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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 "Chapter 136.

28 Roads and Highways Transportation."

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

31 "**§ 136-4A. Transportation system.**

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

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

37 "**§ 136-18. Powers of Department of Transportation.**

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

39 ...

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

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

16 ...

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

36"

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

38 "**§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;**
 39 **federal parkways.**

40 (a) The Department of Transportation is vested with the power to acquire either in the
 41 nature of an appropriate easement or in fee simple such rights-of-way and title to such land,
 42 gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry
 43 beds, lime or other earth or mineral deposits or formations, and such standing timber as it may
 44 deem necessary and suitable for transportation infrastructure construction, including road
 45 construction, maintenance, and repair, and the necessary approaches and ways through, and a
 46 sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to
 47 properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter
 48 set out. If the Department of Transportation acquires by purchase, donation, or condemnation
 49 part of a tract of land in fee simple for highway right-of-way as authorized by this section and
 50 the Department of Transportation later determines that the property acquired for transportation
 51 infrastructure, including highway right-of-way, or a part of that property, is no longer needed

1 for ~~highway infrastructure~~ right-of-way, then the Department shall give first consideration to
2 any offer to purchase the property made by the former owner. The Department may refuse any
3 offer that is less than the current market value of the property, as determined by the
4 Department. Unless the Department acquired an entire lot, block, or tract of land belonging to
5 the former owner, the former owner must own the remainder of the lot, block, or tract of land
6 from which the property was acquired to receive first consideration by the Department of their
7 offer to purchase the property.

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

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

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

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

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

47 (g) The Department of Transportation shall have the same authority, under the same
48 provisions of law provided for construction of State highways, transportation projects, for
49 acquirement of all rights-of-way and easements necessary to comply with the rules and
50 regulations of the United States government for the construction of federal parkways and
51 entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125

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

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

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

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

30 **"§ 136-19.3. Acquisition of buildings.**

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

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

45 **"§ 136-19.5. Utility right-of-way agreements.**

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

1 take into account the fact that more than one utility can make use of the right-of-way. No such
2 agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain
3 under the control of the Department of Transportation.

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

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

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

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

22 **"§ 136-26. Closing of State ~~highways-transportation infrastructure~~ during construction;
23 injury to barriers, warning signs, etc.**

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

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

44 **"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or
45 sewer corporations or associations.**

46 The Department of Transportation shall pay the nonbetterment cost for the relocation of
47 water and sewer lines, located within the existing State ~~highway-transportation project~~
48 right-of-way, that are necessary to be relocated for a State ~~highway-transportation~~ improvement
49 project and that are owned by: (i) a municipality with a population of 5,500 or less according to
50 the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any
51 water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural

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

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

7 "**§ 136-27.2. Relocation of county-owned natural gas lines located on Department of**
8 **Transportation right-of-way.**

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

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

14 "**§ 136-28.2. Relocated ~~highways;~~ transportation infrastructure; contracts let by others.**

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

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

26 "**§ 136-28.6. Participation by the Department of Transportation with private developers.**

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

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

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

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

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

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

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

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

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

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

50 (i) Counties and municipalities may participate financially in private engineering, land
51 acquisition, and construction contracts for transportation projects ~~pertaining to streets or~~

1 highways—which meet the requirements of subsection (b) of this section within their
2 jurisdiction."

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

4 **"§ 136-28.9. Retainage – construction contracts.**

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

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

17 **"§ 136-29. Adjustment and resolution of ~~highway construction~~ Department of**
18 **Transportation contract claim.**

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

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

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

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

47 (d) The provisions of this section shall be part of every contract ~~for State highway~~
48 construction let in accordance with Article 2 of this Chapter between the Department of
49 Transportation and a contractor. A provision in a contract that conflicts with this section is
50 invalid."

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

1 **"§ 136-35. Cooperation with other states and federal government.**

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

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

12 "Article 2A.

13 State ~~Roads-Transportation~~ Generally.

14 **"§ 136-44.1. Statewide ~~road-transportation~~ system; policies.**

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

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

24 **"§ 136-44.2. Budget and appropriations.**

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

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

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

48 The Department of Transportation shall have all powers necessary to comply fully with
49 provisions of present and future federal-aid acts. No federally eligible construction project may
50 be funded entirely with State funds unless the Department of Transportation has first reported
51 to the Joint Legislative Commission on Governmental Operations. For purposes of this section,

1 "federally eligible construction project" means any construction project except secondary road
2 projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any
3 federal-aid act, whether or not federal funds are actually available.

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

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

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

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

28 "**§ 136-44.2C. Special appropriations for State construction.**

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

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

37 "**§ 136-44.4. Annual construction program; State primary and urban systems.**

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

1 commissioners, and other persons upon request. These reports shall indicate the expenditure on
2 each of the projects and the status of all projects set out in the work program."

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

5 "Article 3A.

6 ~~Streets and Highways~~ Transportation Systems in and around Municipalities."

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

8 "**§ 136-66.3. Local government participation in improvements to the State highway**
9 **system.**

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

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

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

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

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

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

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

50 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement with
51 the Department of Transportation, a county or municipality may reimburse the Department of

1 Transportation for the cost of all improvements, including additional right-of-way, for a ~~street~~
2 ~~or street~~, highway improvement ~~projects~~ ~~projects~~, or other transportation system improvements
3 approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to
4 those improvements that the Department of Transportation would normally include in the
5 project.

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

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

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

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

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

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

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

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

48 "**§ 136-66.5. Improvements in urban area streets areas to reduce traffic congestion.**

49 (a) The Department of Transportation is authorized to enter into contracts with
50 municipalities for ~~highway~~ improvement projects which are a part of an overall plan authorized
51 under the provisions of section 135 of Title 23 of the United States Code, the purpose of which

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

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

27 (c) The municipalities in which improvements are made pursuant to section 135 of Title
28 23 of the United States Code shall provide proper maintenance and operation of such
29 completed projects and improvements on the municipal system streets and other transportation
30 infrastructure or will provide other means for assuring proper maintenance and operation as is
31 required by the Department of Transportation. In the event the municipality fails to maintain
32 such project or provide for their proper maintenance, the Department of Transportation is
33 authorized to maintain the said projects and improvements and deduct the cost from allocations
34 to the municipalities made under the provisions of G.S. 136-41.1."

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

36 "**§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing**
37 **record of results with Department of Transportation.**

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

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

46 "**§ 136-103.1. Outside counsel.**

47 The Attorney General is authorized to employ outside counsel as he deems necessary for
48 the purpose of obtaining title abstracts and title certificates for highway transportation system
49 rights-of-way and for assistance in the trial of condemnation cases involving the acquisition of
50 rights-of-way and other interests in land for the purpose of highway transportation construction.

1 Compensation, as approved by the Attorney General, shall be paid out of the appropriations
 2 from the Highway Fund."

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

4 "**§ 136-177. Limitation on funds obligated from Trust Fund.**

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

9 Fiscal Year	Maximum Expenditure
10 1989-90	\$200,000,000
11 1990-91	250,000,000
12 1991-92	300,000,000
13 1992-93	400,000,000
14 1993-94	500,000,000
15 1994-95 and following years	Unlimited

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

20 **SECTION 28.** This act becomes effective August 1, 2009.