

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS65018-RWz-29B* (04/27)

Short Title: DOT Powers and Duties Changes.

(Public)

Sponsors: Senator Goss.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON THE CONDITION OF ITS BUILDINGS; CORRECT A STATUTORY REFERENCE TO THE DEPARTMENT OF TRANSPORTATION'S CHIEF FINANCIAL OFFICER; ELIMINATE STATUTORY REFERENCES TO A SEVEN-YEAR TRANSPORTATION IMPROVEMENT PROGRAM; CLARIFY THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY AND GENERAL SUPERVISION OVER ALL TRANSPORTATION PROJECTS; PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENTS TO RECEIVE FUNDS FOR RIGHT-OF-WAY ACQUISITION; UPDATE STATUTORY REFERENCES TO THE NORTH CAROLINA TURNPIKE AUTHORITY; ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON ACCESS TO COASTAL WATERS; REVISE THE STATUTES GOVERNING THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES PROGRAM; MODIFY THE EFFECT OF MUNICIPAL PARTICIPATION ON DEPARTMENT OF TRANSPORTATION PROJECTS; AND TRANSFER TO THE SECRETARY THE POWER TO PROMULGATE DEPARTMENT OF TRANSPORTATION RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-11 is repealed.

SECTION 2. G.S. 136-16.10 reads as rewritten:

"§ 136-16.10. Allocations by Department ~~Controller~~ Chief Financial Officer to eliminate overdrafts.

The ~~Controller~~ Chief Financial Officer of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation for State Construction, State Funds to Match Federal Highway Aid, State Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations shall not be diverted to other purposes."

SECTION 3. G. S. 136-17.2A(d) reads as rewritten:

"(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any ~~consecutive seven year~~



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1 Transportation Improvement Plan period, the amount expended in a distribution region must be
2 between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts
3 established under this subsection as the target amounts to be expended in the region for ~~those~~
4 ~~seven years~~.that period."

5 **SECTION 4.** G.S. 136-18(1) reads as rewritten:

6 **"§ 136-18. Powers of Department of Transportation.**

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

- 8 (1) The authority and general supervision over all matters relating to the
9 ~~construction~~construction, maintenance, and design of the State ~~highways,~~
10 transportation projects, letting of contracts therefore, and the selection of
11 materials to be used in the construction of State ~~highways~~transportation
12 projects under the authority of this Chapter."

13 **SECTION 5.** G.S. 136-18(12b) reads as rewritten:

14 **"§ 136-18. Powers of Department of Transportation.**

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

- 16 (12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other
17 eligible debt-financing instruments to finance federal-aid highway projects
18 using federal funds to pay a portion of principal, interest, and related bond
19 issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National
20 Highway System Designation Act of 1995, Pub. L. 104-59). These bonds
21 shall be issued by the State Treasurer on behalf of the Department and shall
22 be issued pursuant to an order adopted by the Council of State under
23 G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt
24 instruments, consistent with the terms of the State and Local Government
25 Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use
26 under this subdivision. Prior to issuance of any "GARVEE" or other eligible
27 debt instrument using federal funds to pay a portion of principal, interest,
28 and related bond issuance costs, the State Treasurer shall determine (i) that
29 the total outstanding principal of such debt does not exceed the total amount
30 of federal transportation funds authorized to the State in the prior federal
31 fiscal year; or (ii) that the maximum annual principal and interest of such
32 debt does not exceed fifteen percent (15%) of the expected average annual
33 federal revenue shown for the ~~seven-year~~ period in the most recently
34 adopted Transportation Improvement Program. Notes issued under the
35 provisions of this subdivision may not be deemed to constitute a debt or
36 liability of the State or of any political subdivision thereof, or a pledge of the
37 full faith and credit of the State or of any political subdivision thereof, but
38 shall be payable solely from the funds and revenues pledged therefor. All the
39 notes shall contain on their face a statement to the effect that the State of
40 North Carolina shall not be obligated to pay the principal or the interest on
41 the notes, except from the federal transportation fund revenues as shall be
42 provided by the documents governing the revenue note issuance, and that
43 neither the faith and credit nor the taxing power of the State of North
44 Carolina or of any of its political subdivisions is pledged to the payment of
45 the principal or interest on the notes. The issuance of notes under this Part
46 shall not directly or indirectly or contingently obligate the State or any of its
47 political subdivisions to levy or to pledge any form of taxation whatever or
48 to make any appropriation for their payment."

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

50 **"§ 136-18. Powers of Department of Transportation.**

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

1 (38) To enter into agreements with municipalities, counties, governmental
2 entities, or nonprofit corporations to receive funds for the ~~purpose~~ purposes
3 of advancing right-of-way acquisition or the construction schedule of a
4 project identified in the Transportation Improvement Program. If these funds
5 are subject to repayment by the Department, prior to receipt of funds,
6 reimbursement of all funds received by the Department shall be shown in the
7 existing Transportation Improvement Program and shall be reimbursed
8 within ~~seven years of receipt~~. the period of the existing Transportation
9 Improvement Program."

10 **SECTION 7.** G.S. 136-18(39) reads as rewritten:

11 **"§ 136-18. Powers of Department of Transportation.**

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

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

30 **SECTION 8.** G.S. 136-18(40) reads as rewritten:

31 **"§ 136-18. Powers of Department of Transportation.**

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

33 (40) To expand public access to coastal waters in its road project planning and
34 construction programs. The Department shall work with the Wildlife
35 Resources Commission, other State agencies, and other government entities
36 to address public access to coastal waters along the roadways, bridges, and
37 other transportation infrastructure owned or maintained by the Department.
38 The Department shall adhere to all applicable design standards and
39 guidelines in implementation of this enhanced access. ~~The Department shall~~
40 ~~report on its progress in expanding public access to coastal waters to the~~
41 ~~Joint Legislative Commission on Seafood and Aquaculture and to the Joint~~
42 ~~Legislative Transportation Oversight Commission no later than March 1 of~~
43 ~~each year."~~

44 **SECTION 9.** G.S. 136-28.4 reads as rewritten:

45 **"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**
46 **women-owned businesses in highway transportation contracts.**

47 (a) It is the policy of this State, based on a compelling governmental interest, to
48 encourage and promote participation by disadvantaged minority-owned and women-owned
49 businesses in contracts let by the Department pursuant to this Chapter for the planning, design,
50 preconstruction, construction, alteration, or maintenance of State ~~highways, roads, streets, or~~
51 ~~bridges~~ transportation infrastructure and in the procurement of materials for these projects. All

1 State agencies, institutions, and political subdivisions shall cooperate with the Department of
2 Transportation and among themselves in all efforts to conduct outreach and to encourage and
3 promote the use of disadvantaged minority-owned and women-owned businesses in these
4 contracts.

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

21 (b1) Based upon the findings of the Department's ~~Second Generation Disparity Study~~
22 ~~completed in 2004~~, 2009 study entitled "Measuring Business Opportunity: A Disparity Study of
23 NCDOT's State and Federal Programs" hereinafter referred to as "Study", the program design
24 shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in
25 the Study, and the Department shall implement a comprehensive antidiscrimination
26 enforcement policy. As appropriate, the program design shall be modified by rules adopted by
27 the Department that are consistent with findings made in the Study and in subsequent studies
28 conducted in accordance with subsection (b) of this section. As part of this program, the
29 Department shall review its budget and establish ~~annual~~ aspirational goals every three years,
30 not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged
31 minority-owned and women-owned businesses. These ~~annual~~ aspirational goals for
32 disadvantaged minority-owned and women-owned businesses shall be established consistent
33 with ~~federal methodology specified in the Study~~, methodology, and they shall not be applied
34 rigidly on specific contracts or projects. Instead, the Department shall establish
35 contract-specific goals or project-specific goals for the participation of such firms in a manner
36 consistent with availability of disadvantaged minority-owned and women-owned businesses, as
37 appropriately defined by its most recent Study, for each disadvantaged minority-owned and
38 women-owned business category that has demonstrated significant disparity in contract
39 utilization. Nothing in this section shall authorize the use of quotas. Any program implemented
40 as a result of the Study conducted in accordance with this section shall be narrowly tailored to
41 eliminate the effects of historical and continuing discrimination and its impacts on such
42 disadvantaged minority-owned and women-owned businesses without any undue burden on
43 other contractors. The Department shall give equal opportunity for contracts it lets without
44 regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as
45 defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

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

- 47 (1) "Disadvantaged ~~business~~Business" has the same meaning as "disadvantaged
48 business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently
49 promulgated replacement regulation.
- 50 (2) "Minority" includes only those racial or ethnicity classifications identified by
51 a study conducted in accordance with this section that have been subjected to

1 discrimination in the relevant marketplace and that have been adversely
2 affected in their ability to obtain contracts with the Department.

3 (3) "Women" means a nonminority person born of the female gender.

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

11 (e) This section expires August 31, ~~2010~~ 2014."

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

13 **"§ 136-66.3. Local government participation in improvements to the State transportation**
14 **system.**

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

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

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

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

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

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

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

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

4 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement with
5 the Department of Transportation, a county or municipality may reimburse the Department of
6 Transportation for the cost of all improvements, including additional right-of-way, for a street,
7 highway improvement projects, or other transportation system improvements approved by the
8 Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
9 that the Department of Transportation would normally include in the 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 street, highway, or other transportation project, the county or
21 municipality shall be vested with the same authority to acquire such rights-of-way as is granted
22 to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way,
23 counties and municipalities may use the procedures provided in Article 9 of this Chapter, and
24 wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to
25 include "county," "municipality" or local governing body, and wherever the words
26 "Administrator," "Administrator of Highways," "Administrator of the Department of
27 Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they
28 shall be deemed to include "county or municipal clerk". It is the intention of this subsection that
29 the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be
30 in addition to and supplementary to those powers granted in any local act or in any other
31 general statute, and in any case in which the provisions of this subsection or Article 9 of this
32 Chapter are in conflict with the provisions of any local act or any other provision of any general
33 statute, then the governing body of the county or municipality may in its discretion proceed in
34 accordance with the provisions of such local act or other general statute, or, as an alternative
35 method of procedure, in accordance with the provisions of this subsection and Article 9 of this
36 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 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 transportation
48 system shall be a proper party in any proceeding in court relating to the acquisition of such
49 rights-of-way.

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

51 **SECTION 11.** G.S. 136-89.189 reads as rewritten:

1 **"§ 136-89.189. Turnpike Authority revenue bonds.**

2 The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the
3 General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue
4 bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund
5 any previously issued bonds. In connection with the issuance of revenue bonds, the Authority
6 shall have all powers of a municipality under the State and Local Government Revenue Bond
7 Act, and revenue bonds issued by the Authority shall be entitled to the protection of all
8 provisions of the State and Local Government Revenue Bond Act.

9 Except as provided in this section, the provisions of Chapter 159 of the General Statutes,
10 the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

11 (1) The term of a lease between the Turnpike Authority and the Department
12 executed prior to July 27, 2009, for all or any part of a Turnpike Project may
13 exceed 40 years, as agreed by the Authority and the Department.

14 (2) The maturity date of a refunding bond may extend to the earlier of the
15 following:

16 a. Forty years from the date of issuance of the refunding bond.

17 b. The date the Turnpike Authority determines is the maturity date
18 required for the Turnpike Project funded with the refunding bonds to
19 generate sufficient revenues to retire the refunding bonds and any
20 other outstanding indebtedness issued for that Project. The
21 Authority's determination of the appropriate maturity date is
22 conclusive and binding. In making its determination, the Authority
23 may take into account appropriate financing terms and conventions."

24 **SECTION 12.** G.S. 143B-348 reads as rewritten:

25 **"§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of**
26 **Transportation.**

27 The Secretary of Transportation shall be the head of the Department of Transportation. He
28 shall carry out the day-to-day operations of the Department and shall be responsible for
29 carrying out the policies, programs, priorities, and projects approved by the Board of
30 Transportation. He shall be responsible for all other transportation matters assigned to the
31 Department of Transportation, except those reserved to the Board of Transportation by statute.
32 Except as otherwise provided for by statute, the Secretary shall have all the powers and duties
33 as provided for in Article 1 of Chapter 143B including the responsibility for all management
34 functions for the Department of Transportation. The Secretary shall be vested with authority to
35 adopt design criteria, construction specifications, and standards as required for the Department
36 of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the
37 Secretary's designee shall be vested with authority to promulgate rules, regulations, and
38 ordinances concerning all transportation functions assigned to the Department.

39 All rules, regulations, ordinances, specifications, standards, and criteria adopted by the
40 Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by
41 the Board of Transportation or the Secretary of Transportation. The Secretary shall have
42 complete authority to modify any of these matters existing on July 1, 1977, except as
43 specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance,
44 specification, or standards are continued in effect under this section and the words "Board of
45 Transportation" are used, the words shall mean the "Department of Transportation" unless the
46 context makes such meaning inapplicable. All actions pending in court by or against the Board
47 of Transportation may continue to be prosecuted in that name without the necessity of formally
48 amending the name to the Department of Transportation."

49 **SECTION 13.** G.S. 143B-350(f)(4) reads as rewritten:

50 "(f) Duties of the Board. – The Board of Transportation has the following duties and
51 powers:

- 1 (4) To approve a schedule of all major transportation improvement projects and
2 their anticipated ~~cost for a period of seven years into the future.~~ cost. This
3 schedule is designated the Transportation Improvement Program; it must be
4 published and copies must be available for distribution. The document that
5 contains the Transportation Improvement Program, or a separate document
6 that is published at the same time as the Transportation Improvement
7 Program, must include the anticipated funding sources for the improvement
8 projects included in the Program, a list of any changes made from the
9 previous year's Program, and the reasons for the changes."

10 **SECTION 14.** G.S. 143B-350(f)(13) is repealed.

11 **SECTION 15.** G.S. 159-81(1) reads as rewritten:

12 **"§ 159-81. Definitions.**

13 The words and phrases defined in this section shall have the meanings indicated when used
14 in this Article:

- 15 (1) "Municipality" means a county, city, town, incorporated village, sanitary
16 district, metropolitan sewerage district, metropolitan water district, county
17 water and sewer district, water and sewer authority, hospital authority,
18 hospital district, parking authority, special airport district, special district
19 created under Article 43 of Chapter 105 of the General Statutes, regional
20 public transportation authority, regional transportation authority, regional
21 natural gas district, regional sports authority, airport authority, joint agency
22 created pursuant to Part 1 of Article 20 of Chapter 160A of the General
23 Statutes, a joint agency authorized by agreement between two cities to
24 operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike
25 Authority ~~created pursuant to described in~~ Article 6H of Chapter 136 of the
26 General ~~Statutes,~~ Statutes and transferred to the Department of
27 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
28 State or local government."

29 **SECTION 16.** This act is effective when it becomes law.