

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 93\***

Short Title: Improve State Construction Process. (Public)

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Sponsors: Senators Bingham; Albertson, Apodaca, Atwater, Berger of Rockingham, Blake, Boseman, Brock, Brown, Brunstetter, East, Forrester, Goodall, Hagan, Hunt, Jacumin, Jones, Pittenger, Preston, Purcell, Rand, Smith, Stevens, and Tillman.

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Referred to: Commerce, Small Business and Entrepreneurship.

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February 12, 2007

A BILL TO BE ENTITLED

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2 AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY  
3 DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE  
4 PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND  
5 INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN  
6 AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING,  
7 BONDING, AND DESIGNER SELECTION THRESHOLDS FOR STATE  
8 CONSTRUCTION CONTRACTS, BY DIRECTING THE STATE PERSONNEL  
9 OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND  
10 ENGINEERING POSITION CLASSIFICATIONS, AND BY APPROPRIATING  
11 FUNDS FOR ADDITIONAL PLAN REVIEW AND ENFORCEMENT  
12 PERSONNEL AT THE DEPARTMENT OF INSURANCE.

13       Whereas, delays in the completion of State capital improvement projects that  
14 occur during designer selection, the construction plan review process, construction, and  
15 the construction inspection process can result in millions of dollars in increased  
16 construction costs due to inflation; and

17       Whereas, the State Building Commission was created within the Department  
18 of Administration to direct and guide the State's capital facilities development and  
19 management program; and

20       Whereas, the State Building Commission has the responsibility for  
21 establishing the criteria for and overseeing designer selection for State facilities,  
22 adopting rules, coordinating the plan review, approval, and permit process for State  
23 capital improvements, and studying and recommending ways to improve the  
24 effectiveness and efficiency of the State's capital facilities development and  
25 management programs; and

1           Whereas, greater clarity, coordination, and accountability among the agencies  
2 responsible for the examination of plans and specifications for the construction and  
3 renovation of State facilities and for the construction inspections of those facilities, the  
4 owning agencies/institutions as defined in the State Construction Manual, designers, and  
5 contractors could reduce these delays and facilitate the timely completion of such  
6 projects resulting in significant dollar savings to the State; and

7           Whereas, the influx of project reviews occasioned by the 2000 Higher  
8 Education Bond Act created serious workload and resource issues for the State  
9 Construction Office and the Department of Insurance; and

10           Whereas, costly delays in the plan review and inspections process for State  
11 construction projects are occurring in part due to the inability of the State to attract  
12 qualified architects and engineers to conduct such reviews and inspections, and there are  
13 no plans at this time for a State Personnel Office market study of architect and  
14 engineering positions; Now, therefore,

15 The General Assembly of North Carolina enacts:

16           **SECTION 1.** The State Building Commission shall examine the State capital  
17 improvement process and shall establish or modify, as necessary, the guidelines for the  
18 selection of designers and the rules governing the design, plan review, and inspection of  
19 State building projects. In carrying out its examination and proposing and modifying its  
20 guidelines and rules, the Commission shall consult with all of the State departments  
21 involved in the capital improvement process, including (i) the agencies responsible for  
22 the examination of plans and specifications for the construction and renovation of State  
23 facilities and for the supervision and inspection of all work done and materials used in  
24 the construction or renovation of State facilities ("review and inspection agencies"), (ii)  
25 the owning agencies/institutions as defined in the State Construction Manual ("owning  
26 agencies"), (iii) the Board of Governors of The University of North Carolina, and (iv)  
27 the State Board of Community Colleges. In carrying out the provisions of this section,  
28 the Commission shall:

- 29           (1) Examine the State Construction Manual for opportunities to increase  
30 the accountability of all parties to the State capital improvement  
31 process.
- 32           (2) Determine whether the review and inspection agencies have  
33 sufficiently formalized and documented their review standards and  
34 processes.
- 35           (3) Oversee the proper documentation of review standards and processes  
36 where necessary.
- 37           (4) Facilitate the establishment of clear expectations for all parties to the  
38 process, including the owning agencies, review and inspection  
39 agencies, designers, and contractors. The Commission shall work with  
40 owning agencies and review and inspection agencies to develop a  
41 standard set of time measurements for the design process and the  
42 construction process and shall consider the development of other  
43 standard measures of performance for all the parties to the design,  
44 review, inspection, and construction process.

- 1 (5) Review the State's standard design contract for opportunities to  
2 strengthen the accountability of design firms to the owning agencies.  
3 In particular, the Commission shall consider the inclusion of a  
4 designer's e-mail address as a requirement of the standard design  
5 contract.

6 **SECTION 2.** The State Building Commission shall file an interim report on  
7 or before April 30, 2008, and a final report on or before December 31, 2008, with the  
8 Joint Legislative Commission on Governmental Operations, the Joint Legislative  
9 Oversight Committee on Capital Improvements, the Appropriations Committees of the  
10 House of Representatives and Senate, and the Fiscal Research Division of the General  
11 Assembly. The report shall cover the activities of the Commission in implementing the  
12 provisions of Section 1 of this act and any recommendations to improve the  
13 coordination and efficacy of the design, review, inspection, and construction process.  
14 The report also shall cover the implementation of the recommendations from the  
15 Legislative Study Commission on State Construction Inspections, including:

- 16 (1) Efforts to include owning agencies on all correspondence between  
17 review and inspection agencies, designers, and contractors.  
18 (2) Implementation of new services by review and inspection agencies,  
19 including the use of face-to-face meetings.  
20 (3) The impact of any statutory changes providing State agencies with  
21 greater flexibility in design and construction contracts.

22 **SECTION 3.** The State Personnel Office shall work with the Department of  
23 Administration, the Department of Insurance, and other State agencies employing  
24 architects and engineers to perform a market study of architect and engineer salaries and  
25 position classifications. The State Personnel Office shall complete the study as soon as  
26 possible, but in no event later than six months from the effective date of this section.

27 **SECTION 4.** G.S. 143-129(a) reads as rewritten:

28 "(a) Bidding Required. – No construction or repair work requiring the estimated  
29 expenditure of public money in an amount equal to or more than ~~three hundred thousand~~  
30 ~~dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or purchase of apparatus,  
31 supplies, materials, or equipment requiring an estimated expenditure of public money in  
32 an amount equal to or more than ninety thousand dollars (\$90,000) may be performed,  
33 nor may any contract be awarded therefor, by any board or governing body of the State,  
34 or of any institution of the State government, or of any political subdivision of the State,  
35 unless the provisions of this section are complied with.

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

43 **SECTION 5.** G.S. 44A-26(a) reads as rewritten:

1       (a) When the total amount of construction contracts awarded for any one project  
2 exceeds ~~three hundred thousand dollars (\$300,000)~~, five hundred thousand dollars  
3 (\$500,000), a performance and payment bond as set forth in (1) and (2) is required by  
4 the contracting body from any contractor or construction manager at risk with a contract  
5 more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a  
6 performance and payment bond may be required on any construction contract as  
7 follows:

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

20       **SECTION 6.** G.S. 143-64.34 reads as rewritten:

21       **"§ 143-64.34. Exemption of certain projects.**

22       (a) State capital improvement projects under the jurisdiction of the State Building  
23 ~~Commission~~ Commission, capital improvement projects of The University of North  
24 Carolina, and community college capital improvement projects, where the estimated  
25 expenditure of public money is less than ~~one hundred thousand dollars (\$100,000)~~, five  
26 hundred thousand dollars (\$500,000), are exempt from the provisions of this Article.

27       (b) ~~A capital improvement project of The University of North Carolina under~~  
28 ~~G.S. 116-31.11 where the estimated expenditure of public money is less than three~~  
29 ~~hundred thousand dollars (\$300,000) is exempt from this Article if all of the following~~  
30 ~~apply:~~

- 31           (1) ~~The architectural, engineering, or surveying services to be rendered are~~  
32 ~~under an open end design agreement.~~
- 33           (2) ~~The open end design agreement has been publicly announced.~~
- 34           (3) ~~The open end design agreement complies with procedures adopted by~~  
35 ~~the University and approved by the State Building Commission under~~  
36 ~~G.S. 116-31.11(a)(3).~~

37       (c) ~~A community college capital improvement project where the estimated~~  
38 ~~expenditure of public money is less than three hundred thousand dollars (\$300,000) is~~  
39 ~~exempt from this Article if all of the following apply:~~

- 40           (1) ~~The architectural, engineering, or surveying services to be rendered are~~  
41 ~~under an open end design agreement.~~
- 42           (2) ~~The open end design agreement has been publicly announced.~~

1           (3) ~~The open end design agreement complies with procedures adopted by~~  
2           ~~the State Board of Community Colleges and approved by the State~~  
3           ~~Building Commission."~~

4           **SECTION 7.** There is appropriated from the General Fund to the  
5 Department of Insurance the sum of seven hundred seventy-seven thousand three  
6 hundred eighty-six dollars (\$777,386) for the 2007-2008 fiscal year and the sum of  
7 seven hundred twenty-nine thousand three hundred eighty six dollars (\$729,386) for the  
8 2008-2009 fiscal year to establish one building systems engineer III position, five  
9 building systems engineer II positions, and two State Building Code enforcement officer  
10 positions.

11           **SECTION 8.** Sections 1, 2, and 3 of this act are effective when they become  
12 law. Sections 4, 5, and 6 are effective when they become law and apply to projects that  
13 are funded by the General Assembly on or after July 1, 2007. Section 7 of this act  
14 becomes effective July 1, 2007.