

Article 16.

Planning.

§ 136-200. Definitions.

As used in this Article:

- (1) "Conformity" means the extent to which transportation plans, programs, and projects conform to federal air quality requirements as specified in 40 Code of Federal Regulations, Part 93, Subpart A (1 July 1998 Edition).
- (1a) "Consolidated Metropolitan Planning Organization" means a metropolitan planning organization created on or after January 1, 2001, through a memorandum of understanding by the consolidation of two or more metropolitan planning organizations in existence prior to January 1, 2001, and in accordance with 23 U.S.C. § 134.
- (2) "Department" means the North Carolina Department of Transportation.
- (3) "Interface" means a relationship between streams of traffic that efficiently and safely maximizes the mobility of people and goods within and through urbanized areas and minimizes transportation-related fuel consumption and air pollution.
- (4) "Metropolitan Planning Organization" or "MPO" means an agency that is designated or redesignated by a memorandum of understanding as a Metropolitan Planning Organization in accordance with 23 U.S.C. § 134.
- (5) "Regionally significant project" has the same meaning as under 40 Code of Federal Regulations 93.101 (1 July 1998 Edition).
- (6) "Regional travel demand model" means a model of a region, defined in the model, that is approved by the Department and each Metropolitan Planning Organization whose boundaries include any part of the region and that uses socioeconomic data and projections to predict demands on a transportation network. (1999-328, s. 4.10; 2000-80, ss. 1-3.)

§ 136-200.1. Metropolitan planning organizations recognized.

Metropolitan planning organizations established pursuant to the provisions of 23 U.S.C. § 134 are hereby recognized under the law of the State. Metropolitan planning organizations in existence on the effective date of this section continue unaffected until redesignated or restructured in accordance with the provisions of and according to the procedures established by 23 U.S.C. § 134 and this Article. The provisions of this Article are intended to supplement the provisions of 23 U.S.C. § 134. In the event any provision of this Article is deemed inconsistent with the requirements of 23 U.S.C. § 134, the provisions of federal law shall control. (2000-80, s. 4.)

§ 136-200.2. Decennial review of metropolitan planning organization boundaries, structure, and governance.

(a) Evaluation. – Following each decennial census, and more frequently if requested by an individual metropolitan planning organization, the Governor and the Secretary of Transportation, in cooperation with the affected metropolitan planning organization or organizations, shall initiate an evaluation of the boundaries, structure, and governance of each metropolitan planning organization in the State. The goal of the evaluation shall be to

examine the need for and to make recommendations for adjustments to metropolitan planning organization boundaries, structure, or governance in order to ensure compliance with the objectives of 23 U.S.C. § 134. The Secretary shall submit a report of the evaluation process to the Governor and to the Joint Legislative Transportation Oversight Committee.

(b) Factors for Evaluation. – The evaluation of the area, structure, and governance of each metropolitan planning organization shall include all of the following factors:

- (1) Existing and projected future commuting and travel patterns and urban growth projections.
- (2) Integration of planning with existing regional transportation facilities, such as airports, seaports, and major interstate and intrastate road and rail facilities.
- (3) Conformity with and support for existing or proposed regional transit and mass transportation programs and initiatives.
- (4) Boundaries of existing or proposed federally designated air quality nonattainment areas or air-quality management regions.
- (5) Metropolitan Statistical Area boundaries.
- (6) Existing or proposed cooperative regional planning structures.
- (7) Administrative efficiency, availability of resources, and complexity of management.
- (8) Feasibility of the creation of interstate metropolitan planning organizations.
- (9) Governance structures, as provided in subsection (c) of this section.

(c) Metropolitan Planning Organization Structures. – The Governor and Secretary of Transportation, in cooperation with existing metropolitan planning organizations and local elected officials, may consider the following changes to the structure of existing metropolitan planning organizations:

- (1) Expansion of existing metropolitan planning organization boundaries to include areas specified in 23 U.S.C. § 134(c).
- (2) Consolidation of existing contiguous metropolitan planning organizations in accordance with the redesignation procedure specified in 23 U.S.C. § 134(b).
- (3) Creation of metropolitan planning organization subcommittees with responsibility for matters that affect a limited number of constituent jurisdictions, as specified in a memorandum of understanding redesignating a metropolitan planning organization in accordance with the provisions of 23 U.S.C. § 134.
- (4) Formation of joint committees or working groups among contiguous nonconsolidated metropolitan planning organizations, with such powers and responsibilities as may be delegated to such joint committees pursuant to their respective memoranda of understanding.
- (5) Creation of interstate compacts pursuant to 23 U.S.C. § 134(d) to address coordination of planning among metropolitan planning organizations

located in this State and contiguous metropolitan planning organizations located in adjoining states.

- (6) Delegation by the governing board of a metropolitan planning organization of part or all of its responsibilities to a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes, if the regional transportation authority is eligible to exercise that authority under 23 U.S.C. § 134.

(d) **Optional Governance Provisions.** – In addition to any other provisions permitted or required pursuant to 23 U.S.C. § 134, the memorandum of understanding, creating, enlarging, modifying, or restructuring a metropolitan planning organization may also include any of the following provisions relating to governance:

- (1) Distribution of voting power among the constituent counties, municipal corporations, and other participating organizations on a basis or bases other than population.
- (2) Membership and representation of regional transit or transportation authorities or other regional organizations in addition to membership of counties and municipal corporations.
- (3) Requirements for weighted voting or supermajority voting on some or all issues.
- (4) Provisions authorizing or requiring the delegation of certain decisions or approvals to less than the full-voting membership of the metropolitan planning organization in matters that affect only a limited number of constituent jurisdictions.
- (5) Requirements for rotation and sharing of officer positions and committee chair positions in order to protect against concentration of authority within the metropolitan planning organization.
- (6) Any other provision agreed to by the requisite majority of jurisdictions constituting the metropolitan planning organization.

(e) **Effect of Evaluation.** – Upon completion of the evaluation required under this section, a metropolitan planning organization may be restructured in accordance with the procedure contained in 23 U.S.C. § 134(b)(5).

(f) **Assistance.** – The Department may provide staff assistance to metropolitan planning organizations in existence prior to January 1, 2001, that are considering consolidation on or after January 1, 2001. In addition, the Department may provide funding assistance to metropolitan planning organizations considering consolidation, upon receipt of a letter of intent from jurisdictions representing seventy-five percent (75%) of the affected population, including the central city, in each metropolitan planning organization considering consolidation.

(g) **Ethics Provisions.** – All individuals with voting authority serving on a metropolitan planning organization who are not members of the Board of Transportation shall do all of the following:

- (1) Except as permitted under this subdivision, no MPO member acting in that capacity shall participate in an action if the member knows the

member, the member's extended family, or any business with which the member is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the MPO member's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member's participation in the action. An MPO member may participate in an action of the MPO under any of the following circumstances:

- a. When action is ministerial only and does not require the exercise of discretion.
 - b. When the committee records in its minutes that it cannot obtain a quorum in order to take the action because the MPO member is disqualified from acting, the MPO member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.
- (2) An MPO member shall have an affirmative duty to promptly disclose in writing to the MPO any conflict of interest or potential conflict of interest under subdivision (1) of this subsection. All written disclosures shall be a public record under Chapter 132 of the General Statutes and attached to the minutes of the meeting in which any discussion or vote was taken by the MPO related to that disclosure.
 - (3) File a statement of economic interest with the State Ethics Commission in accordance with Article 3 of Chapter 138A of the General Statutes, for which the State Ethics Commission shall prepare a written evaluation relative to conflicts of interest and potential conflicts of interest and provide a copy of that evaluation to the MPO member. All statements of economic interest and all written evaluations by the Commission of those statements are public records as provided in G.S. 138A-23. The penalties for failure to file shall be as set forth in G.S. 138A-25(a) and (b).
 - (4) File, with and in the same manner as the statement of economic interest filed under subdivision (3) of this subsection, an additional disclosure of a list of all real estate owned wholly or in part by the MPO member, the MPO member's extended family, or a business with which the MPO member is associated within the jurisdiction of the MPO on which the MPO member is serving. All additional disclosures of real estate filed by MPO members are public records under Chapter 132 of the General Statutes. The penalties for failure to file shall be as set forth in G.S. 138A-25(d).

(h) Confidential Information. – An MPO member shall not use or disclose any nonpublic information gained in the course of or by reason of serving as a member of the MPO in a way that would affect a personal financial interest of the MPO member, the MPO member's extended family, or a business with which the MPO member is associated.

(i) Definitions. – For purposes of this section, "extended family" shall have the same meaning as in G.S. 138A-3(25), "business with which associated" shall have the same

meaning as in G.S. 138A-3(7), and "financial benefit" shall mean a direct pecuniary gain or loss or a direct pecuniary loss to a business competitor.

(j) **Violations.** – A violation of subdivision (1) of subsection (g) of this section shall be a Class 1 misdemeanor. An MPO member who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a required filing under subdivisions (3) or (4) of subsection (g) of this section shall be guilty of a Class 1 misdemeanor. An MPO member who provides false information on a required filing under subdivisions (3) or (4) of subsection (g) of this section knowing that the information is false is guilty of a Class H felony. If the State Ethics Commission receives written allegations of violations of this section, the Commission shall report such violations to the Director of the State Bureau of Investigation for investigation and referral to the District Attorney for possible prosecution. All written allegations or related documents are confidential and are not matters of public record.

(k) All individuals with voting authority serving on an MPO who are members of the Board of Transportation shall comply with Chapter 138A of the General Statutes and G.S. 143B-350 while serving on the MPO. (2000-80, s. 5; 2013-156, s. 1(b); 2014-58, s. 12(a); 2014-115, s. 56.6A(a); 2015-264, s. 72(a); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 136-200.3. Additional provisions applicable to consolidated metropolitan planning organizations.

(a) **Limit on Basis for Project Objection.** – Beginning with the 2004 State Transportation Improvement Program, neither the State nor a consolidated metropolitan planning organization shall have a basis to object to a project that is proposed for funding in the Transportation Improvement Program, provided that the project does not affect projects previously programmed, if the project is included in a mutually adopted plan developed pursuant to G.S. 136-66.2, and is consistent with the project selection criteria contained in the memorandum of understanding creating the consolidated metropolitan planning organization.

(b) **Project Ranking Priorities.** – Beginning with the 2004 State Transportation Improvement Program, and subject to the availability of funding, the Department of Transportation, when developing the Transportation Improvement Program, shall abide by the project ranking priorities approved by a:

- (1) Consolidated metropolitan planning organization for any project within its jurisdiction, if the project is not a National Highway System or bridge and Interstate maintenance program project.
- (2) Regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes, for any project that all metropolitan planning organizations within the authority's jurisdiction have delegated responsibility, if the project is not a National Highway System or bridge and Interstate maintenance program project. (2000-80, s. 6.)

§ 136-200.4. Additional requirements for metropolitan planning organizations located in nonattainment areas.

(a) Consultation and Single Conformity Plan Required. – When an area of the State is designated as non-attainment under the federal Clean Air Act (42 U.S.C. § 7401, et seq.) all metropolitan planning organizations with at least twenty-five percent (25%) of their area of jurisdiction located within the boundaries of the nonattainment area shall consult on appropriate emissions reduction strategies and shall adopt a single, unified plan for achieving conformity. The strategies set forth in the unified plan shall be incorporated by each affected metropolitan planning organization into its respective long range transportation plan developed pursuant to 23 U.S.C. § 134(g).

(b) Effect of Failure to Adopt Required Plan. – If a metropolitan planning organization does not comply with the provisions of subsection (a) of this section within one year after designation of at least twenty-five percent (25%) of the metropolitan planning organization's area of jurisdiction as nonattainment under the federal Clean Air Act (42 U.S.C. § 7401, et seq.), the Department shall not allocate any of the following funds to projects within the metropolitan planning organization's area of jurisdiction:

- (1) One hundred percent (100%) State-funded road construction funds.
- (2) State matching funds for any road construction or transit capital project.
- (3) Federal congestion mitigation and air quality improvement program funds.

(c) Mandatory Evaluation and Report. – Each metropolitan planning organization located in whole or in part in areas designated as nonattainment under the federal Clean Air Act (42 U.S.C. § 7401 et seq.) shall complete the evaluation process provided for in G.S. 136-200.2 and submit its findings and recommendations to the Department of Transportation within one year of the effective date of designation as nonattainment. A metropolitan planning organization may request and be granted by the Department an extension if the metropolitan planning organization can show cause for the extension. Extensions shall be granted in no more than one year increments. (2000-80, s. 7.)

§ 136-200.5. Matching funds for Metropolitan Planning Organizations located in nonattainment areas or maintenance areas.

(a) Application. – The lead planning agency for any Metropolitan Planning Organization located in an area designated as a nonattainment or maintenance area under the federal Clean Air Act (42 U.S.C. § 7401, et seq.) may apply to the Department of Transportation for funds to avoid a plan conformity lapse.

(b) Matching Required. – Funds provided under this section shall be matched one-for-one by the local applicant agency.

(c) Use of Funds. – Funds provided under this section shall be used by the local applicant agency only to avoid a plan conformity lapse.

(d) Limit on Funds. – The Department shall not provide more than one million dollars (\$1,000,000) per fiscal year to any lead planning organization of a Metropolitan Planning Organization pursuant to this section.

(e) Payback Required. – Any funds provided to a lead planning organization of a Metropolitan Planning Organization under this section shall be repaid within five years, either from local sources or as an offset against planning funds that might otherwise have been made available from the Department to the lead planning organization. (2003-284, s. 29.14(b).)

§ 136-200.6. Funds for local transportation planning efforts in areas designated nonattainment areas or maintenance areas.

(a) Application. – A regional transportation planning agency in an area designated as a nonattainment or maintenance area under the federal Clean Air Act (42 U.S.C. § 7401, et seq.) that has policy-setting authority for the entire designated area and that is representative of all local governments within the area, may apply to the Department of Transportation for funds to support local transportation planning efforts in that local government's region.

(b) Matching Required. – Funds provided under this section shall be matched one-for-one by the applicant agency.

(c) Use of Funds. – Funds provided under this section shall only be used by the local applicant agency to support regional transportation planning within the designated area.

(d) Local Staff Required. – Funds shall be provided under this section only if local governments in the designated area support and supply staff to the regional transportation planning agency.

(e) Limit on Funds. – The Department shall not provide more than two hundred fifty thousand dollars (\$250,000) in any fiscal year to any agency pursuant to this section. (2003-284, s. 29.14(c).)

§ 136-201. Plan for intermodal interface.

When planning a regionally significant transportation project, the Department shall consider design alternatives that will facilitate the cost-effective interface of the project with other existing or planned transportation projects, including highway, airport, rail, bus, bicycle, and pedestrian facilities. The Department of Transportation shall record its consideration of these design alternatives in the planning documents for the project. (1999-328, s. 4.10.)

§ 136-202. Metropolitan planning organizations.

(a) Each Metropolitan Planning Organization shall base all transportation plans, metropolitan transportation improvement programs, and conformity determinations on the most recently completed regional travel demand model.

(b) Each Metropolitan Planning Organization shall update its transportation plans in accordance with the scheduling requirements stated in 23 Code of Federal Regulations 450.322 (1 April 1999 Edition).

(c) The Department, the metropolitan planning organizations, and the Department of Environmental Quality shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than October 1 of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State Budget Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality.

(d) The Department shall report on the evaluation and adjustment of the boundaries of the area served by each Metropolitan Planning Organization to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission no later than November 1 of each year in which the regions are evaluated and adjusted.

(e) Repealed by Session Laws 2013-156, s. 1(a), effective June 19, 2013. (1999-328, s. 4.10; 2004-203, s. 5(k); 2012-142, s. 24.16(a); 2013-156, s. 1(a); 2015-241, s. 14.30(u).)

§ 136-203: Repealed by Session Laws 2002-148, s. 1, effective October 9, 2002.

§ 136-204. Reserved for future codification purposes.

§ 136-205. Reserved for future codification purposes.

§ 136-206. Reserved for future codification purposes.

§ 136-207. Reserved for future codification purposes.

§ 136-208. Reserved for future codification purposes.

§ 136-209. Reserved for future codification purposes.