

# 2017 Legislative Summary: Public Contracting and Property Disposal

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The North Carolina General Assembly adjourned the 2017 regular legislative session on June 30, 2017. Under the most recent adjournment resolution, the legislature will reconvene on January 10, 2018, during which time it may take up limited categories of legislative business and may reconvene additional times prior to the 2018 Short Session which is scheduled to convene on May 16, 2018. Legislation enacted as of October 5<sup>th</sup> affecting public contracting and property disposal is summarized below. Also included in this summary are bills still pending upon adjournment which are eligible for consideration in the 2018 short session.

## I. Public Bills

### Divestment from Companies that Boycott Israel

S.L. 2017-193 (H161), “Divestment from Companies that Boycott Israel,” creates a new Article 6G of Chapter 147 prohibiting the investment of state funds in or contracting with any company that boycotts or is involved in a boycott of Israel. The term “company” is broadly defined to include business and commercial enterprises as well as associations and other organizations. The term “boycotts or is involved in the boycott of Israel” means “engaging in refusals to deal, terminating business activities, or

taking actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations specifically with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories.” Excluded from this definition are ordinary business decisions or actions with an economic impact of less than twenty million dollars (\$20,000,000) in a 12-month period.

The State Treasurer is charged with the responsibility of developing and publishing a list of companies that meet this definition (it is likely that the Treasurer will publish this list on its website as it does with companies it has identified under the Iran Divestment Act).

State agencies and all units of local government are prohibited from entering into contracts costing over \$1,000 with any entity included on the Treasurer’s Israel boycott list (a “restricted company”). A contract with a restricted company is void by operation of the statute. Contracts currently in effect with restricted companies may remain in effect until the contract expires. The only exception to the prohibition are contracts costing \$1,000 or less.

The Israel boycott contracting prohibition does not include a requirement that either the company or the governmental entity certify that the company is not on the

Treasurer's list of restricted companies. Thus, no separate certification document or affidavit is legally required.

Despite the lack of certification requirement, local governments should be mindful of the contracting prohibition and monitor the Treasurer's list of restricted companies to ensure that they do not inadvertently contract with a company on that list. Local governments may wish to consider including a standard provision in all contracts similar to that which many already include for Iran Divestment Act and [E-Verify](#) compliance. Such a provision could simply state that the vendor or contractor certifies that it has not been designated by the North State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. There is no harm in including such a provision in all contracts, although some companies may insist on removing the provision since there is no certification requirement in the statute.

Unlike the E-Verify contracting prohibition, the Israel boycott contracting prohibition does not extend to a contractor's subcontractors. It only applies to the entity with which the state agency or local government is contracting directly.

This legislation became effective on July 27, 2017. The State Treasurer is required to adopt a policy to implement the law by November 1, 2017, and then publish the list of restricted companies within 120 days after adopting the policy. Thus, it will be several months before the list of restricted companies is available. Local governments need not worry about contracting with a restricted company before the Treasurer publishes its list because it is the inclusion of

a company on that list which triggers the contracting prohibition.

### Iran Divestment Act

[S.L. 2017-193 \(H161\)](#), "Divestment from Companies that Boycott Israel," also amends the [Iran Divestment Act](#) (IDA) in two significant ways. First, the legislation repeals [GS 147-86.59](#), eliminating the certification requirement. Under the previous law, contractors were required to certify either at the time a bid was submitted or at the time a contract was entered into that the contractor was not included on the Treasurer's list of companies that invested in the Iranian nuclear energy industry. With the certification requirement repealed, contractors no longer need to provide this certification and local governments no longer need to require it.

Despite the repeal of the certification requirement, local governments should be mindful that they are still prohibited from contracting with a company included on the Treasurer's IDA list, and that doing so renders the contract void by operation of the statute. Local governments should monitor the Treasurer's list of restricted companies (which is available on the [Treasurer's website](#) and updated every six months) to ensure that they do not inadvertently contract with a company on that list. Many local governments already include a standard provision in all contracts requiring that the contractor certify that it is not included on the Treasurer's IDA list. There is no harm in continuing to include this provision, although some companies may insist on removing it now that the certification requirement has been repealed. The second change to the IDA included in H161 is use of the term "company" instead

of “person” to define what entities a local government is prohibited from contracting with. The term “company” is defined in [GS 147-86.57\(1a\)](#) to mean “any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.” The bill then applies this new definition throughout the IDA to clarify that it is a “company” and not a “person” that is prohibited contracting which state agencies and local governments if the company is included on the Treasurer’s Iran Divestment list. This change removes confusion among some state agencies and local governments over whether the IDA certification requirement (now repealed) and contracting prohibition (still in effect) applied to inter-governmental contracts. With the use of the term “company” as it is now defined, it is clear that the IDA prohibition does not apply to contracts with other governmental agencies.

The IDA section of this legislation is effective October 1, 2017. Local governments should continue to comply with the certification requirement until this date.

### General Contractor Licensure

Section 2.13 of the Regulatory Reform Act of 2017 ([S.L. 2017-10; S131](#)) makes several changes to the licensure requirements for general contractors, including requiring that applicants for licensure be at least 18 years old, possess good moral character, provide evidence of financial responsibility, and pay

an application fee. The changes in the law become effective October 1, 2017, and apply to applications for licensure on or after that date.

### Refrigeration Contractors Licensure

Section 2.7 of the Regulatory Reform Act of 2017 ([S.L. 2017-10; S131](#)) expands and clarifies the categories of refrigeration contractor activities for which licensure is required to now include *commercial refrigeration* (installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components), *industrial refrigeration* (commercial refrigeration with the use of ammonia as a refrigerant gas), *refrigeration services* (all commercial refrigeration activities other than installation), and *transport refrigeration* (installation, maintenance, repairing, and servicing of transport refrigeration). Engaging in any of these activities without proper licensure is a criminal offense (punishable as a Class 3 misdemeanor). The law became effective April 27, 2017.

### Plumbing/HVAC Licensure

[S.L. 2017-15 \(S156\)](#) expands the activities regulated by licensing board for plumbing and HVAC contractors to include the following activities: verify, inspect, evaluate, and test. Contractors who engage in these activities for plumbing and HVAC systems must be licensed by the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors. As with other contractor licensure requirements, performing these activities without being properly licensed by the Board is a criminal offense (which is punishable as a Class 2

misdemeanor). The law became effective May 16, 2017.

### **Local Government Finance Officer Training**

[S.L. 2017-2015 \(S69\)](#) amends GS 159-25(d) to require the Local Government Commission to notify a local government finance officer and the finance officer's local government employer when the LCG requires the finance officer to receive training after the LGC has issued a unit letter to the local government for finance deficiencies. The local government employer is now required to notify the LCG in writing when the finance officer has completed the training. The law became effective July 12, 2017.

### **Public School Recycling Programs**

Under current law, 115C-47(41), local school systems are authorized to develop and implement recycling programs at public schools. Section 2.3 of the Regulatory Reform Act of 2017 ([S.L. 2017-10; S131](#)) amends this authorization to require public schools to comply with [GS 160A-327](#) which imposes limitations on local governments in establishing recycling programs that displace private companies that provide solid waste collection and recycling services. The law became effective April 27, 2017.

### **Surplus Computers for Low-Income Students**

Under [S.L. 2017-67 \(S312\)](#), the State Surplus Property Office is authorized to donate surplus state computers to non-profit organizations approved to refurbish the computers and donate them to low-income school students. When making donation decisions, the office must take into consideration the counties in which the computers will be donated to ensure all geographic locations in the state benefit

from the donations. The law became effective June 19, 2017.

Although this authorization is limited to the state surplus property office and may only be used for disposal of state surplus computers, local governments arguably have this authority under either [G.S. 160A-279](#) or [GS 160A-280](#).

### **Appropriations Act of 2017**

The 2017 budget bill, [S.L. 2017-57 \(S257\)](#), included several provisions affecting state agency purchasing and contracting; these provisions do not apply to local governments.

*Contracting Specialist and Certification Program* (Sec. 11A.12.(a)). By September 1, 2017, the Department of Health and Human Services must report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division a proposal for implementing and administering a contracting specialist training program for management level personnel within the Department. The proposal shall include a detailed description of the proposed program curriculum along with budget estimates for program implementation and administration based on the requirements of the program design.

*Volume Purchase Plans and Single Source Procurement* (Sec. 11H.6.). The Department of Health and Human Services, Division of Medical Assistance is authorized to contract for services, medical equipment, supplies, and appliances through volume purchase plans, single source procurement, or other contracting processes to improve cost containment.

*State Agency GESC Reports* (Sec. 14.1.(g)). Amends 143-64.17H changing the reporting requirements for state agencies using Guaranteed Energy Savings Contracts (GESC) submitted by the State Energy Office. Under the provision, the State Energy office must now report annually to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division.

These provisions became effective June 28, 2017.

## II. Public Bills Still Pending

### Auto-Renewal Contracts

H502 would define the term “consumer” for purposes of the requirements for automatic renewal contracts under GS 75-41 to mean “any natural person who purchases or leases any products or services pursuant to a contract containing an automatic renewal clause for personal, family, household, or agricultural purposes.” Although this definition would not resolve the challenges for local governments created by legislation enacted in 2016 (S.L. 2016-113; S770) strengthening vendor notice requirements, the bill does provide an opportunity to amend GS 75-41 to alleviate local government concerns about contracts rendered automatically void if the vendor fails to comply with the notice requirements. *Status: Passed House and pending in Senate; is eligible for consideration in the 2018 short session.*

Section 12 of a previous edition S16 also proposed an amendment to the auto-renewal contract statute (GS 75-41) by exempting from the definition of consumer

“real estate professionals licensed under Chapter 93A of the General Statutes,” which, as with H502, would not resolve the challenges for local governments created by last year’s strengthening of vendor notice requirements. The final version of S16 did not include this provision.

### E-Verify

H306 would apply the E-Verify contracting prohibition (and the necessary compliance requirements) to *all* government contracts with *all* contractors and vendors. H35 would lower the E-Verify hiring threshold from 25 workers to 15, thus increasing the number of vendors and contractors subject to the E-Verify contracting requirements with local governments. *Status: Both H306 and H35 passed the House and are pending in the Senate; both are eligible for consideration in the 2018 short session.*

### Public School Building Bond Act of 2017 (H866/S542)

Bills introduced in both the Senate and House proposed \$1.9 billion for public school construction needs to be funded by general obligation bonds subject to voter approval. The bond question would be placed on the ballot in the November 2018 general election. *Status: Each bill remains pending in its chamber of introduction; both are eligible for consideration in the 2018 short session.*

### Consumer Protection/Roofing Contracts (H816)

This bill would establish consumer protection measures for roofing contractors, including a requirement that all roof repair contracts be in writing and prohibitions against insurance scamming in disaster situations. *Status: Passed House and pending in Senate; eligible for consideration in the 2018 short session.*

### **State Surplus Equipment Auctions ([S510](#))**

This bill would require the State Surplus Agency to conduct 3 pilot live public auctions of state-owned equipment and vehicles. The auction must include live simulcast interactive bidding with at least seven days' prebidding. *Status: Passed Senate and pending in House; eligible for consideration in the 2018 short session.*

### **Job Order Contracting ([S607](#))**

This bill would establish a "Job Order Contracting" (JOC) method for contracting for construction and repair services. *Status: Pending in Senate (not yet considered by the House); unclear whether eligible for consideration in the 2018 short session.*

### **Interior Design Profession Act ([H590](#))**

This bill would create a voluntary (not mandatory) registration program within the Department of Insurance for individuals engaged in the practice of interior design and decoration. *Status: Passed House and pending in Senate; unclear whether eligible for consideration in the 2018 short session.*

### **Internet Infrastructure**

Two bills seek to address the need for increased access to internet services, especially in rural areas. [H68](#) would grant authorization for broad-band public-private partnerships, and [H390](#) would grant clear authority for counties to fund infrastructure for high-speed internet access. *Status: H68 passed House and pending in Senate; eligible for consideration in the 2018 short session. H390 remains pending in House.*

### **Electronic Advertising**

Similar to H205 that was vetoed (see summary under Section III. Defeated Bills), [S343](#) would have authorized a pilot program for counties to post legal notices on their

websites. The authorization would be limited to Buncombe, Durham, Forsyth, and Guilford Counties. S343 passed Senate and is pending in House; it is eligible for consideration in the 2018 short session.

### **Public Authority Permanent Plates ([H15](#))**

This bill would authorize the Division of Motor Vehicles to issue permanent registration plates for vehicles owned and operated by water and sewer authorities created pursuant to Article 1 of Chapter 162A. *Status: Passed the House and pending in the Senate Rules Committee; is eligible for consideration in the 2018 short session.*

## **III. Defeated Bills**

### **Robeson County Local Business Preference ([H416](#))**

Would have established a bid-match preference for local businesses in Robeson County for the award of County purchase and construction or repair contracts. *Status: defeated on 2<sup>nd</sup> reading in the House.*

### **Electronic Advertising**

[H205](#) was vetoed by the Governor on July 17, 2017. It would have authorized Guilford County, municipalities within the county, and the Guilford County Board of Elections to adopt ordinances allowing all legally required public notices to be published electronically on county and municipal websites in lieu of publication in the newspaper. The ordinance must require links to such notices on the main page of the local government's website along with emailed notices to requesting parties.

H205 also would have enacted a new GS 1-602 authorizing Guilford County to post legal notices on the county's website, including

legal notices required to be published by entities and individuals other than the county. When publishing on behalf of another, the county is authorized to charge a fee for this service.

Although the veto of H205 has not yet been overridden, the substance of that bill described above was incorporated into S181 which did pass and was ratified as [S.L. 2017-210](#) (S181). The authorization becomes effective December 1, 2017, and applies only to Guilford County and municipalities within that county.

#### **IV. Local Bills**

##### **Sanford-Lee County Airport Authority Changes**

Authorizes the Sandford-Lee Airport Authority to enter into certain contracts and leases for a term of up to 40 years, including general leases, contracts for flight operations, and concessions. [S.L. 2017-55 \(H426\)](#)

##### **Fayetteville SBE Program**

Amends the charter of the City of Fayetteville authorizing the City to establish a race- and gender-neutral Small Business Enterprise Program to enhance opportunities for small businesses in the Fayetteville area to participate in City contracts. [S.L. 2017-81 \(H198\)](#)

##### **College of the Albemarle Construction Flexibility**

Authorizes the Board of Trustees of the College of the Albemarle Community College to use state funds, including NC Connect bond funds, to construct a public safety facility located in Currituck County to which

the college's emergency services programs would be relocated. In constructing this project, the college is exempt from the provisions of [GS 143-341](#) under which the Department of Administration has supervisory authority over the design and construction of community college facilities in the formal bidding range. [S.L. 2017- 183 \(H656\)](#)

##### **Alamance-Burlington Schools Property Conveyance**

Authorizes the Alamance-Burlington Board of Education to exchange by direct negotiation the Elon elementary school property for property on which a new school will be constructed. [S.L. 2017-82 \(H393\)](#)

##### **Henderson County Law Enforcement Training Center**

Authorizes Henderson County to construct a law enforcement training center on the campus of the Blue Ridge Community College located within Henderson County, and, to the extent needed for county financing of the construction, authorizes the college's Board of Trustees to convey property to the county for this project. The county must comply with applicable bidding and finance laws in constructing the project. [S.L. 2017-21 \(H449\)](#)

##### **New Hanover County Downtown Development Project**

Authorizes New Hanover County to exercise any authority under G.S. 160A-458.3 (a statute only available for cities) to develop county-owned property in downtown Wilmington. [S.L. 2017-86 \(H397\)](#)

##### **Guilford County Electronic Advertising**

Authorizes Guilford County, municipalities within the county, and the Guilford County Board of Elections to adopt ordinances

allowing all legally required public notices to be published electronically on county and municipal websites in lieu of publication in the newspaper. The ordinance must require links to such notices on the main page of the local government's website along with emailed notices to requesting parties.

Also enacts a new GS 1-602 authorizing Guilford County to post legal notices on the county's website, including legal notices required to be published by entities and individuals other than the county. When publishing on behalf of another entity, the county is authorized to charge a fee for this service. [SL 2017-210](#) (S181)