

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE DRH60377-RU-32 (04/11)**

Short Title: Amend Public Building Contract Laws. (Public)

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Sponsors: Representative Parmon.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC CONTRACTS LAW TO REQUIRE  
PREQUALIFICATION OF BIDDERS FOR PUBLIC BUILDING CONTRACTS  
AND TO ENSURE PROMPT PAYMENT TO BUILDING SUBCONTRACTORS  
UNDER PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-128 is amended by adding the following new subsections to read:

"(f2) A public entity shall provide for the prequalification of all bidders of construction projects subject to this Article. The prequalification criteria shall be determined by the public entity in accordance with rules adopted by the Secretary of Administration to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, history of payment and nonpayment to subcontractors and suppliers, and other factors deemed appropriate by the public entity. To implement this subsection, the Secretary of Administration shall adopt by rule a uniform prequalification form to be used by public entities and uniform standards by which prequalification decisions are to be based.

(f3) All parties involved in the public entity's construction project, including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors, shall agree in all contracts pertaining to the construction of the public entity's construction project, that any dispute concerning the nonpayment under any subcontract, regardless of the tier, shall be subject to binding arbitration as set forth in this subsection. Upon the filing of a notice of nonpayment under G.S. 143-134.1(a1), the State Construction Office, for State construction projects, or an agency designated by a non-State public entity, for non-State construction projects, shall appoint an arbitrator and schedule a hearing on the disputed payment within 30 days of

1 the receipt of the notice of nonpayment. The findings of the arbitrator as to the  
2 nonpayment shall be binding on all the parties. The arbitration shall be conducted in  
3 accordance with Article 45C of Chapter 1 of the General Statutes."

4 **SECTION 2.** G.S. 143-134.1 is amended by adding the following new  
5 subsections to read:

6 "(a1) Notwithstanding the provisions of subsection (a) of this section, no payment  
7 shall be made to any prime contractor except as permitted under this subsection. In the  
8 event that any subcontractor working under any prime contractor, regardless of the tier  
9 of the subcontractor, files a notice with the public entity, the prime contractor and, for  
10 State construction projects, the State Construction Office, that the subcontractor has not  
11 received payment from the prime contractor or the prime contractor's subcontractors for  
12 work performed by the subcontractor, the public entity shall only pay to the prime  
13 contractor that portion of any future payment due that exceeds the amount of payment  
14 claimed by the subcontractor, the prime contractor's profit from the subcontractor's  
15 work, and any additional profit due to the prime contractor from that draw for other  
16 work for which no notice of nonpayment has been received, unless that prime contractor  
17 has given notice under subsection (d) of this section regarding the subcontractor's work  
18 prior to the subcontractor's notice being received. Payment withheld by the public entity  
19 under this subsection shall only be released to the prime contractor upon written  
20 agreement of the prime contractor and the subcontractor who filed the notice of  
21 nonpayment under this section, or upon a written order signed by an arbitrator appointed  
22 to arbitrate the dispute under G.S. 143-128(f3). Any finding of wrongful nonpayment by  
23 the arbitrator under this section shall be subject to additional liquidated damages to the  
24 subcontractor of thirty-three percent (33%) of the amount of the nonpayment.

25 ...

26 (f) For purposes of this section, the term "prime contractor" shall include  
27 construction manager-at-risk, as defined in G.S. 143-128.1, as applicable."

28 **SECTION 3.** G.S. 143-128(f1) reads as rewritten:

29 "(f1) Dispute resolution. – A-Except as set forth in subsection (f3) of this section, a  
30 public entity shall use the dispute resolution process adopted by the State Building  
31 Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution  
32 process, which shall include mediation, to be used as an alternative to the dispute  
33 resolution process adopted by the State Building Commission. This dispute resolution  
34 process will be available to all the parties involved in the public entity's construction  
35 project including the public entity, the architect, the construction manager, the  
36 contractors, and the first-tier and lower-tier subcontractors and shall be available for any  
37 issues arising out of the contract or construction process. The public entity may set a  
38 reasonable threshold, not to exceed fifteen thousand dollars (\$15,000), concerning the  
39 amount in controversy that must be at issue before a party may require other parties to  
40 participate in the dispute resolution process. The public entity may require that the costs  
41 of the process be divided between the parties to the dispute with at least one-third of the  
42 cost to be paid by the public entity, if the public entity is a party to the dispute. The  
43 public entity may require in its contracts that a party participate in mediation concerning  
44 a dispute as a precondition to initiating litigation concerning the dispute."

1           **SECTION 4.** G.S. 143-135.26(4) reads as rewritten:

2           "(4) To develop procedures for evaluating the work performed by designers  
3           and contractors on State capital improvement projects and those  
4           community college buildings, as defined in G.S. 143-336, requiring the  
5           estimated expenditure for construction or repair work for which public  
6           bidding is required under G.S. 143-129, and for use of the evaluations  
7           as a factor affecting designer selections and determining qualification  
8           of contractors to bid on State capital improvement projects and  
9           community college buildings. Included in factors subject to review is  
10          the designer's or contractor's history of payment, including  
11          nonpayment and late payment of subcontractors and suppliers on past  
12          projects."

13           **SECTION 5.** This act becomes effective October 1, 2005, and applies to  
14          contracts let for bid on or after that date.