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**AUGUST 27, 2013**

# EVERYTHING YOU NEED TO KNOW ABOUT **HOUSE BILL 857**

**SAFRAN**  
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- Design-Build
- Public-Private Partnerships
- Qualifications Policy for North Carolina Public Projects

**PRESENTED BY:**



**BRIAN SCHOOLMAN**  
SAFRAN LAW OFFICES

**WITH SPECIAL GUESTS:**

**SEN. TAMARA BARRINGER**  
NORTH CAROLINA GENERAL ASSEMBLY  
&  
**REP. DEAN ARP**  
NORTH CAROLINA GENERAL ASSEMBLY

## SPECIAL PRESENTATION ON **HOUSE BILL 817:**

- Highway Appropriations Bill
- DOT Public-Private Partnerships



**GENERAL JIM TROGDON**  
CHIEF DEPUTY SECRETARY OF OPERATIONS  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION



**GENERAL JIM TROGDON**  
CHIEF DEPUTY SECRETARY OF OPERATIONS - NC DEPARTMENT OF TRANSPORTATION

Jim Trogdon, a registered professional engineer with 27 years of experience in the transportation field, was named NCDOT's Chief Operations Officer in 2009. His NCDOT career began in 1985 as a highway engineer. In 2000, Trogdon was named NCDOT's Division 4 Engineer, overseeing highway maintenance, construction and operations within six counties (Edgecombe, Halifax, Johnston, Nash, Wayne and Wilson), consisting of 6,000 miles of highways, 1,200

bridges, and 850 employees. Trogdon later worked with the N.C. General Assembly as Director of Strategic Transportation Planning. In addition, Trogdon has more than three decades of military service. He earned a Masters of Strategic Studies at the U.S. Army War College, a Masters in Civil Engineering with a minor in statistics and computer science at N.C. State and a Bachelor's in Civil Engineering at N.C. State.



**BRIAN SCHOOLMAN**  
ATTORNEY - SAFRAN LAW OFFICES

Brian earned his Juris Doctor from the Duke University School of Law, and graduated magna cum laude from Claremont McKenna College, earning his B.A. with honors in Government. His practice includes construction litigation, commercial litigation, and appellate practice, in both state and federal courts. He is admitted to the North Carolina and California state bars, the 4th Circuit Court of Appeals, and all three Federal District

Courts in North Carolina. Brian is a member of the ABA Forum on the Construction Industry, and the North Carolina Bar Association Construction Law Section. He is also certified as a Superior Court Mediator by the North Carolina Dispute Resolution Commission (NCDRC). Brian has been with Safran Law Offices since 2003.



**SEN. TAMARA BARRINGER**  
NORTH CAROLINA GENERAL ASSEMBLY

Sen. Barringer is a Republican member of the North Carolina State Senate, representing District 17. Sen. Barringer currently serves as the Vice-Chairman of the Commerce Committee, as well as a member of the Appropriations on Health and Human Services, Education/Higher Education, Finance, Judiciary I, and State and Local Government Committees. As the former managing partner of the Barringer Law Firm,

LLP, she has over 25 years of experience in estate and tax planning, estate administration, and business and commercial law, serving entrepreneurial business clients. Sen. Barringer is an Assistant Clinical Professor of Law and Ethics at UNC Chapel Hill's Kenan-Flagler Business School.



**REP. DEAN ARP**  
NORTH CAROLINA GENERAL ASSEMBLY

Representative Arp is a professional engineer and president of Arp Engineering in Monroe, NC. He received his Master of Science degree in Civil Engineering from the University of North Carolina at Charlotte. He serves on the Advisory Board for the William States Lee College of Engineering. Rep. Arp was elected to the NC General Assembly in 2012, serving District 69. He currently serves as the Vice-Chairman of the Appropriations

Subcommittee on Transportation, and a member of the Appropriations, Education, Homeland Security, Military, and Veterans Affairs, Judiciary, Public Utilities and Energy, and Transportation Committees.

# HOUSE BILL 857 CRIB SHEET

## AN ACT AUTHORIZING PUBLIC CONTRACTS TO UTILIZE THE DESIGN-BUILD METHOD OR PUBLIC-PRIVATE PARTNERSHIP CONSTRUCTION CONTRACTS

Effective September 22, 2013

### 1. NC PUBLIC POLICY ADDS DESIGN-BUILD AND PUBLIC-PRIVATE PARTNERSHIP DELIVERY METHODS

HB 587 adds Design-Build and Public-Private Partnership delivery methods to qualification-based selection methods. G.S. §143-64.31(a).

### 2. REPORTING REQUIREMENT FOR PUBLIC ENTITIES

New reporting requirements have been added for public entities utilizing Construction Management at Risk, Design-Build, and Public-Private Partnership delivery methods. G.S. §143-64.31(b).

The new requirements include mandating a detailed explanation of why a particular delivery method was used as opposed to single-prime or multi-prime low-bid contracting, and any anticipated benefits to the public entity for using the chosen delivery method. G.S. §143-64.31(b)(5).

The public entity is required to submit the report no later than 12 months from the date the public body takes occupancy of the project. Failure to comply can result in prohibition from using alternative delivery methods, and may be enforced by unsuccessful bidders who may obtain injunctive relief. G.S. §143-64.31(d).

### 3. "DESIGN-BUILD" PROJECTS

A "Design-Builder" is defined as "an appropriately licensed person, corporation, or entity that ... provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor." G.S. §143-128.1B(2).

Design-builders will be selected pursuant to the qualifications-based system previously utilized for

selection of design professionals. G.S. §143-128.1A(b)-(c).

Public entities may use a true design-build method, or a design-build bridging contract, whereby the entity contracts separately for design services and for construction services from the same design-builder. G.S. §143-128.1B(a)(1). Under a bridging arrangement, the design professional shall prepare a design criteria package equal to 35% of the completed design documentation for the entire project. G.S. §143-128.1(c).

### 4. PUBLIC-PRIVATE PARTNERSHIP PROJECTS

A "public-private project" is defined as "a capital improvement project undertaken for the benefit of a governmental entity and a private developer pursuant to a development contract that includes construction of a public facility or other improvements..." G.S. §143-128.1C(a)(8).

Public-private projects may only be initiated by a public announcement by the public entity. G.S. §143-128.1(h)(i). Unsolicited bids are not authorized under the new law.

The development contract between the public entity and the private developer must require the developer to furnish at least 50% of the financing for the total cost of the project. G.S. §143-128.1C(a)(4).

The developer and its contractors must furnish performance and payment bonds similar to those required under Chapter 44A. G.S. §143-128.1C(g).

### 5. STUDY COMMISSION ON PREQUALIFICATION

The General Assembly will appoint a Study Committee to examine the issue of prequalification on public nontransportation construction projects for both State and local entities. The stated goal is to evaluate and develop "objective and nondiscriminatory systems for prequalification" to give all contractors "the opportunity to bid in open competition for public construction projects in the State."