



# SENATE BILL 758: Build NC Bond Act of 2018.

2017-2018 General Assembly

**Committee:**  
**Introduced by:**  
**Analysis of:** S.L. 2018-16

**Date:** July 18, 2018  
**Prepared by:** Howard Marsilio  
Staff Attorney

**OVERVIEW:** *S.L. 2018-16, The Build NC Bond Act of 2018, authorizes the issuance of up to \$3 billion in special indebtedness to create an additional funding source for Build NC Projects, which consists of Division Needs Projects and Regional Impact Projects scheduled in accordance with the Strategic Transportation Investments law in Article 14B of Chapter 136 of the General Statutes.*

*This act becomes effective January 1, 2019 and expires December 31, 2028.*

**CURRENT LAW:** The term "special indebtedness" covers the following forms of debt: limited obligation bonds, certificates of participation, lease-purchase revenue bonds, capital lease obligations, and installment purchase contracts. Special indebtedness may be issued without voter approval because it is generally secured by a security interest in the capital facilities that are being financed. If the State defaults on its special indebtedness repayments, no deficiency judgment may be rendered against the State, but the capital facilities that serve as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

The State Capital Facilities Act provides the procedural and regulatory provisions needed to carry out special indebtedness. As with revenue bonds, authorization to use special indebtedness must be given by the General Assembly through specific legislation.

**BILL ANALYSIS:** S.L. 2018-16 authorizes an annual issuance of up to \$300 million of special indebtedness for the next 10 years to finance Build NC Projects<sup>1</sup>. This authorization is known as "Build NC Bonds" and the net proceeds must be used as evenly<sup>2</sup> as possible to finance Division Needs Projects and Regional Impact Projects, in accordance with current Strategic Transportation Investments (STI) law.<sup>3</sup> The State Treasurer, in consultation with the Department of Transportation, must develop and implement a debt management policy to guide the Department's practices in regards to issuing Build NC Bonds.

This act further includes the following requirements and limitations regarding the issuance of Build NC Bonds:

- The source of repayment for Build NC Bonds is the Highway Trust Fund. The Highway Trust Fund consists of three primary revenue sources: highway use tax, motor fuel excise tax, and title and registration fees.

<sup>1</sup> The State Capital Facilities Financing Act is used to finance capital facilities. Although the definition of "capital facilities" mentions that it may include streets and infrastructure, the Act has not been used for transportation-related projects to date. S.L. 2018-16 does not directly change the definition of "capital facilities" within that act but it does define the term "Build NC Project" as a capital facility.

<sup>2</sup> The legislation provides that it must be within 2% of 50% of the bond proceeds.

<sup>3</sup> Article 14B of Chapter 136 of the General Statutes.

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- The State Treasurer shall not issue any Build NC Bonds unless (i) the State Treasurer recommends the issuance and (ii) the State Treasurer has made a determination that all of the following requirements have been or shall be met:
  - The Department of Transportation's average month-end cash balance for the first three months in the calendar year prior to the date of determination is equal to or less than one billion dollars (\$1,000,000,000).
  - The total amount of Build NC Bonds outstanding will not cause the recommended transportation debt target established by the Debt Affordability Advisory Committee to be exceeded.
  - At least 6 months prior to the expected date of a Build NC Bond issuance, the Department of Transportation has consulted with the State Treasurer, the Joint Legislative Transportation Oversight Committee, and the Joint Legislative Commission on Governmental Operations, about the total issuance, debt servicing, and post issuance debt capacity.
- The total amount of special indebtedness resulting from the sale of Build NC Bonds shall not exceed \$3 billion (\$3,000,000,000).
- Except as otherwise provided, each individual issuance of Build NC Bonds is limited to no more than \$300 million (\$300,000,000) in each fiscal year.
- The Department of Transportation may not use the Build NC Proceeds for (i) non-highway projects or (ii) projects utilizing tolling.
- The limitation set forth in G.S. 142-83 regarding bond indebtedness supported by the General Fund does not apply.
- Since the projects to be financed with Build NC Bonds are selected through the STI process, the requirement set forth in G.S. 142-84(e) that the Department of Administration make decisions about the type of capital facility and amount financed does not apply.
- Provides that the maturity date for a Build NC Bond may not exceed 15 years.

**BACKGROUND:** The Strategic Transportation Investments (STI) law established the Strategic Mobility Formula, which allocates funding based on data-driven scoring and local input. It is also used to develop the State Transportation Improvement Program (STIP), which identifies the transportation projects that will receive funding during a specified 10-year period.

The Strategic Mobility Formula divides projects into 3 categories:

- Statewide Mobility – receives 40% of the available funds. Project selection in this category is based 100% on data. Projects not funded in this category can be funded in the Regional Impact or Division Needs categories. Projects in this category are analyzed according to the following criteria: congestion; benefit/cost; economic competitiveness; safety; multimodal and military; and freight and military.
- Regional Impact – receives 30% of the available funds, with funding divided among the regions based on population. Project selection in this category is based 70% on data and 30% on local input. Projects not funded in this category can be funded in the Division Needs category. Projects in this category are analyzed according to the following criteria: congestion; benefit/cost; safety; accessibility/connectivity; and freight and military.

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- Division Needs - receives 30% of the available funds, shared equally over DOT's 14 transportation divisions. Projects in this category are analyzed according to the following criteria: congestion, benefit/cost, safety, freight and military, and accessibility/connectivity.

**EFFECTIVE DATE:** The act becomes effective January 1, 2019, and expires December 31, 2028.

*Cindy Avrette, Legislative Analysis Division, and Luke Gillenwater, Bill Drafting Division, substantially contributed to this summary.*



## SENATE BILL 99: Appropriations Act of 2018, DOT Property Sale Proceeds to be Deposited in State Highway Fund

2017-2018 General Assembly

Committee:  
Introduced by:  
Analysis of: S.L. 2018-5

Date: August 1, 2018  
Prepared by: Howard Marsilio  
Staff Attorney

**OVERVIEW:** *Section 34.12 of S.L. 2018-5 provides that net proceeds derived from the sale of land or facilities purchased with funds from the State Highway Fund shall be deposited back to the State Highway Fund.*

*This section became effective June 12, 2018 and applies to sales made on or after that date.*

**CURRENT LAW:** Article 7 of Chapter 146 outlines procedures and requirements for disposition of land owned by the State, or by any State agency, by sale, lease, rental, or gift. This article also outlines the priorities and procedures for application of net proceeds for the disposition of State land. The article is silent as to land or facilities specifically owned by the Department of Transportation or purchased with money from the State Highway Fund.

**BILL ANALYSIS:** Section 34.12 provides that net proceeds from the sale of land or facilities using funds from the State Highway Fund shall be deposited back to the State Highway Fund.

**EFFECTIVE DATE:** This section became effective June 12, 2018 and applies to sales made on or after that date.

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# SENATE BILL 99: Appropriations Act of 2018, Project Delivery Method Pilot Program

2017-2018 General Assembly

Committee:  
Introduced by:  
Analysis of: S.L. 2018-5

Date: August 1, 2018  
Prepared by: Howard Marsilio  
Staff Attorney

**OVERVIEW:** *Section 34.13 of S.L. 2018-5 authorizes the Department of Transportation ("Department") to establish and implement a pilot project to award transportation project contracts on a construction manager-general contractor basis.*

*This section became effective June 12, 2018, and expires upon submission of the post-completion report for the final contract awarded under the pilot program..*

**CURRENT LAW:** Chapter 136 of the General Statutes lists several requirements that must be met by the Department when letting contracts. For example, G.S. 136-28.1 requires, for all contracts over five million dollars (\$5,000,000), the use of public advertising, the solicitation of at least three informal bids, and the awarding of the contract to the lowest responsible bidder. One exception to this statutory framework is located in G.S. 136-28.11, which allows the Department to award contracts for the construction of transportation projects on a design-build basis.

**BILL ANALYSIS:** Section 34.13 does the following:

- **Section 34.13(a):** Defines the term "construction manager-general contractor" to mean a project delivery method whereby a construction manager is used during the design process to provide input on the design, and that same construction manager may subsequently act as the general contractor and construct the project.
- **Section 34.13(b):** Authorizes the Department to establish and implement the pilot project to award up to five transportation construction contracts on a construction manager-general contractor basis. The Department may only award contracts under this section if (i) the cost of the project is less than one hundred million dollars (\$100,000,000), (ii) the Department determines it is in the public interest to use this delivery method, (iii) the Department prequalifies the contractor, (iv) the Department complies with the pre-award reporting requirement, and (v) the Department has established and implemented guidelines governing the award of contracts under the pilot program.
- **Section 34.13(c):** Requires the Department to submit a pre-award report to the Joint Legislative Transportation Oversight Committee ("JLTOC") on the nature and scope of the project. Also requires the Department to submit a post-completion report to the JLTOC detailing the results of the project.
- **Section 34.13(d):** Requires the Department to develop and implement guidelines for the awarding of contracts under the pilot project.

**EFFECTIVE DATE:** This section became effective June 12, 2018, and expires upon submission of the post-completion report for the final contract awarded under the pilot program.

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## SENATE BILL 99: Appropriations Act of 2018, Replacement ROW for Utility Relocation

2017-2018 General Assembly

**Committee:**  
**Introduced by:**  
**Analysis of:** S.L. 2018-5

**Date:** August 1, 2018  
**Prepared by:** Howard Marsilio  
Staff Attorney

**OVERVIEW:** *Section 34.14 of S.L. 2018-5 authorizes the Department of Transportation (DOT) to, upon agreement with a utility owner, acquire replacement right-of-way (ROW) and assign the easement rights to the ROW to the utility owner.*

*This section became effective July 1, 2018.*

**CURRENT LAW:** Pursuant to G.S. 136-19.5(c), when DOT requires the relocation of utilities, the Department reimburses utility owners for the cost of purchase and relocation to a new ROW if the utility owner originally contributed to the cost of the ROW.

**BILL ANALYSIS:** As another option for DOT, instead of paying costs related to the utility owner purchasing a replacement ROW, Sec. 34.14 authorizes the Department to acquire a replacement ROW for the purpose of assigning the easement rights of the replacement ROW to the utility owner. The Department may only do this upon agreement with the utility owner.

**EFFECTIVE DATE:** This section became effective July 1, 2018.

*Luke Gillenwater, of the Bill Drafting Division, substantially contributed to this summary.*

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## SENATE BILL 99: Appropriations Act of 2018, Unanticipated Bridge or Road Closure/Waiver of Bidding Requirements

**Committee:**  
**Introduced by:**  
**Analysis of:** S.L. 2018-5

**Date:** August 1, 2018  
**Prepared by:** Howard Marsilio  
Staff Attorney

**OVERVIEW:** Section 34.15 of S.L. 2018-5 defines the term "emergency" as it relates to the authority of the Department of Transportation to contract for construction, maintenance, or repair without complying with bidding requirements upon a determination of the Secretary of Transportation that an emergency exists.

*This section became effective July 1, 2018.*

**CURRENT LAW:** The Department of Transportation may enter into construction, maintenance, or repair contracts without complying with bidding requirements upon a determination of the Secretary of Transportation that an emergency exists and that it is not feasible or not in the public interest to comply with the bidding requirements. The term "emergency" was not previously defined as it relates to this authority under G.S. 136-28.1(e).

**BILL ANALYSIS:** Section 34.15 defines the term "emergency" as an unanticipated bridge closure, road closure, or weight restriction that results in detours or deters the free movement of goods and services, and requires an estimated expenditure of ten million dollars (\$10,000,000) or less in construction, maintenance, or repair costs.

**EFFECTIVE DATE:** This section became effective July 1, 2018.

*Joshua Freeman, of the Bill Drafting Division, substantially contributed to this summary.*

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# SENATE BILL 99: Appropriations Act of 2018, Pilot Program/DOT Salary Adjustment & Retention Funds

2017-2018 General Assembly

Committee:  
Introduced by:  
Analysis of: S.L. 2018-5

Date: August 1, 2018  
Prepared by: Howard Marsilio  
Staff Attorney

**OVERVIEW:** *Section 34.19 of S.L. 2018-5 authorizes Department of Transportation employees to elect to exempt themselves from certain State Human Resources Commission policies and rules, with the approval of the Secretary of the Department and the voluntarily relinquishment of (i) annual longevity payments or any claim to longevity pay and (ii) any claim to career status or eligibility for career status. This section also makes various changes and clarifications related to Department employee recruitment and retention.*

*This section became effective July 1, 2018 and expires June 30, 2020.*

**CURRENT LAW:** The State Human Resources Commission, pursuant to the North Carolina Human Resources Act, establishes policies and rules governing, among other things, the compensation and recruitment of State employees.

**BILL ANALYSIS:** Section 34.19 does the following:

(a). Authorizes Department of Transportation employees to elect to exempt themselves from certain State Human Resources Commission policies and rules (pertaining to the following below), with the approval of the Secretary of the Department and the voluntarily relinquishment of (i) annual longevity payments or any claim to longevity pay and (ii) any claim to career status or eligibility for career status:

- Position classification, G.S. 126-4(1).
- Compensation, G.S. 126-4(2).
- Qualification for position, G.S. 126-4(3).
- Recruitment, G.S. 126-4(4).
- Hours and days of work, vacation, and sick leave, G.S. 126-4(5).
- Promotion and transfer, G.S. 126-4(6).
- Prohibition of the establishment of incentive pay programs, G.S. 126-4(10).
- Salaries, Promotions, and Leave, Article 2 of Chapter 126 (cannot be exempted from job posting requirements, G.S. 126-7.1).

(b). Clarifies that nothing in subsection (a) above will abrogate career status under Chapter 126.

(c). Authorizes DOT to utilize two percent (2%) of the total Highway Fund and Highway Trust Fund appropriations for FY 2018-2019 and FY 2019-2020 for payroll expenses for the purposes of salary adjustments, reallocation of positions, and recruitment and retention programs.

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(d). Specifies that priority funding is required for recruitment, retention, salary revisions, and job reallocations at the Secretary of Transportation's direction, and authorizes the use of market surveys and other information available from the Office of State Human Resources.

(e) Requires the Department of Transportation to report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division of the General Assembly beginning January 1, 2019.

(f) Authorizes the Secretary of Transportation to designate vacant positions as not subject to the open recruitment requirements of G.S. 126-7.1(a) with notice to the State Human Resources Commission.

(g) Exempts decisions made under this section from classification and compensation rules and policies of the State Human Resources Commission.

**EFFECTIVE DATE:** This section became effective July 1, 2018 and expires June 30, 2020.



# SENATE BILL 99: Appropriations Act of 2018, DMV/Commercial Motorcoach Study

2017-2018 General Assembly

**Committee:**  
**Introduced by:**  
**Analysis of:** S.L. 2018-5

**Date:** August 1, 2018  
**Prepared by:** Howard Marsilio  
Staff Attorney

**OVERVIEW:** *Section 34.22 of S.L. 2018-5 directs the Division of Motor Vehicles (DMV), in consultation with the Department of Public Safety and the North Carolina Motorcoach Association, to study federal and state regulation of commercial motorcoaches.*

*This section became effective July 1, 2018.*

## CURRENT LAW:

- Federal law preempts a state's economic authority over commercial motorcoaches, i.e. the scheduling of service, transportation rates, and the authority to provide charter bus transportation.
- However, this preemption has a savings clause which clarifies that federal law does not restrict a state's safety regulatory authority, its authority to impose highway route controls, or minimum financial responsibility.

## BILL ANALYSIS: Section 34.22 does the following:

- Directs DMV to study:
  - Federal regulation of commercial motorcoaches.
  - Regulation of commercial motorcoaches in other states and jurisdictions, including VA, SC, GA, FL, TN, PA, D.C., and NY affecting commercial motorcoaches registered in NC doing business in those states.
  - Regulations and requirements for out-of-state commercial motorcoaches doing business within North Carolina.
  - The equity of regulations and requirements governing North Carolina registered motorcoaches traveling and doing business in other states and out-of-state registered commercial motorcoaches traveling and doing business in North Carolina
  - Whether North Carolina may enter into reciprocity agreements with other states and jurisdictions.
- Requires DMV to report its findings along with any legislative recommendations to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety by December 1, 2018.

**EFFECTIVE DATE:** This section became effective July 1, 2018.

*Luke Gillenwater, of the Bill Drafting Division, substantially contributed to this summary.*

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## SENATE BILL 99: Appropriations Act of 2018, Clarify Oversight Authority Over Auto Appraisers

2017-2018 General Assembly

Committee:  
Introduced by:  
Analysis of: S.L. 2018-5

Date: August 1, 2018  
Prepared by: Howard Marsilio  
Staff Attorney

**OVERVIEW:** Section 34.26 of S.L. 2018-5 clarifies the role of the Department of Insurance and the Division of Motor Vehicles as it relates to enforcing certain laws and rules governing motor vehicle appraisers.

*This section became effective July 1, 2018.*

**CURRENT LAW:** G.S. 20-279.2(a) provides that the Commissioner of the Division of Motor Vehicles administers and enforces the provisions of G.S. 20-279.21(d1), which directs how motor vehicle appraisers are to appraise the value of motor vehicles involved in certain claims.

**BILL ANALYSIS:** Section 34.26 clarifies that the Commissioner of the Department of Insurance, not the Commissioner of the Department of Motor Vehicles, administers and enforces the provisions of G.S. 20-279.21(d1).

**EFFECTIVE DATE:** This section became effective July 1, 2018.

*Luke Gillenwater, of the Bill Drafting Division, substantially contributed to this summary.*

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