

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 828
Commerce Committee Substitute Adopted 5/11/09
Third Edition Engrossed 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S828-PCS55420-SU-57

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~~ For contracts let to carry out the provisions of this Chapter 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 maintenance, excluding resurfacing, 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



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1 shall keep a record of all bids submitted, which record shall be subject to public inspection at
2 any time after the bids are opened.

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

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

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

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

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

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

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

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

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

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

1 specifications, and content of the signs shall be determined in the sole discretion of the
2 Department of Transportation. The Department of Transportation may issue rules and policies
3 necessary to implement this section.

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

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

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

25 **SECTION 3.** G.S. 136-28.4(e) reads as rewritten:

26 "(e) This section expires August 31, ~~2009-2010.~~"

27 **SECTION 4.** The title of Chapter 136 of the General Statutes reads as rewritten:

28 "**Chapter 136.**

29 **Roads and Highways Transportation.**"

30 **SECTION 5.** Chapter 136 of the General Statutes is amended by adding a new
31 section to read:

32 "**§ 136-4A. Transportation system.**

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

37 **SECTION 6.** G.S. 136-18 reads as rewritten:

38 "**§ 136-18. Powers of Department of Transportation.**

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

40 ...

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

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

17 ...

18 (39) To enter into partnership agreements with the North Carolina Turnpike
 19 Authority, private entities, and authorized political subdivisions to finance,
 20 by tolls, contracts, and other financing methods authorized by law, the cost
 21 of acquiring, constructing, equipping, maintaining, and operating
 22 transportation infrastructure in this State, ~~with priority given to highways,~~
 23 ~~roads, streets, and bridges,~~ and to plan, design, develop, acquire, construct,
 24 equip, maintain, and operate ~~highways, roads, streets, bridges, and existing~~
 25 ~~rail, as well as properties adjoining existing rail lines~~ transportation
 26 infrastructure in this State. An agreement entered into under this subdivision
 27 requires the concurrence of the Board of Transportation. The Department
 28 shall report to the Chairs of the Joint Legislative Transportation Oversight
 29 Committee, the Chairs of the House of Representatives Appropriations
 30 Subcommittee on Transportation, and the Chairs of the Senate
 31 Appropriations Committee on the Department of Transportation, at the same
 32 time it notifies the Board of Transportation of any proposed agreement under
 33 this subdivision. Any contracts for construction of highways, roads, streets,
 34 and bridges which are awarded pursuant to an agreement entered into under
 35 this section shall comply with the competitive bidding requirements of
 36 Article 2 of this Chapter.

37"

38 **SECTION 7.** G.S. 136-19 reads as rewritten:

39 **"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;**
 40 **federal parkways.**

41 (a) The Department of Transportation is vested with the power to acquire either in the
 42 nature of an appropriate easement or in fee simple such rights-of-way and title to such land,
 43 gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry
 44 beds, lime or other earth or mineral deposits or formations, and such standing timber as it may
 45 deem necessary and suitable for transportation infrastructure construction, including road
 46 construction, maintenance, and repair, and the necessary approaches and ways through, and a
 47 sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to
 48 properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter
 49 set out. If the Department of Transportation acquires by purchase, donation, or condemnation
 50 part of a tract of land in fee simple for highway right-of-way as authorized by this section and
 51 the Department of Transportation later determines that the property acquired for transportation

1 infrastructure, including highway right-of-way, or a part of that property, is no longer needed
2 for ~~highway infrastructure right-of-way~~, then the Department shall give first consideration to
3 any offer to purchase the property made by the former owner. The Department may refuse any
4 offer that is less than the current market value of the property, as determined by the
5 Department. Unless the Department acquired an entire lot, block, or tract of land belonging to
6 the former owner, the former owner must own the remainder of the lot, block, or tract of land
7 from which the property was acquired to receive first consideration by the Department of their
8 offer to purchase the property.

9 (b) Notwithstanding the provisions of subsection (a), if the Department acquires the
10 property by condemnation and determines that the property or a part of that property is no
11 longer needed for ~~highway right-of-way, right-of-way or other transportation projects~~ the
12 Department of Transportation may reconvey the property to the former owner upon payment by
13 the former owner of the full price paid to the owner when the property was taken, the cost of
14 any improvements, together with interest at the legal rate to the date when the decision was
15 made to offer the return of the property. Unless the Department acquired an entire lot, block, or
16 tract of land belonging to the former owner, the former owner must own the remainder of the
17 lot, block, or tract of land from which the property was acquired to purchase the property
18 pursuant to this subsection.

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

23 (d) The Department of Transportation is also vested with the power to acquire such
24 additional land alongside of the rights-of-way ~~or for transportation projects, including roads~~ as
25 in its opinion may be necessary and proper for the protection of the transportation projects,
26 including roads and roadways, and such additional area as may be necessary as by it
27 determined for approaches to and from such material and other requisite area as may be desired
28 by it for working purposes. The Department of Transportation may, in its discretion, with the
29 consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so
30 doing, the interest of the public will be best served, even though said entire lot, block or tract is
31 not immediately needed for right-of-way purposes.

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

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

48 (g) The Department of Transportation shall have the same authority, under the same
49 provisions of law provided for construction of State ~~highways, transportation projects,~~ for
50 acquirement of all rights-of-way and easements necessary to comply with the rules and
51 regulations of the United States government for the construction of federal parkways and

1 entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125
2 acres per mile of said parkways, including roadway and recreational, and scenic areas on either
3 side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or
4 appropriated may, at the option of the Department of Transportation, be a fee-simple title. The
5 said Department of Transportation is hereby authorized to convey such title so acquired to the
6 United States government, or its appropriate agency, free and clear of all claims for
7 compensation. All compensation contracted to be paid or legally assessed shall be a valid claim
8 against the Department of Transportation, payable out of the State Highway Fund. Any
9 conveyance to the United States Department of Interior of land acquired as provided by this
10 section shall contain a provision whereby the State of North Carolina shall retain concurrent
11 jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent
12 jurisdiction to lands already conveyed to the United States Department of Interior for parkways
13 and entrances to parkways.

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

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

30 **SECTION 8.** G.S. 136-19.3 reads as rewritten:

31 **"§ 136-19.3. Acquisition of buildings.**

32 Where the right-of-way of a proposed highway or other transportation project necessitates
33 the taking of a portion of a building or structure, the Department of Transportation may
34 acquire, by condemnation or purchase, the entire building or structure, together with the right to
35 enter upon the surrounding land for the purpose of removing said building or structure, upon a
36 determination by the Department of Transportation based upon an affidavit of an independent
37 real estate appraiser that the partial taking will substantially destroy the economic value or
38 utility of the building or structure and (i) that an economy in the expenditure of public funds
39 will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building
40 without destroying the entire building; or (iii) that the convenience, safety or improvement of
41 the highway-transportation project will be promoted thereby; provided, nothing herein
42 contained shall be deemed to give the Department of Transportation authority to condemn the
43 underlying fee of the portion of any building or structure which lies outside the right-of-way of
44 any existing or proposed transportation project, including a public road, street or highway."

45 **SECTION 9.** G.S. 136-19.5 reads as rewritten:

46 **"§ 136-19.5. Utility right-of-way agreements.**

47 (a) Before the Department of Transportation acquires or proposes to acquire additional
48 rights-of-way for the purpose of accommodating the installation of utilities as authorized by
49 G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate
50 utilities regarding the acquisition and use of the particular right-of-way and requiring the
51 payment to the Department of Transportation for or recapture of all of its costs associated with

1 that acquisition, including the use of funds allocated to such acquisition. Such agreements may
2 take into account the fact that more than one utility can make use of the right-of-way. No such
3 agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain
4 under the control of the Department of Transportation.

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

13 (c) Whenever the Department of Transportation requires the relocation of utilities
14 located in a right-of-way for which the utility owner contributed to the cost of acquisition, the
15 Department of Transportation shall reimburse the utility owner for the cost of moving those
16 utilities.

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

22 **SECTION 10.** G.S. 136-26 reads as rewritten:

23 **"§ 136-26. Closing of State ~~highways-transportation~~ infrastructure during construction;
24 injury to barriers, warning signs, etc.**

25 If it shall appear necessary to the Department of Transportation, its officers, or appropriate
26 employees, to close any ~~road or highway-transportation~~ infrastructure coming under its
27 jurisdiction so as to permit ~~of~~ proper completion of work which is being performed, ~~such the~~
28 Department of Transportation, its officers or employees, may close, or cause to be closed, the
29 whole or any portion of ~~such road or highway-transportation~~ infrastructure deemed necessary to
30 be excluded from public travel. While any ~~such road or highway-transportation~~ infrastructure,
31 or portion thereof, is so closed, or while any ~~such road or highway-transportation~~ infrastructure,
32 or portion thereof, is in process of construction or maintenance, ~~such the~~ Department of
33 Transportation, its officers or appropriate employees, or its contractor, under authority from
34 ~~such the~~ Department of Transportation, may erect, or cause to be erected, suitable barriers or
35 obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the
36 ~~road or highway-transportation~~ infrastructure, or portion thereof, is closed; and may place
37 warning signs, lights and lanterns on ~~such road or highway-transportation~~ infrastructure, or
38 portions thereof. When ~~such road or highway-transportation~~ infrastructure is closed to the public or in process
39 of construction or maintenance, as provided herein, any person who willfully drives into new
40 construction work, breaks down, removes, injures or destroys any such barrier or barriers or
41 obstructions on the road closed or being constructed, or tears down, removes or destroys any
42 such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns
43 so erected, posted or placed, shall be guilty of a Class 1 misdemeanor."

44 **SECTION 11.** G.S. 136-27.1 reads as rewritten:

45 **"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or
46 sewer corporations or associations.**

47 The Department of Transportation shall pay the nonbetterment cost for the relocation of
48 water and sewer lines, located within the existing State ~~highway-transportation~~ project
49 right-of-way, that are necessary to be relocated for a State ~~highway-transportation~~ improvement
50 project and that are owned by: (i) a municipality with a population of 5,500 or less according to
51 the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any

1 water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural
2 water system operated by a County as an enterprise system; (v) any sanitary district organized
3 pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a
4 water or sewer system organized pursuant to Chapter 162A of the General Statutes and then
5 sold or transferred to a municipality with a population of greater than 5,500 according to the
6 latest decennial census."

7 **SECTION 12.** G.S. 136-27.2 reads as rewritten:

8 "**§ 136-27.2. Relocation of county-owned natural gas lines located on Department of**
9 **Transportation right-of-way.**

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

14 **SECTION 13.** G.S. 136-28.2 reads as rewritten:

15 "**§ 136-28.2. Relocated ~~highways;~~transportation infrastructure; contracts let by others.**

16 The Department of Transportation is authorized to permit power companies and
17 governmental agencies, including agencies of the federal government, when it is necessary to
18 relocate a ~~public highway-transportation infrastructure~~ by reason of the construction of a dam,
19 to let contracts for the construction of the relocated ~~highway-transportation infrastructure~~. The
20 construction shall be in accordance with the Department of Transportation standards and
21 specifications. The Department of Transportation is further authorized to reimburse the power
22 company or governmental agency for betterments arising out of the construction of the
23 relocated ~~highway-transportation infrastructure~~, provided the bidding and the award is in
24 accordance with the Department of Transportation's regulations and the Department of
25 Transportation approves the award of the contract."

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

27 "**§ 136-28.6. Participation by the Department of Transportation with private developers.**

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

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

31 (1) The construction of a ~~street or highway-transportation project~~ on the
32 Transportation Improvement Plan adopted by the Department of
33 Transportation; or

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

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

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

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

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

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

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

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

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

6 "**§ 136-28.9. Retainage – construction contracts.**

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

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

19 "**§ 136-29. Adjustment and resolution of ~~highway construction~~ Department of**
20 **Transportation contract claim.**

21 (a) A contractor who has completed a contract with the Department of Transportation to
22 ~~construct a State highway~~ let in accordance with Article 2 of this Chapter and who has not
23 received the amount he claims is due under the contract may submit a verified written claim to
24 the ~~State Highway Administrator~~ Secretary of Transportation for the amount the contractor
25 claims is due. The claim shall be submitted within 60 days after the contractor receives his final
26 statement from the Department and shall state the factual basis for the claim.

27 The ~~State Highway Administrator~~ Secretary or the Secretary's designee shall investigate a
28 submitted claim within 90 days of receiving the claim or within any longer time period agreed
29 to by the ~~State Highway Administrator~~ Secretary or the Secretary's designee and the contractor.
30 The contractor may appear before the ~~State Highway Administrator~~ Secretary or the Secretary's
31 designee, either in person or through counsel, to present facts and arguments in support of ~~his~~
32 the claim. The ~~State Highway Administrator~~ Secretary or the Secretary's designee may allow,
33 deny, or compromise the claim, in whole or in part. The ~~State Highway Administrator~~
34 Secretary or the Secretary's designee shall give the contractor a written statement of the ~~State~~
35 ~~Highway Administrator's~~ decision on the contractor's claim.

36 (b) A contractor who is dissatisfied with the ~~State Highway Administrator's~~ Secretary or
37 the Secretary's designee's decision on the contractor's claim may commence a contested case on
38 the claim under Chapter 150B of the General Statutes. The contested case shall be commenced
39 within 60 days of receiving the ~~State Highway Administrator's~~ written statement of the
40 decision.

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

49 (d) The provisions of this section shall be part of every contract ~~for State highway~~
50 ~~construction~~ let in accordance with Article 2 of this Chapter between the Department of

1 Transportation and a contractor. A provision in a contract that conflicts with this section is
2 invalid."

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

4 **"§ 136-35. Cooperation with other states and federal government.**

5 It shall also be the duty of the Department of Transportation, where possible, to cooperate
6 with the state highway commissions of other states and with the federal government in the
7 correlation of roads and other transportation systems so as to form a system of intercounty,
8 interstate, and national ~~highways-highways~~ and transportation systems. The Department of
9 Transportation may enter into reciprocal agreements with other states and the ~~Federal Highway~~
10 ~~Administration-United States Department of Transportation~~ to perform inspection work and to
11 pay reasonable fees for inspection work performed by others in connection with supplies and
12 materials used in highway-transportation construction and repair."

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

15 "Article 2A.

16 State Roads ~~Transportation~~ Generally.

17 **"§ 136-44.1. Statewide ~~road-transportation~~ system; policies.**

18 The Department of Transportation shall develop and maintain a statewide system of ~~roads~~
19 ~~and highways-roads, highways, and other transportation systems~~ commensurate with the needs
20 of the State as a whole and it shall not sacrifice the general statewide interest to the purely local
21 desires of any particular area. The Board of Transportation shall formulate general policies and
22 plans for a statewide ~~system of highways-transportation system~~. The Board shall formulate
23 policies governing the construction, improvement and maintenance of ~~roads-and highways~~
24 roads, highways, and other transportation systems of the State with due regard to
25 farm-to-market roads and school bus routes."

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

27 **"§ 136-44.2. Budget and appropriations.**

28 The Director of the Budget shall include in the "Current Operations Appropriations Bill" an
29 enumeration of the purposes or objects of the proposed expenditures for each of the
30 construction and maintenance programs for that budget period for the State primary, secondary,
31 ~~and State parks road systems-systems, and other transportation systems~~. The State primary
32 system shall include all portions of the State highway system located both inside and outside
33 municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State
34 secondary system shall include all of the State highway system located both inside and outside
35 municipal corporate limits that is not a part of the State primary system. The State parks system
36 shall include all State parks roads and parking lots that are not also part of the State highway
37 system. The transportation systems shall include State-maintained, nonhighway modes of
38 transportation as well.

39 All construction and maintenance programs for which appropriations are requested shall be
40 enumerated separately in the budget. Programs that are entirely State funded shall be listed
41 separately from those programs involving the use of federal-aid funds. Proposed appropriations
42 of State matching funds for each of the federal-aid construction programs shall be enumerated
43 separately as well as the federal-aid funds anticipated for each program in order that the total
44 construction requirements for each program may be provided for in the budget. Also, proposed
45 State matching funds for the highway planning and research program shall be included
46 separately along with the anticipated federal-aid funds for that purpose.

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

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

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

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

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

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

32 **"§ 136-44.2C. Special appropriations for State construction.**

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

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

41 **"§ 136-44.4. Annual construction program; State primary and urban systems.**

42 The Department of Transportation shall develop an annual construction program for the
43 state-funded improvements on the primary and urban system highways and for all other
44 federal-aid construction programs which shall be approved by the Board of Transportation. It
45 shall include a statement of the immediate and long-range goals. The Department shall develop
46 criteria for determining priorities of projects to insure that the long-range goals and the
47 statewide needs as a whole are met, which shall be approved by the Board of Transportation.
48 The annual construction program shall list all projects according to priority. A brief description
49 of each project shall be given, identifying the highway number, county, nature of the
50 improvement and the estimated cost of the project shall be indicated. Other transportation
51 systems shall be similarly identified. Copies of the most recent annual work program shall be

1 made available to any member of the General Assembly upon request. The Department of
2 Transportation shall make annual reports after the completion of the fiscal year to be made
3 available to the legislative committees and subcommittees for highway matters, county
4 commissioners, and other persons upon request. These reports shall indicate the expenditure on
5 each of the projects and the status of all projects set out in the work program."

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

8 "Article 3A.

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

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

11 **"§ 136-66.3. Local government participation in improvements to the State highway**
12 **system.**

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

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

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

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

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

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

42 (d) Authorization to Participate in Development-Related Improvements. – When in the
43 review and approval by a local government of plans for the development of property abutting
44 ~~the a State highway-transportation~~ system it is determined by the municipality that
45 improvements to the State highway system are necessary to provide for the safe and orderly
46 movement of traffic, the local government is authorized to construct, or have constructed, said
47 improvements to the State ~~highway-transportation~~ system in vicinity of the development. For
48 purposes of this section, improvements include but are not limited to additional travel lanes,
49 turn lanes, curb and gutter, ~~and drainage facilities-facilities,~~ and other ~~transportation system~~
50 ~~improvements.~~ All improvements to ~~the a State highway-transportation~~ system shall be

1 constructed in accordance with the specifications and requirements of the Department of
2 Transportation and be approved by the Department of Transportation.

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

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

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

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

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

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

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

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

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

1 **"§ 136-66.5. Improvements in urban ~~area streets~~ areas to reduce traffic congestion.**

2 (a) The Department of Transportation is authorized to enter into contracts with
3 municipalities for ~~highway~~-improvement projects which are a part of an overall plan authorized
4 under the provisions of section 135 of Title 23 of the United States Code, the purpose of which
5 is to facilitate the flow of ~~traffic~~-people and goods in urban areas. In connection with these
6 contracts, the Department of Transportation and the municipalities are authorized to enter into
7 contracts for improvement projects on the municipal system of streets, and pursuant to contract
8 with the municipalities, the Department of Transportation is authorized to construct or to let to
9 contract the said improvement projects on streets on the municipal street system or other
10 transportation system; provided that no portion of the cost of the improvements made on the
11 municipal ~~street~~-system shall be paid from Department of Transportation funds except the
12 proportionate share of funds received from the ~~Federal Highway Administration~~-United States
13 Department of Transportation and allocated for the purposes set out in section 135 of Title 23
14 of the United States Code. Pursuant to contract with the Department of Transportation, the
15 municipalities may construct or let to contract the said improvement projects on the municipal
16 ~~street~~-system and the Department of Transportation is authorized to pay over to the
17 municipalities the proportionate share of funds received pursuant to section 135 of Title 23
18 of the United States Code; provided that no portion of the costs of the improvements made on the
19 municipal ~~street~~-system shall be paid for from the State Highway Fund except those received
20 from the ~~Federal Highway Administration~~-United States Department of Transportation and
21 allocated for the purpose set out in section 135 of Title 23 of the United States Code.

22 (b) The municipalities are authorized to enter into contracts with the Department of
23 Transportation for improvement projects which are a part of an overall plan authorized under
24 the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to
25 facilitate the flow of traffic in urban areas, on the State highway system streets within the
26 municipalities with the approval of the ~~Federal Highway Administration~~-United States
27 Department of Transportation. Pursuant to contract for the foregoing improvement projects, the
28 municipalities are authorized to construct or let to contract the said improvement projects and
29 the Department of Transportation is authorized to reimburse the municipalities for the cost of
30 the construction of the said improvement projects.

31 (c) The municipalities in which improvements are made pursuant to section 135 of Title
32 23 of the United States Code shall provide proper maintenance and operation of such
33 completed projects and improvements on the municipal system streets and other transportation
34 infrastructure or will provide other means for assuring proper maintenance and operation as is
35 required by the Department of Transportation. In the event the municipality fails to maintain
36 such project or provide for their proper maintenance, the Department of Transportation is
37 authorized to maintain the said projects and improvements and deduct the cost from allocations
38 to the municipalities made under the provisions of G.S. 136-41.1."

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

40 **"§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing**
41 **record of results with Department of Transportation.**

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

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

50 **"§ 136-103.1. Outside counsel.**

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

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

8 "**§ 136-177. Limitation on funds obligated from Trust Fund.**

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

Fiscal Year	Maximum Expenditure
14 1989-90	\$200,000,000
15 1990-91	250,000,000
16 1991-92	300,000,000
17 1992-93	400,000,000
18 1993-94	500,000,000
19 1994-95 and following years	Unlimited

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

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