



Public Schools of North Carolina
State Board of Education
Department of Public Instruction
Financial and Business Services
Division of School Support
School Planning Section

SELECTED LAWS

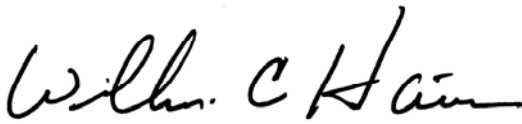
Relating to the Construction
and Repair of Public School
Facilities in North Carolina

August - 2011

Foreword

There are many different variables to making a school run properly. From the Board of Education to the students themselves, each person plays a role in the shaping of the students in today's classrooms. Everything begins with the Statutes set forth by the North Carolina State Legislature. The Legislature not only determines the roles and responsibilities of the school administrators throughout the school system and an individual school but also how the schools are funded.

This document lists the General Statutes written by the Legislature that relate to the construction, or repair of public school facilities in North Carolina. Also listed are statutes that relate to the funding, maintenance, and contract stipulations regarding public schools.



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All text in Italics is an interpretation by School Planning and is not a part of the General Statute

Chapter 18C

North Carolina State Lottery Fund

§ 18C-160. North Carolina State Lottery Fund.

An enterprise fund, to be known as the North Carolina State Lottery Fund, is created within the State treasury. The North Carolina State Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the purposes of operating the Commission and the lottery games. (2005-344, s. 1.)

§ 18C-161. Types of income to the North Carolina State Lottery Fund.

The following revenues shall be deposited in the North Carolina State Lottery Fund:

- (1) All proceeds from the sale of lottery tickets or shares.
- (2) The funds for initial start-up costs provided by the State.
- (3) All other funds created or appropriated to the Commission from any source.
- (4) Interest earned by the North Carolina State Lottery Fund. (2005-344, s. 1.)

§ 18C-162. Allocation of revenues.

Description: 50% for public prizes, 35% for education, 8% for lottery expenses, 7% for compensation paid to lottery game retailers.

(a) The Commission shall allocate revenues to the North Carolina State Lottery Fund in order to increase and maximize the available revenues for education purposes, and to the extent practicable, shall adhere to the following guidelines:

- (1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.
- (2) At least thirty-five percent (35%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.
- (3) No more than eight percent (8%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery. Advertising expenses shall not exceed one percent (1%) of the total annual revenues.

- (4) No more than seven percent (7%) of the total annual revenues, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers.
- (b) To the extent that the expenses of the Commission are less than eight percent (8%) of total annual revenues, the Commission may allocate any surplus funds:
 - (1) To increase prize payments; or
 - (2) To the benefit of the public purposes as described in this Chapter.
- (c) Unclaimed prize money shall be held separate and apart from the other revenues and allocated as follows:
 - (1) Fifty percent (50%) to enhance prizes under subdivision (a)(1) of this section.
 - (2) Fifty percent (50%) to the Education Lottery Fund to be allocated in accordance with G.S. 18C-164(c). (2005-344, s.1; 2005-276, s. 31.1(r).)

§ 18C-163. Expenses of the Lottery.

Expenses of the lottery may include any of the following:

- (1) The costs incurred in operating and administering the Commission, including initial start-up cost.
- (2) The costs resulting from any contracts entered into for the purchase or lease of goods or services required by the Commission.
- (3) A transfer of one million dollars (\$1,000,000) annually to the Department of Health and Human Services for gambling addiction education and treatment programs.
- (4) The costs of supplies, materials, tickets, independent studies and audits, data transmission, advertising, promotion, incentives, public relations, communications, bonding for lottery game retailers, printing, and distribution of tickets and shares.
- (5) The costs of reimbursing other governmental entities for services provided to the Commission.
- (6) The costs for any other goods and services needed to accomplish the purposes of this Chapter. (2005-344, s. 1; 2005-276, s. 31.1(s).)

§ 18C-164. Transfer of net revenues.

Description: 50% to class size reduction and "More at Four"; 40% to Public School Building Capital Fund; 10% to scholarships.

(a) The funds remaining the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred four times a year to the Education Lottery Fund, which shall be created in the State treasury.

(b) From the Education Lottery Fund, the Commission shall transfer a sum equal to five percent (5%) of the net revenue of the prior year to the Education Lottery Reserve Fund. A special revenue fund for this purpose shall be established in the State treasury to be known as the Education Lottery Reserve Fund, and that fund shall be capped at fifty million dollars (\$50,000,000). Monies in the Education Lottery Reserve Fund may be appropriated only as provided in subsection (e) of this section.

(c) The commission shall distribute the remaining net revenue of the Education Lottery Fund, as follows, in the following manner:

- (1) A sum equal to fifty percent (50%) to support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps and to support academic pre-kindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
- (2) A sum equal to forty percent (40%) to the Public School Building Capital Fund in accordance with G.S. 115C-546.2.
- (3) A sum equal to ten percent (10%) to the state Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of the Chapter 15C of the General Statutes

(d) Of the sums transferred under subsection (c) of this section, the General Assembly shall appropriate the funds annually based upon estimates of lottery net revenue to the Education Lottery Fund provided by the Office of State Budget and Management and the Fiscal Research Division of the North Carolina General Assembly.

(e) If the actual net revenues are less than the appropriation for that given year, then the Governor may transfer from the Education Lottery Reserve Fund an amount sufficient to equal the appropriation by the General Assembly. If the monies available in the Education lottery Reserve Fund are insufficient to reach a full appropriation, the Governor shall transfer monies in order of priority, to the following:

- (1) To support academic pre-kindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
- (2) To reduce class size.
- (3) To provide financial aid for needy students to attend college.
- (4) To the Public School Building Capital Fund to be spent in accordance with this section.

(f) If the actual net revenues exceed the amounts appropriated in that fiscal year, the excess net revenues shall remain in the Education Lottery Fund, and then be transferred as follow:

- (1) Fifty percent (50%) to the Public School Building Capital Fund to be spent in accordance with this section
- (2) Fifty percent (50%) to the State Educational Assistance Authority to be spent in accordance with this section. (2005-344, s. 1; 2005-276, s. 31.1(t).)

North Carolina State Lottery Act

§ 18C-172. Lottery Oversight Committee

Description: 9 members, 3 year terms; Primary duties are to organize and analyze net revenues in order to ensure net proceeds provide additional funding for education.

(a) Creation and Membership. – The Lottery Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of nine members appointed as provided below. In making appointments, each appointing officer

shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure racial, gender, and geographical diversity among the membership.

- (1) Three members shall be appointed by the Speaker of the House of Representatives, at least one being an educator and at least one being a person trained or experienced in financial management.
- (2) Three members shall be appointed by the President Pro Tempore of the Senate, at least one being an educator and at least one being a person trained or experienced in financial management.
- (3) Three members shall be appointed by the Governor, at least one being an educator and at least one being a person trained or experienced in financial management.

(b) Terms. – Terms on the Committee are for three years and begin on January 1, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Purpose and Powers. – The Committee shall:

- (1) Review whether expenditures of the net revenues of the Lottery have been in accordance with Article 7 of this Chapter, and study ways to ensure that net proceeds from the Lottery will not be used to supplant education funding but to provide additional funding for education.
- (2) Receive and review reports submitted to the General Assembly pursuant to Chapter 18C of the General Statutes.
- (3) Study other Lottery matters as the Committee considers necessary to fulfill its mandate.

(d) Reports. – The Committee shall report its analysis and any findings and recommendations to the General Assembly by September 15 of each year. The Committee may make interim reports to the General Assembly regarding the expenditure of net Lottery revenues.

(e) Organization. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a co-chair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the co-chairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. – From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. – The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Director of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

Chapter 44A

Statutory Liens and Charges

§ 44A-26. Bonds required

Description: *Performance and Payment Bonds required for projects costing \$300,000 or more. Also, required for each contract of \$50,000 or more.*

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

- (1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.
- (2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract. (1973, c. 1194, s. 1983, c. 818; 1987 (Regular Session, 1988), c. 108, s. 10; c. 367, s. 3; 2001-496, s. 7.)

Local Modifications: City of Charlotte, 1983, ch. 422.

Effect of Amendments: The 1983 amendment, effective Oct. 1, 1983, rewrote the introductory language of subsection (a).

CASE NOTES

Proof that Materials Were Used on Project. --- If the supplier in good faith furnished the material for the construction of the project, it is entitled to recover for the materials so furnished. It is not required to prove that the materials were actually used on the project. *Noland Co. v. Poovey*, 58 N.C. app. 800, 295 S.E.2d 238 (1982)

Submission of Surety's Liability to Jury. --- Where there is evidence from which a jury could conclude that the supplier delivered some materials to the job site which it did not in good faith believe were intended for the project, the issue as to the surety's liability on the bond should be submitted to the jury. *Noland Co. v. Poovey*, 58 N.C. App. 800, 295 S.E.2d 238 (1982).

Chapter 58

Insurance

§ 58-31-40. Commissioner to inspect State Property; plans submitted.

Description: Projects greater than 20,000 square feet in area per floor and project greater than two stories must be approved by the Commissioner of Insurance. The local building inspector reviews projects not reviewed by NCDOT.

(a) The Commissioner shall, at least once every year or more often if the Commissioner considers it necessary, visit, inspect, and thoroughly examine every State property to analyze and determine its protection from fire, including the property's occupants or contents. The Commissioner shall notify the agency or official in charge of the property of any defect noted by the Commissioner or any improvement considered by the Commissioner to be necessary.

(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising 20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents.

(c) The Commissioner shall review a plan subject to subsection (b) of this section within 30 days of submission, provided that the Commissioner may require one additional 30-day extension if necessary to complete the review. If the Commissioner has neither approved nor denied the plan during the initial 30-day review period, the owner may proceed with the building site preparation, the building foundation, and any structural components of the building that are not subject to inspection for the purposes set forth in subsection (b) of this section. If the Commissioner has neither approved nor denied the plan within 60 days of submission, the owner may request review and final approval under subsection (b) of this section by the Department of Administration, State Construction Office, pursuant to rules adopted under G.S. 143-135.26. (1901, c. 710, ss. 1, 2; 1903, c. 771, s. 3; Rev., s. 4829; 1909, c. 880; 1919, c. 186, s. 3; C.S., s. 6453; 2000-122, s. 10; 2001-487, s. 19; 2001-496, s. 11.1.)

.....No board, commission, superintendent, or other person or persons authorized and directed by law to select plans and erect buildings for the use of the State of North Carolina or any institutions thereof, or for the use of any county, city, or incorporated town or school district shall receive and approve of any plans until they are submitted to and approved by the Commissioner of Insurance of the State as to the safety of the proposed buildings from fire, as well as the protection of the inmate in case of fire.

Chapter 87

Contracting

"§ 87-1. "General contractor" defined; exceptions.

Description: Provisions to establish under what conditions an owner may design construction improvements or employ a design-build contractor to do the same.

(a) For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

(b) This section shall not apply to the following:

(1) Persons, firms, or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments.

(2) Any person, firm, or corporation who constructs or alters a building on land owned by that person, firm, or corporation provided (i) the building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and (ii) the person, firm, or corporation complies with G.S. 87-14. If the building is not occupied solely by such the person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend such the building solely for occupancy by that person and his family, firm, or corporation.

(3) Any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when the building is intended for use by that person after completion."

"§ 87-14. Regulations as to issue of building permits.

Description: Provisions to establish under what conditions a building permit is issued when an owner designs construction improvements or employs a design-build contractor to do the same.

(a) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand dollars (\$30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the following:

(1) Furnish satisfactory proof to such the inspector or authority that he the person seeking the permit or another person contracting to superintend or manage the construction is duly licensed under the terms of this Article to carry out or superintend the construction or is exempt from licensure under G.S. 87-1(b). If an applicant claims an exemption from licensure pursuant to G.S. 87-1(b)(2), the applicant for the building permit shall execute a verified affidavit attesting to the following:

a. That the person is the owner of the property on which the building is being constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation.

b. That the person will personally superintend and manage all aspects of the construction of the building and that the duty will not be delegated to any other person not duly licensed under the terms of this Article.

c. That the person will be personally present for all inspections required by the North Carolina State Building Code, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

The building inspector or other authority shall transmit a copy of the affidavit to the Board, who shall verify that the applicant was validly entitled to claim the exemption under G.S. 87-1(b)(2). If the Board determines that the applicant was not entitled to claim the exemption under G.S. 87-1(b)(2), the building permit shall be revoked pursuant to G.S. 153A-362 or G.S. 160A-422.

(2) Furnish proof that the person has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes.

(b) It shall be unlawful for such the building inspector or other authority to issue or allow the issuance of such a building permit pursuant to this section unless and until the applicant has furnished evidence that he the applicant is either exempt from the provisions of this Article Article and, if applicable, fully complied with the provisions of subdivision (a)(1) of this section, or is duly licensed under this Article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and further, that the applicant has in effect Workers' Compensation insurance as required by Chapter 97 of the General Statutes. Any building inspector or other authority who is subject to and violates the terms of this section shall be guilty of a Class 3 misdemeanor and subject only to a fine of not more than fifty dollars (\$50.00)."

Chapter 105

Taxation

§ 105-275(43). Property classified and excluded from the tax base

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

(43) Real or tangible personal property that is subject to a capital lease pursuant to G.S. 115C-531.

§ 105-487. Use of additional tax revenue by counties and municipalities

Description: Additional tax revenue may be used by county for public school outlay purposes as defined in § 105-487

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes after the first five fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes.

(b) Repealed by Session Laws 1998-98, s. 31

(c) The Local Government Commission may, upon petition by a county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) of this section to be used for public school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school capital needs, but also the other capital needs of the petitioning county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) of this section that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by that subsection expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) of this section in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes. (1983, c. 908, s. 1; 1993, c. 255, ss. 1, 3; 1998-98, s. 31; 1998-186, s. 1.)

Local Modification: Burke County: 1985, c. 326.

Effect of Amendments: Session Laws 1993, c. 255, s. 1, effective July 1, 1993, in subsection (a), substituted "next 10 fiscal years" for "second five fiscal years".

Session Laws 1993, c. 255, s. 3, effective July 1, 1993, in the second sentence of the first paragraph of subsection (c), substituted "of a resolution adopted by the City Council or Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end; in the sentence of the first

paragraph of subsection (c), added at the beginning "The petition"; in the first sentence of the second paragraph of subsection (c), substituted "shall" for "may" and added at the end "contained in the petition concerning not only the public school or water and sewage capital needs, but also the other capital needs of the petitioning county or municipality"; and in the second sentence of the second paragraph of subsection (c) added at the beginning "The Commission may also consider information".

§ 105-502. Use of additional tax revenue by counties

Description: 60% of revenue used for public school capital outlay purposes, or to reduce debt incurred for these purposes.

(a) Sixty percent (60%) of the revenue received by a county under this Article during the first 25 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect.

(b) The Local Government Commission may, upon petition by a county, authorize a county to use part or all of its tax revenue, otherwise required by subsection (a) to be used for public school capital outlay purposes, for any lawful purpose. The petition shall be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county. The Commission may consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes.

(d) For purposes of this section in determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect. (1985 (Regular Session, 1986), c. 906, s. 1; 1987, c. 622, s. 11; 1993, c. 255, ss. 2, 4; 19980186, s. 2.)

Effect of Amendments: Session Laws 1993, c. 255, effective July 1, 1993, in s. 2, in subsection (a) substituted "16 fiscal years" for "11 fiscal years"; and in s. 4, in subsection (b), in the first sentence of the first paragraph, substituted "of a resolution adopted by the Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end and in the second sentence added at the beginning "The petition"; and in subsection (b), in the first sentence of the second paragraph, substituted "shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county" for "may", and in the second sentence added "The Commission may".

Chapter 115C

Elementary and Secondary Education

§ 115C-12. Powers and duties of the Board generally.

Description: Protects school-age children from toxic emissions.

(33) Duty to Protect the Health of School-Age Children from Toxicants at School. – The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

- a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.
- b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient rout assignments.
- c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.
- d. Establish guidelines for Integrated Pest management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.
- e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds.

Local Boards of Education

§ 115C-47(28) & (28a). Powers and duties generally

Description: Local boards ability to enter into lease purchase, installment contracts, and to purchase energy conservation measures.

(28) To Enter Lease Purchase and Installment Purchase Contracts. – Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. – Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

§ 115C-47. Powers and duties generally.

Description: Stipulates the principal's duty to regulate toxic emission in or around school grounds.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(45) To Address the Use of Pesticides in Schools. – Local boards of education shall adopt policies that address the use of pesticides in schools. These policies shall:

- a. Require the principal or the principal's designee to annually notify the students' parents, guardians, or custodians as well as school staff of the schedule of pesticide use on school property and their right to request notification. Such notification shall be made, to the extent possible, at least 72 hours in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, "relatively nontoxic" (no signal word required on the product's label).
- b. Require the use of Integrated Pest Management. As used in this sub-subdivision, "Integrated Pest Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

(46) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. – Local boards of education shall prohibit the purchase or acceptance of chromate copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under the G.S. 115C-12(33). Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

(47) To Address Mercury in the classroom and on School Grounds. – Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

- (48) To Address Exposure to Diesel Exhaust Fumes. – Local boards of education shall adopt policies and procedures to reduce students’ exposure to diesel emissions.

Organization of Schools

§ 115C-67. Merger of units in same county

Description: Stipulation regarding the merger of City and County School administrative units as approved by the State Board of Education.

City school administrative units may be consolidated and merged with contiguous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

- (1) The name by which the merged school administrative unit shall be identified and known.
- (2) The effective date of the merger.
- (3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including:
 - a. The termination of any terms of office proposed in the reorganization of the board.
 - b. The method of constituting and continuing the board of education; the manner of selection of board members, including (i) the number of members of the board, (ii) the method of their election or appointment, (iii) whether members shall be nominated, elected, or appointed from districts or at large, (iv) the manner of determining the nominee, and (v) whether the election shall be partisan or nonpartisan; the length of the members’ terms of office; the dates of induction into office; the organization of the board; the procedure for filling vacancies; and the compensation to be paid members of the board for expenses incurred in performance of their duties. To the extent that the method conflicts with G.S. 115C-35, G.S. 115C-37, or with any local act concerning any of the units being merged and consolidated, the plan of merger and consolidation shall prevail.
- (4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes.
- (5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit.

- (6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all local school administrative units involved.
- (7) A public hearing, which shall have been announced at least 10 days prior to the hearing, on the proposed plan of merger.
- (8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area.
- (9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the local school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received, the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education, the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but is not required that it be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city school administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969, are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742; 1981, c. 423, s. 1; 1991(Regular Session, 1992), c. 767, s. 3.)

Local Modification: Monroe City School Administrative Unit: 1983, c. 475; Union County School Administrative Unit: 1983, c. 475.

Editor's Note: Session Laws 1991 (Regular Session, 1992), c. 767, which amended this section, became effective July 1, 1981. Section 4 of c. 767 provides: "Nothing in this act is intended to alter legislative intent relative to local funding level requirements."

Unconstitutional Merger Could Not Be Ratified by Legislature: The General Assembly could not ratify the merger of a city and county school system held unconstitutional by previous uncontested ruling of the trial court, and the General Assembly cannot, by enacting legislation, make constitutional that which a court has ruled unconstitutional. Cannon v. North Carolina State Board of Education, 117 N.C. App. 399, 451 S.E.2d 302 (1994).

Applied in Floyd v. Lumberton City Board of Education, 71 N.C. App. 670, 324 S.E.2d 18 (1984).

OPINIONS OF ATTORNEY GENERAL

Editor's Note: The opinions below were rendered under corresponding provisions of former Chapter 115.

Contents of Plan of Merger and Effect Thereof: The plan of merger may include a provision that candidates for the merged board be elected on a nonpartisan basis in a partisan election. If the merger is brought about the city school board would have no further authority after the merger and would be dissolved by operation of law, while if the school units are merged and the city unit no longer exists, the supplemental tax heretofore approved may still be levied and turned over to the merged board for administrative purposes within the are formerly recognized as the city administrative unit. See opinion of the Attorney General to Mr. R. A. Collier, Sr., Attorney for Statesville City School Board, 40 N.C.A.G. 221 (1969).

Effect of Merger of County and City Unit on Supplemental Taxes in Effect in Each Unit: See opinion of Attorney General to Mr. Thomas A. Banks, Wake County Attorney, 40 N.C.A.G. 228 (1970).

§ 115C-72. Consolidation of districts and discontinuance of schools

Description: Stipulations regarding the consolidation of City and County School Systems as approved by the State Board of Education.

(a) Local boards of education shall have the power and authority to close or consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the closing or consolidation will better serve the educational interest of the local school administrative unit or any part of it.

In determining whether two or more public schools shall be consolidated or in determining whether or not a school shall be closed and the pupils transferred there from, local boards of education of the several counties shall observe and be bound by the following rules:

- (1) In any question involving the closing or consolidation of any public school, the local board of education of the school administrative unit in which such school is located shall cause a thorough study of such school to be made, having in mind primarily the welfare of the students to be affected by a proposed closing or consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such closing or consolidation, the cost of providing additional school facilities in the event of such closing or consolidation, and such other factors as the board shall be consider germane. Before the entry of any order of closing or consolidation,

the local board of education shall provide for a public hearing in regard to such proposed closing or consolidation, at which hearing the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said board may, in the exercise of its discretion, approve the closing or consolidation proposed.

- (2) The provisions of this section shall not deprive any local board of education of the authority to assign or enroll any and all pupils in schools in accordance with the provisions of G.S. 115C-366(b) and G.S. 115C-367 to 115C-370.

(b) This section does not govern merger of a city school administrative unit with another school administrative unit. Such merger is governed by G.S. 115C-67. (1955, c. 1372, art. 8, s. 3; 1981, c. 423, s. 1; 1983, c. 308; c. 752.)

CASE NOTES

Editor's Note: The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.

Statute requires only that a public hearing be provided; it does not specify any particular form, location, or notice for such hearing. *Lutz v. Board of Education*, 282 N.C. 208, 192 S.E.2d 463 (1972).

Discretion as to Location of School Vested in Board of Education.--- Whether a change should be made in the location of the school, as well as the selection of the site for a new one, is vested in the sound discretion of the board of education. Its action cannot be restrained by the courts unless there has been a violation of some provision of law or a manifest abuse of discretion. *Lutz v. Board of Education*, 282 N.C. 208, 192 S.E.2d 463 (1972); *Painter v. Wake County Board of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

For cases in which compliance with applicable statutory provisions was held sufficient, see *Dilday v. Beaufort County Board of Education*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966); *Lutz v. Board of Education*, 282 N.C. 208, 192 S.E.2d 463 (1972).

Decisions under Former Statutes: --- As to constitutionality of former statute, see *Sparkman v. Board of Commissioners*, 187 N.C. 241, 121 S.E. 531 (1924).

As to consolidation of tax and nontax districts, see *Paschal v. Johnson*, 183 N.C. 129, 110 S.E. 841 (1922); *Perry v. Board of Commissioners*, 183 N.C. 387, 112 S.E. 6 (1922); *Barnes v. Leonard*, 184 N.C. 325, 114 S.E. 398 (1922); *Board of Education v. Bray Bros. Co.*, 184 N.C. 484, 115 S.E. 47 (1922); *Gates School Dist. Comm. v. Gates County Board of Education*, 235 N.C. 212, 69 S.E.2d 529 (1952); *Gates School Dist. Comm. v. Gates County Board of Education*, 236 N.C. 216, 72 S.E.2d 429 (1952).

As to issuance of bonds, see *Paschal v. Johnson*, 183 N.C. 129, 110 S.E.2d 841 (1922)

As to reallocation of funds from bond issues, see *Gore v. Columbus County*, 232 N.C. 636, 61 S.E.2d 890 (1950).

As to consolidation as prerequisite to closing high school operated as union school, see *Kreeger v. Drummond*, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

As to providing ample facilities in consolidated district, see *Kreeger v. Drummond*, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

As to discretionary authority of county board of education, see *Davenport v. Board of Education*, 183 N.C. 570, 112 S.E. 246 (1922); *Gore v. Columbus County*, 232 N.C. 636, 61 S.E.2d 890 (1950).

As to enjoining or setting aside creation or consolidation of school districts, see *Gates School Dist. Comm. v. Gates County Board Of Education*, 236 N.C. 216, 72 S.E.2d 429 (1952).

As to circumstances insufficient to show abuse of discretion in consolidating school districts, see *Gates School Dist. Comm. v. Gates County Board Of Education*, 236 N.C. 216, 72 S.E.2d 429 (1952).

As to transfer of pupils, see *Kreeger v. Drummond*, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

§ 115C-73. Enlarging tax districts and city units by permanently attaching contiguous property

The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city school administrative units, real property contiguous to said local tax districts or city school administrative units, upon the written petition of the owners thereof and the taxpayers of the families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit: Provided, the petition must be signed by a majority of the persons who are the owners thereof and a majority of the taxpayers of the families living on such real property on the date the petition is filed with the county board of education: Provided, further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section: Provided, further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 60 days after the approval of such transfer is given by the State Board of Education.

Any qualified voter residing in the area attached shall be permitted to vote in any election for members of the board of education having jurisdiction over the attached area. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4; 1971, c. 672; 1973, c. 1155; 1981, c. 423, s. 1; 1985 (Regular Session, 1986), c. 975, s. 13.)

Editor's Note: Session Laws 1985 (Regular Session, 1986), c. 975, which deleted "or the committee of such tax district, as the case may be" at the end of the first proviso of the first paragraph, provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

General Education

Part 1. Courses of Study

§ 115C-81(b). Basic Education Program

Description: Description of the Education Program, including core curriculum, competencies by grade level, text books, materials, and class size.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

- (1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically or intellectually gifted students, and the students with discipline and emotional problems;
- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with special needs and, in particular, include appropriate modifications;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
- (12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

Part 2. Vocational and Technical Education Production Work Activities.

§ 115C-159. Statement of purpose

Description: All vocational activities should be practical, educational, organized, and not to be construed as engaging in a business.

It is the intent of the General Assembly that practical work experiences within the school and outside the school, which are valuable to students and which are under the supervision of a teacher, should be encouraged as a part of vocational and technical education instruction in the public secondary schools and middle schools when those experiences are organized and maintained to the best advantage of the vocational programs. Those activities are a part of the instructional activities in the vocational programs and are not to be construed as engaging in business. Those services, products, and properties generated through these instructional activities are exempt from

the requirements of G.S. 115C-518; the local board shall adopt rules for the disposition of these services, products, and properties. Local boards of education may use available financial resources to support that instruction. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1983, c. 750, s. 2; 1985, c. 479, s. 32; 1987, c. 738, s. 184; 1993, c. 180, s. 3.)

Community Schools Act

§ 115C-204. Purpose of Article

Description: Highlights the need to increase community involvement in schools and public school facilities, and for sufficient funds to be made available to achieve community involvement.

The purpose of this Article is to encourage greater community involvement in the public schools and greater community use of public school facilities. To this end it is declared to be the policy of this State:

- (1) To provide for increased involvement by citizens in their local schools through community schools advisory councils.
- (2) To assure maximum use of public school facilities by the citizens of each community in this State.

It is further declared to be the policy of this State that, to the extent sufficient funds are made available, each local board of education shall comply with the provisions of this Article. (1997, c. 682; 1981, c. 423, s. 1.)

Superintendents

§ 115C-276. Duties of superintendent

Description: Superintendent shall oversee the condition of and renovations to buildings in his school system.

(c) To Monitor Condition of School Plants. – It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediate provisions to remedy any unsafe or unsanitary conditions existing in any school building.

Principals and supervisors

§ 115C-288. Powers and duties of principal

Description: Principal shall conduct two building inspections and one fire drill per month, and submit one report per month on the status of drills and inspections.

(d) To Conduct Fire Drills and Inspect for Fire Hazards. – It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file two copies of a written report once each month during the regular school session with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(f) To Protect School Property. – The principal shall protect school property as provided in G.S. 115C-523.

Teachers

§ 115C-301. Allocation of teachers; class size

Description: Requirements specifying class size and teaching load, local boards of education to file report at the end of the Second month of each school year, and must request additional positions, to the State Board of Education.

(a) Request for Funds. – The State Board of Education, based upon the reports of local boards of education and such other information as the State Board may require from local boards, shall determine for each local school administrative unit the number of teachers and other instructional personnel to be included in the State budget request.

(b) Allocation of Positions. – The State board of Education is authorized to adopt rules to allot instructional personnel and teachers, within funds appropriated.

(c) Maximum Class Size. – The average class size for each grade span in a local school administrative unit shall at no time exceed the funded allotment ratio of teachers to students. At the end of the second school month and for the remainder of the school year, the size of an individual class shall not exceed the allotment ratio by more than three students. At no time may the General Assembly appropriate funds for higher unit-wide class averages than those for which State funds were provided during the 1984-85 school year.

(d) Maximum Teaching Load. – Students shall be assigned to classes so that from the 15th day of the school year through the end of the school year the number of students for whom teachers in grades 7 through 12 are assigned teaching responsibilities during the course of the day is no more than 150 students, except as provided in subsection (g) of this section.

(e) Alternative Maximum Class Sizes. – The State Board of Education, in its discretion, may set higher maximum class sizes and daily teaching loads for classes in music, physical education, and other similar subjects, so long as the effectiveness of the instructional programs in those areas is not thereby impaired.

(f) Second Month Reports. – At the end of the second month of each school year, each local board of education, through the superintendent, shall file a report for each school within the school unit with the State Board of Education. The report shall be filed in a format prescribed by the State Board of Education and shall include the organization for each school, the duties of each teacher, the size of each class, the teaching load of each teacher, and such other information as the State Board may require. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(g) Waivers and Allotment Adjustments. – Local boards of education shall report exceptions to the State Board of Education as provided in G.S. 115C-47(10), and shall request allotment adjustments or waivers from the standards set out above. Within 45 days of receipt of reports, the State Board of Education, within funds available, may allot additional positions or grant waivers for the excess class size or daily load.

(1) If the exception resulted from (i) exceptional circumstances, emergencies, or acts of God, (ii) large changes in student population, (iii) organizational problems caused by remote geographic location, or (iv) classes organized for a solitary curricular area, and

(2) If the local board cannot organizationally correct the exception.

All allotment adjustments and waivers submitted under this provision shall be reported to the Director of the Budget and to the General Assembly by May 15 of each year.

(h) State Board Rules. – The State Board of Education shall adopt rules necessary for the implementation of class size and teaching load provisions.

(i) Penalty for Noncompliance. – If the State Board of Education determines that a local superintendent has willfully failed to comply with the requirements of this section, no State funds shall be allocated to pay the superintendent's salary for the period of time the superintendent is in noncompliance. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Regular Session, 1984), c. 1034, ss. 12, 13; 1985, c. 479, s. 55(b)(3)b; 1987, c. 738, s. 181; 1987 (Regular Session, 1988), c. 1025, s. 15, c. 1086, s. 89(a).)

Cross References: As to the allotment of classified principals, see §115C-284.

§ 115C-307. Duties of teachers

Description: *Instruct students to care for school property*

(h) To Take Care of School Buildings. – It shall be the duty of every teacher to instruct children in proper care of property and to exercise due care in the protection of school property, in accordance with the provisions of G.S. 115C-523.

The School Budget and Fiscal Control Act

Part 2. Budget

§ 115C-426. Uniform budget format

Description: Fund shall include appropriations for property, construction, furnishings and equipment, and school transportation made available by the SBE, and board of local county commissioners

- (f) The capital outlay fund shall include appropriations for:
 - (1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.
 - (2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.
 - (3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.
 - (4) The acquisition of school buses as additions to the fleet.
 - (5) The acquisition of activity buses and other motor vehicles.
 - (6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans, specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

No contract for the purchase of a site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115C-431 shall, insofar as the same may be applicable, be used to settle the disagreement.

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

§ 115C-426.2. Joint planning

Description: Joint meetings between local boards of education and boards of county commissioners encouraged to discuss school capital outlay needs and 5 year plan to meet these needs.

In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article. (1995 (Regular Session, 1996), c. 666, s. 2.)

Part 3. Fiscal Control

§ 115C-441. Budgetary accounting for appropriations

Description: Stipulations for capital outlay expenditures contracts, by LEA.

(c1) Continuing Contracts for Capital Outlay. – An administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed and/or paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, provided:

- i. The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation;
- ii. An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year; and
- iii. Contract for capital outlay expenditures are approved by a resolution adopted by the board of the county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

§ 115C-457.2. Remittance of moneys to the Fund

Description: All civil fines collected shall be turned over to the Office of State Budget and Management within 10 days after the close of the calendar month in which the fines were collected.

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used

by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year.

Loans from State Literary Fund

§ 115C-458. Loans by State Board from State Literary Fund

Description: SBE may approve loans from State Literary Fund for construction of school and administrative buildings in LEAs.

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096; 1981, c. 423, s. 1.)

§ 115C-459. Terms of loans

Description: Loans payable in 10 installments with 8% interest rate or less. Loans payable on February 10th each year.

Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed eight percent (8%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the local board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the local board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094; 1981, c. 423, s. 1; 1983, c. 477.)

§ 115C-460. How secured and paid

Description: Payment for loan to be issued from local LEA to treasurer of local school fund. Payment then remitted to State Treasurer.

At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the local board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefore, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. Upon failure of any local school administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the local board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3; 1981, c. 423, s. 1.)

§ 115C-461. Loans by county boards to school districts

Description: County boards of education may make loans to local school districts that have levied a local tax sufficient to repay the loan in 10 installments.

The county board of education, from any sum borrowed under the provisions of this Article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in 10 annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners. (1955, c. 1372, art. 11, s. 4; 1981, c. 423, s. 1; 1985 (Regular Session, 1986), c. 975, s. 24.)

Editor's Note: Session Laws 1985 (Regular Session, 1986), c. 975, which deleted a former second paragraph of this section, relating to written petition of a majority of the school committee asking for a loan, and a lien upon local taxes for repayment of the same, provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

§ 115C-462. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission

In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5; 1981, c. 423, s. 1.)

§ 115C-463. Issuance of bonds as part of general refunding plan

Description: SBE may authorize the issuance of bonds for a general refunding plan as outlined in G.S § 115C-462.

In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6; 1981, c. 423, s. 1.)

§ 115C-464. Validating certain funding and refunding notes of counties

Description: Notes held by SBE are to be authorized to be refunded with bonds for valid existing indebtedness.

The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to Article 24 of Chapter 136 of the Public Laws of 1923, or from special building funds pursuant to either Chapter 147 of the Public Laws of 1921, or Article 25 of Chapter 136 of the Public Laws of 1923, or Chapter 201 of the Public Laws of 1925, or Chapter 199 of the Public Laws of 1927, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being Chapter 81 of the Public Laws of 1927, as amended. (1955, c. 1372, art. 11, s. 7; 1971, c. 704, s. 12; 1981, c. 423, s. 1.)

§ 115C-465. Special appropriation from fund

Description: SBE may use \$17,500 per year from State Literary Fund for preparing school building plans.

The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars (\$17,500) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said fund. (1955, c. 1372, art. 11, s. 8; 1981, c. 423, s. 1.)

§115C-466. Loans not granted in accordance with § 115C-458

The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any local board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, and that a dire emergency exists in the local school administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G.S. 115C-459 and shall be evidenced by the note of the local board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the local board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G.S. 115C-460 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2; 1981, c. 423, s. 1.)

§115C-467. Pledge of no tax revenues to repayment of loans from State Literary Fund

Any local board of education obtaining a loan from the State Literary Fund under the provisions of G.S. 115C-466 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available no tax revenues, including by not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1981, c. 423, s. 1.)

Computer Loan Revolving Fund

§115C-472.5. Creation of the Fund; administration

Description: Computer Loan Revolving Fund created to assist local school systems purchase computer equipment.

(a) The Department of Public Instruction shall administer the Computer Loan Revolving Fund. The Fund shall be used to provide loans to local school administrative units to enable them to purchase computer equipment to implement the Uniform Education Reporting System in accordance with the standards adopted by the State Board of Education pursuant to G.S. 115C-12(18).

(b) A loan shall be for the actual amount of the equipment up to a maximum to be determined by the Superintendent.

(c) Loans shall be evidenced by notes made payable to the Department of Public Instruction. The rate, term, and other conditions of the note shall be determined in accordance with uniform policies established by the Superintendent.

(d) The Department of Public Instruction shall report to the state Chief Information Officer on an annual basis on all loans made from the fund. (1991 (Regular Session, 1992), c. 1044, s. 23(a); 1997-18, s. 15(m); 2004-129, s. 33.)

Editor's Note: Session Laws 1991 (Regular Session, 1992), c. 1044, which enacted this article, in s. 23(b) provides: "There is appropriated from the State Literary Fund to the Department of Public Education the sum of one million five hundred thousand dollars (\$1,500,000) for the 1992-93 fiscal year for the Computer Loan Revolving Fund created in subsection (a) of this section."

"This section shall become effective only to the extent that funds are available in the State Literary Fund in addition to the funds in the amount of one million dollars (\$1,000,000) appropriated in Section 65 of Chapter 900 of the 1991 Session Laws."

School Sites and Property

§115C-517. Acquisition of sites

Description: Schools may not be operated by an LEA outside its boundaries.

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290; 1981, c. 423, s. 1; c. 1127, s. 78; 1995, c. 199, s. 1.)

Local Modifications: Charlotte-Mecklenburg County School Administrative Unit: 1985, c. 229.

Effect of Amendments: The 1995 amendment, effective June 8, 1995, deleted "Provided, that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid" from the end of the section and made a related change.

CASE NOTES

Editor's Note: The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.

Constitutionality: Former §115-125, similar to this section, did not violate the requirements of just compensation and due process provided by U.S. Const., Amend. XIV. *Doby v. Brown*, 135 F. Supp. 584 (M.D.N.C. 1955), *aff'd*, 232 F.2d 504 (4th Cir.), *cert. denied*, 352 U.S. 837, 77 S. Ct. 57, 1 L. Ed. 2d 55 (1956).

History of Section: See *Board of Education v. Forrest*, 190 N.C. 753, 130 S.E. 621 (1925).

Discretion of School Authorities: The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949); *Wayne County Board of Education v. Lewis*, 231 N.C. 661, 58 S.E.2d 725 (1950); *Feezor v. Siceloff*, 232 N.C. 563, 61 S.E.2d 714 (1950).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. *Brown v. Candler*, 236 N.C. 576, 73 S.E.2d 550 (1952).

The advisability of taking property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. *Burlington City Board of Education v. Allen*, 243 N.C. 520, 91 S.E.2d 180 (1956).

The board of education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the board, and its discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. *Painter v. Wake County Board of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

County board of education had the discretion to determine what land constituted a "suitable site" to construct its athletic facilities and what land was "necessary" to construct its athletic facilities. The board had authority to condemn land to be used as wetlands mitigation and a source of fill as necessary to building athletic facilities in an environmentally sensitive area. *Dare County Board of Education v. Sakaria*, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

The courts are bound by the discretionary decision of a local board of education in selecting and determining the land necessary to construct a school, school building, school bus garage, a parking area, an access road suitable for school buses or "other school facilities" unless that decision is an arbitrary abuse of discretion or disregard of law. *Dare County Board of Education v. Sakaria*, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

Facts Not Showing Abuse of Discretion: The fact that the site for a high school selected by the school authorities in a mountainous section of the State could be approached only by a crooked highway and over a narrow bridge, and that there might have been other satisfactory sites for such school, did not compel or support the conclusion that the school authorities abused their discretion in selecting the site. *Brown v. Candler*, 236 N.C. 576, 73 S.E.2d 550 (1952).

Effect of Restrictive Covenants: A board of education which purchases property for a valid school purpose cannot be enjoined to comply with restrictive covenants requiring that the property be used exclusively for residential purposes, the appropriate remedy for other landowners protected by the covenant being an action to recover damages for the taking of their property rights. *Carolina Mills, Inc. v. Catawba County Board of Education*, 27 N.C. App. 524, 219 S.E.2d 509 (1975).

Selection of Site on Grounds of County Home: Former §1153-9(9) (see now §1153A-169) did not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school, when its use would not interfere with the use of the remainder of the site for a county home. *Brown v. Candler*, 236 N.C. 576, 73 S.E.2d 550 (1952).

High School and Elementary School on Adjoining Sites: A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than 10 (now 50) acres of land, if any part thereof must be obtained by condemnation. *Wayne County Board of Education v. Lewis*, 231 N.C. 661, 58 S.E.2d 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of 10 (now 50) acres, since the board has the discretionary power to locate the schools on adjoining sites. Wayne County Board of Education v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

There is no limitation on the acreage which may be purchased or donated for a school use. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed 10 (now 50) acres. Wayne County Board of Education v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

OPINIONS OF ATTORNEY GENERAL

Acquisition of Land by Purchase Does Not Affect Right to Condemn Additional Land: Where a board of education has acquired a tract of land by purchase and because of the nature of the land an additional five acres is required, the board may resort to condemnation for the extra five acres needed, and this right is not nullified by the fact that the board has heretofore acquired some land for the school site by purchase. See opinion of the Attorney General to Mr. W. Earl Britt, Attorney for Fairmont Board of Education, 40 N.C.A.G. 216 (1969), rendered under former corresponding provisions.

§115C-518. Disposition of school property; easements and rights-of-way

Description: Guidelines for the selling off of school grounds. All proceeds shall be applied to reduce the county's indebtedness for the school administrative unit.

(a) When in the opinion of any local board of education the use of any building site or other real property or personal property owned or held by the board is unnecessary or undesirable for public school purposes, the local board of education may dispose of such according to the procedures prescribed in General Statutes, Chapter 160A, Article 12, or any successor provisions thereto. Provided, when any real property to which the board holds title is no longer suitable or necessary for public school purposes, the board of county commissioners for the county in which the property is located shall be afforded the first opportunity to obtain the property. The board of education shall offer the property to the board of commissioners at a fair market price or at a price negotiated between the two boards. If the board of commissioners does not choose to obtain the property as offered, the board of education may dispose of such property according to the procedure as herein provided. Provided that no State or federal regulations would prohibit such action. For the purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the school administrative unit, the board of education, and the school administrative official who most nearly performs the same duties performed by the specified city official. A local board of education may also sell any property other than real property through the facilities of the North Carolina Department of Administration. The proceeds of any sale of real property or from any lease for a term of over one year shall be applied to reduce the county's bonded indebtedness for the school administrative unit disposing of such real property or for capital outlay purposes.

(b) In addition to the foregoing, local boards of education are hereby, authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporations to furnish utility services, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks.

(c) Any sale, exchange or lease of real or personal property by any local board of education prior to June 18, 1982, and pursuant to the authority of G.S. 115-126 is hereby validated, ratified and confirmed. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395; 1975, c. 264; c. 879, s. 46; 1977, c. 803; 1981, c. 423, s. 1; 1981 (Regular Session, 1982), c. 1216; 1983, c. 731; 1985 (Regular Session, 1986), c. 975, s. 22.)

Local Modification: Ashe 1993 (Regular Session, 1994), c. 622, s. 3; Avery: 1993 (Regular Session, 1994), c. 622, s. 3; Brunswick: 1993 (Regular Session, 1994), c. 612, s. 3; Cabarrus: 1991 (Regular Session, 1992), c. 848, ss. 2, 3; Carteret: 1991 (Regular Session, 1992), c. 1001, s. 2; Chowan: 1993 (Regular Session, 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Regular Session, 1992), c. 1001, s. 2; Forsyth: 1993 (Regular Session, 1994), c. 642, s. 3; Harnett: 1993 (Regular Session, 1994), c. 622, s. 3; 1993 (Regular Session, 1994), c. 623, s. 3; Haywood: 1993 (Regular Session, 1994), c. 611, s. 2; Hyde: 1981, c. 877; Iredell: 1991 (Regular Session, 1992), c. 1001, s. 2; Lee: 1993 (Regular Session, 1994), c. 622, s. 3; 1993 (Regular Session, 1994), c. 623, s. 3; Macon: 1993 (Regular Session, 1994), c. 611, s. 2; Nash: 1993 (Regular Session, 1994), c. 624, s. 3; Orange: 1993 (Regular Session, 1994), c. 642, s. 3; Pasquotank: 1993 (Regular Session, 1994), c. 655, s. 3; Richmond: 1991 (Regular Session, 1992), c. 898; Rowan: 1991 (Regular Session, 1992), c. 848, ss. 2, 3; Sampson: 1993 (Regular Session, 1994), c. 614, s. 4; Stanly: 1991 (Regular Session, 1992), c. 848, ss. 2, 3; City of Burlington Board of Education: 1993, c. 277, s. 3; Bladen County Board of Education: 1991 (Regular Session, 1992), c. 853; Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; New Hanover County Board of Education: 1985 (Regular Session, 1986), c. 917; Transylvania County Board of Education: 1983, c. 579; Albemarle City School Administrative Unit: 1985, c. 74.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the Editor's Note under §153A-158.1.

Cross References: For provision exempting services, products, and properties generated through vocational education instructional activities from the requirements of this section, see §115C-159. As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see 160A-274.

Editor's Note: Session Laws 1985 (Regular Session, 1986), c. 975, which deleted "district or" preceding "administrative unit" in the sixth sentence of subsection (a), provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

Chapter 115, including 115-126, referred to in this section, was repealed by Session Laws 1981, c. 423, s. 1, and has been re-modified as Chapter 115C.

CASE NOTES

Editor's Note: Many of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.

Power to Acquire Land: Subsection (d) of former § 115C-126 did not give the board of education any additional power to acquire land for school purposes. This power was given by § 115-27, 115-35(b) and 115-125 (see now, § 115C-40, 115C-36 and 115C-517). *Painter v. Wake County Board Of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

There is nothing in the Constitution which prohibits the board of education from exchanging land which it owns for other land for school purposes. *Painter v. Wake County Board of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

No Claim Would Lie Against Board of Commissioners: The court did not err in determining complaint failed to state a claim as to the proposed sale of school and its adjacent property; the county board of education, not the board of commissioners, holds all school property and is capable of selling and transferring the same for school purposes; applying this law to the case under review, no claim with respect to disposition of the school property would lie against defendant board of commissioners. *Moore v. Wykle*, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

If a discrepancy in valuation exists it bears only on the question of abuse of discretion, and any such discrepancy is only one of the factors to be considered in determining whether the board has abused its discretion. *Painter v. Wake County Board of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

Burden to Overcome Presumption: The burden was on plaintiffs to overcome the presumption that the board of education, in proposing an exchange of property, was acting in good faith and in accord with the spirit and purpose of former § 115-126. *Painter v. Wake County Board of Education*, 288 N.C. 165, 217 S.E.2d 650 (1975).

Lease of Surplus Lands: a city school administrative unit contemplated by § 115-s (see now § 115C-66) was a governmental agency separate and distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, had legislative authority to lease the surplus, either for a public or a private purpose, so long as it exercised its discretion in good faith. Where lease stipulated that use was to be for a public or semipublic purpose, the law would presume that the parties intended and contemplated use of the property without unlawful discrimination because of race, religion or other illegal classification. *State v. Cooke*, 248 N.C. 485, 103 S.E.2d 846 (1958), appeal dismissed, 364 U.S. 177, 80 S. Ct. 1482, 4 L. Ed. 2d 1650, rehearing denied, 364 U.S. 856, 81 S. Ct. 29, 5 L. Ed. 2d 80 (1960).

Delegation of Authority: Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into, and a decree restraining the execution of the contract was proper. *Bowles v. Fayetteville Graded Schools*, 211 N.C. 36, 188 S.E. 615 (1936).

Statutory Discretion Was Not Withdrawn by Purchase of Facility: Where plaintiffs alleged that defendants made unauthorized diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purpose of facility, although the sale of the school property may have resulted from the purchase of facility, the Board of Education's statutory discretion to determine that the school property was surplus property no longer needed for school purposes was not withdrawn by its actions with respect to the facility. *Moore v. Wykle*, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992)

§115C-521. Erection of school buildings

Description: *Guidelines for getting approval for an addition, renovation, or construction of a new school building.*

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by

January 1, 1988, and every five years thereafter. In developing these plans, local boards of education shall consider the costs and feasibility of renovating old school buildings instead of replacing them.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the operation of the school, re-locatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of re-locatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefore. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public

Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, no board of education shall invest any money until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board.

(c1) No local board of education shall apply for a certificate of occupancy for any new middle or high school building until the plans for the science laboratory areas of the building have been reviewed and approved to meet accepted safety standards for school science laboratories and related preparation rooms and stockrooms. The review and approval of the plans may be done by the State Board of Education or by any other entity that is licensed or authorized by the State Board to do so.

(d) Local boards of education shall make no contract for the erection of any school building unless the site upon which it is located is owned in fee simple by the board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners, may appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of the boards, whereby children from the administrative unit making the appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to the property shall be vested in the local board of education of the county embracing the former special charter district.

(e) The State Board of Education shall establish with in the Department of Public Instruction a central clearinghouse for access by local boards of education that may want to use a prototype design in the construction of school facilities. The State Board shall compile necessary publications and a computer database to distribute information on prototype designs to local school administrative units. All architects and engineers registered in North Carolina may submit plans for inclusion in the computer database and these plans may be accessed by any person. The original architect of record or engineer of record shall retain ownership and liability for a prototype design. The State Board may adopt rules it considers necessary to implement this subsection. (1955, c. 1372, art. 15, ss. 5-7; 1969, c. 1022, s. 1; 1981, c. 423, s. 1; c. 638, s. 1; 1983, c. 761, s. 93; 1985, c. 783, s. 3; 1987, c. 622, s. 14; 1993, c. 416, s. 1; c. 465, s. 1; 1993 (Regular Session, 1994), c. 775, s. 6; 1995, c. 8, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(c), (d); 1997-222, s. 3; 1997-236, s. 1.)

Local Modification: Ashe: 1993 (Regular Session, 1994), c. 622, s. 2; Avery: 1993 (Regular Session, 1994), c. 622, s. 2; Brunswick: 1993 (Regular Session, 1994), c. 612, s. 2; Chowan: 1993 (Regular Session, 1994), c. 655 s. 2; Duplin: 1993, c. 549, ss.1,2; Forsyth: 1993, c. 128, s. 1, 1993 (Regular Session, 1994), c. 642, s. 3; Harnett: 1993 (Regular Session, 1994), c. 622, s. 2; 1993 (Regular Session, 1994), c. 623, s. 2; Lee: 1993 (Regular Session, 1994), c. 622, s. 2; 1993 (Regular Session, 1994), c. 623, s. 2; Nash: 1993 (Regular Session, 1994), c. 642, s. 3; Orange: 1993 Regular Session, 1994), c. 642, s. 3; Pasquotank: 1993 (Regular Session, 1994), c. 655, s. 2; Sampson: 1993 (Regular Session, 1994), c. 614, s. 3; County of

Buncombe County, Buncombe County School Administrative Unit and Asheville City School Administrative Unit: 1983, c. 360; Burke County and Burke County School Administrative Unit: 1983, c. 198; Burke County Board of Education: 1985, c. 230; Lenoir County Board of Education: 1995, c. 200, s. 1; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; Duplin: 1993, c. 549, s. 1; Forsyth: 1993, c. 128, s.1.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the Editor's Note under § 153A-158.1.

Cross References: As to penalty for school officials having pecuniary interest in school supplies, see § 14-236 and 14-237.

Editor's Note: Session Laws 1987, c. 622, which added the second sentence of subsection (a), provided in s. 16: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1993 (Regular Session, 1994), c. 775, which amended this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Regular Session, 1994), c. 775, which amended this section, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Effect of Amendments: The 1993 (Regular Session, 1994) amendment, effective July 16, 1994, in the second paragraph of subsection (c) added the last sentence.

The 1995 amendment, effective march 13, 1995, and applicable to cost and feasibility analyses submitted to the State Superintendent on or after that date, inserted " and the State Superintendent submits to the North Carolina Historical Commission" following "to the State Superintendent" in the second sentence of the first paragraph of subsection (c).

CASE NOTES

Editor's Note: The cases below ere decided under corresponding provisions of former Chapter 115 and earlier statutes.

Board of Education Presents Needs to Commissioners: Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. *Dilday v. Beaufort County Board of Education*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine What Expenditures Shall Be Made: The board of commissioners of the county, and not the board of education, are charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. *Johnson v. Marrow*, 228 N.C. 58, 44 S.E.2d 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents its plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education are necessary. When it determines that funds

are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated in the approved projects. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

The right of the board of commissioners to determine what expenditure shall be made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. *Dilday v. Beaufort County Board of Education*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere with Authority of Board of Education: The control of the board of county commissioner over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949); *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of education. *Dilday v. Beaufort County Board of Education*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

All Expenditures Must Be Authorized: All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949).

Expense a Countywide Charge: It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a countywide charge. *Reeves v. Board of Education*, 204 N.C. 74, 167 S.E. 454 (1933).

Commissioners May Reallocate Proceeds of Bond Issue: A bond order issued under former §153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that former §153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949).

But may Not Change Purpose for Which bonds Were Issued: Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

Any change in plan must be initiated by the board of education. Then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary, and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

Power of board of Education Discretionary: The building of a school is a matter vested by statute in the sound discretion of the county board of education and is not to be restrained by the courts, unless it is in

violation of some provision of law, or unless the committee is influenced by improper motives, or there is misconduct on their part. *Venable V. School Comm.*, 149 N.C. 120; 62 S.E. 902 (1908); *Pickler v. County Board*, 149 N.C. 221, 62 S.E. 901 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless it is in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Feezor v. Siceloff*, 232 N.C. 563, 61 S.E.2d 714 (1950).

Courts Cannot Interfere with Discretion of Board of Education Absent Abuse: The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. *Dilday v. Beaufort County Board of Education*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Money Available for Erection of Building: Where a county board of education consolidated five existing high schools into one countywide high school with the approval of the State Board of Education, and plans for the new school building were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend former corresponding section, providing that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money . . . available for its erection." *Edwards v. Yancey County Board of Education*, 235 N.C. 345, 70 S.E.2d 170 (1952).

Providing Electric Lights: Under general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. *Conrad v. Board of Education*, 190 N.C. 389, 130 S.E. 53 (1925).

A former statute similar to subsection (d) of this section did not apply to the erection of electric light wires. It applied only to sites for school buildings; it did not extend to or include the rights-of-way. *Conrad v. Board of Education*, 190 N.C. 389, 130 S.E. 53 (1925).

§115C-521.1. Building standards for preschool students

A public school that voluntarily applies for a child care facility license may use an existing or newly constructed classroom in a public school for three- and four-year-old preschool students without modifications to the classroom or building if the classroom:

1. Has at least one toilet and one sink for hand washing;
2. Meets kindergarten standards for overhead light fixtures;
3. Meets kindergarten standards for floors, walls, and ceilings, and;
4. Has floors, walls, and ceilings that are free from mold, mildew, and lead hazards.

A public school that voluntarily applies for a child care facility license shall meet all other requirements for child care facility licensure.

§115C-523. Care of school property

Description: Teachers and principals are responsible for monitoring school property. Any damage should be reported to the superintendent. Parents or legal guardians are liable for up to \$5,000.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

Notwithstanding any other provision of law, the parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars (\$5,000). The Board of Education shall make written demand upon the parent or legal guardian as a prerequisite to bringing suit.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7; 1981, c. 423, s. 1; 1985, c. 581, s. 4.)

§115C-524. Repair of school property; use of buildings for other than school purposes

Description: Principals, teachers, and janitors should report repairs to be made and are not held responsible for any damages that could not have been prevented.

(a) Repair of school buildings is subject to the provisions of G.S. 115C-521(c) and (d).

(b) It shall be the duty of local boards of education and tax-levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education may adopt rules and regulations under which they may enter into agreements permitting non-school groups to use school real and personal property, except for school buses, for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property pursuant to such agreements. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253; 1981, c. 423, s. 1; 1985 (Regular Session, 1986), c. 975, s. 23; 1991 (Regular Session, 1992), c. 900, s. 79(a).)

Editor's Note: Session Laws 1985 (Regular Session, 1986), c. 975, which deleted "committeemen" following "It shall be the duty of all" at the beginning of the second sentence of the first paragraph of subsection (b), provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

CASE NOTES

This section explicitly precludes liability from attaching to schools when the school facilities are being used for nonschool purposes. *Lindler v. Duplin County Board of Education*, 108 N.C. App. 757, 425 S.E.2d 465, cert. denied, 333 N.C. 791, 431 S.E.2d 25 (1993).

Day Care Program: The legislature may constitutionally delegate to the school board the power or authority to maintain a day care program. *Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education*, 55 N.C. App. 134, 285 S.E.2d 110 (1981), cert. denied and appeal dismissed, 305 N.C. 300 291, S.E.2d 150 (1982), decided under former 115-133.

Immunity from Liability: There is not exception, in cases of active negligence, to the immunity provided by this section. The legislature clearly intended to do more than codify the old common-law rule that if an affirmative act of negligence were committed or the premises were leased in a ruinous condition, a third party injured on school premises would have recourse against the county board of education. *Plemmons v. City of Gastonia*, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 166 (1983)

A county board of education was immune from liability for injury to a minor who fell from gymnasium bleachers. *Plemmons v. City of Gastonia*, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 166 (1983).

The county school board's action to recover lost tax dollars expended in removing asbestos from school property was a governmental function exercised in pursuit of a sovereign purpose for the public good on behalf of the State, and the action was not barred by the statute of limitations. *Rowan County Board of Education v. United States Gypsum Co.*, 87 N.C. App. 106, 359 S.E.2d 814, cert. denied, 321 N.C. 298, 362 S.E.2d 781 (1987).

Quoted in *Rowan County Board of Education v. United States Gypsum Co.*, 332 N.C. 1, 418 S.E.2d 648 (1992).

§ 115C-525. Fire prevention

Description: *Principals are responsible for inspecting school grounds periodically for fire hazards, with proper adjustments addressed when needed. The board of county commissioners shall designate a qualified city or county inspection official to formally inspect the school grounds a minimum of twice a year.*

(a) **Duty of Principal Regarding Fire Hazards.** – The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

- (1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof

by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.

- (2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wiring, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.
- (3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.
- (4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.
- (5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.
- (6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115C-525(b).

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115C-525(b). It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections.

(b) Inspection of Schools for Fire Hazards; Removal of Hazards. - Every public school building in the State shall be inspected a minimum of two times during the year in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 120 days apart:

- (1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in G.S. 115C-525(a)(1) through (5) exist, and to ensure that the building and all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.
- (2) The board of county commissioners of each county shall designate the persons to make the inspections and reports required by subdivision (1) of this subsection. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the

county fire marshal, or any other qualified persons, but no person shall make any inspection unless he shall be qualified as required by G.S. 153A-351.1 and Section 7 of Chapter 531 of the 1977 Session Laws. Nothing in this section shall be construed as prohibiting two or more counties from designating the same persons to make the inspections and reports required by subdivision (1) of this subsection. The board of county commissioners shall compensate or provide for the compensation of the persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

- (3) It shall be the duty of the Commissioner of Insurance, the Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.
- (4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.
- (5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection and not removed or corrected by the principals as required by subdivision (4) of this subsection are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard.

(c) Liability for Failure to Perform Duties Imposed by G.S. 115C-288 and 115C-525(a) or 115C-525(b). – Any person willfully failing to perform any of the duties imposed by G.S. 115C-288, 115C-525(a) or 115C-525(b) shall be guilty of a Class 3 misdemeanor and shall only be fined not more than five hundred dollars (\$500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14; 1981, c. 423, s. 1; 1989, c. 681, s. 12; 1993, c. 539, s. 892; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note: Session Laws 1193, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments: The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" following "shall" in subsection (c).

§ 115C-528. Lease purchase and installment purchase contracts for certain equipment

Description: *Guidelines to contracts involving purchasing equipment to improve the overall functionality of a school.*

(a) Local boards of education may purchase or finance the purchase of automobiles; school buses; mobile classroom units; photocopiers; and computers, computer hardware, computer software, and related support services by lease purchase contracts and installment purchase contracts as provided in this section. Computers, computer hardware, computer software, and related support services purchased under this section shall meet the technical standards specified in the North Carolina Instructional Technology Plan as developed and approved under G.S. 115C-102.6A and G.S. 115C-102.6B.

(b) A lease purchase contract under this section creates in the local board the right to possess and use the property for a specified period of time in exchange for periodic payments and shall include either an obligation or an option to purchase the property during the term of the contract. The contract may include an option to upgrade the property during the term. A local board may exercise an option to upgrade without re-bidding the contract.

(c) An installment purchase contract under this section creates in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(d) The term of a contract entered into under this section shall not exceed the useful life of the property purchased. An option to upgrade shall be considered in determining the useful life of the property.

(e) A contract entered into under this section shall be considered a continuing contract for capital outlay and subject to G.S. 115C-441(c1).

(f) A contract entered into under this section is subject to Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold shall apply.

(g) Subsections (e) and (f) of this section shall not apply to contracts entered into under this section so long as the term of each contract does not exceed three years and the total amount financed during any three-year period is no greater than two hundred fifty thousand dollars (\$250,000) or is no greater than three times the local board's annual State allocation for classroom materials, equipment, and instructional supplies, whichever is less. The local board shall submit information, including the principal and interest paid and the amount of outstanding obligation, concerning these contracts as part of the annual budget it submits to its board of county commissioners under Article 31 of this Chapter.

(h) No contract entered into under this section may contain a no substitution clause that restricts the right of a local board to:

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any property financed or purchased by the contract.

(i) No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual

obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (1995 (Regular Session, 1996), c. 716, s. 14; 1997-236, s. 4.)

§ 115C-531. Capital leases of school buildings and school facilities

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

- (1) Capital lease – A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.
- (2) Private developer – The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization – Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G. S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation – The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars (\$300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Non-substitution Clause – A capital lease may not contain a non-substitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power – No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting – A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due.

(g) Local government Commission Approval – Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar (\$500,000) threshold applies.

(h) No Agreements on Student Assignment – A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected – The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvements to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.

§ 115C-532. Additional provisions applicable to build-to-suit capital leases

Description: Contracts that exceed \$300,000

(a) Definitions – The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

- (1) Build-to-suit capital lease – A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars (\$300,000).
- (2) Prime contractor – A contractor who contracts directly with the private developer or the private developer’s construction manager at risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions – A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education - Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

- (1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit’s best interest under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.
- (2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for

under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirement Regarding Design Services – Required design and engineering services shall be performed by an engineer, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services – A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

- (1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.
- (2) The private developer or its construction manager at risk may pre-qualify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer 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, and other factors deemed appropriate by the private developer and the local board of education.
- (3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant to G.S. 143-128.2, and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.
- (4) A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and pre-qualified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk

and any contractor may negotiate and reach agreement with the successful bidder on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

- (5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized – Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

- (1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.
- (2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized – Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms – In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

- (1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.
- (2) Facility programming, planning, and design, including both architectural and engineering services.
- (3) Qualification and prequalification of contractors and subcontractors.
- (4) Construction and construction management.
- (5) Financing.
- (6) Facility maintenance and repairs.
- (7) Energy usage guarantees.
- (8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.

(9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit – A private developer shall provide an irrevocable letter of credit for the benefit of laborers and material men in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period."

§ 115C-538. Inspections of insured public school properties

Description: Periodic inspections of all public school properties in hopes of improving the safety of children during a fire or explosion.

The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local boards of education shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4; 1981, c. 423, s. 1.)

Public School Building Capital Fund

§ 115C-546.1. Creation of Fund; administration

Description: Fund used for school construction (new schools, additions, or renovations) and for the purchase of technology equipment, for any public school system. Corporate Income Tax provides a portion of this money. Money is deposited into this fund four times a year (Feb, May, Aug, and Nov)

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans.

(b) **(See Editor's Note)** Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

<u>Period</u>	<u>Fraction</u>
10/1/97 to 9/30/98	One-fifteenth (1/15)
10/1/98 to 9/30/99	Two twenty-ninths (2/29)
10/1/99 to 9/30/00	One-fourteenth (1/14)
After 9/30/00	Five sixty-ninths (5/69)

(c) The Fund shall be administered by the Department of Public Instruction. (1987, c. 622, s. 12; c. 813, s. 20; 1989 (Regular Session, 1990), c. 1066, s. 28(b); 1991, c. 689, s. 260; 1995

(Regular Session, 1996), c. 631, s. 15; 1996, 2nd Ex. Sess. c. 13, s. 2.2; 1997-221, s. 26; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-284, s. 7.33(b).)

Editor's Note: Session Laws 1995, c. 631, s. 15 provides for the amendment of subsection (b)... after the last LEA is funded by the commission on School Facility Needs (The "Critical Needs" Fund).

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claims Raised in Answer: Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1, Rule 15(a). *Moore v. Wykle*, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements

Description: *Monies are allocated by LEA based on average daily membership. Funds received must meet specific requirements before being assigned. There must be a 1:3, local to state funds ratio to gain approval.*

(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Counties shall use monies in the Fund for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings; for equipment to implement a local school technology plan that is approved pursuant to G.S. 115C-102.6C; or for both. Monies used to implement a local school technology plan shall be transferred to the State School Technology Fund and allocated by that Fund to the local school administrative unit for equipment.

As used in this section, "public school buildings" only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings, for the purchase of land for public school buildings, or for equipment to implement a local school technology plan, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs and its school technology needs can be met in a more timely fashion through the allocation of financial resources previously

allocated for purposes other than school building needs or school technology needs and not restricted for use in meeting public school building needs or school technology needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and school technology needs and may allocate the funds it receives under this Article for purposes other than school building needs or school technology needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund allocated for capital projects shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Monies in the Fund transferred to the State Technology Fund do not require a local match.

Revenue received from local sales and use taxes that are restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Regular Session, 1992), c. 1030, s. 30; 1997-221, s. 27.)

(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

- (1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.
- (2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the effective State average tax rate is greater than one hundred percent (100%) with the following definitions applying to this subdivision:
 - a. "Effective county tax rate" means the actual county tax rate, including any countywide supplemental tax levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.
 - b. "State average effective tax rate" means the average effective county tax rates for all counties.
 - c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (3) No county shall have to provide matching funds required under subsection (c) of this section.
- (4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.
- (5) A county may not use monies in this Fund to pay for school technology needs. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Reg. Sess., 1992), c. 1030, s. 30; 1997-221, s. 27; 2005-276, s. 31.1(hh); 2005-344, s. 15.2.)

Local Modification: Edgecombe and Nash Counties and local school administrative units located in those counties: 1987, c. 813, s. 18.2.

Editor's Note: Session Laws 1987, c. 813, which amended subsections (b) and (c), provided in s. 25: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claim Raised in Answer: Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1; Rule 15(a). *Moore v. Wykle*, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Chapter 115D

Community Colleges

§115D-41. Restrictions on contracts with local school administrative units

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs. In no event shall a community college contract with a local school administrative unit to provide high school level courses. (1991 (Reg. Sess., 1992), c. 900, s. 82(a).)

(b) Existing community college facilities that comply with the North Carolina State Building Code and applicable local ordinances for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new community college facilities that

comply with the North Carolina State Building Code and applicable local ordinance for community college facilities also may be used without modification for these students.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered "Business – Group B" in the same manner as other community college uses.

Chapter 116

Higher Education

§ 116-43.15. Use of college or university facilities by public school students pursuant to cooperative programs

The existing facilities of any constituent institution of The University of North Carolina and the existing facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with the North Carolina State Building Code and applicable local ordinances for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new facilities of any constituent institution of The University of North Carolina and new facilities of any private college or university licensed in accordance with the G.S. 116-15 that comply with the North Carolina State Building Code and applicable local ordinances for those facilities may be used without modification for public school students in joint cooperative programs such as middle or early college programs and dual enrollment programs.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered "Business – Group B" in the same manner as other college and university uses.

Chapter 121

Archives and History

§ 121-12. North Carolina Historical Commission

Description: Any property to be purchased for public school use must first be declared as a non-historical site or grounds.

(a) Protection of Properties on National Register – It shall be the duty of the Historical Commission, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every

kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, giving due consideration to the competing public interests that may be involved. To this end, the head of any State agency having direct or indirect jurisdiction over a proposed State or state-assisted undertaking, or the head of any State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any State or state-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470.

Where, in the judgment of the commission, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Commission a reasonable opportunity to comment with regard to such undertaking.

The Historical Commission shall act with reasonable diligence to insure that all State departments, boards, commissions, or agencies potentially affected by the provisions of this section be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each affected State department or agency shall furnish, either upon its own initiative or at the request of the Historical Commission such information as may reasonably be required by the Commission for the proper implementation of this section.

(b) Criteria for State Historic Properties – The Commission shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historic, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization, or individual. The Commission shall cooperate to the fullest practical extent with any local historical organization and with any city or county historic district properties commission. In evaluating whether a building should be a State historic site, the Commission shall request and review plans for the use and maintenance of the building.

(c) Criteria for state Aid to Historic Properties – The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or other organization or individual for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations to be administered by the Department of Cultural Resources are proposed. If the property is a building, the Commission shall request and review the plans for the use, maintenance, operation, and purpose of the building and shall comment on the feasibility of the plans in the written report. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

- (1) Whether the property is historically authentic;
- (2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
- (3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
- (4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;

- (5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and
- (6) Such further comments and recommendations that the Commission may make.

(c1) Criteria for State Aid to Historical Museums – The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations to be administered by the Department of Cultural Resources are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

- (1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;
- (2) The local or regional need for such a program or project;
- (3) The estimated cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;
- (4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;
- (5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and
- (6) Such further comments and recommendations that the Commission may make.

(d) Commission to Furnish Recommendations to Legislative Committee – The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of assisting a history museum, at least five copies of a report on the findings and recommendations of the Commission relating to such property. (1973, c. 476, s. 48; 1975, c. 19, s. 40; 1979, c. 861, ss. 3-5; 1985 (Regular Session, 1986), c. 1014, s. 171(b); 1995, c. 324, s. 12.)

Editor's Note: Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments: The 1995 amendment effective July 1, 1995, added the last sentence in subsection (b), and added the third sentence in subsection (c).

Legal Periodicals: For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

Chapter 133

Public Works

General Provisions

- 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.
- 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.
- 133-2. Drawing of plans by material furnisher prohibited.
- 133-3. Specifications to carry competitive items; substitution of materials.
- 133-4. Violation of Chapter made misdemeanor.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited

Description: It's unlawful for architects, etc., to specify building materials from a firm, etc., in which he has a financial interest.

It shall be unlawful for any architect, engineer, or other individual, firm, or corporation providing design services for any city, county or State work supported wholly or in part with public funds, knowingly to specify any building materials, equipment or other items which are manufactured, sold or distributed by any firm or corporation in which such designer or specifier has a financial interest by reason of being a partner, officer, employee, agent or substantial stockholder. (1933, c. 66, s. 1; 1977, c. 730.)

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer

Description: Project costs thresholds for renovations or additions that must be prepared by an architect or engineer before any type of repair or construction is started. The architect or engineer must conduct frequent inspections of the construction site.

Projects Requiring Licensed Architect / Engineer:

***Project Cost Threshold**

Projects Requiring Licensed Architect / Engineer:	*Project Cost Threshold
<i>New Construction or Additions</i>	<i>\$135,000 +</i>
<i>Major Repairs with Structural Changes</i>	<i>\$135,000 +</i>
<i>Non-Structural Repairs</i>	<i>\$300,000 +</i>
<i>Repairs / Renovation Work Affecting "Life Safety Systems"</i>	<i>\$100,000 +</i>
<i>Buildings Classified by Building Code as "Business" (Concession / Toilet / Field House, etc.)</i>	<i>\$Over 2,500 sq ft</i>

**Project costs are market value / replacement costs if competitively bid (not reduced by any donated labor, material, or cash)*

(a) In the interest of public health, safety and economy, every officer, board, department, or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of:

- (1) Three hundred thousand dollars (\$300,000) for the repair of public buildings where such repair does not include major structural change in framing or foundation support systems,
- (1a) One hundred thousand dollars (\$100,000) for the repair of public buildings affecting life safety systems,
- (2) One hundred thirty-five thousand dollars (\$135,000) for the repair of public buildings where such repair includes major structural change in framing or foundation support systems, or
- (3) One hundred thirty-five thousand dollars (\$135,000) for the construction of, or additions to, public buildings or State-owned and operated utilities,

shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83A of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all these plans and specifications.

- (b) (1) On all projects requiring the services of an architect, an architect shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:
 - a. The inspections of the construction, repairs or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercise by a member of that profession; and
 - b. To the best of his knowledge and in the professional opinion of the architect, the contractor has fulfilled the obligations of such plans, specifications, and contract.
 - (2) On all projects requiring the services of an engineer, an engineer shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:
 - a. The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
 - b. To the best of his knowledge and in the professional opinion of the engineer, the contractor has fulfilled the obligations of such plans, specifications, and contract.
 - (3) No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (c) The following shall be excepted from the requirements of subsection (a) of this section:
- (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
 - (2) Apartment buildings used exclusively as the residence of not more than two families.

- (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
- (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.
- (5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet.

(d) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(e) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(f) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Regular Session, 1984), c. 970, s. 1; 1989, c. 24; 1997-412, s. 11; 1998-212, s. 11.8(e); 2001-496, ss. 6, 8(e); 2003-305, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited

It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items; substitution of materials

Description: Performance and design characteristics should be specified for materials required. If possible, brand name specifications, listing three or more equivalent design can be used. Equivalent designs are used to denote standards but are not restrictive. If three equivalent designs are not available, list as many as are available. Substitution of materials of equivalent design must be submitted to the design professional, and either approved or disapproved, prior to bid opening. Specifications may list one or more preferred brands as an alternate bid and must identify performance standards that support the preference. Performance standards for the preference must be approved by the Board of Education in an open meeting.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the

general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. Specifications may list one or more preferred brands as an alternate to the base bid in limited circumstances. Specifications containing a preferred brand alternate under this section must identify the performance standards that support the preference. Performance standards for the preference must be approved in advance by the owner in an open meeting. Any alternate approved by the owner shall be approved only where (i) the preferred alternate will provide cost savings, maintain or improve the functioning of any process or system affected by the preferred item or items, or both, and (ii) a justification identifying these criteria is made available in writing to the public. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1; 2002-107, s. 5; 2002-159, s. 64(c).)

§ 133-4. Violation of Chapter made misdemeanor

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars (\$500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

Chapter 136

Roads and Highways

§ 136-18. Powers of Department of Transportation

Description: DOT must provide repairs to roads leading to a public school, used by school buses.

The said Department of Transportation shall be vested with the following powers:

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are

transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

Chapter 143

State Departments, Institutions, and Commissions

Energy Conservation in Public Facilities

Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units

§ 143-64.17. Definitions

Description: Defines terms or phrases used in Article 3B

As used in this Part:

- (1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the facility or meter, when the alteration, training, or services provide anticipated energy savings or capture lost revenue. Energy conservation measure includes any of the following:
 - a. Insulation of the building structure and systems within the building.
 - b. Storm windows or doors, caulking, weather-stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.
 - c. Automatic energy control systems.
 - d. Heating, ventilating, or air-conditioning system modifications or replacements.
 - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.
 - f. Energy recovery systems.

- g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
 - h. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and water recovery systems.
 - i. Other energy conservations measures that conserve energy, water, or other utilities.
- (2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility fees, or operating costs, including environmental discharge fees, water and sewer, maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including captured lost revenues, developed by the governmental unit.
- (2a) "Governmental unit" means either a local governmental unit or a State governmental unit.
- (3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.
- (4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
- (5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.
- (6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:
- a. The name and address of the governmental unit.
 - b. The name, address, title, and telephone number of a contact person in the governmental unit.
 - c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
 - d. The date, time, and place where proposals must be received.
 - e. The evaluation criteria for assessing the proposals.
 - f. A statement reserving the right of the governmental unit to reject any or all the proposals.
 - g. Any other stipulations and clarifications the governmental unit may require.
- (7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions. (1993 (Regular Session, 1994), c. 775, s. 3; 1995, c. 295, s. 1; 1999-235, ss. 1, 2; 2002-161, s. 2.)

Editor's Note: Session Laws 1993 (Regular Session, 1994), c. 775, s. 11, made this Part effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Regular Session, 1994), c. 775, which enacted this Part, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Effect of Amendments: The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, deleted the second sentence of subdivision (3), regarding when the local governmental unit could not be required to purchase a maintenance contract from the qualified provider installing the energy conservation measures.

§ 143-64.17A. Solicitation of guaranteed energy savings contracts

Description: *Request should be published 15 days before a provider is chosen. There must be a minimum of 2 applicants.*

(a) Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.

(c) In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

- (1) The information required in subsection (b) of this section; and
- (2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit by a licensed architect or engineer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by evaluating all of the following:

- (1) Prices offered.
- (2) Proposed costs of construction, financing, maintenance, and training.
- (3) Quality of the products proposed.
- (4) Amount of energy savings.
- (5) General reputation and performance capabilities of the qualified providers.
- (6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.
- (7) Time specified in the proposals for the performance of the contract.
- (8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter. (1993 (Regular Session, 1994), c. 775, s. 3; 2002-161, s. 3.)

§ 143-64.17B. Guaranteed energy savings contracts

Description: Contract terms not to exceed 20 years. Contracts are for existing buildings only.

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

- (1) The term of the contract does not exceed 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.
- (2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing building or utility system.

(b) Before entering into a guaranteed energy savings contract, the governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit

have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract.

(f) In the case of a State governmental unit, a qualified provider shall, when feasible, after the acceptance of the proposal of the qualified provider by the State governmental unit, conduct an investment grade audit. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the State governmental unit or the qualified provider may terminate the project without incurring any additional obligation to the other party. However, if the State governmental unit terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the State governmental unit shall reimburse the qualified provider the reasonable cost incurred in conducting the audit, and the results of the audit shall become the property of the State governmental unit.

(g) In the case of a State governmental unit, a qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the State governmental unit any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. A surplus in any one year shall not be carried forward or applied to a shortfall in any other year. (1993 (Regular Session, 1994), c. 775, s. 3; 1995, c. 295, s. 2; 1999-235, s. 3; 2002-161, s. 4; 2003-138, s. 1.)

Editor's Note: Session Laws 1993 (Regular Session, 1994), c. 775, s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission, and that the Commission shall compile the information, including the energy savings expected and realized, and report it biennially to the Joint Legislative Commission on Governmental Operations.

Session Laws 1993 (Regular Session, 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Session Laws 1993 (Regular Session, 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Effect of Amendments: The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, added "and all required shortfall payments to the local governmental unit have not been made" in the last sentence of subsection (c); in the last sentence of subsection (d) substituted

"does not include" for "also includes" and added "provided that those obligations are disclosed when the contract is executed"; and added subsection (e).

§ 143-64.17C. Repealed by Session Laws 2002, ch. 161, s. 5, effective January 1, 2003, and applicable to contracts entered into on or after that date.

§ 143-64.17D. Contract continuance

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a direct or indirect pledge of the taxing power or full faith and credit of any governmental unit. (1993 (Regular Session, 1994), c. 775, s. 3; 2002-161, s. 6.)

§ 143-64.17E. Payments under contract

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Regular Session, 1994), c. 775, s. 3.)

Procurement of Architectural, Engineering, and Surveying Services

Selection of Design Professional (Architect / Engineer / Construction Manger):

- *Announcement of professional services needed (§ 143-64.31)*
- *Qualifications-based selection without regard for fees (§ 143-64.31)*
- *Exemptions:*
 - *Projects with estimated professional fees < \$30,000 (§ 143-64.32)*
 - *Specific projects at sole discretion of LEA (documented in meeting of Board of Education) (§ 143-64.32)*
- *Show good faith efforts to notify minority firms (§ 143-128.2)*

§ 143-64.31. Declaration of public policy

Description: *State's public policy to select the best qualified and reasonably priced firm to oversee the construction of a public building.*

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract

cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk was selected.
- (2) The terms of the contract with the construction manager at risk.
- (3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.
- (4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1.)

Cross References: As to public contracts, see §143-128 et seq.

Editor's Note: Session Laws 1987, c. 102, s. 4 makes this section effective upon ratification. The act was ratified April 27, 1987.

§ 143-64.32. Written exemption of particular contracts

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (b) Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefore and the circumstances attendant thereto. (1987, c. 102, s. 2.)

Editor's Note: Session Laws 1987, c. 102, s. 4 makes this section effective upon ratification. The act was ratified April 27, 1987.

§ 143-64.33. Advice in selecting consultants or negotiating consultant contracts

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors or any or all. (1987, c. 102, s. 3; 1989, c. 230, s. 3, c. 770, s. 44.)

Public Contracts

Separate specifications for building contracts; responsible contractors.

- § 143-128. Requirements for certain building contracts.
- § 143-128.1. Construction management at risk contracts.
- § 143-128.2. Minority business Participation goals.
- § 143-128.3. Minority business Participation Administration.
- § 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.
- § 143-129.1. Withdrawal of bid.
- § 143-129.4. Guaranteed energy savings contracts.
- § 143-129.8. Purchase of information technology goods and services.
- § 143-130. Allowance for convict labor must be specified.
- § 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.
- § 143-132. Minimum number of bids for public contracts.
- § 143-133. No evasion permitted.
- § 143-134. Applicable to Department of Transportation and Department of Correction; exceptions.
- § 143-134.1. Interest on final payments due to prime contractors.
- § 143-135. Limitation of application of Article.
- § 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.
- § 143-135.2. Contracts for restoration of historic buildings with private donations.
- § 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.
- § 143-135.4. Authority of Department of Administration not repealed.
- § 143-135.9. "Best Value" information technology procurements.

§ 143-128. Requirements for certain building contracts

Description: Contracts must meet certain criteria before being finalized, including preparation of specifications and construction methods.

(a) Preparation of specifications. – Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, shall have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work.
- (2) Plumbing and gas fittings and accessories, and all related work.
- (3) Electrical wiring and installations, and all related work.
- (4) General work not included in subdivisions (1), (2), and (3) of this subsection relating to the erection, construction, alteration, or repair of any building.

Specifications for contracts that will be bid under the separate-prime system or dual bidding system shall be drawn as to permit separate and independent bidding upon each of the subdivisions of work enumerated in this subsection. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(a1) Construction methods – The State, a county, municipality, or other public body shall award contracts to erect, construct, alter, or repair buildings pursuant to any of the following methods:

- (1) Separate-prime bidding.
 - *Separate drawings / specifications for each work subdivision (General, Plumbing, HVAC, Electrical, etc.)*
 - *Separate contract for each work subdivision*
 - *Subdivision < \$25,000 can be included in another subdivision regardless of total project cost*
- (2) Single-prime bidding.
 - *Separate drawings / specifications for each work subdivision (General, Plumbing, HVAC, Electrical, etc.)*
 - *Bidders must identify on their bids the selected sub-contractors*
- (3) Dual bidding pursuant to subsection (d1) of this section.
 - *Bids received under both single and separate prime methods*
 - *Separate-prime bids received (but not opened) 1 hour before single-prime bids*
 - *Separate-prime bidders may not underbid their bids to single-prime GC's*
 - *Award to either separate-prime or single-prime at discretion of Board of Education*
- (4) Construction management at risk contracts pursuant to G.S. 143-138.1.
 - *Construction management at risk selected by owner based on qualifications (not lowest fee)*
 - *Guarantees total construction price*
 - *Construction management at risk must be licensed contractor*
 - *Design services are separately contracted*
 - *Sub-contractors pre-qualified, competitively bid*
- (5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).
 - *State Building Commission approval by majority vote*
 - *Authorization for a specific project*
 - *Project must be competitively bid*
 - *Burden of justification is on applicant*
 - *OR obtain authorization by local act of NC Legislature*

(a2) Annually, on or before April 1st, beginning April 1, 2003, The University of North Carolina and all other public entities shall report to the Secretary of the Department of Administration on the effectiveness and cost-benefit of utilization of each of the construction methods authorized in G.S. 143-128(a1) that are used by the public entity. The reports, which shall be initially filed in the year in which the project is completed, shall be in the format and contain the data prescribed by the Secretary of Administration and shall include at least the following:

- (1) The type of construction method used on the project
- (2) The total dollar value of building projects by specific project with costs.

- (3) The bid costs and relevant post-bid costs.
- (4) A detailed listing of all contractors and subcontractors used on the project indicating whether the contractor or subcontractor was an out-of-state contractor or subcontractor.
- (5) If any contractor or subcontractor was an out-of-state contractor or subcontractor, the reasons why the contractor or subcontractor was selected.

The Secretary of the Department of Administration shall report to the General Assembly on or before May 1st each year on the information collected pursuant to this subsection.

(b) Separate-prime contracts. – When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars (\$25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. The contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

(c) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(d) Single-prime contracts – All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

- (1) Heating, ventilating, and air conditioning;
- (2) Plumbing;
- (3) Electrical; and
- (4) General.

The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be nonresponsive or nonresponsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall incorporate by reference the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

When contracts are awarded pursuant to this section, the public body shall make available to subcontractors the dispute resolution process as provided for in subsection (f1) of this section.

(d1) Dual bidding. – The State, a county, municipality, or other public entity may accept bids to erect, construct, alter, or repair a building under both the single-prime and separate-prime contracting systems and shall award the contract to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidder, the public entity may consider cost of construction oversight, time for completion, and other factors it considers appropriate. The bids received as separate-prime bids shall be received, but not opened, one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the public entity under the separate-prime system. The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded pursuant to this section and the provisions of subsection (d) of this section shall apply to single-prime contracts awarded pursuant to this section.

(e) Project expeditor; scheduling; public body to resolve project disputes. – The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on a project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expeditor may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expeditor, if required by the contract documents, shall be responsible for preparing the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may provide in the contract documents for resolution of project disputes through alternative dispute resolution processes as provided for in subsection (f1) of this section.

(f) Repealed by Session Laws 2001-496, s. 3, effective January 1, 2001.

(f1) Dispute resolution. – A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the 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 and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars (\$15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.

(g) Exceptions – This section shall not apply to:

- (1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.
- (2) The erection, construction, alteration, or repair of a building when the cost thereof is three hundred thousand dollars (\$300,000) or less.

Notwithstanding the other provisions of this subsection, subsection (f1) of this section shall apply to any erection, construction, alteration, or repair of a building by a public entity. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620; 1987 (Regular Session, 1988), c. 1108, ss. 4, 5; 1989, c. 480, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 4, 5; c. 509, s. 79; 1998-137, s. 1; 1998-193, s. 1; 2001-496, ss. 3, 13; 2002-159, s. 42.)

§ 143-128.1. Construction management at risk contracts

Description: The selected construction manager at risk is responsible for soliciting bids to public entities for the construction of a project. The construction manager at risk may perform some of the construction if none of the bids are reasonable and is approved by the public entity involved.

(a) For purposes of this section and G.S. 143-64.31:

- (1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- (2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.
- (3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.
- (4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The prequalification criteria shall be determined by the public entity and the construction manager at risk 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, and other factors deemed appropriate by the public entity. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to G.S. 143-128.2. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration

quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(g).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. (2001-496, s. 2.)

§ 143-128.2. Minority business participation goals

Description: Solicitation of minority business participation is required when the project cost is over \$5,000. A verifiable State goal of 10% participation is used for projects over \$100,000 if state funds are used, unless pre-existing local goals are justified. A good faith effort to encourage minority business participation is required. Efforts made and participation achieved must be documented. Reporting requirements by NC Department of Administration must be complied with.

(a) The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State. A local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. On State building projects and building projects subject to the State goal requirement, the Secretary shall identify the appropriate percentage goal, based on adequate data, for each category of minority business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

Except as otherwise provided for in this subsection, each city, county, or other local public entity shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects.

Each entity required to have verifiable percentage goals under this subsection shall make a good faith effort to recruit minority participation in accordance with this section or G.S. 143-131(b), as applicable.

(b) A public entity shall establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects. Public entities shall make good faith efforts as set forth in subsection (e) of this section. Public entities shall require contractors to make good faith efforts pursuant to subsection (f) of this section. Each first-tier subcontractor on a construction management at risk project shall comply with the requirements applicable to contractors under this subsection.

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized

under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (f) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

- (1) Within the time specified in the bid documents, either:
 - a. An affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith or effort; or
 - b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.
- (2) Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project.

Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

(d) No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:

- (1) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or
- (2) With the approval of the public entity for good cause.

Good faith efforts as set forth in G.S. 143-131(b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(b).

(e) Before awarding a contract, a public entity shall do the following:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- (2) Attend the scheduled prebid conference.
- (3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time, and location where bids are to be submitted.

- c. The name of the individual within the public entity who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist.
- (4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

(f) A public entity shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The public entity may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
 - (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
 - (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
 - (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
 - (5) Attending any prebid meetings scheduled by the public owner.
 - (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
 - (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
 - (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit
 - (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
 - (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
- (g) As used in this section:
- (1) The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%)

- of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
- a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
- (3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

(h) The State, counties, municipalities, and all other public bodies shall award public building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

(i) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.

(j) Except as provided in subsections (a), (g), (h) and (i) of this section, this section shall only apply to building projects costing three hundred thousand dollars (\$300,000) or more. This section shall not apply to the purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site. (2001-496, s. 3.1.)

§ 143-128.3. Minority business participation administration

Description: Outlines the documentation required in regards to making sure minority businesses are given an opportunity for being selected for construction projects.

(a) All public entities subject to G.S. 143-128.2 shall report to the Department of Administration, Office of Historically Underutilized Business, the following with respect to each building project:

- (1) The verifiable percentage goal.
- (2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or

rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.

- (3) The utilization of minority businesses under the various construction methods under G.S. 143-128(a1).

The reports shall be in the format and contain the data prescribed by the Secretary of Administration. The University of North Carolina and the State Board of Community Colleges shall report quarterly and all other public entities shall report semiannually. The Secretary of the Department of Administration shall make reports every six months to the Joint Legislative Committee on Governmental Operations on information reported pursuant to this subsection.

(b) A public entity that has been notified by the Secretary of its failure to comply with G.S. 143-128.2 on a project shall develop a plan of compliance that addresses the deficiencies identified by the Secretary. The corrective plan shall apply to the current project or to subsequent projects under G.S. 143-128, as appropriate, provided that the plan must be implemented, at a minimum, on the current project to the extent feasible. If the public entity, after notification from the Secretary, fails to file a corrective plan, or if the public entity does not implement the corrective plan in accordance with its terms, the Secretary shall require one or both of the following:

- (1) That the public entity consult with the Department of Administration, Office of Historically Underutilized Businesses on the development of a new corrective plan, subject to the approval of the Department and the Attorney General. The public entity may designate a representative to appear on its behalf, provided that the representative has managerial responsibility for the construction project.
- (2) That the public entity not bid another contract under G.S. 143-128 without prior review by the Department and the Attorney General of a good faith compliance plan developed pursuant to subdivision (1) of this subsection. The public entity shall be subject to the review and approval of its good faith compliance plan under this subdivision with respect to any projects bid pursuant to G.S. 143-128 during a period of time determined by the Secretary, not to exceed one year.

A public entity aggrieved by the decision of the Secretary may file a contested case proceeding under Chapter 150B of the General Statutes.

(c) The Secretary shall study and recommend to the General Assembly and other State agencies ways to improve the effectiveness and efficiency of the State capital facilities development, minority business participation program and good faith efforts in utilizing minority businesses as set forth in G.S. 143-128.2, and other appropriate good faith efforts that may result in the increased utilization of minority businesses.

(d) The Secretary shall appoint an advisory board to develop recommendations to improve the recruitment and utilization of minority businesses. The Secretary, with the input of its advisory board, shall review the State's programs for promoting the recruitment and utilization of minority businesses involved in State capital projects and shall recommend to the General Assembly, the State Construction Office, The University of North Carolina, and the community colleges system changes in the terms and conditions of State laws, rules, and policies that will enhance opportunities for utilization of minority businesses on these projects. The Secretary shall provide guidance to these agencies on identifying types of projects likely to attract increased participation by minority businesses and breaking down or combining elements of work into economically feasible units to facilitate minority business participation.

(e) The Secretary shall adopt rules for State entities, The University of North Carolina, and community colleges and shall adopt guidelines for local government units to implement the provisions of G.S. 143-128.2.

(e1) The Secretary shall adopt rules and procedures for: (i) the certification of a minority business contractor, as defined in G.S. 143-128.2(g), as a historically underutilized business; (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification as a historically underutilized business.

(f) The Secretary shall provide the following information to the Attorney General:

- (1) Failure by a public entity to report data to the Secretary in accordance with this section.
- (2) Upon the request of the Attorney General, any data or other information collected under this section.
- (3) False statements knowingly provided in any affidavit or documentation under G.S. 143-128.2 to the State or other public entity. Public entities shall provide to the Secretary information concerning any false information knowingly provided to the public entity pursuant to G.S. 143-128.2.

(g) The Secretary shall report findings and recommendations as required under this section to the Joint Legislative Committee on Governmental Operations annually on or before June 1, beginning June 1, 2002. (2001-496, s. 3.6; 2005-270, s.2.)

§ 143-129. Procedure for letting of public contracts

Description: *Construction or repair work equal to or more than \$500,000 must be formally bid in compliance with this section.*

	<i>Estimated Project Cost</i>
<p><i>Formal Bids:</i></p> <ul style="list-style-type: none"> - 7-day advertisement in newspaper of general circulation in area of project (electronic ads if authorized by Board of Education, time & place where plans and specs are available, time & place for opening bids - 5% bid bond - Sealed bids - Bids opened in public - Bids recorded in minutes of Board of Education - Bidders provide performance & labor and materials payment bonds - Comply with minority participation requirements 	<i>\$500,000 +</i>
<p><i>Informal Bids:</i></p> <ul style="list-style-type: none"> - No advertisement required - No particular number of bids required - Bids may be obtained verbally, by electronic or written submission - Bid deposit not mandated but, at owner's option, may be required - Performance and payment bonds not mandated, but may be required by owner - Comply with minority participation requirements 	<i>\$30,000 to < \$500,000</i>

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or

purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or re-advertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

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

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

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

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

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

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

(c) Contract Execution and Security. – All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

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

(d) Use of Unemployment Relief Labor. – Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions – The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the

governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.

- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

- (7) Purchases of information technology through contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and G.S. 147-33.92(b).
- (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
- (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
- (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
- (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
- (12) Build-to-suit capital leases with a private developer under G.S. 115C-532.

(f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

- (1) The United States of America or any federal agency;
- (2) The State of North Carolina or any agency or political subdivision of the State;
or
- (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

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

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

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and

final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

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

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

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

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

RPTAs and RTAs may adopt regulations to implement this subsection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1.)

§ 143-129.1. Withdrawal of bid

Description: Bidder can withdraw a bid within 72 hours, if a clerical or mathematical mistake was made during calculations of the project at hand.

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

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. If the

work or purchase is relet for bids, under no circumstances may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

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

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

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

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a Class 1 misdemeanor. (1977, c. 617, s. 1; 1993, c. 539, s. 1008; 1994, Ex. Sess., c. 24, s. 14(c); 2001-328, s. 2.)

§ 143-129.4. Guaranteed energy savings contracts

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are not governed by this Article but instead are governed by the provisions of that Part; except that

guaranteed energy savings contracts are subject to the requirements of G.S. 143-128.2 and G.S. 143-135.3. (1993 (Regular Session, 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k); 2001-496, s. 3.3; 2002-161, s. 11.)

Editor's Note: Session Laws 1993 (Regular Session, 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Regular Session, 1994), c. 775, which enacted this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Regular Session, 1994), c. 775, which enacted this section, in s. 10 provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997."

Effect of Amendments: The 1995 amendment, effective October 1, 1995, substituted "G.S. 143-128(f)" for "G.S. 143-128(c)."

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

Description: *Contracts regarding the purchase of information technology design, goods, installation and services shall be awarded to the best overall proposal as determined by the awarding authority. The awarding authority must consider cost and quality of goods and services.*

(a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 147-33.81(2), using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.

(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements.

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) The awarding authority may use procurement methods set forth by G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded. (2001-328, s. 3; 2004-199, s. 36(b); 2004-203, s. 10.)

§ 143-130. Allowance for convict labor must be specified

In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids

Description: Informal bids may be solicited when the cost estimate is between \$30,000 and \$300,000 for construction or repair work and between \$30,000 and \$90,000 for equipment or supplies.

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

(b) All public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office for Historically Underutilized Business, upon the completion of the project. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1; 1987 (Reg. Sess., 1988), c. 1108, s. 6; 1997-174, s. 5; 2001-496, s. 5.1; 2005-227, s. 2.)

§ 143-132. Minimum number of bids for public contracts

Description: Minimum of three bids must be submitted before a contract is awarded for formally bid projects.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required

by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(d1) each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991, governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2; 1989, c. 480, s. 2; 1989 (Regular Session, 1990), c. 1051, s. 4; 1991 (Regular Session, 1992), c. 985, s. 1; 1995, c. 358, s. 4; c. 367, ss. 1, 7; 2001-496, s. 9.)

Editor's Note: Session Laws 1989, c. 480, s. 3 provides: "The State Construction Office of the Department of Administration, the Division of School Planning of the Department of Public Education, the Division of Facility Services of the Department of Human Resources, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the School Board Association, and the North Carolina Hospital Association shall monitor and study the separate prime and single-prime contract systems in the bidding of public building projects and shall compile data on the total verifiable contractual, legal, and administrative cost to the public.

The State Building Commission shall develop the necessary forms and procedures to survey the public contracts let. The public bodies responsible for the award of contracts shall submit all necessary records to the appropriate office division, association, or individual as directed by the State Building Commission. The appropriate office, division, association, or individual shall maintain records of public contracts from bodies under their supervision or bodies that are their members.

An executive summary of data shall be submitted to the State Building Commission and such data shall be compiled and analyzed in a report to be made to the 1995 Session of the General Assembly."

Session Laws 1989, c.480, as amended by Session Laws 1989, c. 770, s. 74.17, provides in s. 3.1: "Contracts awarded pursuant to the separate prime contract system during the period beginning on June 8, 1989 and ending December 31, 1989 are not hereby invalidated for noncompliance with G.S. 143-128(c)."

Effective of Amendments: The 1989 amendment, effective June 28, 1989, designated the first paragraph as subsection (a) and subsection (b). As to the expiration of this amendment, see the Editor's Note.

§ 143-134.1. Interest on final payments due to prime contractors; payments to subcontractors

Description: Interest incurred on delayed final payments will be at a rate of 1% per month or a fraction thereof. No retainage on public construction projects costing less than \$100,000. Retainage rate is 5% until 50% of project is completed to the owners' satisfaction.

(a) On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. However, when the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on the project to complete his contract. Should final payment to any prime contractor beyond the date the contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, the prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on the unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the provisions of this section and the payment provisions of the contract documents that do not conflict with this section, or the prime contractor shall be paid interest on any unpaid amount at the rate stipulated above for delayed final payments. The interest shall begin on the date the payment is due and continue until the date on which payment is made. The due date may be established by the terms of the contract. Funds for payment of the interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of the conditions, interest on the reasonable sum shall not apply.

(b) Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.

(b1) **(Effective January 1, 2008)** No retainage on periodic or final payments made by the owner or prime contractor shall be allowed on public construction contracts in which the total project costs are less than one hundred thousand dollars (\$100,000). Retainage on periodic or final payments on public construction contracts in which the total project costs are equal to or greater than one hundred thousand dollars (\$100,000) is allowed as follows:

- (1) The owner shall not retain more than five percent (5%) of any periodic payment due a prime contractor.
- (2) When the project is fifty percent (50%) complete, the owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the contractor if the contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the architect, engineer, or owner has been corrected by the contractor and accepted by the architect, engineer, or owner. If the owner determines the contractor's performance is unsatisfactory, the owner may reinstate retainage for each subsequent periodic payment application as authorized in this subsection up to

the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.

- (3) A sub contract on a contract governed by this section may include a provision for the retainage on periodic payments made by the prime contractor to the subcontractor. However, the percentage of the payment retained: (i) shall be paid to the subcontractor under the same terms and conditions as provided in subdivision (2) of this subsection and (ii) subject to subsection (b3) of this section, shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Subject to subsection (b3) of this section, any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- (4) Within 60 days after the submission of the pay request and one of the following occurs, as specified in the contract documents, the owner with written consent of the surety shall release to the contractor all retainage on payments held by the owner: (i) the owner receives a certificate of substantial completion from the architect, engineer, or designer in charge of the project; or (ii) the owner receives beneficial occupancy or use of the project. However, the owner may retain sufficient funds to secure completion of the project or corrections on any work. If the owner retains funds, the amount retained shall not exceed two and one-half times the estimated value of the work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the consent of the contractor's surety.
- (5) The existence of any third-party claims against the contractor or any additive change orders to the construction orders to the construction contract shall not be a basis for delaying the release of any retainage on payments.

(b2) Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contract by or before the project is fifty percent (50%) complete if the contractor has performed satisfactorily. However, payment to the early finishing trades is contingent upon the owner's receipt of an approval or certification from the architect of record or applicable engineer that the work performed by the subcontractor is acceptable and in accordance with the contract documents. At that time, the owner shall reduce the retainage for such trades to five-tenths percent (0.5%) of the contract. Payments under this subsection shall be made no later than 60 days following receipt of the subcontractor's request or immediately upon receipt of the surety's consent, whichever occurs later. Early finishing trades under this subsection shall include structural steel, piling, caisson, and demolition. The early finishing trades for which line-item release of retained funds is required shall not be construed to prevent an owner or an owner's representative from identifying any other trades not listed in this subsection that are also allowed line-item release of retained funds. Should the owner or owner's representative identify any other trades to be afforded line-item release of retainage, the trade shall be listed in the original bid documents. Each bid document shall list the inspections required by the owner before accepting the work, and any financial information required by the owner to

release payment to the trades, except the failure of the bid documents to contain this information shall not obligate the owner to release the retainage if it has not received the required certification from the architect of record or applicable engineer.

(b3) Notwithstanding subdivisions (2) and (3) of subsection (b1) of this section, and subsection (b2) of this section, following fifty percent (50%) completion of the project, the owner shall be authorized to withhold additional retainage from a subsequent periodic payment, not to exceed five percent (5%) as set forth in subdivision (1) of subsection (b1) of this section, in order to allow the owner to retain two and one-half percent (2.5%) total retainage through the completion of the project. In the event that the owner elects to withhold additional retainage on any periodic payment subsequent to release of retainage pursuant to subsection (b2) of this section, the general contractor may also withhold from the subcontractors remaining on the project sufficient retainage to offset the additional retainage held by the owner, notwithstanding the actual percentage of retainage withheld by the owner of the project as a whole.

(b4) Neither the owner's nor contractor's release of retainage on payments as part of a payment in full on a line-item of work under subsection (b2) of this section shall affect any applicable warranties on work done by the contractor or subcontractor, and the warranties shall not begin to run any earlier than either the owner's receipt of a certificate of substantial completion from the architect, engineer, or designer in charge of the project or the owner receives beneficial occupancy.

(b5) The State or any political subdivision of the State may allow contractors to bid on bonded projects with and without retainage on payments.

(b6) Nothing in subsections (b1), (b2), (b3), and (b4) of this section shall operate to prevent any agency or any political subdivision of the State from complying with the requirements of a federal contract or grant when the requirements of the federal contract or grant conflict with subsections (b1), (b2), (b3), or (b4) of this section. Each bid document must specify when federal preemption of this section shall apply.

(c) **(Effective until January 1, 2008)** The percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

(d) Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner. (1959, c. 1328; 1967, c. 860; 1979, c. 778; 1983, c. 804, ss. 1, 2.)

(e) **(Effective January 1, 2008)** Nothing in this section shall prevent the owner from withholding payment to the contractor in addition to the amounts authorized by this section for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

Editor's Note: This act become effective January 1, 2008, and applies to contracts entered into on or after that date. Repeal section (c) after January 1, 2008.

§ 143-135. Limitation of application of Article

Description: *Labor for a State funded project can not be performed by an employee of the agency concerned without approval by the agency director. Maximum project cost is \$125,000. Maximum labor cost is \$50,000. Bidding of materials is required.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13; 1995, c. 274, s. 1.)

§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose

(a) It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in state construction projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is the effective and economical construction of public buildings.

(b) It is the policy of the State not to accept bids or proposals from, nor to engage in business with, and business that, within the last two years, has been finally found by a court or an administrative agency of competent jurisdiction to have unlawfully discriminated on the basis of race, gender, religion, national origin, age physical disability, or any other unlawful basis in its solicitation, selection, hiring, or treatment of another business. (1983, c. 692, s. 1; 2001-496, s. 5.2.)

§ 143-135.8. Prequalification

Bidders may be prequalified for any public construction project. (1995, c. 367, s. 8.)

Editor's Note: Session Laws 1995, c. 367, s. 11, made this effective October 1, 1995.

§ 143-135.9. "Best Value" information technology procurements.

Description: Requires that the awarding authority look at the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance. The "Government-Vendor Partnership" should equally share risk and reward.

(a) For purposes of this section:

- (1) "Best value" procurement means the selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.
- (2) "Government-Vendor Partnership" means a mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of complex technology.
- (3) "Information technology" includes electronic data processing and telecommunications goods and services, microelectronics, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design and/or redesign of business processes.
- (4) "Solution-Based Solicitation" means a solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(b) The intent of "Best Value" Information Technology procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Business process reengineering, system design, and technology implementation may be combined into a single solicitation.

(c) The acquisition of information technology by the State of North Carolina shall be conducted using the "Best Value" procurement method. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Office of Information Technology Services, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged.

(d) Any county, city, town or subdivision of the State may acquire information technology pursuant to this section. (1998-189, s. 1; 1999-434, s. 15; 1999-456, s. 39.)

§ 143-135.26. Powers and duties of the Commission

Description: Lists responsibilities and expectations of the State Building Commission

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

- (1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project, the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project and a construction manager at risk selected for each capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer, consultant or construction manager at risk except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the designer, consultant, or the construction manager at risk and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible and accountable for the final selection of the designer, consultant, or construction manager at risk. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided, however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning only; provided, further, the Director of the Budget, after consultation with the State Construction Office, may waive the 60-day requirement for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects. The Director of the Budget also may, after consultation with the State Construction Office, schedule the availability of design and construction funds for capital improvement projects for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer.

- (2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement and community college buildings, as defined in subdivision (4) of this section. The rules shall provide for a specific time frame for plan review and approval and permit issuance by each agency, consistent with applicable laws. The time frames shall be established to provide for expeditious review, approval, and permitting of State capital improvement projects and community college buildings. To further expedite the plan review, approval, and permit process, the State Building Commission shall develop a

standard memorandum of understanding to be executed by the funded agency and all reviewing agencies for each State capital improvement project. The memorandum of understanding, at minimum, shall include provisions for establishing:

- a. The type and frequency of plan reviews.
 - b. The submittal dates for each plan review.
 - c. The estimated plan review time for each review and reviewing agency.
 - d. A schedule of meeting dates.
- (2a) To adopt rules exempting specified types of State capital improvement projects, including community college buildings as defined in subdivision (4) of this section, from plan review.
 - (3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.
 - (4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings, as defined in G.S. 143-336, requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129, and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects and community college buildings.
 - (5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.
 - (6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.
 - (7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its work.
 - (8) To review the State's provisions for ensuring the safety and health of employees involved with State capital improvement projects, and to recommend to the appropriate agencies and to the General Assembly, after consultation with the Commissioner of Labor, changes in the terms and conditions of construction contracts, State regulations, or State laws that will enhance employee safety and health on these projects.
 - (9) To authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128. An authorization under this subdivision for an alternative contracting method shall be granted only under the following conditions:
 - a. An authorization shall apply only to a single project.
 - b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.

- b1. The entity includes in its bid or proposal requirements that the contractor will file a plan for making a good faith effort to reach the minority participation goal set out in G.S. 143-128.2.
- c. The authorization must be approved by a majority of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law.

- (10) To adopt rules governing review and final approval of plans that are submitted to the State Construction Office pursuant to G.S. 58-31-40. The rules shall provide for the manner of submission of the plan by the owner, the type of structural work that may be completed by the owner pursuant to G.S. 58-31-40(c), and the expeditious review or completion of review of the plan in a manner that ensures that the building will meet the fire safety requirements of G.S. 58-31-40(b).
- (11) To develop dispute resolution procedures, including mediation, for subcontractors under any of the construction methods authorized under G.S. 143-128(a1) on State capital improvement projects, including building projects of The University of North Carolina, and community college buildings as defined in subdivision (4) of this section, for use by any public entity that has not developed its own dispute resolution process.
- (12) To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings as defined in subdivision (4) of this section, where the expenditure of public money does not exceed the amount specified in G.S. 143-64.34(b) or (c).
- (13) To submit an annual report of its activities to the Governor and the Joint Legislative Commission on Governmental Operations. (1987, c. 71, s. 1; c. 721, s. 2; c. 830, s. 79(a); 1989, c. 50; 1989 (Regular Session, 1990), c. 889; 1991 (Regular Session, 1992), c. 893, s. 1; 1993, c. 561, s. 29; 1995, c. 367, s. 10; 1996, 2nd Ex. Sess., c. 18, s. 10.1; 2001-496, s. 11; 2005-370, s. 2.)

Editor's Note: Session Laws 1987 (Regular Session, 1988), c. 1086, s. 123(b) provides: "(b) The Office of State Budget and Management may contract for and supervise all aspects of design, construction, or demolition of prison facilities designated in subdivisions (1) through (5) of subsection (a) of this section [s. 123 of c. 1086, which provided for prison facilities construction funds] without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143.64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1 (g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

"Construction of the dormitories set out in subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall be based on the existing design used for the new 104-man dormitories built in the South Piedmont Area of the Division of Prisons to comply with the consent judgment in the case of HUBERT v. WARD, allowing for site adaptations and other necessary modifications.

"This subsection expires upon completion of the capital projects designated in subdivisions (1) through (5) of subsection (a) of this section."

Session Laws 1989, c. 754, s. 28(a) provides: "(a) Of the funds appropriated in Section 4 of this act to the Office of State Budget and Management for the purpose of construction of prison facilities, the Office of State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of prison facilities without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50

through 113A-66, 133-1.1(b), and 133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date."

As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Regular Session, 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Regular Session, 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of Management and Budget from the requirements of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by 1991 Session Laws (Regular Session, 1992), c. 1044, s. 41(b), quoted under 143-64.10.

Session Laws 1993, c. 550, s. 6, effective July 1, 1993, provides that if the Secretary of Administration, after consultation with the Secretary of Correction, finds that the delivery of state prison and youth services facilities authorized to be constructed under that act must be expedited for good cause, the Office of State Construction of the Department of Administration may use alternative delivery systems and shall be exempt from several statutes, including this section, and rules implementing those statutes to the extent necessary to expedite delivery. Section 6 also sets out the provisions governing the exercise of the exemptions allowable and other relevant provisions.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4, provides: "(a) The Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of facilities in order to implement the repairs and renovations of the Western Justice Academy under the provisions of this section without being subject to the following statutes and rules implementing those statutes: G.S. 143-135.26, 143-131, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 113-1.1(g). The Department of Justice shall let contracts for all repairs and renovations of the Academy as soon as possible, but not later than December 1, 1996.

"The Department of Justice shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of facilities shall include a penalty for failure to complete the work by a specified date.

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments: The 1995 amendment, effective June 30, 1995, added subdivision (9). The 1996 Second Extra Session amendment, effective July 1, 1996, added the language beginning "provided, further, the Director of the Budget" through the end of the first paragraph of subdivision (1).

Chapter 153A

Counties

County Property

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1995, c. 17, s. 14.)

Local Modification: Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; Cabarrus: 1985, c. 194, s. 3; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin: 1981, c. 941; Gaston: 1995, c. 399, ss.1, 2; Granville: 1981, c. 941; Halifax: 1995 (Regular Session, 1996), c. 706; Greene: 1995, c. 399, ss. 1, 2; Johnston: 1981, c. 459; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Regular Session, 1996), c. 706; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1993 (Regular Session, 1994), c. 613, s. 1; 1995, c. 399, ss. 1, 2; Union: 1983, c. 150; Vance: 1981, c. 941; Wake: 1985, c. 337; Warren: 1981, c. 941; Watauga: 1989, c. 487, s. 1; Wilson: 1995 (Regular Session, 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

Editor's Note: This section and Local Modification notes have been set out above to reflect changes due to the codification of Session Laws 1989 (Regular Session, 1990), c. 885, ss.1, 2, and Session Laws 1991 (Regular Session, 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1, and c. 1001, s. 1.

Effect of Amendments: The 1995 amendment, effective March 23, 1995, deleted in other counties from the end of the section catch line.

§ 153A-164. Joint buildings

Description: *Counties may acquire or construct buildings in order to share office space for the involved employees.*

Two or more counties, cities, other units of local government (including local boards of education), or any combination of such governments may jointly acquire or construct public buildings to house offices, departments, bureaus, agencies, or facilities of each government. The governments may acquire any land necessary for a joint building or may use land already held by one of the governments.

In exercising the powers granted by this section, the governments shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1965, c. 682, s. 1; 1973, c. 822, s. 1.)

§ 153A-165. Leases

A county may lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Chapter 143, Article 8. (1973, c. 822, s. 1.)

§ 153A-331. Contents and requirements of ordinance.

Description: Authorize counties, in cooperation with local boards of education, to require subdividers to reserve land for later purchase of a school site.

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation. (1959, c. 1007; 1973, c. 822, s. 1; 1975, c. 231; 1987, c. 747, ss. 10, 17; 2005-426, s. 2(b).)

"§ 153A-360. Inspections of work in progress.

Description: Provisions to establish under what conditions a building permit is issued when an owner designs construction improvements or employs a design-build contractor to do the same.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes."

Chapter 160A

Cities and Towns

Contracts

§ 160A-20. Security interest

Description: Lists stipulations involved with the purchase of property, improvements, etc. Defines the term "unit of local government".

(a) Purchase. – A unit of local government may purchase, or finance or refinance the purchase of, real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Improvements. – A unit of local government may finance or refinance the construction or repair of fixtures or improvements on real property by contracts that create in some or all of the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for the construction or repair.

(c) Accounts. – A unit of local government may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of the advance funding are invested pending disbursement. A unit of local government may also use other accounts, such as debt service payment accounts and debt service reserve accounts, to facilitate transactions authorized by this section. To secure transactions authorized by this section, a unit of local government may also create security interests in these accounts.

(d) Nonsubstitution. – No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any fixture, improvement, project, or property financed, refinanced, or purchased pursuant to the contract.

(e) Oversight. – A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

- (1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
- (2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) Public Hospitals. – A nonprofit entity operating or leasing a public hospital may enter into a contract pursuant to this section only if the nonprofit entity will have an ownership interest in the property being financed or refinanced, including a leasehold interest. The security interest granted in the property shall be only to the extent of the nonprofit entity's property interest. In addition, any contract entered into by a nonprofit entity operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority that owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by the nonprofit entity.
- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank-eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a material, adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or would otherwise materially interfere with an anticipated financing by the nonprofit entity.

(f) Limit of Security. – No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section. The taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Public Hearing. – Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) Local Government Defined. – As used in this section, the term "unit of local government" means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
- (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
- (5b) A local airport authority that was created pursuant to a local act of the General Assembly.
- (6) A local school administrative unit whose board of education is authorized to levy a school tax.
- (6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

- (6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- (9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.
- (10) A regional natural gas district, as defined by Article 28 of this Chapter.
- (11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.
- (12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39. (1979, c. 743; 1987 (Regular Session, 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Regular Session, 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Regular Session, 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1; 1998-70, s. 1; 1998-117, s. 1; 1999-386, ss. 1, 2; 2001-414, s. 52; 2002-161, s. 10; 2003-259, s. 1; 2003-388, s. 3.)

Editor's Note: Session Laws 1989, c. 708, which amended this section, in ss. 2 and 3 provides:

Sec. 2. (a) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under G.S. 160A-20, subsections (a), (b), (c), and (f), as rewritten by this act, is hereby validated, ratified, and confirmed. Furthermore, such a contract may not be held invalid because it contains a nonsubstitution clause, or because no public hearing was advertised and held on the contract, or both.

(b) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under subsection (a) of this Section 2 or under G.S. 160A-20 as it existed prior to the ratification of this act or as rewritten by this act, except that the Local Government Commission did not approve the contract, is hereby validated, ratified, and confirmed.

Sec. 3. Nothing in this act shall be interpreted to limit or restrict the authority of cities, counties, or water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes to purchase, improve, or finance the purchase or improvement of real or personal property pursuant to any other applicable law, whether general, special, or local.

Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments: The 1995 amendment, effective July 19, 1995, added subdivision (h)(8). The 1995 (Regular Session, 1996) amendment, effective June 21, 1996, added subdivision (h)(5a).

Legal Periodicals: For note, "Constitutional Expansion of Local Government Financing Alternatives: Wayne County Citizens Association v. Wayne County Board of Commissioners," see 70 N.C.L. Rev. 1947 (1992).

CASE NOTES

This section does not contravene N.C. Const. Art. V, 4, which authorizes the General Assembly to regulate local government finance. *Wayne County Citizens v. Wayne County Board of Commissioners.*, 328 N.C. 24, 399 S.E.2d 311 (1991).

County's installment purchase contract for construction of a new courthouse and jail was authorized by this section. *Wayne County Citizens v. Wayne County Board of Commissioners.*, 328 N.C. 24, 399 S.E.2d 311 (1991).

§ 160A-372. Contents and requirements of ordinance.

Description: Authorize cities, in cooperation with local boards of education, to require subdividers to reserve land for later purchase of a school site.

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance wherever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to

determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59; 1985, c. 146, ss. 1, 2; 1987, c. 747, ss. 9, 18; 1989 (Reg. Sess., 1990), c. 1024, s. 39; 2005-426, s. 29(a).)

"§ 160A-420. Inspections of work in progress.

Description: Provisions to establish under what conditions a building permit is issued when an owner designs construction improvements or employs a design-build contractor to do the same.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes."

North Carolina State Building Code

Fire Prevention Code:

Section 806 Decorative Vegetation

806.1 Natural cut trees. Natural cut trees, where permitted by this section, shall have the truck bottoms cut off at least 0.5 inch (12.7 mm) above the original cut and shall be placed in a support device complying with Section 806.1.2.

806.1.1 Restricted occupancies. Natural cut trees shall be prohibited in Group A, E (**Educational**), I-1, I-2, I-3, I-4, M, R-1, R-2 and R-4 occupancies.

Exceptions:

1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E (**Educational**), M, R-1 and R-2.
2. Trees shall be permitted within dwelling units in Group R-2 occupancies.
3. In religious assembly occupancies when in the opinion of the Fire Official adequate safeguards have been taken treated natural cut Christmas trees are permitted. The tree shall be treated and maintained flame resistant in accordance with the test protocol listed in Appendix H.

806.1.2 Support devices. The support device that holds the tree in an upright position shall be of a type that is stable and that meets all of the following criteria:

1. The device shall hold the tree securely and be of adequate size to avoid tipping over of the tree.
2. The device shall be capable of containing a minimum 2-day supply of water.
3. The water level, when full, shall cover the tree stem at least 2 inches (51 mm). The water level shall be maintained above the fresh cut and checked at least once daily.

806.1.3 Dryness. The tree shall be removed from the building whenever the needles or leaves fall off readily when a tree branch is shaken or if the needles are brittle and break when bent between the thumb and index finger. The tree shall be checked daily for dryness.

806.2 Artificial vegetation. Artificial decorative vegetation shall meet the flame propagation performance criteria of NFPA 701. Meeting the flame propagation performance criteria of NFPA 701 shall be documented and certified by the manufacturer in an approved manner.

806.3 Obstruction of means of egress. The required width of any portion of a means of egress shall not be obstructed by decorative vegetation.

806.4 Open flame. Candles and open flames shall not be used on or near decorative vegetation. Natural cut trees shall be kept a distance from heat vents and any open flame or heat-producing devices at least equal to the height of the tree.

806.5 Electrical fixtures and wiring. The use of unlisted electrical wiring and lighting on natural cut trees and artificial decorative vegetation shall be prohibited. The use of electrical wiring and lighting on artificial trees constructed entirely of metal shall be prohibited.

Note: Each year, as the holiday season approaches, we receive numerous inquiries related to the use of Christmas trees in schools. Because of the potential safety hazards to students and staff posed by the use of certain types of decorations, the following information is provided. Reference is made to the North Carolina State Fire Prevention Code, (2002 Edition). Specific inquiries as to the requirements or interpretation of the Code should be directed to the Engineering & Codes Division of the North Carolina Office of the State Fire Marshal at (919) 661-5880. Living Christmas trees in a balled condition with their roots protected by an earth ball may be permitted (Check with Local Fire Marshal) provided they are maintained in a fresh condition and are not allowed to become dry. The School Insurance Section of the Division of School Support of Department of Public Instruction strongly recommends careful placement of Christmas trees and other similar decorations away from exit traffic patterns, to include corridors and exit doors.