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## Coates' Canons Blog: 2013 Public Purchasing and Contracting Legislative Update – What's Hot and What's Not

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The General Assembly's crossover deadline has come and gone, so now is a good time to

pause and take stock of pending legislation affecting public purchasing and contracting. Bills proposing changes to our state's public contracting statutes include authorizing design-build and public private partnership construction contracts, authorizing local preferences, and requiring E-Verify by construction contractors.

Some of these bills have made considerable progress thus far in the legislative session; others are still pending in the committee to which they were initially referred, which does not bode well for their ultimate success.

Bills of interest in the public procurement area are summarized below along with my very tentative assessment of which bills are and are not likely to pass this session. Keep reading to the end of this post to find out how you too can track bills you are interested in. And finally, when the General Assembly adjourns for the year, stay tuned for the School of Government's annual legislative summary webinars.

### ***What's Hot?***

The following bills affecting public purchasing and contracting have a reasonable likelihood of passing during the current legislative session – or, at least the bill met the crossover deadline:

**HB857** (Public Contracts/Construction Methods/DB/P3) authorizes public entities to use the design-build method or the public private partnership method for construction projects. While there are several other bills pending that authorize design-build and public private partnership contracts, HB857 has made the most progress through the legislative process. Including design-build as a statutorily authorized method of building construction and repair contracting is one of the North Carolina Association of County Commissioners' **legislative goals** for this session, and the bill has received considerable input from both local government and industry representatives. It most likely will pass.

For those who are not familiar with the design-build construction method, it is an integrated construction approach that delivers both design (architectural and engineering) and construction services under one contract with a single point of responsibility. Design-build is sometimes confused with construction management at-risk (CMR), which unlike design-build, is a currently authorized building construction method under **GS 143-128**. One fundamental difference between design-build and CMR is that, under CMR, the local government is required to contract separately with an architect and/or engineer for design services, while a design-build project involves a single contract with both the design professional and the contractor encompassing both the design and construction phases of the project.

It is not uncommon for the General Assembly to pass local bills authorizing individual cities and counties to use the design-build method or public private partnership method for local projects. During the current session, Buncombe County has

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already received design-build authorization for two economic development projects (**HB222/SL 2013-31** and **HB555/SL 2013-40**), and similar local acts are pending for the Town of Clinton (**HB133 / SB111**) and the Town of Cornelius (**HB195**). Onslow County has already received authorization for a public private partnership project (**SB75 / SL 2013-37**). The passage of HB857 would eliminate the need for these types of local acts.

**HB110 / SB611** (Public Contracts/Project Labor) prohibits a unit of government from requiring, prohibiting, or discriminating against a bidder or contractor for adhering to or not adhering to an agreement with a labor organization for a public construction project. The House passed its version of the bill by a vote of 108-2, so it is likely to pass the Senate as well. A similar bill passed by the House (**HB872, Protect NC Right?To?Work**) makes void and unenforceable any contract provision that requires a contractor or subcontractor to hire union workers.

**SB547 / HB645** (Energy Savings Contracting Amendments) requires contractors who are qualified to bid on guaranteed energy savings contracts (GESC) to be prequalified by the State Energy Office. The bill also revises some of the RFP procedures for entering into a GESC, and stipulates the specific methods of measuring annual energy savings under a GESC. The Senate passed its version of this bill unanimously, so it will likely receive favorable consideration in the House. For more information about GESCs, see the **GESC contracting process summary** on our **SOG Local Government Purchasing and Contracting website**.

**HB180** (Mechanics Liens/Technical Corrections) has already been enacted (**SL 2013-16**). This bill made technical corrections to the mechanics lien law revisions enacted by the General Assembly during the 2012 Short Session. I mention this bill mainly as a reminder that the new requirement to register a lien agent for construction projects *does not apply to public entities* as North Carolina law does not authorize the filing of liens against units of government.

**HB449** (State Contracts/Furniture) makes furniture vendors on the federal GSA furniture schedule qualified for state furniture contracts. This bill has passed both chambers and is awaiting the Governor's signature.

**SB78 / HB56** (Amend State Contract Review Laws) creates a new contract management section of the Department of Administration's Division of Purchase and Contract to improve management and administration of large state contracts. Since both the Senate and House have passed their respective versions of this bill and each are pending in the other chamber, it's likely that one of them will be enacted.

**HB701** (IT Purchasing/Convenience Contracts) authorizes state agencies to purchase IT goods and services from multi-party cooperative convenience contracts approved by the State Chief Information Officer. Having passed the House unanimously, the bill will likely be viewed favorably by the Senate.

**HB289** (State Computer Equipment/Buy Refurbished) requires the state CIO and Department of Administration to offer state agencies and local government the option of purchasing refurbished computer equipment from registered computer equipment refurbishers. The language in this bill is not codified, meaning it is not styled as an amendment to an existing statute. It is therefore unclear whether the General Assembly intends this purchasing option to be treated as an exemption to competitive bidding requirements such as those found in **GS 143-129(e)**, but presumably the authorization would operate the same as a codified bidding exemption. The bill passed the House unanimously so it will likely pass the Senate as well.

**HB754** (Lease Purchase of Real Property/Comm. Coll.) authorizes community colleges to use lease purchase and installment purchase contracts for acquiring real property when only local funds are used. This bill passed the House unanimously and has already cleared the Senate Education Committee, so it appears to enjoy widespread support.

**SB236** (Counties Responsible for School Construction) authorizes a county to assume responsibility for construction and ownership of public school facilities. Although this bill passed the Senate, the controversy it generated makes predicting its ultimate fate difficult. In its current form the bill only applies to nine counties: Beaufort, Dare, Davie, Guilford, Harnett, Lee, Rockingham, Rowan, and Wake.

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**SB42** (Charter School/Govt. Unit) adds charter schools to the property disposal statute that authorizes property conveyances between units of government (GS 160A-274). This bill passed the Senate on a strong 42-3 vote, so it will likely pass the House as well. On the other hand, **SB575** (Counties May Fund Charter School Capital) which authorizes counties to fund capital projects for charter schools, remains pending in the Senate, so its fate is less clear.

### ***What's Not?***

The following bills did not meet the crossover deadline, so unless the contents of the bill become included in another piece of legislation at some point during the remainder of the session or are determined to fall into an appropriations or finance category (which is not likely at this point in the session), the bill – and its contents – will likely receive no further consideration this session.

Several bills propose local or resident bidder preferences: **HB284** (Local Contracts/Local Bidder Preference) authorizes cities and counties to give a price-match bid preference to local bidders for construction and purchase contracts if the local bidder's bid is within 5% or \$10,000 (whichever is less) of the nonlocal low bidder. A "local bidder" is defined as a business that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is in the city or county giving the preference. **SB232** (Public Contracts/Local Business Preference) is similar to HB284. **SB19** (Bldg. Contracts/Local Business Participation) gives a somewhat different twist to local preference bills – it mandates that cities and counties require bidders on building construction projects to make good faith efforts to solicit participation by local businesses and subcontractors under a process similar to that required for historically underutilized businesses [HUB]. **HB728** (NC First) codified Governor Perdue's Executive Order 50 which established a price-match bid preference for in-state bidders on state agency purchase contracts. As written, the bill only applies to state agency contracts, not local government contracts.

**HB160** (Public Contracts/Illegal Immigrants) prohibits state and local government construction and purchase contracts with contractors who employ illegal immigrants and requires contractors to use the E-Verify program to verify the legal employment status of their employees.

**HB906** (N.C. Public Contractor Safety Act) requires prequalification of construction contractors and subcontractors based on occupational health and safety records.

**SB186** (Notice Publication by Counties and Cities) authorizes cities and counties to give public notice by electronic means only in lieu of publication in the newspaper. This authorization would apply to all legal notices for which newspaper publication is currently required, including those for bidding and property disposal.

**SB125** (Public Meeting/Records Law Violations) makes violations of the state's open meetings and public records laws a Class 3 misdemeanor.

### ***How You Can Track Bills***

It's not too late in the session to do some bill tracking of your own. The School of Government's online Daily Bulletin has a number of new features (see Aimee Wall's **blog post**) including a really cool bill tracking function that you can customize based on your own areas of interest. To subscribe to the Daily Bulletin, visit our **Legislative Reporting Service Website**. If you're with a local government and are interested in our special government subscription opportunity, contact Kathryn Hooker at 919.966.4120.

## **Links**

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