§ 136-18. Powers of Department of Transportation.

The Department of Transportation has the following powers:

(1) The authority and general supervision over all matters relating to the construction, maintenance, and design of State transportation projects, letting of contracts therefor, and the selection of materials to be used in the construction of State transportation projects under the authority of this Chapter.

(2) Related to right-of-way:

a. To take over and assume exclusive control for the benefit of the State of any existing county or township roads.

b. To locate and acquire rights-of-way for any new roads that may be necessary for a State highway system.

c. Subject to the provisions of G.S. 136-19.5(a) and (b), to use existing rights-of-way, or locate and acquire such additional rights-of-way, as may be necessary for the present or future relocation or initial location, above or below ground, of all of the following:

1. Telephone, telegraph, distributed antenna systems (DAS), broadband communications, electric and other lines, as well as gas, water, sewerage, oil, and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof.

2. Nonutility owned or operated communications or data transmission infrastructure.

The Department may widen, relocate, change, or alter the grade or location thereof, or alter the location or configuration of the lines or systems above or below ground. No agreement for use of Department right-of-way under this sub-subdivision shall abrogate the Department's ownership and control of the right-of-way. The Department may adopt policies and rules necessary to implement this sub-subdivision.

d. To change or relocate any existing roads that the Department of Transportation owns or acquires.

e. To acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State transportation system and adjacent utility rights-of-way.

f., g. Repealed by Session Laws 2019-76, s. 23, effective October 1, 2019.

All changes or alterations authorized by this subdivision are subject to G.S. 136-54 to G.S. 136-63, to the extent that those sections are applicable.

Nothing in this Chapter authorizes the Department of Transportation to allow or pay anything to any county, township, city, or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by the county, township, city, or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation. When any person, firm, or corporation owning a deposit of sand, gravel, or

other material necessary for the construction of the system of State highways has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by the Department of Transportation, thereafter the Department of Transportation may condemn the necessary right-of-way under Article 9 of this Chapter, to connect the deposit with any part of the system of State highways or public carrier. Easements to material deposits condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations, and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations, and public corporations, by trucks, tractors, trailers, or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of the rules, regulations, and ordinances. The violation of any of the rules, regulations, or ordinances so prescribed by the Department of Transportation constitutes a Class 1 misdemeanor. The Department of Transportation shall not make a rule, regulation, or ordinance that conflicts with any statute or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if the street is maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from the date of acquiring the roads. The Department of Transportation may maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) In consultation with university system and community college horticulture programs and the North Carolina Forestry Association, the Department shall use seeds and plants the U.S. Department of Agriculture has classified as native to a state or county in the Southeastern United States, including cultivars and varieties thereof that were not bred to have reduced reproductive structures, with a strong preference for plants the U.S. Department of Agriculture has classified as native to North Carolina, in the highway right-of-way in the promotion of erosion control, landscaping, and general protection of the highways, except that the Department may use (i) nonnative

grasses, plants, and seeds for the purpose of soil and slope stabilization for erosion control and (ii) nonnative turf grasses. For purposes of this subdivision, the Southeastern United States means the states of Alabama, Georgia, North Carolina, South Carolina, Tennessee, Virginia, and the following counties in Florida: Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington. The Department shall also have the power to acquire by gift or otherwise land for and to construct, operate, and maintain roadside parks, picnic areas, picnic tables, scenic overlooks, and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies, and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks, or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except for any of the following:

a. Materials displayed in welcome centers in accordance with G.S. 136-89.56.
b. Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind of the Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed.
c. Activities permitted by a local government pursuant to an ordinance meeting the requirements of G.S. 136-27.4.

Every other use or attempted use of any of these areas for commercial purposes constitutes a Class 1 misdemeanor, and each day's use constitutes a separate offense.

(10) To make proper and reasonable rules, regulations, and ordinances for the placing or erection of telephone, telegraph, electric, and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the highways or in any way interfere with the highways, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric, or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change them to conform to the order of the Department of Transportation. Any violation of these rules and regulations or noncompliance with these orders constitutes a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" has the definition set forth in G.S. 160D-931.

(11) To regulate, abandon, and close to use grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the road on one side of the railroad or railroads, the Department of Transportation may abandon and close to use the

grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation may close to use and abandon the grade crossing and any other adjacent crossing.

(12) To comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The Department of Transportation may enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies, and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other acts necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out the construction and maintenance. The good faith and credit of the State are further pledged to maintain the roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out the maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer may, with the approval of the Governor and Council of State, issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of the federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) To establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation may apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the federal aid acts referenced in this subdivision. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates

as the Department of Transportation may deem necessary. The Department of Transportation may apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the formula for the distribution of funds established by G.S. 136-189.11. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants pledge as security for the obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of the governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision are outstanding debt for the purpose of Article 10 of Chapter 159 of the General Statutes.

(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 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.

(13) To construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) To provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the highways for the guidance and protection of aircraft.

(15) To provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. The facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) Pursuant to a resolution of the Board of Transportation, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the parcels of land for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for these purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation shall maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the State-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. The Department of Transportation may construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation may construct, pave, and maintain all other driveways and entrances to the public schools

leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for the construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless the signs have first been approved by the Department of Transportation.

(20) To maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that the road is not a part of the State-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground is defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which the cemetery or burial ground is located, but does not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation shall remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of the animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where the construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation may regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation may make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation is responsible for determining safe clearances and shall fix standards for this determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation, or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as provided in this subdivision, or not in compliance with the terms of the permit, or violating the provisions of the rules, regulations, or ordinances promulgated under the authority of this section is guilty of a Class 1 misdemeanor. This subdivision does not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation may enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition, and construction of

roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation may do planning, surveying, locating, engineering, right-of-way acquisition, and construction on short segments of roads and bridges in adjoining states with the cost of the work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of the work done within this State by the adjoining state. The Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) To pave driveways leading from State-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation shall design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at State-owned hospitals for the treatment of tuberculosis, State-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and developmental centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for the construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the institutions listed in this subdivision, the Department of Transportation shall give the project priority to ensure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization has been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, may acquire by condemnation new or additional right-of-way to construct, pave, or otherwise improve a designated State-maintained secondary road upon presentation by the board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of the request by a majority of its members and by the further presentation of a petition requesting the improvement executed by the abutting owners whose frontage on the secondary road equals or exceeds seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision does not limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) To establish policies and promulgate rules providing for voluntary local government, property owner, or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, these costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Local government, property owner, and highway user participation can be in the form of

materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct, or maintain toll roads or bridges.

(28) To obtain land, either by gift, lease, or purchase, which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) To establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access." The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision applies to improvements that are not located on the school property. The Department has the power to grant final approval of any project design under this subdivision. To facilitate completion of the evaluation and recommendations within the required 60 days, in lieu of the evaluation by the Department, schools may engage an independent traffic engineer prequalified by the Department. The resulting evaluation and recommendations from the independent traffic engineer shall also fulfill any similar requirements imposed by a unit of local government. This subdivision does not require the public or private entities planning schools to meet the recommendations made by the Department or the independent traffic engineer, except those highway improvements that are required for safe ingress and egress to the State highway system, pursuant to subdivision (29) of this section, and that are physically connected to a driveway on the school property. The total cost of any improvements to the State highway system provided by a school pursuant to this subdivision, including those improvements pursuant to subdivision (29) of this section, shall be reimbursed by the Department. Any agreement between a school and the Department to make improvements to the State highway system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Nothing in this subdivision precludes the Department from entering into an agreement with the school whereby the school installs the agreed upon improvements and the Department provides full reimbursement for the associated costs incurred by the school, including design fees and any costs of right-of-way or easements. The term "school," as used in this subdivision, means any facility engaged in the educational

instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5. The term "improvements," as used in this subdivision, refers to all facilities within the right-of-way required to be installed to satisfy the road cross-section requirements depicted upon the approved plans. These facilities include roadway construction, including pavement installation and medians; ditches and shoulders; storm drainage pipes, culverts, and related appurtenances; and, where required, curb and gutter; signals, including pedestrian safety signals; street lights; sidewalks; and design fees. Improvements do not include any costs for public utilities.

(29b) The Department of Transportation shall consider exceptions to the sight distance requirement for driveway locations in instances where the curves of the road are close and frequent. Exceptions shall be granted in instances where sufficient sight distance can be provided or established through other means such as advisory speed signs, convex mirrors, and advanced warning signs. When appropriate, the Department shall consider lowering the speed limit on the relevant portion of the road. The Department may require a driveway permit applicant to cover the cost of installing the appropriate signage around the driveway, including speed limit reduction and driveway warning signs, and may also require the applicant to install and maintain convex or other mirrors to increase the safety around the driveway location.

This subdivision applies only to sections of roadway where the minimum sight distance as defined in the published "Policy on Street and Driveway Access to North Carolina Highways" is not available for a proposed driveway.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in this Chapter to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of these supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) To designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural, or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that meet all of the following:

a. Have no scenic value.

b. Have been designated or would be so designated solely to preserve system continuity.

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subdivision.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subdivision, but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subdivision, if requested.

(32) To perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation shall, from time to time, carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) To conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and to investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) The Department has the following powers related to fixed guideway public transportation system safety:

a. To oversee the safety of fixed guideway public transportation systems in the State not regulated by the Federal Railroad Administration, pursuant to 49 U.S.C. § 5329 and 49 U.S.C. § 5330 and any reauthorizations of or amendments to those sections. The Department shall adopt rules in conformance with 49 U.S.C. § 5329 and 49 U.S.C. § 5330 concerning its oversight of the safety of fixed guideway public transportation systems.

b. The Department shall examine and inspect the condition of each rail fixed guideway public transportation system and its equipment and facilities for the purpose of ensuring the safety and convenience of the public and the rail fixed guideway public transportation system's employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the rail fixed guideway public transportation system and require the rail fixed guideway public transportation system to repair the equipment or facilities.

c. To conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all rail fixed guideway public transportation systems and to investigate the cause of any rail fixed guideway public transportation system accident. In order to

facilitate this program, any rail fixed guideway public transportation system involved in an accident meeting the reporting thresholds defined by the Department shall report the accident to the Department.

d. The Department shall review, approve, oversee, and enforce each rail fixed guideway public transportation system's implementation of the public transportation system safety plan required pursuant to 49 U.S.C. § 5329(d).

e. The Department shall audit, at least once triennially, each rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required pursuant to 49 U.S.C. § 5329(d).

f. The Department shall provide, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems overseen by the Department to the Federal Transit Administration, the Governor, and the Board of Directors, or equivalent entity, of any rail fixed guideway public transportation system the Department oversees.

g. The Department shall not receive funding for the activities authorized by sub-subdivisions a. through f. of this subdivision from any rail fixed guideway public transportation systems subject to the Department's authority pursuant to sub-subdivisions a. through f. of this subdivision.

(37) To permit use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a bridge owned by a private or public entity, if the bridge does not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the bridge inspection reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision is subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purposes of advancing right-of-way acquisition or the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to

repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within the period of the existing Transportation Improvement Program.

(39) To enter into partnership agreements with 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, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Committee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for transportation infrastructure subject to an agreement under this subdivision that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of the transportation infrastructure shall be executed without approval of the Local Government Commission. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

(39a)a. The Department of Transportation and Turnpike Authority may enter into up to six agreements with a private entity as provided under subdivision (39) of this section for which the provisions of this section apply.

b. A private entity or its contractors must provide performance and payment security in the form and in the amount determined by the Department of Transportation. The form of the performance and payment security may consist of bonds, letters of credit, parent guaranties, or other instruments acceptable to the Department of Transportation.

c. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to the agreement, and any rights and remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this section. This sub-subdivision does not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this section.

d. Article 6H of this Chapter applies to the Department of Transportation and to projects undertaken by the Department of Transportation under

subdivision (39) of this section. The Department may assign its authority under that Article to fix, revise, charge, retain, enforce, and collect tolls and fees to the private entity.

e. Any contract under this subdivision or under Article 6H of this Chapter for the development, construction, maintenance, or operation of a project shall provide for revenue sharing, if applicable, between the private party and the Department, and revenues derived from the project may be used as set forth in G.S. 136-89.188(a), notwithstanding the provisions of G.S. 136-89.188(d). Excess toll revenues from a Turnpike Project shall be used for the funding or financing of transportation projects within the corridor where the Turnpike Project is located. For purposes of this subdivision, the term "excess toll revenues" means those toll revenues derived from a Turnpike Project that are not otherwise used or allocated to the Authority or a private entity pursuant to this subdivision, notwithstanding the provisions of G.S. 136-89.188(d). For purposes of this subdivision, the term "corridor" means (i) the right-of-way limits of the Turnpike Project and any facilities related to the Turnpike Project or any facility or improvement necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of a Turnpike Project; (ii) the right-of-way limits of any subsequent improvements, additions, or extension to the Turnpike Project and facilities related to the Turnpike projects, including any improvements necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of those subsequent improvements, additions, or extensions to the Turnpike Project; and (iii) roads used for ingress or egress to the toll facility or roads that intersect with the toll facility, whether by ramps or separated grade facility, and located within one mile in any direction.

f. Agreements entered into under this subdivision shall comply with the following additional provisions:

1. The Department shall solicit proposals for agreements.
2. The agreement shall be limited to no more than 50 years from the date of the beginning of operations on the toll facility.
3. Notwithstanding the provisions of G.S. 136-89.183(a)(5), all initial tolls or fees to be charged by a private entity shall be reviewed by the Turnpike Authority Board. Prior to setting toll rates, either a set rate or a minimum and maximum rate set by the private entity, the private entity shall hold a public hearing on the toll rates, including an explanation of the toll setting methodology, in accordance with guidelines for the hearing developed by the Department. After tolls go into effect, the private entity shall report to the Turnpike Authority Board 30 days prior to any increase in toll rates or change in the toll setting methodology by the private entity from the previous toll rates or toll setting methodology last reported to the Turnpike Authority Board.

4. Financial advisors and attorneys retained by the Department on contract to work on projects pursuant to this subsection are subject to State law governing conflicts of interest.
5. 60 days prior to the signing of a concession agreement subject to this subdivision, the Department shall report to the Joint Legislative Transportation Oversight Committee on the following for the presumptive concessionaire:
    I. Project description.
    II. Number of years that tolls will be in place.
    III. Name and location of firms and parent companies, if applicable, including firm responsibility and stake, and assessment of audited financial statements.
    IV. Analysis of firm selection criteria.
    V. Name of any firm or individual under contract to provide counsel or financial analysis to the Department or Authority. The Department shall disclose payments to these contractors related to completing the agreement under this subdivision.
    VI. Demonstrated ability of the project team to deliver the project, by evidence of the project team's prior experience in delivering a project on schedule and budget, and disclosure of any unfavorable outcomes on prior projects.
    VII. Detailed description of method of finance, including sources of funds, State contribution amounts, including schedule of availability payments and terms of debt payments.
    VIII. Information on assignment of risk shared or assigned to State and private partner.
    IX. Information on the feasibility of finance as obtained in traffic and revenue studies.
6. The Turnpike Authority annual report under G.S. 136-89.193 shall include reporting on all revenue collections associated with projects subject to this subdivision under the Turnpike Authority.
7. The Department shall develop standards for entering into comprehensive agreements with private entities under the authority of this subdivision and report those standards to the Joint Legislative Transportation Oversight Committee on or before October 1, 2013.

(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access.

(41) The Department shall, prior to the beginning of construction, determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles that are to be constructed within the right-of-way of a

public street or highway that is a part of the State highway system or an urban highway system must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

(42) The Department shall develop and utilize a process for selection of transportation projects that is based on professional standards in order to most efficiently use limited resources to benefit all citizens of the State. The strategic prioritization process should be a systematic, data-driven process that includes a combination of quantitative data, qualitative input, and multimodal characteristics, and should include local input. The Department shall develop a process for standardizing or approving local methodology used in Metropolitan Planning Organization and Rural Transportation Planning Organization prioritization.

(43) For the purposes of financing an agreement under subdivision (39a) or (46) of this section, the Department of Transportation may act as a conduit issuer for private activity bonds to the extent the bonds do not constitute a debt obligation of the State. The issuance of private activity bonds under this subdivision and any related actions is governed by the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, with G.S. 159-88 satisfied by adherence to the requirements of subdivision (39a) or (46) of this section.

(44) To contract for sponsorship arrangements for Department operations and may solicit contracts for these arrangements pursuant to Article 2 of this Chapter. All amounts collected and all savings realized as a result of these sponsorship arrangements shall be used by the Department toward funding of maintenance activities.

(44a) Where the Department owns or leases the passenger rail facility, owns or leases the rail equipment, or holds leasehold or license rights for the purpose of operating passenger stations, the Department may operate or contract for the following receipt-generating activities and use the proceeds to fund passenger rail operations:

a. Where the Department owns the passenger rail facility or owns or leases the rail equipment, operation of concessions on State-funded passenger trains and at passenger rail facilities to provide to passengers food, drink, and other refreshments, personal comfort items, internet access, and souvenirs publicizing the passenger rail system.

b. Where the Department holds leasehold or license rights for the purpose of operating passenger stations, operation of concessions at rail passenger facilities to provide food, drink, and other refreshments, personal comfort items, internet access, and souvenirs publicizing the passenger rail system, in accordance with the terms of the leasehold or license.

c. Advertising on or within the Department's passenger rail equipment or facility, including display advertising and advertising delivered to passengers through the use of video monitors, public address systems installed in passenger areas, and other electronic media.

d. The sale of naming rights to Department-owned passenger rail equipment or facilities.

(45) The Department shall not transfer ownership of a State-owned concrete arch bridge to any public, private, or nonprofit entity as part of any bridge relocation or reuse program project unless the entity assumes all liability associated with the bridge and posts a bond or other financial assurance acceptable to the Department to cover the present value of future maintenance costs, as well as any right-of-way or other additional costs if the bridge transfer would require the Department to change the planned route of any replacement structure.

(46) To enter into partnership agreements with private entities to finance, by contracts, revenues of facilities, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating communications infrastructure supporting transportation infrastructure on the Interstate System as defined by Title 23, United States Code, Section 103(c) in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate communications infrastructure supporting transportation infrastructure within this State. For the purposes of this subdivision, communications infrastructure supporting transportation infrastructure means fiber optic trunk lines, microcell towers or other broadband or data transmission facilities located within the right-of-way of the interstate or primary highway system that is owned, and utilized completely or partly, by the Department for traffic management, highway safety, vehicle technology integration, and other functions of the Department. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for communications infrastructure supporting transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs for communications infrastructure supporting transportation infrastructure to be made later than 18 months after final acceptance by the Department shall be executed without approval of the Local Government Commission. Any contracts for communications infrastructure supporting transportation infrastructure which are awarded pursuant to an agreement entered into under this subdivision shall comply with the competitive bidding requirements of this Article. The Department may enter into agreements with one or more private entities under this subdivision as follows:

a. A private entity or its contractors must provide performance and payment security in the form of performance and payment bonds on the design and construction portion of the agreement as required under G.S. 44A-26.

b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to such agreement, and any rights and

remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this subdivision. The foregoing shall not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this subdivision.

c. An agreement entered into under this subdivision for communications infrastructure supporting transportation infrastructure may provide that private entities may commercialize the capacity of such communications infrastructure in excess of the Department's need through lease or other arrangements, with the Department having first right of refusal for future anticipated capacity needs.

d. No agreement entered into under this subdivision for use of Department right-of-way or communications infrastructure and its facilities shall abrogate the Department's ownership and control of the right-of-way or communications infrastructure and its facilities within the right-of-way.

e. Agreements entered into under this subdivision shall comply with the following additional provisions:

1. The Department shall solicit proposals for an agreement.
2. An agreement shall be limited to no more than 50 years from the date the communications infrastructure becomes operational and utilized by the Department.
3. Financial advisors and attorneys retained by the Department on contract to work on projects pursuant to this subdivision shall be subject to State law governing conflicts of interest.
4. Sixty days prior to the signing of a concession agreement subject to this subdivision, the Department shall report to the Joint Legislative Transportation Oversight Committee on the following for the presumptive concessionaire:
    I. Project description.
    II. Name and location of firms and parent companies, if applicable, including firm responsibility and stake, and assessment of audited financial statements.
    III. Analysis of firm selection criteria.
    IV. Name of any firm or individual under contract to provide counsel or financial analysis to the Department. The Department shall disclose payments to these contractors related to completing the agreement under this subdivision.
    V. Demonstrated ability of the project team to deliver the project, by evidence of the project team's prior experience in delivering a project on schedule and budget, and disclosure of any unfavorable outcomes on prior projects.

VI. Detailed description of method of finance, including sources of funds, State contribution amounts, including schedule of availability payments, service payments or similar remuneration, and terms of debt payments.

VII. Information on assignment of risk shared or assigned to the Department, the State, and private entity partner.

VIII. Information on the feasibility of finance. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1; 2005-403, s. 2; 2006-230, s. 1(a); 2007-428, s. 1; 2007-439, s. 1; 2007-485, s. 3.1; 2008-164, s. 1; 2008-180, ss. 2, 8; 2009-266, s. 6; 2009-451, s. 25.6(a); 2010-97, s. 14; 2010-165, ss. 4, 4(a), 5-8; 2012-84, s. 2; 2012-184, s. 1; 2013-137, ss. 1, 2; 2013-183, ss. 4.2, 5.2; 2013-266, s. 1; 2014-58, ss. 9, 13; 2014-100, s. 34.27; 2014-115, s. 56.2; 2015-241, s. 29.22(a); 2016-90, s. 2(a); 2017-57, s. 34.6A(a); 2017-159, s. 3(a); 2017-197, s. 7.5; 2019-76, s. 23; 2019-111, s. 2.5(o); 2019-148, s. 1; 2019-199, s. 5(a), (b); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2020-91, s. 4.5(a); 2023-134, s. 41.8(c); 2025-25, s. 29(3); 2025-47, s. 16.)