

## 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).)