

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 356
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/11/19
House Committee Substitute Favorable 7/15/19
House Committee Substitute #2 Favorable 7/30/19
Proposed Conference Committee Substitute S356-PCCS45380-SU-8

Short Title: DOT Cash and Accountability.

(Public)

Sponsors:

Referred to:

March 27, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE REVENUE ADJUSTMENTS, IMPLEMENT BUDGET
3 STABILIZATION MEASURES, AND ENHANCE TRANSPARENCY AND
4 ACCOUNTABILITY AT THE DEPARTMENT OF TRANSPORTATION.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. REVENUE ADJUSTMENTS AND BUDGET STABILIZATION MEASURES**

8
9 **BUILD NC BONDS**

10 **SECTION 1.1.(a)** Notwithstanding G.S. 142-97(4), for the 2019-2020 fiscal year,
11 the Department of the State Treasurer shall authorize the issuance and sale of Build NC Bonds
12 in the amount of four hundred million dollars (\$400,000,000).

13 **SECTION 1.1.(b)** Nothing in this section shall be construed as modifying the Build
14 NC Bonds limit set forth in G.S. 142-97(3).

15
16 **LOAN TO HIGHWAY FUND**

17 **SECTION 1.2.(a)** Notwithstanding any provision of law to the contrary, the
18 Department of Transportation shall transfer one hundred million dollars (\$100,000,000) in
19 nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund according to
20 the following schedule:

21 (1) \$50,000,000 on or before February 1, 2020.

22 (2) \$50,000,000 on or before May 1, 2020.

23 **SECTION 1.2.(b)** The Department of Transportation shall repay the Highway Trust
24 Fund loan according to a repayment schedule approved by the Department of the State Treasurer.

25
26 **TRANSPORTATION EMERGENCY RESERVE**

27 **SECTION 1.3.(a)** Legislative Intent. – It is the intent of the General Assembly that
28 the Transportation Emergency Reserve shall only be used for major disasters and not for snow
29 and ice removal or non-declared emergency operations.

30 **SECTION 1.3.(b)** Article 2A of Chapter 136 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 136-44.2E. Transportation Emergency Reserve.**



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1 (a) Creation. – The Transportation Emergency Reserve (Emergency Reserve) is
2 established as a special fund in the Department of Transportation.

3 (b) Funding; Use of Funds. – Subject to subsection (d) of this section, no later than July
4 30 of each fiscal year, the Department of Transportation shall transfer from the Highway Fund
5 to the Emergency Reserve the sum of one hundred twenty-five million dollars (\$125,000,000),
6 and these funds are hereby appropriated for expenses related to an emergency. For purposes of
7 this section, the term "emergency" has the same meaning as in G.S. 166A-19.3.

8 (c) Access to Funds. – The Department may only use funds in the Emergency Reserve
9 after the President of the United States issues a declaration under the Stafford Act (42 U.S.C. §§
10 5121 – 5207) that a major disaster exists in the State. The Secretary of Transportation shall ensure
11 all funds in the Emergency Reserve are accessed and used pursuant to this section.

12 (d) Limitation on Funds. – The total funds in the Emergency Reserve shall not exceed the
13 sum of one hundred twenty-five million dollars (\$125,000,000). If a transfer under subsection
14 (b) of this section would cause the Emergency Reserve to exceed this limitation, the amount
15 transferred shall equal the difference between one hundred twenty-five million dollars
16 (\$125,000,000) and the amount of funds in the Emergency Reserve on the transfer date set forth
17 in subsection (b) of this section.

18 (e) Evaluation of Emergency Reserve. – No later than February 1 of the first year of the
19 2021-2023 fiscal biennium, and biennially thereafter, the Department of the Transportation shall
20 submit a report on the Emergency Reserve to the House of Representatives Appropriations
21 Committee on Transportation, the Senate Appropriations Committee on the Department of
22 Transportation, and the Fiscal Research Division. The report shall contain the results of an
23 evaluation of the Emergency Reserve, based on a methodology developed jointly by the Office
24 of State Budget and Management and the Department of Transportation, to determine the
25 minimum amount of funds needed in the Emergency Reserve."

26 **SECTION 1.3.(c)** G.S. 143C-6-11 is amended by adding a new subsection to read:

27 "(d1) Unanticipated Expenditures; Adjustment of Budget. – In any fiscal year, when all
28 funds allocated for snow and ice removal, and emergencies are depleted, the Department may, in
29 coordination with the Office of State Budget and Management (OSBM), reduce the budget for
30 every departmental division, grant-in-aid, and category of expenditures, excluding salaries, to
31 pay for any unanticipated expenditures from snow and ice removal, and emergencies. Within 30
32 days of an adjustment made pursuant to this subsection, the Department shall submit a report to
33 the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division."

34 **SECTION 1.3.(d)** No later than 30 days from the effective date of this section, the
35 State Controller shall transfer from the unreserved balance in the General Fund to the Emergency
36 Reserve the sum of sixty-four million dollars (\$64,000,000).

37 **SECTION 1.3.(e)** Revise Department of Transportation Base Budget. – The
38 Department of Transportation, in consultation with the Office of State Budget and Management,
39 shall revise the Department base budget to increase the amount of funds available for snow and
40 ice removal and emergency expenditures.

41 **SECTION 1.3.(f)** This section is effective when it becomes law.

42 43 **MAP ACT PAYMENTS**

44 **SECTION 1.4.(a)** Limitation on Funds to Pay Map Act Settlement Costs. – The
45 Department of Transportation may use no more than one hundred fifty million dollars
46 (\$150,000,000) each fiscal year to pay compensation for damages arising from the Department's
47 recordation of a transportation corridor map under Article 2E of Chapter 136 of the General
48 Statutes (Map Act). This limitation does not apply to the payment of compensation for Map Act
49 damages arising from a Turnpike project. For purposes of this section, the term "Turnpike
50 project" has the same meaning as in G.S. 136-89.181.

51 **SECTION 1.4.(b)** G.S. 136-113 reads as rewritten:

"§ 136-113. Interest as a part of just compensation.

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the legal rate on said amount from the date of taking to the date of satisfaction of the judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. For purposes of this section, the term "legal rate" means the prime lending rate, as published by the Board of Governors of the Federal Reserve System on the first business day of the calendar month immediately preceding the date of taking. The legal rate established under this section shall not exceed the legal rate set in G.S. 24-1. An amount awarded as damages shall bear simple, not compounding, interest."

SECTION 1.4.(c) Subsection (a) of this section becomes effective December 1, 2019, and applies to all pending and future claims and causes of action arising from the recordation of a transportation corridor map under Article 2E of Chapter 136 of the General Statutes. Subsection (b) of this section becomes effective January 1, 2020, and applies to causes of action filed on or after that date.

FEMA REIMBURSEMENT

SECTION 1.5.(a) The Department of Transportation shall expeditiously seek reimbursement from the federal government for all qualifying disaster expenditures. No later than the end of each month, the Department shall submit a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division that contains an itemized list of all disaster expenditures that qualify for federal reimbursement for which reimbursement is still pending and the expected amount, including the total amount spent for each disaster, the expected amount of reimbursement to be received for each disaster, the reimbursement amount received to date, the dates the work plans and reimbursement applications were submitted, and the expected dates of reimbursement.

SECTION 1.5.(b) This section is effective when it becomes law.

REMOVE REQUIRED REPAYMENT OF GENERAL FUND LOAN

SECTION 1.6. Section 7 of S.L. 2019-15 reads as rewritten:

~~"SECTION 7. Repayment and Reversion of Loaned Funds. – Upon reaching the amount limitation set forth in Section 5 of this act or June 30, 2021, whichever occurs earlier, the Department shall transfer ninety million dollars (\$90,000,000) to the Office of the State Controller for deposit in the Savings Reserve and shall transfer the remaining balance in the Fund to the Highway Fund and close the Fund."~~

DISASTER RELIEF FUNDS

SECTION 1.7. In addition to any other funds appropriated during the 2019-2020 fiscal year, there is appropriated from the General Fund to the Department of Transportation the sum of thirty-six million dollars (\$36,000,000) to be used as follows:

- (1) \$30,000,000 for current and future activities related to recovery from Hurricane Dorian such as debris removal and repair of highway infrastructure damage.
- (2) \$2,000,000 for the Living Shoreline projects.
- (3) \$2,000,000 to expand the Flood Inundation Mapping Alert Network for Transportation.
- (4) \$2,000,000 for a Flood Risk and Vulnerability Assessment on the Strategic Highway Corridor System.

PART II. TRANSPARENCY AND ACCOUNTABILITY MEASURES

BUDGET ACCOUNTABILITY REPORTING

SECTION 2.1.(a) G.S. 143C-6-11 reads as rewritten:

"§ 143C-6-11. Highway appropriation.

...

(m) Target Amount Report. – No later than the fifteenth day of the month following a month where the combined average daily cash balance (cash balance) is outside of the target range established in subdivision (1) of subsection (k) of this section, the Department shall report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the reasons why the cash balance is outside of the target range, the actions to be taken by the Department to bring the cash balance into the target range, and the estimated amount of time it will take for the cash balance to return to the target range.

(n) Cash Watch Weekly Report. – The Department of Transportation shall publish for public review a weekly report of the Department's cash position, which shall be entitled "NCDOT Cash Watch Numbers." The report shall be issued as a press release to all interested parties, posted on the Department's Web site, and submitted to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division. In addition to any cash flow category the Department determines is beneficial to include, the report shall contain the following:

(1) Beginning Combined Cash Balance Total

a. Highway Fund Total

b. Highway Trust Fund Total

(2) Less Disbursements

a. Payroll

b. Debt Service

c. STI Construction Costs

d. General Operating Costs

e. Map Act Claims/Settlements

f. State Aid Payments

g. Disaster Related Costs

h. Other

(3) Ending Combined Cash Balance Total

a. Highway Fund Total

b. Highway Trust Fund Total

(4) Reserved Cash

a. Statutory Cash Balance

b. GARVEE/Federal Repayment Reserve

c. Transportation Emergency Reserve

d. Other Reserves

e. Trustee Accounts – Build NC proceeds

f. Trustee Accounts – GARVEE

g. Trustee Accounts – Other Bonds

(o) Balance Sheet Report. – By the third day of each month, the Department of Transportation shall submit a balance sheet report of all assets, debits, liabilities, and fund balances with an explanation of significant changes from the prior month to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division."

SECTION 2.1.(b) Subsection (c) of Section 34.23 of S.L. 2014-100 is repealed.

SECTION 2.1.(c) This section is effective when it becomes law.

PERFORMANCE AUDIT OF DEPARTMENT OF TRANSPORTATION

SECTION 2.3.(a) The Office of the State Auditor shall conduct a performance audit of the Department of Transportation. The audit shall include an examination of the following:

- (1) Budget adherence by department, division, and highway division.

- 1 (2) Timeliness of federal reimbursement requests and timeliness of the
2 Department's responses to any federal requests for additional information or
3 action.
- 4 (3) Department controls and oversight of divisions and highway divisions as to
5 cash management, project coordination and delivery, and budget adherence.
- 6 (4) Efficacy of communication and coordination within the Department.
- 7 (5) Efficacy of cash management by the Department.
- 8 (6) Other items the State Auditor deems relevant to study.

9 **SECTION 2.3.(b)** By March 1, 2020, the State Auditor and the Department of
10 Transportation shall report to the Joint Legislative Commission on Governmental Operations,
11 Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division. The
12 State Auditor report shall contain the performance audit required by this section. The Department
13 of Transportation report shall contain the Department's plan of action in response to the
14 performance audit. The Department of Transportation shall give the State Auditor full access to
15 all data necessary to complete the audit and the report.

17 **FINANCIAL MANAGEMENT REPORT**

18 **SECTION 2.4.** By January 15, 2020, the Department of Transportation shall submit
19 a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research
20 Division on:

- 21 (1) Internal management by department, division, and highway division of cash
22 and finances, including all financial controls, policies, and approval processes
23 for contracts and expenses.
- 24 (2) Projected total cost of remaining Map Act claims and an assessment of Map
25 Act settlement cost versus total litigation exposure of every remaining claim
26 exceeding one million dollars (\$1,000,000).
- 27 (3) Actions taken by the Department in response to the "Monthly Projected
28 Ending Cash Balance" report presented to the Joint Legislative Transportation
29 Oversight Committee meeting of November 8, 2018.
- 30 (4) The Department summary of the McKinsey Report and measures taken by the
31 Department to (i) ensure each Highway Division does not exceed its budget,
32 (ii) enhance coordination and communication between the Financial
33 Management Division and the Division Engineers, (iii) make changes to the
34 base budget for the Highway Fund that increases funding for disaster-related
35 expenses and for the Highway Trust Fund to include anticipated Map Act
36 related expenses, (iv) address contracting restrictions that do not permit
37 changes when necessary, (v) establish key performance indicators that include
38 cash management measures, and (vi) develop real-time reporting of data
39 throughout the Department.
- 40 (5) Factors taken into consideration and justification for Department employee
41 salary adjustments, including any consideration of the Department's financial
42 position.
- 43 (6) The Department authority, justification, and procedures for Highway Division
44 offices to exceed annual budgeted amounts and to borrow from a future fiscal
45 year's allocation.
- 46 (7) The total amount of funds loaned from the Highway Trust Fund to the
47 Highway Fund, the legal authority to make the loans, the justification for the
48 loans, the use of the loaned funds, and the Department's plan to restore the
49 funds to the Highway Trust Fund.

- 1 (8) A review of the Highway Fund and Highway Trust Fund including (i) history
2 and statutory authority, (ii) rationale for transfers between the funds, and (iii)
3 use of Highway Fund for all accounts payable.
- 4 (9) The total amount of funds spent on outside contractors by highway division
5 for the 2018-2019 fiscal year.
- 6 (10) An assessment of Department contracting procedures, proposed changes to
7 increase the Department's contract flexibility in addressing cash flow
8 variances, and any legal or regulatory obstacles impeding the proposed
9 changes.
- 10 (11) Department internal audits: history, frequency, and findings.
- 11 (12) Any recommendations for legislation.
- 12

13 **PART III. EFFECTIVE DATE**

14 **SECTION 3.1.** Except as otherwise provided, this act is effective when it becomes
15 law.