

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 417

Commerce Committee Substitute Adopted 4/29/97

House Committee Substitute Favorable 5/28/97

Short Title: Highway Contract Bonding Req'ments.

(Public)

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Sponsors:

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Referred to:

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March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT  
BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR  
RESOLVING STATE CONTRACT DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.10 reads as rewritten:

**"§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.**

(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund projects of ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or less, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation.

(b) The letting of contracts under this section is not subject to any of the provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may waive the

1 bonding requirements of Chapter 44A of the General Statutes and the licensing  
2 requirements of Chapter 87 for contracts awarded under this section.

3 (c) The Secretary of Transportation shall report quarterly to the Joint Legislative  
4 Transportation Oversight Committee on the implementation of this section."

5 Section 2. G.S. 143-135.3 reads as rewritten:

6 "**§ 143-135.3. Adjustment and resolution of State ~~board construction contract claim.~~**

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

8 (1) Board. –~~The word 'board' as used in this section shall mean the State of North~~  
9 ~~Carolina~~ The State or any board, bureau, commission, institution, or  
10 other agency of the State, as distinguished from a board or governing  
11 body of a subdivision of the State.

12 (2) Construction contract. – A contract for any of the following:

13 a. The construction or repair of buildings and appurtenances  
14 thereto, including, utilities, plumbing, heating, electrical, air  
15 conditioning, elevator, excavation, grading, paving, roofing,  
16 masonry work, tile work, and painting.

17 b. The construction or repair of airport runways, taxiways and  
18 parking aprons, sewer and water mains, power lines, docks,  
19 wharves, dams, drainage canals, telephone lines, streets, site  
20 preparation, parking areas, and other capital improvement.

21 c. Architectural, engineering, or other professional services in  
22 connection with a contract described in this subdivision.

23 (3) Contract. – A contract for goods, services, construction, or repair  
24 administered by the Department of Administration.

25 (4) Contractor. – A person who submits a bid on or enters into a contract  
26 with a board.

27 ~~"A contract for construction or repair work," as used in this section, is defined as any~~  
28 ~~contract for the construction of buildings and appurtenances thereto, including, but not by~~  
29 ~~way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator,~~  
30 ~~excavation, grading, paving, roofing, masonry work, tile work and painting, and repair~~  
31 ~~work as well as any contract for the construction of airport runways, taxiways and~~  
32 ~~parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage~~  
33 ~~canals, telephone lines, streets, site preparation, parking areas and other types of~~  
34 ~~construction on which the Department of Administration enters into contracts.~~

35 ~~"Contractor" as used in this section includes any person, firm, association or~~  
36 ~~corporation which has contracted with a State board for architectural, engineering or~~  
37 ~~other professional services in connection with construction or repair work as well as~~  
38 ~~those persons who have contracted to perform such construction or repair work.~~

39 (b) Uncompleted Construction Contract. – A contractor who has not completed a  
40 construction contract with a board ~~for construction or repair work~~ and who has not received  
41 the amount ~~he~~ the contractor claims is due under the contract may submit a verified  
42 written claim to the Director of the Office of State Construction of the Department of  
43 Administration for the amount the contractor claims is due. The Director may deny,

1 allow, or compromise the claim, in whole or in part. ~~A~~ The Director's decision is not a  
2 final decision of the Department of Administration under subsection (d) of this section  
3 and a claim under this subsection is not a contested case under Chapter 150B of the  
4 General Statutes.

5 (c) Completed Construction Contract. – A contractor who has completed a  
6 construction contract with a board for construction or repair work and who has not received  
7 the amount ~~he~~ the contractor claims is due under the contract may submit a verified  
8 written claim to the Director of the Office of State Construction of the Department of  
9 Administration for the amount the contractor claims is due. The claim shall be submitted  
10 within 60 days after the contractor receives a final statement of the board's disposition of  
11 ~~his~~ the contractor's claim and shall state the factual basis for the claim.

12 The Director shall investigate a submitted claim within 90 days of receiving the claim,  
13 or within any longer time period upon which the Director and the contractor agree. The  
14 contractor may appear before the Director, either in person or through counsel, to present  
15 facts and arguments in support of his claim. The Director may allow, deny, or  
16 compromise the claim, in whole or in part. The Director shall give the contractor a  
17 written statement of the Director's decision on the contractor's claim.

18 A contractor who is dissatisfied with the Director's decision on a claim submitted  
19 under this subsection may commence a contested case on the claim under Chapter 150B  
20 of the General Statutes. The contested case shall be commenced within 60 days of  
21 receiving the Director's written statement of the decision.

22 ~~(c1) A contractor who is dissatisfied with the Director's decision on a claim~~  
23 ~~submitted under subsection (c) of this section may commence a contested case on the~~  
24 ~~claim under Chapter 150B of the General Statutes. The contested case shall be~~  
25 ~~commenced within 60 days of receiving the Director's written statement of the decision.~~

26 (d) Alternate Procedure. – Notwithstanding the provisions of subsection (c) of this  
27 section and of Chapter 150B of the General Statutes, in the case of any contract dispute  
28 between a board and a contractor, if the contractor and the Department of Administration  
29 cannot agree to a resolution through informal procedures, the contractor may, in lieu of  
30 filing a petition for a contested case under Article 3 of Chapter 150B of the General  
31 Statutes, As to any portion of a claim that is denied by the Director, the contractor may, in lieu  
32 of the procedures set forth in the preceding subsection of this section, within six months of  
33 receipt of the Director's final decision, after a final decision by the Department of  
34 Administration, institute a civil action for the sum he claims to be entitled to to determine  
35 the contractor's rights, duties, or privileges under the contract by filing a verified  
36 complaint and the issuance of a summons in the Superior Court of Wake County or in the  
37 superior court of any county where the work under the contract was performed. The  
38 procedure shall be the same as in all civil actions except that all issues shall be tried by  
39 the judge, without a jury.

40 (e) Incorporation in Contracts. – The provisions of this section are part of every  
41 contract ~~for construction or repair work~~ made by a board and a contractor. A provision in a  
42 contract that conflicts with this section is invalid."

1           Section 3. Section 2 of this act becomes effective January 1, 1998, and applies  
2 to contract disputes arising on or after that date. The remainder of this act is effective  
3 when it becomes law.