

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-446
HOUSE BILL 73**

AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING AND DESIGNER SELECTION THRESHOLDS FOR STATE CONSTRUCTION CONTRACTS, AND BY DIRECTING THE STATE PERSONNEL OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND ENGINEERING POSITION CLASSIFICATIONS.

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

SECTION 1. The State Building Commission shall examine the State capital improvement process and shall establish or modify, as necessary, the guidelines for the selection of designers and the rules governing the design, plan review, and inspection of State building projects. In carrying out its examination and proposing and modifying its guidelines and rules, the Commission shall consult with all of the State departments involved in the capital improvement process, including (i) the agencies responsible for

the examination of plans and specifications for the construction and renovation of State facilities and for the supervision and inspection of all work done and materials used in the construction or renovation of State facilities (review and inspection agencies), (ii) the owning agencies/institutions as defined in the State Construction Manual (owning agencies), (iii) the Board of Governors of The University of North Carolina, and (iv) the State Board of Community Colleges. In carrying out the provisions of this section, the Commission shall:

- (1) Examine the State Construction Manual for opportunities to increase the accountability of all parties to the State capital improvement process.
- (2) Determine whether the review and inspection agencies have sufficiently formalized and documented their review standards and processes.
- (3) Oversee the proper documentation of review standards and processes where necessary.
- (4) Facilitate the establishment of clear expectations for all parties to the process, including the owning agencies, review and inspection agencies, designers, and contractors. The Commission shall work with owning agencies and review and inspection agencies to develop a standard set of time measurements for the design process and the construction process and shall consider the development of other standard measures of performance for all the parties to the design, review, inspection, and construction process.
- (5) Review the State's standard design contract for opportunities to strengthen the accountability of design firms to the owning agencies. In particular, the Commission shall consider the inclusion of a designer's e-mail address as a requirement of the standard design contract.

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

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

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

SECTION 4. G.S. 143-135.26(2) reads as rewritten:

- "(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."

SECTION 5. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 - 1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and
 - 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- a1. To organize and schedule, within three weeks of designer selection and before the design contract is let, a meeting of the stakeholders for each State capital improvement project to discuss plan review requirements and to define the terms of the memorandum of understanding developed by the State Building Commission pursuant to G.S. 143-135.26(2). The stakeholders shall include the funded agency, each State agency having plan review responsibilities for the project, and the selected designer. Notwithstanding the foregoing, the meeting need not be scheduled if the funded agency so requests.
- b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.
- e. To require all State agencies to use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

Except for sub-subdivisions b., b1., and e. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11."

SECTION 6. G.S. 143-129(a) reads as rewritten:

"(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~three hundred thousand dollars (\$300,000)~~ 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 readvertise 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."

SECTION 7. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

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

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

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

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

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

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

SECTION 8. Sections 4, 5, 6, and 7 of this act are effective when it becomes law and apply to projects that are funded on or after July 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:27 a.m. this 23rd day of August, 2007