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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2019

SESSION LAW 2020-91

HOUSE BILL 77

AN ACT TO ADJUST THE DEPARTMENT OF TRANSPORTATION CERTIFIED BUDGET FOR THE 2020-2021 FISCAL YEAR AND TO IMPLEMENT GOVERNANCE MEASURES AND OTHER MODIFICATIONS RELATED TO THE OPERATIONS OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

PART I. BUDGET APPROPRIATIONS FOR THE 2020-2021 FISCAL YEAR

SECTION 1.1.(a) All budget codes listed in the DOT Certified Budget for the 2020-2021 fiscal year are appropriated up to the amounts specified, as adjusted by the General Assembly in this act. For purposes of this act, the term "DOT Certified Budget" means the Department of Transportation certified budget for the 2019-2021 biennium published by the Office of State Budget and Management and dated January 31, 2020.

SECTION 1.1.(b) If any provision of S.L. 2019-231 and this act conflict, this act shall control. Except as provided in this section and otherwise where expressly repealed or amended by this act, the provisions of any other legislation enacted during the 2019 Regular Session of the General Assembly expressly appropriating funds to an agency, a department, or an institution covered under this act shall remain in effect.

PART II. HIGHWAY FUND AND HIGHWAY TRUST FUND

CURRENT OPERATIONS/HIGHWAY FUND

SECTION 2.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated in Section 2.1 of S.L. 2019-231 are adjusted for the fiscal year ending June 30, 2021, according to the following schedule. Amounts set out in parentheses are reductions from Highway Fund Appropriations for the 2020-2021 fiscal year.

Current Operations – Highway Fund	**FY 2020-2021**
Department of Transportation	
Administration	$0
Division of Highways	
Administration	$0
Construction	(8,500,000)
Maintenance	$65,715,093
Governor's Highway Safety Program	$0
OSHA Program	$0
State Aid to Municipalities	(17,795,301)
Intermodal Divisions	
Ferry	$0
Public Transportation, Bicycle, and Pedestrian	(76,192,980)
Aviation	(8,682,390)
Rail	(12,200,000)

Division of Motor Vehicles	(794,048)
Compensation, Benefits, Reserves, Transfers, and Other	(3,542,874)
Capital Improvements	(7,707,500)
Total Highway Fund Appropriations	**$2,333,400,000**

HIGHWAY FUND AVAILABILITY

SECTION 2.2. The Highway Fund availability set out in Section 2.2 of S.L. 2019-231 applies to the 2019-2020 fiscal year only. The Highway Fund availability used in developing the 2020-2021 fiscal year budget is shown below:

Highway Fund Availability	**FY 2020-2021**
Consensus Forecast	$2,127,600,000
Motor Fuels Tax Rate Floor	$16,200,000
Motor Fuels Tax Revenue Distribution	$189,600,000
Total Highway Fund Availability	**$2,333,400,000**

CURRENT OPERATIONS/HIGHWAY TRUST FUND

SECTION 2.3. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated in Section 2.4 of S.L. 2019-231 are adjusted for the fiscal year ending June 30, 2021, according to the following schedule. Amounts set out in parentheses are reductions from Highway Fund Appropriations for the 2020-2021 fiscal year.

Current Operations – Highway Trust Fund	**FY 2020-2021**
Program Administration	$0
Bonds	$0
Turnpike Authority	$0
State Ports Authority	$0
FHWA State Match	$0
Strategic Prioritization Funding Plan for Transportation Investments	(425,900,000)
Transfer to Visitor Center	$0
Total Highway Trust Fund Appropriations	**$1,230,900,000**

HIGHWAY TRUST FUND AVAILABILITY

SECTION 2.4. The Highway Trust Fund availability set out in Section 2.4 of S.L. 2019-231 applies to the 2019-2020 fiscal year only. The Highway Trust Fund availability used in developing the 2020-2021 fiscal year budget is shown below:

Highway Trust Fund Availability	**FY 2020-2021**
Consensus Forecast	$1,419,000,000
Motor Fuels Tax Rate Floor	$3,800,000
Motor Fuels Tax Revenue Distribution	(191,900,000)
Total Highway Trust Fund Availability	**$1,230,900,000**

PART III. ADJUSTMENTS TO THE 2020-2021 DOT CERTIFIED BUDGET

USE OF HIGHWAY FUND APPROPRIATIONS

SECTION 3.1. Of the funds appropriated in this act to the Department of Transportation from the Highway Fund, the sum of one hundred seven million one hundred fifty-eight thousand one hundred seventy-one dollars ($107,158,171) for the 2020-2021 fiscal year shall be used as follows:

(1) General Maintenance Reserve (Fund Code: 0934) – $84,165,752 in nonrecurring funds. The revised net appropriation is $517,382,234.

(2) Contract Resurfacing (Fund Code: 7824) – $22,992,419 in nonrecurring funds. The revised net appropriation is $558,674,899.

HIGHWAY FUND REDUCTIONS

SECTION 3.2. Of the funds appropriated in this act to the Department of Transportation from the Highway Fund, the sum of one hundred seventy-six million eight hundred fifty-eight thousand one hundred seventy-one dollars ($176,858,171) for the 2020-2021 fiscal

year shall be reduced as follows:

(1) Mobility Modernization Program (Fund Code: 7844) – $41,443,078 in nonrecurring funds. The revised net appropriation is $0.

(2) Powell Bill Program (Fund Code: 7836) – $7,375,000 in recurring funds and $10,420,301 in nonrecurring funds. The revised net appropriation is $137,079,699.

(3) State Secondary System (Fund Code: 7812) – $8,500,000 in nonrecurring funds. The revised net appropriation is $3,500,000.

(4) Commercial Airport Funds (Fund Code: 7830) – $3,815,190 in nonrecurring funds. The revised net appropriation for this grant program is $71,184,810.

(5) State Aid to General Aviation Airports (Fund Code: 7830) – $4,867,200 in nonrecurring funds. The revised net appropriation for this grant program is $45,832,800.

(6) Amtrak Payment Cap (Fund Code: 7829) – $1,200,000 in nonrecurring funds due to CARES Act cap on Amtrak payments for State-supported routes. The revised net appropriation for contract services in this fund code is $9,897,200.

(7) Freight Rail & Rail Crossing Safety Improvement (FRRCSI) Program (Fund Code: 7829) – $11,000,000 in nonrecurring funds for the FRRCSI grant program. The revised net appropriation is $10,800,000.

(8) Public Transportation – Lynx Blue Line Extension (Fund Code: 7831) – $25,000,000 in nonrecurring funds. Reimbursements to Charlotte Area Transit System (CATS) during the 2020-2021 fiscal year will come from unexpended appropriations.

(9) Public Transportation – State Maintenance Assistance Program (SMAP) (Fund Code: 7831) – $32,528,557 in nonrecurring funds. The revised net appropriation for this program is $0.

(10) Public Transportation – Rural Operating Assistance Program (ROAP) (Fund Code: 7831) – $18,664,423 in nonrecurring funds. The revised net appropriation for this program is $0.

(11) DMV Headquarters Lease (Fund Code: 7050) – $794,048 in nonrecurring funds based upon the lease agreement schedule. The revised net appropriation for the lease is $1,705,952.

(12) Capital Repairs (Fund Code: 7826) – $7,707,500 in nonrecurring funds. The revised net appropriation is $0.

(13) Department Vacant Positions – $3,542,874 in recurring funds. This reduction is for the elimination of the following vacant positions:

Position Description	**Position Number**
a. Marine Field Maintenance Superintendent	60029775
b. Administrative Specialist I	60029763
c. Engineer III	60029761
d. Engineer III	60029758
e. Engineer III	60027691
f. Engineering Manager I	60027656
g. Engineer I	60027541
h. Administrative Officer I	60025145
i. Engineer III	60025070
j. HR Technician I	60023288
k. Executive Assistant I	60023276
*l.*Engineering Manager I	60022808
m. Administrative Associate II	60022310
n. Agency HR Consultant II	60022309
o. Engineering Manager I	60021737
p. Administrative Associate II	60021294
q. Administrative Specialist I	60021100
r. Executive Assistant I	60019741
s. Administrative Associate II	60019631
t. Administrative Associate II	60019010
u. Executive Assistant I	60017554
v. Administrative Associate II	60016967
w. Administrative Associate II	60016696
x. Administrative Specialist I	60016599
y. Administrative Specialist I	60016460

z. Engineer I	60016454
aa. Administrative Associate II	60016453
bb. Administrative Associate II	60016068
cc. Administrative Specialist II	60015790
dd. Aircraft Maintenance Supervisor	60015606
ee. Maintenance/Construction Technician II	60015522
ff. Auditor I	60015502
gg. Maintenance/Construction Supervisor III	60015485
hh. Administrative Specialist II	60015480
ii. Auditor III	60015440
jj. Auditor I	60015437
kk. Auditor III	60015433
//. Auditor III	60015427
mm. Auditor III	60015204
nn. Agency HR Consultant III	60015079
oo. Public Information Manager	60014954

HIGHWAY TRUST FUND REDUCTIONS

SECTION 3.3. Of the funds appropriated in this act to the Department of Transportation from the Highway Trust Fund, the sum of four hundred twenty-five million nine hundred thousand ($425,900,000) for the 2020-2021 fiscal year shall be reduced as follows:

(1) Strategic Transportation Initiative (Fund Code: 9075) – $425,900,000 in nonrecurring funds. The revised net appropriation is $1,039,408,940.

PART IV. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1.(a) Subsections (b) and (c) of Section 4.1 of S.L. 2019-231 are repealed.

SECTION 4.1.(b) The General Assembly authorizes and certifies anticipated revenues for the Highway Fund as follows:

For Fiscal Year 2021-2022 $2,472.1 million
For Fiscal Year 2022-2023 $2,452.8 million
For Fiscal Year 2023-2024 $2,509.9 million
For Fiscal Year 2024-2025 $2,587.8 million

SECTION 4.1.(c) The General Assembly authorizes and certifies anticipated revenues for the Highway Trust Fund as follows:

For Fiscal Year 2021-2022 $1,390.6 million
For Fiscal Year 2022-2023 $1,574.6 million
For Fiscal Year 2023-2024 $1,621.9 million
For Fiscal Year 2024-2025 $1,661.7 million

SECTION 4.1.(d) Beginning the 2021-2022 fiscal year, the Department of Transportation, in collaboration with the Office of State Budget and Management, shall develop a five-year revenue forecast. The five-year revenue forecast developed under this subsection shall be used (i) to develop the five-year cash flow estimates included in the biennial budgets, (ii) to develop the Strategic Transportation Improvement Program, and (iii) by the Department of the State Treasurer to compute transportation debt capacity.

MOTOR FUEL EXCISE TAX FLOOR

SECTION 4.2. Notwithstanding the rate calculated pursuant to G.S. 105-449.80(a), for the period that begins on January 1, 2021, and ends on December 31, 2021, the motor fuel excise tax rate shall be the greater of thirty-six and one-tenth cents (36.1¢) per gallon or the rate calculated pursuant to G.S. 105-449.80(a). For the period beginning January 1, 2022, the motor fuel tax rate shall be calculated pursuant to the formula set out in G.S. 105-449.80(a) using as the amount for the preceding calendar year the amount that the motor fuel tax rate would have been for the period beginning on January 1, 2021, and ending on December 31, 2021, but for the calculation under this section.

BUILD NC BOND ADDITIONAL ISSUE

SECTION 4.3.(a) Notwithstanding G.S. 142-97(2)c. and G.S. 142-97(4), for the 2020-2021 fiscal year, the Department of the State Treasurer is authorized to issue Build NC Bonds in the amount of seven hundred million dollars ($700,000,000), if the issuance plan is in

compliance with appropriate credit, control, and disclosure requirements.

SECTION 4.3.(b) Notwithstanding the project tier distribution requirements in subdivision (2a) of G.S. 142-82 and Section 2 of S.L. 2018-16, the Department of Transportation shall use the net proceeds of Build NC Bonds issued pursuant to subsection (a) of this section on currently existing projects.

SECTION 4.3.(c) For purposes of this section, the term "currently existing project" means a project that is, as of June 1, 2020, in the process of design or construction.

SECTION 4.3.(d) Nothing in this section shall be construed as modifying the Build NC Bonds limit set forth in G.S. 142-97(3).

SECTION 4.3.(e) Section 1.1 of S.L. 2019-251 is repealed.

UNEXPENDED BUILD NC BONDS

SECTION 4.4. To the extent authorized by law and any applicable contract, the Department of Transportation shall use any unexpended net proceeds from the Build NC Series 2019A Bonds on currently existing projects. The Department of State Treasurer and the Department of Transportation shall take all steps necessary to implement this section. For purposes of this section, the term "currently existing project" means a project that is, as of June 1, 2020, in the process of design or construction.

INCREASE MAXIMUM GARVEE DEBT SERVICE/USE GARVEE RESERVE FUNDS

SECTION 4.5.(a) G.S. 136-18(12b) reads as rewritten:

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

SECTION 4.5.(b) Pursuant to the terms and provisions of (i) the memorandum of agreement (MOA) between Department of Transportation and Federal Highway Administration and (ii) the Master Trust Indenture (MTI) between the State and the Master Trustee named in the MTI which secures all outstanding GARVEE Bonds, the Department shall continue to obligate federal funds in accordance with the terms and provisions of the MTI and for the purposes set forth in the MTI. To the extent not prohibited by either the terms of the MOA or the MTI, the Department shall use other legally available federal funds to fund and maintain a GARVEE/Federal Repayment Reserve Fund in an amount equal to the immediately ensuing payment of only interest, or both principal and interest, on all outstanding GARVEE Bonds. The Department shall only use federal funds for payment of debt service on GARVEE Bonds. The State funds currently held in GARVEE/Federal Repayment Reserve shall be used for currently existing projects. For purposes of this section, the term "currently existing project" means a project that is as of June 1, 2020, in the process of design or construction.

MODIFY FUEL TAX DISTRIBUTION

SECTION 4.6.(a) Effective July 1, 2020, and applicable to excise tax revenue collected by the Department on or after that date, G.S. 105-449.125(b) reads as rewritten:

"(b) Distribution of Remaining Revenue. – The Secretary shall allocate the remaining excise tax revenue collected under this Article, including any revenue that is allocated but not distributed under subsection (a) of this section, as follows:

(1) ~~Seventy-one percent (71%)~~ Eighty-one percent (81%) to the Highway Fund.

(2) ~~Twenty-nine percent (29%)~~ Nineteen percent (19%) to the Highway Trust Fund."

SECTION 4.6.(b) Effective July 1, 2021, and applicable to excise tax revenue collected by the Department on or after that date, G.S. 105-449.125(b), as amended by subsection (a) of this section, reads as rewritten:

"(b) Distribution of Remaining Revenue. – The Secretary shall allocate the remaining excise tax revenue collected under this Article, including any revenue that is allocated but not distributed under subsection (a) of this section, as follows:

(1) ~~Eighty-one percent (81%)~~ Eighty percent (80%) to the Highway Fund.

(2) ~~Nineteen percent (19%)~~ Twenty percent (20%) to the Highway Trust Fund."

SECTION 4.6.(c) Effective July 1, 2022, and applicable to excise tax revenue collected by the Department on or after that date, G.S. 105-449.125(b), as amended by subsection (b) of this section, reads as rewritten:

"(b) Distribution of Remaining Revenue. – The Secretary shall allocate the remaining excise tax revenue collected under this Article, including any revenue that is allocated but not distributed under subsection (a) of this section, as follows:

(1) ~~Eighty percent (80%)~~ Seventy-five percent (75%) to the Highway Fund.

(2) ~~Twenty percent (20%)~~ Twenty-five percent (25%) to the Highway Trust Fund."

TRANSPORTATION EMERGENCY RESERVE/EXTRA SESSION

SECTION 4.7.(a) G.S. 136-44.2E(c), as enacted by S.L. 2019-251, reads as rewritten:

"(c) Access to Funds. – The Department may only use funds in the Emergency Reserve after the President of the United States issues a declaration under the Stafford Act (42 U.S.C. §§ 5121 – 5207) that a major disaster exists in the State. The Secretary of Transportation shall ensure all funds in the Emergency Reserve are accessed and used pursuant to this ~~section.~~ section, and in a manner that ensures to the extent practicable that the funds are eligible for federal reimbursement or cost sharing with the federal funds."

SECTION 4.7.(b) G.S. 136-44.2E, as enacted by S.L. 2019-251, is amended by adding a new subsection to read:

"(f) Notification of Governor; Reimbursement. – The Secretary shall notify the Governor within 24 hours of determining that anticipated emergency expenses by the Department under this section will exceed the funds in the Emergency Reserve. Upon notification, the Governor shall immediately proceed under G.S. 166A-19.20(e). Federal reimbursements for funds expended in relation to a major disaster, declared in accord with subsection (c) of this section, shall be used to reimburse expenditures from the following accounts in order of priority:

(1) Emergency Reserve, subject to the limitation in subsection (d) of this section.

(2) Reserve for General Maintenance in the Highway Fund.

(3) Savings Reserve."

SECTION 4.7.(c) G.S. 166A-19.20 is amended by adding a new subsection to read:

"(e) Extra Session; Emergency Transportation Expenditures. – The General Assembly considers a determination by the Secretary of Transportation under G.S. 136-44.2E(f) that anticipated emergency expenses will exceed the funds in the Transportation Emergency Reserve within the meaning of the term "extraordinary occasions," and therefore the Governor is authorized to convene the General Assembly in Extra Session under Section 5(7) of Article III of the North Carolina Constitution. The General Assembly strongly urges the Governor to convene the General Assembly in Extra Session within 14 days of notice by the Secretary under G.S. 136-44.2E(f) for the purpose of appropriating funds from the Savings Reserve to the Emergency Reserve to address the transportation needs of the State necessitated by a major disaster."

CLARIFY BUDGET REDUCTION FOR UNANTICIPATED EXPENDITURES

SECTION 4.8. Subsection (d1) of G.S. 143C-6-11, as enacted by S.L. 2019-251, reads as rewritten:

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

EXTEND DEADLINE/FEDERAL GUIDANCE ON USE OF COVID-19 FUNDS

SECTION 4.9.(a) Subdivision (4) of Section 3.3 of S.L. 2020-4 reads as rewritten:

"(4) $300,000,000 to OSBM to allocate to the General Maintenance Reserve in the Highway Fund for the Department of Transportation; provided that OSBM shall not transfer these allocated funds to the Department for use until the guidelines in "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments," dated April 22, 2020, are revised by the United States Department of the Treasury to authorize the use of funds from the Coronavirus Relief Fund for the purpose of replacing lost revenue due to the COVID-19 emergency, or a subsequent act of Congress authorizes the use of funds from the Coronavirus Relief Fund for the purpose of replacing lost revenue due to the COVID-19 emergency. 30 days prior to the transfer of funds pursuant to this subsection, OSBM shall submit a report to the Joint Legislative Commission on Governmental Operations. On or before April 1, 2021, the Department shall submit a report on the status of utilizing these funds and a revenue update to the Joint Legislative Transportation Oversight Committee (JLTOC) and the Fiscal Research Division. The Governor may not use the funds described in this subdivision to make budget adjustments under G.S. 143C-6-4 or to make reallocations under G.S. 166A-19.40(c). Notwithstanding Section 3.2 of this act, if, ~~by June 15, 2020,~~ by September 1, 2020, the guidelines in "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments," dated April 22, 2020, are not revised by the United States Department of the Treasury to authorize the use of funds from the Coronavirus Relief Fund for the purpose of replacing lost revenue due to the COVID-19 emergency, or a subsequent act of

Congress does not authorize the use of funds from the Coronavirus Relief Fund for the purpose of replacing lost revenue due to the COVID-19 emergency, the State Controller shall transfer the funds described in this subdivision to the Reserve and the funds shall remain unspent until appropriated by an act of the General Assembly."

SECTION 4.9.(b) This section becomes effective June 15, 2020.

CASH WATCH/BALANCE SHEET REPORT

SECTION 4.10.(a) Subsection (n) of G.S. 143C-6-11, as enacted by S.L. 2019-251, reads as rewritten:

"(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~~ Total Cash and Bond Proceeds

~~a. Highway Fund Total~~

~~b. Highway Trust Fund Total~~

(2) ~~Less Disbursements~~ Add Receipts

~~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~~ Less Disbursements

a. ~~Highway Fund Total~~ Payroll

b. ~~Highway Trust Fund Total~~ 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

(4) Reserved Cash

a. ~~Statutory Cash Balance~~ GARVEE/Federal Repayment Reserve

b. ~~GARVEE/Federal Repayment Reserve~~ Transportation Emergency Reserve

c. ~~Transportation Emergency Reserve~~ Trustee Accounts – Build NC proceeds

d. ~~Other Reserves~~ Trustee Accounts – GARVEE

e. ~~Trustee Accounts – Build NC proceeds~~ Trustee Accounts – Other Bonds

f. ~~Trustee Accounts – GARVEE~~

g. ~~Trustee Accounts – Other Bonds~~

(5) Unreserved Cash Balance Total

a. Highway Fund Total

b. Highway Trust Fund Total

c. Statutory Cash Requirement"

SECTION 4.10.(b) Subsection (o) of G.S. 143C-6-11, as enacted by S.L. 2019-251, reads as rewritten:

"(o) Balance Sheet Report. – By the ~~third~~ fifteenth 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."

POWELL BILL FUNDS

SECTION 4.11.(a) Section 5.4 of S.L. 2019-250 is repealed.

SECTION 4.11.(b) For the 2020-2021 fiscal year, municipalities with a population of 400,000 or more shall only receive two-thirds of the 2019-2020 fiscal year allocation of Powell Bill Program funds, as reported in the Department's "2019 North Carolina State Street Aid Allocations to Municipalities" dated January 2020. The remaining Powell Bill Program funds shall be allocated to municipalities with a population of less than 400,000 in accordance with the requirements of G.S. 136-41.1(a).

POWELL BILL PREFERENCE FOR PLANTS NATIVE TO NORTH CAROLINA

SECTION 4.11A. G.S. 136-41.3(a) reads as rewritten:

"(a) Uses of Funds. – Except as otherwise provided in this subsection, the funds allocated to cities and towns under the provisions of G.S. 136-41.1 and G.S. 136-41.2 shall be expended by said cities and towns primarily for the resurfacing of streets within the corporate limits of the municipality but may also be used for the purposes of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways, greenways, or sidewalks. Cities and towns shall strongly prefer the use of seeds and plants the U.S. Department of Agriculture has classified as native to North Carolina when the use of funds under this subsection includes landscaping. The funds allocated to cities and towns under the provisions of G.S. 136-41.1 and G.S. 136-41.2 shall not be expended for the construction of a sidewalk into which is built a mailbox, utility pole, fire hydrant, or other similar obstruction that would impede the clear passage of pedestrians on the sidewalk."

CAPITAL, REPAIRS, AND RENOVATIONS

SECTION 4.12. The 2020-2021 fiscal year allocation of funds for capital, repairs, and renovations in Section 4.2 of S.L. 2019-231 is repealed.

DMV/FUNDS FOR HEADQUARTERS INFORMATION TECHNOLOGY EXPENSES

SECTION 4.13. Of the funds appropriated in this act to the Department of Transportation, excluding funds appropriated to the Division of Motor Vehicles, up to one million five hundred thousand dollars ($1,500,000) shall be used for information technology expenses related to the Division of Motor Vehicle's headquarters relocation.

AIRPORT FUNDS

SECTION 4.14.(a) Notwithstanding subsection (c) of G.S. 63-74, for the 2020-2021 fiscal year, the Commercial Airport Funds in subdivision (4) of Section 3.2 of this act shall be allocated as follows:

(1) Albert J. Ellis	$1,812,481
(2) Asheville Regional	$3,541,082
(3) Charlotte/Douglas International	$29,133,306
(4) Concord-Padgett Regional	$2,240,445
(5) Fayetteville Regional/Grannis Field	$2,685,707
(6) Piedmont Triad International	$8,805,486
(7) Raleigh-Durham International	$17,903,471
(8) Wilmington International	$5,062,832

SECTION 4.14.(b) Notwithstanding the provisions of subsection (b) of Section 4.7 of S.L. 2019-231 and subsection (d) of G.S. 63-74, for the 2019-2021 fiscal biennium, the Department of Transportation shall disburse funds to a compliant airport on a quarterly schedule agreed to by the Department and the airport receiving funds, and an airport shall not have to return the funds to the Department unless the funds are in the possession or control of the airport and not expended or encumbered by August 31, 2021.

RAIL DIVISION EQUIPMENT MANAGEMENT PLANT

SECTION 4.15.(a) By November 1, 2020, the Department of Transportation, Rail Division, shall submit to the Joint Legislative Transportation Oversight Committee (JLTOC), the House of Representatives Appropriations Committee on Transportation, the Senate

Appropriations Committee on the Department of Transportation, and the Fiscal Research Division a fleet management plan for Rail Division equipment. The plan shall include the current inventory of rolling stock, a program for fleet acquisition, tracking, safety, maintenance, repair, disposal, and any anticipated changes in service to State-supported passenger rail programs over the next 10 years, along with the following information:

(1) Division inventory of rolling stock: name or identifier, description, specifications, usage status of active or idle, age, date obtained, cost and source of funds to obtain, location, estimated remaining service life, annual cost, and future intended use.

(2) Ten year acquisition plan for rolling stock: description, estimated cost, estimated future maintenance costs, intended funding sources, intended use or purpose, anticipated acquisition timeline, and if item is expansion (new service) or replacement for current inventory.

(3) Intended use of federal grants awarded by September 1, 2020, on fleet management: description of grant, date awarded, decision to accept or reject award, intended use of federal funds, required State match amount, and source of State matching funds.

SECTION 4.15.(b) No later than December 31, 2020, the Rail Division shall offer for sale as surplus property idle equipment that will not be rehabilitated for future use or transferred to the Department of Natural and Cultural Resources. Notwithstanding Article 3A of Chapter 143 of the General Statutes and any other provision to the contrary, the net proceeds of the sale of property pursuant to this section shall be credited to the Rail Equipment Overhaul Fund (Fund Code: 7845).

SECTION 4.15.(c) No later than June 30, 2021, the Rail Division shall (i) relocate the caboose currently located on the P&N Corridor in the City of Gastonia and marked RNCX 400500 to the North Carolina Transportation Museum and (ii) transfer to the Department of Natural and Cultural Resources any ownership interest in the caboose and the Atlantic Coast Line #501 locomotive currently located at the North Carolina Transportation Museum.

HATTERAS/OCRACOKE FERRY LEASE

SECTION 4.16. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, G.S. 136-28.1, and any other provision of law to the contrary, and pending completion of a successful route verification, the Department of Transportation, Ferry Division, shall lease a passenger ferry vessel for operation between Hatteras and Ocracoke. The term of the lease shall end no later than September 10, 2020. Of the contingency funds appropriated in this act to the Department, the sum of up to one million one hundred forty-six thousand one hundred seventy-nine dollars ($1,146,179) shall be used by the Division to lease and operate the ferry.

QUARTERLY DISTRIBUTION OF FUNDS TO PORTS AUTHORITY

SECTION 4.17. For the 2019-2021 fiscal biennium, the Department of Transportation shall distribute funds allocated to the NC Ports Authority on a quarterly basis.

PART V. GOVERNANCE

BOARD OF TRANSPORTATION RESTRUCTURE

SECTION 5.1.(a) G.S. 143B-350 reads as rewritten:

"§ 143B-350. Board of Transportation – organization; powers and duties, etc.

(a) Board of Transportation. – There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State. The Board shall carry out its duties consistent with the fiduciary responsibility to ensure the solvency of the State Highway Fund and Highway Trust Fund.

(b) Membership of the Board. –

(1) Number, appointment. – The Board of Transportation shall have ~~19~~ 20 voting members. Voting members shall be appointed as provided in subdivisions (2) and (3) of this subsection for terms of office beginning July 31 of the year of initial appointment, and every four years thereafter. Fourteen of the members shall be division members appointed by the Governor. ~~Five shall be at-large members appointed by the Governor. At least three members of the Board shall be registered voters of a political party other than the political party of the Governor.~~ Six members shall be at-large members appointed by the General Assembly, three upon recommendation of the President Pro Tempore of the Senate and three upon recommendation of the Speaker of the House of Representatives. The Secretary of Transportation shall serve as an ex officio nonvoting member of the Board. No more than two members of the Board may reside in the same highway division.

(2) Division members. – One member shall be appointed from and be a resident of each of the 14 highway divisions. ~~The Governor, in selecting division members, shall consider for appointment persons suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent.~~ Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent. The Governor shall appoint one member from each of the fourteen divisions as follows:

a. Division 1, beginning in 2020.

b. Division 2, beginning in 2022.

c. Division 3, beginning in 2020.

d. Division 4, beginning in 2022.

e. Division 5, beginning in 2022.

f. Division 6, beginning in 2020.

g. Division 7, beginning in 2022.

h. Division 8, beginning in 2022.

i. Division 9, beginning in 2020.

j. Division 10, beginning in 2022.

k. Division 11, beginning in 2022.

l. Division 12, beginning in 2020.

m. Division 13, beginning in 2022.

n. Division 14, beginning in 2020.

(3) At-large members. – ~~Five members shall be appointed by the Governor from the State at large. At-large members appointed pursuant to this subdivision shall develop transportation policy and address transportation problems with a statewide perspective. At-large members appointed under this subdivision shall possess the following qualifications:~~

~~a. One at-large member shall be a person with expertise in environmental issues affecting the State;~~

~~b. One at-large member shall be a person familiar with the State ports and aviation issues;~~

~~c. One at-large member shall be a person residing in a rural area of the State with broad knowledge of and experience in transportation issues affecting rural areas;~~

~~d. One at-large member shall be a person residing in an urban area with broad knowledge of and expertise in mass transit;~~

~~e. One at-large member shall be a person with broad knowledge of and expertise in government-related finance and accounting.~~

Six at-large members shall be appointed as follows:

a. Two members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, beginning in 2020.

b. One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, beginning in 2022.

c. Two members appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, beginning in 2020.

d. One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, beginning in 2022.

(c) Staggered Terms. – The terms of all Board members serving on the Board prior to ~~January 15, 2001, shall expire on January 14, 2001.~~ July 31, 2020, shall expire on July 30, 2020. A new board of ~~19~~ 20 voting members shall be appointed with terms beginning on ~~January 15, 2001. The Board shall serve the following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the three at-large members filling the positions designated in sub-subdivisions (b)(3)a., b., and c. of this section shall serve four-year terms beginning on January 15, 2001, and four-year terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14 and the two at-large members filling the positions designated in sub-subdivisions (b)(3)c. and d. of this section shall serve two-year terms beginning January 15, 2001, and four-year terms thereafter.~~ July 31, 2020.

(d) Holdover Terms; Vacancies; Removal. – Members shall continue to serve until their successors are appointed. The ~~Governor~~ appointing authority may appoint a member to serve out the unexpired term of any Board member. The ~~Governor~~ appointing authority may remove any member of the Board appointed by that appointing authority for any cause the ~~Governor~~ appointing authority finds sufficient. The ~~Governor~~ appointing authority shall remove any member of the Board upon conviction of a felony, conviction of any offense involving a violation of the Board member's official duties, or for a violation of the provisions of subsections (i), (j), and (k) of this section or any other code of ethics applicable to members of the Board as determined by the ~~Governor~~ appointing authority or the ~~Governor's~~ appointing authority's designee.

(e) Organization and Meetings of the Board. – Within ~~60~~ 30 days after ~~January 15, 2001, and thereafter within 60 days following the beginning of the regular term of the Governor,~~ July 31, 2020, the Governor ~~or his designee~~ shall call the Board into session. The Governor shall select a chair from among the Board's membership for a two-year term. The Board shall select a ~~chair and~~ vice-chair from among its membership for a two-year ~~terms.~~ term. The Governor may select a chair for one additional two-year term. The Board may select a ~~chair or~~ vice-chair for one additional two-year term. The Board of Transportation shall meet ~~once in each 60 days~~ at least

once a month at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the ~~chairman~~ chair or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties and Powers of the Board. – The primary duty of the Board of Transportation shall be to serve as fiduciaries of the State Highway Fund and Highway Trust Fund and ensure the solvency of those funds when carrying out the Board's duties and powers. The Board of Transportation has the following duties and powers:

(1) To formulate policies and ~~priorities for all modes of transportation under the Department of Transportation.~~ priorities, accountability and performance metrics for all modes, divisions, and central office of the Department of Transportation, including personnel within those divisions, and to hold those modes, divisions, and personnel accountable to those metrics.

(1a) To review and take action on each Spend Plan developed by the Department of Transportation as required by G.S. 143C-6-11.1. An approved Spend Plan must be fiscally responsible while accomplishing transportation goals across the State.

(1b) To ensure that the Department of Transportation is operating within the approved Spend Plan.

(1c) To review and approve the Department's use of bonds, including for federally funded projects.

(2) To advise the Secretary on matters to ~~achieve the maximum public benefit in the performance of the functions assigned to the Department.~~ increase the performance, efficiency, and effectiveness of the day-to-day operations of the Department of Transportation.

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of ~~transportation taking into consideration the social, economic and environmental impacts of the various alternatives.~~ transportation.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost. This schedule is designated the Transportation Improvement Program. The Board shall publish the schedule in a format that is easily reproducible for distribution and make copies available for distribution in accordance with the process established for public records in Chapter 132 of the General Statutes.

(4a) To approve a schedule of State highway maintenance projects and their anticipated cost. This schedule is designated the Highway Maintenance Improvement Program and is established in G.S. 136-44.3A. The Board shall publish the schedule on the Department's Web site by April 1 of each year. The document that contains the Highway Maintenance Improvement Program shall include the anticipated funding sources for the improvement projects included in the Highway Maintenance Improvement Program, a list of any changes made from the previous year's Highway Maintenance Improvement Program, and the reasons for the changes.

~~(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it.~~

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department.

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available.

(8) To approve all highway construction programs.

(9) To approve all highway construction projects and construction plans for the construction of projects.

(10) To review all statewide maintenance functions.

(11) To award all highway construction contracts.

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain.

(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges.

(13) Repealed by Session Laws 2010-165, s. 13, effective August 2, 2010.

(f1) Local Government Participation. – The ability of a local government to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(f2) Approval of aircraft and ferry purposes. – Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

(g) Delegation of Board Duties. – The Board of Transportation shall delegate to the Secretary of Transportation the authority under subdivisions (1) and (2) of this subsection, and may delegate the authority under subdivision (3) of this subsection:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(g1) Limitation on Board Duties. – The Board of Transportation shall not make decisions on individual contracts, projects, or personnel matters.

~~(h) Consultation of Board Members. – Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division.~~

(i) Disclosure of Contributions. – ~~Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998.~~ A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation on or after ~~December 1, 1998,~~ July 31, 2020, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor or officer recommending appointment in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection shall include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

(*l*) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature, conducted in conjunction with the State Ethics Commission, and shall include input from the School of Government at the University of North Carolina at Chapel Hill, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

~~(n) Review of Appointments by the Joint Legislative Transportation Oversight Committee. – The Governor shall submit the names of all proposed Board of Transportation appointees, along with the disclosure statements required under subsections (i), (j), and (k) of this section, to the Joint Legislative Transportation Oversight Committee prior to Board members' taking office. The Committee shall have 30 days to review and submit comments to the Governor on the proposed appointees before they take office. The Governor shall consider the views expressed by the Committee concerning the appointees to the Board. If the Committee does not review or submit comments to the Governor on the proposed Board appointees within the 30 days, the Governor may proceed to appoint the proposed members to the Board.~~

(o) Additional Ethics Requirements. – Board members shall sign a sworn statement that they will abide by the disclosure, ethics, and education requirements of this section and of Chapter 138A of the General Statutes. Following the convening of each Board of Transportation meeting, and prior to the conduct of business, each Board member shall sign a sworn statement that the member has no

financial, professional, or other interest in any project being considered on the meeting agenda. To the extent the Board member has such an interest, the chair and member shall take all appropriate steps to ensure that the interest is properly evaluated and addressed in accordance with law and that the member is not permitted to act on any matter in which the member has a disqualifying conflict of interest.

(p) Reports. – Notwithstanding any other provision of law, any report required to be submitted by the Board to the General Assembly or a committee thereof is due by the 15th day of the month that the report is due."

SECTION 5.1.(b) Notwithstanding the requirements of G.S. 143B-350(b)(1), as amended by this act, the following voting members shall be appointed to the Board of Transportation for a two-year term beginning July 31, 2020:

(1) Division members. – The Governor shall appoint one member from each of the following eight divisions:

a. Division 2.

b. Division 4.

c. Division 5.

d. Division 7.

e. Division 8.

f. Division 10.

g. Division 11.

h. Division 13.

(2) At-large members. – The General Assembly shall appoint two at-large members, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives.

All members appointed as provided in this subsection shall be subject to all other provisions of G.S. 143B-350, as amended by this act.

SECTION 5.1.(c) When the General Assembly is not in session, any initial appointments to the Board and appointments to fill vacancies for members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate or Speaker of the House of Representatives on or after the effective date of this section shall be made in accordance with G.S. 120-122; provided the Governor may not reject the recommendation of the officer recommending the appointment, and the candidate is deemed approved on the date the recommendation is submitted to the Governor.

SECTION 5.1.(d) This section becomes effective July 31, 2020.

CASH FLOOR CONTRACTING LIMITATION CLARIFICATION

SECTION 5.2.(a) G.S. 143C-6-11(f) reads as rewritten:

"(f) Seven and One Half Percent (7.5%) Cash Balance Required. – The Department of Transportation shall maintain an available cash balance at the end of each month equal to at least seven and one half percent (7.5%) of the total appropriations for the current fiscal year from the Highway Fund and the Highway Trust Fund. In projecting cash balances in future years, the Department shall use the estimated cash flow as specified in the Current Operations Appropriation Act. No further transportation project contract commitment may be entered into that would cause the cash position to fall below this requirement. In the event this cash position is not maintained, no further transportation project contract commitments may be entered into until the cash balance has been regained. Provided the Department may modify or supplement transportation contract commitments for existing transportation projects that (i) result in a savings from the total estimated project cost of the existing commitment, based on a cost-savings analysis, or (ii) relate to the needs of an existing transportation project to continue. Any federal funds on hand shall not be considered as cash for the purposes of this subsection."

SECTION 5.2.(b) Notwithstanding the limitation on contract commitments in G.S. 143C-6-11(f), when the Department's cash balance is below the 7.5% required by that subsection, upon approval of the Secretary of Transportation, the Department may enter into transportation project contract commitments that are necessary to restore transportation infrastructure damaged as a result of a natural disaster or other emergency. Within 72 hours of entering into a contract under this subsection, the Secretary shall report to the Board of Transportation, the Transportation Oversight Manager at the Office of State Budget and Management, and the Joint Legislative Transportation Oversight Committee, detailing the need for the contract and the associated costs.

SECTION 5.3.(c) Subsection (b) of this section expires on January 1, 2021.

MONTHLY FINANCIAL STATEMENT REPORT

SECTION 5.3.(a) G.S. 143C-6-11, as amended by Section 2.1 of S.L. 2019-251, is amended by adding two new subsections to read:

"(p) Monthly Financial Statement Report. – Each month the Department of Transportation shall post on the Department's Web site and submit to the Board of Transportation, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division a financial statement report that includes the following information:

(1) Revenues received by the Highway Fund and Highway Trust Fund for the month, broken down into category, and in relation to the revenue estimate for category used for the current fiscal year budget.

(2) Expenditures by fund code for the month, and in relation to the current fiscal year certified budget and the Department's Spend Plan.

(3) Expenditures by Highway Division for the month, and in relation to the current fiscal year allocation of funds for maintenance activities made by the Department pursuant to G.S. 136-44.6.

(4) Expenditures by Highway Division from the Reserve for General Maintenance in the Highway Fund (GMR) for the month, broken down into category, and in relation to the current budget year allocation of funds for each category.

(5) Expenditures by Highway Division on capital and Strategic Transportation Investment (STI) projects, and in relation to the current budget year allocation of funds for capital and STI projects.

(6) Projected revenues and Spend Plan of the Department for the next 18 months, noting any changes.

(7) Accounts payable, including the number of contracts, invoices paid, and payments pending. The report shall also include the number of days between an invoice being submitted and being approved and the number of days between approval and payment. The Department shall also report the number of contracts breached and invoices the Department could not pay in full, including the age of those invoices and the status of any negotiated resolutions.

(q) Year-End Report. – At the end of each fiscal year, no later than July 15, the Department shall post on the Department's Web site and submit to the Board of Transportation, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division a year-end summary of information required in the monthly financial statement report under subdivisions (1) through (5) of subsection (p) of this section for the previous fiscal year, including a comparison to the Department's Spend Plan for that period."

SECTION 5.3.(b) In order for the public to access up-to-date information on projected revenue and Spend Plan status of the Department, the Department shall adjust its performance dashboard available on the Department of Transportation's Web site to include and track information required by G.S. 143C-6-11(p)(6) as enacted by this act. Dashboard enhancements required under this subsection shall be completed by October 1, 2020.

DEPARTMENT OF TRANSPORTATION SPEND PLAN

SECTION 5.4. Part 2 of Article 6 of Chapter 143C of the General Statutes is amended by adding a new section to read:

"**§ 143C-6-11.1. Department of Transportation Spend Plan.**

(a) The Department of Transportation shall develop a comprehensive cash-spending plan, known as the "Spend Plan," to spend money from any source, including federal funds and bond proceeds, for programs, functions, activities or objects, by the Department.

(b) The Department shall present the Spend Plan to the Board of Transportation, the Transportation Oversight Manager at the Office of State Budget and Management, and the State Budget Director for approval.

(c) The Board of Transportation, the Transportation Oversight Manager at the Office of State Budget and Management, and the State Budget Director shall either approve the Spend Plan or report any objections to the Spend Plan with specificity and reasons for the objections in writing to the Chairs of the Senate Appropriations Committee on the Department of Transportation, the Chairs of the House of Representatives Appropriations Committee on Transportation, and the Fiscal Research Division if the General Assembly is in session, or to the Chairs of the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division if the General Assembly is not in session. Upon receipt of the Spend Plan, approval or a report must be completed within 30 days.

(d) Any modifications to the Spend Plan or expenditures outside of the Spend Plan shall be submitted for approval as provided in subsection (b) of this section prior to implementation."

TRANSPORTATION OVERSIGHT MANAGER POSITION

SECTION 5.5.(a) The Department of Transportation shall transfer one vacant FTE position and funds to the Office of State Budget and Management to be reclassified into the position of Transportation Oversight Manager. The duties for this position shall include but not be limited to: monitoring and assisting the Department of Transportation in developing the Department budget and Spend Plan, monitoring the Department's finances and spending, collaborating on assessing risks to Department finances, and making revenue and cash projections, and ensuring the Department budget is faithfully executed consistent with the State Budget Act and other statutes governing Department of Transportation finances.

SECTION 5.5.(b) The Department of Transportation shall give full access to all data and information and full access to, and training on, all systems in order for the Office of State Budget and Management to perform proper oversight.

SECTION 5.5.(c) The Office of State Budget and Management shall work in consultation with the Department to prepare and submit the reports required by G.S. 143C-6-11(p), as enacted by this act.

HIGHWAY DIVISION FINANCIAL PERSONNEL STRUCTURING

SECTION 5.6.(a) The Department of Transportation shall develop and establish a uniform financial management personnel structure within all Highway Division offices. Each position shall have clear responsibilities for financial management of accounts

payable, accounts receivable, contract oversight, and budgets. Each Highway Division office is required to maintain personnel competent in Department cash management practices and Division project management as it relates to project spending.

SECTION 5.6.(b) The Department of Transportation shall develop and establish uniform report formats and policies and procedures that calculate spending and track cash management in a consistent manner among Highway Divisions. The Department shall provide training on all forms, systems, and policies developed by the Department pursuant to this section.

SECTION 5.6.(c) The Department is authorized to reclassify positions as required to establish the uniform financial management personnel structure required by this section.

SECTION 5.6.(d) The Department shall report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the development and establishment of, or plan to establish and develop, the uniform financial management personnel structure by October 31, 2020. The report shall also include a description of required positions and responsibilities of the FTEs needed to establish the personnel structure required by this section for each Highway Division and all personnel actions taken to fulfill the requirements of this section, including associated costs. The information shall be provided for each Highway Division.

ADDITIONAL BOND DISCLOSURE PERSONNEL

SECTION 5.7. The Department of Transportation shall transfer one vacant FTE position to the Department of the State Treasurer. The Department of the State Treasurer shall reclassify the vacant position into a Financial Analyst position focused on bond disclosure within the State and Local Government Finance Division to review and monitor the Department of Transportation's bond program and activities which utilize bond proceeds, including monitoring the spending and approval of projects using bond proceeds, reviewing general compliance for repayment and debt service, and assisting the Department of the State Treasurer in fulfilling its duties and responsibilities for bond disclosures and compliance as required by the United States Securities Exchange Commission and other applicable State or federal laws.

TRANSPORTATION FORECASTING METHODOLOGY

SECTION 5.8.(a) The Department of Transportation, in consultation with the Transportation Oversight Manager at the Office of State Budget and Management, shall create, develop, modify, and implement Department forecasting methodology, best practices, and accuracy standards for the forecasting of spending.

SECTION 5.8.(b) By December 31, 2020, the Department of Transportation shall report to the Board of Transportation, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division of the General Assembly on implementation of this section.

ANNUAL PERFORMANCE AUDIT OF DEPARTMENT OF TRANSPORTATION

SECTION 5.9.(a) Beginning the 2019-2020 fiscal year, the Office of the State Auditor shall conduct a performance audit of the Department of Transportation every year. The performance audit shall include an examination of the following:

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

(2) Timeliness of federal reimbursement requests and timeliness of the Department's responses to any federal requests for additional information or action.

(3) Department controls and oversight of divisions and highway divisions as to cash management, project coordination and delivery, and budget adherence.

(4) Efficacy of communication and coordination within the Department.

(5) Efficacy of cash management by the Department.

(6) Other items the State Auditor deems relevant to study, including implementation of the provisions of this act.

SECTION 5.9.(b) The State Auditor shall submit a report of the performance audit to the Joint Legislative Commission on Governmental Operations, Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division. The Department of Transportation shall give the State Auditor full access to all employees and data necessary to complete the audit and the report. The State Auditor shall submit the annual report required by this subsection by the fifteenth day of January beginning in 2021.

HIGHWAY DIVISION FUND ALLOCATION PLANS

SECTION 5.10. G.S. 136-44.6 reads as rewritten:

"§ 136-44.6. Uniformly applicable formula for the allocation of funds for primary and secondary road maintenance.

The Department of Transportation, in consultation with its Division Engineers, shall develop biennially a uniformly applicable formula for the allocation of funds ~~from the Reserve for General Maintenance~~ in the Highway Fund for maintenance on primary and secondary roads in each Highway Division. The formula shall take into consideration the number of paved and unpaved miles of state-maintained secondary roads in each Highway Division and such other factors as experience may dictate. In developing the allocation formula, the Department of Transportation shall allocate funding to Highway Divisions and create a plan of action to reallocate funds among Highway Divisions based upon expenditures of the first three quarters. Each Division Engineer shall have discretion in using funds allocated under this section to his or her Highway Division for maintenance activities. Allotments shall be made available to Highway Divisions on a

quarterly basis, based upon the Spend Plan developed by the Department. The Department shall create a plan for reallocation to maximize use of funds with the fiscal year. This section shall not apply to projects to pave unpaved roads under G.S. 136-44.2D."

AUDIT DOT USE OF ADVANCE CONSTRUCTION

SECTION 5.11.(a) No later than 90 days from the effective date of this act the Department of Transportation shall submit a detailed report to the Joint Legislative Transportation Oversight Committee, the Fiscal Research Division, and the Office of the State Auditor on its use of federal Advance Construction authorizations, including the benefits and risks associated with the practice. The report shall also include:

(1) A report showing the Advance Construction Balances by funding source for five years.

(2) A listing of projects currently utilizing Advance Construction with details such as the initial Advance Construction amount, contract amount, amount of expenditures for which Advance Construction has been converted allowing reimbursement by Federal Highway Administration or other sources and a schedule for Advance Construction that is planned to be converted where future reimbursement is anticipated, and the anticipated conversion and reimbursement schedule.

(3) A listing of projects where it is anticipated Advance Construction will be used in the future with details such as anticipated Advance Construction amount and conversion and reimbursement schedule.

(4) A listing of projects currently utilizing GARVEE bond funding with details such as total amount of bonds, amount of principal and interest repaid, and schedule of remaining principal and interest payments.

SECTION 5.11.(b) The Office of the State Auditor shall conduct a performance audit of the Department's report required by subsection (a) of this section and, no later than March 31, 2021, shall submit a report containing the results of the performance audit and recommendations to the House of Representatives Appropriations Committee on Transportation, the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division. The Department of Transportation shall give the State Auditor full access to all employees and data necessary to complete the audit and the report.

PART VI. MISCELLANEOUS

SECTION 6.1. The budget enacted by the General Assembly is for the maintenance of the Department of Transportation for the 2020-2021 fiscal year as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget certified the amount appropriated to the Department of Transportation for the 2019-2021 fiscal biennium in the DOT Certified Budget. The adjustments made by the General Assembly to the DOT Certified Budget for the 2020-2021 fiscal year are set out in this act.

SECTION 6.2. The budget enacted by the General Assembly for the Department of Transportation shall also be interpreted in accordance with the special provisions in this act and other appropriate legislation. In the event that there is a conflict between the line-item budget certified by the Director of the Budget for the Department of Transportation and the budget enacted by the General Assembly for the Department of Transportation, the budget enacted by the General Assembly shall prevail.

SECTION 6.3. If House Bill 1136, House Bill 1218, or Senate Bill 818 of the 2019 Regular Session become law, the Office of State Budget and Management shall, no later than August 15, 2020, adjust the Department of Transportation, General Maintenance Reserve, for the 2020-2021 fiscal year to account for any change in employee benefit costs.

SECTION 6.4. If Section 2.5 of Senate Bill 750 of the 2019 Regular Session becomes law, Section 4.16 of this act is repealed.

PART VII. EFFECTIVE DATE

SECTION 7.1. Except as otherwise provided, this act becomes effective July 1, 2020.

In the General Assembly read three times and ratified this the 25th day of June, 2020.

s/ Daniel J. Forest

President of the Senate

s/ Tim Moore

Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 25th day of June, 2020 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 6th day of July, 2020.

s/ Karen Jenkins

Enrolling Clerk

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