

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 828  
Commerce Committee Substitute Adopted 5/11/09

Short Title: Bidding Process Changes/Maintenance and Op.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM AMOUNT AT WHICH PROJECTS MAY UNDERGO AN INFORMAL BIDDING PROCESS AND CLARIFY THE APPLICATION OF THIS PROCESS, TO CONTINUE THE DEPARTMENT OF TRANSPORTATION'S PROGRAM FOR PARTICIPATION OF DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES, AND TO AMEND VARIOUS STATUTES IN CHAPTER 136 OF THE GENERAL STATUTES TO CONFORM WITH THE DEPARTMENT'S FOCUS ON ALL MODES OF TRANSPORTATION INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 136-28.1 reads as rewritten:

**"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for ~~construction~~ construction, maintenance, or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) In those cases in which the amount of work to be let to contract for highway ~~construction, maintenance, construction~~ or repair is one million two hundred thousand dollars (\$1,200,000) or less, and for highway maintenance that is one million two hundred thousand dollars (\$1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget



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1 Act. In cases of a written determination by the Secretary of Transportation that the requirement  
2 for compatibility does not make public advertising feasible for the repair of ferryboats, the  
3 public advertising as well as the soliciting of informal bids may be waived.

4 (d) The construction, maintenance, and repair of the highway rest area buildings and  
5 facilities, weight stations and the Department of Transportation's participation in the  
6 construction of welcome center buildings shall be deemed highway construction, maintenance,  
7 or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Chapter 143C of the General  
8 Statutes, the State Budget Act.

9 (e) The Department of Transportation may enter into contracts for construction,  
10 maintenance, or repair without complying with the bidding requirements of this section upon a  
11 determination of the Secretary of Transportation or the State Highway Administrator that an  
12 emergency exists and that it is not feasible or not in the public interest for the Department of  
13 Transportation to comply with the bidding requirements.

14 (f) Notwithstanding any other provision of law, the Department of Transportation may  
15 solicit proposals under rules and regulations adopted by the Department of Transportation for  
16 all contracts for professional engineering services and other kinds of professional or specialized  
17 services necessary in connection with ~~highway construction, maintenance, or repair.~~ the  
18 planning, design, maintenance, repair, and construction of transportation infrastructure. In order  
19 to promote engineering and design quality and ensure maximum competition by professional  
20 firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to  
21 promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to  
22 reject any and all proposals is reserved to the Board of Transportation.

23 (g) The Department of Transportation may enter into contracts for research and  
24 development with educational institutions and nonprofit organizations without soliciting bids or  
25 proposals.

26 (h) The Department of Transportation may enter into contracts for applied research and  
27 experimental work without soliciting bids or proposals; provided, however, that if the research  
28 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article  
29 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is  
30 encouraged to solicit proposals when contracts are entered into with private firms when it is in  
31 the public interest to do so.

32 (i) The Department of Transportation may negotiate and enter into contracts with  
33 public utility companies for the lease, purchase, installation, and maintenance of generators for  
34 electricity for its ferry repair facilities.

35 (j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

36 (k) The Department of Transportation may accept bids under this section by electronic  
37 means and may issue rules governing the acceptance of these bids. For purposes of this  
38 subsection "electronic means" is defined as means relating to technology having electrical,  
39 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

40 (l) The Department of Transportation may enter into as many as two pilot contracts for  
41 public private participation in providing litter removal from State right-of-way. Selection of  
42 firms to perform this work shall be made using a best value procurement process and shall be  
43 without regard to other provisions of law regarding the Adopt-A-Highway Program  
44 administered by the Department. Acknowledgement of sponsors may be indicated by  
45 appropriate signs that shall be owned by the Department of Transportation. The size, style,  
46 specifications, and content of the signs shall be determined in the sole discretion of the  
47 Department of Transportation. The Department of Transportation may issue rules and policies  
48 necessary to implement this section.

49 (m) The Department of Transportation may enter into as many as two pilot contracts for  
50 public-private participation in providing real-time traveler information at State-owned rest  
51 areas. Selection of firms to perform this work shall be made using a best value procurement

1 process. Recognition of sponsors in the program may be indicated by appropriate  
2 acknowledgment for any services provided. The size, style, specifications, and content of the  
3 acknowledgment shall be determined in the sole discretion of the Department. Revenues  
4 generated pursuant to a contract initiated under this subsection shall be shared with Department  
5 of Transportation at a predetermined percentage or rate, and shall be earmarked by the  
6 Department to maintain the State owned rest areas from which the revenues are generated. The  
7 Department of Transportation may issue guidelines, rules, and policies necessary to administer  
8 a pilot program initiated under this subsection."

9 **SECTION 2.** G.S. 136-28.10(a) reads as rewritten:

10 "(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway  
11 Trust Fund construction and repair projects of five hundred thousand dollars (\$500,000) or less,  
12 and maintenance projects of five hundred thousand dollars (\$500,000) or less per year, the  
13 Board of Transportation may, after soliciting at least three informal bids in writing from Small  
14 Business Enterprises, award contracts to the lowest responsible bidder. The Department of  
15 Transportation may identify projects likely to attract increased participation by Small Business  
16 Enterprises, and restrict the solicitation and award to those bidders. The Board of  
17 Transportation may delegate full authority to award contracts, adopt necessary rules, and  
18 administer the provisions of this section to the Secretary of Transportation."

19 **SECTION 3.** The title of Chapter 136 of the General Statutes reads as rewritten:

20 **"Chapter 136.**

21 **Roads and Highways-Transportation."**

22 **SECTION 4.** Chapter 136 of the General Statutes is amended by adding a new  
23 section to read:

24 **"§ 136-4A. Transportation system.**

25 For the purpose of this Chapter, transportation system is defined as all modes of  
26 transportation infrastructure owned and maintained by the North Carolina Department of  
27 Transportation, including roads, highways, rail, ferry, aviation, public transportation, and  
28 bicycle and pedestrian facilities."

29 **SECTION 5.** G.S. 136-18(2) reads as rewritten:

30 **"§ 136-18. Powers of Department of Transportation.**

31 The said Department of Transportation is vested with the following powers:

32 ...

- 33 (2) To take over and assume exclusive control for the benefit of the State of any  
34 existing county or township roads, and to locate and acquire rights-of-way  
35 for any new roads that may be necessary for a State highway system, and  
36 subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire  
37 such additional rights-of-way as may be necessary for the present or future  
38 relocation or initial location, above or below ground, of telephone, telegraph,  
39 broadband communications, electric and other lines, as well as gas, water,  
40 sewerage, oil and other pipelines, to be operated by public utilities as defined  
41 in G.S. 62-3(23) and which are regulated under Chapter 62 of the General  
42 Statutes, or by municipalities, counties, any entity created by one or more  
43 political subdivisions for the purpose of supplying any such utility services,  
44 electric membership corporations, telephone membership corporations, or  
45 any combination thereof, with full power to widen, relocate, change or alter  
46 the grade or location thereof and to change or relocate any existing roads  
47 that the Department of Transportation may now own or may acquire; to  
48 acquire by gift, purchase, or otherwise, any road or highway, or tract of land  
49 or other property whatsoever that may be necessary for a State highway  
50 transportation system and adjacent utility rights-of-way: Provided, all  
51 changes or alterations authorized by this subdivision shall be subject to the

1 provisions of G.S. 136-54 to 136-63, to the extent that said sections are  
2 applicable: Provided, that nothing in this Chapter shall be construed to  
3 authorize or permit the Department of Transportation to allow or pay  
4 anything to any county, township, city or town, or to any board of  
5 commissioners or governing body thereof, for any existing road or part of  
6 any road heretofore constructed by any such county, township, city or town,  
7 unless a contract has already been entered into with the Department of  
8 Transportation."

9 **SECTION 6.** G.S. 136-19 reads as rewritten:

10 **"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;  
11 federal parkways.**

12 (a) The Department of Transportation is vested with the power to acquire either in the  
13 nature of an appropriate easement or in fee simple such rights-of-way and title to such land,  
14 gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry  
15 beds, lime or other earth or mineral deposits or formations, and such standing timber as it may  
16 deem necessary and suitable for transportation infrastructure construction, including road  
17 construction, maintenance, and repair, and the necessary approaches and ways through, and a  
18 sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to  
19 properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter  
20 set out. If the Department of Transportation acquires by purchase, donation, or condemnation  
21 part of a tract of land in fee simple for highway right-of-way as authorized by this section and  
22 the Department of Transportation later determines that the property acquired for transportation  
23 infrastructure, including highway right-of-way, or a part of that property, is no longer needed  
24 for ~~highway infrastructure~~ right-of-way, then the Department shall give first consideration to  
25 any offer to purchase the property made by the former owner. The Department may refuse any  
26 offer that is less than the current market value of the property, as determined by the  
27 Department. Unless the Department acquired an entire lot, block, or tract of land belonging to  
28 the former owner, the former owner must own the remainder of the lot, block, or tract of land  
29 from which the property was acquired to receive first consideration by the Department of their  
30 offer to purchase the property.

31 (b) Notwithstanding the provisions of subsection (a), if the Department acquires the  
32 property by condemnation and determines that the property or a part of that property is no  
33 longer needed for highway ~~right-of-way, right-of-way or other transportation project,~~ the  
34 Department of Transportation may reconvey the property to the former owner upon payment by  
35 the former owner of the full price paid to the owner when the property was taken, the cost of  
36 any improvements, together with interest at the legal rate to the date when the decision was  
37 made to offer the return of the property. Unless the Department acquired an entire lot, block, or  
38 tract of land belonging to the former owner, the former owner must own the remainder of the  
39 lot, block, or tract of land from which the property was acquired to purchase the property  
40 pursuant to this subsection.

41 (c) The requirements of this section for reconveying property to the former owner,  
42 regardless of whether such property was acquired by purchase, donation, or condemnation,  
43 shall not apply to property acquired outside the right-of-way as an "uneconomic remnant" or  
44 "residue".

45 (d) The Department of Transportation is also vested with the power to acquire such  
46 additional land alongside of the rights-of-way ~~or for transportation projects, including roads~~ as  
47 in its opinion may be necessary and proper for the protection of the transportation projects,  
48 including roads and roadways, and such additional area as may be necessary as by it  
49 determined for approaches to and from such material and other requisite area as may be desired  
50 by it for working purposes. The Department of Transportation may, in its discretion, with the  
51 consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so

1 doing, the interest of the public will be best served, even though said entire lot, block or tract is  
2 not immediately needed for right-of-way purposes.

3 (e) Notwithstanding any other provisions of law or eminent domain powers of utility  
4 companies, utility membership corporations, municipalities, counties, entities created by  
5 political subdivisions, or any combination thereof, and in order to prevent undue delay of  
6 highway projects because of utility conflicts, the Department of Transportation may condemn  
7 or acquire property in fee or appropriate easements necessary to provide ~~highway-transportation~~  
8 project rights-of-way for the relocation of utilities when required in the construction,  
9 reconstruction, or rehabilitation of a State ~~highway-transportation~~ project. The Department of  
10 Transportation shall also have the authority, subject to the provisions of G.S. 136-19.5(a) and  
11 (b), to, in its discretion, acquire rights-of-way necessary for the present or future placement of  
12 utilities as described in G.S. 136-18(2).

13 (f) Whenever the Department of Transportation and the owner or owners of the lands,  
14 materials, and timber required by the Department of Transportation to carry on the work as  
15 herein provided for, are unable to agree as to the price thereof, the Department of  
16 Transportation is hereby vested with the power to condemn the lands, materials, and timber and  
17 in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used  
18 by it exclusively.

19 (g) The Department of Transportation shall have the same authority, under the same  
20 provisions of law provided for construction of State ~~highways, transportation projects,~~ for  
21 acquirement of all rights-of-way and easements necessary to comply with the rules and  
22 regulations of the United States government for the construction of federal parkways and  
23 entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125  
24 acres per mile of said parkways, including roadway and recreational, and scenic areas on either  
25 side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or  
26 appropriated may, at the option of the Department of Transportation, be a fee-simple title. The  
27 said Department of Transportation is hereby authorized to convey such title so acquired to the  
28 United States government, or its appropriate agency, free and clear of all claims for  
29 compensation. All compensation contracted to be paid or legally assessed shall be a valid claim  
30 against the Department of Transportation, payable out of the State Highway Fund. Any  
31 conveyance to the United States Department of Interior of land acquired as provided by this  
32 section shall contain a provision whereby the State of North Carolina shall retain concurrent  
33 jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent  
34 jurisdiction to lands already conveyed to the United States Department of Interior for parkways  
35 and entrances to parkways.

36 (h) The action of the Department of Transportation heretofore taken in the acquirement  
37 of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United  
38 States government is hereby ratified and approved and declared to be a reasonable exercise of  
39 the discretion vested in the said Department of Transportation in furtherance of the public  
40 interest.

41 (i) When areas have been tentatively designated by the United States government to be  
42 included within a parkway, but the final survey necessary for the filing of maps as provided in  
43 this section has not yet been made, no person shall cut or remove any timber from said areas  
44 pending the filing of said maps after receiving notice from the Department of Transportation  
45 that such area is under investigation; and any property owner who suffers loss by reason of the  
46 restraint upon his right to use the said timber pending such investigation shall be entitled to  
47 recover compensation from the Department of Transportation for the temporary appropriation  
48 of his property, in the event the same is not finally included within the appropriated area, and  
49 the provisions of this section may be enforced under the same law now applicable for the  
50 adjustment of compensation in the acquirement of rights-of-way on other property by the  
51 Department of Transportation."

1           **SECTION 7.** G.S. 136-19.3 reads as rewritten:

2   "**§ 136-19.3. Acquisition of buildings.**

3       Where the right-of-way of a proposed highway or other transportation project necessitates  
4 the taking of a portion of a building or structure, the Department of Transportation may  
5 acquire, by condemnation or purchase, the entire building or structure, together with the right to  
6 enter upon the surrounding land for the purpose of removing said building or structure, upon a  
7 determination by the Department of Transportation based upon an affidavit of an independent  
8 real estate appraiser that the partial taking will substantially destroy the economic value or  
9 utility of the building or structure and (i) that an economy in the expenditure of public funds  
10 will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building  
11 without destroying the entire building; or (iii) that the convenience, safety or improvement of  
12 the ~~highway-transportation project~~ will be promoted thereby; provided, nothing herein  
13 contained shall be deemed to give the Department of Transportation authority to condemn the  
14 underlying fee of the portion of any building or structure which lies outside the right-of-way of  
15 any existing or proposed transportation project, including a public road, street or highway."

16           **SECTION 8.** G.S. 136-19.5 reads as rewritten:

17   "**§ 136-19.5. Utility right-of-way agreements.**

18       (a) Before the Department of Transportation acquires or proposes to acquire additional  
19 rights-of-way for the purpose of accommodating the installation of utilities as authorized by  
20 G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate  
21 utilities regarding the acquisition and use of the particular right-of-way and requiring the  
22 payment to the Department of Transportation for or recapture of all of its costs associated with  
23 that acquisition, including the use of funds allocated to such acquisition. Such agreements may  
24 take into account the fact that more than one utility can make use of the right-of-way. No such  
25 agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain  
26 under the control of the Department of Transportation.

27       (b) A prior agreement between the Department of Transportation and the affected  
28 utilities may be entered into but is not required when the acquisition of right-of-way is for the  
29 purpose of relocation of utilities due to construction, reconstruction, or rehabilitation of a State  
30 ~~highway-transportation~~ project. The Department of Transportation shall notify the affected  
31 utility whose facilities are being relocated and the affected utility may choose not to participate  
32 in the proposed plan for right-of-way acquisition. The decision not to participate in the  
33 proposed plan of right-of-way acquisition shall not affect any other rights the utility may have  
34 as a result of the relocation of its lines or pipelines.

35       (c) Whenever the Department of Transportation requires the relocation of utilities  
36 located in a right-of-way for which the utility owner contributed to the cost of acquisition, the  
37 Department of Transportation shall reimburse the utility owner for the cost of moving those  
38 utilities.

39       (d) Any additional right-of-way obtained pursuant to this section which is part of a  
40 railroad right-of-way shall be returned to the railroad or its successor in interest when the  
41 Department of Transportation and the affected utilities agree that the additional right-of-way is  
42 no longer useful for utility purposes and the Department of Transportation determines that it is  
43 no longer useful for ~~highway-transportation~~ purposes."

44           **SECTION 9.** G.S. 136-26 reads as rewritten:

45   "**§ 136-26. Closing of State ~~highways-transportation infrastructure~~ during construction;**  
46   **injury to barriers, warning signs, etc.**

47       If it shall appear necessary to the Department of Transportation, its officers, or appropriate  
48 employees, to close any ~~road or highway-transportation infrastructure~~ coming under its  
49 jurisdiction so as to permit of proper completion of work which is being performed, ~~such the~~  
50 Department of Transportation, its officers or employees, may close, or cause to be closed, the  
51 whole or any portion of ~~such road or highway-transportation infrastructure~~ deemed necessary to

1 be excluded from public travel. While any ~~such road or highway, transportation infrastructure,~~  
2 or portion thereof, is so closed, or while any ~~such road or highway, transportation infrastructure,~~  
3 or portion thereof, is in process of construction or maintenance, ~~such the~~ Department of  
4 Transportation, its officers or appropriate employees, or its contractor, under authority from  
5 ~~such the~~ Department of Transportation, may erect, or cause to be erected, suitable barriers or  
6 obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the  
7 ~~road or highway, transportation infrastructure,~~ or portion thereof, is closed; and may place  
8 warning signs, lights and lanterns on ~~such road or highway, transportation infrastructure,~~ or  
9 portions thereof. When ~~such road or highway infrastructure~~ is closed to the public or in process  
10 of construction or maintenance, as provided herein, any person who willfully drives into new  
11 construction work, breaks down, removes, injures or destroys any such barrier or barriers or  
12 obstructions on the road closed or being constructed, or tears down, removes or destroys any  
13 such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns  
14 so erected, posted or placed, shall be guilty of a Class 1 misdemeanor."

15 **SECTION 10.** G.S. 136-27.1 reads as rewritten:

16 **"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or**  
17 **sewer corporations or associations.**

18 The Department of Transportation shall pay the nonbetterment cost for the relocation of  
19 water and sewer lines, located within the existing State ~~highway transportation project~~  
20 right-of-way, that are necessary to be relocated for a State ~~highway transportation~~ improvement  
21 project and that are owned by: (i) a municipality with a population of 5,500 or less according to  
22 the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any  
23 water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural  
24 water system operated by county as an enterprise system; (v) any sanitary district organized  
25 pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a  
26 water or sewer system organized pursuant to Chapter 162A of the General Statutes and then  
27 sold or transferred to a municipality with a population of greater than 5,500 according to the  
28 latest decennial census."

29 **SECTION 11.** G.S. 136-27.2 reads as rewritten:

30 **"§ 136-27.2. Relocation of county-owned natural gas lines located on Department of**  
31 **Transportation right-of-way.**

32 The Department of Transportation shall pay the nonbetterment cost for the relocation of  
33 county-owned natural gas lines, located within the existing State ~~highway transportation project~~  
34 right-of-way, that the Department needs to relocate due to a State ~~highway transportation~~  
35 improvement project."

36 **SECTION 12.** G.S. 136-28.2 reads as rewritten:

37 **"§ 136-28.2. Relocated ~~highways; transportation infrastructure; contracts let by others.~~**

38 The Department of Transportation is authorized to permit power companies and  
39 governmental agencies, including agencies of the federal government, when it is necessary to  
40 relocate a ~~public highway transportation infrastructure~~ by reason of the construction of a dam,  
41 to let contracts for the construction of the relocated ~~highway transportation infrastructure.~~ The  
42 construction shall be in accordance with the Department of Transportation standards and  
43 specifications. The Department of Transportation is further authorized to reimburse the power  
44 company or governmental agency for betterments arising out of the construction of the  
45 relocated ~~highway transportation infrastructure,~~ provided the bidding and the award is in  
46 accordance with the Department of Transportation's regulations and the Department of  
47 Transportation approves the award of the contract."

48 **SECTION 13.** G.S. 136-28.4 reads as rewritten:

49 **"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**  
50 **women-owned businesses in ~~highway transportation~~ contracts.**

1 (a) It is the policy of this State, based on a compelling governmental interest, to  
2 encourage and promote participation by disadvantaged minority-owned and women-owned  
3 businesses in contracts let by the Department pursuant to this Chapter for the planning, design,  
4 preconstruction, construction, alteration, or maintenance of State highways, roads, streets, ~~or~~  
5 ~~bridges-bridges, and other transportation systems~~ and in the procurement of materials for these  
6 projects. All State agencies, institutions, and political subdivisions shall cooperate with the  
7 Department of Transportation and among themselves in all efforts to conduct outreach and to  
8 encourage and promote the use of disadvantaged minority-owned and women-owned  
9 businesses in these contracts.

10 (b) At least every five years, the Department shall conduct a study on the availability  
11 and utilization of disadvantaged minority-owned and women-owned business enterprises and  
12 examine relevant evidence of the effects of race-based or gender-based discrimination upon the  
13 utilization of such business enterprises in contracts for planning, design, preconstruction,  
14 construction, alteration, or maintenance of State highways, roads, streets, ~~or bridges-bridges,~~  
15 ~~and other transportation systems~~ and in the procurement of materials for these projects. Should  
16 the study show a strong basis in evidence of ongoing effects of past or present discrimination  
17 that prevents or limits disadvantaged minority-owned and women-owned businesses from  
18 participating in the above contracts at a level which would have existed absent such  
19 discrimination, such evidence shall constitute a basis for the State's continued compelling  
20 governmental interest in remedying such race and gender discrimination in ~~highway~~  
21 ~~transportation~~ contracting. Under such circumstances, the Department shall, in conformity with  
22 State and federal law, adopt by rule and contract provisions a specific program to remedy such  
23 discrimination. This specific program shall, to the extent reasonably practicable, address each  
24 barrier identified in such study that adversely affects contract participation by disadvantaged  
25 minority-owned and women-owned businesses.

26 (b1) Based upon the findings of the Department's Second Generation Disparity Study  
27 completed in 2004, hereinafter referred to as "Study", the program design shall, to the extent  
28 reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the  
29 Department shall implement a comprehensive antidiscrimination enforcement policy. As  
30 appropriate, the program design shall be modified by rules adopted by the Department that are  
31 consistent with findings made in the Study and in subsequent studies conducted in accordance  
32 with subsection (b) of this section. As part of this program, the Department shall review its  
33 budget and establish annual aspirational goals, not mandatory goals, in percentages, for the  
34 overall participation in contracts by disadvantaged minority-owned and women-owned  
35 businesses. These annual aspirational goals for disadvantaged minority-owned and  
36 women-owned businesses shall be established consistent with methodology specified in the  
37 Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the  
38 Department shall establish contract-specific goals or project-specific goals for the participation  
39 of such firms in a manner consistent with availability of disadvantaged minority-owned and  
40 women-owned businesses, as appropriately defined by its most recent Study, for each  
41 disadvantaged minority-owned and women-owned business category that has demonstrated  
42 significant disparity in contract utilization. Nothing in this section shall authorize the use of  
43 quotas. Any program implemented as a result of the Study conducted in accordance with this  
44 section shall be narrowly tailored to eliminate the effects of historical and continuing  
45 discrimination and its impacts on such disadvantaged minority-owned and women-owned  
46 businesses without any undue burden on other contractors. The Department shall give equal  
47 opportunity for contracts it lets without regard to race, religion, color, creed, national origin,  
48 sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and  
49 businesses otherwise qualified.

50 (c) The following definitions apply in this section:



1 (1) "Disadvantaged business" has the same meaning as "disadvantaged business  
2 enterprise" in 49 C.F.R. § 26.5 or any subsequently promulgated  
3 replacement regulation.

4 (2) "Minority" includes only those racial or ethnicity classifications identified by  
5 a study conducted in accordance with this section that have been subjected to  
6 discrimination in the relevant marketplace and that have been adversely  
7 affected in their ability to obtain contracts with the Department.

8 (d) The Department shall report semiannually to the Joint Legislative Transportation  
9 Oversight Committee on the utilization of disadvantaged minority-owned businesses and  
10 women-owned businesses and any program adopted to promote contracting opportunities for  
11 those businesses. Following each study of availability and utilization, the Department shall  
12 report to the Joint Legislative Transportation Oversight Committee on the results of the study  
13 for the purpose of determining whether the provisions of this section should continue in force  
14 and effect.

15 (e) This section expires August 31, ~~2009~~2014."

16 **SECTION 14.** G.S. 136-28.6 reads as rewritten:

17 **"§ 136-28.6. Participation by the Department of Transportation with private developers.**

18 (a) The Department of Transportation may participate in private engineering and  
19 construction contracts for State ~~highways-transportation systems~~.

20 (b) In order to qualify for State participation, the project must be:

21 (1) The construction of a ~~street or highway-transportation project~~ on the  
22 Transportation Improvement Plan adopted by the Department of  
23 Transportation; or

24 (2) The construction of a ~~street or highway-transportation project~~ on a mutually  
25 adopted transportation plan that is designated a Department of  
26 Transportation responsibility.

27 (c) Only those projects in which the right-of-way is furnished without cost to the  
28 Department of Transportation are eligible.

29 (d) The Department's participation shall be limited to fifty percent (50%) of the amount  
30 of any engineering contract and/or any construction contract let for the project.

31 (e) Department of Transportation participation in the contracts shall be limited to cost  
32 associated with normal practices of the Department of Transportation.

33 (f) Plans for the project must meet Department of Transportation standards and shall be  
34 approved by the Department of Transportation.

35 (g) Projects shall be constructed in accordance with the plans and specifications  
36 approved by the Department of Transportation.

37 (h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative  
38 Commission on Governmental Operations on all agreements entered into between a private  
39 developer and the Department of Transportation for participation in private engineering and  
40 construction contracts under this section.

41 (i) Counties and municipalities may participate financially in private engineering, land  
42 acquisition, and construction contracts for transportation projects ~~pertaining to streets or~~  
43 ~~highways~~ which meet the requirements of subsection (b) of this section within their  
44 jurisdiction."

45 **SECTION 15.** G.S. 136-28.9 reads as rewritten:

46 **"§ 136-28.9. Retainage – construction contracts.**

47 Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and  
48 147-86.11, or any other provision of the law, the Department of Transportation is authorized to  
49 enter into trust agreements with banks and contractors for the deposit of retainage and for the  
50 payment to contractors of income on these deposits, in connection with highway-transportation  
51 construction contracts, in trust accounts with banks in accordance with Department of

1 Transportation regulations, including deposit insurance and collateral requirements. The  
2 Department of Transportation may contract with those banks without trust departments in  
3 addition to those with trust departments. Funds deposited in any trust account shall be invested  
4 only in bonds, securities, certificates of deposits, or other forms of investment authorized by  
5 G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for  
6 interest to be paid on uninvested cash balances."

7 **SECTION 16.** G.S. 136-29 reads as rewritten:

8 "**§ 136-29. Adjustment and resolution of highway construction contract claim.**

9 (a) A contractor who has completed a contract with the Department of Transportation to  
10 construct a State ~~highway-transportation~~ project and who has not received the amount he claims  
11 is due under the contract may submit a verified written claim to the State Highway  
12 Administrator for the amount the contractor claims is due. The claim shall be submitted within  
13 60 days after the contractor receives his final statement from the Department and shall state the  
14 factual basis for the claim.

15 The State Highway Administrator shall investigate a submitted claim within 90 days of  
16 receiving the claim or within any longer time period agreed to by the State Highway  
17 Administrator and the contractor. The contractor may appear before the State Highway  
18 Administrator, either in person or through counsel, to present facts and arguments in support of  
19 his claim. The State Highway Administrator may allow, deny, or compromise the claim, in  
20 whole or in part. The State Highway Administrator shall give the contractor a written statement  
21 of the State Highway Administrator's decision on the contractor's claim.

22 (b) A contractor who is dissatisfied with the State Highway Administrator's decision on  
23 the contractor's claim may commence a contested case on the claim under Chapter 150B of the  
24 General Statutes. The contested case shall be commenced within 60 days of receiving the State  
25 Highway Administrator's written statement of the decision.

26 (c) As to any portion of a claim that is denied by the State Highway Administrator, the  
27 contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six  
28 months of receipt of the State Highway Administrator's final decision, institute a civil action for  
29 the sum he claims to be entitled to under the contract by filing a verified complaint and the  
30 issuance of a summons in the Superior Court of Wake County or in the superior court of any  
31 county where the work under the contract was performed. The procedure shall be the same as  
32 in all civil actions except that all issues shall be tried by the judge, without a jury.

33 (d) The provisions of this section shall be part of every contract for State ~~highway~~  
34 transportation construction between the Department of Transportation and a contractor. A  
35 provision in a contract that conflicts with this section is invalid."

36 **SECTION 17.** G.S. 136-35 reads as rewritten:

37 "**§ 136-35. Cooperation with other states and federal government.**

38 It shall also be the duty of the Department of Transportation, where possible, to cooperate  
39 with the state highway commissions of other states and with the federal government in the  
40 correlation of roads and other transportation systems so as to form a system of intercounty,  
41 interstate, and national ~~highways-highways and transportation systems~~. The Department of  
42 Transportation may enter into reciprocal agreements with other states and the Federal Highway  
43 Administration to perform inspection work and to pay reasonable fees for inspection work  
44 performed by others in connection with supplies and materials used in ~~highway-transportation~~  
45 construction and repair."

46 **SECTION 18.** The title of Article 2A of Chapter 136 of the General Statutes and  
47 G.S. 136-44.1 read as rewritten:

48 "Article 2A.

49 State ~~Roads-Transportation~~ Generally.

50 "**§ 136-44.1. Statewide ~~road-transportation~~ system; policies.**

1 The Department of Transportation shall develop and maintain a statewide system of ~~roads~~  
2 ~~and highways~~ roads, highways, and other transportation systems commensurate with the needs  
3 of the State as a whole and it shall not sacrifice the general statewide interest to the purely local  
4 desires of any particular area. The Board of Transportation shall formulate general policies and  
5 plans for a statewide ~~system of highways~~ transportation system. The Board shall formulate  
6 policies governing the construction, improvement and maintenance of ~~roads and highways~~  
7 roads, highways, and other transportation systems of the State with due regard to  
8 farm-to-market roads and school bus routes."

9 **SECTION 19.** G.S. 136-44.2 reads as rewritten:

10 **"§ 136-44.2. Budget and appropriations.**

11 The Director of the Budget shall include in the "Current Operations Appropriations Bill" an  
12 enumeration of the purposes or objects of the proposed expenditures for each of the  
13 construction and maintenance programs for that budget period for the State primary, secondary,  
14 ~~and State parks road systems~~ systems, and other transportation systems. The State primary  
15 system shall include all portions of the State highway system located both inside and outside  
16 municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State  
17 secondary system shall include all of the State highway system located both inside and outside  
18 municipal corporate limits that is not a part of the State primary system. The State parks system  
19 shall include all State parks roads and parking lots that are not also part of the State highway  
20 system. The transportation systems shall include state-maintained, nonhighway modes of  
21 transportation as well.

22 All construction and maintenance programs for which appropriations are requested shall be  
23 enumerated separately in the budget. Programs that are entirely State funded shall be listed  
24 separately from those programs involving the use of federal-aid funds. Proposed appropriations  
25 of State matching funds for each of the federal-aid construction programs shall be enumerated  
26 separately as well as the federal-aid funds anticipated for each program in order that the total  
27 construction requirements for each program may be provided for in the budget. Also, proposed  
28 State matching funds for the highway planning and research program shall be included  
29 separately along with the anticipated federal-aid funds for that purpose.

30 Other program categories for which appropriations are requested, such as, but not limited  
31 to, maintenance, channelization and traffic control, bridge maintenance, public service and  
32 access road construction, transportation projects and systems, and ferry operations shall be  
33 enumerated in the budget.

34 The Department of Transportation shall have all powers necessary to comply fully with  
35 provisions of present and future federal-aid acts. No federally eligible construction project may  
36 be funded entirely with State funds unless the Department of Transportation has first reported  
37 to the Joint Legislative Commission on Governmental Operations. For purposes of this section,  
38 "federally eligible construction project" means any construction project except secondary road  
39 projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any  
40 federal-aid act, whether or not federal funds are actually available.

41 The "Current Operations Appropriations Bill" shall also contain the proposed  
42 appropriations of State funds for use in each county for maintenance and construction of  
43 secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds  
44 appropriated for secondary roads shall not be transferred nor used except for the construction  
45 and maintenance of secondary roads in the county for which they are allocated pursuant to  
46 G.S. 136-44.5 and 136-44.6.

47 If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is  
48 greater than the amount estimated for that date in the Current Operations Appropriations Act  
49 for the following fiscal year, the excess shall be used in accordance with this paragraph. The  
50 Director of the Budget may allocate part or all of the excess among reserves for access and  
51 public roads, for unforeseen events requiring prompt action, or for other urgent needs. The

1 amount not allocated to any of these reserves by the Director of the Budget shall be credited to  
2 a reserve for maintenance. The Board of Transportation shall report monthly to the Joint  
3 Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of  
4 funds in the maintenance reserve.

5 The Department of Transportation may provide for costs incurred or accrued for traffic  
6 control measures to be taken by the Department at major events which involve a high degree of  
7 traffic concentration on State highways, and which cannot be funded from regular budgeted  
8 items. This authorization applies only to events which are expected to generate 30,000 vehicles  
9 or more per day. The Department of Transportation shall provide for this funding by allocating  
10 and reserving up to one hundred thousand dollars (\$100,000) before any other allocations from  
11 the appropriations for State maintenance for primary, secondary, and urban road systems are  
12 made, based upon the same proportion as is appropriated to each system."

13 **SECTION 20.** G.S. 136-44.2C reads as rewritten:

14 "**§ 136-44.2C. Special appropriations for State construction.**

15 Special appropriations for the construction of State highways may be used for the planning,  
16 design, right-of-way acquisition, and construction of ~~highway-transportation~~ projects for the  
17 State ~~Highway-Transportation~~ System and Federal Aid System, including secondary roads,  
18 contained in the Transportation Improvement Program prepared pursuant to  
19 G.S. 143B-350(f)(4). Funding from the special appropriations used for secondary road projects  
20 in the Transportation Improvement Program is not subject to the allocation formula and  
21 restrictions of G.S. 136-44.2, 136-44.2A, or 136-44.5."

22 **SECTION 21.** G.S. 136-44.4 reads as rewritten:

23 "**§ 136-44.4. Annual construction program; State primary and urban systems.**

24 The Department of Transportation shall develop an annual construction program for the  
25 state-funded improvements on the primary and urban system highways and for all other  
26 federal-aid construction programs which shall be approved by the Board of Transportation. It  
27 shall include a statement of the immediate and long-range goals. The Department shall develop  
28 criteria for determining priorities of projects to insure that the long-range goals and the  
29 statewide needs as a whole are met, which shall be approved by the Board of Transportation.  
30 The annual construction program shall list all projects according to priority. A brief description  
31 of each project shall be given, identifying the highway number, county, nature of the  
32 improvement and the estimated cost of the project shall be indicated. Other transportation  
33 systems shall be similarly identified. Copies of the most recent annual work program shall be  
34 made available to any member of the General Assembly upon request. The Department of  
35 Transportation shall make annual reports after the completion of the fiscal year to be made  
36 available to the legislative committees and subcommittees for highway matters, county  
37 commissioners, and other persons upon request. These reports shall indicate the expenditure on  
38 each of the projects and the status of all projects set out in the work program."

39 **SECTION 22.** The title of Article 3A of Chapter 136 of the General Statutes reads  
40 as rewritten:

41 "Article 3A.

42 ~~Streets and Highways-Transportation Systems~~ in and around Municipalities."

43 **SECTION 23.** G.S. 136-66.3 reads as rewritten:

44 "**§ 136-66.3. Local government participation in improvements to the State highway**  
45 **system.**

46 (a) Municipal Participation Authorized. – A municipality may, but is not required to,  
47 participate in the right-of-way and construction cost of a State ~~highway-transportation~~  
48 improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is  
49 located in the municipality or its extraterritorial jurisdiction.

50 (b) Process for Initiating Participation. – A municipality interested in participating in  
51 the funding of a State highway improvement project may submit a proposal to the Department

1 of Transportation. The Department and the municipality shall include their respective  
2 responsibilities for a proposed municipal participation project in any agreement reached  
3 concerning participation.

4 (c) Type of Participation Authorized. – A municipality is authorized and empowered to  
5 acquire land by dedication and acceptance, purchase, or eminent domain, and make  
6 improvements to portions of the State ~~highway-transportation~~ system lying within or outside  
7 the municipal corporate limits utilizing local funds that have been authorized for that purpose.  
8 All improvements to ~~the State highway system-transportation systems~~ shall be done in  
9 accordance with the specifications and requirements of the Department of Transportation.

10 (c1) No TIP Disadvantage for Participation. – If a county or municipality participates in  
11 a State ~~highway-transportation~~ system improvement project, as authorized by this section, or by  
12 G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government's  
13 participation does not cause any disadvantage to any other project in the Transportation  
14 Improvement Program under G.S. 143B-350(f)(4).

15 (c2) Distribution of State Funds Made Available by County or Municipal Participation. –  
16 Any State or federal funds allocated to a project that are made available by county or municipal  
17 participation in a project contained in the Transportation Improvement Program under  
18 G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to  
19 under the distribution formula contained in G.S. 136-17.2A.

20 (c3) Limitation on Agreements. – The Department shall not enter into any agreement  
21 with a county or municipality to provide additional total funding for highway construction in  
22 the county or municipality in exchange for county or municipal participation in any project  
23 contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

24 (d) Authorization to Participate in Development-Related Improvements. – When in the  
25 review and approval by a local government of plans for the development of property abutting  
26 ~~the a State highway-transportation~~ system it is determined by the municipality that  
27 improvements to the State highway system are necessary to provide for the safe and orderly  
28 movement of traffic, the local government is authorized to construct, or have constructed, said  
29 improvements to the State ~~highway-transportation~~ system in vicinity of the development. For  
30 purposes of this section, improvements include but are not limited to additional travel lanes,  
31 turn lanes, curb and gutter, ~~and drainage facilities-facilities,~~ and other transportation system  
32 improvements. All improvements to ~~the a State highway-transportation~~ system shall be  
33 constructed in accordance with the specifications and requirements of the Department of  
34 Transportation and be approved by the Department of Transportation.

35 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement with  
36 the Department of Transportation, a county or municipality may reimburse the Department of  
37 Transportation for the cost of all improvements, including additional right-of-way, for a ~~street~~  
38 ~~or street,~~ highway improvement ~~projects-projects,~~ or other transportation system improvements  
39 approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to  
40 those improvements that the Department of Transportation would normally include in the  
41 project.

42 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the  
43 Department of Transportation shall allow the local government a period of not less than three  
44 years from the date construction of the project is initiated to reimburse the Department their  
45 agreed upon share of the costs necessary for the project. The Department of Transportation  
46 shall not charge a local government any interest during the initial three years.

47 (f) Report to General Assembly. – The Department shall report in writing, on a  
48 monthly basis, to the Joint Legislative Commission on Governmental Operations on all  
49 agreements entered into between counties, municipalities and the Department of  
50 Transportation. The report shall state in summary form the contents of such agreements.

1 (g) Local Government Acquisition of Rights-of-Way. – In the acquisition of  
2 rights-of-way for any State ~~highway system street or street~~, highway, or other transportation  
3 project, the county or municipality shall be vested with the same authority to acquire such  
4 rights-of-way as is granted to the Department of Transportation in this Chapter. In the  
5 acquisition of such rights-of-way, counties and municipalities may use the procedures provided  
6 in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in  
7 Article 9 they shall be deemed to include "county," "municipality" or local governing body, and  
8 wherever the words "Administrator," "Administrator of Highways," "Administrator of the  
9 Department of Transportation," or "Chairman of the Department of Transportation" appear in  
10 Article 9 they shall be deemed to include "county or municipal clerk". It is the intention of this  
11 subsection that the powers herein granted to municipalities for the purpose of acquiring  
12 rights-of-way shall be in addition to and supplementary to those powers granted in any local act  
13 or in any other general statute, and in any case in which the provisions of this subsection or  
14 Article 9 of this Chapter are in conflict with the provisions of any local act or any other  
15 provision of any general statute, then the governing body of the county or municipality may in  
16 its discretion proceed in accordance with the provisions of such local act or other general  
17 statute, or, as an alternative method of procedure, in accordance with the provisions of this  
18 subsection and Article 9 of this Chapter.

19 (h) Department Authority Concerning Rights-of-Way. – In the absence of an  
20 agreement, the Department of Transportation shall retain authority to pay the full cost of  
21 acquiring rights-of-way where the proposed project is deemed important to a coordinated State  
22 highway transportation system.

23 (i) Changes to Local Government Participation Agreement. – Either the local  
24 government or the Department of Transportation may at any time propose changes in the  
25 agreement setting forth their respective responsibilities by giving notice to the other party, but  
26 no change shall be effective until it is adopted by both the municipal governing body and the  
27 Department of Transportation.

28 (j) Local Governments Party to Rights-of-Way Proceeding. – Any municipality that  
29 agrees to contribute any part of the cost of acquiring rights-of-way for any State ~~highway~~  
30 ~~system street or highway transportation system~~ shall be a proper party in any proceeding in  
31 court relating to the acquisition of such rights-of-way.

32 (k) Repealed by Session Laws 2008-180, s. 6, effective August 4, 2008."

33 **SECTION 24.** G.S. 136-66.5 reads as rewritten:

34 **"§ 136-66.5. Improvements in urban ~~area streets~~ areas to reduce traffic congestion.**

35 (a) The Department of Transportation is authorized to enter into contracts with  
36 municipalities for ~~highway~~-improvement projects which are a part of an overall plan authorized  
37 under the provisions of section 135 of Title 23 of the United States Code, the purpose of which  
38 is to facilitate the flow of ~~traffic people and goods~~ in urban areas. In connection with these  
39 contracts, the Department of Transportation and the municipalities are authorized to enter into  
40 contracts for improvement projects on the municipal system of streets, and pursuant to contract  
41 with the municipalities, the Department of Transportation is authorized to construct or to let to  
42 contract the said improvement projects on streets on the municipal street system or other  
43 transportation system; provided that no portion of the cost of the improvements made on the  
44 municipal street-system shall be paid from Department of Transportation funds except the  
45 proportionate share of funds received from the ~~Federal Highway Administration~~ U.S.  
46 Department of Transportation and allocated for the purposes set out in section 135 of Title 23  
47 of the United States Code. Pursuant to contract with the Department of Transportation, the  
48 municipalities may construct or let to contract the said improvement projects on the municipal  
49 ~~street~~-system and the Department of Transportation is authorized to pay over to the  
50 municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of  
51 the United States Code; provided that no portion of the costs of the improvements made on the

1 municipal ~~street~~ system shall be paid for from the State Highway Fund except those received  
 2 from the ~~Federal Highway Administration~~ U.S. Department of Transportation and allocated for  
 3 the purpose set out in section 135 of Title 23 of the United States Code.

4 (b) The municipalities are authorized to enter into contracts with the Department of  
 5 Transportation for improvement projects which are a part of an overall plan authorized under  
 6 the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to  
 7 facilitate the flow of traffic in urban areas, on the State highway system streets within the  
 8 municipalities with the approval of the ~~Federal Highway Administration~~ U.S. Department of  
 9 Transportation. Pursuant to contract for the foregoing improvement projects, the municipalities  
 10 are authorized to construct or let to contract the said improvement projects and the Department  
 11 of Transportation is authorized to reimburse the municipalities for the cost of the construction  
 12 of the said improvement projects.

13 (c) The municipalities in which improvements are made pursuant to section 135 of Title  
 14 23 of the United States Code shall provide proper maintenance and operation of such  
 15 completed projects and improvements on the municipal system streets and other transportation  
 16 infrastructure or will provide other means for assuring proper maintenance and operation as is  
 17 required by the Department of Transportation. In the event the municipality fails to maintain  
 18 such project or provide for their proper maintenance, the Department of Transportation is  
 19 authorized to maintain the said projects and improvements and deduct the cost from allocations  
 20 to the municipalities made under the provisions of G.S. 136-41.1."

21 **SECTION 25.** G.S. 136-102.2 reads as rewritten:

22 **"§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing**  
 23 **record of results with Department of Transportation.**

24 No person, firm or corporation shall make any test drilling or boring upon the right-of-way  
 25 of any ~~road or highway~~ transportation system, under the jurisdiction of the Department of  
 26 Transportation, until written authorization has been obtained from the owner or the person in  
 27 charge of the land on which the highway easement is located. A complete record showing the  
 28 results of the test drilling or boring shall be filed forthwith with the chairman [Secretary] of the  
 29 Department of Transportation and shall be a public record. This section shall not apply to the  
 30 Department of Transportation making test drilling or boring for highway purposes only."

31 **SECTION 26.** G.S. 136-103.1 reads as rewritten:

32 **"§ 136-103.1. Outside counsel.**

33 The Attorney General is authorized to employ outside counsel as he deems necessary for  
 34 the purpose of obtaining title abstracts and title certificates for ~~highway~~ transportation system  
 35 rights-of-way and for assistance in the trial of condemnation cases involving the acquisition of  
 36 rights-of-way and other interests in land for the purpose of ~~highway~~ transportation construction.  
 37 Compensation, as approved by the Attorney General, shall be paid out of the appropriations  
 38 from the Highway Fund."

39 **SECTION 27.** G.S. 136-177 reads as rewritten:

40 **"§ 136-177. Limitation on funds obligated from Trust Fund.**

41 In a fiscal year, the Department of Transportation may not obligate more Trust Fund  
 42 revenue, other than revenue allocated for city streets under G.S. 136-176(b)(3) or secondary  
 43 roads under G.S. 136-176(b)(4) and G.S. 20-85(b), to construct or improve highways and other  
 44 forms of transportation than the amount indicated in the following table:

Fiscal Year	Maximum Expenditure
1989-90	\$200,000,000
1990-91	250,000,000
1991-92	300,000,000
1992-93	400,000,000
1993-94	500,000,000
1994-95 and following years	Unlimited

1 The amount of revenue credited to the Trust Fund in a fiscal year under G.S. 136-176(a) that  
2 exceeds the maximum allowable expenditure set in the table above may be used only for  
3 preliminary planning and design and the acquisition of rights-of-way for scheduled highways  
4 and highway improvements to be funded from the Trust Fund."

5 **SECTION 28.** This act becomes effective July 1, 2009.