fifteen million five hundred thousand dollars (\$15,500,000), which shall be deposited into the General Fund, no later than June 30, 2013.

SECTION 3. Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:  
 "§ 124-5.1. State use of North Carolina Railroad Company dividends deposited to General Fund.

(a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company. The improvements may include the following project types:~~

(1) ~~Railroad and industrial track rehabilitation.~~

(2) ~~Railroad signal and grade-crossing protection.~~

(3) ~~Bridge improvements.~~

(4) ~~Corridor protection.~~

(5) ~~Industrial site acquisition deposited into the General Fund.~~

(b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on those obligations relating to periods prior to January 1, 2000, shall be deemed paid and contributed by the State to the capital of the North Carolina Railroad Company."~~

SECTION 3.(b) Article 2 of Chapter 124 of the General Statutes is amended by adding the following new section:

**"§ 124-18. Dividends required of State-owned railroad company.**

Any State-owned railroad company that has trackage in more than two counties shall issue an annual cash dividend to the State. The minimum amount of the annual dividend is twenty-five percent (25%) of the company's income from its trackage rights agreements for the prior year. Such a minimum dividend is due by January 15 of each year, and interest shall accrue at the rate of prime plus one percent (1%) if the payment is not paid by the due date."

SECTION 3.(c) G.S. 136-16.6 is repealed.

SECTION 4. One-time real property dividend. – (a) Any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a dividend consisting of any of the company's non-corridor real property that is among the following parcels:

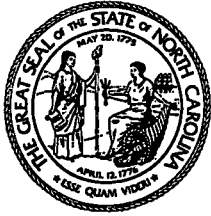
Property Description	County	Nearest Town	Parcel ID
Burke Street Lot	Alamance	Gibsonville	107493
4th Street Lot	Carteret	Morehead	638620808907000
Bridges St. Lot	Carteret	Morehead	638620911461000
Newport Lot	Carteret	Newport	634814246231000
Station & Former Industrial Lot	Carteret	Morehead	638620718127000
Waterfront & Riparian Rights	Carteret	Morehead	638620708857000 & 638620709868000
Wye Ppty. Extension	Carteret	Morehead	637616924807000
Wye Property	Carteret	Morehead	637620923019000
Clarks Lot	Craven	Clarks	8-221-035
N. Craven St. Lot	Craven	New Bern	8-003-241-A

1	Tiffany & Bright Sts. Property	Lenoir	Kinston	11185 & 26555
2	Hillsborough Former Depot Lot	Orange	Hillsborough	9864755143
3	Morrisville Former Depot	Wake	Morrisville	0755-14-6475
4	Waynesboro Lot	Wayne	Goldsboro	2599119118

5 The dividend required by this section shall be issued no later than June 30, 2013. Any  
6 State-owned railroad making a dividend under this section may deduct any tax liabilities under  
7 the Internal Revenue Code triggered by this dividend from the amount of the dividend required  
8 under Section 2 of this act.

9 **SECTION 4.(b)** Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department  
10 of Administration shall sell the properties issued as dividends under this section and deposit the  
11 proceeds of the sales into the General Fund. Notwithstanding any other provision of law, the  
12 Department of Administration may deduct the costs of selling the property from the proceeds of  
13 the sales.

14 **SECTION 5.** Section 3 of this act becomes effective January 1, 2014. The  
15 remainder of this act is effective when it becomes law.



# SENATE BILL 29: NC Railroad Company Reporting and Dividends

2013-2014 General Assembly

<b>Committee:</b>	Senate Ref to Program Evaluation. If fav, re- ref to Finance	<b>Date:</b>	April 5, 2013
<b>Introduced by:</b>	Sen. Hartsell	<b>Prepared by:</b>	Hal Pell
<b>Analysis of:</b>	First Edition		Committee Counsel

**SUMMARY:** *This act implements the four recommendations of the Program Evaluation Oversight Division's Report Number 2012-10, which is entitled "North Carolina Should Require NC Railroad Company to Pay an Annual Dividend and Strengthen Reporting." Those four recommendations are to (1) strengthen oversight, annual reporting, and strategic planning by the North Carolina Railroad Company (NCR), (2) require a one-time cash dividend, (3) require an annual dividend, and (4) require the transfer of low income non-corridor properties to the State for sale.*

**CURRENT LAW:** Chapter 124 provides the existing law for internal improvement corporations in which the State owns a majority of the stock. Chapter 124 covers such topics with respect to internal improvement corporations as: reporting (G.S. 124-3), the use of dividends from the North Carolina Railroad Company (G.S. 124-5.1), and the appointment of officers to a company (G.S. 124-6).

The North Carolina Railroad Company is an internal improvement corporation entirely owned by the State. Thus, the NCR is subject to the requirements of Chapter 124. But as a Chapter 55 stock corporation, the NCR otherwise functions like most stock corporations, albeit one with a unique stockholder. The NCR has not issued any dividends to its stockholder in recent years. According to statute, dividends are to be used by the Department of Transportation as directed by the NCR board.

**BILL ANALYSIS:** Sections one through four of the bill correspond to the four numbered recommendations of the Program Evaluation Report Number 2012-10.

**Section 1** modifies the existing board appointment and reporting requirements.

- Subsection (b) requires the governor to cross-appoint two board members from the Board of Transportation.
- Subsection (c) requires the railroad company to (i) prepare and maintain a comprehensive strategic plan, including a mission statement, and (ii) develop and implement a formalized performance management system.
- Subsection (d) builds on the existing annual reporting requirements through the enactment of a new statute, which adds new language and recodifies existing reporting laws. The new law requires the inclusion of new information, the most significant largest being the same information as is included in a publicly traded corporation's Form 10-K. Subsection (d) also clarifies that confidential information of a State-owned railroad company not only is exempt from a public records request (existing law), but is not a public record.

**Section 2** requires a one-time cash dividend in the amount of \$15.5 million, payable to the General Fund no later than June 30, 2013.

O. Walker Reagan  
Director



\* S 2 9 - S M R K - 4 1 E 1 - V 1 \*

Research Division  
(919) 733-2578

# Senate Bill 29

Page 2

## Section 3 of the act:

- Directs that all NCRR dividends be deposited into the General Fund, rather than be used to improve the NCRR's corridor (as provided in G.S. 126-5.1) or on rail-related improvements (as provided in G.S. 136-16.6, which G.S. 126-5.1 arguably supersedes because it was passed later in time).<sup>1</sup> Dividends are due by January 15th each year and late dividends are subject to interest at a rate of the prime rate plus one percent.
- Requires that any dividends be paid to the General Fund, including an annual cash dividend in an amount equal to 25% of the trackage rights agreement. The rent under the trackage rights agreement adjusts each year, so the exact amount of the dividend will vary. The dividend for 2014 would be approximately \$3.7 million.

**Section 4** requires a one-time real property dividend consisting of low income non-corridor properties. The section authorizes NCRR to deduct any tax implications of the transfer from the \$15.5 million cash dividend required under Section 2.<sup>2</sup> Subsection (b) directs the Department of Administration sell the properties, allowing deductions from the sale proceeds for the costs of the sales.

**EFFECTIVE DATE:** Section 3 becomes effective January 1, 2014, meaning that the first annual cash dividend will be due January 15, 2014. The remainder of the act is effective when it becomes law. The one-time cash and real property dividends are both due by June 30, 2013.

**BACKGROUND:** Section 28.12A of S.L. 2011-145, as amended, directed PED to "conduct a comprehensive evaluation of the North Carolina Railroad Company" and included a list of issues to be addressed in the evaluation. A complete listing of the issues is available in that session law and on page 2 of the Report Number 2012-10.

*S29-smrk-41(e1)*

*Ryan Blackledge, Staff Attorney, significantly contributed to this summary.*

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<sup>1</sup> Any property transferred from a corporation to a shareholder (unless a fair market price transaction) is considered "distribution" under North Carolina's Chapter 55 corporate law. A statutory requirement that all dividends be deposited to the General Fund may preclude the NCRR from transferring property (including cash) directly to State entities unless the NCRR receives something of fair market value in exchange. Existing statutes likely similarly limit such transfers, depending on the entity involved.

<sup>2</sup> The Internal Revenue Code requires most corporations to pay taxes on the gain on real property issued as a dividend to a shareholder.





NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 29\*

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

S29-ARK-23 [v.3]

Page 1 of 2

Comm. Sub. [NO]  
Amends Title [YES]  
First Edition

Date \_\_\_\_\_, 2013

Senator Hartsell

1 moves to amend the bill on page 1, lines 5 through 7 to read:

2  
3 "COMPANY TO THE HIGHWAY FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND  
4 OF THE NORTH CAROLINA RAILROAD COMPANY TO THE HIGHWAY FUND, AND  
5 (4) REQUIRE THE TRANSFER OF LOW INCOME", and  
6

7 On page 1, lines 9 and 10, by rewriting those lines to read:

8  
9 "COMPANY TO THE STATE.", and  
10

11 On page 3, lines 1 through 5, by rewriting those lines to read:

12  
13 "SECTION 2.(a) The Freight Rail & Rail Crossing Safety Improvement Account is  
14 established within the Highway Fund as a separate, nonreverting account.

15 SECTION 2.(b) One time cash dividend. – Notwithstanding G.S. 124-5.1 and G.S.  
16 136-16.6, any State owned railroad company, as defined under G.S. 124-11, that has trackage  
17 in more than two counties shall issue a cash dividend in the amount of fifteen million five  
18 hundred thousand dollars (\$15,500,000), which shall be deposited into the Freight Rail & Rail  
19 Crossing Safety Improvement Account no later than June 30, 2013.", and  
20

21 On page 3, lines 7 through 21, by rewriting those lines to read:

22  
23 "~~§ 124-5.1. State use of North Carolina Railroad Company dividends.~~dividends deposited  
24 to Highway Fund.

25 (a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of~~  
26 ~~the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company~~  
27 ~~received by the State shall be applied to reduce the obligations described in subsection (e) of~~  
28 ~~Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L.~~  
29 ~~1999-237. Any dividends of the North Carolina Railroad Company received by the State shall~~  
30 ~~be used by the Department of Transportation for the improvement of the property of the North~~  
31 ~~Carolina Railroad Company as recommended and approved by the Board of Directors of the~~  
32 ~~North Carolina Railroad Company. The improvements may include the following project~~



\* S 2 9 - A R K - 2 3 - V - 3 \*

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 29\*

AMENDMENT NO. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

S29-ARK-23 [v.3]

Page 2 of 2

1 ~~types:deposited into the Freight Rail & Rail Crossing Safety Improvement Account, a separate~~  
2 ~~non-reverting account within the Highway Fund and administered by the Department of~~  
3 ~~Transportation's Rail Division. Funds from the Account shall be used for the enhancement of~~  
4 ~~freight rail service and railroad-roadway crossing safety, and may include the following project~~  
5 ~~types:~~

- 6 (1) ~~Railroad and industrial track rehabilitation.~~ Track and associated  
7 infrastructure improvements for freight service.  
8 (2) ~~Railroad signal and grade crossing protection.~~ Grade crossing protection,  
9 elimination, and hazard removal.  
10 (3) ~~Bridge improvements.~~ Signalization improvements.  
11 (4) ~~Corridor protection.~~ Assistance for projects to improve rail access to  
12 industrial, port, and military facilities and for freight intermodal facility  
13 improvements, provided that funding assistance under this subdivision shall  
14 be subject to the same limits as that for short-line railroads under  
15 G.S. 136-44.39.  
16 (5) ~~Industrial site acquisition.~~

17 . . . .", and  
18

19 On page 4, lines 9 through 13, by rewriting the lines to read:  
20

21 "SECTION 4.(b) Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the  
22 Department of Administration shall sell the properties issued as dividends under this section  
23 and deposit the proceeds of the sales into the Freight Rail & Rail Crossing Safety Improvement  
24 Account of the Highway Fund. Notwithstanding any other provision of law, the Department of  
25 Administration may deduct the costs of selling the property from the proceeds of the sales."  
26  
27

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 32\*

Short Title: Periodic Review and Expiration of Rules. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); and Goolsby.

Referred to: Program Evaluation.

February 4, 2013

A BILL TO BE ENTITLED.

AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed ~~rule.~~ rule, unless the rule is a readoption without changes to the existing rule proposed to keep a permanent rule from expiring.
- (2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-21.3A. Expiration date of permanent rules.

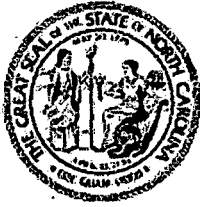
(a) Unless readopted pursuant to the provisions of G.S. 150B-21.2 and approved by the Commission pursuant to the provisions of Part 3 of Article 2A of this Chapter, a permanent rule expires on the latest of any of the following:

- (1) December 31, 2016, for rules in Title 10A of the North Carolina Administrative Code.
- (2) December 31, 2017, for rules in Title 15A of the North Carolina Administrative Code.



- 1           (3)   December 31, 2018, for rules, in Title 21 of the North Carolina  
2           Administrative Code.  
3           (4)   December 31, 2019, for all remaining rules, unless and to the extent the  
4           agencies that adopted the rules are exempt from the rule-making  
5           requirements in this Article.  
6           (5)   Ten years after its effective date.  
7           (6)   Ten years after its readopted effective date.  
8           (7)   Ten years from the effective date of the most recent amendment to the rule.  
9       (b)   The Commission shall establish a time line for the submission of rules subject to  
10   expiration after consultation with the adopting agency.  
11       (c)   The Codifier of Rules shall annually notify agencies of rules that will expire within  
12   the next two years."

13           **SECTION 3.** This act is effective when it becomes law.



## SENATE BILL 32: Periodic Review and Expiration of Rules

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: First Edition

Date: April 5, 2013  
Prepared by: Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 32 would amend the Administrative Procedure Act to provide for the periodic review and expiration of State agency rules.*

**BILL ANALYSIS:** SB 32 would make the following changes to the Administrative Procedure Act:

- Provide in G.S. 150B-21.2(c) that a notice of a proposed rule need not include the text of that proposed rule if the rule is being readopted without changes for the purpose of preventing a permanent rule from expiring.
- Create a new G.S. 150B-21.3A establishing various expiration dates for rules as specified, except those rules readopted under the section governing the procedures for adopting permanent rules and approved by the Rules Review Commission under the Part of the General Statutes that governs the Commission's review of rules.
- Direct the Rules Review Commission to establish a timeline for submitting rules subject to expiration after consulting with the adopting agency.
- Require the Codifier of Rules to annually notify agencies of the rules that will expire within the next two years.

**EFFECTIVE DATE:** This act is effective when it becomes law.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 78\*

Short Title:	Amend State Contract Review Laws.	(Public)
<hr/>		
Sponsors:	Senators Hartsell (Primary Sponsor); Apodaca, Clodfelter, Daniel, Graham; Gunn, Hise, Hunt, and Randleman.	
<hr/>		
Referred to:	Program Evaluation.	

February 13, 2013

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF  
CERTAIN STATE CONTRACTS, AND TO PROVIDE FOR CONTRACT  
MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1. G.S. 114-8.3 reads as rewritten:**

**"§ 114-8.3. Attorney ~~General~~ General/General Counsel; to review certain contracts.**

(a) Except as provided in subsection (b) of this section, the Attorney General or the Attorney General's designee shall review all proposed contracts for supplies, materials, printing, equipment, ~~and or~~ contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General, in consultation with the Department of Administration, shall establish procedures regarding the review of contracts subject to this section, and shall provide any attorney designated under this subsection with guidelines to be used in reviewing contracts. shall require that any Any attorney designated under this subsection shall comply with any rules-procedures established by the Attorney General ~~or the Department of Administration~~ regarding the review of contracts.

(a1) Any contract for services that exceeds five million dollars (\$5,000,000), which requires that a representative from within the office of the Attorney General advise and assist in the negotiation of contract for services pursuant to G.S. 143-49(3a), must include the signature and title of the Attorney General's representative in order to be valid.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection.



1 The General Counsel shall establish procedures regarding the review of contracts subject to this  
2 section, and shall require that any attorney designated under this subsection comply with any  
3 ~~rules-procedures~~ established by the Attorney General ~~or the Department of Administration~~  
4 regarding the review of contracts.

5 (c) All State agencies, the constituent institutions of The University of North Carolina,  
6 or any person who will be entering into a contract on behalf of the State for supplies, materials,  
7 printing, equipment, or contractual services that exceed one million dollars (\$1,000,000) shall  
8 notify the Secretary of the Department of Administration or the Secretary's designee of the  
9 intent to enter into the contract, and provide information as required by the Secretary or the  
10 Secretary's designee, including, but not limited to, the name and title of the attorney designated  
11 to conduct the review required by this section.

12 (d) The Department of Administration shall adopt procedures for the identification and  
13 record keeping of contracts subject to review under this section. The records shall be kept by  
14 the Department and shall include a log identifying all contracts subject to review under this  
15 section. The log shall include, at a minimum, (i) the name of the contracting agency,  
16 constituent institution of The University of North Carolina, or the party that is contracting on  
17 behalf of the State and (ii) the name and title of the attorney designated to conduct the review  
18 required by this section."

19 SECTION 2. G.S. 143-49 reads as rewritten:

20 "§ 143-49. Powers and duties of Secretary.

21 The Secretary of Administration shall have power and authority, and it shall be ~~his-the~~  
22 Secretary's duty, subject to the provisions of this Article:

23 ...

24 (3a) ~~To request, notify and the~~ Attorney General of pending contracts for  
25 contractual services exceeding a cost of five million dollars (\$5,000,000).  
26 Upon notification, the Attorney General shall assign a representative of from  
27 within the office of the Attorney General to assist in negotiation for the  
28 award of any the contract. contract for contractual services exceeding a cost  
29 of one hundred thousand dollars (\$100,000) that requires negotiation with  
30 prospective contractors. It shall be the duty of such representative to assist  
31 and advise in obtaining the most favorable contract for the State, to evaluate  
32 all proposals available from prospective contractors for that purpose, to  
33 interpret proposed contract terms and to advise the Secretary or his  
34 representatives of the liabilities of the State and validity of the contract to be  
35 awarded. All contracts and drafts of such contracts shall be prepared by the  
36 office of the Attorney General and copies thereof shall be retained by such  
37 office for a period of three years following the termination of such contracts.  
38 The term "contractual services" as used in this subsection and G.S. 143-52.2  
39 shall mean work performed by an independent contractor requiring  
40 specialized knowledge, experience, expertise or similar capabilities wherein  
41 the service rendered does not consist primarily of acquisition by this State of  
42 equipment or materials and the rental of equipment, materials and supplies.  
43 ~~The term "negotiation" as used in this~~ This subdivision shall not apply be  
44 ~~deemed to refer to contracts entered into or to be entered into as a result of a~~  
45 ~~competitive bidding process. This subdivision does not require the Secretary~~  
46 ~~to notify the Attorney General for the appointment of a representative from~~  
47 ~~within the office of the Attorney General for any contracts for contractual~~  
48 ~~services to be entered into by the constituent institutions of The University~~  
49 ~~of North Carolina unless requested to do so by the General Counsel of The~~  
50 University of North Carolina.

51 ...."

1           **SECTION 3.** The Department of Administration shall provide an individualized  
2 notice to the following State entities to ensure that the entities are aware of how the statutory  
3 amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- 4           (1) The North Carolina State Lottery Commission, which is subject to  
5           G.S. 18C-150.
- 6           (2) The Commissioner of Banks, who is subject to G.S. 53-320(d),  
7           G.S. 53-326(d), G.S. 53-391, and G.S. 53-401.
- 8           (3) The Commissioner of Insurance, who is subject to G.S. 53-401,  
9           G.S. 58-33-30(e)(4) and (5), G.S. 58-33-125(e), G.S. 58-33-130(a), and  
10           G.S. 58-71-40(d).
- 11           (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
12           Secretary of Transportation shall be copied on the notice sent to the Global  
13           TransPark Authority.
- 14           (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- 15           (6) The North Carolina Board for Licensing of Geologists, which is subject to  
16           G.S. 89E-5(e).
- 17           (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
18           to G.S. 89F-5(d).
- 19           (8) The constituent institutions of the University of North Carolina, which are  
20           subject to G.S. 114-8.3(b). For notification under this subdivision, the  
21           Department of Administration may provide the University of North Carolina  
22           system a notification to distribute to all of its constituent institutions. If the  
23           Department of Administration does so, the University of North Carolina  
24           system shall distribute those notifications to the system's constituent  
25           institutions.
- 26           (9) The North Carolina Center for Applied Textile Technology, which is subject  
27           to G.S. 115D-67.4.
- 28           (10) The North Carolina State Health Plan for Teachers and State Employees,  
29           which is subject to G.S. 135-48.33(b).
- 30           (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
31           G.S. 143-134(b).
- 32           (12) The North Carolina Turnpike Authority, which is subject to  
33           G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
34           the notice sent to the Turnpike Authority.
- 35           (13) The Department of Health and Human Services, which is subject to  
36           G.S. 143-48.1(c).
- 37           (14) The Division of Adult Correction of the Department of Public Safety, which  
38           is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
39           on the notice sent to the Division of Adult Correction.
- 40           (15) The North Carolina Code Officials Qualification Board, which is subject to  
41           G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
42           notice sent to the Code Officials Qualification Board.
- 43           (16) The Roanoke Island Commission, which is subject to  
44           G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
45           copied on the notice sent to the Roanoke Island Commission.
- 46           (17) Any other State entity subject to contract review under G.S. 114-8.3.

47           The Department of Administration, as part of its notice, shall provide a means by  
48 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
49 Administration has not received an acknowledgement from a State entity within 30 days of  
50 sending the notice, the Department of Administration shall send a second notice. If the  
51 Department of Administration has not received an acknowledgement from a State entity within



30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

**SECTION 4.** The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than June 30, 2013.

**SECTION 5.** G.S. 143-49 reads as rewritten:

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

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- ...
- (13) To ~~implement~~ implement, by September 1, 2013, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. ~~By September 1, 2012, April 1, 2013,~~ and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
  - (14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~ designation, by April 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
  - (15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~ implement, by September 1, 2013, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.
  - (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.
  - (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. Any procedures established under this subdivision shall be reported to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division no later than 30 days prior to the effective date of the procedures."

**SECTION 6.** Sections 1 and 2 of this act become effective July 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

D

SENATE BILL 78\*  
PROPOSED COMMITTEE SUBSTITUTE S78-CSRK-23 [v.1]

4/4/2013 2:52:43 PM

Short Title: Amend State Contract Review Laws.

(Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. Attorney General-General/General Counsel; to review certain contracts.

(a) Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one five million dollars (\$1,000,000) (\$5,000,000). The designee shall confirm to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section designee's review shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General-General shall:

(1) Establish establish procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.

(2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form,



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(ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any rules-procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment and debt contracts, as defined in subdivision (4) of this subsection, or any contracts for services entered pursuant to the State Treasurer's authority under G.S. 147-69.3, to confirm that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

(1) The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(2) The term "General Counsel's designee" shall include any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.

(3) Any contract for services reviewed pursuant to this subdivision must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of such contract. Except for any debt contract, or contracts entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.

(4) For the purposes of this subdivision, "investment and debt contracts" means any of the following:

a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.

b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.

c. Debt issued or to be issued by the State of North Carolina under the supervision of the State Treasurer, debt issued or to be issued by the North Carolina Capital Facilities Finance Agency, and debt and other matters of finance subject to the approval or supervision of the Local Government Commission, including, in each case, services required for ongoing management and review of debt issues that have previously been incurred or that are proposed to be incurred.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars (\$1,000,000) shall

1 notify the Secretary of the Department of Administration or the Secretary's designee of the  
2 intent to enter into the contract and provide such information as required by the Department for  
3 the purposes of maintaining a centralized log of such contracts and identifying the location of  
4 the contract documents.

5 **SECTION 2.** G.S. 143-49 reads as rewritten:

6 **"§ 143-49. Powers and duties of Secretary.**

7 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the  
8 Secretary's duty, subject to the provisions of this Article:

9 ...

10 (3a) ~~To request, notify and the Attorney General of pending contracts for~~  
11 ~~contractual services exceeding a cost of five million dollars (\$5,000,000).~~  
12 Upon notification, the Attorney General shall assign a representative of from  
13 within the office of the Attorney General, the Contract Management Section  
14 of the Division of Purchase and Contract, Department of Administration, or  
15 other qualified counsel to assist in negotiation for the award of any the  
16 contract. contract for contractual services exceeding a cost of one hundred  
17 thousand dollars (\$100,000) that requires negotiation with prospective  
18 contractors. It shall be the duty of such representative to assist and advise in  
19 obtaining the most favorable contract for the State, to evaluate all proposals  
20 available from prospective contractors for that purpose, to interpret proposed  
21 contract terms and to advise the Secretary or his representatives of the  
22 liabilities of the State and validity of the contract to be awarded. All  
23 contracts and drafts of such contracts shall be prepared reviewed by an  
24 attorney from within the office of the Attorney General and copies thereof  
25 shall be retained by such office for a period of three years following the  
26 termination of such contracts. The term "contractual services" as used in this  
27 subsection and G.S. 143-52.2 shall mean work performed by an independent  
28 contractor requiring specialized knowledge, experience, expertise or similar  
29 capabilities wherein the service rendered does not consist primarily of  
30 acquisition by this State of equipment or materials and the rental of  
31 equipment, materials and supplies. The term "negotiation" as used in this  
32 This subdivision shall not apply be deemed to refer to contracts entered into  
33 or to be entered into as a result of a competitive bidding process. The  
34 following procedures and requirements apply to contracts subject to this  
35 subdivision:

36 a. The Secretary is not required to notify the Attorney General for  
37 the appointment of a representative for any contracts for  
38 contractual services to be entered into by the constituent  
39 institutions of The University of North Carolina pursuant to G.S.  
40 114-8.3(b), or for contracts to be entered into by the Department  
41 of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do  
42 so by the General Counsel of The University of North Carolina  
43 or the General Counsel of the Department of State Treasurer,  
44 respectively.

45 b. Any contract for services reviewed pursuant to this subdivision  
46 must include signature of the Attorney General or the Attorney  
47 General's designee. If the contract commences without the  
48 required signature, the State shall have the right to terminate the  
49 contract and the other party or parties to the contract shall only be  
50 entitled to the value of all services provided to the State prior to  
51 the termination.

1 . . . . ."

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

4 **"§ 143-50.1. Division of Purchase and Contract; Contract Management Section.**

5 (a) The Contract Management Section (CMS) is established in the Division of Purchase  
6 and Contract, Department of Administration. The CMS shall include legal counsel with the  
7 duties and responsibilities included in this section.

8 (b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all  
9 proposed solicitations for supplies, materials, printing, equipment, or contractual services that  
10 exceed one million dollars (\$1,000,000), the CMS shall:

11 (1) Participate and assist in the preparation of all proposed solicitations, and  
12 review all available proposals from prospective contractors, with the goal of  
13 obtaining the most favorable contract for the State.

14 (2) Interpret proposed contract terms and advise the Secretary or the Secretary's  
15 designee of the potential liabilities to the State.

16 (3) Review all proposed contracts to ensure that the contracts:

17 a. Are in proper legal form.

18 b. Contain all clauses required by law.

19 c. Are legally enforceable.

20 d. Require performance that will accomplish the intended purposes of  
21 the proposed contract.

22 The review and evaluation required by this subsection shall not constitute approval or  
23 disapproval of the policy merit or lack thereof of the proposed contract.

24 (c) With respect to proposed contracts for services which exceed five million dollars  
25 (\$5,000,000), the CMS shall perform such duties as may be required by the Attorney General  
26 under G.S. 143-49(3a).

27 (d) The CMS shall:

28 (1) Assist State departments, agencies, and institutions to establish formal  
29 contract administration procedures and functions.

30 (2) Advise personnel in contracting specialist roles as to appropriate contract  
31 management and administrative techniques and activities.

32 (3) Act as a general resource to State agencies on contracting issues related to  
33 procurement, including contract drafting, clarification of terms and  
34 conditions, proper solicitation and bid evaluation procedures, contract  
35 negotiation, and such other matters as directed by the State Purchasing  
36 Officer.

37 (4) Assist representatives of the Attorney General, agency counsel, and other  
38 legal staff, as requested, in matters related to contracting for goods and  
39 services.

40 (e) The Department of Administration shall adopt procedures for the record keeping of  
41 the information provided by State agencies and which has been received by the Secretary or the  
42 Secretary's designee pursuant to G.S. 114-8.3(c). The records shall be kept by the Department  
43 and shall include a log with information that provides identification of individual contracts and  
44 where the contract documents are located. The Secretary is authorized to require that entities  
45 reporting pursuant to G.S. 114-8.39(c) provide such additional information that may be  
46 required to identify the individual contracts.

47 (f) The CMS shall consist of personnel designated by the Secretary and perform such  
48 other functions as directed by the Secretary that are not inconsistent with this section."

49 **SECTION 4.** G.S. 143-52.1 reads as rewritten:

50 **"§ 143-52.1. Board of Awards. Award recommendations; State Purchasing Officer action.**

(a) When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Purchasing Officer's action. There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.

(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.

(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.

(e) Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board. A report of all contract awards greater than twenty-five thousand dollars (\$25,000) approved through the Division of Purchase and Contract shall be reported monthly by the Board State Procurement Officer to the chairs of the Joint Legislative Oversight Committee on Information Technology. Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

SECTION 5. G.S. 147-33.101 reads as rewritten:

**"§ 147-33.101. Board of Awards review. Award recommendation; State Chief Information Officer action.**

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Chief Information Officer's action. the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State

government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) A report of all contract awards greater than twenty-five thousand dollars (\$25,000), approved through the Statewide IT Procurement Office, shall be reported monthly by the State CIO's to the Cochairs of the Joint Legislative Oversight Committee on Information Technology. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

**SECTION 6.** G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

(1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or

(2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of ~~Administration~~, Administration or the State Purchasing Officer, ~~or the Board of Awards Officer~~ shall not be required, regardless of dollar value."

**SECTION 7.** G.S. 120-36.6 reads as rewritten:

**"§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards and Council of State~~, unless the ~~Board or Council~~ has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or Council~~. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the ~~Board or Council~~; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or Council~~."

**SECTION 8.** G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all such estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon

consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

**SECTION 9.** G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

**SECTION 10.** G.S. 143-318.18(10) is repealed.

**SECTION 11.** The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- (1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.
- (2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.



- (3) The Commissioner of Insurance, who is subject to G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a), and 58-71-40(d).
- (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The Secretary of Transportation shall be copied on the notice sent to the Global TransPark Authority.
- (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- (6) The North Carolina Board for Licensing of Geologists, which is subject to G.S. 89E-5(e).
- (7) The North Carolina Board for Licensing of Soil Scientists, which is subject to G.S. 89F-5(d).
- (8) The constituent institutions of the University of North Carolina, which are subject to G.S. 114-8.3(b). For notification under this subdivision, the Department of Administration may provide the University of North Carolina system a notification to distribute to all of its constituent institutions. If the Department of Administration does so, the University of North Carolina system shall distribute those notifications to the system's constituent institutions.
- (9) The North Carolina Center for Applied Textile Technology, which is subject to G.S. 115D-67.4.
- (10) The North Carolina State Health Plan for Teachers and State Employees, which is subject to G.S. 135-48.33(b).
- (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and G.S. 143-134(b).
- (12) The North Carolina Turnpike Authority, which is subject to G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on the notice sent to the Turnpike Authority.
- (13) The Department of Health and Human Services, which is subject to G.S. 143-48.1(c).
- (14) The Division of Adult Correction of the Department of Public Safety, which is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied on the notice sent to the Division of Adult Correction.
- (15) The North Carolina Code Officials Qualification Board, which is subject to G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the notice sent to the Code Officials Qualification Board.
- (16) The Roanoke Island Commission, which is subject to G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be copied on the notice sent to the Roanoke Island Commission.
- (17) Any other State entity subject to contract review under G.S. 114-8.3.

The Department of Administration, as part of its notice, shall provide a means by which an entity may acknowledge receipt and understanding of the notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the notice, the Department of Administration shall send a second notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

**SECTION 12.** The Attorney General's Office, the Department of Administration, the Office of the General Counsel for The University of North Carolina, and the Department of

State Treasurer, shall establish procedures to implement the provisions of this act no later than June 30, 2013.

**SECTION 13. G.S. 143-49 reads as rewritten:**

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

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- ...
- (13) To ~~implement~~ implement, by January 1, 2014, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. ~~By September 1, 2012, June 1, 2013,~~ and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
  - (14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~ designation, by September 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
  - (15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~ implement, by July 1, 2014, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.
  - (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.
  - (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby."

**SECTION 14.** Sections 1 through 3 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.



# SENATE BILL 78: Amend State Contract Review Laws

2013-2014 General Assembly

**Committee:** Senate Program Evaluation  
**Introduced by:** Sen. Hartsell  
**Analysis of:** PCS to First Edition  
S78-CSRK-23

**Date:** April 4, 2013  
**Prepared by:** Hal Pell  
Committee Counsel

**SUMMARY:** *This act creates a contract management section in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars (\$1,000,000); provides that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars (\$5,000,000), and complete an internal review of such contracts; repeals the Board of Awards and transfers its responsibilities; and provides for contract management certification and training. The contract review provisions are effective October 1, 2013, and the remainder of the act is effective when it becomes law.*

## BILL ANALYSIS:

### Section 1:

- The act removes contract review responsibility from the Attorney General's office for all contracts for supplies, materials, printing, equipment, and contractual services in excess of \$1,000,000 and transfers that responsibility to a new section in the Department of Administration (see Section 3, below). The section also amends the law to provide that the Attorney General or designee is responsible for reviewing all proposed contracts for services in excess of \$5 million dollars. The term "designee" includes any attorney approved by the Attorney General.
- The Attorney General's office is also required to: (1) establish procedures regarding the review of contracts and provide any attorney designated to review a contract for services in excess of \$5,000,000 with guidelines to be used in reviewing the contract, and (2) advise and assist the Contract Management Section of the Division of Purchase and Contract, Contract Management Section [See Section 3], in establishing procedures and guidelines for the review of contracts.
- Adds a new provision which directs the General Counsel of the Department of State Treasurer (or designee) to review all proposed investment and debt contracts (defined terms), or contracts entered into pursuant to the Treasurer's authority to contract for investment advisory services. The contracts are to be reviewed to confirm that the contracts conform to the stated statutory requirements. The provision exempts certain contracts from the provision that states that the absence of a reviewing counsel's triggers the State's right to terminate a contract.

### Section 2:

- Increases the threshold amount for a legal review of contracts for services from \$100 thousand dollars to \$5 million dollars. The attorney designated by the Attorney General's office to review such contracts is required to fulfill the same requirements provided under current law: (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.

O. Walker Reagan  
Director



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# Senate PCS 78

Page 2

- The act also requires a review by an attorney from within the Attorney General's office, and the attorney's signature and title must be included on the contract. Absent a signature, the State would have the right to terminate the contract, with the other parties receiving the value of the services provided prior to the termination.

## Section 3:

- Establishes a Contract Management Section (CMS) in the Division of Purchase and Contract, Department of Administration, to review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed \$1 million dollars, unless reviewed by another agency that has been designated by statute.
- The legal counsel in the CMS would be responsible for: participating and assisting in the preparation of all proposed solicitations, and reviewing them with the goal of obtaining the most favorable contract for the State; interpreting proposed contract terms and advising the Secretary or the Secretary's designee of the potential liabilities to the State; and insuring compliance with statutory requirements.
- Counsel in the CMS would also be subject to appointment by the Attorney General's office for review of contracts for services in excess of \$5 million dollars.
- The CMS would also: (1) assist State departments, agencies, and institutions to establish formal contract administration procedures and functions, (2) advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities, (3) act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer, and (4) assist other State agency legal staff, as requested, in matters related to contracting for goods and services.

## Sections 4 through 10:

The act transfers the authority to take action on contract award recommendations from the Board of Awards to the State Purchasing Officer, or the State Chief Information Officer, depending on the subject of the contract. The statute establishing the Board of Awards is repealed.

## Section 11:

Requires the Department to notify agencies about new contract review laws.

## Section 12:

Requires the Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina to establish procedures to implement the provisions of the act no later than June 30, 2013.

## Section 13:

Sets dates for the implementation of the quality management system; contract specialist career path, contract management and training certification program, and a reporting date for recommendations on improving the procurement laws—all of which are required under current law.

**EFFECTIVE DATE:** Sections 1 through 3 of the act are effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 144  
Corrected Copy 2/28/13

Short Title:   Nonprofit Grants/Increase Accountability. (Public)

Sponsors:   Senators Hartsell (Primary Sponsor) (Primary Sponsor); Apodaca, Brock, Clark,  
Clodfelter, Daniel, D. Davis, Goolsby, Gunn, Hise, Hunt, Jackson, McLaurin,  
Meredith, and Nesbitt.

Referred to:   Program Evaluation.

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE OVERSIGHT OF STATE GRANTS TO NON-STATE ENTITIES AND TO INCREASE THE ACCOUNTABILITY OF GRANTEEES WHO RECEIVE STATE GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143C-6-23 reads as rewritten:

**"§ 143C-6-23. State grant funds: administration; oversight and reporting requirements."**

(a) Definitions. – The following definitions apply in this section:

- (1) "Grant" and "grant funds" means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.
- (2) "Grantee" means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (3) "Subgrantee" means a non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or



department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants.  
– The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (2a) Require each contract that awards a grant to include all of the following:
  - a. Concrete, measurable benchmarks against which to measure success. The benchmarks shall address the expected quantifiable outputs and outcomes.
  - b. Identification of program performance measures that will be used to compare quantifiable outputs and outcomes against the benchmarks established in contracts pursuant to this subdivision.
  - c. For purposes of this subdivision, the term "output" means quantified activities performed by the grantee, and the term "outcome" means what happens as a result of the grantee's activities.
- (3) Ensure that State funds are spent in accordance with the purposes for which they were granted.
- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds.
- (5a) Establish the criteria for grants from which oversight costs may be withheld by a State agency pursuant to subsection (f1) of this section.
- (5b) Provide procedures for the determination of the amount of a grant that may be withheld for administrative costs pursuant to subsection (f1) of this section.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial ~~and program performance~~ information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.
- (6a) Establish mandatory periodic reporting requirements for grantees and subgrantees, including reporting on benchmarks set out in the contract awarding the grant pursuant to subdivision (2a) of this subsection by means of performance measures identified in the contract. Performance reporting shall be reviewed by the State agency overseeing the grant on an ongoing basis. The State agency overseeing the grant shall submit an annual performance report to the Office of State Budget and Management.

- 1 (7) Require grantees and subgrantees to maintain reports, records, and other  
2 information to properly account for the expenditure of all grant funds and to  
3 make such reports, records, and other information available to the grantor  
4 State agency for oversight, monitoring, and evaluation purposes.
- 5 (8) Require grantees and subgrantees to ensure that work papers in the  
6 possession of their auditors are available to the State Auditor for the  
7 purposes set out in subsection (i) of this section.
- 8 (9) Require grantees to be responsible for managing and monitoring each  
9 project, program, or activity supported by grant funds and each subgrantee  
10 project, program, or activity supported by grant funds.
- 11 (9a) Require a State agency that oversees a grant program to develop a  
12 monitoring plan for that program. The State agency shall provide a  
13 description of its monitoring plan and any additional information regarding  
14 that plan to the Office of State Budget and Management.
- 15 (10) Provide procedures for the suspension of further disbursements or use of  
16 grant funds for noncompliance with these rules or other inappropriate use of  
17 the funds.
- 18 (11) Provide procedures for use in appropriate circumstances for reinstatement of  
19 disbursements that have been suspended for noncompliance with these rules  
20 or other inappropriate use of grant funds.
- 21 (12) Provide procedures for the recovery and return to the grantor State agency of  
22 unexpended grant funds from a grantee or subgrantee if the grantee or  
23 subgrantee is unable to fulfill the purposes of the grant.
- 24 (e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the  
25 provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are  
26 subject to the provisions of Chapter 150B of the General Statutes.
- 27 (f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The  
28 Office of State Budget and Management, after consultation with the administering State  
29 agency, shall have the power to suspend disbursement of grant funds to grantees or  
30 subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds  
31 already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this  
32 section. In addition, the Office of the Controller shall electronically stop payments to a grantee  
33 upon notification by the Office of State Budget and Management to suspend disbursement of  
34 funds to the grantee.
- 35 If the grant funds are a pass-through of funds granted by an agency of the United States,  
36 then the Office of State Budget and Management must consult with the granting agency of the  
37 United States and the State agency that is the recipient of the pass-through funds prior to taking  
38 the actions authorized by this subsection.
- 39 (f1) Withholding From Certain Grants to Cover Agency Oversight Cost. – A State  
40 agency that oversees a grant may withhold up to two percent (2%) of the amount of the grant  
41 awarded each fiscal year to cover grant oversight costs pursuant to this subsection if the grant  
42 satisfies the criteria established by the Office of State Budget and Management. No State  
43 agency shall withhold funds under this subsection until the State agency submits a written  
44 request to the Office of State Budget and Management that sets out the oversight  
45 responsibilities of the agency with regard to the grant, the amount that the agency is requesting  
46 to withhold from the grant for the fiscal year, and receives approval from the Office of State  
47 Budget and Management to withhold funds to cover the oversight costs. An agency may  
48 withhold only the amount approved by the Office of State Budget and Management. The Office  
49 of State Budget and Management shall determine whether it is appropriate to allow the  
50 withholding under this section, and if so, the amount that may be withheld by the State agency.

1 The Office of State Budget and Management shall notify the State agency in writing of the  
2 approval or disapproval of the request, and if approved, that amount that may be withheld.

3 If a State agency does receive approval under this section to withhold a percentage of the  
4 amount of the grant awarded, then the agency shall reserve one-half of one percent (.5%) of the  
5 amount authorized by the Office of State Budget and Management to be withheld by the  
6 agency and shall transfer those funds to the Office of State Budget and Management at the time  
7 the grant funds are disbursed. The Office of State Budget and Management shall use the funds  
8 transferred from the agency to cover costs related to statewide oversight of grants to non-State  
9 entities.

10 Funds shall not be withheld under this subsection for the purpose of covering oversight  
11 costs if the grant is a pass-through of funds granted by an agency of the United States and the  
12 terms of the federal grant prohibit the withholding of funds described by this subsection.

13 (g) Audit Oversight. – The State Auditor has audit oversight, with respect to grant funds  
14 received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General  
15 Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee  
16 or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and  
17 other information necessary for the State Auditor to account fully for the use and expenditure  
18 of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish  
19 any additional financial or budgetary information requested by the State Auditor, including  
20 audit work papers in the possession of any auditor of a grantee or subgrantee directly related to  
21 the use and expenditure of grant funds.

22 (h) Report on Grant Recipients That Failed to Comply. – Not later than May 1, 2007,  
23 and by May 1 of every succeeding year, the Office of State Budget and Management shall  
24 report to the Joint Legislative Commission on Governmental Operations and the Fiscal  
25 Research Division on all grantees or subgrantees that failed to comply with this section with  
26 respect to grant funds received in the prior fiscal year.

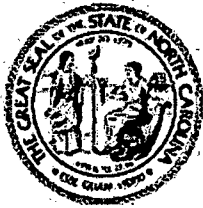
27 (i) State Agencies to Submit Grant List to Auditor. – No later than October 1 of each  
28 year, each State agency shall submit a list to the State Auditor, in the format prescribed by the  
29 State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal  
30 year. The list shall include the amount disbursed to each grantee and other information as  
31 required by the State Auditor to comply with the requirements of this section."

32 **SECTION 2.** G.S. 143C-6-23(d), as amended by Section 1 of this act, is amended  
33 by adding a new subdivision to read:

34 "(7a) Require grantees to submit cash-basis reporting within 90 days of the end of  
35 the State fiscal year."

36 **SECTION 3.** Section 2 of this act becomes effective July 1, 2015. The remainder  
37 of this act becomes effective July 1, 2013.





## SENATE BILL 144: Nonprofit Grants/Increase Accountability

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: Second Edition

Date: April 5, 2013  
Prepared by: Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 144 would revise the statute governing the administration, oversight, and reporting requirements for State grant funds to non-State entities, as recommended by the Joint Legislative Program Evaluation Oversight Committee.*

[As introduced, this bill was identical to H58, as introduced by Rep. Howard, which is currently in House Appropriations.]

**CURRENT LAW:** G.S. 143C-6-23 governs the administration and oversight requirements for State grant funds and establishes reporting requirements for non-State entities that receive State funds.<sup>1</sup> The statute does not apply to payments made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs, nor does it apply to any non-State entity that is subject to the auditing and reporting requirements of the Local Government Commission.

### Role of the Office of State Budget and Management

**Rules.** – The Office of State Budget and Management (OSBM) must adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees. The rules should include policies and procedures that ensure State funds are spent in accordance with their purpose, that provide for adequate oversight and monitoring to prevent the misuse of grant funds, and that require periodic reporting by grantees.

**Suspension and Recovery of Funds.** – If a grantee does not comply with the terms of the grant, OSBM may suspend disbursement of grant funds to grantees, prevent further use of grant funds already disbursed, or recover grants funds that have already been disbursed.

**Reporting.** – By statute, OSBM is required to report annually to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees and subgrantees that failed to comply with the provisions governing grant funds. Currently, OSBM updates and reports this information on a weekly basis on its website.

### Role of State Agencies

In FY 2011-2012, State agencies disbursed \$700.1 million in grant funds to non-profits, of which approximately 50% represents State funds.<sup>2</sup> The responsibility for grant management is distributed to approximately 26 State agencies and divisions. Agencies are responsible for holding grantees accountable for grant expenditures by performing monitoring and oversight functions. Monitoring is done through reporting, site visits, regular contact, or other means to ensure the funds are being

<sup>1</sup> Government entities that receive State grant funds are not subject to these reporting requirements.

<sup>2</sup> These figures were provided by OSBM. At the time of PED's report, the total amount of grant funds to nonprofits was \$694 million. Of that amount, 65% or \$452 million represented State funds, 25% or \$172.8 million represented federal funds flowing through State agencies, 8% or \$55.7 million representing combined State and federal funds, and the remainder from other sources.



# Senate Bill 144

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administered in compliance with the law. Agencies must also evaluate the results and outcomes of the activities and accomplishments of the grantee to determine if results were achieved, the success of the activity, and whether the activities should continue.<sup>3</sup> Funds may be disbursed up-front, on a set schedule, or as reimbursement for expenses. However, grants are typically distributed in part or in full before state-level reporting takes place.<sup>4</sup> Lastly, agencies are required to address noncompliance by communicating the requirements to the grantees, requiring a response from the grantee upon noncompliance, and suspending payments after consultation with OSBM.

## **Role of Grantees**

Grantees submit activities and financial information online to NC Grants<sup>5</sup> and the NC Accounting System (NCAS), including line-item expenditures for personnel, contracted services, materials, and operating expenses for each grant awarded. For grantees receiving less than \$500,000 annually, the State does not require documentation to support expenditures claimed in their reports.<sup>6</sup> Grantees receiving more than \$500,000 in State funds are required to submit a financial audit that requires review by a CPA. While the audit provides assurance that an independent entity has reviewed their financial statements, it does not provide a detailed accounting of expenditures at the grant-award level.<sup>7</sup> Grantees must also ensure that subgrantees comply with all reporting requirements of the grantee.

**BILL ANALYSIS:** Senate Bill 144 would do the following:

- Require State agencies to:
  - Develop a monitoring plan for grant oversight and provide a plan description to OSBM.
  - Submit an annual performance report to OSBM.
  - Determine whether to withhold up to 2% of the annual amount awarded for a grant program to cover oversight costs. The agency must make a request to and receive approval from OSBM prior to withholding funds to cover the oversight costs. An agency could withhold only the approved amount. If approval is received, the agency must transfer one-half of one percent (.5%) of the authorized amount to OSBM. The bill provides that the withholding requirement does not apply to the following grant programs:
    - A program that is a pass-through of funds granted by an agency of the United States and the terms of the federal grant prohibit the withholding of funds described by this section.
- Require OSBM to:
  - Include in each contract awarding a grant concrete, measurable benchmarks against which to measure the success of the grant program, and identify program performance measures to be used to compare quantifiable outputs and outcomes against those benchmarks.

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<sup>3</sup> 09 NCAC 03M .0704.

<sup>4</sup> PED Report Number 2009-02, p. 6.

<sup>5</sup> The predecessor to NC Grants was the Grants Information Center (GIC). The GIC was the State's first partially consolidated grant IT system, which began in 2007 in the Office of the State Auditor and was designed to automate the grant reporting requirements of G.S. 143C-6-23. In 2009, it was transferred to OSBM and became known as NC Grants after a series of enhancements and upgrades. However, NC Grants is not a financial system so that information must be submitted separately to NCAS.

<sup>6</sup> PED Report Number 2009-02, p. 8.

<sup>7</sup> PED Report Number 2009-02, p. 9.

# Senate Bill 144

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- Establish criteria for grants from which oversight costs shall be withheld and provide procedures to determine the amount allowed to be withheld for administrative costs.
- Approve or disapprove of requests for a reduction of the withholding and to notify agencies of its decision.
- Establish mandatory periodic reporting requirements for grantees and subgrantees, including reporting on benchmarks.
- Use funds transferred from an agency to cover costs related to statewide oversight of grants to non-State entities.
- Require OSBM to suspend disbursement of grant funds to an administering State agency on grounds of noncompliance.
- Require grantees to submit a cash receipts and disbursement report within 90 days of the end of the State fiscal year.

**EFFECTIVE DATE:** The requirement that grantees submit a cash report within 90 days of the end of the State fiscal year would become effective July 1, 2015. The remainder of the act would become effective July 1, 2013.

**BACKGROUND:** Senate Bill 144 contains recommendations from the Program Evaluation Division's 2009 report "Accountability Gaps Limit State Oversight of \$694 Million in Grants to Non-Profit Organizations." The report examined practices and policies regarding oversight of State grants to non-profit organizations and determined whether current oversight provides assurance that public resources are spent in the way intended by the State.

The report concluded that State agencies are inconsistent in how they manage their grants and that current state reporting requirements do not ensure accountability for state funds granted to non-profits. Information about activities and accomplishments that grantees are currently required to report to the State do not adequately address performance goals and outcomes, and the quality of oversight is highly variable across agencies. Further, the report found that reporting deadlines complicate timely reporting because grantee reporting cycles do not necessarily line up with the State's fiscal year and because annual reports are not due until six to nine months after each grantee's fiscal-year end.

*Trina Griffin and Kelly Quick, staff to House Finance, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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SENATE BILL 193\*

Short Title: Child Nutrition Program Solvency and Support.

(Public)

Sponsors: Senators Hartsell (Primary Sponsor); Barringer, Gunn, Hise; Hunt, and Randleman.

Referred to: Program Evaluation.

March 6, 2013

A BILL TO BE ENTITLED

AN ACT (1) TO PROHIBIT LOCAL SCHOOL ADMINISTRATIVE UNITS FROM ASSESSING INDIRECT COSTS TO A CHILD NUTRITION PROGRAM UNLESS THE PROGRAM IS FINANCIALLY SOLVENT AND (2) TO APPROPRIATE FUNDS TO PROMOTE OPTIMAL PRICING FOR CHILD NUTRITION PROGRAM FOODS AND SUPPLIES, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-450 reads as rewritten:

"§ 115C-450. School food services.

(a) School food services shall be included in the budget of each local school administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115C-426.

(b) No local school administrative unit shall assess indirect costs to a child nutrition program unless the child nutrition program's food services account balance is greater than an average month's cost of operation for the child nutrition program. An average month's cost of operation shall be calculated and published by the Department of Public Instruction for each child nutrition program and shall be equal to the average of the three prior fiscal year's average monthly cost of operation. When calculating the average month's cost of operation for each child nutrition program, the Department of Public Instruction shall use the complete and final audited figures from each child nutrition program's operation. If complete and final audited figures for a given year are not yet available for a child nutrition program, the Department of Public Instruction may use projected figures but shall update the published average month's cost of operation once complete and final audited figures become available. As used in this subsection, the term "indirect costs" is as defined in the United States Office of Budget and Management Circular A-87, as revised, and the term "cost of operation" is as defined in G.S. 115C-264(c).

SECTION 2.(a) There is appropriated from the General Fund to the Department of Public Instruction, Division of School Support, Child Nutritional Services Section, the sum of eighty thousand dollars (\$80,000) in recurring funds for fiscal year 2013-2014. These funds shall be used to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies.

SECTION 2.(b) Beginning October 1, 2014, and each year thereafter on October 1, for as long as the Department of Public Instruction receives the funding authorized by



\* S 1 9 3 - V - 1 \*

1 subsection (a) of this section, the Department of Public Instruction shall report to the Joint  
2 Legislative Education Oversight Committee on the annual savings achieved through the  
3 increased participation of local school administrative units in the North Carolina Procurement  
4 Alliance.

5 **SECTION 3.** This act becomes effective July 1, 2013.



# SENATE BILL 193: Child Nutrition Program Solvency and Support

2013-2014 General Assembly

**Committee:** Senate Program Evaluation  
**Introduced by:** Sen. Hartsell  
**Analysis of:** First Edition

**Date:** April 5, 2013  
**Prepared by:** Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 193 would restrict when a local school administrative unit (LEA) may charge its indirect costs (e.g., general administrative costs) to a school lunch program by requiring that the school lunch program's operating account have more than 1 month of funds. The bill also would appropriate \$80,000 to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies. This bill is based on recommendations by the Joint Legislative Program Evaluation Oversight Committee.*

[As introduced, this bill was identical to H57, as introduced by Rep. Howard, which is currently in Senate Education/Higher Education.]

**BILL ANALYSIS:** Section 1 of HB 57 would amend G.S. 115C-450 to restrict when a local school administrative unit (LEA) may charge its indirect costs to a child nutrition (school lunch) program. Indirect costs may include, for example, general administrative costs at the LEA's central offices.

As discussed in the Program Evaluation Division's Report Number 2011-06, some LEA's have charged school lunch programs for indirect administrative costs when a school lunch program has less than one month's operating expenses available, thereby leading to financial solvency issues. Under the bill, a LEA would be allowed to charge indirect costs to a school lunch program only in a month when the school lunch program's operating account has more than 1 month of expenses.

Section 2 would appropriate \$80,000 to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies and requires DPI reporting to the General Assembly to monitor savings achieved through the Procurement Alliance.

**EFFECTIVE DATE:** House Bill 57 would become effective July 1, 2013.

**BACKGROUND:** House Bill 57 would implement Recommendation 1 of the Program Evaluation Division's Report Number 2011-06, *"Child Nutrition Programs Challenged to Meet Nutrition Standards, Maintain Participation, and Remain Solvent,"* dated October 12, 2011. The bill was recommended by the Joint Legislative Program Evaluation Oversight Committee.

The North Carolina Child Nutrition Procurement Alliance member school districts are voluntary participants who have joined together as 87 individual school districts in the mission to procure high quality, reasonably priced food and supply products for federally-funded child nutrition programs operating in their respective school districts. They opened their first bids as "Alliance" members in May 2009.

NC Child Nutrition Procurement Alliance membership does not constitute a legal affiliation; it serves as a means to consolidate 900+ bid product specifications through a process concluding in student pre-approval of branded food products. Qualified distributors submit "cost plus fixed fee" or "firm price" bids by LOT to member districts who award bid LOTS by individual district or "cooperatives" of several districts to the lowest qualified bidder. Cost savings is created by increasing total volume of pre-approved product purchases by members using the same bid specification documents for food and supplies.

*Greg Roney, Research Division, and Ryan Blackledge, Bill Drafting Division, substantially contributed to this summary.*





**Senate Standing Program Evaluation Committee**  
**April 9, 2013**



## **State Government Accountability and the Program Evaluation Division**

**Presentation to Senate Program Evaluation Committee**  
**April 9, 2013**  
**by**  
**John Turcotte**  
**Director of Program Evaluation Division**

Program Evaluation Division



North Carolina General Assembly

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## **Overview**



- **Program Evaluation Division**
  - About PED
  - Topic Selection
  - Benefit/Cost Ratio
  - Recent Publications
- **State Auditor and Program Evaluation Division (PED) Compared**
- **Accountability Conditions in North Carolina**

Program Evaluation Division



North Carolina General Assembly

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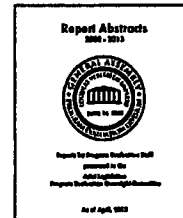
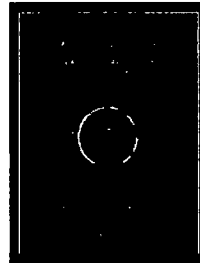


# Senate Standing Program Evaluation Committee April 9, 2013

## About the Program Evaluation Division



**JOINT LEGISLATIVE PROGRAM EVALUATION  
OVERSIGHT COMMITTEE (2013)**  
NORTH CAROLINA GENERAL ASSEMBLY



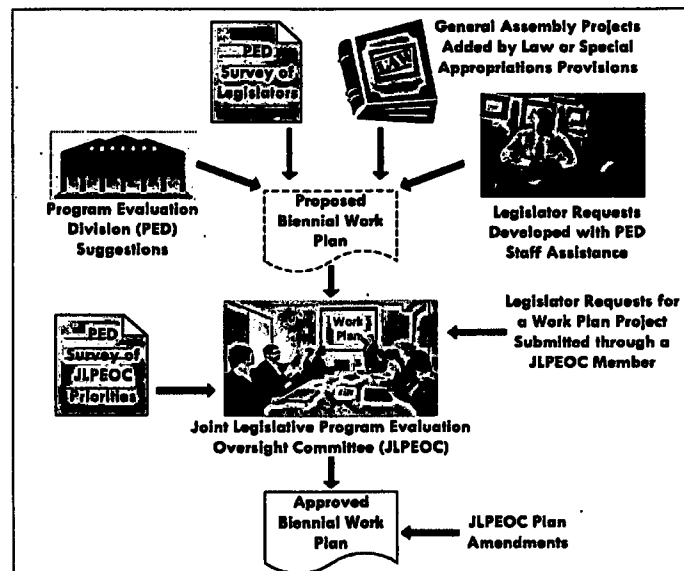
Program Evaluation Division



North Carolina General Assembly

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## Work Plan Development Process



Program Evaluation Division



North Carolina General Assembly

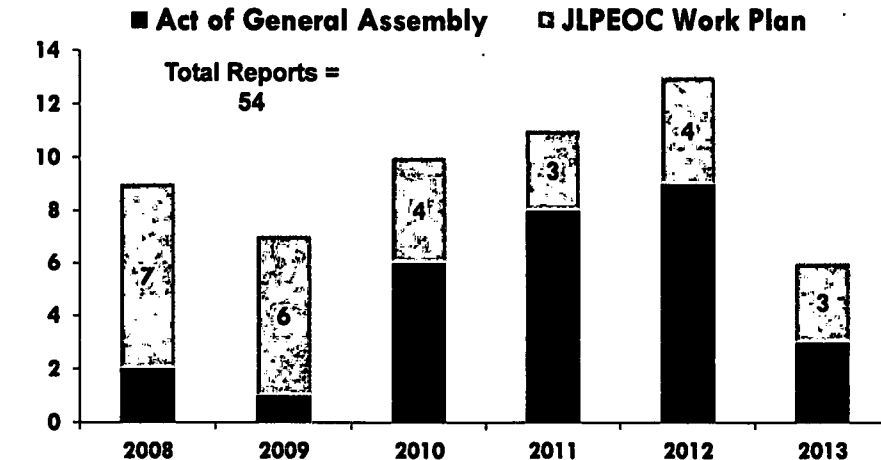
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**Senate Standing Program Evaluation Committee**  
**April 9, 2013**

## Program Evaluation Division Reports by Year and Directive



Program Evaluation Division



North Carolina General Assembly

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## Recommended vs. Implemented Savings from PED Reports: 2008-2012

	\$ Millions	
	Recurring	Non-Recurring
<b>PED Recommended</b>		
Savings	\$ 56.1	\$ 63.7
Additional Non-Tax Revenue	\$ 3.7	\$ 15.5
<b>Total</b>	<b>\$ 59.8</b>	<b>\$ 79.2</b>
<b>Implemented by State</b>		
Savings	\$ 16.6	\$ 2.5
Additional Non-Tax Revenue	\$ -	\$ -
<b>Total</b>	<b>\$ 16.6</b>	<b>\$ 2.5</b>
<b>Recurring PED Cost</b>	<b>\$ 1.7</b>	
<b>Benefit-to-Cost Ratio</b>	<b>10 to 1</b>	

Program Evaluation Division



North Carolina General Assembly

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Senate Standing Program Evaluation Committee  
April 9, 2013

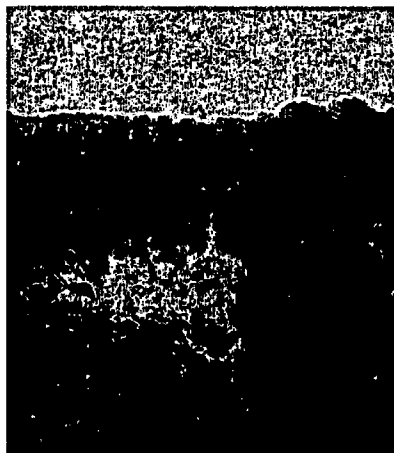
## Recent Examples of Program Evaluation Division Reports

Program Evaluation Division



North Carolina General Assembly

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### Introduced Legislation

- S345



### PROGRAM EVALUATION DIVISION NORTH CAROLINA GENERAL ASSEMBLY

January 2013 REPORT OF THE PROGRAM EVALUATION DIVISION, NORTH CAROLINA GENERAL ASSEMBLY Report No. 2013-01

#### North Carolina Does Not Track Lands Submerged under Navigable Rivers or Know the Extent of Private Claims

##### Summary

The General Assembly directed the Program Evaluation Division to study, in cooperation with the Department of Administration, the inventory of all state-owned lands and the issue of public ownership of lands submerged under navigable rivers in the State. North Carolina gained ownership of lands submerged under navigable waters through the Declaration of Independence and victory in the Revolutionary War. Current state law prohibits the conveyance of title to submerged lands except by an act of the General Assembly, and does not allow for adverse possession of submerged lands. However, the State may have conveyed certain lands submerged under navigable rivers to private owners in the past.

The Department of Administration (DOA) is charged with managing and controlling the State's submerged lands, but its overall management approach is largely passive. DOA operates under the assumption that all lands beneath navigable rivers are sovereign lands of the State. Whereas DOA grants and tracks certain types of easements, it does not require easements for many structures built on lands submerged under navigable rivers for which it has the authority. In addition, DOA does not exercise its authority to lease or convey mineral deposits for mining that takes place on riverbeds.

North Carolina does not have a comprehensive inventory of lands submerged under navigable rivers, so the extent to which private parties may hold title to these lands is unknown. Ten of the 19 other original colony states do not track ownership of their submerged lands. Those that do track ownership only track control or title influenced submerged lands. Between 1983 and 2004, North Carolina established a process to resolve and map all private claims to submerged lands in 25 coastal counties at a cost of more than \$4.1 million to operate the office. The State has not conducted a comparable process for lands submerged under navigable rivers in the remaining 73 counties.

To more actively manage the use of lands submerged under navigable rivers in the future and protect its ownership interest, the General Assembly could consider:

- requiring DOA to improve its management and tracking of all submerged lands and
- using the coastal submerged lands claim process as a model to resolve adverse ownership claims to lands submerged under navigable rivers in the remaining 73 counties.

Program Evaluation Division

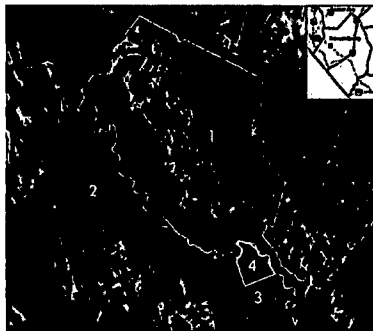


North Carolina General Assembly

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## Senate Standing Program Evaluation Committee April 9, 2013



### Joint Committee Recommended Legislation

- H60
- S30



### PROGRAM EVALUATION DIVISION NORTH CAROLINA GENERAL ASSEMBLY

October 2012 | Report No. 2012-19

#### Options for the Indian Cultural Center Will Allow the Site to Meet Its Cultural, Recreational, and Economic Development Intent

##### Summary

In June 2012, the Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to evaluate options for the future disposition of the North Carolina Indian Cultural Center site located in Hatteras, NC. The original concept for the Cultural Center was a theme park-like attraction dedicated to the history, culture, and heritage of North Carolina American Indians. The North Carolina Indian Cultural Center Inc. (NCCCI) holds the lease on the property and is the responsible charged with implementing the concept.

The geography, conditions, and size of the Cultural Center site hinder the development of the site as originally envisioned. The Cultural Center site is composed of two individual parcels of land totaling 628 acres. The capacity to develop the site is constrained by geography and accessibility. The existing facilities on the site are dilapidated, because the site is heavily wooded and mostly unfenced, the Cultural Center is vulnerable to theft and vandalism.

The lease structure hinders accessibility and state oversight. Over time, performance measures were removed from the property lease with NCCCI Inc. Furthermore, the property lease is not an effective mechanism for overseeing the goal of creating a Cultural Center because the lease does not specify the variety, number, frequency, and quality of programs consistent with the mission.

Options for the future disposition of the Cultural Center site are limited by property allocation and size. Weighing options for each of the parcels, rather than the site as a whole, is the most effective way to ensure the future disposition promotes North Carolina Indian culture and provides opportunities for public recreation and economic development.

The need to preserve and promote North Carolina Indian culture remains. The Cultural Center site is not the ideal place to preserve and promote North Carolina Indian culture. North Carolina's American Indians still desire a central location for the preservation of culture and provide consultation of such efforts.

The General Assembly should terminate the property lease, direct the Department of Administration (DOA) on the disposition of the two parcels of land, and direct the Commission of Indian Affairs to develop a new strategic vision for the preservation and promotion of North Carolina American Indian culture. The lease should be terminated and DOA should be directed to allocate two parcels to the state parts and sell the remaining parcels. The commission should report to the General Assembly on the new strategic vision by April 1, 2014.

Program Evaluation Division



North Carolina General Assembly

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### Joint Committee Recommended Legislation

- H174
- S29



### PROGRAM EVALUATION DIVISION NORTH CAROLINA GENERAL ASSEMBLY

October 2012 | Report No. 2012-10

#### North Carolina Should Require NC Railroad Company to Pay an Annual Dividend and Strengthen Reporting

##### Summary

The General Assembly directed the Program Evaluation Division to evaluate the North Carolina Railroad Company (NCRR). The legislation required a review of the corporation's status, economic development benefits, tangible and intangible value, and governance and required consideration of whether NCRR should be sold, transferred under the North Carolina Department of Transportation or another state agency, or remain in corporate structure.

NCRR has benefited from its unique relationship with the State of North Carolina, the corporation's sole shareholder, but the State has not profited financially from this relationship. NCRR's capital has increased by at least \$196.3 million since 1999 when the State became the corporation's sole shareholder. As a result, NCRR is both profitable and solvent. However, the State has not profited from this relationship in the form of receiving direct financial benefits because dividends are required by state law to pay for NCRR capital improvements.

Selling NCRR or the railroad corridor may not be in the best interest of the State because there are valuable rail assets and their long-term benefits would be lost. However, NCRR property not related to the railroad corridor could be transferred to the State as a dividend and sold to provide one-time revenue.

The State has limited mechanisms for oversight of NCRR. As a private corporation, NCRR has less stringent reporting requirements than publicly-traded corporations. NCRR has not fully met all reporting requirements since 2007 and lacks a comprehensive strategic plan and performance measurement system. Changing NCRR's corporate structure could strengthen the State's oversight but requires a lengthy and complicated process. Amending state law could improve the corporation's reporting to the State and require NCRR to make an annual dividend payment while maintaining its corporate structure.

To address these findings, the General Assembly should

- amend Chapter 134 of the General Statutes to strengthen reporting by NCRR;
- require NCRR to pay a one-time dividend of \$15.5 million and, thereafter, require NCRR to pay an annual dividend equal to 2.5% of NCRR's annual income from its freight rights agreements (estimated at \$3.7 million annually) to the General Fund; and
- require NCRR to convey to the State 14 properties not directly related to the railroad corridor so these properties can be sold and the proceeds deposited into the General Fund.

Program Evaluation Division



North Carolina General Assembly

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## Senate Standing Program Evaluation Committee

### April 9, 2013

### How North Carolina Compares

**A Compendium of  
State Statistics**

January 2013

Prepared by the  
N.C. General Assembly  
Program Evaluation Division

North Carolina Rankings Among States by Aspiration <sup>20</sup>					
Prepared January 2013 by Program Evaluation Division of General Assembly Legislative Services Office					
Indicator Number	Indicator	Ranking of New NC Compared			Key
		2009	2011	2013	
18	Real Estate				<div style="display: flex; align-items: center;"> <div style="flex: 1; border-left: 1px solid black; border-right: 1px solid black; height: 100px; position: relative;"> <div style="position: absolute; top: 0; right: 0; font-size: 8px;">High/Favorable</div> <div style="position: absolute; bottom: 0; right: 0; font-size: 8px;">Low/Unfavorable</div> </div> <div style="flex: 1; border-left: 1px solid black; border-right: 1px solid black; height: 100px; position: relative;"> <div style="position: absolute; top: 0; right: 0; font-size: 8px;">High/Favorable</div> <div style="position: absolute; bottom: 0; right: 0; font-size: 8px;">Low/Unfavorable</div> </div> </div>
22	Percentage of State Unemployed by the State	8	6	6	
2	Percent Change in Population				
19	Per Capita State and Local Debt				
23	Average Annual Inflation Rates				
1	Population	18	18	18	
14	Per Capita State Expenditures	10	11	11	
10	Per Capita State and Local Taxes	25	26	27	
8	Percentage in Computer or Math Occupations	24	25	25	
11	State and Local Taxes as a Percentage of Income	21	22	23	
12	Per Capita State Taxes	20	20	20	
24	State Government Full Employment	19	21	24	
20	Per Capita Medicaid Expenditures	20	20	20	
15	Per Capita State General Fund Expenditures	23	23	23	
25	Percentage with a High School Education or Less	27	28	27	
13	Per Capita Federal Grants	27	27	27	
21	State Funding for Public K-12	26	26	26	
16	General Fund Expenditures as a Percentage of Income	25	25	25	
17	Per Capita Federal Expenditures				
7	Percentage Without Health Insurance				
9	Percentage of Adults Overweight or Obese				
6	Percentage of Population Living in Poverty				
3	Median Household Income				
4	Unemployment Rate				
5	State Identity				

\*Numbers in column labeled "Indicator Number" correspond to ranking bases as listed in New North Carolina Compared

\*\*Aspiration refers to the extent to which a ranking is favorable or aspirational to states. A rank of 1 is the highest level of aspiration. Low arithmetic values are favorable and are shaded green. High arithmetic values are unfavorable and are shaded red.

Program Evaluation Division
North Carolina General Assembly
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## Reports available online at [www.ncleg.net/PED/Reports/reports.html](http://www.ncleg.net/PED/Reports/reports.html)

PROGRAM EVALUATION DIVISION  
NORTH CAROLINA GENERAL ASSEMBLY

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### Reports

The Program Evaluation Division produces reports on the performance of state programs and provides information and recommendations to the General Assembly.

- Recently Published Reports
- Reports by Topic Area
- Reports by Date
- Report Abstracts
- Peters Reports
- New North Carolina Compared
- Division Activities and Accomplishments

If you would like email notification when new reports are released, submit your email address here.

To cite Program Evaluation Division reports, we suggest:  
Program Evaluation Division. (2008, December). *Caring for previously hospitalized consumers: Progress and challenges in mental health system reform*. Report to the Joint Legislative Program Evaluation Oversight Committee. Raleigh, NC: General Assembly.

To cite Program Evaluation Division presentations, we suggest:  
Program Evaluation Division. (2008, December). *Caring for previously hospitalized consumers: Progress and challenges in mental health system reform*. Presentation to the Joint Legislative Program Evaluation Oversight Committee. Raleigh, NC: General Assembly.

[John.turcotte@ncleg.net](mailto:John.turcotte@ncleg.net)
Program Evaluation Division
North Carolina General Assembly
11



**Senate Standing Program Evaluation Committee**  
**April 9, 2013**

## **How the State Auditor and Program Evaluation Division Compare**

### **State Auditor**

1. Established by NC Constitution
2. Elected statewide for a four-year term
3. Duties are prescribed by law, NC G.S. 147-64.1-14
4. Performs financial, compliance, performance and investigative audits
5. Topics and timing determined by the State Auditor
6. Statewide jurisdiction
7. \$16.5 million combined general fund and receipt budget
8. 170 positions

### **Program Evaluation Division**

1. Established in 2007 as One of Four Divisions of the Legislative Services Office
2. Employees serve at will and pleasure of Legislative Services Commission
3. Duties are prescribed by law, NC G.S. 120-36.1-14
4. Performs program evaluations with emphasis on return on investment and improved results
5. Topics and timing determined by the General Assembly and Joint Legislative Program Evaluation Oversight Committee
6. Statewide jurisdiction
7. \$1.7 million general fund allocation
8. 13 positions

Program Evaluation Division



North Carolina General Assembly

12

## **Accountability Conditions in North Carolina**



- No statewide benchmarks for gauging if programs are reducing deleterious conditions in NC



- No uniform strategic planning at agency level



- No incentives for programs to prove efficacy—legally compliant and popular programs may not be effective



- No statewide standards defining performance measures



- No statewide performance data validity or integrity controls



- Programs are funded without performance targets

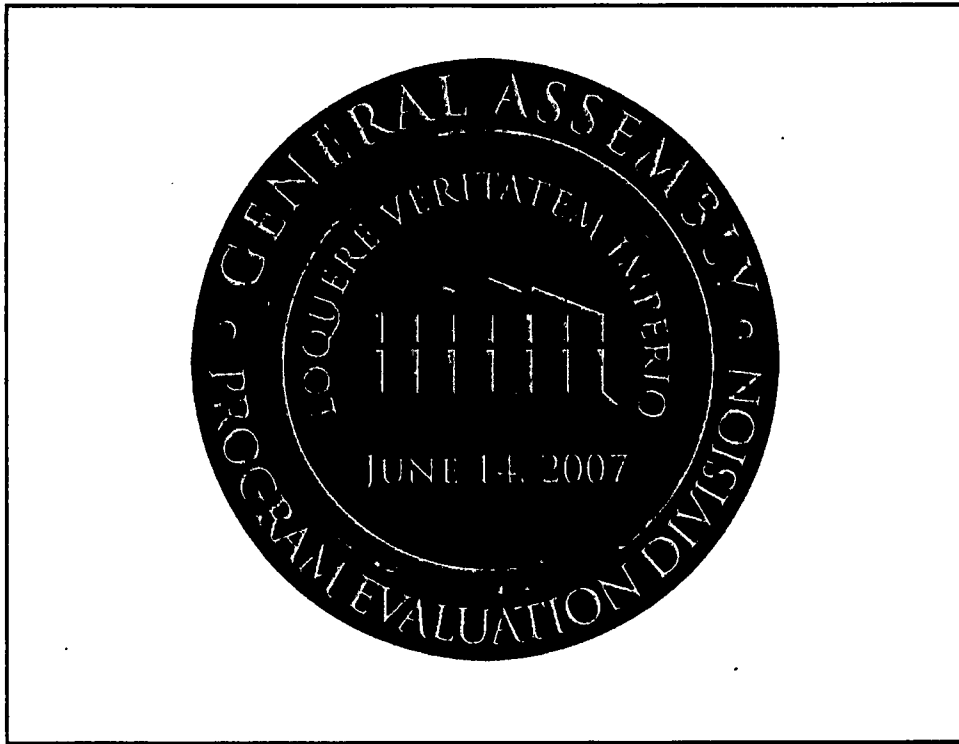
Program Evaluation Division



North Carolina General Assembly



**Senate Standing Program Evaluation Committee**  
**April 9, 2013**



# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 9, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Matt Viohl	CW Consult
John [unclear]	FCU
Pat C. Gancey	APP CNC
David Henney	NC center for Nonprofits
Jim [unclear]	NCDTSEA
Bill McGee	DETreas
Tony Solari	ST. THOMAS
LYNN HARVEY	NC DPI
Gene Causby	DCSCA
Rachel Beartier	NCDPI
Leanne Womack	NCSBA
Rhonda Todd	DOA
John Monroe	P.L. Group
Tony Adams	NCAA
Sarah Rothacker	Brakeley ASSE
Elizabeth Hodgins	CFTF
Jennifer Michan	ASNC

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 9, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Angy Ellis	NORM
George Smith	NP
Mark Griesper	MDMR
Morgan Beam	Gov. Office
Carl Deen	OSP
Carl McLamb	DENR
JOE DELUCA	NC OAH/RRC
Molly Masich	OAH
Anca GROZAV	OSBM
Jennifer Haigwood	NCDOJ
R Rogers	CWMTF
S. Stuckey	Consultant
Stephanie Rutz	DOA/YAIO
Chris Agnew	DOJ
David Crawford	A/ANC
Lillie White	NCMMC
Kathryn Trogden	Metro Mayers



# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

APRIL 9, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>[Signature]</i>	
Kirsten Laster	SSG NC
<i>[Signature]</i>	SOS
Layton Long	SPH
Doug Lassiter	NCSTA
Betsy Bailey	PENC
Tom Brown	EDF
<i>[Signature]</i>	SA
Mark Fountain	Joey Moore -
Mildred Spearman	NCAOC
Blake Thomas	Dept. of State Treasurer
Dusanna Davis	WM
Emila Sutton	NC HFA
Scott Saylor	NC Railroad Company
Adam Bridemore	NCAIA
Beth Briggs	NC Council For Women
Lisa Martin	NC Home Builders

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 9, 2013

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Curtis Aldendifer	NC REC
Sarah Wolfe	MWC LLC
Paul Foglia	Inform
Nadia Lubr	NCCN
Mag Mader Abill	SELL
Cassie Gam	Siema Club
Justin Delaney	Lebor

**Senate Committee on Program Evaluation  
Tuesday, April 16, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 29	NC Railroad Company Reporting and Dividends.	Senator Hartsell
SB 426	Change Deadline/Auditee Response.- AB	Senator J. Davis

**Presentations**

Ms. Beth Wood, State Auditor, will give comments regarding the Auditor's Program Evaluation Studies, State Government Accountability and Organization.

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, April 16, 2013 at 12:00 PM  
Room 421 of the Legislative Office Building**

**MINUTES**

The Senate Committee on Program Evaluation met at 12:00 PM on April 16, 2013 in Room 421 of the Legislative Office Building with ten members of the committee present. Senator Fletcher L. Hartsell, Jr., Chair, presided.

Senator Hartsell recognized the Sergeant-at-Arms and thanked them for their assistance. He then introduced and thanked pages Maranda Judd and Treston Farrington.

As Senator Hartsell was needed in another committee for a vote, he asked Senator Randleman to preside.

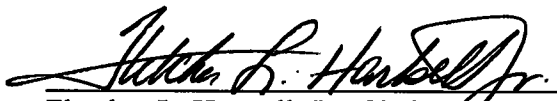
Senator Randleman recognized State Auditor Beth Wood, for a presentation to the committee regarding her findings of State Government Accountability, Process and Organization. After her presentation, Ms. Wood kindly answered questions from Senators Cook and McKissick.

Senator Hartsell returned to the committee and resumed the chair.

**SB 426 – Change Deadline/Auditee Response.** Senator Jim Davis was recognized to explain the bill. Auditor Wood gave additional comments and she and Senator Davis answered questions from Senator McKissick. Senator Sanderson moved for a favorable report. All voted and the motion carried.

**SB 29 – NC Railroad Company Reporting and Dividends.** As this was Senator Hartsell's bill he asked Senator Randleman to preside. She noted this was a Proposed Committee Substitute and Senator Sanderson moved for adoption for purposes of discussion. All voted and the motion carried. Senator Hartsell presented an amendment and moved that it be adopted. All voted and the motion carried. He then explained the bill and amendment. Senator Sanderson moved for a favorable report as amended, unfavorable to the original bill and rolled into a new Proposed Committee Substitute with a referral to Finance. All voted and the motion carried.

There being no further business, the meeting was adjourned.

  
Fletcher L. Hartsell, Jr., Chairman

  
Gerry Johnson, Committee Assistant

Principal Clerk  
Reading Clerk

\_\_\_\_\_  
\_\_\_\_\_

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	April 16, 2013	12:00 PM	421 LOB

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 29	NC Railroad Company Reporting and Dividends.	Senator Hartsell
SB 426	Change Deadline/Auditee Response.- AB	Senator J. Davis

Ms. Beth Wood, State Auditor, will give comments regarding the Auditor's Program Evaluation Studies, State Government Accountability and Organization.

Senator Fletcher L. Hartsell, Jr., Chair

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Tuesday, April 16, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**FAVORABLE**

**SB 426**

Change Deadline/Auditee Response.-AB

Draft Number: None

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

**TOTAL REPORTED: 1**

Senator James Davis will handle SB 426



\* C M R 3 0 0 - V - 1 \*

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Wednesday, April 17, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL**

**SB 29**

NC Railroad Company Reporting and Dividends.

Draft Number: S29-PCS35317-RK-26  
Sequential Referral: Appropriations/Base Budget  
Recommended Referral: None  
Long Title Amended: Yes

**TOTAL REPORTED: 1**

Senator Fletcher Hartsell will handle SB 29



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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1

SENATE BILL 29\*

Short Title: NC Railroad Company Reporting and Dividends. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); and Randleman.

Referred to: Program Evaluation.

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) STRENGTHEN OVERSIGHT, ANNUAL REPORTING, AND STRATEGIC PLANNING BY THE NORTH CAROLINA RAILROAD COMPANY, (2) REQUIRE A ONE-TIME CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE GENERAL FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE GENERAL FUND, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NON-CORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO THE STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1. Reporting and Oversight.** – (a) G.S. 124-1 reads as rewritten:

**"§ 124-1. Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in ~~G.S. 124-3~~. G.S. 124-17."

**SECTION 1.(b)** Article 2 of Chapter 124 of the General Statutes is amended by adding a new section, G.S. 124-15. G.S. 124-6(b), as amended by Section 3.3(a) of S.L. 1999-431, is recodified as G.S. 124-15(a). G.S. 124-5(b) is recodified as G.S. 124-15(b). G.S. 124-15, as created and amended by this subsection, reads as rewritten:

**"§ 124-15. Board of directors; appointment and approval of encumbrances.**

(a) Notwithstanding subsection (a) of ~~this section~~, G.S. 124-6, for any State-owned railroad company ~~organized as a corporation in which the State is the owner of all the voting stock and which~~ that has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, two shall also be appointees to the Board of Transportation. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General



\* S 2 9 - V - 1 \*



1 Assembly by the President Pro Tempore of the Senate, two shall be appointed for terms of four  
2 years and one shall be appointed for a term of two years. Thereafter all Board members shall  
3 serve four-year terms. The Board shall elect the chairman from among its membership.

4 (b) No State-owned railroad company shall sell, lease, mortgage, or otherwise  
5 encumber its franchise, right-of-way, or other property, except by and with the approval and  
6 consent of the Board of Directors of that corporation. The president or other chief officer of the  
7 State-owned railroad company shall report any acquisitions and dispositions in accordance with  
8 G.S. 124-3(10)."

9 SECTION 1.(c) Article 2 of Chapter 124 of the General Statutes is amended by  
10 adding a new section to read as follows:

11 **"§ 124-16. Strategic plan required of State-owned railroad company; performance**  
12 **management system.**

13 (a) Any State-owned railroad company shall prepare and maintain a comprehensive  
14 strategic plan that includes a mission statement describing the purpose of the company and  
15 clear goals that address the strategic issues facing the company.

16 (b) Any State-owned railroad company shall develop and implement a formalized  
17 performance management system based on its strategic plan. The performance management  
18 system shall measure and monitor progress toward achieving strategic objectives. When  
19 performance fails to achieve strategic objectives within the time period established in the plan,  
20 a State-owned railroad company shall take corrective action."

21 SECTION 1.(d) Article 2 of Chapter 124 of the General Statutes is amended by  
22 adding a new section, G.S. 124-17. G.S. 124-3(b) is recodified as G.S. 124-17(b). G.S. 124-3(c)  
23 is recodified as G.S. 124-17(c). G.S. 124-17, as created and amended by this subsection, reads  
24 as rewritten:

25 **"§ 124-17. Enhanced annual report of State-owned railroad company; additional**  
26 **reporting requirements to Governor and General Assembly.**

27 (a) A State-owned railroad company shall submit an annual report to the Joint  
28 Legislative Commission on Governmental Operations and the Joint Legislative Transportation  
29 Oversight Committee. The report shall include the following:

30 (1) The information required under G.S. 124-3.

31 (2) A copy of the strategic plan required under G.S. 124-16.

32 (3) Any failures to meet strategic objectives and what corrective actions were  
33 taken under G.S. 124-16(b).

34 (4) The information required by Form 10-K that public companies must file  
35 with the U.S. Securities and Exchange Commission pursuant to sections 13  
36 and 15(d) of the Securities Exchange Act of 1934, as amended. If a  
37 particular reporting requirement of Form 10-K is not relevant to the railroad  
38 company, the report shall include an explanation why.

39 (5) Anticipated dividends for the next three fiscal years.

40 (b) Upon the request of the Governor or any committee of the General Assembly, a  
41 State-owned railroad company shall provide all additional information and data within its  
42 possession or ascertainable from its records. The State-owned railroad company shall not be  
43 deemed to have waived any attorney-client privilege when complying with this subsection. At  
44 the time a State-owned railroad company provides information under this section, it shall  
45 indicate whether the information is confidential. Confidential information shall be subject to  
46 subsection (c) of this section.

47 (c) Confidential information includes (i) information related to a proposed specific  
48 business transaction where inspection, examination, or copying of the records would frustrate  
49 the purpose for which the records were created, or (ii) information that is subject to  
50 confidentiality obligations of a railroad company. Confidential information is exempt from  
51 Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

SECTION 2. One-time cash dividend. – Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a cash dividend in the amount of fifteen million five hundred thousand dollars (\$15,500,000), which shall be deposited into the General Fund, no later than June 30, 2013.

SECTION 3. Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:

"§ 124-5.1. ~~State use of North Carolina Railroad Company dividends.~~ Dividends deposited to General Fund.

(a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company. The improvements may include the following project types:~~

(1) ~~Railroad and industrial track rehabilitation.~~

(2) ~~Railroad signal and grade crossing protection.~~

(3) ~~Bridge improvements.~~

(4) ~~Corridor protection.~~

(5) ~~Industrial site acquisition deposited into the General Fund.~~

(b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on these obligations relating to periods prior to January 1, 2000, shall be deemed paid and contributed by the State to the capital of the North Carolina Railroad Company."~~

SECTION 3.(b) Article 2 of Chapter 124 of the General Statutes is amended by adding the following new section:

"§ 124-18. Dividends required of State-owned railroad company.

Any State-owned railroad company that has trackage in more than two counties shall issue an annual cash dividend to the State. The minimum amount of the annual dividend is twenty-five percent (25%) of the company's income from its trackage rights agreements for the prior year. Such a minimum dividend is due by January 15 of each year, and interest shall accrue at the rate of prime plus one percent (1%) if the payment is not paid by the due date."

SECTION 3.(c) G.S. 136-16.6 is repealed.

SECTION 4. One-time real property dividend. – (a) Any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a dividend consisting of any of the company's non-corridor real property that is among the following parcels:

Property Description	County	Nearest Town	Parcel ID
Burke Street Lot	Alamance	Gibsonville	107493
4th Street Lot	Carteret	Morehead	638620808907000
Bridges St. Lot	Carteret	Morehead	638620911461000
Newport Lot	Carteret	Newport	634814246231000
Station & Former Industrial Lot	Carteret	Morehead	638620718127000
Waterfront & Riparian Rights	Carteret	Morehead	638620708857000 & 638620709868000
Wye Ppty. Extension	Carteret	Morehead	637616924807000
Wye Property	Carteret	Morehead	637620923019000
Clarks Lot	Craven	Clarks	8-221-035
N. Craven St. Lot	Craven	New Bern	8-003-241-A

1	Tiffany & Bright Sts. Property	Lenoir	Kinston	11185 & 26555
2	Hillsborough Former Depot Lot	Orange	Hillsborough	9864755143
3	Morrisville Former Depot	Wake	Morrisville	0755-14-6475
4	Waynesboro Lot	Wayne	Goldsboro	2599119118

5 The dividend required by this section shall be issued no later than June 30, 2013. Any  
6 State-owned railroad making a dividend under this section may deduct any tax liabilities under  
7 the Internal Revenue Code triggered by this dividend from the amount of the dividend required  
8 under Section 2 of this act.

9 **SECTION 4.(b)** Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department  
10 of Administration shall sell the properties issued as dividends under this section and deposit the  
11 proceeds of the sales into the General Fund. Notwithstanding any other provision of law, the  
12 Department of Administration may deduct the costs of selling the property from the proceeds of  
13 the sales.

14 **SECTION 5.** Section 3 of this act becomes effective January 1, 2014. The  
15 remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 29\*  
PROPOSED COMMITTEE SUBSTITUTE S29-CSRK-26 [v.4]

4/12/2013 4:45:18 PM

Short Title: NC Railroad Company Reporting and Dividends.

(Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) STRENGTHEN OVERSIGHT, ANNUAL REPORTING, AND STRATEGIC PLANNING BY THE NORTH CAROLINA RAILROAD COMPANY, (2) REQUIRE A ONE-TIME CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE HIGHWAY FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE HIGHWAY FUND, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NON-CORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO THE STATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Reporting and Oversight. – (a) G.S. 124-1 reads as rewritten:

**"§ 124-1. Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in ~~G.S. 124-3.~~ G.S. 124-17."

**SECTION 1.(b)** Article 2 of Chapter 124 of the General Statutes is amended by adding a new section, G.S. 124-15. G.S. 124-6(b), as amended by Section 3.3(a) of S.L. 1999-431, is recodified as G.S. 124-15(a). G.S. 124-5(b) is recodified as G.S. 124-15(b). G.S. 124-15, as created and amended by this subsection, reads as rewritten:

**"§ 124-15. Board of directors; appointment and approval of encumbrances.**

(a) Notwithstanding subsection (a) of ~~this section,~~ G.S. 124-6, for any State-owned railroad company ~~organized as a corporation in which the State is the owner of all the voting stock and which~~ that has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, one shall be from the appointees to the Board of Transportation, and one shall be the Secretary of Commerce or the Secretary's designee. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the



1 President Pro Tempore of the Senate, two shall be appointed for terms of four years and one  
2 shall be appointed for a term of two years. Thereafter all Board members shall serve four-year  
3 terms. The Board shall elect the chairman from among its membership.

4 (b) No State-owned railroad company shall sell, lease, mortgage, or otherwise  
5 encumber its franchise, right-of-way, or other property, except by and with the approval and  
6 consent of the Board of Directors of that corporation. The president or other chief officer of the  
7 State-owned railroad company shall report any acquisitions and dispositions in accordance with  
8 G.S. 124-3(10)."

9 SECTION 1.(c) Article 2 of Chapter 124 of the General Statutes is amended by  
10 adding a new section to read as follows:

11 **"§ 124-16. Strategic plan and capital investment plan required of State-owned railroad**  
12 **company; performance management system.**

13 (a) Any State-owned railroad company shall prepare and maintain a comprehensive  
14 strategic plan and a capital investment plan. The strategic plan shall include a mission  
15 statement describing the purpose of the company and clear goals that address the strategic  
16 issues facing the company.

17 (b) Any State-owned railroad company shall develop and implement a formalized  
18 performance management system based on its strategic plan. The performance management  
19 system shall measure and monitor progress toward achieving strategic objectives. When  
20 performance fails to achieve strategic objectives within the time period established in the plan,  
21 a State-owned railroad company shall take corrective action."

22 SECTION 1.(d) Article 2 of Chapter 124 of the General Statutes is amended by  
23 adding a new section, G.S. 124-17. G.S. 124-3(b) is recodified as G.S. 124-17(b). G.S. 124-3(c)  
24 is recodified as G.S. 124-17(c). G.S. 124-17, as created and amended by this subsection, reads  
25 as rewritten:

26 **"§ 124-17. Enhanced annual report of State-owned railroad company; additional**  
27 **reporting requirements to Governor and General Assembly.**

28 (a) A State-owned railroad company shall submit an annual report to the Joint  
29 Legislative Commission on Governmental Operations and the Joint Legislative Transportation  
30 Oversight Committee. The report shall include the following:

31 (1) The information required under G.S. 124-3.

32 (2) A copy of the strategic plan and the capital investment plan required under  
33 G.S. 124-16.

34 (3) Any failures to meet strategic objectives and what corrective actions were  
35 taken under G.S. 124-16(b).

36 (4) Anticipated dividends for the next three fiscal years.

37 (5) A description of the State-owned railroad company's business, subsidiaries,  
38 and markets in which it operates.

39 (6) A list of the properties owned by the State-owned railroad company.

40 (7) A list of the directors and executive officers of the State-owned railroad  
41 company and a description of the background and experience of each.

42 (8) A description of the State-owned railroad company's code of ethics and  
43 conflicts of interest policy.

44 (9) A summary of the fees paid to an accounting firm during the year.

45 (10) A list of the compensation paid to directors and officers of the State-owned  
46 railroad company.

47 (11) A description of the State-owned railroad company's disagreements with its  
48 accountants if there has been a change in accountants.

49 (12) A description of any transactions between the State-owned railroad company  
50 and its directors, officers, and their family members.

(b) Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records. The State-owned railroad company shall not be deemed to have waived any attorney-client privilege when complying with this subsection. At the time a State-owned railroad company provides information under this section, it shall indicate whether the information is confidential. Confidential information shall be subject to subsection (c) of this section.

(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information is exempt from Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

**SECTION 2.(a)** The Freight Rail & Rail Crossing Safety Improvement Account is established within the Highway Fund as a separate, nonreverting account.

**SECTION 2.(b)** One-time cash dividend. – Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a cash dividend in the amount of fifteen million five hundred thousand dollars (\$15,500,000), which shall be deposited into the Freight Rail & Rail Crossing Safety Improvement Account no later than June 30, 2013.

**SECTION 3.** Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:

**"§ 124-5.1. ~~State use of North Carolina Railroad Company dividends.~~Dividends deposited to Highway Fund.**

(a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company. The improvements may include the following project types:~~deposited into the Rail & Rail Crossing Safety Improvement Account, a separate non-reverting account within the Highway Fund and administered by the Department of Transportation's Rail Division. Funds from the Account shall be used for the enhancement of rail service and railroad-roadway crossing safety, and may include, but is not limited to, the following project types:

(1) ~~Railroad and industrial track rehabilitation.~~Track and associated infrastructure improvements for rail service.

(2) ~~Railroad signal and grade crossing protection.~~Grade crossing protection, elimination, and hazard removal.

(3) ~~Bridge improvements.~~Signalization improvements.

(4) ~~Corridor protection.~~Assistance for projects to improve rail access to industrial, port, and military facilities and for freight intermodal facility improvements, provided that funding assistance under this subdivision shall be subject to the same limits as that for short-line railroads under G.S. 136-44.39.

(5) ~~Industrial site acquisition.~~

(b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on these obligations relating to periods prior to January 1, 2000, shall be deemed paid and contributed by the State to the capital of the North Carolina Railroad Company."~~

SECTION 3.(b) Article 2 of Chapter 124 of the General Statutes is amended by adding the following new section:

**"§ 124-18. Dividends required of State-owned railroad company.**

Any State-owned railroad company that has trackage in more than two counties shall issue an annual cash dividend to the State. The minimum amount of the annual dividend is twenty-five percent (25%) of the company's income from its trackage rights agreements for the prior year. Such a minimum dividend is due by January 15 of each year, and interest shall accrue at the annual rate of prime plus one percent (1%) if the payment is not paid by the due date. The Directors of any State-owned railroad company who vote for or assent to the minimum dividend required under this section shall not be held liable under G.S. 55-8-33."

SECTION 3.(c) G.S. 136-16.6 is repealed.

SECTION 4. One-time real property dividend. – (a) Any State-owned railroad company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue a dividend consisting of any of the company's non-corridor real property that is among the following parcels:

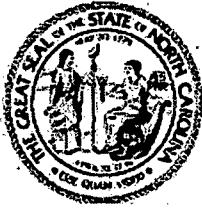
Property Description	County	Nearest Town	Parcel ID
Burke Street Lot	Alamance	Gibsonville	107493
4th Street Lot	Carteret	Morehead	638620808907000
Bridges St. Lot	Carteret	Morehead	638620911461000
Newport Lot	Carteret	Newport	634814246231000
Station & Former Industrial Lot	Carteret	Morehead	638620718127000
Waterfront & Riparian Rights	Carteret	Morehead	638620708857000 & 638620709868000
Wye Ppty. Extension	Carteret	Morehead	637616924807000
Wye Property	Carteret	Morehead	637620923019000
Clarks Lot	Craven	Clarks	8-221-035
N. Craven St. Lot	Craven	New Bern	8-003-241-A
Tiffany & Bright Sts. Property	Lenoir	Kinston	11185 & 26555
Morrisville Former Depot	Wake	Morrisville	0755-14-6475
Waynesboro Lot	Wayne	Goldsboro	2599119118

For purposes of this section, the value of the real property dividend shall be based upon either an appraisal of the fair market value of the parcel as of the date of transfer of the parcel to the State or the ad valorem tax value for the parcel for the year of transfer, as determined by the Board of Directors of any State owned railroad company.

The dividend required by this section shall be issued no later than June 30, 2013. Any State-owned railroad making a dividend under this section may deduct any tax liabilities under the Internal Revenue Code triggered by this dividend from the amount of the dividend required under Section 2 of this act.

SECTION 4.(b) Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department of Administration shall sell the properties issued as dividends under this section and deposit the proceeds of the sales into the Freight Rail & Rail Crossing Safety Improvement Account of the Highway Fund. Notwithstanding any other provision of law, the Department of Administration may deduct the costs of selling the property from the proceeds of the sales.

SECTION 5. Section 3 of this act becomes effective January 1, 2014. The remainder of this act is effective when it becomes law.



## SENATE BILL 29: NC Railroad Company Reporting and Dividends

2013-2014 General Assembly

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<b>Committee:</b>	Senate Ref to Program Evaluation. If fav, re- ref to Finance	<b>Date:</b>	April 15, 2013
<b>Introduced by:</b>	Sen. Hartsell	<b>Prepared by:</b>	Hal Pell
<b>Analysis of:</b>	PCS to First Edition S29-CSRK-26		Committee Counsel

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**SUMMARY:** *This act implements the four recommendations of the Program Evaluation Oversight Division's Report Number 2012-10, which is entitled "North Carolina Should Require NC Railroad Company to Pay an Annual Dividend and Strengthen Reporting." Those four recommendations are to (1) strengthen oversight, annual reporting, and strategic planning by the North Carolina Railroad Company (NCR), (2) require a one-time cash dividend, (3) require an annual dividend, and (4) require the transfer of low income non-corridor properties to the State for sale.*

[As introduced, this bill was identical to H174, as introduced by Rep. Howard, which is currently in House Appropriations.]

**CURRENT LAW:** Chapter 124 provides the existing law for internal improvement corporations in which the State owns a majority of the stock. Chapter 124 covers such topics with respect to internal improvement corporations as: reporting (G.S. 124-3), the use of dividends from the North Carolina Railroad Company (G.S. 124-5.1), and the appointment of officers to a company (G.S. 124-6).

The North Carolina Railroad Company is an internal improvement corporation entirely owned by the State. Thus, the NCR is subject to the requirements of Chapter 124. But as a Chapter 55 stock corporation, the NCR otherwise functions like most stock corporations, albeit one with a unique stockholder. The NCR has not issued any dividends to its stockholder in recent years. According to statute, dividends are to be used by the Department of Transportation as directed by the NCR board.

**BILL ANALYSIS:** Sections one through four of the bill correspond to the four numbered recommendations of the Program Evaluation Report Number 2012-10.

**Section 1** modifies the existing board appointment and reporting requirements.

- Subsection (b) requires the governor to cross-appoint a board member from the Board of Transportation and the Secretary of Commerce or designee.
- Subsection (c) requires the railroad company to (i) prepare and maintain a comprehensive strategic plan, including a mission statement, (ii) prepare a capital management plan, and (iii) develop and implement a formalized performance management system.
- Subsection (d) builds on the existing annual reporting requirements through the enactment of a new statute, which adds new language and recodifies existing reporting laws. The new law requires the inclusion of new information. Subsection (d) also clarifies that confidential information of a State-owned railroad company not only is exempt from a public records request (existing law), but is not a public record.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578



# Senate PCS 29

Page 2

**Section 2** requires a one-time cash dividend in the amount of \$15.5 million, payable to the Rail & Rail Crossing Safety Improvement Account, a separate non-reverting account within the Highway Fund and administered by the Department of Transportation's Rail Division, no later than June 30, 2013.

**Section 3** of the act:

- Directs that all NCRR dividends be deposited into the Rail & Rail Crossing Safety Improvement Account. Dividends are due by January 15th each year and late dividends are subject to interest at a rate of the prime rate plus one percent.
- Requires that any dividends be paid to the General Fund, including an annual minimum cash dividend in an amount equal to 25% of the trackage rights agreement. The rent under the trackage rights agreement adjusts each year, so the exact amount of the dividend will vary. The minimum dividend for 2014 would be approximately \$3.7 million.

**Section 4** requires a one-time real property dividend consisting of low income non-corridor properties. The section authorizes NCRR to deduct any tax implications of the transfer from the \$15.5 million cash dividend required under Section 2.<sup>1</sup> Subsection (b) directs the Department of Administration sell the properties, allowing deductions from the sale proceeds for the costs of the sales.

**EFFECTIVE DATE:** Section 3 becomes effective January 1, 2014, meaning that the first annual cash dividend will be due January 15, 2014. The remainder of the act is effective when it becomes law. The one-time cash and real property dividends are both due by June 30, 2013.

**BACKGROUND:** Section 28.12A of S.L. 2011-145, as amended, directed PED to "conduct a comprehensive evaluation of the North Carolina Railroad Company" and included a list of issues to be addressed in the evaluation. A complete listing of the issues is available in that session law and on page 2 of the Report Number 2012-10.

*S29-smrk-50(CSRK-26)*

*Ryan Blackledge, Staff Attorney, significantly contributed to this summary.*

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<sup>1</sup> The Internal Revenue Code requires most corporations to pay taxes on the gain on real property issued as a dividend to a shareholder.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 29\*

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

Page 1 of 1

S29-ARK-27 [v.2]

Comm. Sub. [YES]  
Amends Title [NO]  
First Edition

Date \_\_\_\_\_, 2013

Senator Hartsell

- 1 moves to amend the bill on page 4, line 5, by deleting the word "minimum", and
- 2
- 3 on page 4, line 7, by deleting the words "Such a minimum" and substituting the word "The",
- 4 and
- 5
- 6 on page 4, line 10, by deleting the word "minimum".
- 7
- 8
- 9
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- 16
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- 18

SIGNED

  
Amendment Sponsor

SIGNED

\_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



\* S 2 9 - A R K - 2 7 - V - 2 \*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 426

Short Title: Change Deadline/Auditee Response.-AB

(Public)

Sponsors: Senator J. Davis (Primary Sponsor).

Referred to: Program Evaluation.

March 27, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO CHANGE THE DEADLINE FOR AN AUDITEE'S RESPONSE TO A  
3 PERFORMANCE AUDIT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 147-64.6(c) reads as rewritten:

6 "§ 147-64.6. Duties and responsibilities.

7 ...  
8 (c) The Auditor shall be responsible for the following acts and activities:

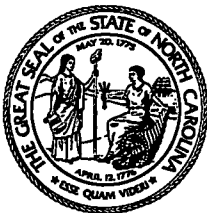
9 ...  
10 (13) At the conclusion of an audit, the Auditor or his designated representative  
11 shall discuss the audit with the official whose office is subject to audit and  
12 submit necessary underlying facts developed for all findings and  
13 recommendations which may be included in the audit report. On audits of  
14 economy and efficiency and program results, the auditee's written response  
15 shall be included in the final report if received ~~within 30 days from receipt of~~  
16 ~~the draft report on or before the deadline set by the Auditor.~~

17 ...."

18 SECTION 2. This act becomes effective October 1, 2013.



\* S 4 2 6 - V - 1 \*



## SENATE BILL 426: Change Deadline/Auditee Response.-AB

2013-2014 General Assembly

**Committee:** Senate Program Evaluation  
**Introduced by:** Sen. J. Davis  
**Analysis of:** PCS to First Edition  
S426-CSRK-24

**Date:** April 5, 2013  
**Prepared by:** Hal Pell  
Committee Counsel

**SUMMARY:** *This act authorizes the State Auditor to set a deadline for the receipt of an auditee's written response to a draft audit report for the purpose of inclusion in the final report. This act becomes effective October 1, 2013.*

**CURRENT LAW:** At the conclusion of an audit, the Auditor or the Auditor's representative discusses the audit with the official whose office is subject to the audit, and submits necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, if the auditee's written response is received within 30 days from the auditee's receipt of the draft report, it will be included in the final report.

**BILL ANALYSIS:** The act authorizes the Auditor to set a deadline for the receipt of the auditee's response to the draft report, so that the response will be included in the final report.

**EFFECTIVE DATE:** This act becomes effective October 1, 2013.

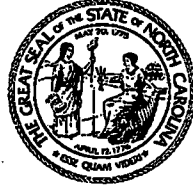
S426-smrk-43(csrk-24)

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# Office of the State Auditor



**Beth A. Wood, CPA**

2 S. Salisbury Street  
20601 Mail Service Center  
Raleigh, NC 27699-0601

Telephone: (919) 807-7500  
Fax: (919) 807-7647  
<http://www.ncauditor.net>

## **Highlights of Recent Audits and Reports**

- Carried out legislatively requested audit of Medicaid that identified administrative costs \$180 million higher than peer group average, poor budget forecasting and disregard for budget directives
- Found that several major agencies within state government failed to monitor or effectively administer the state's performance management system, resulting in wasted effort and ineffective human resources management
- Discovered more than \$12 million in uncollected fines at the Department of Transportation
- Identified \$10.5 million in annual cost-savings for prisoner health care at the state Department of Correction
- Identified millions of dollars in uncollected fines, fees, and penalties at the Administrative Office of the Courts
- Found that implementation of the Department of Health and Human Services Medicaid Management Information System was \$320 million over budget and nearly two years behind schedule
- North Carolina Industrial Commission audit found that state cannot identify employers who lack workmen's compensation insurance and that the commission fails to collect most penalties and fines that are assessed
- Identified \$580,000 in improper overtime payments made to employees at the Department of Health and Human Services working on the state Medicaid computer system
- Found that Information Technology Services has not set up criteria to determine whether IT consolidation goals have been met. There was no evidence to determine if consolidation had reduced costs or improved services.
- A separate audit found that ITS could not ensure the accuracy of its billing because of shortcomings in determining the value of its infrastructure
- Discovered poor oversight of \$80 million in grants administered by the Department of Commerce
- Identified \$1.34 million in overpayments by the State Health Plan to Baptist Hospital because of a lack of contract monitoring.

- Helped improve transparency and public access to the Department of Environment and Natural Resources environmental permitting process
- Conducted legislative requested audits of the Roanoke Island Commission; the N.C. Indian Cultural Center; the Department of Public Instruction administration's School Breakfast Program; and Legal Aid of North Carolina's Farmworker Program
- Found questionable expenses of more than \$13,500 by the mayor of Princeville, as well as two suspect contracts worth thousands of dollars more. The case has been referred to law enforcement officials and the IRS.
- Uncovered gross mismanagement regarding the contract and operation of the North Carolina Department of Transportation Rural Vanpool Program. DOT allowed the contractor to operate the program without a contract for more than 11 years. Investigators discovered the contractor billed DOT at least \$163,272 for personal mileage fees, backup van fees, and insurance deductibles that appeared excessive or unreasonable

# VISITOR REGISTRATION SHEET

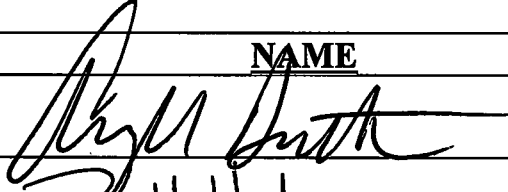
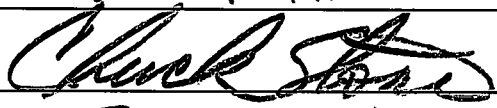
## SENATE PROGRAM EVALUATION

(Committee Name)

April 16, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
	SJS
Bill Holmes	OSA
Tim Hoegemeyer	OSA
Beth Wood	OSA
Jim Mammol	GRM & ASSOC
Self Tel	
Will Gratham	MLK
Mary Dillon	Ellis & Winters
Scott Saylor	MC Rabold Comp
STEVEN WEBB	NCHBA
LISA MARTIN	NCHBA
	SEAN
John Mcmullen	MF & S
Edgar Miller	CTNL
Teri Saylor	NCRP
DAVID REE	MFS
Joyce Fitzpatrick	NCRP

# VISITOR REGISTRATION SHEET

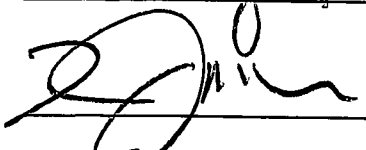
Senate Program Evaluation  
Name of Committee

4/16/13  
Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

David Bolbachian	NC Board of Nursing
Jah Harli	MTFS
Amanda Horner	Trautman Sanders
Franklin Freeman	MWC
Andrew Blackburn	SSG NC
Thomas C. Caves, Jr.	NCSBI
Will Parry-Hill	NCHFA
	RANC
W. J. Pearson	RANC



# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 16, 2013

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>Dunwood</i>	<i>NS</i>
<i>Lori Amthurn</i>	<i>LHH</i>
<i>Michelle Frazier</i>	<i>METS</i>

**Senate Committee on Program Evaluation  
Tuesday, April 23, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 78	Amend State Contract Review Laws. For discussion only	Senator Hartsell
SB 144	Nonprofit Grants/Increase Accountability.	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell

**Presentations**

**Other Business**

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, April 23, 2013 at 12:00 PM  
Room 421 of the Legislative Office Building**

**MINUTES**

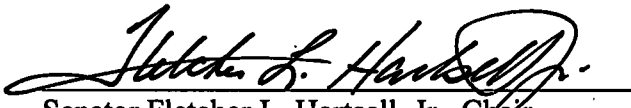
The Senate Committee on Program Evaluation met at 12:00 PM on April 23, 2013 in Room 421 of the Legislative Office Building with eleven members present. Senator Fletcher L. Hartsell, Jr., Chair, presided.

Senator Hartsell introduced the Sergeant-at-Arms and pages Ron Davenport, Mollie McDonald, Natalie Brown and thanked them all for their service to the committee.

**Senate Bill 144 – Non-Profit Grants/Increase Accountability.** Senator Hartsell introduced the bill and noted that it was a Proposed Committee Substitute. Senator Bingham moved that it be adopted for purposes of discussion. All voted and the motion carried. As this was Senator Hartsell's bill, he asked Senator Bingham to preside. Senator Hartsell explained the bill and then recognized Mr. John Turcotte, Director of Program Evaluation, for additional explanation. Senator Hartsell and Mr. Turcotte answered questions from Senators Clodfelter, McKissick and Woodard. Senator Clodfelter offered a clarifying amendment and moved that it be adopted. All voted and the motion carried. Senator Hartsell then offered an additional clarifying amendment and moved that it be adopted. All voted and the motion carried. Mr. David Heinan, representing the North Carolina Center for Nonprofits, gave comments as did Ms. Stephanie Nantz, Executive Director for Department of Administration Youth Advocacy and Involvement Office. Senator Clark moved for a favorable report to the Proposed Committee Substitute as amended and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

Senate Bills 78 and 193 will be heard at a later date.

There being no further business, the meeting was adjourned at 1:00 P.M.

  
Senator Fletcher L. Hartsell, Jr., Chair  
Presiding

  
Gerry Johnson, Committee Assistant

Principal Clerk \_\_\_\_\_  
Reading Clerk \_\_\_\_\_

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	April 23, 2013	12:00 PM	421 LOB

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	
SB 78	Amend State Contract Review Laws. For discussion only	Senator Hartsell
SB 144	Nonprofit Grants/Increase Accountability.	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Tuesday, April 23, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL**

**SB 144**

Nonprofit Grants/Increase Accountability.

Draft Number: S144-PCS35330-TJ-25

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

**TOTAL REPORTED: 1**

Senator Fletcher Hartsell will handle SB 144



\* C M R 3 5 8 - V - 1 \*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

D

SENATE BILL 78\*  
PROPOSED COMMITTEE SUBSTITUTE S78-CSRK-23 [v.1]

4/4/2013 2:52:43 PM

Short Title: Amend State Contract Review Laws.

(Public).

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE  
DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF  
ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND  
REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND  
REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR  
CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY  
THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. Attorney General/General Counsel; to review certain contracts.

(a) Except as provided in subsections (b) and (b1) of this section, the  
Attorney General or the Attorney General's designee shall perform the duties required pursuant  
to G.S. 143-49(3a) for review all proposed contracts for supplies, materials, printing,  
equipment, and contractual services that exceed one five million dollars (\$1,000,000)  
(\$5,000,000). The designee shall confirm to ensure that the proposed contracts are (i) in proper  
legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable,  
and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used  
in this section designee's review shall not constitute approval or disapproval of the policy merit  
or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney  
General's designee" shall include any attorney approved by the Attorney General to review  
contracts as provided in this subsection. The Attorney General shall:

(1) Establish establish procedures regarding the review of contracts subject to  
this section and shall provide any attorney designated under G.S. 143-49(3a)  
with guidelines to be used in reviewing contracts. shall require that any  
attorney designated under this subsection comply with any rules established  
by the Attorney General or the Department of Administration regarding the  
review of contracts.

(2) Advise and assist the Contract Management Section of the Division of  
Purchase and Contract, Department of Administration, in establishing  
procedures and guidelines for the review of contracts pursuant to  
G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General  
Counsel of each institution or the General Counsel's designee shall review all proposed  
contracts for supplies, materials, printing, equipment, and contractual services that exceed one  
million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form,



\* S 7 8 - C S R K - 2 3 - V - 1 \*

(ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any ~~rules-procedures~~ established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment and debt contracts, as defined in subdivision (4) of this subsection, or any contracts for services entered pursuant to the State Treasurer's authority under G.S. 147-69.3, to confirm that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

- (1) The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.
- (2) The term "General Counsel's designee" shall include any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.
- (3) Any contract for services reviewed pursuant to this subdivision must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of such contract. Except for any debt contract, or contracts entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.
- (4) For the purposes of this subdivision, "investment and debt contracts" means any of the following:
  - a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.
  - b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.
  - c. Debt issued or to be issued by the State of North Carolina under the supervision of the State Treasurer, debt issued or to be issued by the North Carolina Capital Facilities Finance Agency, and debt and other matters of finance subject to the approval or supervision of the Local Government Commission, including, in each case, services required for ongoing management and review of debt issues that have previously been incurred or that are proposed to be incurred.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars (\$1,000,000) shall

1 notify the Secretary of the Department of Administration or the Secretary's designee of the  
2 intent to enter into the contract and provide such information as required by the Department for  
3 the purposes of maintaining a centralized log of such contracts and identifying the location of  
4 the contract documents.

5 SECTION 2. G.S. 143-49 reads as rewritten:

6 "§ 143-49. Powers and duties of Secretary.

7 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the  
8 Secretary's duty, subject to the provisions of this Article:

9 ...

10 (3a) To ~~request, notify and~~ the Attorney General of pending contracts for  
11 contractual services exceeding a cost of five million dollars (\$5,000,000).  
12 Upon notification, the Attorney General shall assign a representative of from  
13 within the office of the Attorney General, the Contract Management Section  
14 of the Division of Purchase and Contract, Department of Administration, or  
15 other qualified counsel to assist in negotiation for the award of any the  
16 contract. contract for contractual services exceeding a cost of one hundred  
17 thousand dollars (\$100,000) that requires negotiation with prospective  
18 contractors. It shall be the duty of such representative to assist and advise in  
19 obtaining the most favorable contract for the State, to evaluate all proposals  
20 available from prospective contractors for that purpose, to interpret proposed  
21 contract terms and to advise the Secretary or his representatives of the  
22 liabilities of the State and validity of the contract to be awarded. All  
23 contracts and drafts of such contracts shall be prepared reviewed by an  
24 attorney from within the office of the Attorney General and copies thereof  
25 shall be retained by such office for a period of three years following the  
26 termination of such contracts. The term "contractual services" as used in this  
27 subsection and G.S. 143-52.2 shall mean work performed by an independent  
28 contractor requiring specialized knowledge, experience, expertise or similar  
29 capabilities wherein the service rendered does not consist primarily of  
30 acquisition by this State of equipment or materials and the rental of  
31 equipment, materials and supplies. The term "negotiation" as used in this  
32 This subdivision shall not apply be deemed to refer to contracts entered into  
33 or to be entered into as a result of a competitive bidding process. The  
34 following procedures and requirements apply to contracts subject to this  
35 subdivision:

- 36 a. The Secretary is not required to notify the Attorney General for  
37 the appointment of a representative for any contracts for  
38 contractual services to be entered into by the constituent  
39 institutions of The University of North Carolina pursuant to G.S.  
40 114-8.3(b), or for contracts to be entered into by the Department  
41 of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do  
42 so by the General Counsel of The University of North Carolina  
43 or the General Counsel of the Department of State Treasurer,  
44 respectively.  
45 b. Any contract for services reviewed pursuant to this subdivision  
46 must include signature of the Attorney General or the Attorney  
47 General's designee. If the contract commences without the  
48 required signature, the State shall have the right to terminate the  
49 contract and the other party or parties to the contract shall only be  
50 entitled to the value of all services provided to the State prior to  
51 the termination.



1 . . . . ."  
2 SECTION 3. Article 3 of Chapter 143 of the General Statutes is amended by  
3 adding a new section to read:

4 **"§ 143-50.1. Division of Purchase and Contract; Contract Management Section.**

5 (a) The Contract Management Section (CMS) is established in the Division of Purchase  
6 and Contract, Department of Administration. The CMS shall include legal counsel with the  
7 duties and responsibilities included in this section.

8 (b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all  
9 proposed solicitations for supplies, materials, printing, equipment, or contractual services that  
10 exceed one million dollars (\$1,000,000), the CMS shall:

- 11 (1) Participate and assist in the preparation of all proposed solicitations, and  
12 review all available proposals from prospective contractors, with the goal of  
13 obtaining the most favorable contract for the State.  
14 (2) Interpret proposed contract terms and advise the Secretary or the Secretary's  
15 designee of the potential liabilities to the State.  
16 (3) Review all proposed contracts to ensure that the contracts:  
17 a. Are in proper legal form.  
18 b. Contain all clauses required by law.  
19 c. Are legally enforceable.  
20 d. Require performance that will accomplish the intended purposes of  
21 the proposed contract.

22 The review and evaluation required by this subsection shall not constitute approval or  
23 disapproval of the policy merit or lack thereof of the proposed contract.

24 (c) With respect to proposed contracts for services which exceed five million dollars  
25 (\$5,000,000), the CMS shall perform such duties as may be required by the Attorney General  
26 under G.S. 143-49(3a).

27 (d) The CMS shall:

- 28 (1) Assist State departments, agencies, and institutions to establish formal  
29 contract administration procedures and functions.  
30 (2) Advise personnel in contracting specialist roles as to appropriate contract  
31 management and administrative techniques and activities.  
32 (3) Act as a general resource to State agencies on contracting issues related to  
33 procurement, including contract drafting, clarification of terms and  
34 conditions, proper solicitation and bid evaluation procedures, contract  
35 negotiation, and such other matters as directed by the State Purchasing  
36 Officer.  
37 (4) Assist representatives of the Attorney General, agency counsel, and other  
38 legal staff, as requested, in matters related to contracting for goods and  
39 services.

40 (e) The Department of Administration shall adopt procedures for the record keeping of  
41 the information provided by State agencies and which has been received by the Secretary or the  
42 Secretary's designee pursuant to G.S. 114-8.3(c). The records shall be kept by the Department  
43 and shall include a log with information that provides identification of individual contracts and  
44 where the contract documents are located. The Secretary is authorized to require that entities  
45 reporting pursuant to G.S. 114-8.39(c) provide such additional information that may be  
46 required to identify the individual contracts.

47 (f) The CMS shall consist of personnel designated by the Secretary and perform such  
48 other functions as directed by the Secretary that are not inconsistent with this section."

49 SECTION 4. G.S. 143-52.1 reads as rewritten:

50 **"§ 143-52.1. Board of Awards. Award recommendations; State Purchasing Officer action.**

(a) When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Purchasing Officer's action. There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) ~~The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.~~

(c) ~~When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.~~

(d) ~~The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.~~

(e) ~~Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board. A report of all contract awards greater than twenty-five thousand dollars (\$25,000) approved through the Division of Purchase and Contract shall be reported monthly by the Board State Procurement Officer to the chairs of the Joint Legislative Oversight Committee on Information Technology. Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."~~

SECTION 5. G.S. 147-33.101 reads as rewritten:

**"§ 147-33.101. Board of Awards review. Award recommendation; State Chief Information Officer action.**

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Chief Information Officer's action. the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) ~~Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State~~

government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) A report of all contract awards greater than twenty-five thousand dollars (\$25,000), approved through the Statewide IT Procurement Office, shall be reported monthly by the State CIO's to the Cochairs of the Joint Legislative Oversight Committee on Information Technology. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

**SECTION 6.** G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

- (1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or
- (2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of ~~Administration~~, Administration or the State Purchasing Officer, ~~or the Board of Awards Officer~~ shall not be required, regardless of dollar value."

**SECTION 7.** G.S. 120-36.6 reads as rewritten:

**"§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards and Council of State~~, unless the ~~Board or Council~~ has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or Council~~. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the ~~Board or Council~~; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or Council~~."

**SECTION 8.** G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all such estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon

consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

**SECTION 9.** G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

**SECTION 10.** G.S. 143-318.18(10) is repealed.

**SECTION 11.** The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- (1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.
- (2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.

- 1 (3) The Commissioner of Insurance, who is subject to  
2 G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a),  
3 and 58-71-40(d).  
4 (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
5 Secretary of Transportation shall be copied on the notice sent to the Global  
6 TransPark Authority.  
7 (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).  
8 (6) The North Carolina Board for Licensing of Geologists, which is subject to  
9 G.S. 89E-5(e).  
10 (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
11 to G.S. 89F-5(d).  
12 (8) The constituent institutions of the University of North Carolina, which are  
13 subject to G.S. 114-8.3(b). For notification under this subdivision, the  
14 Department of Administration may provide the University of North Carolina  
15 system a notification to distribute to all of its constituent institutions. If the  
16 Department of Administration does so, the University of North Carolina  
17 system shall distribute those notifications to the system's constituent  
18 institutions.  
19 (9) The North Carolina Center for Applied Textile Technology, which is subject  
20 to G.S. 115D-67.4.  
21 (10) The North Carolina State Health Plan for Teachers and State Employees,  
22 which is subject to G.S. 135-48.33(b).  
23 (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
24 G.S. 143-134(b).  
25 (12) The North Carolina Turnpike Authority, which is subject to  
26 G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
27 the notice sent to the Turnpike Authority.  
28 (13) The Department of Health and Human Services, which is subject to  
29 G.S. 143-48.1(c).  
30 (14) The Division of Adult Correction of the Department of Public Safety, which  
31 is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
32 on the notice sent to the Division of Adult Correction.  
33 (15) The North Carolina Code Officials Qualification Board, which is subject to  
34 G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
35 notice sent to the Code Officials Qualification Board.  
36 (16) The Roanoke Island Commission, which is subject to  
37 G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
38 copied on the notice sent to the Roanoke Island Commission.  
39 (17) Any other State entity subject to contract review under G.S. 114-8.3.

40 The Department of Administration, as part of its notice, shall provide a means by  
41 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
42 Administration has not received an acknowledgement from a State entity within 30 days of  
43 sending the notice, the Department of Administration shall send a second notice. If the  
44 Department of Administration has not received an acknowledgement from a State entity within  
45 30 days of sending the second notice, the Department of Administration shall notify (i) the  
46 Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations  
47 Subcommittee on General Government and the Senate Appropriations Committee on General  
48 Government and Information Technology.

49 **SECTION 12.** The Attorney General's Office, the Department of Administration,  
50 the Office of the General Counsel for The University of North Carolina, and the Department of

1 State Treasurer, shall establish procedures to implement the provisions of this act no later than  
2 June 30, 2013.

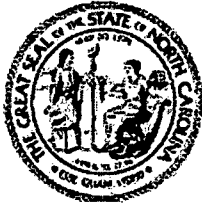
3 SECTION 13. G.S. 143-49 reads as rewritten:

4 "§ 143-49. Powers and duties of Secretary.

5 The Secretary of Administration shall have power and authority, and it shall be his duty,  
6 subject to the provisions of this Article:

- 7 ...
- 8 (13) To ~~implement~~ implement, by January 1, 2014, a quality management system  
9 equivalent to the International Organization for Standardization (ISO)  
10 9001:2008 to ensure that citizen and agency customer requirements are met.  
11 By ~~September 1, 2012,~~ June 1, 2013, and more frequently as requested, the  
12 Secretary shall report to the Joint Legislative Commission on Governmental  
13 Operations, the Program Evaluation Division, and the Fiscal Research  
14 Division concerning the progress of the Department's effort to comply with  
15 the provisions of this subdivision.
- 16 (14) To work in conjunction with the Office of State Personnel to create a  
17 Contracting Specialist career path to provide for the ~~designation~~ designation,  
18 by September 1, 2013, of one or more employees within each department,  
19 agency, or institution of the State to serve as the Contracting Specialist for  
20 the department, agency, or institution. Employees on the Contracting  
21 Specialist career path shall receive training and guidance as to the provisions  
22 of this Article.
- 23 (15) To work in conjunction with the Office of State Personnel, the Division of  
24 Purchase and Contract, and the University of North Carolina School of  
25 Government to ~~develop~~ implement, by July 1, 2014, a rigorous contract  
26 management training and certification program for State employees. The  
27 program shall be administered by the Office of State Personnel.
- 28 (16) To work in conjunction with the University of North Carolina School of  
29 Government to study and recommend improvements to State procurement  
30 laws, including the feasibility of adopting the provisions of the American  
31 Bar Association Model Procurement Code. The recommendations shall be  
32 reported by the Secretary to the Joint Legislative Commission on  
33 Governmental Operations and the Program Evaluation Division by  
34 September 1, 2013.
- 35 (17) To establish procedures to permit State government, or any of its  
36 departments, institutions, or agencies, to join with any federal, State, or local  
37 government agency, entity, or subdivision, or any nonprofit organization in  
38 cooperative purchasing plans, projects, arrangements, or agreements if the  
39 interest of the State would be served thereby."

40 SECTION 14. Sections 1 through 3 of this act become effective October 1, 2013,  
41 and apply to contracts entered into on or after that date. The remainder of this act is effective  
42 when it becomes law.



## SENATE BILL 78: Amend State Contract Review Laws

This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: PCS to First Edition  
S78-CSRK-23

Date: April 4, 2013  
Prepared by: Hal Pell  
Committee Counsel

**SUMMARY:** *This act creates a contract management section in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars (\$1,000,000); provides that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars (\$5,000,000), and complete an internal review of such contracts; repeals the Board of Awards and transfers its responsibilities; and provides for contract management certification and training. The contract review provisions are effective October 1, 2013, and the remainder of the act is effective when it becomes law.*

### BILL ANALYSIS:

#### Section 1:

- The act removes contract review responsibility from the Attorney General's office for all contracts for supplies, materials, printing, equipment, and contractual services in excess of \$1,000,000 and transfers that responsibility to a new section in the Department of Administration (see Section 3, below). The section also amends the law to provide that the Attorney General or designee is responsible for reviewing all proposed contracts for services in excess of \$5 million dollars. The term "designee" includes any attorney approved by the Attorney General.
- The Attorney General's office is also required to: (1) establish procedures regarding the review of contracts and provide any attorney designated to review a contract for services in excess of \$5,000,000 with guidelines to be used in reviewing the contract, and (2) advise and assist the Contract Management Section of the Division of Purchase and Contract, Contract Management Section [See Section 3], in establishing procedures and guidelines for the review of contracts.
- Adds a new provision which directs the General Counsel of the Department of State Treasurer (or designee) to review all proposed investment and debt contracts (defined terms), or contracts entered into pursuant to the Treasurer's authority to contract for investment advisory services. The contracts are to be reviewed to confirm that the contracts conform to the stated statutory requirements. The provision exempts certain contracts from the provision that states that the absence of a reviewing counsel's triggers the State's right to terminate a contract.

#### Section 2:

- Increases the threshold amount for a legal review of contracts for services from \$100 thousand dollars to \$5 million dollars. The attorney designated by the Attorney General's office to review such contracts is required to fulfill the same requirements provided under current law: (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# Senate PCS 78

Page 2

- The act also requires a review by an attorney from within the Attorney General's office, and the attorney's signature and title must be included on the contract. Absent a signature, the State would have the right to terminate the contract, with the other parties receiving the value of the services provided prior to the termination.

## Section 3:

- Establishes a Contract Management Section (CMS) in the Division of Purchase and Contract, Department of Administration, to review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed \$1 million dollars, unless reviewed by another agency that has been designated by statute.
- The legal counsel in the CMS would be responsible for: participating and assisting in the preparation of all proposed solicitations, and reviewing them with the goal of obtaining the most favorable contract for the State; interpreting proposed contract terms and advising the Secretary or the Secretary's designee of the potential liabilities to the State; and insuring compliance with statutory requirements.
- Counsel in the CMS would also be subject to appointment by the Attorney General's office for review of contracts for services in excess of \$5 million dollars.
- The CMS would also: (1) assist State departments, agencies, and institutions to establish formal contract administration procedures and functions, (2) advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities, (3) act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer, and (4) assist other State agency legal staff, as requested, in matters related to contracting for goods and services.

## Sections 4 through 10:

The act transfers the authority to take action on contract award recommendations from the Board of Awards to the State Purchasing Officer, or the State Chief Information Officer, depending on the subject of the contract. The statute establishing the Board of Awards is repealed.

## Section 11:

Requires the Department to notify agencies about new contract review laws.

## Section 12:

Requires the Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina to establish procedures to implement the provisions of the act no later than June 30, 2013.

## Section 13:

Sets dates for the implementation of the quality management system; contract specialist career path, contract management and training certification program, and a reporting date for recommendations on improving the procurement laws—all of which are required under current law.

**EFFECTIVE DATE:** Sections 1 through 3 of the act are effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of the act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

2

SENATE BILL 78\*  
Corrected Copy 4/15/13

Short Title: Amend State Contract Review Laws. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Apodaca, Clodfelter, Daniel, Graham, Gunn, Hise, Hunt, and Randleman.

Referred to: Program Evaluation.

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. Attorney General/General Counsel; to review certain contracts.

(a) Except as provided in subsection (b) of this section, the Attorney General or the Attorney General's designee shall review all proposed contracts for supplies, materials, printing, equipment, and/or contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General, in consultation with the Department of Administration, shall establish procedures regarding the review of contracts subject to this section, and shall provide any attorney designated under this subsection with guidelines to be used in reviewing contracts. ~~shall require that any~~ Any attorney designated under this subsection shall comply with any rules/procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(a1) Any contract for services that exceeds five million dollars (\$5,000,000), which requires that a representative from within the office of the Attorney General advise and assist in the negotiation of contract for services pursuant to G.S. 143-49(3a), must include the signature and title of the Attorney General's representative in order to be valid.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection.



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1 The General Counsel shall establish procedures regarding the review of contracts subject to this  
2 section, and shall require that any attorney designated under this subsection comply with any  
3 rules-procedures established by the Attorney General or the Department of Administration  
4 regarding the review of contracts.

5 (c) All State agencies, the constituent institutions of The University of North Carolina,  
6 or any person who will be entering into a contract on behalf of the State for supplies, materials,  
7 printing, equipment, or contractual services that exceed one million dollars (\$1,000,000) shall  
8 notify the Secretary of the Department of Administration or the Secretary's designee of the  
9 intent to enter into the contract, and provide information as required by the Secretary or the  
10 Secretary's designee, including, but not limited to, the name and title of the attorney designated  
11 to conduct the review required by this section.

12 (d) The Department of Administration shall adopt procedures for the identification and  
13 record keeping of contracts subject to review under this section. The records shall be kept by  
14 the Department and shall include a log identifying all contracts subject to review under this  
15 section. The log shall include, at a minimum, (i) the name of the contracting agency,  
16 constituent institution of The University of North Carolina, or the party that is contracting on  
17 behalf of the State and (ii) the name and title of the attorney designated to conduct the review  
18 required by this section."

19 SECTION 2. G.S. 143-49 reads as rewritten:

20 "§ 143-49. Powers and duties of Secretary.

21 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the  
22 Secretary's duty, subject to the provisions of this Article:

23 ...

24 (3a) To request, notify and the Attorney General of pending contracts for  
25 contractual services exceeding a cost of five million dollars (\$5,000,000).  
26 Upon notification, the Attorney General shall assign a representative of from  
27 within the office of the Attorney General to assist in negotiation for the  
28 award of any the contract. contract for contractual services exceeding a cost  
29 of one hundred thousand dollars (\$100,000) that requires negotiation with  
30 prospective contractors. It shall be the duty of such representative to assist  
31 and advise in obtaining the most favorable contract for the State, to evaluate  
32 all proposals available from prospective contractors for that purpose, to  
33 interpret proposed contract terms and to advise the Secretary or his  
34 representatives of the liabilities of the State and validity of the contract to be  
35 awarded. All contracts and drafts of such contracts shall be prepared by the  
36 office of the Attorney General and copies thereof shall be retained by such  
37 office for a period of three years following the termination of such contracts.  
38 The term "contractual services" as used in this subsection and G.S. 143-52.2  
39 shall mean work performed by an independent contractor requiring  
40 specialized knowledge, experience, expertise or similar capabilities wherein  
41 the service rendered does not consist primarily of acquisition by this State of  
42 equipment or materials and the rental of equipment, materials and supplies.  
43 The term "negotiation" as used in this This subdivision shall not apply be  
44 deemed to refer to contracts entered into or to be entered into as a result of a  
45 competitive bidding process. This subdivision does not require the Secretary  
46 to notify the Attorney General for the appointment of a representative from  
47 within the office of the Attorney General for any contracts for contractual  
48 services to be entered into by the constituent institutions of The University  
49 of North Carolina unless requested to do so by the General Counsel of The  
50 University of North Carolina.

51 ...."

1           **SECTION 3.** The Department of Administration shall provide an individualized  
2 notice to the following State entities to ensure that the entities are aware of how the statutory  
3 amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- 4           (1) The North Carolina State Lottery Commission, which is subject to  
5           G.S. 18C-150.
- 6           (2) The Commissioner of Banks, who is subject to G.S. 53-320(d),  
7           G.S. 53-326(d), G.S. 53-391, and G.S. 53-401.
- 8           (3) The Commissioner of Insurance, who is subject to G.S. 53-401,  
9           G.S. 58-33-30(e)(4) and (5), G.S. 58-33-125(e), G.S. 58-33-130(a), and  
10           G.S. 58-71-40(d).
- 11           (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
12           Secretary of Transportation shall be copied on the notice sent to the Global  
13           TransPark Authority.
- 14           (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- 15           (6) The North Carolina Board for Licensing of Geologists, which is subject to  
16           G.S. 89E-5(e).
- 17           (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
18           to G.S. 89F-5(d).
- 19           (8) The constituent institutions of the University of North Carolina, which are  
20           subject to G.S. 114-8.3(b). For notification under this subdivision, the  
21           Department of Administration may provide the University of North Carolina  
22           system a notification to distribute to all of its constituent institutions. If the  
23           Department of Administration does so, the University of North Carolina  
24           system shall distribute those notifications to the system's constituent  
25           institutions.
- 26           (9) The North Carolina Center for Applied Textile Technology, which is subject  
27           to G.S. 115D-67.4.
- 28           (10) The North Carolina State Health Plan for Teachers and State Employees,  
29           which is subject to G.S. 135-48.33(b).
- 30           (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
31           G.S. 143-134(b).
- 32           (12) The North Carolina Turnpike Authority, which is subject to  
33           G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
34           the notice sent to the Turnpike Authority.
- 35           (13) The Department of Health and Human Services, which is subject to  
36           G.S. 143-48.1(c).
- 37           (14) The Division of Adult Correction of the Department of Public Safety, which  
38           is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
39           on the notice sent to the Division of Adult Correction.
- 40           (15) The North Carolina Code Officials Qualification Board, which is subject to  
41           G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
42           notice sent to the Code Officials Qualification Board.
- 43           (16) The Roanoke Island Commission, which is subject to  
44           G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
45           copied on the notice sent to the Roanoke Island Commission.
- 46           (17) Any other State entity subject to contract review under G.S. 114-8.3.

47           The Department of Administration, as part of its notice, shall provide a means by  
48 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
49 Administration has not received an acknowledgement from a State entity within 30 days of  
50 sending the notice, the Department of Administration shall send a second notice. If the  
51 Department of Administration has not received an acknowledgement from a State entity within

30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

**SECTION 4.** The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than June 30, 2013.

**SECTION 5.** G.S. 143-49 reads as rewritten:

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

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- ...
- (13) To ~~implement~~ implement, by September 1, 2013, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1, 2012, April 1, 2013, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
  - (14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~ designation, by April 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
  - (15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~ implement, by September 1, 2013, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.
  - (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.
  - (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. Any procedures established under this subdivision shall be reported to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division no later than 30 days prior to the effective date of the procedures."

**SECTION 6.** Sections 1 and 2 of this act become effective July 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 144  
Corrected Copy 2/28/13  
Corrected Copy 4/9/13

Short Title: Nonprofit Grants/Increase Accountability. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Apodaca, Brock, Clark, Clodfelter, Daniel, D. Davis, Goolsby, Gunn, Hise, Hunt, Jackson, McLaurin, Meredith, and Nesbitt.

Referred to: Program Evaluation.

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE OVERSIGHT OF STATE GRANTS TO NON-STATE ENTITIES AND TO INCREASE THE ACCOUNTABILITY OF GRANTEEES WHO RECEIVE STATE GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143C-6-23 reads as rewritten:

**"§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.**

(a) Definitions. – The following definitions apply in this section:

(1) "Grant" and "grant funds" means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.

(2) "Grantee" means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(3) "Subgrantee" means a non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written



statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. – The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (2a) Require each contract that awards a grant to include all of the following:
  - a. Concrete, measurable benchmarks against which to measure success. The benchmarks shall address the expected quantifiable outputs and outcomes.
  - b. Identification of program performance measures that will be used to compare quantifiable outputs and outcomes against the benchmarks established in contracts pursuant to this subdivision.
  - c. For purposes of this subdivision, the term "output" means quantified activities performed by the grantee, and the term "outcome" means what happens as a result of the grantee's activities.
- (3) Ensure that State funds are spent in accordance with the purposes for which they were granted.
- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds.
- (5a) Establish the criteria for grants from which oversight costs may be withheld by a State agency pursuant to subsection (f1) of this section.
- (5b) Provide procedures for the determination of the amount of a grant that may be withheld for administrative costs pursuant to subsection (f1) of this section.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial ~~and program performance~~ information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.
- (6a) Establish mandatory periodic reporting requirements for grantees and subgrantees, including reporting on benchmarks set out in the contract awarding the grant pursuant to subdivision (2a) of this subsection by means of performance measures identified in the contract. Performance reporting shall be reviewed by the State agency overseeing the grant on an ongoing

- 1 basis. The State agency overseeing the grant shall submit an annual  
2 performance report to the Office of State Budget and Management.
- 3 (7) Require grantees and subgrantees to maintain reports, records, and other  
4 information to properly account for the expenditure of all grant funds and to  
5 make such reports, records, and other information available to the grantor  
6 State agency for oversight, monitoring, and evaluation purposes.
- 7 (8) Require grantees and subgrantees to ensure that work papers in the  
8 possession of their auditors are available to the State Auditor for the  
9 purposes set out in subsection (i) of this section.
- 10 (9) Require grantees to be responsible for managing and monitoring each  
11 project, program, or activity supported by grant funds and each subgrantee  
12 project, program, or activity supported by grant funds.
- 13 (9a) Require a State agency that oversees a grant program to develop a  
14 monitoring plan for that program. The State agency shall provide a  
15 description of its monitoring plan and any additional information regarding  
16 that plan to the Office of State Budget and Management.
- 17 (10) Provide procedures for the suspension of further disbursements or use of  
18 grant funds for noncompliance with these rules or other inappropriate use of  
19 the funds.
- 20 (11) Provide procedures for use in appropriate circumstances for reinstatement of  
21 disbursements that have been suspended for noncompliance with these rules  
22 or other inappropriate use of grant funds.
- 23 (12) Provide procedures for the recovery and return to the grantor State agency of  
24 unexpended grant funds from a grantee or subgrantee if the grantee or  
25 subgrantee is unable to fulfill the purposes of the grant.
- 26 (e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the  
27 provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are  
28 subject to the provisions of Chapter 150B of the General Statutes.
- 29 (f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The  
30 Office of State Budget and Management, after consultation with the administering State  
31 agency, shall have the power to suspend disbursement of grant funds to grantees or  
32 subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds  
33 already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this  
34 section. In addition, the Office of the Controller shall electronically stop payments to a grantee  
35 upon notification by the Office of State Budget and Management to suspend disbursement of  
36 funds to the grantee.
- 37 If the grant funds are a pass-through of funds granted by an agency of the United States,  
38 then the Office of State Budget and Management must consult with the granting agency of the  
39 United States and the State agency that is the recipient of the pass-through funds prior to taking  
40 the actions authorized by this subsection.
- 41 (f1) Withholding From Certain Grants to Cover Agency Oversight Cost. – A State  
42 agency that oversees a grant may withhold up to two percent (2%) of the amount of the grant  
43 awarded each fiscal year to cover grant oversight costs pursuant to this subsection if the grant  
44 satisfies the criteria established by the Office of State Budget and Management. No State  
45 agency shall withhold funds under this subsection until the State agency submits a written  
46 request to the Office of State Budget and Management that sets out the oversight  
47 responsibilities of the agency with regard to the grant, the amount that the agency is requesting  
48 to withhold from the grant for the fiscal year, and receives approval from the Office of State  
49 Budget and Management to withhold funds to cover the oversight costs. An agency may  
50 withhold only the amount approved by the Office of State Budget and Management. The Office  
51 of State Budget and Management shall determine whether it is appropriate to allow the

1 withholding under this section, and if so, the amount that may be withheld by the State agency.  
2 The Office of State Budget and Management shall notify the State agency in writing of the  
3 approval or disapproval of the request, and if approved, that amount that may be withheld.

4 If a State agency does receive approval under this section to withhold a percentage of the  
5 amount of the grant awarded, then the agency shall reserve one-half of one percent (.5%) of the  
6 amount authorized by the Office of State Budget and Management to be withheld by the  
7 agency and shall transfer those funds to the Office of State Budget and Management at the time  
8 the grant funds are disbursed. The Office of State Budget and Management shall use the funds  
9 transferred from the agency to cover costs related to statewide oversight of grants to non-State  
10 entities.

11 Funds shall not be withheld under this subsection for the purpose of covering oversight  
12 costs if the grant is a pass-through of funds granted by an agency of the United States and the  
13 terms of the federal grant prohibit the withholding of funds described by this subsection.

14 (g) **Audit Oversight.** – The State Auditor has audit oversight, with respect to grant funds  
15 received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General  
16 Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee  
17 or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and  
18 other information necessary for the State Auditor to account fully for the use and expenditure  
19 of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish  
20 any additional financial or budgetary information requested by the State Auditor, including  
21 audit work papers in the possession of any auditor of a grantee or subgrantee directly related to  
22 the use and expenditure of grant funds.

23 (h) **Report on Grant Recipients That Failed to Comply.** – Not later than May 1, 2007,  
24 and by May 1 of every succeeding year, the Office of State Budget and Management shall  
25 report to the Joint Legislative Commission on Governmental Operations and the Fiscal  
26 Research Division on all grantees or subgrantees that failed to comply with this section with  
27 respect to grant funds received in the prior fiscal year.

28 (i) **State Agencies to Submit Grant List to Auditor.** – No later than October 1 of each  
29 year, each State agency shall submit a list to the State Auditor, in the format prescribed by the  
30 State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal  
31 year. The list shall include the amount disbursed to each grantee and other information as  
32 required by the State Auditor to comply with the requirements of this section."

33 **SECTION 2.** G.S. 143C-6-23(d), as amended by Section 1 of this act, is amended  
34 by adding a new subdivision to read:

35 "(7a) Require grantees to submit cash-basis reporting within 90 days of the end of  
36 the State fiscal year."

37 **SECTION 3.** Section 2 of this act becomes effective July 1, 2015. The remainder  
38 of this act becomes effective July 1, 2013.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 144  
Corrected Copy 2/28/13  
Corrected Copy 4/9/13  
PROPOSED COMMITTEE SUBSTITUTE S144-CSTJ-25 [v.1]  
4/22/2013 11:37:02 PM

Short Title: Nonprofit Grants/Increase Accountability.

(Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED  
AN ACT TO IMPROVE THE OVERSIGHT OF STATE GRANTS TO NON-STATE  
ENTITIES AND TO INCREASE THE ACCOUNTABILITY OF GRANTEES WHO  
RECEIVE STATE GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143C-6-23 reads as rewritten:

"§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.

(a) Definitions. – The following definitions apply in this section:

(1) ~~"Grant" and "grant funds" means Grant or grant funds. – State funds~~  
~~disbursed as a grant by a State agency; agency to a grantee to carry out a~~  
~~program for a public purpose; however, the terms do not include any~~  
~~payment made by the Medicaid program, the State Health Plan for Teachers~~  
~~and State Employees, or other similar medical programs.~~

(2) ~~"Grantee" means a Grantee. – A non-State entity that receives State funds as~~  
~~a grant from a State agency but meets any of the conditions listed in this~~  
~~subdivision, but a grantee does not include any non-State entity subject to~~  
~~the audit and other reporting requirements of the Local Government~~  
~~Commission-Commission or a business entity receiving an economic~~  
~~development incentive grant included in the Department of Commerce~~  
~~report required by G.S. 143B-437.07. The conditions are:~~

a. Has its performance measured in relation to whether objectives of a  
State program are met.

b. Has responsibility for programmatic decision making.

c. Is responsible for adherence to applicable State program  
requirements specified in the award.

d. In accordance with its agreement, uses the State funds to carry out a  
program for a public purpose, as opposed to providing goods or  
services for the benefit of a State entity.

(3) ~~"Subgrantee" means a Subgrantee. – A non-State entity that receives State~~  
~~funds as a grant from a grantee or from another subgrantee meets any of the~~  
~~conditions listed in this subdivision, but a subgrantee does not include any~~  
~~non-State entity subject to the audit and other reporting requirements of the~~  
~~Local Government Commission-Commission or a business entity receiving~~



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an economic development incentive grant included in the Department of Commerce report required by G.S. 143B-437.07. The conditions are:

- a. Has its performance measured in relation to whether objectives of a State program are met.
- b. Has responsibility for programmatic decision making.
- c. Is responsible for adherence to applicable State program requirements specified in the award.
- d. In accordance with its agreement, uses the State funds to carry out a program for a public purpose, as opposed to providing goods or services for the benefit of a State entity.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. – The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (2a) Require each contract that awards a grant to include all of the following:
  - a. Concrete, measurable benchmarks against which to measure success. The benchmarks shall address the expected quantifiable outputs and outcomes.
  - b. Identification of program performance measures that will be used to compare quantifiable outputs and outcomes against the benchmarks established in contracts pursuant to this subdivision.
  - c. For purposes of this subdivision, the term "output" means quantified activities performed by the grantee and the term "outcome" means what happens as a result of the grantee's activities.
- (3) Ensure that State funds are spent in accordance with the purposes for which they were granted.

- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds.
- (5a) Establish the criteria for grant programs from which oversight costs shall be reserved by a State agency pursuant to G.S. 143C-6-24.
- (5b) Provide procedures for making the determination that the amount required to be reserved under G.S. 143C-6-24 may be reduced.
- (5c) Require that an administering State agency and the Office of Budget and Management provide an accounting of the reserved funds that is separate from other funds used for oversight and monitoring and that the accounting be made available to a grantee or subgrantee upon request.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. ~~The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.~~
- (6a) Establish mandatory periodic reporting requirements for grantees and subgrantees, including reporting on benchmarks set out in the contract awarding the grant pursuant to subdivision (2a) of this subsection, by means of performance measures identified in the contract. The State agency overseeing the grant shall review performance reporting on an ongoing basis and shall submit an annual performance report to the Office of State Budget and Management.
- (7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.
- (8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (i)-(g) of this section.
- (9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.
- (9a) Require a State agency that oversees a grant program to develop a monitoring plan for that program and to submit the plan and any additional information regarding the plan to the Office of State Budget and Management for review and approval.
- (10) Provide procedures for the suspension of further disbursements or use of grant funds for noncompliance with these rules or other inappropriate use of the funds.
- (11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of grant funds.
- (12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) ~~Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The Office of State Budget and Management, after consultation with the administering State agency, shall have the power to~~ Management may take the actions listed in this subsection for noncompliance with the rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection. The authorized actions are as follows:

(1) With respect to a grantee or a subgrantee, and after consultation with the administering State agency, suspend disbursement of grant funds to grantees or subgrantees, to funds, prevent further use of grant funds already disbursed, and to recover grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. Disbursed.

(2) With respect to an administering State agency, and after 90 days notice to give the administering State agency an opportunity to correct the noncompliance, suspend disbursement of grant funds.

(g) Audit Oversight. – The State Auditor has audit oversight, with respect to grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of grant funds.

~~(h) Report on Grant Recipients That Failed to Comply. – Not later than May 1, 2007, and by May 1 of every succeeding year, the Noncompliance Reports. – The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on~~ maintain a list that is publically available of all grantees or subgrantees that failed to comply with this section with respect to grant funds received in the prior fiscal year.

(i) ~~State Agencies to Submit Grant List to Auditor to the Office of State Budget and Management. – No later than October 1 of each year, each State agency shall submit a list to the State Auditor, Office of State Budget and Management, in the format prescribed by the State Auditor, Office of State Budget and Management, of every grantee to which the agency disbursed grant funds in the prior fiscal year. The list shall include the amount disbursed to each grantee and other information as required by the State Auditor Office of State Budget and Management to comply with the requirements of this section."~~

**SECTION 2.** Article 6 of Chapter 143C of the General Statutes is amended by adding a new statutory section to read:

**"§ 143C-6-24. Reserving of Grant Program Funds for Oversight.**

(a) Mandatory Reserve. – A State agency that oversees a grant program shall reserve two percent (2%) of the amount awarded for the grant program each fiscal year to cover oversight costs for the grant program pursuant to this subsection if the grant program satisfies the criteria established by the Office of State Budget and Management. The administering State agency shall transfer twenty-five percent (25%) of the amount reserved to the Office of State Budget and Management at the time the grant program funds are disbursed. The Office of State

Budget and Management shall use the funds transferred from the administering State agency to cover costs related to statewide oversight of grants to non-State entities.

(b) Adjustment. – If an administering State agency or the Office of State Budget and Management believes that the amount reserved under subsection (a) of this section is in excess of the amount the administering State agency requires for oversight, the amount of the reserve may be reduced in accordance with this subsection. If the amount reserved is reduced, the amount transferred to the Office of State Budget and Management shall be reduced proportionately.

(1) By request. – An administering State agency may submit a written request to the Office of State Budget and Management for a reduction of the amount reserved. The request must set out the oversight responsibilities of the agency with regard to the grant program and the amount by which the agency is requesting the reserve be reduced from the grant program for the fiscal year. The Office of State Budget and Management shall determine whether it is appropriate to allow a reduction of the reserve under this section and, if so, the amount by which the reserve shall be reduced. The Office of State Budget and Management shall notify the State agency in writing of the approval or disapproval of the request and, if approved, the amount by which the reserve shall be reduced.

(2) Without request. – The Office of State Budget and Management may, without a request by an administering State agency, reduce the amount reserved from a grant program for oversight if it makes a determination that the amount required under subsection (a) of this section is in excess of the amount the administering State agency requires for oversight. The Office of State Budget and Management shall notify the administering State agency in writing of its determination. A grantee may recommend a reduction of the amount reserved from a grant program for oversight to the administering State agency and to the Office of State Budget and Management; however, an adverse determination by the Office of State Budget and Management shall not constitute grounds for appeal by the grantee under Chapter 150B of the General Statutes.

(c) Review. – The Office of State Budget and Management shall review the reserved amounts annually and may make adjustments to the reserve at any time in accordance with subdivision (2) of subsection (b) of this section.

(d) Limitations. – Funds shall not be reserved under this section if a grant program meets any of the following conditions:

(1) The program is a pass-through of funds granted by an agency of the United States, and the terms of the federal grant prohibit the reserving of funds described by this section.

(2) The program is funded by a direct appropriation of the General Assembly.

**SECTION 3.** G.S. 143C-6-23(d), as amended by Section 1 of this act, is amended by adding a new subdivision to read:

"(7a) Require grantees to submit a financial position report in a format specified by the Office of State Budget and Management within 90 days of the end of the State fiscal year."

**SECTION 4.** Sections 2 and 3 of this act become effective July 1, 2014, and apply to grants awarded on or after that date. The remainder of this act becomes effective July 1, 2013.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE 4-23-13

S. B. No. 144

Amendment No. 1

COMMITTEE SUBSTITUTE \_\_\_\_\_

(to be filled in by  
Principal Clerk)

Rep.)

Sen.)

Clodfelter

1 moves to amend the bill on page 5, line 34

2 ( ) WHICH CHANGES THE TITLE

3 by adding the following at the end of the line:

4  
5 "Any adjustment that reduces the  
6 two percent (2%) reserve shall  
7 be restored to the grant program."

8

9

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SIGNED

Samuel H. Clodfelter

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

S. B. No. 144

COMMITTEE SUBSTITUTE ☒

DATE 4/23/13

Amendment No. 2

(to be filled in by  
Principal Clerk)

Rep.) Amersell  
Sen.) \_\_\_\_\_

1 moves to amend the bill on page 5, lines 36 - 40

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

4 "is a pass-through of funds granted  
5 by an agency of the United States,  
6 and the terms of the federal grant  
7 prohibit the reserving of funds  
8 described by this section."

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

SIGNED

[Signature]

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



## SENATE BILL 144: Nonprofit Grants/Increase Accountability

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: PCS to Third Edition  
S144-CSTJ-15

Date: April 22, 2013  
Prepared by: Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 144 would revise the statute governing the administration, oversight, and reporting requirements for State grant funds to non-State entities, as recommended by the Joint Legislative Program Evaluation Oversight Committee. The PCS would require State agencies to withhold 2% of the annual grant program amount to cover oversight costs. Of that amount, 25% would be transferred to OSBM to cover costs related to the statewide oversight of grants. The PCS would also eliminate specified mandatory periodic reporting requirements for grantees and subgrantees. The PCS makes several technical changes to the bill.*

[As introduced, this bill was identical to H58, as introduced by Rep. Howard, which is currently in House Appropriations.]

**CURRENT LAW:** G.S. 143C-6-23 governs the administration and oversight requirements for State grant funds and establishes reporting requirements for non-State entities that receive State funds.<sup>1</sup> The statute does not apply to payments made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs, nor does it apply to any non-State entity that is subject to the auditing and reporting requirements of the Local Government Commission.

### Role of the Office of State Budget and Management

**Rules.** – The Office of State Budget and Management (OSBM) must adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees. The rules should include policies and procedures that ensure State funds are spent in accordance with their purpose, that provide for adequate oversight and monitoring to prevent the misuse of grant funds, and that require periodic reporting by grantees.

**Suspension and Recovery of Funds.** – If a grantee does not comply with the terms of the grant, OSBM may suspend disbursement of grant funds to grantees, prevent further use of grant funds already disbursed, or recover grants funds that have already been disbursed.

**Reporting.** – By statute, OSBM is required to report annually to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees and subgrantees that failed to comply with the provisions governing grant funds. Currently, OSBM updates and reports this information on a weekly basis on its website.

<sup>1</sup> Government entities that receive State grant funds are not subject to these reporting requirements.





## **Role of State Agencies**

In FY 2011-2012, State agencies disbursed \$700.1 million in grant funds to non-profits, of which approximately 50% represents State funds.<sup>2</sup> The responsibility for grant management is distributed to approximately 26 State agencies and divisions. Agencies are responsible for holding grantees accountable for grant expenditures by performing monitoring and oversight functions. Monitoring is done through reporting, site visits, regular contact, or other means to ensure the funds are being administered in compliance with the law. Agencies must also evaluate the results and outcomes of the activities and accomplishments of the grantee to determine if results were achieved, the success of the activity, and whether the activities should continue.<sup>3</sup> Funds may be disbursed up-front, on a set schedule, or as reimbursement for expenses. However, grants are typically distributed in part or in full before state-level reporting takes place.<sup>4</sup> Lastly, agencies are required to address noncompliance by communicating the requirements to the grantees, requiring a response from the grantee upon noncompliance, and suspending payments after consultation with OSBM.

## **Role of Grantees**

Grantees submit activities and financial information online to NC Grants<sup>5</sup> and the NC Accounting System (NCAS), including line-item expenditures for personnel, contracted services, materials, and operating expenses for each grant awarded. For grantees receiving less than \$500,000 annually, the State does not require documentation to support expenditures claimed in their reports.<sup>6</sup> Grantees receiving more than \$500,000 in State funds are required to submit a financial audit that requires review by a CPA. While the audit provides assurance that an independent entity has reviewed their financial statements, it does not provide a detailed accounting of expenditures at the grant-award level.<sup>7</sup> Grantees must also ensure that subgrantees comply with all reporting requirements of the grantee.

**BILL ANALYSIS:** The Proposed Committee Substitute for Senate Bill 144 would do the following:

- Modify the definitions of "grantee" and "subgrantee" so as to distinguish between entities that carry out a program for a public purpose and entities that provide goods or services for the benefit of a State entity.
- Require State agencies to:
  - Develop a monitoring plan for grant oversight that includes concrete, measurable benchmarks by which to measure performance, and to submit an annual performance report to OSBM. OSBM would also have to incorporate these requirements into their rules governing grant oversight.

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<sup>2</sup> These figures were provided by OSBM. At the time of PED's report, the total amount of grant funds to nonprofits was \$694 million. Of that amount, 65% or \$452 million represented State funds, 25% or \$172.8 million represented federal funds flowing through State agencies, 8% or \$55.7 million representing combined State and federal funds, and the remainder from other sources.

<sup>3</sup> 09 NCAC 03M .0704.

<sup>4</sup> PED Report Number 2009-02, p. 6.

<sup>5</sup> The predecessor to NC Grants was the Grants Information Center (GIC). The GIC was the State's first partially consolidated grant IT system, which began in 2007 in the Office of the State Auditor and was designed to automate the grant reporting requirements of G.S. 143C-6-23. In 2009, it was transferred to OSBM and became known as NC Grants after a series of enhancements and upgrades. However, NC Grants is not a financial system so that information must be submitted separately to NCAS.

<sup>6</sup> PED Report Number 2009-02, p. 8.

<sup>7</sup> PED Report Number 2009-02, p. 9.

# Senate PCS 144

Page 3

- Withhold 2% of the annual amount awarded for a grant program to cover oversight costs and transfer 25% of that amount to OSBM to be used for statewide oversight costs. An agency would have the option of requesting a reduction of the amount withheld if it believes that 2% is in excess of the amount needed for adequate oversight. OSBM would review and approve or disapprove the request. The bill provides that the withholding requirement does not apply to the following grant programs:
  - A program that is a pass through of funds granted by an agency of the United States and the terms of the federal grant prohibit the withholding of funds described by this section.
  - A program that is funded by a direct appropriation of the General Assembly.<sup>8</sup>
- Provide a separate accounting of how the withheld funds are used for oversight.
- Require OSBM to:
  - Require that each contract awarding a grant include concrete, measurable benchmarks against which to measure the success of the grant program.
  - Establish criteria for grants from which oversight costs shall be withheld and provide procedures for reducing the amount withheld, either by request of the administering State agency or by OSBM.
  - Approve or disapprove of requests for a reduction of the withholding and to notify agencies of its decision. OSBM may also make adjustments to the withholding.
  - Establish mandatory periodic reporting requirements for grantees and subgrantees that must be reviewed by the State agency overseeing the grant.
  - Provide a separate accounting of how the funds transferred to it from an administering State agency are used for oversight.
- Authorize OSBM, after 90 days' notice, to suspend disbursement of grant funds to an administering State agency for noncompliance.
- Require grantees to submit a cash receipts and disbursement report within 90 days of the end of the State fiscal year.

**EFFECTIVE DATE:** The withholding provision and the requirement that grantees submit a cash report within 90 days of the end of the State fiscal year would become effective July 1, 2014. The remainder of the act, which requires OSBM to adopt certain rules with respect to grant oversight, would become effective July 1, 2013.

**BACKGROUND:** Senate Bill 144 contains recommendations from the Program Evaluation Division's 2009 report "Accountability Gaps Limit State Oversight of \$694 Million in Grants to Non-Profit Organizations." The report examined practices and policies regarding oversight of State grants to non-profit organizations and determined whether current oversight provides assurance that public resources are spent in the way intended by the State.

The report concluded that State agencies are inconsistent in how they manage their grants and that current state reporting requirements do not ensure accountability for state funds granted to non-profits. Information about activities and accomplishments that grantees are currently required to report to the State do not adequately address performance goals and outcomes, and the quality of oversight is highly

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<sup>8</sup> Two examples would be appropriations to the NC Partnership for Children and the Rural Center.

# Senate PCS 144

*Page 4*

variable across agencies. Further, the report found that reporting deadlines complicate timely reporting because grantee reporting cycles do not necessarily line up with the State's fiscal year and because annual reports are not due until six to nine months after each grantee's fiscal-year end.

*Trina Griffin and Kelly Quick, Research Division, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 193\*  
Corrected Copy 4/15/13

Short Title: Child Nutrition Program Solvency and Support. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Barringer, Gunn, Hise, Hunt, and Randleman.

Referred to: Program Evaluation.

March 6, 2013

A BILL TO BE ENTITLED

AN ACT (1) TO PROHIBIT LOCAL SCHOOL ADMINISTRATIVE UNITS FROM ASSESSING INDIRECT COSTS TO A CHILD NUTRITION PROGRAM UNLESS THE PROGRAM IS FINANCIALLY SOLVENT AND (2) TO APPROPRIATE FUNDS TO PROMOTE OPTIMAL PRICING FOR CHILD NUTRITION PROGRAM FOODS AND SUPPLIES, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-450 reads as rewritten:

"§ 115C-450. School food services.

(a) School food services shall be included in the budget of each local school administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115C-426.

(b) No local school administrative unit shall assess indirect costs to a child nutrition program unless the child nutrition program's food services account balance is greater than an average month's cost of operation for the child nutrition program. An average month's cost of operation shall be calculated and published by the Department of Public Instruction for each child nutrition program and shall be equal to the average of the three prior fiscal year's average monthly cost of operation. When calculating the average month's cost of operation for each child nutrition program, the Department of Public Instruction shall use the complete and final audited figures from each child nutrition program's operation. If complete and final audited figures for a given year are not yet available for a child nutrition program, the Department of Public Instruction may use projected figures but shall update the published average month's cost of operation once complete and final audited figures become available. As used in this subsection, the term "indirect costs" is as defined in the United States Office of Budget and Management Circular A-87, as revised, and the term "cost of operation" is as defined in G.S. 115C-264(c).

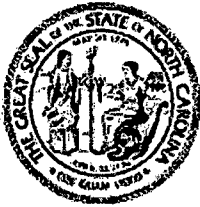
SECTION 2.(a) There is appropriated from the General Fund to the Department of Public Instruction, Division of School Support, Child Nutritional Services Section, the sum of eighty thousand dollars (\$80,000) in recurring funds for fiscal year 2013-2014. These funds shall be used to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies.

SECTION 2.(b) Beginning October 1, 2014, and each year thereafter on October 1, for as long as the Department of Public Instruction receives the funding authorized by



1 subsection (a) of this section, the Department of Public Instruction shall report to the Joint  
2 Legislative Education Oversight Committee on the annual savings achieved through the  
3 increased participation of local school administrative units in the North Carolina Procurement  
4 Alliance.

5 **SECTION 3.** This act becomes effective July 1, 2013.



## SENATE BILL 193: Child Nutrition Program Solvency and Support

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: First Edition

Date: April 5, 2013  
Prepared by: Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 193 would restrict when a local school administrative unit (LEA) may charge its indirect costs (e.g., general administrative costs) to a school lunch program by requiring that the school lunch program's operating account have more than 1 month of funds. The bill also would appropriate \$80,000 to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies. This bill is based on recommendations by the Joint Legislative Program Evaluation Oversight Committee.*

[As introduced, this bill was identical to H57, as introduced by Rep. Howard, which is currently in Senate Education/Higher Education.]

**BILL ANALYSIS:** Section 1 of HB 57 would amend G.S. 115C-450 to restrict when a local school administrative unit (LEA) may charge its indirect costs to a child nutrition (school lunch) program. Indirect costs may include, for example, general administrative costs at the LEA's central offices.

As discussed in the Program Evaluation Division's Report Number 2011-06, some LEA's have charged school lunch programs for indirect administrative costs when a school lunch program has less than one month's operating expenses available, thereby leading to financial solvency issues. Under the bill, a LEA would be allowed to charge indirect costs to a school lunch program only in a month when the school lunch program's operating account has more than 1 month of expenses.

Section 2 would appropriate \$80,000 to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies and requires DPI reporting to the General Assembly to monitor savings achieved through the Procurement Alliance.

**EFFECTIVE DATE:** House Bill 57 would become effective July 1, 2013.

**BACKGROUND:** House Bill 57 would implement Recommendation 1 of the Program Evaluation Division's Report Number 2011-06, *"Child Nutrition Programs Challenged to Meet Nutrition Standards, Maintain Participation, and Remain Solvent,"* dated October 12, 2011. The bill was recommended by the Joint Legislative Program Evaluation Oversight Committee.

The North Carolina Child Nutrition Procurement Alliance member school districts are voluntary participants who have joined together as 87 individual school districts in the mission to procure high quality, reasonably priced food and supply products for federally-funded child nutrition programs operating in their respective school districts. They opened their first bids as "Alliance" members in May 2009.

NC Child Nutrition Procurement Alliance membership does not constitute a legal affiliation; it serves as a means to consolidate 900+ bid product specifications through a process concluding in student pre-approval of branded food products. Qualified distributors submit "cost plus fixed fee" or "firm price" bids by LOT to member districts who award bid LOTS by individual district or "cooperatives" of several districts to the lowest qualified bidder. Cost savings is created by increasing total volume of pre-approved product purchases by members using the same bid specification documents for food and supplies.

*Greg Roney, Research Division, and Ryan Blackledge, Bill Drafting Division, substantially contributed to this summary.*

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

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# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 23, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Adam Pridemore	NCAST
Sarah Wolfe	MWC LLC
Karen Bollen	ICA
Anna Tesmire	APPCNC
Kay Phillips	APPCNC
Lord Ann Harris	CATTA
George Smith	NP
Mildred Spearman	NCAOC
Betsy Bailey	PENC
Patricia Gannon	APPCNC
Justin Delaney	NC DOL
Wendy Pany-Han	NCHFA
Emile Sutton	NCHFA
Murphy Chappell	NCCBSA
Math Gross	NCPC
Kay Pakroy	NASW-NC
Carl Dean	OSA

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 23, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Andy Chase	KMA
DAVID RICE	MFS
Meisley	SA
Hmc	Rural Center
Butch Gunnells	NCBA
De B van	JGS
Chris Agner	DOJ
Colleen Kochanek	KLG
Sever Restuecker	Brubaker C. ASSOC.
John DelGiorno	Brubaker C. ASSOC.
R Rogers	CWMTP
W. M. Jewell	NCLC
Betsy Netten	Amer Heart Assn
Gaelyn Hawthorne	CISNC
David Hemen	NC Center for Nonprofits
Lynn Harvey	NCDPI
Bruce Thompson	PRICKER POB 6
Gene Causby	NC CFS A



# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 23, 2013

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
John Miron	P.I. Guy
Elizabeth Biser	Brooks Pierce
Bill Holmes	Office of State Audit
Tim Hoegemeier	"
Rhonda Todd	DOA
Stephanie Naulty	DOA
Bill McGee	US Treas
Blake Thomas	US Treas
Alcey Badger	CSS

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 23, 2013

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
David Crawford	AIANC
Annaliese Dolph	Dolph Law
Ann M.	Becker
Beantier	NCDPI
Jon Law	NZ Assoc For Child

**Senate Committee on Program Evaluation  
Tuesday, April 30, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 13	State Agency Property Use/Biennial Report.	Representative Howard Representative W. Brawley Representative Moffitt Representative Wray
SB 78	Amend State Contract Review Laws. For discussion only	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell

**Other Business**

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, April 30, 2013 at 12:00 PM  
Room 421 of the Legislative Office Building**

**MINUTES**

The Senate Committee on Program Evaluation met at 12:00 PM on April 30, 2013 in Room 421 of the Legislative Office Building with ten members of the committee present. Senator Fletcher Hartsell, Chairman, presided.

Senator Hartsell introduced the Sergeant-at-Arms and welcomed page Christine Long. He thanked them all for their service to the committee.

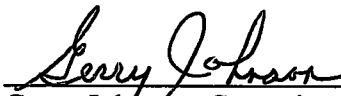
**HB 13 – State Agency Property Use/Biennial Report.** Senator Hartsell noted there was a Proposed Committee Substitute and Senator Sanderson moved that it be adopted for purposes of discussion. All voted and the motion carried. Representative Howard was recognized to explain the bill. Mr. Hal Pell, staff attorney, gave additional explanation. Questions from Senators McKissick and Clark were answered by Representative Howard. Senator McKissick then moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

**SB 193 – Child Nutrition Program Solvency and Support.** Senator Hartsell noted there was a Proposed Committee Substitute and Senator Sanderson moved that it be adopted for purposes of discussion. All Voted and the motion carried. As this was Senator Hartsell's bill, he asked Senator Sanderson to preside. Senator Hartsell explained the bill and noted that Senator Randleman was presenting an amendment. Ms. Pam Taylor, representing Program Evaluation, explained the amendment. Senator Cook moved for adoption and the motion carried. Senator Hartsell gave further explanation. Dr. Lynn Harvey, Director of Child Nutrition Services for the Department of Public Instruction, answered questions from Senator McKissick. Senator Bingham moved for a favorable report to the Proposed Committee Substitute as amended and rolled into a new Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

**SB 78 – Amend State Contract Review Laws.** Senator Hartsell noted there was a Proposed Committee Substitute. Senator Randleman moved that it be adopted for purposes of discussion. All voted and the motion carried. As this was Senator Hartsell's bill, he asked Senator Sanderson to preside. Senator Hartsell explained the bill and noted that it was for discussion only. Questions from Senators McKissick, Hunt and Bingham were answered by Senator Hartsell, and Mr. Hal Pell, staff attorney. Mr. Sam Bayassee, Director of the Division of Purchasing and Contracts for the Department of Administration gave comments.

There being no further business, the meeting was adjourned.

  
Fletcher L. Hartsell, Jr., Chair

  
Gerry Johnson, Committee Assistant

Principal Clerk  
Reading Clerk

\_\_\_\_\_  
\_\_\_\_\_

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	April 30, 2013	12:00 PM	421 LOB

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	
HB 13	State Agency Property Use/Biennial Report.	Representative Howard Representative W. Brawley Representative Moffitt Representative Wray
SB 78	Amend State Contract Review Laws. For discussion only	Senator Hartsell
SB 193	Child Nutrition Program Solvency and Support.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Tuesday, April 30, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL**

**SB 193** Child Nutrition Program Solvency and Support.  
Draft Number: S193-PCS75295-TJ-30  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: Yes

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE  
SUBSTITUTE BILL**

**HB 13** State Agency Property Use/Biennial Report.  
Draft Number: H13-PCS80333-RK-40  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: Yes

**TOTAL REPORTED: 2**

Senator Fletcher Hartsell will handle SB 193  
Senator Fletcher Hartsell will handle HB 13



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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 13  
Second Edition Engrossed 2/14/13

Short Title: State Agency Property Use/Biennial Report. (Public)

Sponsors: Representatives Howard, W. Brawley, Moffitt, and Wray (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Finance.

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES TO BIENNIALY REPORT TO THE DEPARTMENT OF ADMINISTRATION AND TO THE PROGRAM EVALUATION DIVISION ON THEIR USE OF REAL PROPERTY; AND TO REQUIRE THE DEPARTMENT OF PUBLIC INSTRUCTION TO REPORT ANNUALLY ON THE AMOUNT OF REVENUE GENERATED THROUGH LEASING SPACE ON RESIDENTIAL SCHOOL CAMPUSES, AS RECOMMENDED BY THE SURPLUS PROPERTY SUBCOMMITTEE OF THE HOUSE SELECT COMMITTEE ON STATE-OWNED ASSETS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 80.

"Reporting on State Agency Use of Real Property.

**"§ 143-750. Definitions.**

The following definitions apply in this Article:

- (1) Real property. – A parcel of land, a building, or space within a building. This term does not include right-of-way property allocated to the Department of Transportation.
- (2) State agency. – A unit of the executive or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina. The term does not include a unit of local government or a public authority.
- (3) Underutilized property. – Real property that contains substantial space or facilities that are currently not used on a regular basis by the State agency that owns or leases the property or to which the property is allocated.
- (4) Unused property. – Real property that is vacant or that is not used for a current program or purpose of the State agency. This term includes real property that is designated for a particular current or future use but that is not actually currently used for that program or purpose.

**"§ 143-751. Duty to analyze real property use every two years.**

Each State agency shall analyze each piece of real property owned by, allocated to, or leased by it at least every two years in order to determine if the property is unused property or underutilized property.

**"§ 143-752. State agencies shall biennially report on real property use.**



1 On or before September 1 of each even-numbered year, each State agency shall report to  
2 the Department of Administration and to the Program Evaluation and Fiscal Research Divisions  
3 of the General Assembly on its use of real property. The report shall include all of the  
4 following, set forth in separate sections of the report:

- 5 (1) Summary information about the amount of real property allocated to, owned  
6 by, and leased by the State agency.
- 7 (2) Detailed information about each piece of real property allocated to, owned  
8 by, and leased by the State agency, including, as appropriate, all of the  
9 following:
  - 10 a. The location of the property, including the latitude and longitude of  
11 the center of the building or parcel of real property.
  - 12 b. The square footage or acreage of the property.
  - 13 c. The total amount paid by the State to acquire the property, including  
14 any costs associated with the purchase.
  - 15 d. The nature of the State agency's interest in the property.
  - 16 e. The condition of the property.
  - 17 f. The current use of the property.
  - 18 g. An estimate of how much of the property is underutilized or a  
19 statement that the property is unused, as applicable.
  - 20 h. The terms of any lease for property, including information about  
21 lease renewal options.
  - 22 i. Floor plan and other spatial information about the property.
- 23 (3) Detailed information about any real property allocated to, owned by, or  
24 leased by the State agency that is unused property or underutilized property,  
25 without regard to whether the property has been deemed surplus as of the  
26 date of the report. If property is unused property or underutilized property  
27 but the State agency has not notified the Department of Administration that  
28 it is surplus, this section of the report shall include an explanation of why the  
29 State agency has not so notified the Department.
- 30 (4) Detailed information about any real property designated surplus pursuant to  
31 G.S. 143-753.
- 32 (5) Highlights of any differences between the information contained in the  
33 report and the information contained in the most recent report submitted  
34 pursuant to this section.
- 35 (6) Any additional information about the State agency's real property use  
36 requested by the Department of Administration or by the Program  
37 Evaluation Division of the General Assembly.

38 **"§ 143-753. Automatic designation of certain unused and underutilized property as**  
39 **surplus property.**

40 Any piece of real property owned by or allocated to a State agency that was designated as  
41 unused property or underutilized property on the most recent report submitted pursuant to  
42 G.S. 143-752 and that is unused property or underutilized property on the date that the  
43 subsequent report is due under that section shall automatically be designated surplus property  
44 and shall be reported in the section of the report required by G.S. 143-752(4). The designation  
45 of a piece of real property as surplus pursuant to this section shall in no way affect the  
46 applicability of Chapter 146 of the General Statutes to any disposition of that property.

47 **"§ 143-754. Department of Administration shall assist State agencies.**

48 When requested to do so, the Department of Administration shall assist a State agency in its  
49 efforts to comply with this Article by providing property records in the possession of the  
50 Department to the requesting State agency.



1 **"§ 143-755. State agencies shall report on revenues generated from leasing State**  
2 **property.**

3 On or before February 1 of each year, each State agency shall report to the Chairs of the  
4 House Appropriations Committee, the Chairs of the Senate Appropriations/Base Budget  
5 Committee, and to the Fiscal Research Division of the General Assembly the amount of  
6 revenue generated through leasing space on property owned by or allocated to the State agency  
7 during the previous year."

8 **SECTION 2.** G.S. 143C-8-4(a) reads as rewritten:

9 **"§ 143C-8-4. Agency capital improvement needs estimates.**

10 (a) **Needs Estimate Required.** – On or before September 1 of each even-numbered year,  
11 each State agency shall submit to the Office of State Budget and Management and to the  
12 Division of Fiscal Research a six-year capital improvement needs estimate and the report  
13 required by G.S. 143-752. This estimate shall describe the agency's anticipated capital needs for  
14 each year of the six-year planning period. Capital improvement needs estimates shall be shown  
15 in two parts."

16 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

HOUSE BILL 13  
Second Edition Engrossed 2/14/13  
PROPOSED SENATE COMMITTEE SUBSTITUTE H13-CSRK-40 [v.1]  
4/29/2013 8:45:11 PM

Short Title: State Agency Property Use/Biennial Report.

(Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE STATE AGENCIES TO BIENNIALY REPORT TO THE  
DEPARTMENT OF ADMINISTRATION AND TO THE PROGRAM EVALUATION  
DIVISION ON THEIR USE OF REAL PROPERTY, AND TO REQUIRE STATE  
AGENCIES TO REPORT ANNUALLY THE AMOUNT OF REVENUE GENERATED  
DURING THE PREVIOUS CALENDAR YEAR FROM THE LEASING OF SPACE ON  
AGENCY PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new  
Article to read:

"Article 80.

"Reporting on State Agency Use of Real Property.

"§ 143-750. Definitions.

The following definitions apply in this Article:

- (1) Real property. – A parcel of land, a building, or space within a building. This term does not include right-of-way property allocated to the Department of Transportation.
- (2) State agency. – A unit of the executive or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina. The term does not include a unit of local government or a public authority.
- (3) Underutilized property. – Real property that contains substantial space or facilities that are currently not used on a regular basis by the State agency that owns or leases the property or to which the property is allocated.
- (4) Unused property. – Real property that is vacant or that is not used for a current program or purpose of the State agency. This term includes real property that is designated for a particular current or future use but that is not actually currently used for that program or purpose.

"§ 143-751. Duty to analyze real property use every two years.

Each State agency shall analyze each piece of real property owned by, allocated to, or leased by it at least every two years in order to determine if the property is unused property or underutilized property.

"§ 143-752. State agencies shall biennially report on real property use.

On or before September 1 of each even-numbered year, each State agency shall report to the Department of Administration and to the Program Evaluation and Fiscal Research Divisions



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of the General Assembly on its use of real property. The report shall include all of the following, set forth in separate sections of the report:

- (1) Summary information about the amount of real property allocated to, owned by, and leased by the State agency.
- (2) Detailed information about each piece of real property allocated to, owned by, and leased by the State agency, including, as appropriate, all of the following:
  - a. The location of the property, including the latitude and longitude of the center of the building or parcel of real property.
  - b. The square footage or acreage of the property.
  - c. The total amount paid by the State to acquire the property, including any costs associated with the purchase.
  - d. The nature of the State agency's interest in the property.
  - e. The condition of the property.
  - f. The current use of the property.
  - g. An estimate of how much of the property is underutilized or a statement that the property is unused, as applicable.
  - h. The terms of any lease for property, including information about lease renewal options.
  - i. Floor plan and other spatial information about the property.
- (3) Detailed information about any real property allocated to, owned by, or leased by the State agency that is unused property or underutilized property, without regard to whether the property has been deemed surplus as of the date of the report. If property is unused property or underutilized property but the State agency has not notified the Department of Administration that it is surplus, this section of the report shall include an explanation of why the State agency has not so notified the Department.
- (4) Detailed information about any real property designated surplus pursuant to G.S. 143-753.
- (5) Highlights of any differences between the information contained in the report and the information contained in the most recent report submitted pursuant to this section.
- (6) Any additional information about the State agency's real property use requested by the Department of Administration or by the Program Evaluation Division of the General Assembly.

**"§ 143-753. Automatic designation of certain unused and underutilized property as surplus property.**

Any piece of real property owned by or allocated to a State agency that was designated as unused property or underutilized property on the most recent report submitted pursuant to G.S. 143-752 and that is unused property or underutilized property on the date that the subsequent report is due under that section shall automatically be designated surplus property and shall be reported in the section of the report required by G.S. 143-752(4). The designation of a piece of real property as surplus pursuant to this section shall in no way affect the applicability of Chapter 146 of the General Statutes to any disposition of that property.

**"§ 143-754. Department of Administration shall assist State agencies.**

When requested to do so, the Department of Administration shall assist a State agency in its efforts to comply with this Article by providing property records in the possession of the Department to the requesting State agency.

**"§ 143-755. State agencies shall report on revenues generated from leasing State property.**

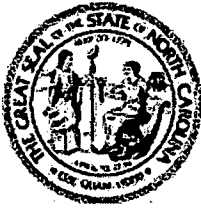
1     On or before February 1 of each year, each State agency shall report to the Chairs of the  
2     House Appropriations Committee, the Chairs of the Senate Appropriations/Base Budget  
3     Committee, and to the Fiscal Research Division of the General Assembly the amount of  
4     revenue generated through leasing space on property owned by or allocated to the State agency  
5     during the previous year."

6             **SECTION 2.** G.S. 143C-8-4(a) reads as rewritten:

7     **"§ 143C-8-4. Agency capital improvement needs estimates.**

8         (a)     Needs Estimate Required. – On or before September 1 of each even-numbered year,  
9     each State agency shall submit to the Office of State Budget and Management and to the  
10    Division of Fiscal Research a six-year capital improvement needs estimate and the report  
11    required by G.S. 143-752. This estimate shall describe the agency's anticipated capital needs for  
12    each year of the six-year planning period. Capital improvement needs estimates shall be shown  
13    in two parts."

14            **SECTION 3.** This act is effective when it becomes law.



## HOUSE BILL 13: State Agency Property Use/Biennial Report

2013-2014 General Assembly

<b>Committee:</b>	Senate Program Evaluation	<b>Date:</b>	April 29, 2013
<b>Introduced by:</b>	Reps. Howard, W. Brawley, Moffitt, Wray	<b>Prepared by:</b>	Hal Pell
<b>Analysis of:</b>	PCS to Second Edition H13-CSRK-40		Committee Counsel

**SUMMARY:** *House Bill 13 would require State agencies in the executive and judicial branches to report biennially to the Department of Administration (DOA) and others an analysis of the agencies' use of real property owned, allocated, or leased by the agency. Any real property designated as unused or underutilized property for two consecutive reports is deemed surplus property. The bill would also require State agencies to report the amount of revenue generated through leasing space on agency property the previous calendar year. This act is effective when it becomes law.*

**BACKGROUND:** Currently, DOA maintains an inventory of all State-owned property. However, no statute requires periodic reports concerning real property as contemplated by House Bill 13.

**CURRENT LAW:** Subchapter 2 of Chapter 146 of the General Statutes governs acquisition of State lands. G.S. 146-22 states that "[e]very acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration." G.S. 146-22.1 provides a broad list of purposes for which DOA may acquire property, such as "[l]ands necessary for the construction and operation of State buildings and other government facilities[.]" land used for historical sites, and land for parks. When a State agency determines that it needs additional real property, the agency must submit an application for acquisition with DOA under G.S. 146-22.4. DOA then investigates and negotiates purchase or lease of the property when appropriate. A similar approval process is required for sale of State property when an agency determines that the property is no longer needed under G.S. 146-27.

**BILL ANALYSIS:** House Bill 13 would require executive and judicial branch agencies to analyze all real property such as land, buildings, and space within a building that are owned, allocated or leased by the agency. The analysis must determine whether the real property is unused or underutilized property. Underutilized property is defined as property that "contains substantial space or facilities that are currently not used on a regular basis by the State agency." The requirements do not apply to right-of-way property allocated to the Department of Transportation or real property held by local governments.

I. Agencies must report the following on or before September 1 of each even-numbered year to DOA, Office of State Budget and Management (OSBM), the Program Evaluation Division (PED), and the Fiscal Research Division (FRD):

- Summary of amount of real property.
- Detailed information about each piece of real property including the location of the property (latitude and longitude of the center of the property), square footage or acreage of the property, total amount paid to acquire the property, nature of the agency's interest, condition of the property, use of the property, estimate of how much of the property is underutilized or a statement that the property is unused, terms of any lease, and floor plan.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# House PCS 13

*Page 2*

- Detailed information about real property that is unused property or underutilized property.
- Detailed information about real property designated as surplus.
- Comparison of any differences between the current report and the prior report.
- Any additional information requested by DOA or PED.

Any real property designated as unused or underutilized property for two consecutive reports is deemed surplus property

To aid the agencies, DOA must, upon request by an agency, provide property records in its possession.

II. On or before February 1 of each year, each State agency must report to the Chairs of the House Appropriations Committee, the Chairs of the Senate Appropriations/Base Budget Committee, and to the Fiscal Research Division of the General Assembly the amount of revenue generated through leasing space on property owned by or allocated to the State agency during the previous year.

**EFFECTIVE DATE:** The act is effective when it becomes law. The first informational report from State agencies would be due on or before September 1, 2014; the first report on leasing revenue would be due on February 1, 2014.

*H13-smrk-61(e2)*

*Staff Attorneys Shelly DeAdder and Greg Roney substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 78\*  
PROPOSED COMMITTEE SUBSTITUTE S78-CSRK-23 [v.1]

4/4/2013 2:52:43 PM

Short Title: Amend State Contract Review Laws.

(Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE  
DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF  
ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND  
REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND  
REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR  
CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY  
THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. Attorney General-General/General Counsel; to review certain contracts.

(a) Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one five million dollars (\$1,000,000) (\$5,000,000). The designee shall confirm to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section designee's review shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General-General shall:

(1) Establish establish procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.

(2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form,



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(ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any rules-procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment and debt contracts, as defined in subdivision (4) of this subsection, or any contracts for services entered pursuant to the State Treasurer's authority under G.S. 147-69.3, to confirm that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

(1) The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(2) The term "General Counsel's designee" shall include any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.

(3) Any contract for services reviewed pursuant to this subdivision must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of such contract. Except for any debt contract, or contracts entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.

(4) For the purposes of this subdivision, "investment and debt contracts" means any of the following:

a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.

b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.

c. Debt issued or to be issued by the State of North Carolina under the supervision of the State Treasurer, debt issued or to be issued by the North Carolina Capital Facilities Finance Agency, and debt and other matters of finance subject to the approval or supervision of the Local Government Commission, including, in each case, services required for ongoing management and review of debt issues that have previously been incurred or that are proposed to be incurred.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars (\$1,000,000) shall



1 notify the Secretary of the Department of Administration or the Secretary's designee of the  
2 intent to enter into the contract and provide such information as required by the Department for  
3 the purposes of maintaining a centralized log of such contracts and identifying the location of  
4 the contract documents.

5 SECTION 2. G.S. 143-49 reads as rewritten:

6 "§ 143-49. Powers and duties of Secretary.

7 The Secretary of Administration shall have power and authority, and it shall be ~~his~~the  
8 Secretary's duty, subject to the provisions of this Article:

9 ...

10 (3a) To request, notify and the Attorney General of pending contracts for  
11 contractual services exceeding a cost of five million dollars (\$5,000,000).  
12 Upon notification, the Attorney General shall assign a representative of from  
13 within the office of the Attorney General, the Contract Management Section  
14 of the Division of Purchase and Contract, Department of Administration, or  
15 other qualified counsel to assist in negotiation for the award of any the  
16 contract. contract for contractual services exceeding a cost of one hundred  
17 thousand dollars (\$100,000) that requires negotiation with prospective  
18 contractors. It shall be the duty of such representative to assist and advise in  
19 obtaining the most favorable contract for the State, to evaluate all proposals  
20 available from prospective contractors for that purpose, to interpret proposed  
21 contract terms and to advise the Secretary or his representatives of the  
22 liabilities of the State and validity of the contract to be awarded. All  
23 contracts and drafts of such contracts shall be prepared reviewed by an  
24 attorney from within the office of the Attorney General and copies thereof  
25 shall be retained by such office for a period of three years following the  
26 termination of such contracts. The term "contractual services" as used in this  
27 subsection and G.S. 143-52.2 shall mean work performed by an independent  
28 contractor requiring specialized knowledge, experience, expertise or similar  
29 capabilities wherein the service rendered does not consist primarily of  
30 acquisition by this State of equipment or materials and the rental of  
31 equipment, materials and supplies. The term "negotiation" as used in this  
32 This subdivision shall not apply be deemed to refer to contracts entered into  
33 or to be entered into as a result of a competitive bidding process. The  
34 following procedures and requirements apply to contracts subject to this  
35 subdivision:

36 a. The Secretary is not required to notify the Attorney General for  
37 the appointment of a representative for any contracts for  
38 contractual services to be entered into by the constituent  
39 institutions of The University of North Carolina pursuant to G.S.  
40 114-8.3(b), or for contracts to be entered into by the Department  
41 of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do  
42 so by the General Counsel of The University of North Carolina  
43 or the General Counsel of the Department of State Treasurer,  
44 respectively.

45 b. Any contract for services reviewed pursuant to this subdivision  
46 must include signature of the Attorney General or the Attorney  
47 General's designee. If the contract commences without the  
48 required signature, the State shall have the right to terminate the  
49 contract and the other party or parties to the contract shall only be  
50 entitled to the value of all services provided to the State prior to  
51 the termination.

1 . . . . ."

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

4 **"§ 143-50.1. Division of Purchase and Contract; Contract Management Section.**

5 (a) The Contract Management Section (CMS) is established in the Division of Purchase  
6 and Contract, Department of Administration. The CMS shall include legal counsel with the  
7 duties and responsibilities included in this section.

8 (b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all  
9 proposed solicitations for supplies, materials, printing, equipment, or contractual services that  
10 exceed one million dollars (\$1,000,000), the CMS shall:

- 11 (1) Participate and assist in the preparation of all proposed solicitations, and  
12 review all available proposals from prospective contractors, with the goal of  
13 obtaining the most favorable contract for the State.  
14 (2) Interpret proposed contract terms and advise the Secretary or the Secretary's  
15 designee of the potential liabilities to the State.  
16 (3) Review all proposed contracts to ensure that the contracts:  
17 a. Are in proper legal form.  
18 b. Contain all clauses required by law.  
19 c. Are legally enforceable.  
20 d. Require performance that will accomplish the intended purposes of  
21 the proposed contract.

22 The review and evaluation required by this subsection shall not constitute approval or  
23 disapproval of the policy merit or lack thereof of the proposed contract.

24 (c) With respect to proposed contracts for services which exceed five million dollars  
25 (\$5,000,000), the CMS shall perform such duties as may be required by the Attorney General  
26 under G.S. 143-49(3a).

27 (d) The CMS shall:

- 28 (1) Assist State departments, agencies, and institutions to establish formal  
29 contract administration procedures and functions.  
30 (2) Advise personnel in contracting specialist roles as to appropriate contract  
31 management and administrative techniques and activities.  
32 (3) Act as a general resource to State agencies on contracting issues related to  
33 procurement, including contract drafting, clarification of terms and  
34 conditions, proper solicitation and bid evaluation procedures, contract  
35 negotiation, and such other matters as directed by the State Purchasing  
36 Officer.  
37 (4) Assist representatives of the Attorney General, agency counsel, and other  
38 legal staff, as requested, in matters related to contracting for goods and  
39 services.

40 (e) The Department of Administration shall adopt procedures for the record keeping of  
41 the information provided by State agencies and which has been received by the Secretary or the  
42 Secretary's designee pursuant to G.S. 114-8.3(c). The records shall be kept by the Department  
43 and shall include a log with information that provides identification of individual contracts and  
44 where the contract documents are located. The Secretary is authorized to require that entities  
45 reporting pursuant to G.S. 114-8.39(c) provide such additional information that may be  
46 required to identify the individual contracts.

47 (f) The CMS shall consist of personnel designated by the Secretary and perform such  
48 other functions as directed by the Secretary that are not inconsistent with this section."

49 SECTION 4. G.S. 143-52.1 reads as rewritten:

50 **"§ 143-52.1. Board of Awards. Award recommendations; State Purchasing Officer action.**

(a) When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Purchasing Officer's action. There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.

(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.

(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.

(e) Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board. A report of all contract awards greater than twenty-five thousand dollars (\$25,000) approved through the Division of Purchase and Contract shall be reported monthly by the Board State Procurement Officer to the chairs of the Joint Legislative Oversight Committee on Information Technology. Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

SECTION 5. G.S. 147-33.101 reads as rewritten:

**"§ 147-33.101. Board of Awards review. Award recommendation; State Chief Information Officer action.**

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Chief Information Officer's action. the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State

1 government, including established procurement processes, and compliance with the State  
2 government wide technical architecture as established by the State CIO.

3 (c) A report of all contract awards greater than twenty-five thousand dollars (\$25,000),  
4 approved through the Statewide IT Procurement Office, shall be reported monthly by the State  
5 CIO's to the Cochair's of the Joint Legislative Oversight Committee on Information  
6 Technology. The report shall include the amount of the award, the award recipient, the using  
7 agency, and a short description of the nature of the award."

8 **SECTION 6.** G.S. 116-13(a) reads as rewritten:

9 "(a) The power and authority granted to the Board of Governors with regard to the  
10 acquisition, operation, maintenance and disposition of real and personal property and services  
11 shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of  
12 the General Statutes and related sections of the North Carolina Administrative Code, except  
13 when a purchase is being made that is not covered by a State term contract and either:

14 (1) The funds used to procure personal property or services are not moneys  
15 appropriated from the General Fund or received as tuition or, in the case of  
16 multiple fund sources, moneys appropriated from the General Fund or  
17 received as tuition do not exceed thirty percent (30%) of the total funds; or

18 (2) The funds used to procure personal property or services are contract and  
19 grant funds or, in the case of multiple fund sources, the contract and grant  
20 funds exceed fifty percent (50%) of the total funds.

21 When a special responsibility constituent institution makes a purchase under subdivision (1)  
22 or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the  
23 approval or oversight of the Secretary of ~~Administration~~, Administration or the State  
24 Purchasing Officer, ~~or the Board of Awards Officer~~ shall not be required, regardless of dollar  
25 value."

26 **SECTION 7.** G.S. 120-36.6 reads as rewritten:

27 **"§ 120-36.6. Legislative Fiscal Research staff participation.**

28 The Legislative Services Officer shall designate a member of the Fiscal Research staff, and  
29 a member of the General Research or Bill Drafting staff who may attend all meetings of the  
30 ~~Board of Awards and Council of State~~, unless the ~~Board or Council~~ has voted to exclude them  
31 from the specific meeting, provided that no final action may be taken while they are so  
32 excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified  
33 of all such meetings, hearings and trips in the same manner and at the same time as notice is  
34 given to members of the ~~Board or Council~~. The Legislative Services Officer and the Director of  
35 Fiscal Research shall be provided with a copy of all reports, memoranda, and other  
36 informational material which are distributed to the members of the ~~Board or Council~~; these  
37 reports, memoranda and materials shall be delivered to the Legislative Services Officer and the  
38 Director of Fiscal Research at the same time that they are distributed to the members of the  
39 ~~Board or Council~~."

40 **SECTION 8.** G.S. 143-52(a) reads as rewritten:

41 "(a) The Secretary of Administration shall compile and consolidate all such estimates of  
42 goods and services needed and required by State departments, institutions and agencies to  
43 determine the total requirements of any given commodity. Where such total requirements will  
44 involve an expenditure in excess of the expenditure benchmark established under the provisions  
45 of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter  
46 provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in  
47 this State or through electronic means, or both, as determined by the Secretary to be most  
48 advantageous, at least once and at least 10 days prior to the date designated for opening. Except  
49 as otherwise provided under this Article, contracts for the purchase of goods and services shall  
50 be based on competitive bids and suitable means authorized by the Secretary as provided in  
51 G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon

consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

**SECTION 9.** G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

**SECTION 10.** G.S. 143-318.18(10) is repealed.

**SECTION 11.** The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- (1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.
- (2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.

- 1 (3) The Commissioner of Insurance, who is subject to  
2 G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a),  
3 and 58-71-40(d).  
4 (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
5 Secretary of Transportation shall be copied on the notice sent to the Global  
6 TransPark Authority.  
7 (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).  
8 (6) The North Carolina Board for Licensing of Geologists, which is subject to  
9 G.S. 89E-5(e).  
10 (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
11 to G.S. 89F-5(d).  
12 (8) The constituent institutions of the University of North Carolina, which are  
13 subject to G.S. 114-8.3(b). For notification under this subdivision, the  
14 Department of Administration may provide the University of North Carolina  
15 system a notification to distribute to all of its constituent institutions. If the  
16 Department of Administration does so, the University of North Carolina  
17 system shall distribute those notifications to the system's constituent  
18 institutions.  
19 (9) The North Carolina Center for Applied Textile Technology, which is subject  
20 to G.S. 115D-67.4.  
21 (10) The North Carolina State Health Plan for Teachers and State Employees,  
22 which is subject to G.S. 135-48.33(b).  
23 (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
24 G.S. 143-134(b).  
25 (12) The North Carolina Turnpike Authority, which is subject to  
26 G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
27 the notice sent to the Turnpike Authority.  
28 (13) The Department of Health and Human Services, which is subject to  
29 G.S. 143-48.1(c).  
30 (14) The Division of Adult Correction of the Department of Public Safety, which  
31 is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
32 on the notice sent to the Division of Adult Correction.  
33 (15) The North Carolina Code Officials Qualification Board, which is subject to  
34 G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
35 notice sent to the Code Officials Qualification Board.  
36 (16) The Roanoke Island Commission, which is subject to  
37 G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
38 copied on the notice sent to the Roanoke Island Commission.  
39 (17) Any other State entity subject to contract review under G.S. 114-8.3.

40 The Department of Administration, as part of its notice, shall provide a means by  
41 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
42 Administration has not received an acknowledgement from a State entity within 30 days of  
43 sending the notice, the Department of Administration shall send a second notice. If the  
44 Department of Administration has not received an acknowledgement from a State entity within  
45 30 days of sending the second notice, the Department of Administration shall notify (i) the  
46 Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations  
47 Subcommittee on General Government and the Senate Appropriations Committee on General  
48 Government and Information Technology.

49 **SECTION 12.** The Attorney General's Office, the Department of Administration,  
50 the Office of the General Counsel for The University of North Carolina, and the Department of

1 State Treasurer, shall establish procedures to implement the provisions of this act no later than  
2 June 30, 2013.

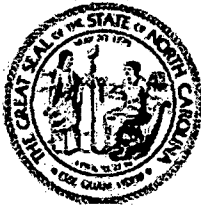
3 **SECTION 13.** G.S. 143-49 reads as rewritten:

4 **"§ 143-49. Powers and duties of Secretary.**

5 The Secretary of Administration shall have power and authority, and it shall be his duty,  
6 subject to the provisions of this Article:

- 7 ...
- 8 (13) To ~~implement~~ implement, by January 1, 2014, a quality management system  
9 equivalent to the International Organization for Standardization (ISO)  
10 9001:2008 to ensure that citizen and agency customer requirements are met.  
11 By September 1, 2012, June 1, 2013, and more frequently as requested, the  
12 Secretary shall report to the Joint Legislative Commission on Governmental  
13 Operations, the Program Evaluation Division, and the Fiscal Research  
14 Division concerning the progress of the Department's effort to comply with  
15 the provisions of this subdivision.
- 16 (14) To work in conjunction with the Office of State Personnel to create a  
17 Contracting Specialist career path to provide for the ~~designation~~ designation,  
18 by September 1, 2013, of one or more employees within each department,  
19 agency, or institution of the State to serve as the Contracting Specialist for  
20 the department, agency, or institution. Employees on the Contracting  
21 Specialist career path shall receive training and guidance as to the provisions  
22 of this Article.
- 23 (15) To work in conjunction with the Office of State Personnel, the Division of  
24 Purchase and Contract, and the University of North Carolina School of  
25 Government to ~~develop~~ implement, by July 1, 2014, a rigorous contract  
26 management training and certification program for State employees. The  
27 program shall be administered by the Office of State Personnel.
- 28 (16) To work in conjunction with the University of North Carolina School of  
29 Government to study and recommend improvements to State procurement  
30 laws, including the feasibility of adopting the provisions of the American  
31 Bar Association Model Procurement Code. The recommendations shall be  
32 reported by the Secretary to the Joint Legislative Commission on  
33 Governmental Operations and the Program Evaluation Division by  
34 September 1, 2013.
- 35 (17) To establish procedures to permit State government, or any of its  
36 departments, institutions, or agencies, to join with any federal, State, or local  
37 government agency, entity, or subdivision, or any nonprofit organization in  
38 cooperative purchasing plans, projects, arrangements, or agreements if the  
39 interest of the State would be served thereby."

40 **SECTION 14.** Sections 1 through 3 of this act become effective October 1, 2013,  
41 and apply to contracts entered into on or after that date. The remainder of this act is effective  
42 when it becomes law.



## SENATE BILL 78: Amend State Contract Review Laws

This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: PCS to First Edition  
S78-CSRK-23

Date: April 4, 2013  
Prepared by: Hal Pell  
Committee Counsel

**SUMMARY:** *This act creates a contract management section in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars (\$1,000,000); provides that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars (\$5,000,000), and complete an internal review of such contracts; repeals the Board of Awards and transfers its responsibilities; and provides for contract management certification and training. The contract review provisions are effective October 1, 2013, and the remainder of the act is effective when it becomes law.*

### BILL ANALYSIS:

#### Section 1:

- The act removes contract review responsibility from the Attorney General's office for all contracts for supplies, materials, printing, equipment, and contractual services in excess of \$1,000,000 and transfers that responsibility to a new section in the Department of Administration (see Section 3, below). The section also amends the law to provide that the Attorney General or designee is responsible for reviewing all proposed contracts for services in excess of \$5 million dollars. The term "designee" includes any attorney approved by the Attorney General.
- The Attorney General's office is also required to: (1) establish procedures regarding the review of contracts and provide any attorney designated to review a contract for services in excess of \$5,000,000 with guidelines to be used in reviewing the contract, and (2) advise and assist the Contract Management Section of the Division of Purchase and Contract, Contract Management Section [See Section 3], in establishing procedures and guidelines for the review of contracts.
- Adds a new provision which directs the General Counsel of the Department of State Treasurer (or designee) to review all proposed investment and debt contracts (defined terms), or contracts entered into pursuant to the Treasurer's authority to contract for investment advisory services. The contracts are to be reviewed to confirm that the contracts conform to the stated statutory requirements. The provision exempts certain contracts from the provision that states that the absence of a reviewing counsel's triggers the State's right to terminate a contract.

#### Section 2:

- Increases the threshold amount for a legal review of contracts for services from \$100 thousand dollars to \$5 million dollars. The attorney designated by the Attorney General's office to review such contracts is required to fulfill the same requirements provided under current law: (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578



# Senate PCS 78

Page 2

- The act also requires a review by an attorney from within the Attorney General's office, and the attorney's signature and title must be included on the contract. Absent a signature, the State would have the right to terminate the contract, with the other parties receiving the value of the services provided prior to the termination.

## **Section 3:**

- Establishes a Contract Management Section (CMS) in the Division of Purchase and Contract, Department of Administration, to review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed \$1 million dollars, unless reviewed by another agency that has been designated by statute.
- The legal counsel in the CMS would be responsible for: participating and assisting in the preparation of all proposed solicitations, and reviewing them with the goal of obtaining the most favorable contract for the State; interpreting proposed contract terms and advising the Secretary or the Secretary's designee of the potential liabilities to the State; and insuring compliance with statutory requirements.
- Counsel in the CMS would also be subject to appointment by the Attorney General's office for review of contracts for services in excess of \$5 million dollars.
- The CMS would also: (1) assist State departments, agencies, and institutions to establish formal contract administration procedures and functions, (2) advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities, (3) act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer, and (4) assist other State agency legal staff, as requested, in matters related to contracting for goods and services.

## **Sections 4 through 10:**

The act transfers the authority to take action on contract award recommendations from the Board of Awards to the State Purchasing Officer, or the State Chief Information Officer, depending on the subject of the contract. The statute establishing the Board of Awards is repealed.

## **Section 11:**

Requires the Department to notify agencies about new contract review laws.

## **Section 12:**

Requires the Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina to establish procedures to implement the provisions of the act no later than June 30, 2013.

## **Section 13:**

Sets dates for the implementation of the quality management system; contract specialist career path, contract management and training certification program, and a reporting date for recommendations on improving the procurement laws—all of which are required under current law.

**EFFECTIVE DATE:** Sections 1 through 3 of the act are effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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2

SENATE BILL 78\*  
Corrected Copy 4/15/13

Short Title:	Amend State Contract Review Laws.	(Public)
Sponsors:	Senators Hartsell (Primary Sponsor); Apodaca, Clodfelter, Daniel, Graham, Gunn, Hise, Hunt, and Randleman.	
Referred to:	Program Evaluation.	

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 114-8.3 reads as rewritten:

**"§ 114-8.3. Attorney General-General/General Counsel; to review certain contracts.**

(a) Except as provided in subsection (b) of this section, the Attorney General or the Attorney General's designee shall review all proposed contracts for supplies, materials, printing, equipment, and or contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General-General, in consultation with the Department of Administration, shall establish procedures regarding the review of contracts subject to this section, and shall provide any attorney designated under this subsection with guidelines to be used in reviewing contracts. shall require that any Any attorney designated under this subsection shall comply with any rules-procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(a1) Any contract for services that exceeds five million dollars (\$5,000,000), which requires that a representative from within the office of the Attorney General advise and assist in the negotiation of contract for services pursuant to G.S. 143-49(3a), must include the signature and title of the Attorney General's representative in order to be valid.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection.



1 The General Counsel shall establish procedures regarding the review of contracts subject to this  
2 section, and shall require that any attorney designated under this subsection comply with any  
3 ~~rules-procedures~~ established by the Attorney General ~~or the Department of Administration~~  
4 regarding the review of contracts.

5 (c) All State agencies, the constituent institutions of The University of North Carolina,  
6 or any person who will be entering into a contract on behalf of the State for supplies, materials,  
7 printing, equipment, or contractual services that exceed one million dollars (\$1,000,000) shall  
8 notify the Secretary of the Department of Administration or the Secretary's designee of the  
9 intent to enter into the contract, and provide information as required by the Secretary or the  
10 Secretary's designee, including, but not limited to, the name and title of the attorney designated  
11 to conduct the review required by this section.

12 (d) The Department of Administration shall adopt procedures for the identification and  
13 record keeping of contracts subject to review under this section. The records shall be kept by  
14 the Department and shall include a log identifying all contracts subject to review under this  
15 section. The log shall include, at a minimum, (i) the name of the contracting agency,  
16 constituent institution of The University of North Carolina, or the party that is contracting on  
17 behalf of the State and (ii) the name and title of the attorney designated to conduct the review  
18 required by this section."

19 SECTION 2. G.S. 143-49 reads as rewritten:

20 "§ 143-49. Powers and duties of Secretary.

21 The Secretary of Administration shall have power and authority, and it shall be ~~his-the~~  
22 Secretary's duty, subject to the provisions of this Article:

23 ...  
24 (3a) ~~To request, notify and the Attorney General of pending contracts for~~  
25 contractual services exceeding a cost of five million dollars (\$5,000,000).  
26 Upon notification, the Attorney General shall assign a representative of from  
27 within the office of the Attorney General to assist in negotiation for the  
28 award of any the contract. contract for contractual services exceeding a cost  
29 of one hundred thousand dollars (\$100,000) that requires negotiation with  
30 prospective contractors. It shall be the duty of such representative to assist  
31 and advise in obtaining the most favorable contract for the State, to evaluate  
32 all proposals available from prospective contractors for that purpose, to  
33 interpret proposed contract terms and to advise the Secretary or his  
34 representatives of the liabilities of the State and validity of the contract to be  
35 awarded. All contracts and drafts of such contracts shall be prepared by the  
36 office of the Attorney General and copies thereof shall be retained by such  
37 office for a period of three years following the termination of such contracts.  
38 The term "contractual services" as used in this subsection and G.S. 143-52.2  
39 shall mean work performed by an independent contractor requiring  
40 specialized knowledge, experience, expertise or similar capabilities wherein  
41 the service rendered does not consist primarily of acquisition by this State of  
42 equipment or materials and the rental of equipment, materials and supplies.  
43 ~~The term "negotiation" as used in this~~ This subdivision shall not apply be  
44 ~~deemed to refer to contracts entered into or to be entered into as a result of a~~  
45 competitive bidding process. This subdivision does not require the Secretary  
46 to notify the Attorney General for the appointment of a representative from  
47 within the office of the Attorney General for any contracts for contractual  
48 services to be entered into by the constituent institutions of The University  
49 of North Carolina unless requested to do so by the General Counsel of The  
50 University of North Carolina.

51 ...."

1           **SECTION 3.** The Department of Administration shall provide an individualized  
2 notice to the following State entities to ensure that the entities are aware of how the statutory  
3 amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- 4           (1) The North Carolina State Lottery Commission, which is subject to  
5           G.S. 18C-150.
- 6           (2) The Commissioner of Banks, who is subject to G.S. 53-320(d),  
7           G.S. 53-326(d), G.S. 53-391, and G.S. 53-401.
- 8           (3) The Commissioner of Insurance, who is subject to G.S. 53-401,  
9           G.S. 58-33-30(e)(4) and (5), G.S. 58-33-125(e), G.S. 58-33-130(a), and  
10           G.S. 58-71-40(d).
- 11           (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The  
12           Secretary of Transportation shall be copied on the notice sent to the Global  
13           TransPark Authority.
- 14           (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- 15           (6) The North Carolina Board for Licensing of Geologists, which is subject to  
16           G.S. 89E-5(e).
- 17           (7) The North Carolina Board for Licensing of Soil Scientists, which is subject  
18           to G.S. 89F-5(d).
- 19           (8) The constituent institutions of the University of North Carolina, which are  
20           subject to G.S. 114-8.3(b). For notification under this subdivision, the  
21           Department of Administration may provide the University of North Carolina  
22           system a notification to distribute to all of its constituent institutions. If the  
23           Department of Administration does so, the University of North Carolina  
24           system shall distribute those notifications to the system's constituent  
25           institutions.
- 26           (9) The North Carolina Center for Applied Textile Technology, which is subject  
27           to G.S. 115D-67.4.
- 28           (10) The North Carolina State Health Plan for Teachers and State Employees,  
29           which is subject to G.S. 135-48.33(b).
- 30           (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and  
31           G.S. 143-134(b).
- 32           (12) The North Carolina Turnpike Authority, which is subject to  
33           G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on  
34           the notice sent to the Turnpike Authority.
- 35           (13) The Department of Health and Human Services, which is subject to  
36           G.S. 143-48.1(c).
- 37           (14) The Division of Adult Correction of the Department of Public Safety, which  
38           is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied  
39           on the notice sent to the Division of Adult Correction.
- 40           (15) The North Carolina Code Officials Qualification Board, which is subject to  
41           G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the  
42           notice sent to the Code Officials Qualification Board.
- 43           (16) The Roanoke Island Commission, which is subject to  
44           G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be  
45           copied on the notice sent to the Roanoke Island Commission.
- 46           (17) Any other State entity subject to contract review under G.S. 114-8.3.

47           The Department of Administration, as part of its notice, shall provide a means by  
48 which an entity may acknowledge receipt and understanding of the notice. If the Department of  
49 Administration has not received an acknowledgement from a State entity within 30 days of  
50 sending the notice, the Department of Administration shall send a second notice. If the  
51 Department of Administration has not received an acknowledgement from a State entity within

30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

**SECTION 4.** The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than June 30, 2013.

**SECTION 5.** G.S. 143-49 reads as rewritten:

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

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- ...
- (13) To ~~implement~~implement, by September 1, 2013, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. ~~By September 1, 2012, April 1, 2013,~~ and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
- (14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~designation, by April 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
- (15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~implement, by September 1, 2013, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.
- (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.
- (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. Any procedures established under this subdivision shall be reported to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division no later than 30 days prior to the effective date of the procedures."

**SECTION 6.** Sections 1 and 2 of this act become effective July 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 193\*

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

S193-ATJ-26 [v.1]

Page 1 of 1

Comm. Sub. [YES]  
Amends Title [NO]  
Second Edition

Date \_\_\_\_\_, 2013

Senator Randleman

moves to amend the bill on page 1, line 15 - 28, by rewriting the lines to read:

"(b) No local school administrative unit shall assess indirect costs to a child nutrition program unless the program has a minimum of one month's operating balance. One month's operating balance shall be derived from net cash resources divided by one month's operating costs. Net Cash resources means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit Child Nutrition account at any given time, less cash payables and other liabilities. When calculating the average month's operating balance, the Department of Public Instruction shall use the complete and final figures obtained from the annual financial report from each child nutrition program's operation. An average month's operating balance shall be calculated and published by the Department of Public Instruction for each child nutrition program and shall be equal to the average of the three prior fiscal years' monthly operating balances. If complete and final financial reports for a given year are not yet available for a child nutrition program, the Department of Public Instruction may use projected figures but shall update the published average month's operating balance once complete and final financial reports become available. As used in this subsection, the term "indirect costs" is as defined in the United States Office of Budget and Management Circular A-87, as revised, and the term "net cash resources" is as defined in 7 CFR 210.2.

SIGNED

  
Amendment Sponsor

SIGNED

\_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



\* S 1 9 3 - A T J - 2 6 - V - 1 \*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**S**

**D**

**SENATE BILL 193\*  
Corrected Copy 4/15/13  
PROPOSED COMMITTEE SUBSTITUTE S193-CSTJ-30 [v.1]  
4/26/2013 2:55:52 PM**

Short Title: Child Nutrition Program Solvency and Support.

(Public)

Sponsors:

Referred to:

March 6, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT (1) TO PROHIBIT LOCAL SCHOOL ADMINISTRATIVE UNITS FROM  
3 ASSESSING INDIRECT COSTS TO A CHILD NUTRITION PROGRAM UNLESS THE  
4 PROGRAM IS FINANCIALLY SOLVENT AND (2) TO PROMOTE OPTIMAL  
5 PRICING FOR CHILD NUTRITION PROGRAM FOODS AND SUPPLIES, AS  
6 RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION  
7 OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE  
8 PROGRAM EVALUATION DIVISION.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. G.S. 115C-450 reads as rewritten:

11 "**§ 115C-450. School food services.**

12 (a) School food services shall be included in the budget of each local school  
13 administrative unit and the State Board of Education shall provide for school food services in  
14 the uniform budget format required by G.S. 115C-426.

15 (b) No local school administrative unit shall assess indirect costs to a child nutrition  
16 program unless the child nutrition program's food services account balance is greater than an  
17 average month's cost of operation for the child nutrition program. An average month's cost of  
18 operation shall be calculated and published by the Department of Public Instruction for each  
19 child nutrition program and shall be equal to the average of the three prior fiscal year's average  
20 monthly cost of operation. When calculating the average month's cost of operation for each  
21 child nutrition program, the Department of Public Instruction shall use the complete and final  
22 audited figures from each child nutrition program's operation. If complete and final audited  
23 figures for a given year are not yet available for a child nutrition program, the Department of  
24 Public Instruction may use projected figures but shall update the published average month's  
25 cost of operation once complete and final audited figures become available. As used in this  
26 subsection, the term "indirect costs" is as defined in the United States Office of Budget and  
27 Management Circular A-87, as revised, and the term "cost of operation" is as defined in  
28 G.S. 115C-264(c)."

29 SECTION 2.(a) The North Carolina Procurement Alliance shall promote optional  
30 pricing for child nutrition program foods and supplies.

31 SECTION 2.(b) Beginning October 1, 2014, and each year thereafter on October  
32 1, the Department of Public Instruction shall report to the Joint Legislative Education Oversight  
33 Committee on the annual savings achieved through the increased participation of local school  
34 administrative units in the North Carolina Procurement Alliance.

35 SECTION 3. This act becomes effective July 1, 2013.





## SENATE BILL 193: Child Nutrition Program Solvency and Support

2013-2014 General Assembly

Committee: Senate Program Evaluation  
Introduced by: Sen. Hartsell  
Analysis of: PCS to Second Edition  
S193-CSTJ-30

Date: April 26, 2013  
Prepared by: Janice Paul  
Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute (PCS) for Senate Bill 193 would restrict when local school administrative unit may charge its indirect costs (e.g., general administrative costs) to a school lunch program. The PCS would do the following:*

- *Require a local school administrative unit (LEA) to have more than one month of funds in the operating account for its school lunch program before charging general administrative costs to the program.*
- *Direct the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies.*
- *Require the Department of Public Instruction to make an annual report to the Joint Legislative Education Oversight Committee on the annual savings achieved through the North Carolina Procurement Alliance.*

*The Proposed Committee Substitute deletes an appropriation of \$80,000 to provide administrative support for the North Carolina Procurement Alliance.*

- [As introduced, this bill was identical to H57, as introduced by Rep. Howard, which is currently in Senate Education/Higher Education.]

**BILL ANALYSIS:** The PCS for Senate Bill 193 would amend G.S. 115C-450 to restrict when a LEA may charge its indirect costs to a child nutrition (school lunch) program. Indirect costs may include, for example, general administrative costs at the LEA's central offices. Under the statutory change in the bill, an LEA would be allowed to charge indirect costs to a school lunch program only in a month when the school lunch program's account balance is greater than an average month's cost of program operation.

The PCS would also require the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies, and the Department of Public Instruction to annually report to the Joint Legislative Education Oversight Committee the savings achieved through the North Carolina Procurement Alliance.

**BACKGROUND:** Senate Bill 193 would implement Recommendation 1 of the Program Evaluation Division's Report Number 2011-06, "*Child Nutrition Programs Challenged to Meet Nutrition Standards, Maintain Participation, and Remain Solvent*," dated October 12, 2011 ("Report"). As discussed in the Report, some LEA's have charged school lunch programs for indirect administrative costs when a school lunch program has less than one month's operating expenses available, leading to financial solvency issues.

The North Carolina Child Nutrition Procurement Alliance is a voluntary group of 87 LEA's that consolidate purchasing 900+ food and supply products for federally-funded child nutrition programs. The Alliance members receive better product and supply pricing due to higher volume product purchases and standardized bid specifications. The Alliance members opened their first bids in May 2009.

**EFFECTIVE DATE:** The PCS for Senate Bill 193 would become effective July 1, 2013.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578



# Senate PCS 193

Page 2

*Greg Roney, Research Division, and Ryan Blackledge, Bill Drafting Division, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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2

SENATE BILL 193\*  
Corrected Copy 4/15/13

Short Title: Child Nutrition Program Solvency and Support. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Barringer, Gunn, Hise, Hunt, and Randleman.

Referred to: Program Evaluation.

March 6, 2013

A BILL TO BE ENTITLED

AN ACT (1) TO PROHIBIT LOCAL SCHOOL ADMINISTRATIVE UNITS FROM ASSESSING INDIRECT COSTS TO A CHILD NUTRITION PROGRAM UNLESS THE PROGRAM IS FINANCIALLY SOLVENT AND (2) TO APPROPRIATE FUNDS TO PROMOTE OPTIMAL PRICING FOR CHILD NUTRITION PROGRAM FOODS AND SUPPLIES, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-450 reads as rewritten:

**"§ 115C-450. School food services.**

(a) School food services shall be included in the budget of each local school administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115C-426.

(b) No local school administrative unit shall assess indirect costs to a child nutrition program unless the child nutrition program's food services account balance is greater than an average month's cost of operation for the child nutrition program. An average month's cost of operation shall be calculated and published by the Department of Public Instruction for each child nutrition program and shall be equal to the average of the three prior fiscal year's average monthly cost of operation. When calculating the average month's cost of operation for each child nutrition program, the Department of Public Instruction shall use the complete and final audited figures from each child nutrition program's operation. If complete and final audited figures for a given year are not yet available for a child nutrition program, the Department of Public Instruction may use projected figures but shall update the published average month's cost of operation once complete and final audited figures become available. As used in this subsection, the term "indirect costs" is as defined in the United States Office of Budget and Management Circular A-87, as revised, and the term "cost of operation" is as defined in G.S. 115C-264(c).

**SECTION 2.(a)** There is appropriated from the General Fund to the Department of Public Instruction, Division of School Support, Child Nutritional Services Section, the sum of eighty thousand dollars (\$80,000) in recurring funds for fiscal year 2013-2014. These funds shall be used to provide administrative support for the North Carolina Procurement Alliance to promote optimal pricing for child nutrition program foods and supplies.

**SECTION 2.(b)** Beginning October 1, 2014, and each year thereafter on October 1, for as long as the Department of Public Instruction receives the funding authorized by



1 subsection (a) of this section, the Department of Public Instruction shall report to the Joint  
2 Legislative Education Oversight Committee on the annual savings achieved through the  
3 increased participation of local school-administrative units in the North Carolina Procurement  
4 Alliance.

5 **SECTION 3.** This act becomes effective July 1, 2013.

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 30, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Blake Thomas	N.C. Dep't of Treasurer
Bill McLoe	NC " " "
Amy McConkey	NC Beverage Assn
Butch Gunnells	NC Beverage Assn
Gene Causby	NC SNA
Rachel Bealier	NCDPI
Wynn Harvey	NCDPI
Janet Johnson	NCDPI
Tim Hoegemeyer	State Auditor
Rhonda Todd	DOA
Andy Chase	KMA
Alex Badger	CSS
Tim Seigler	XCCU
Michelle Brooks	East Carolina University
Leanne Womni	NCSBA
Joe Allen	NCAOZ
Ed Smith	BSF

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

April 30, 2013

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Katherine Joyce	NASA
Adam Pridemore	NASA
Kay Emanuel	School of Government
SPENCER FUELLAS	DOA
Dev Moretz	UNCGA
Will Grawtham	MVC
George Smith	NP
DAVID REE	MFS
Chris Agard	DOT
MARGARET MATRONE	NCHFA
Bo Heald	McGraw-Hill

**Senate Committee on Program Evaluation  
Tuesday, May 7, 2013, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 78	Amend State Contract Review Laws.	Senator Hartsell

**Other Business**

**Adjournment**

**Senate Committee on Program Evaluation  
Tuesday, May 7, 2013 at 12:00 PM  
Room 421 of the Legislative Office Building**

**MINUTES**

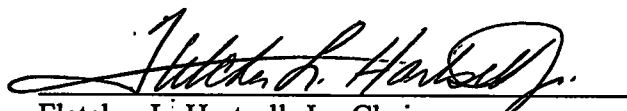
The Senate Committee on Program Evaluation met at 12:00 PM on May 7, 2013 in Room 421 of the Legislative Office Building with eleven members present. Senator Fletcher Hartsell, Chairman, presided.

Senator Hartsell called the meeting to order at 12:15 p.m. He then welcomed the Sergeant-at-Arms and introduced pages Kateleigh Johnson and Gabbie Holmes and thanked all for their services to the Committee.

**SB 78 – Amend State Contract Review Laws.** Senator Hartsell noted that this was a Proposed Committee Substitute which had been adopted at a previous meeting. As this and the following bill were Senator Hartsell's bills, he invited Senator Clark to preside. Senator Hartsell was asked to explain the bill. Senator Gunn moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

**SB 32 – Periodic Review and Expiration of Rules.** Senator Hartsell explained the bill and answered questions from Senators Hunt and McKissick. Comments were given by Mr. William Potter, representing the North Carolina Physical Therapy Association and the North Carolina Dental Society, Judge Julian Mann, Director of the Office of Administrative Hearings and Ms. Molly Masich, Codifier of Rules for the Office of Administrative Hearings. Senator Bingham moved for a favorable report. All voted and the motion carried.

There being no further business the meeting was adjourned.

  
Fletcher L. Hartsell, Jr., Chairman

  
Gerry Johnson, Committee Assistant

Principal Clerk  
Reading Clerk

\_\_\_\_\_  
\_\_\_\_\_

**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	May 7, 2013	12:00 PM	421 LOB

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 78	Amend State Contract Review Laws.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair



**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Tuesday, May 07, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**FAVORABLE**

**SB 32**

Periodic Review and Expiration of Rules.

Draft Number: None  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: No

**TOTAL REPORTED: 1**

Committee Clerk Comments:

1 report of 2

Senator Fletcher Hartsell will handle SB 32



\* C M R 4 8 5 - V - 2 \*

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**PROGRAM EVALUATION COMMITTEE REPORT  
Senator Hartsell, Chair**

Wednesday, May 08, 2013

Senator Hartsell,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL**

**SB 78**

Amend State Contract Review Laws.

Draft Number: S78-PCS75314-RK-23

Sequential Referral: None

Recommended Referral: None

Long Title Amended: Yes

**TOTAL REPORTED: 1**

Senator Fletcher Hartsell will handle SB 78



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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1

SENATE BILL 32\*

Short Title: Periodic Review and Expiration of Rules. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); and Goolsby.

Referred to: Program Evaluation.

February 4, 2013

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.  
The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed ~~rule~~ rule, unless the rule is a readoption without changes to the existing rule proposed to keep a permanent rule from expiring.
- (2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

**SECTION 2.** Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

**"§ 150B-21.3A. Expiration date of permanent rules.**

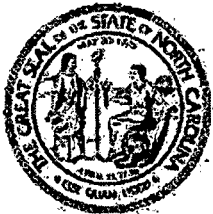
(a) Unless readopted pursuant to the provisions of G.S. 150B-21.2 and approved by the Commission pursuant to the provisions of Part 3 of Article 2A of this Chapter, a permanent rule expires on the latest of any of the following:

- (1) December 31, 2016, for rules in Title 10A of the North Carolina Administrative Code.
- (2) December 31, 2017, for rules in Title 15A of the North Carolina Administrative Code.



- 1           (3)   December 31, 2018, for rules, in Title 21 of the North Carolina  
2           Administrative Code.  
3           (4)   December 31, 2019, for all remaining rules, unless and to the extent the  
4           agencies that adopted the rules are exempt from the rule-making  
5           requirements in this Article.  
6           (5)   Ten years after its effective date.  
7           (6)   Ten years after its readopted effective date.  
8           (7)   Ten years from the effective date of the most recent amendment to the rule.  
9           (b)   The Commission shall establish a time line for the submission of rules subject to  
10          expiration after consultation with the adopting agency.  
11          (c)   The Codifier of Rules shall annually notify agencies of rules that will expire within  
12          the next two years."

13           **SECTION 3.** This act is effective when it becomes law.



## SENATE BILL 32: Periodic Review and Expiration of Rules

2013-2014 General Assembly

**Committee:** Senate Program Evaluation  
**Introduced by:** Sen. Hartsell  
**Analysis of:** First Edition

**Date:** April 5, 2013  
**Prepared by:** Janice Paul  
Committee Counsel

**SUMMARY:** *Senate Bill 32 would amend the Administrative Procedure Act to provide for the periodic review and expiration of State agency rules.*

**BILL ANALYSIS:** SB 32 would make the following changes to the Administrative Procedure Act:

- Provide in G.S. 150B-21.2(c) that a notice of a proposed rule need not include the text of that proposed rule if the rule is being readopted without changes for the purpose of preventing a permanent rule from expiring.
- Create a new G.S. 150B-21.3A establishing various expiration dates for rules as specified, except those rules readopted under the section governing the procedures for adopting permanent rules and approved by the Rules Review Commission under the Part of the General Statutes that governs the Commission's review of rules.
- Direct the Rules Review Commission to establish a timeline for submitting rules subject to expiration after consulting with the adopting agency.
- Require the Codifier of Rules to annually notify agencies of the rules that will expire within the next two years.

**EFFECTIVE DATE:** This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 78\*  
PROPOSED COMMITTEE SUBSTITUTE S78-CSRK-23 [v.1]

4/4/2013 2:52:43 PM

Short Title: Amend State Contract Review Laws.

(Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. ~~Attorney General-General/General Counsel;~~ to review certain contracts.

(a) Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one five million dollars (\$1,000,000) (\$5,000,000). The designee shall confirm to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used ~~in this section~~ designee's review shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General-General shall:

(1) Establish establish procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.

(2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form,



\* S 7 8 - C S R K - 2 3 - V - 1 \*

(ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any rules-procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment and debt contracts, as defined in subdivision (4) of this subsection, or any contracts for services entered pursuant to the State Treasurer's authority under G.S. 147-69.3, to confirm that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

- (1) The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.
- (2) The term "General Counsel's designee" shall include any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.
- (3) Any contract for services reviewed pursuant to this subdivision must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of such contract. Except for any debt contract, or contracts entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.
- (4) For the purposes of this subdivision, "investment and debt contracts" means any of the following:
  - a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.
  - b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.
  - c. Debt issued or to be issued by the State of North Carolina under the supervision of the State Treasurer, debt issued or to be issued by the North Carolina Capital Facilities Finance Agency, and debt and other matters of finance subject to the approval or supervision of the Local Government Commission, including, in each case, services required for ongoing management and review of debt issues that have previously been incurred or that are proposed to be incurred.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars (\$1,000,000) shall

1 notify the Secretary of the Department of Administration or the Secretary's designee of the  
2 intent to enter into the contract and provide such information as required by the Department for  
3 the purposes of maintaining a centralized log of such contracts and identifying the location of  
4 the contract documents.

5 **SECTION 2.** G.S. 143-49 reads as rewritten:

6 **"§ 143-49. Powers and duties of Secretary.**

7 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the  
8 Secretary's duty, subject to the provisions of this Article:

9 ...  
10 (3a) To ~~request, notify and~~ the Attorney General of pending contracts for  
11 contractual services exceeding a cost of five million dollars (\$5,000,000).  
12 Upon notification, the Attorney General shall assign a representative of from  
13 within the office of the Attorney General, the Contract Management Section  
14 of the Division of Purchase and Contract, Department of Administration, or  
15 other qualified counsel to assist in negotiation for the award of any the  
16 contract. contract for contractual services exceeding a cost of one hundred  
17 thousand dollars (\$100,000) that requires negotiation with prospective  
18 contractors. It shall be the duty of such representative to assist and advise in  
19 obtaining the most favorable contract for the State, to evaluate all proposals  
20 available from prospective contractors for that purpose, to interpret proposed  
21 contract terms and to advise the Secretary or his representatives of the  
22 liabilities of the State and validity of the contract to be awarded. All  
23 contracts and drafts of such contracts shall be prepared reviewed by an  
24 attorney from within the office of the Attorney General and copies thereof  
25 shall be retained by such office for a period of three years following the  
26 termination of such contracts. The term "contractual services" as used in this  
27 subsection and G.S. 143-52.2 shall mean work performed by an independent  
28 contractor requiring specialized knowledge, experience, expertise or similar  
29 capabilities wherein the service rendered does not consist primarily of  
30 acquisition by this State of equipment or materials and the rental of  
31 equipment, materials and supplies. The term "negotiation" as used in this  
32 This subdivision shall not apply be deemed to refer to contracts entered into  
33 or to be entered into as a result of a competitive bidding process. The  
34 following procedures and requirements apply to contracts subject to this  
35 subdivision:

- 36 a. The Secretary is not required to notify the Attorney General for  
37 the appointment of a representative for any contracts for  
38 contractual services to be entered into by the constituent  
39 institutions of The University of North Carolina pursuant to G.S.  
40 114-8.3(b), or for contracts to be entered into by the Département  
41 of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do  
42 so by the General Counsel of The University of North Carolina  
43 or the General Counsel of the Department of State Treasurer,  
44 respectively.  
45 b. Any contract for services reviewed pursuant to this subdivision  
46 must include signature of the Attorney General or the Attorney  
47 General's designee. If the contract commences without the  
48 required signature, the State shall have the right to terminate the  
49 contract and the other party or parties to the contract shall only be  
50 entitled to the value of all services provided to the State prior to  
51 the termination.



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

**"§ 143-50.1. Division of Purchase and Contract; Contract Management Section.**

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars (\$1,000,000), the CMS shall:

- (1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.
- (2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.
- (3) Review all proposed contracts to ensure that the contracts:
  - a. Are in proper legal form.
  - b. Contain all clauses required by law.
  - c. Are legally enforceable.
  - d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services which exceed five million dollars (\$5,000,000), the CMS shall perform such duties as may be required by the Attorney General under G.S. 143-49(3a).

(d) The CMS shall:

- (1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.
- (2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.
- (3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer.
- (4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and which has been received by the Secretary or the Secretary's designee pursuant to G.S. 114-8.3(c). The records shall be kept by the Department and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide such additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform such other functions as directed by the Secretary that are not inconsistent with this section."

SECTION 4. G.S. 143-52.1 reads as rewritten:

**"§ 143-52.1. Board of Awards. Award recommendations; State Purchasing Officer action.**

1 (a) When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of  
2 the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award  
3 recommendation shall be submitted to the State Purchasing Officer for approval or other action.  
4 The agency or institution making the recommendation, or for which the purchase is to be made,  
5 shall be notified promptly of the State Purchasing Officer's action. There is created the Board of  
6 Awards. The Board shall consist of three members at a time, appointed by the Chair of the  
7 Commission. Members of the Board shall be appointed on a rotating basis from the  
8 membership of the Commission and the Council of State. Two out of three members appointed  
9 for each meeting of the Board shall constitute a quorum of the Board.

10 (b) The Board shall meet weekly as called by the Chair of the Commission, except in  
11 weeks when no contracts have been submitted to the Board for review.

12 (c) When the dollar value of a contract exceeds the benchmark established either  
13 pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a  
14 recommendation on action to be taken by the Secretary of Administration on contracts to be  
15 awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded  
16 by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior  
17 to the awarding of the contract.

18 (d) The State Budget Officer shall designate a secretary for the Board. The Secretary of  
19 Administration and the State Chief Information Officer shall each submit their matters for  
20 consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each  
21 meeting and made public by the Secretary of Administration or State Chief Information  
22 Officer, as applicable unless the Secretary of Administration or State Chief Information  
23 Officer, as applicable, determines a specific record of the meeting needs to be confidential due  
24 to the nature of the contract. The Secretary of Administration or State Chief Information  
25 Officer, as applicable, may elect to proceed with the award of a contract without a  
26 recommendation of the Board in cases of emergencies or in the event that a Board is not  
27 available. In those cases, contracts awarded without Board review shall be reported to the next  
28 meeting of the Board as a matter of record.

29 (e) Reports on recommendations made by the Board on matters presented by the State  
30 Chief Information Officer to the Board. A report of all contract awards greater than twenty-five  
31 thousand dollars (\$25,000) approved through the Division of Purchase and Contract shall be  
32 reported monthly by the Board State Procurement Officer to the chairs of the Joint Legislative  
33 Oversight Committee on Information Technology. Cochairs of the Joint Legislative Committee  
34 on Governmental Operations. The report shall include the amount of the award, the award  
35 recipient, the using agency, and a short description of the nature of the award."

36 **SECTION 5. G.S. 147-33.101 reads as rewritten:**

37 **"§ 147-33.101. Board of Awards review. Award recommendation; State Chief Information**  
38 **Officer action.**

39 (a) When the dollar value of a contract for the procurement of information technology  
40 equipment, materials, and supplies exceeds the benchmark established by the State Chief  
41 Information Officer, an award recommendation shall be submitted to the State Chief  
42 Information Officer for approval or other action. The agency or institution making the  
43 recommendation, or for which the purchase is to be made, shall be notified promptly of the  
44 State Chief Information Officer's action. the contract shall be reviewed by the Board of Awards  
45 pursuant to G.S. 143-52.1 prior to the contract being awarded.

46 (b) Prior to submission of any contract for review by the Board of Awards pursuant to  
47 this section for any contract for information technology being acquired for the benefit of the  
48 Office and not on behalf of any other State agency, the Director of the Budget shall review and  
49 approve the procurement to ensure compliance with the established processes, specifications,  
50 and standards applicable to all information technology purchased, licensed, or leased in State

government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) A report of all contract awards greater than twenty-five thousand dollars (\$25,000), approved through the Statewide IT Procurement Office, shall be reported monthly by the State CIO's to the Cochairs of the Joint Legislative Oversight Committee on Information Technology. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

**SECTION 6.** G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

(1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or

(2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of ~~Administration~~, Administration or the State Purchasing Officer, ~~or the Board of Awards Officer~~ shall not be required, regardless of dollar value."

**SECTION 7.** G.S. 120-36.6 reads as rewritten:

**"§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards and Council of State~~, unless the ~~Board or Council~~ has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or Council~~. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the ~~Board or Council~~; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or Council~~."

**SECTION 8.** G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all such estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon

consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

**SECTION 9.** G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

**SECTION 10.** G.S. 143-318.18(10) is repealed.

**SECTION 11.** The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- (1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.
- (2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.

- (3) The Commissioner of Insurance, who is subject to G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a), and 58-71-40(d).
- (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The Secretary of Transportation shall be copied on the notice sent to the Global TransPark Authority.
- (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- (6) The North Carolina Board for Licensing of Geologists, which is subject to G.S. 89E-5(e).
- (7) The North Carolina Board for Licensing of Soil Scientists, which is subject to G.S. 89F-5(d).
- (8) The constituent institutions of the University of North Carolina, which are subject to G.S. 114-8.3(b). For notification under this subdivision, the Department of Administration may provide the University of North Carolina system a notification to distribute to all of its constituent institutions. If the Department of Administration does so, the University of North Carolina system shall distribute those notifications to the system's constituent institutions.
- (9) The North Carolina Center for Applied Textile Technology, which is subject to G.S. 115D-67.4.
- (10) The North Carolina State Health Plan for Teachers and State Employees, which is subject to G.S. 135-48.33(b).
- (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and G.S. 143-134(b).
- (12) The North Carolina Turnpike Authority, which is subject to G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on the notice sent to the Turnpike Authority.
- (13) The Department of Health and Human Services, which is subject to G.S. 143-48.1(c).
- (14) The Division of Adult Correction of the Department of Public Safety, which is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied on the notice sent to the Division of Adult Correction.
- (15) The North Carolina Code Officials Qualification Board, which is subject to G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the notice sent to the Code Officials Qualification Board.
- (16) The Roanoke Island Commission, which is subject to G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be copied on the notice sent to the Roanoke Island Commission.
- (17) Any other State entity subject to contract review under G.S. 114-8.3.

The Department of Administration, as part of its notice, shall provide a means by which an entity may acknowledge receipt and understanding of the notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the notice, the Department of Administration shall send a second notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

**SECTION 12.** The Attorney General's Office, the Department of Administration, the Office of the General Counsel for The University of North Carolina, and the Department of

State Treasurer, shall establish procedures to implement the provisions of this act no later than June 30, 2013.

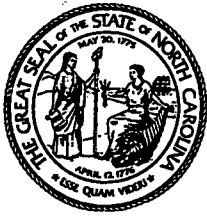
**SECTION 13. G.S. 143-49 reads as rewritten:**

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

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- (13) To ~~implement~~ implement, by January 1, 2014, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. ~~By September 1, 2012, June 1, 2013,~~ and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
- (14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~ designation, by September 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.
- (15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~ implement, by July 1, 2014, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.
- (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.
- (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby."

**SECTION 14.** Sections 1 through 3 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.



This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.

## SENATE BILL 78: Amend State Contract Review Laws

2013-2014 General Assembly

**Committee:** Senate Program Evaluation  
**Introduced by:** Sen. Hartsell  
**Analysis of:** PCS to First Edition  
S78-CSRK-23

**Date:** April 4, 2013  
**Prepared by:** Hal Pell  
Committee Counsel

**SUMMARY:** *This act creates a contract management section in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars (\$1,000,000); provides that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars (\$5,000,000), and complete an internal review of such contracts; repeals the Board of Awards and transfers its responsibilities; and provides for contract management certification and training. The contract review provisions are effective October 1, 2013, and the remainder of the act is effective when it becomes law.*

### BILL ANALYSIS:

#### Section 1:

- The act removes contract review responsibility from the Attorney General's office for all contracts for supplies, materials, printing, equipment, and contractual services in excess of \$1,000,000 and transfers that responsibility to a new section in the Department of Administration (see Section 3, below). The section also amends the law to provide that the Attorney General or designee is responsible for reviewing all proposed contracts for services in excess of \$5 million dollars. The term "designee" includes any attorney approved by the Attorney General.
- The Attorney General's office is also required to: (1) establish procedures regarding the review of contracts and provide any attorney designated to review a contract for services in excess of \$5,000,000 with guidelines to be used in reviewing the contract, and (2) advise and assist the Contract Management Section of the Division of Purchase and Contract, Contract Management Section [See Section 3], in establishing procedures and guidelines for the review of contracts.
- Adds a new provision which directs the General Counsel of the Department of State Treasurer (or designee) to review all proposed investment and debt contracts (defined terms), or contracts entered into pursuant to the Treasurer's authority to contract for investment advisory services. The contracts are to be reviewed to confirm that the contracts conform to the stated statutory requirements. The provision exempts certain contracts from the provision that states that the absence of a reviewing counsel's triggers the State's right to terminate a contract.

#### Section 2:

- Increases the threshold amount for a legal review of contracts for services from \$100 thousand dollars to \$5 million dollars. The attorney designated by the Attorney General's office to review such contracts is required to fulfill the same requirements provided under current law: (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# Senate PCS 78

Page 2

- The act also requires a review by an attorney from within the Attorney General's office, and the attorney's signature and title must be included on the contract. Absent a signature, the State would have the right to terminate the contract, with the other parties receiving the value of the services provided prior to the termination.

## Section 3:

- Establishes a Contract Management Section (CMS) in the Division of Purchase and Contract, Department of Administration, to review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed \$1 million dollars, unless reviewed by another agency that has been designated by statute.
- The legal counsel in the CMS would be responsible for: participating and assisting in the preparation of all proposed solicitations, and reviewing them with the goal of obtaining the most favorable contract for the State; interpreting proposed contract terms and advising the Secretary or the Secretary's designee of the potential liabilities to the State; and insuring compliance with statutory requirements.
- Counsel in the CMS would also be subject to appointment by the Attorney General's office for review of contracts for services in excess of \$5 million dollars.
- The CMS would also: (1) assist State departments, agencies, and institutions to establish formal contract administration procedures and functions, (2) advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities, (3) act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer, and (4) assist other State agency legal staff, as requested, in matters related to contracting for goods and services.

## Sections 4 through 10:

The act transfers the authority to take action on contract award recommendations from the Board of Awards to the State Purchasing Officer, or the State Chief Information Officer, depending on the subject of the contract. The statute establishing the Board of Awards is repealed.

## Section 11:

Requires the Department to notify agencies about new contract review laws.

## Section 12:

Requires the Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina to establish procedures to implement the provisions of the act no later than June 30, 2013.

## Section 13:

Sets dates for the implementation of the quality management system; contract specialist career path, contract management and training certification program, and a reporting date for recommendations on improving the procurement laws—all of which are required under current law.

**EFFECTIVE DATE:** Sections 1 through 3 of the act are effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of the act is effective when it becomes law.

H78-smrk-40(CSRK-23)



# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

May 7, 2013

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
M. Guespi	DENR
Rhonda Todd	DOM
Haley Todd	DOA
Speros Fleggs	DOA
Brook Rainey Pearson	JRC
Jennifer Harwood	NCDOL
Justin Delancey	NCDOL
DAVID RICE	MFS
HA NGUYEN	NCLCB
Trevor Minor	DENR
Anca Grozar	OSBM
Molly Masich	OAH
Joe Wren	SOS
Kay Emanuel	School of Government
Doug Laster	NCSA
CHRIS DILLON	NLWR
Madra Lhr	NCCN

Myrl Dutton

SOS

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

May 7, 2013

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Emila Sutton	NCHFA
Ammanda Horner	Tractman Sanders
Molly Higgins	Liana Clark
Kristina Romberg	NCCN
Annaliese Dolph	Dolph Law
W.H. Potter, Jr.	NC DENTAL Soc & NCPHysical Therapy Ass'n
John V Foucafaia	Young Moore & Henderson
Jillian Mann	OAH
Eric Thomas	DPI
Jennifer Preston	NCDPI
Amy Hammond	NCPC
Tina Bear	BEOP
Andy Chase	KMA
Matthew Gross	NCPC
David Hergen	NC Center for Nonprofits
Lisa Martin	NC Hare Bail Bonds
Heather Barnett	Ward & Smith

# VISITOR REGISTRATION SHEET

## SENATE PROGRAM EVALUATION

(Committee Name)

May 7, 2013

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>Preston Howard</i>	<i>NCMA</i>
<i>Lita Harris</i>	<i>MWC</i>

## **MEMBERSHIP**

### **SENATE PROGRAM EVALUATION COMMITTEE 2013 - 2014**

**Senator Fletcher Hartsell, Chair**  
**Room 300 C, LOB**  
**919-733-7223**

**Senator Stan Bingham**  
**Room 2117, LB**  
**919-733-5665**

**Senator Andrew Brock**  
**Room 521, LOB**  
**919-715-0690**

**Senator Ben Clark**  
**Room 1121, LB**  
**919-733-9349**

**Senator Dan Clodfelter**  
**Room 620, LOB**  
**919-715-8331**

**Senator Bill Cook**  
**Room 525, LOB**  
**919-715-8331**

**Senator Rick Gunn**  
**Room 312, LOB**  
**919-301-1446**

**Committee Assistant**

**Gerry Johnson**

**Senator Neal Hunt**  
**Room 309, LOB**  
**919-733-5850**

**Senator Floyd McKissick**  
**Room 516, LOB**  
**919-733-4599**

**Senator Martin Nesbitt**  
**Room 1129, LB**  
**919-715-3001**

**Senator Shirley Randleman**  
**Room 308, LOB**  
**919-733-5743**

**Senator Norman Sanderson**  
**Room 629, LOB**  
**919-733-5706**

**Senator Mike Woodard**  
**Room 515, LOB**  
**919-733-4809**

**Research Staff**

**Hal Pell -Research**  
**Jan Paul - Research**

North Carolina General Assembly  
Pending Senate Committee on  
Program Evaluation

2013-2014 Biennium  
Leg. Day: H-162/S-163

Date: 08/26/2014  
Time: 2:37:05 PM

Bill	Introducer	Short Title		Date	Latest Action
<u>S 32</u>	Hartsell	Periodic Review and Expiration of Rules.	S	05-14-2013	Re-ref Com On Program Evaluation
<u>S 446</u> =	Brock	Modify Internal Auditing Statutes.	S	03-27-2013	Ref to Program Evaluation. If fav, re-ref to Judiciary II
<u>S 448</u> =	Brock	Omnibus State IT Governance Changes.	S	03-27-2013	Ref To Com On Program Evaluation

'\$' indicates the bill is an appropriations bill.

A bold line indicates that the bill is an appropriations bill.

'\*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill

Principal Clerk  
Reading Clerk

\_\_\_\_\_  
\_\_\_\_\_

**Cancelled Notice**  
**SENATE**  
**NOTICE OF COMMITTEE MEETING**  
**AND**  
**BILL SPONSOR NOTICE**

The Senate Committee on Program Evaluation will NOT meet at the following time:

<b>DAY</b>	<b>DATE</b>	<b>TIME</b>	<b>ROOM</b>
Tuesday	June 3, 2014	12:00 PM	421 LOB

The following will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 446	Modify Internal Auditing Statutes.	Senator Brock
SB 448	Omnibus State IT Governance Changes.	Senator Brock

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk \_\_\_\_\_  
Reading Clerk \_\_\_\_\_

**SENATE**  
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**AND**  
**BILL SPONSOR NOTICE**

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Senator Fletcher L. Hartsell, Jr., Chair

**Senate Committee on Program Evaluation  
Tuesday, June 3, 2014, 12:00 PM  
421 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 32	Periodic Review and Expiration of Rules.	Senator Hartsell
SB 446	Modify Internal Auditing Statutes.	Senator Brock
SB 448	Omnibus State IT Governance Changes.	Senator Brock

**Presentations**

**Other Business**

**Adjournment**