

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 828  
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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



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1 contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation  
2 shall keep a record of all bids submitted, which record shall be subject to public inspection at  
3 any time after the bids are opened.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 "**Chapter 136.**

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

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

33 "**§ 136-4A. Transportation system.**

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

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

39 "**§ 136-18. Powers of Department of Transportation.**

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

41 ...

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

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

18 ...

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

38 ...."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **"§ 136-19.3. Acquisition of buildings.**

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

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

47 **"§ 136-19.5. Utility right-of-way agreements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **"§ 136-28.2. Relocated ~~highways; transportation infrastructure; contracts let by others.~~**

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

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

28 **"§ 136-28.6. Participation by the Department of Transportation with private developers.**

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

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

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

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

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

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

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

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

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

48 (h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative  
49 Commission on Governmental Operations on all agreements entered into between a private  
50 developer and the Department of Transportation for participation in private engineering and  
51 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~~"  
29 Act" an 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~~"Act" 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 August 1, 2009.