

## Article 6.

### Administration of the Budget.

#### Part 1. Certification and Administration of the Budget.

##### **§ 143C-6-1. Budget enacted by the General Assembly; certified budgets of State agencies.**

(a) Governor to Administer the Budget as Enacted by the General Assembly. – In accordance with Section 5(3) of Article III of the North Carolina Constitution, the Governor shall administer the budget as enacted by the General Assembly. All appropriations of State funds now or hereafter made to the State agencies and non-State entities authorize expenditures only for the (i) purposes or programs and (ii) objects or line items enumerated in the Recommended State Budget and the Budget Support Document recommended to the General Assembly by the Governor, as amended and enacted by the General Assembly in the Current Operations Appropriations Act or any other act affecting the State budget. The Governor shall ensure that appropriations are expended in strict accordance with the budget enacted by the General Assembly.

(b) Departmental Receipts. – Departmental receipts collected to support a program or purpose shall be credited to the fund from which appropriations have been made to support that program or purpose. A State agency shall expend departmental receipts first, including receipts in excess of the amount of receipts budgeted in the certified budget for the program or purpose, and shall expend other funds appropriated for the purpose or program only to the extent that receipts are insufficient to meet the costs anticipated in the certified budget.

Except as authorized in G.S. 143C-6-4, excess departmental receipts shall not be used to increase expenditures for a purpose or program.

(c) Certification of the Budget. – The Director of the Budget shall certify to each State agency the amount appropriated to it for each program and each object from all funds included in the budget as defined in G.S. 143C-3-5(d). The certified budget for each State agency shall reflect the total of all appropriations enacted for each State agency by the General Assembly in the Current Operations Appropriations Act and any other act affecting the State budget. The certified budget for each State agency shall follow the format of the Budget Support Document as modified to reflect changes enacted by the General Assembly. (2006-203, s. 3; 2013-360, s. 6.12(m); 2017-57, s. 6.6(f).)

##### **§ 143C-6-2. Methods to avoid deficit.**

(a) Appropriations. – Each appropriation is maximum and conditional. The expenditures authorized by an appropriation from a fund shall be made only if necessary and only if the aggregate revenues to the fund during each fiscal year of the biennium, when added to any unreserved fund balance from the previous fiscal year, are sufficient to support the expenditures.

(b) Revenue Collections. – The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall consult with the Chief Justice to identify expenditure reductions and other lawful measures the Chief Justice and Judicial Branch can implement to reduce expenditures. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit.

(c) Local Governments Funds. – In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated to local governments unless the Governor has exhausted all other sources of revenue of the State including any appropriated surplus remaining in the treasury at the beginning of the fiscal period.

In accordance with Section 19 of Article I of the North Carolina Constitution and the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue. This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. (2006-203, s. 3; 2007-393, s. 6.)

### **§ 143C-6-3. Allotments.**

To receive the operating funds appropriated to it, a State agency shall submit to the Director, at intervals and in a format prescribed by the Director, a request for an allotment of the amount estimated to be required for the agency's operating costs during the ensuing fiscal period. The Director shall approve or modify the allotment requests, and the State Controller shall implement the allotments as approved or modified by the Director. (2006-203, s. 3.)

### **§ 143C-6-4. Budget Adjustments Authorized.**

(a) Findings. – The General Assembly recognizes that even the most thorough budget deliberations may be affected by unforeseeable events; therefore, under the limited circumstances set forth in this section, the Director is authorized to adjust the enacted budget by making transfers among lines of expenditure, purposes, or programs or by increasing expenditures funded by departmental receipts.

(b) Budget Adjustments. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was appropriated in the certified budget by adjusting the authorized budget for all of the following:

- (1) Line items within programs. – An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was authorized in the certified budget for the purpose or program.
- (2) Responses to extraordinary events. – A purpose or program if the overexpenditure of the purpose or program is:
  - a. Required by a court or Industrial Commission order;
  - b. Authorized under G.S. 166A-19.40(a)(1) and (c) of the North Carolina Emergency Management Act; or
  - c. Required to call out the North Carolina National Guard.
- (3) Responses to unforeseen circumstances. – A purpose or program not subject to the provisions of subdivision (b)(2) of this subsection, if each of the following conditions is satisfied:
  - a. The overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted.
  - b. The scope of the purpose or program is not increased.
  - c. The overexpenditure is authorized on a one-time nonrecurring basis for one year only, unless the overexpenditure is the result of (i) salary

adjustments authorized by law or (ii) the establishment of time-limited positions funded with agency receipts.

(b1) If the overexpenditure would cause a department's total requirements for a fund to exceed the department's certified budget for a fiscal year for that fund by more than three percent (3%), the Director shall consult with the Joint Legislative Commission on Governmental Operations prior to authorizing the overexpenditure.

(b2) Subsection (b) of this section shall not be construed to authorize budget adjustments that cause General Fund expenditures, excluding expenditures from General Fund receipts, to exceed General Fund appropriations for a department.

(c) Overexpenditures Reported. – The Director shall report quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on overexpenditures approved by the Director under subdivisions (2) and (3) of subsection (b) of this section.

(d) Overexpenditures in Senate Budget. – The President Pro Tempore of the Senate may approve expenditures for more than was authorized in the enacted budget for objects or line items in the budget of the Senate.

(e) Overexpenditures in House of Representatives Budget. – The Speaker of the House of Representatives may approve expenditures for more than was authorized in the enacted budget objects or line items in the budget of the House of Representatives.

(f) Transfers Between Line Items or Programs in General Assembly Budget Other Than Senate and House of Representatives. – Expenditures exceeding amounts authorized for programs, objects, or line items in the budget of the General Assembly other than those of the Senate and House of Representatives shall be approved jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(g) Transfers in The University of North Carolina Budget. – Transfers or changes within the budget of The University of North Carolina may be made as provided in Article 1 of Chapter 116 of the General Statutes.

(h) Transfers Within the Office of the Governor. – Transfers or changes as between objects or line items in the budget of the Office of the Governor may be made by the Governor. (2006-203, s. 3; 2007-117, s. 4; 2009-281, s. 1; 2011-183, s. 127(c); 2012-12, s. 2(x); 2013-360, s. 6.12(n); 2017-102, s. 26.)

**§ 143C-6-5. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation; no fee increases that the General Assembly has rejected.**

(a) Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, or funds allocated from the State Capital and Infrastructure Fund in accordance with G.S. 143C-4-3.1, funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143C-4-4, and funds exempted from Chapter 143C in accordance with G.S. 143C-1-3(c) may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this subsection, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill which fails a reading, or if the purpose is included in the version of a bill that passes one house, but the bill is enacted without the purpose.

(b) Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this

subsection, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase. (2006-66, s. 6.4; 2006-203, s. 3; 2017-57, s. 36.12(i).)

**§ 143C-6-5.5. Limitation on use of State funds for abortions.**

No State funds may be used for the performance of abortions or to support the administration of any governmental health plan or government-offered insurance policy offering abortion, except that this prohibition shall not apply where (i) the life of the mother would be endangered if the unborn child were carried to term or (ii) the pregnancy is the result of a rape or incest. Nothing in this section shall be construed to limit medical care provided after a spontaneous miscarriage. (2011-145, s. 29.23(a).)

**§ 143C-6-6. Positions included in the State Payroll.**

(a) Before a State agency establishes a new position or changes the funding of an existing position, the agency shall submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that funds for the action are included in the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the Controller of the approval. The Controller shall not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(b) Payments on behalf of employees for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases, required employer salary-related contributions for retirement benefits, death benefits, the Disability Income Plan and social security for employees shall be paid from the General Fund or the Highway Fund, only to the extent of the proportionate part paid from the General Fund or Highway Fund, in support of the salary of the employee, and the remainder of the employer's contribution requirements shall be paid from the same source that supplies the remainder of the employee's salary.

(c) Subsection (a) of this section does not apply to The University of North Carolina. (2006-203, s. 3; 2007-484, s. 34.)

**§ 143C-6-7. Compliance with Chapter and appropriations acts by State agencies.**

(a) Compliance With Chapter and Appropriations Acts. – Except as otherwise provided by law, all expenditures of State funds by a State agency shall be made in compliance with the State budget as enacted by the General Assembly and certified by the Director. If the Director finds that a State agency has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a penal statute or an apparent instance of malfeasance, misfeasance, or nonfeasance by a person.

(b) Repayment of Funds Spent for an Unauthorized Purpose. – In addition to the provisions of subsection (a) of this section, if the Director finds that a State agency violated this section, the Director shall withhold any future allocations for the unauthorized purpose and shall also withhold future allocations to the Department in an amount equal to the funds unlawfully spent. (2006-203, s. 3.)

**§ 143C-6-8. State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.**

(a) Limitation. – Unless otherwise authorized by the Director as provided by law, purchase orders, contracts, salary commitments, and any other financial obligations by State agencies shall be subject to the availability of appropriated funds or available funds that are not State funds as defined in this Chapter. Any employment contract or salary commitment that is paid in whole or in part with State funds shall also be subject to this limitation.

(b) Notice. – Any written purchase order, contract, salary commitment, or other financial obligation subject to this section shall include a clause that sets forth the limitation imposed by subsection (a) of this section. Where this section applies but there is no written document to which the limitation may be added, the entity that administers the State funds at issue shall notify the person or entity of the limitation. (2006-203, s. 3; 2012-142, s. 6.13(a).)

**§ 143C-6-9. Use of lapsed salary savings.**

(a) Lapsed salary savings may be expended only for nonrecurring purposes or line items.

(b) Lapsed salary savings shall not be used to pay for litigation services provided by private counsel. As used in this subsection, litigation services and private counsel are as defined in G.S. 147-17(c1) and G.S. 114-2.3(d).

(c) Until otherwise provided by the General Assembly, the Office of State Budget and Management (OSBM) in conjunction with State agencies, as defined in G.S. 143C-1-1(d)(24), shall report on the use of lapsed salary funds at the end of each fiscal year. State agencies shall report to the OSBM on the use of lapsed salary, including all of the following:

- (1) The total amount of accrued lapsed salary funds by funding source.
- (2) The total number of full-time equivalent positions comprising the lapsed salary funds.
- (3) The total expenditure of lapsed salaries by purpose.
- (4) The legal authorization to expend lapsed salary funds.

The OSBM shall report by October 1 of each year on the use of lapsed salary funds to the Joint Legislative Oversight Committees on Health and Human Services, Education, Justice and Public Safety, Transportation, Information Technology, General Government, and Agriculture and Natural and Economic Resources and the Fiscal Research Division. (2006-203, s. 3; 2017-57, s. 6.7; 2020-78, s. 20.1.)

**§ 143C-6-10. Flexible compensation plan.**

Notwithstanding any other provision of law, the Director may establish a program of dependent care assistance and a flexible compensation plan for eligible officers and employees of State agencies as provided in G.S. 126-95. With the approval of the Director, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may also be used as provided by G.S. 126-95. (2007-117, s. 3(c).)

Part 2. Highway Appropriations.

**§ 143C-6-11. Highway appropriation.**

(a) General Provisions. – Appropriations made for transportation projects are subject to the provisions in this section. If the provisions in this section conflict with the budget acts, the budget acts prevail.

(b) Cash Flow Management of Transportation Projects. – Transportation Project funds shall be budgeted, expended, and accounted for on a "cash flow" basis. Pursuant to this end, transportation project contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(c) Appropriations Are for Payments and Contract Commitments to Be Made in the Appropriation Fiscal Year. – The appropriations for transportation projects are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Transportation project contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each transportation project appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(d) Payments Subject to Availability of Funds. – The annual appropriations for transportation projects shall be expended only to the extent that sufficient funds are available in the Highway Fund.

(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 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 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.

(e) Retainage Fully Funded. – The Department of Transportation shall fully fund retainage from transportation project contracts in the year in which the work is performed.

(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.

(g) Anticipation of Revenues. – In awarding State transportation project contracts requiring payments beyond a biennium, the Director may anticipate revenues as authorized and certified by the General Assembly to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not

required for other budget items may be anticipated for the second and subsequent fiscal years' contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.

(h) Amounts Encumbered. – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subsection (c) above. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(i) Provision Incorporated in Contracts. – The provisions of subsection (h) of this section shall be incorporated verbatim in all transportation project contracts.

(j) Existing Contracts Are Not Affected. – The provisions of this section shall not apply to transportation project contracts awarded by the Department of Transportation prior to July 15, 1980.

(k) The Department of Transportation shall do all of the following:

- (1) Utilize cash flow financing to the extent possible to fund transportation projects with the goal of reducing the combined average daily cash balance of the Highway Fund and the Highway Trust Fund to an amount equal to between fifteen and twenty percent (15-20%) of the total appropriations for the current fiscal year from those funds. In projecting cash balances in future years, the Department shall use the estimated cash flow as specified in the Current Operations Appropriation Act. Any federal funds on hand shall not be considered as cash for the purposes of this subsection. The target amount shall include an amount necessary to make all municipal-aid funding requirements of the Department.
- (2) Establish necessary management controls to facilitate use of cash flow financing, such as establishment of a financial planning committee, development of a monthly financing report, establishment of appropriate fund cash level targets, review of revenue forecasting procedures, and reduction of accrued unbilled costs.
- (3) Report annually, on October 1 of each year, to the Joint Legislative Transportation Oversight Committee on its cash management policies and results.

(l) It is the intent of the General Assembly to (i) prevent the inclusion of duplicative fund codes in the Highway Fund certified budget and (ii) correctly align authorized positions and associated operating costs with the appropriate purposes and definitions as defined in G.S. 143C-1-1. To that end, the Office of State Budget and Management, in consultation with the Department of Transportation, the Office of the State Controller, and the Fiscal Research Division of the General Assembly, shall include, as an appendix to the Highway Fund certified budget, object detail using the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller to provide a more detailed accounting of the proposed budgets and receipts and actual expenditures and revenue collections. This requirement includes applying object detail at the four-digit level for all accounts to full-time and part-time positions, to operating expenditures and receipts, and to intrafund transfers. Additionally, work order positions shall be budgeted within existing fund codes.

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

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

- (1) Total Cash and Bond Proceeds
- (2) Add Receipts
- (3) Less Disbursements
  - a. Payroll
  - b. Debt Service
  - c. STI Construction Costs
  - d. General Operating Costs
  - e. Map Act Claims/Settlements
  - f. State Aid Payments
  - g. Disaster-Related Costs
  - h. Other
- (4) Reserved Cash
  - a. GARVEE/Federal Repayment Reserve
  - b. Transportation Emergency Reserve
  - c. Trustee Accounts – Build NC proceeds
  - d. Trustee Accounts – GARVEE
  - e. Trustee Accounts – Other Bonds
  - f. Repealed by Session Laws 2020-91, s. 4.10(a), effective July 1, 2020.
  - g. Repealed by Session Laws 2020-91, s. 4.10(a), effective July 1, 2020.
- (5) Unreserved Cash Balance Total
  - a. Highway Fund Total



- b. Highway Trust Fund Total
- c. Statutory Cash Requirement

(o) Balance Sheet Report. – By the 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.

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

(q) 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.

(r) 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 (q) of this section for the previous fiscal year, including a comparison to

the Department's Spend Plan for that period. (2006-203, s. 3; 2014-100, s. 34.23(a); 2018-5, s. 34.8(b); 2019-251, ss. 1.3(c), 1.5(a), 2.1(a); 2020-91, ss. 4.8, 4.10(a), (b), 5.2(a), 5.3(a).)

**§ 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. (2020-91, s. 5.4.)

**§ 143C-6-12. Quarterly report on State agency reorganizations and movements of positions.**

The Office of State Budget and Management shall report quarterly to the Joint Legislative Commission on Governmental Operations and the appropriate Joint Legislative Oversight Committee on reorganizations of State agencies and movements of State agency positions. Each report submitted pursuant to this section shall include all of the following information for the previous quarter:

- (1) A list of all reorganizations within State agencies or between State agencies.
- (2) A list of all positions moved within a State agency or between State agencies.
- (3) A statement of the purpose of each reorganization and position movement undertaken and of the legal authority under which each reorganization and position movement was made. (2014-100, s. 6.10.)

**§ 143C-6-13:** Reserved for future codification purposes.

**§ 143C-6-14:** Reserved for future codification purposes.

**§ 143C-6-15:** Reserved for future codification purposes.

**§ 143C-6-16:** Reserved for future codification purposes.

§ 143C-6-17: Reserved for future codification purposes.

§ 143C-6-18: Reserved for future codification purposes.

§ 143C-6-19: Reserved for future codification purposes.

§ 143C-6-20: Reserved for future codification purposes.

### Part 3. Non-State Entities Receiving State Funds.

#### § 143C-6-21. **Payments to nonprofits.**

Except as otherwise provided by law, an annual appropriation of one hundred thousand dollars (\$100,000) or less to or for the use of a nonprofit corporation may be made in a single annual payment, in the discretion of the Director of the Budget. An annual appropriation of more than one hundred thousand dollars (\$100,000) to or for the use of a nonprofit corporation shall be made in quarterly or monthly payments, in the discretion of the Director of the Budget. (2006-203, s. 3; 2013-360, s. 6.12(o).)

#### § 143C-6-22. **Use of State funds by non-State entities.**

(a) Disbursement and Use of State Funds. – Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State Treasury.

(b) Compliance by Non-State Entities. – If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies the information required by G.S. 143C-6-23 or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(c) Civil Actions. – Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County. (2006-203, s. 3.)

#### § 143C-6-23. **State grant funds: administration; oversight and reporting requirements.**

(a) Definitions. – The following definitions apply in this section:

- (1) Grant or grant funds. – State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.

- (2) Grantee. – A non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (3) Encumbrance. – A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided, or other legally binding agreement. A financial obligation is not an encumbrance for purposes of this section unless it (i) is in writing and has been signed by a person or entity who has authority to legally bind the grantee or subgrantee to spend the funds or (ii) was created by the provision of goods or services to the grantee or subgrantee by a third party under circumstances that create a legally binding obligation to pay for the goods or services.
- (4) Subgrantee. – A non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. – The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (3) Ensure that State funds are spent in accordance with the purposes for which they were granted.
- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.

- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds. These policies shall require each grantee and subgrantee to ensure that, for accounting purposes, State funds and interest earned on those funds remain separate and apart from other funds in the possession or control of the grantee or subgrantee.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.
- (7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.
- (8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (i) of this section.
- (9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.
- (10) Provide procedures for the suspension of further disbursements or use of grant funds for noncompliance with these rules or other inappropriate use of the funds.
- (11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of grant funds.
- (12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee (i) in accordance with subsection (f1) of this section or (ii) in the event that the grantee or subgrantee is unable to fulfill the purposes of the grant for a reason not set forth in that subsection.
  - (d1) Required Grant Terms. – The terms of each grant shall include all of the following, which shall be deemed a part of the grant:
    - (1) The limitation contained in G.S. 143C-6-8 concerning the availability of appropriated funds.
    - (2) The relevant provisions of any legislation authorizing or governing the administration of the grant.
    - (3) The terms of this section.
  - (e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.
  - (f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The Office of State Budget and Management, after consultation with the administering State agency,

shall have the power to suspend disbursement of grant funds to grantees or subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(f1) Return of Grant Funds. – Except as otherwise required by federal law, a grantee or subgrantee shall return to the State all affected grant funds and interest earned on those funds if any of the following occurs:

- (1) The funds are in the possession or control of a grantee and are not expended, made subject to an encumbrance, or disbursed to a subgrantee by August 31 immediately following the fiscal year in which the funds are appropriated by the General Assembly, or a different period set forth in the terms of the applicable appropriation or federal grant.
- (2) The funds remain unexpended at the time that the grantee or subgrantee dissolves, ceases operations, or otherwise indicates that it does not intend to spend the funds.
- (3) The Office of State Budget and Management seeks to recover the funds pursuant to subsection (f) of this section.

(f2) Use of Returned Grant Funds. – Encumbered funds returned to the State pursuant to subsection (f1) of this section by a grantee or subgrantee shall upon appropriation by the General Assembly be spent in accordance with the terms of the encumbrance. All other funds returned to the State by a grantee or subgrantee pursuant to subsection (f1) of this section shall be credited to the fund from which they were appropriated and shall remain unexpended and unencumbered until appropriated by the General Assembly. Nothing in this section shall be construed to authorize an expenditure pursuant to an unlawful encumbrance or in a manner that would violate the terms of the appropriation of the grant funds at issue.

(g) Audit Oversight. – The State Auditor has audit oversight, with respect to grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee or subgrantee shall, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of grant funds received by the grantee or subgrantee. The grantee or subgrantee shall furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of grant funds. The grantee or subgrantee shall post conspicuously in its office the State Auditor's hotline telephone number, as described in G.S. 147-64.6B(a).

(h) Report on Grant Recipients That Failed to Comply. – Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section with respect to grant funds received in the prior fiscal year.

(i) State Agencies to Submit Grant List to Auditor. – No later than October 1 of each year, each State agency shall submit a list to the State Auditor, in the format prescribed by the State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal year. The

list shall include the amount disbursed to each grantee and other information as required by the State Auditor to comply with the requirements of this section.

(j) Use of Interest Earned on Grant Funds. – Except as otherwise required by federal law or the terms of a federal grant, interest earned on grant funds after receipt of the funds by a grantee or subgrantee shall be credited to the grantee or subgrantee and shall be used for the same purposes for which the grant or subgrant was made.

(k) Reporting by Grantees and Subgrantees That Cease Operations. – A grantee or subgrantee that intends to dissolve or cease operations shall report that decision in writing to the Office of State Budget and Management and to the Fiscal Research Division at least 30 days prior to taking that action. (2006-203, s. 3; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2014-100, s. 6.5(a); 2015-264, s. 21; 2019-19, s. 1(a).)