

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 321\*

Short Title: Zoo and Zoo Funds Modifications. (Public)

Sponsors: Representatives E. Warren, Brubaker, Tarleton, Harrison (Primary Sponsors);  
M. Alexander, Hurley, Wiley, and Wray.

Referred to: State Government/State Personnel, if favorable, Commerce, Small Business, and  
Entrepreneurship.

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF  
THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD  
EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK  
OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND  
IMPLEMENTATION OF THE MANDATES OF THIS ACT; AND TO ESTABLISH THE  
NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION  
STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

**PART I: PURCHASING AND CONTRACTING AUTHORITY ON BEHALF OF THE  
NORTH CAROLINA ZOOLOGICAL PARK**

**SECTION 1.1.** Article 8 of Chapter 143 of the General Statutes is amended by  
adding a new section to read:

**"§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological  
Park.**

(a) Exemption. – The North Carolina Zoological Park is a State entity whose primary  
purpose is the attraction of, interaction with, and education of the public regarding issues of  
global conservation, ecological preservation, and scientific exploration, and that purpose  
presents unique challenges requiring greater flexibility and faster responsiveness in meeting the  
needs of and creating the attractions for the Park. Accordingly, the Department of Environment  
and Natural Resources may use the procedure set forth in this section, in addition to or instead  
of any other procedure available under North Carolina law, to contract with a non-State entity  
on behalf of the Park for the acquisition of goods and services where: (i) the contract directly  
results in the generation of revenue for the State of North Carolina; or (ii) the use of the  
acquired goods and services by the Park results in increased revenue or decreased expenditures  
for the State of North Carolina.

(b) Limitation. – Contracts executed pursuant to the exemption of subsection (a) of this  
section 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



1 considered in awarding contracts shall be identified in the request for  
 2 proposals.

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

11 (d) Promotional Rights. – Subject to the approval of the Department, a non-State entity  
 12 awarded a contract that results in increased revenue or decreased expenditures for the Park may  
 13 advertise, announce, or otherwise publicize the provision of services pursuant to award of the  
 14 contract."

15 **SECTION 1.2.** G.S. 143-135.9 reads as rewritten:

16 "**§ 143-135.9. ~~"Best Value" information technology procurements.~~Best Value**  
 17 **procurements.**

18 (a) ~~For purposes of this section:~~Definitions. – The following definitions apply in this  
 19 section:

20 (1) ~~"Best Value" procurement means the~~Best Value procurement. – The  
 21 selection of a contractor based on a determination of which proposal offers  
 22 the best trade-off between price and performance, where quality is  
 23 considered an integral performance factor. The award decision is made  
 24 based on multiple factors, including: total cost of ownership, meaning the  
 25 cost of acquiring, operating, maintaining, and supporting a product or  
 26 service over its projected lifetime; the evaluated technical merit of the  
 27 vendor's proposal; the vendor's past performance; and the evaluated  
 28 probability of performing the requirements stated in the solicitation on time,  
 29 with high quality, and in a manner that accomplishes the stated business  
 30 objectives and maintains industry standards compliance.

31 (2) ~~"Government Vendor Partnership" means a~~Government-Vendor partnership.  
 32 – A mutually beneficial contractual relationship between State government  
 33 and a contractor, wherein the two share risk and reward, and value is added  
 34 to the procurement of ~~complex technology-needed goods or services.~~

35 (3) ~~"Information technology" includes electronic~~Information technology. –  
 36 Electronic data processing and telecommunications goods and services,  
 37 microelectronics, software, information processing, office systems, any  
 38 services related to the foregoing, and consulting or other services for design  
 39 and/or redesign of business processes.

40 (4) ~~"Solution-Based Solicitation" means a~~Solution-Based solicitation. – A  
 41 solicitation in which the requirements are stated in terms of how the product  
 42 or service being purchased should accomplish the business objectives, rather  
 43 than in terms of the technical design of the product or service.

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

49 (c) Information Technology. – The acquisition of information technology by the State  
 50 of North Carolina shall be conducted using the ~~"Best Value"~~Best Value procurement method.  
 51 For purposes of this section, business process reengineering, system design, and technology

1 implementation may be combined into a single solicitation. For acquisitions which the  
2 procuring agency and the Division of Purchase and Contracts or the Office of Information  
3 Technology Services, as applicable, deem to be highly complex or determine that the optimal  
4 solution to the business problem at hand is not known, the use of Solution-Based Solicitation  
5 and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or  
6 subdivision of the State may acquire information technology pursuant to this section.

7 ~~(d) Any county, city, town or subdivision of the State may acquire information~~  
8 ~~technology pursuant to this section.~~

9 (e) North Carolina Zoological Park. – The acquisition of goods and services under a  
10 contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of  
11 Environment and Natural Resources on behalf of the North Carolina Zoological Park may be  
12 conducted using the Best Value procurement method. For acquisitions which the procuring  
13 agency deems to be highly complex, the use of Government-Vendor partnership is authorized."

## 14 15 **PART II: EXPANSION OF UMSTEAD ACT EXEMPTION FOR THE NORTH** 16 **CAROLINA ZOOLOGICAL PARK**

17 **SECTION 2.1.** G.S. 66-58(b) is amended by adding a new subdivision to read:

18 "(b) The provisions of subsection (a) of this section shall not apply to:

19 ...

20 (26) The North Carolina Zoological Park."

21 **SECTION 2.2.** G.S. 66-58(c)(18) is repealed.  
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## 23 **PART III: ADMINISTRATIVE IMPROVEMENTS TO THE NORTH CAROLINA** 24 **ZOOLOGICAL PARK OPERATIONS**

25 **SECTION 3.1.** The Secretary of the Department of Environment and Natural  
26 Resources shall work with the North Carolina Zoological Park to do the following:

27 (1) Examine all purchasing and contracting policies and procedures. The  
28 Department shall identify opportunities for delegating purchasing and  
29 contracting responsibilities to the Park where appropriate. For purchases and  
30 contracts involving promotion and advertising, the Department shall  
31 consider increasing the amount over which the Park must solicit competitive  
32 bids or quotes to five thousand dollars (\$5,000).

33 (2) Continue negotiations with the Office of Information Technology Services  
34 regarding the implementation of Article 3D of Chapter 147 of the General  
35 Statutes.

36 (3) Identify and address any other administrative concerns of the Park.

37 **SECTION 3.2.** The Secretary of the Department of Environment and Natural  
38 Resources shall review the current Memorandum of Understanding between the Department  
39 and the North Carolina Zoological Society. The Secretary shall work with the Society to make  
40 appropriate revisions to or replace the Memorandum, as needed.  
41

## 42 **PART IV: REPORT**

43 **SECTION 4.** The Department of Environment and Natural Resources shall report  
44 to the North Carolina Zoological Park Funding and Organization Study Committee and to the  
45 Fiscal Research Division of the Legislative Services Office on the progress and implementation  
46 of Parts I and III of this act no later than January 15, 2010.  
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## 48 **PART V: ESTABLISHMENT OF COMMITTEE**

49 **SECTION 5.1.** Committee Established. – The North Carolina Zoological Park  
50 Funding and Organization Study Committee is hereby established.

1           **SECTION 5.2.** Membership. – The Committee shall consist of 22 members as  
2 follows:

- 3           (1) Five members of the Senate appointed by the President Pro Tempore of the  
4 Senate.
- 5           (2) Five members of the House appointed by the Speaker of the House of  
6 Representatives.
- 7           (3) The Secretary of Environment and Natural Resources, or the Secretary's  
8 designee.
- 9           (4) The Director of the Zoological Park, or the Director's designee.
- 10          (5) The Secretary of Commerce, or the Secretary's designee.
- 11          (6) The Executive Director of the Division of Tourism, Film and Sports  
12 Development of the Department of Commerce, or the Executive Director's  
13 designee.
- 14          (7) The Chair of the North Carolina Zoological Park Council, or the Chair's  
15 designee.
- 16          (8) The Chair of the board of directors of the North Carolina Zoological Society,  
17 Inc., or the Chair's designee.
- 18          (9) Two additional representatives of the Zoo Society Board, who may be  
19 comprised of current or former members, one appointed by the President Pro  
20 Tempore of the Senate upon recommendation of the Chair of the Zoo  
21 Society Board, one appointed by the Speaker of the House of  
22 Representatives upon recommendation of the Chair of the Zoo Society  
23 Board.
- 24          (10) Two representatives from the public at large appointed by the President Pro  
25 Tempore of the Senate.
- 26          (11) Two representatives from the public at large appointed by the Speaker of the  
27 House of Representatives.

28           **SECTION 5.3.** Cochairs. – The Committee shall have three cochairs, one  
29 designated by the President Pro Tempore of the Senate and two designated by the Speaker of  
30 the House of Representatives from among their respective appointees. The Committee shall  
31 meet upon the call of the cochairs.

32           **SECTION 5.4.** Quorum. – A quorum of the Committee shall consist of 10  
33 members.

34           **SECTION 5.5.** Vacancies. – Any vacancy on the Committee shall be filled by the  
35 original appointing authority.

36           **SECTION 5.6.** Purpose and Duties. – The Committee shall study: (i) funding  
37 issues associated with the Zoological Park, including current and expected capital and  
38 operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the  
39 current organizational structure of the Zoological Park, and other potential organizational  
40 structures, including, but not limited to, reorganization as an authority, as a private nonprofit  
41 corporation, or other entity to determine which organizational structure would most effectively  
42 achieve the mission of the Zoological Park.

43           **SECTION 5.7.** Expenses of Members. – Members of the Committee shall receive  
44 per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6,  
45 as appropriate.

46           **SECTION 5.8.** Staff. – Upon the prior approval of the Legislative Services  
47 Commission, the Legislative Services Officer shall assign professional staff to the Committee  
48 to aid in its work.

49           **SECTION 5.9.** Consultants. – The Committee may hire consultants to assist with  
50 the study as provided in G.S. 120-32.02(b).

1           **SECTION 5.10.** Meetings. – The Committee may meet in the Legislative Building  
2 or the Legislative Office Building upon the approval of the Legislative Services Commission.

3           **SECTION 5.11.** Report. – The Committee shall report its findings and  
4 recommendations to the 2010 Regular Session of the 2009 General Assembly and the  
5 Environmental Review Commission on or before May 1, 2010, at which time the Committee  
6 shall terminate.

7           **SECTION 5.12.** Funding. – From funds appropriated to the General Assembly, the  
8 Legislative Services Commission shall allocate funds for the purpose of conducting the study  
9 provided for in this act.

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11 **PART VI: EFFECTIVE DATE**

12           **SECTION 6.** This act is effective when it becomes law.