

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 828
PROPOSED COMMITTEE SUBSTITUTE S828-PCS55376-SU-41

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.



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1 (c) The construction, maintenance, and repair of ferryboats and all other marine floating
2 equipment and the construction and repair of all types of docks by the Department of
3 Transportation shall be deemed highway construction, maintenance, or repair for the purpose of
4 G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget
5 Act. In cases of a written determination by the Secretary of Transportation that the requirement
6 for compatibility does not make public advertising feasible for the repair of ferryboats, the
7 public advertising as well as the soliciting of informal bids may be waived.

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

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

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

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

30 (h) The Department of Transportation may enter into contracts for applied research and
31 experimental work without soliciting bids or proposals; provided, however, that if the research
32 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article
33 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is
34 encouraged to solicit proposals when contracts are entered into with private firms when it is in
35 the public interest to do so.

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

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

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

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

1 Department of Transportation. The Department of Transportation may issue rules and policies
2 necessary to implement this section.

3 (m) The Department of Transportation may enter into as many as two pilot contracts for
4 public-private participation in providing real-time traveler information at State-owned rest
5 areas. Selection of firms to perform this work shall be made using a best value procurement
6 process. Recognition of sponsors in the program may be indicated by appropriate
7 acknowledgment for any services provided. The size, style, specifications, and content of the
8 acknowledgment shall be determined in the sole discretion of the Department. Revenues
9 generated pursuant to a contract initiated under this subsection shall be shared with Department
10 of Transportation at a predetermined percentage or rate, and shall be earmarked by the
11 Department to maintain the State owned rest areas from which the revenues are generated. The
12 Department of Transportation may issue guidelines, rules, and policies necessary to administer
13 a pilot program initiated under this subsection."

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

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

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

25 "Chapter 136.

26 ~~Roads and Highways Transportation.~~"

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

29 "**§ 136-4A. Transportation system.**

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

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

35 "**§ 136-18. Powers of Department of Transportation.**

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

37 ...

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

1 that the Department of Transportation may now own or may acquire; to
2 acquire by gift, purchase, or otherwise, any road or highway, or tract of land
3 or other property whatsoever that may be necessary for a State ~~highway~~
4 transportation system and adjacent utility rights-of-way: Provided, all
5 changes or alterations authorized by this subdivision shall be subject to the
6 provisions of G.S. 136-54 to 136-63, to the extent that said sections are
7 applicable: Provided, that nothing in this Chapter shall be construed to
8 authorize or permit the Department of Transportation to allow or pay
9 anything to any county, township, city or town, or to any board of
10 commissioners or governing body thereof, for any existing road or part of
11 any road heretofore constructed by any such county, township, city or town,
12 unless a contract has already been entered into with the Department of
13 Transportation."

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

15 **"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;
16 federal parkways.**

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

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

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

50 (d) The Department of Transportation is also vested with the power to acquire such
51 additional land alongside of the rights-of-way ~~or~~ for transportation projects, including roads as

1 in its opinion may be necessary and proper for the protection of the transportation projects,
2 including roads and roadways, and such additional area as may be necessary as by it
3 determined for approaches to and from such material and other requisite area as may be desired
4 by it for working purposes. The Department of Transportation may, in its discretion, with the
5 consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so
6 doing, the interest of the public will be best served, even though said entire lot, block or tract is
7 not immediately needed for right-of-way purposes.

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

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

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

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

46 (i) When areas have been tentatively designated by the United States government to be
47 included within a parkway, but the final survey necessary for the filing of maps as provided in
48 this section has not yet been made, no person shall cut or remove any timber from said areas
49 pending the filing of said maps after receiving notice from the Department of Transportation
50 that such area is under investigation; and any property owner who suffers loss by reason of the
51 restraint upon his right to use the said timber pending such investigation shall be entitled to

1 recover compensation from the Department of Transportation for the temporary appropriation
2 of his property, in the event the same is not finally included within the appropriated area, and
3 the provisions of this section may be enforced under the same law now applicable for the
4 adjustment of compensation in the acquirement of rights-of-way on other property by the
5 Department of Transportation."

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

7 **"§ 136-19.3. Acquisition of buildings.**

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

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

22 **"§ 136-19.5. Utility right-of-way agreements.**

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

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

40 (c) Whenever the Department of Transportation requires the relocation of utilities
41 located in a right-of-way for which the utility owner contributed to the cost of acquisition, the
42 Department of Transportation shall reimburse the utility owner for the cost of moving those
43 utilities.

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

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

50 **"§ 136-26. Closing of State ~~highways~~transportation infrastructure during construction;
51 injury to barriers, warning signs, etc.**

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

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

21 **"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or**
22 **sewer corporations or associations.**

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

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

35 **"§ 136-27.2. Relocation of county-owned natural gas lines located on Department of**
36 **Transportation right-of-way.**

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

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

42 **"§ 136-28.2. Relocated ~~highways; transportation infrastructure;~~ contracts let by others.**

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

1 accordance with the Department of Transportation's regulations and the Department of
2 Transportation approves the award of the contract."

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

4 **"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**
5 **women-owned businesses in highway-transportation contracts.**

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

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

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

1 opportunity for contracts it lets without regard to race, religion, color, creed, national origin,
2 sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and
3 businesses otherwise qualified.

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

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

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

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

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

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

21 "**§ 136-28.6. Participation by the Department of Transportation with private developers.**

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

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

25 (1) The construction of a ~~street or highway~~transportation project on the
26 Transportation Improvement Plan adopted by the Department of
27 Transportation; or

28 (2) The construction of a ~~street or highway~~transportation project on a mutually
29 adopted transportation plan that is designated a Department of
30 Transportation responsibility.

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

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

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

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

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

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

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

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

50 "**§ 136-28.9. Retainage – construction contracts.**

1 Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and
2 147-86.11, or any other provision of the law, the Department of Transportation is authorized to
3 enter into trust agreements with banks and contractors for the deposit of retainage and for the
4 payment to contractors of income on these deposits, in connection with ~~highway~~ transportation
5 construction contracts, in trust accounts with banks in accordance with Department of
6 Transportation regulations, including deposit insurance and collateral requirements. The
7 Department of Transportation may contract with those banks without trust departments in
8 addition to those with trust departments. Funds deposited in any trust account shall be invested
9 only in bonds, securities, certificates of deposits, or other forms of investment authorized by
10 G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for
11 interest to be paid on uninvested cash balances."

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

13 **"§ 136-29. Adjustment and resolution of highway construction contract claim.**

14 (a) A contractor who has completed a contract with the Department of Transportation to
15 construct a State ~~highway~~ transportation project and who has not received the amount he claims
16 is due under the contract may submit a verified written claim to the State Highway
17 Administrator for the amount the contractor claims is due. The claim shall be submitted within
18 60 days after the contractor receives his final statement from the Department and shall state the
19 factual basis for the claim.

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

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

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

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

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

42 **"§ 136-35. Cooperation with other states and federal government.**

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

1 If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is
2 greater than the amount estimated for that date in the Current Operations Appropriations Act
3 for the following fiscal year, the excess shall be used in accordance with this paragraph. The
4 Director of the Budget may allocate part or all of the excess among reserves for access and
5 public roads, for unforeseen events requiring prompt action, or for other urgent needs. The
6 amount not allocated to any of these reserves by the Director of the Budget shall be credited to
7 a reserve for maintenance. The Board of Transportation shall report monthly to the Joint
8 Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of
9 funds in the maintenance reserve.

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

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

19 **"§ 136-44.2C. Special appropriations for State construction.**

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

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

28 **"§ 136-44.4. Annual construction program; State primary and urban systems.**

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

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

46 "Article 3A.

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

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

49 **"§ 136-66.3. Local government participation in improvements to the State highway**
50 **system.**

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

5 (b) Process for Initiating Participation. – A municipality interested in participating in
6 the funding of a State highway improvement project may submit a proposal to the Department
7 of Transportation. The Department and the municipality shall include their respective
8 responsibilities for a proposed municipal participation project in any agreement reached
9 concerning participation.

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

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

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

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

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

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

48 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
49 Department of Transportation shall allow the local government a period of not less than three
50 years from the date construction of the project is initiated to reimburse the Department their

1 agreed upon share of the costs necessary for the project. The Department of Transportation
2 shall not charge a local government any interest during the initial three years.

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

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

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

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

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

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

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

40 **"§ 136-66.5. Improvements in urban ~~area streets~~ areas to reduce traffic congestion.**

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

1 Department of Transportation and allocated for the purposes set out in section 135 of Title 23
 2 of the United States Code. Pursuant to contract with the Department of Transportation, the
 3 municipalities may construct or let to contract the said improvement projects on the municipal
 4 ~~street~~ system and the Department of Transportation is authorized to pay over to the
 5 municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of
 6 the United States Code; provided that no portion of the costs of the improvements made on the
 7 municipal ~~street~~ system shall be paid for from the State Highway Fund except those received
 8 from the ~~Federal Highway Administration~~ U.S. Department of Transportation and allocated for
 9 the purpose set out in section 135 of Title 23 of the United States Code.

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

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

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

28 "**§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing**
 29 **record of results with Department of Transportation.**

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

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

38 "**§ 136-103.1. Outside counsel.**

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

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

46 "**§ 136-177. Limitation on funds obligated from Trust Fund.**

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

51 Fiscal Year	Maximum Expenditure
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1	1989-90	\$200,000,000
2	1990-91	250,000,000
3	1991-92	300,000,000
4	1992-93	400,000,000
5	1993-94	500,000,000
6	1994-95 and following years	Unlimited

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

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