

TEMPORARY RULE
RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of State Treasurer

RULE CITATION: 20 NCAC 01I .0101-.0105

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA

COMMENT:

Staff recommends objection to all rules for lack of statutory authority to engage in temporary rulemaking. To be clear, staff thinks G.S. 147-86.10 and 147-86.15 allow the Treasurer to promulgate rules governing short-term loans. Staff notes this authority is closely related to the "Uniform Plan" governing cash management in G.S. 147-86.11, but staff believes agencies still have the ability to adopt rules outside the Uniform Plan to "devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody." G.S. 147-86.10. G.S. 147-86.10 allows the Treasurer to promulgate rules governing disbursement of moneys coming into his control, including the short-term loans allowed pursuant to 147.86.15. Therefore, staff recommends objection only for lack of statutory authority to promulgate temporary rules governing short-term loans.

§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, commissions, and officers of the State, whether or not subject to the State Budget Act, Chapter 143C of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State

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Commission Counsel

Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices. (1985, c. 709, s. 1; 1999-434, s. 2; 2006-203, s. 120.)

§ 147-86.11. Cash management for the State.

(a) Uniform Plan. - The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, "State agency" means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, 147-86.14, and 147-86.22, this Article does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. - The State Auditor pursuant to authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations the Auditor deems advisable to the agencies.

(c) Treasurer's Report. - The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

...

§ 147-86.15. Cash management of the Highway Fund and the Highway Trust Fund.

The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for cash management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this section.

In its Findings of Need Form, the agency lists three reasons why the agency has authority to engage in temporary rulemaking pursuant to G.S. 150B-21.1. Upon review, staff believes that none of the three reasons listed by the agency confer temporary rulemaking authority.

Reason 1: Session Law 2019-251, Sec. 1.2

First, the agency cites a recent act of the General Assembly, S.L. 2019-251. In its Findings of Need Form, the agency states:

The language of this Session Law affects and alters DST's cash management authority under N.C. Gen. Stat. § 147-86.15 by mandating that the Department of Transportation (DOT) and not the Treasurer "shall transfer one hundred million dollars. . . in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund." DST is unaware of a single prior instance in which DST was requested to use, or even contemplated using, the Treasurer's authority to make

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loans from the Highway Trust Fund to the Highway Fund without explicit guidance enacted by the General Assembly.

DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020 deadline to comply with S.L. 2019-251. (emphasis retained from filing)

In requiring the loan, the General Assembly did not describe or classify the loan as a “short-term loan” and it also directed DOT instead of the Treasurer to transfer the funds from the Highway Trust Fund to the Highway Fund. As a result, staff believes the two loans described in S.L. 2019-251, Sec. 1.2 do not fall within the Treasurer’s existing rulemaking authority granted in G.S. 147-86.15. Therefore, these loans do not alter existing rulemaking authority and do not confer temporary rulemaking authority. It is also unclear to staff whether these rules as drafted would apply to the May 1, 2020 loan given the definition of “short-term loan” in 20 NCAC 011 .0101(3) since it requires short-term loans to be “by the State Treasurer, made pursuant to G.S. 147-86.15.”

The Session Law mandating the loans also does not create temporary rulemaking authority for the proposed rules. The Session Law states: “The Department of Transportation shall repay the Highway Trust Fund loan according to a repayment schedule approved by the Department of the State Treasurer.” S.L. 2019-251, Sec. 1.2(b). The proposed rules do not address a repayment schedule for the two loans. Instead, the proposed rules provide a broader application, approval, and tracking process for short-term loans.

In its Findings of Need Form, the agency states it needs these rules in place before the required loan transfer on May 1, 2020. Staff notes the legislation also required a loan transfer on February 1, 2020, which occurred before these rules were filed with OAH for publication on March 2, 2020.

SESSION LAW 2019-251

Loan to Highway fund

SECTION 1.2.(a) Notwithstanding any provision of law to the contrary, the Department of Transportation shall transfer one hundred million dollars (\$100,000,000) in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund according to the following schedule:

- (1) \$50,000,000 on or before February 1, 2020.
- (2) \$50,000,000 on or before May 1, 2020.

SECTION 1.2.(b) The Department of Transportation shall repay the Highway Trust Fund loan according to a repayment schedule approved by the Department of the State Treasurer.

§ 147-86.15. Cash management of the Highway Fund and the Highway Trust Fund.

The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for cash management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this section.

Reason 2: Session Law 2019-251, Sec. 1.1

For its second reason, the agency cites a different section of the same recent act of the General Assembly, S.L. 2019-251, Sec. 1.1. The agency explains it needs to engage in temporary rulemaking in response to the new Session Law to ensure adequate funding for the required issuance of \$400 million in Build NC Bonds in addition to the \$100 million in loans between the Highway Trust Fund and the Highway Fund. In its Findings of Need Form, the agency states:

The Treasurer must issue Build NC Bonds pursuant to the S.L. 2019-251 mandate, while also continuing to ensure that the Highway Trust Fund is sufficiently funded to (a) repay the special indebtedness resulting from the sale of Build NC Bonds and (b) comply with bond covenants such as minimum cash balance requirements. Finally, DST must approve a viable repayment schedule of the one hundred-million-dollar (\$100,000,000) loan described above.

The proposed rules do not govern Build NC Bonds or a repayment schedule. Based on the language in the cited portion of the Session Law, Section 1.1, staff fails to see any statutory authority or temporary rulemaking authority for the governance of cash management or short-term loans.

Staff notes issuance of \$400 million in Build NC Bonds and the loans totaling \$100 million from the Highway Trust Fund to the Highway Fund are required by the same Session Law. In Section 2.1 of the same Session Law, the General Assembly requires a "Cash Watch Weekly Report" from DOT. In the weekly report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, DOT is required to include the cash balances of the Highway Fund and the Highway Trust Fund.

SESSION LAW 2019-251 BUILD NC BONDS

SECTION 1.1.(a) Notwithstanding G.S. 142-97(4), for the 2019-2020 fiscal year, the Department of the State Treasurer shall authorize the issuance and sale of Build NC Bonds in the amount of four hundred million dollars (\$400,000,000).

SECTION 1.1.(b) Nothing in this section shall be construed as modifying the Build NC Bonds limit set forth in G.S. 142-97(3).

BUDGET ACCOUNTABILITY REPORTING

SECTION 2.1.(a) G.S. 143C-6-11 reads as rewritten:
"§ 143C-6-11. Highway appropriation.

...

(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) **Beginning Combined Cash Balance Total**
 - a. **Highway Fund Total**
 - b. **Highway Trust Fund Total**
- (2) **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**

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- h. Other
- (3) Ending Combined Cash Balance Total
 - a. Highway Fund Total
 - b. Highway Trust Fund Total
- (4) Reserved Cash
 - a. Statutory Cash Balance
 - b. GARVEE/Federal Repayment Reserve
 - c. Transportation Emergency Reserve
 - d. Other Reserves
 - e. Trustee Accounts – Build NC proceeds
 - f. Trustee Accounts – GARVEE
 - g. Trustee Accounts – Other Bonds

Reason 3: A Recent Change in State Budgetary Policy

The Treasurer cites a recent change in budgetary policy as a third reason for temporary rulemaking authority. Specifically, the Treasurer attached a January 17, 2020 DOT report to the Joint Legislative Transportation Oversight Committee. The report, mandated by S.L. 2019-251, explains DOT’s plans to restructure the way DOT handles federal funding. The report states: “DOT plans to implement this structural budget change between July 1, 2020 and September 30, 2020.” The Treasurer cites DOT’s report to the Transportation Oversight Committee and DOT’s intent to restructure its budget as authority to engage in temporary rulemaking for the proposed rules.

G.S. 150B-21.1(a)(3) allows an agency to adopt a temporary rule if adherence to the notice and hearing requirements in the permanent rulemaking process would be contrary to the public interest and the immediate adoption of the rule is required by “a recent change in federal or State budgetary policy.” G.S. 150B-21.1(a2) defines “recent” as “an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.” Based on the Treasurer’s filing, the change in budgetary policy has not yet occurred or been made effective. Staff also notes the Treasurer’s filings do not contain any approval of the budgetary change by OSBM or the General Assembly. As a result, there has been no documentation submitted to RRC evidencing a change in budgetary policy occurring or made effective prior to the submission of these temporary rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- ...

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.

Note: Change in Public Hearing

Staff notes the agency changed the date and time of its public hearing in substantial compliance with the APA. While G.S. 150B-21.2(e) specifically addresses the timeframe for rescheduling public hearings during the permanent rulemaking process, G.S. 150B-21.1 does not address the same for temporary rulemaking. However, G.S. 150B-21.1(a3)(4) requires public hearings to be held at least five days after notice of temporary rulemaking.

In the agency's Proposed Temporary Rule Form, the Public Hearing on these rules was scheduled for March 18, 2020 at 3:00-4:00 PM at the Dogwood Conference Room at 3200 Atlantic Avenue. On March 16, the agency rescheduled its public hearing for March 24, 2020 at 2:00-3:00 PM, more than five days after the updated notice. The hearing was held at the same location, with an option to for the public to participate via conference call. Staff does not recommend objection for failure to comply with the APA due to substantial compliance.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a3) Unless otherwise provided by law, the agency shall:

- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

§ 150B-21.2. Procedure for adopting a permanent rule.

(e) Hearing. - An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

1. DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, loan deadline established in S.L. 2019-251.
2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of fiscal year 2019-2020 (June 30, 2020) and seeks to enable compliance with G.S. 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.
3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

9. Rule-making Coordinator:

Laura Rowe
Phone:
919-814-3851
E-Mail:
Laura.Rowe@nctreasurer.com

Agency contact, if any:

Cindy Aiken
Phone:
919-814-3846
E-Mail: Cindy.Aiken@nctreasurer.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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Temporary Rule-Making Findings of Need Form

Attachment for Question #7.

1. The Department of State Treasurer (DST) is seeking to have the proposed Cash Management Rules in place before the May 1, 2020 loan deadline established in S.L. 2019-251.¹

By adopting these proposed Cash Management Rules, DST seeks to provide definitions of terms, including what constitutes a “short-term loan” under N.C. Gen. Stat. § 147-86.15,² and to establish a process for determining whether short-term loans between the Highway Fund and Highway Trust should be made. A key component of this process involves identifying information that will be considered in making such loans, such as how the funds will be used, who will receive the funds, why the funds are needed, and the time of repayment of the short-term loans from the Highway Fund back to the Highway Trust Fund.

The adoption of these rules must be expedited because of the passage of Session Law 2019-251, Section 1.2, enacted November 18, 2019, which provides as follows:

Section 1.2(a) Notwithstanding any provision of law to the contrary, the Department of Transportation shall transfer one hundred million dollars (\$100,000,000) in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund according to the following schedule:

(1) \$50,000,000 on or before February 1, 2020.

(2) \$50,000,000 on or before May 1, 2020.

Section 1.2(b) The Department of Transportation shall repay the Highway Trust Fund loan according to a repayment schedule approved by the Department of the State Treasurer.

The language of this Session Law affects and alters DST’s cash management authority under N.C. Gen. Stat. § 147-86.15 by mandating that the Department of Transportation (DOT) and not the Treasurer “shall transfer one hundred million dollars . . . in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund.” (emphasis added). DST is unaware of a single prior instance in which DST was requested to use, or even contemplated using, the Treasurer’s authority to make loans from the Highway Trust Fund to the Highway Fund without explicit guidance enacted by the General Assembly.

DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, deadline to comply with S.L. 2019-251.

2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of Fiscal Year 2019-2020 (June 30, 2020) and seeks to enable compliance with N.C. Gen. Stat. § 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.

A second area of urgency lies in Section 1.1 of the same S.L. 2019-251. That section states in full:

¹ A copy of this Session Law has been provided.

² A copy of this statutory provision has been provided.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

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3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

9. Rule-making Coordinator:

Laura Rowe
Phone:
919-814-3851
E-Mail:
Laura.Rowe@nctreasurer.com

Agency contact, if any:

Cindy Aiken
Phone:
919-814-3846
E-Mail: Cindy.Aiken@nctreasurer.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

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Action taken:

Submitted for RRC Review:

Date returned to agency:

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Temporary Rule-Making Findings of Need Form

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The adoption of these rules must be expedited because of the passage of Session Law 2019-251, Section 1.2, enacted November 18, 2019, which provides as follows:

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The language of this Session Law affects and alters DST’s cash management authority under N.C. Gen. Stat. § 147-86.15 by mandating that the Department of Transportation (DOT) and not the Treasurer “shall transfer one hundred million dollars . . . in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund.” (emphasis added). DST is unaware of a single prior instance in which DST was requested to use, or even contemplated using, the Treasurer’s authority to make loans from the Highway Trust Fund to the Highway Fund without explicit guidance enacted by the General Assembly.

DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, deadline to comply with S.L. 2019-251.

2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of Fiscal Year 2019-2020 (June 30, 2020) and seeks to enable compliance with N.C. Gen. Stat. § 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.

A second area of urgency lies in Section 1.1 of the same S.L. 2019-251. That section states in full:

¹ A copy of this Session Law has been provided.

² A copy of this statutory provision has been provided.

SECTION 1.1.(a) Notwithstanding G.S. 142-97(4), for the 2019-2020 fiscal year, the Department of the State Treasurer shall authorize the issuance and sale of Build NC Bonds in the amount of four hundred million dollars (\$400,000,000).

SECTION 1.1.(b) Nothing in this section shall be construed as modifying the Build NC Bonds limit set forth in G.S. 142-97(3).

The end of the 2019-2020 fiscal year is June 30, 2020. While this Session Law mandates that DST issue four hundred million dollars (\$400,000,000) in Build NC Bonds by June 30, 2020, the Treasurer must still issue these bonds in accordance with N.C. Gen. Stat. § 142-97. Section 142-97 is the general enabling legislation for the Build NC Bonds. Section 142-97(1) provides that:

(1) Subject to appropriation by the General Assembly, funds from the Highway Trust Fund shall be the source for repayment of special indebtedness resulting from the sale of Build NC Bonds.

The Treasurer must issue Build NC Bonds pursuant to the S.L. 2019-251 mandate, while also continuing to ensure that the Highway Trust Fund is sufficiently funded to (a) repay the special indebtedness resulting from the sale of Build NC Bonds and (b) comply with bond covenants such as minimum cash balance requirements. Finally, DST must approve a viable repayment schedule of the one hundred-million-dollar (\$100,000,000) loan described above.

Any withdrawal or transfer of cash from the Highway Trust Fund decreases the amount of funds available to pay the required amounts due on outstanding bonds, and the solvency and stability of the Highway Trust Fund is a factor considered by rating agencies. The Highway Trust Fund must have sufficient monies to repay outstanding indebtedness to prevent the downgrading of the State of North Carolina's bond ratings. The State Treasurer is responsible for State debt and must protect the State's bond ratings. The bond ratings are of high public import and have far-reaching public consequences as high bond ratings allow the State to borrow money at lower interest rates.

In less than three months, DST must issue four hundred million dollars (\$400,000,000) in Build NC Bonds. The temporary rulemaking process is required to ensure Cash Management Rules are in place for the management of Highway Funds and Highway Trust Funds ahead of the issuance of these bonds.

3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.

A third reason why the regular notice and comment period for rulemaking is contrary to the public interest is DOT's announced timeline to change its budget practices. In its January 17, 2020, report to the Joint Legislative Transportation Oversight Committee (attached),³ DOT asserted that between July 1, 2020, and September 30, 2020, DOT plans to "restructure" the Highway Fund and Highway Trust Fund by consolidating all State Transportation Improvement Program (STIP) revenues into the Highway Trust Fund.

This "restructuring" is a major change to how monies in these two Funds are currently tracked. Since the inception of the Highway Trust Fund, STIP revenues have been allocated to the respective funds (Federal STIP money to the Highway Fund and State STIP money to the Highway Trust Fund). This method helps

³ A copy of DOT's January 17, 2020 report to the Joint Legislative Transportation Oversight Committee titled "S.L. 2019-251 Financial Management Report," has been provided; the relevant portions are found on pages 14 and 15 of the report under the section titled "Repayment Plan."

prevent commingling the revenues and thus allows more transparency in tracking and accounting for the monies involved.

The DOT report asserts that the commingling of these funds “as a structural budget change” would accelerate the repayment of loans made from the Highway Trust Fund to the Highway Fund. The Treasurer’s proposed Cash Management Rules must clarify the Treasurer’s cash management process *before* the DOT seeks to restructure the way it accounts for Highway Fund and Highway Trust Fund monies to preserve accountability and avoid confusion.

4. The standards of N.C. Gen. Stat. § 150B-21.9 have been met.

In approving temporary rules, N.C. Gen. Stat. § 150B-21.1(b) requires temporary rules to meet the criteria set forth in N.C. Gen. Stat. § 150B-21.1(a) (justification) and requires that the temporary rules meet the standards of N.C. Gen. Stat. § 150B-21.9. The standards of N.C. Gen. Stat. § 150B-21.9 include satisfaction of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

These temporary rules meet the above criteria as follows:

- (1) (a) Authority pursuant to N.C. Gen. Stat. § 147-86.15.

These temporary rules are within the authority delegated to the Treasurer by the General Assembly pursuant to N.C. Gen. Stat. § 147-86.15, which states: “The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for cash management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this section.”

As the agency charged with managing the cash balances of the Highway Fund and the Highway Trust Fund pursuant to N.C. Gen. Stat. § 147-86.15, DST has the authority to promulgate rules related to its cash management authority, including with respect to making short-term loans. The requirement that agencies use the formal APA rule-making process in exercising its authority was emphasized recently by the North Carolina Supreme Court in Cabarrus Cty. Bd. of Educ. v. Dep't of State Treasurer, No. 369PA18, 2020 WL 1652563, at *10 (N.C. Apr. 3, 2020):

A presumption that the rulemaking provisions of the Administrative Procedure Act apply to the formulation of rules, as that term is defined in N.C.G.S. § 150B-2(8a), in the absence of an explicit or implicit exemption, is fully consistent with the applicable statutory provisions and represents the most logical reading of them. See N.C.G.S. § 150B-1(a) (providing that “[t]his Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies”); N.C.G.S. § 150B-18 (providing that “[t]his Article applies to an agency’s exercise of

its authority to adopt a rule[,]" with "[a] rule [not being] valid unless it is adopted in substantial compliance with this Article").

(b) Authority pursuant to S.L. 2019-251, § 1.2(b).

These temporary rules are within the authority delegated to DST by the General Assembly pursuant to S.L. 2019-251, § 1.2(b). Departing from the provisions of existing law, (*i.e.*, N.C. Gen. Stat. § 147-86.15, which provides that only the Treasurer may make loans from the Highway Trust Fund to the Highway Fund), S.L. 2019-251 requires that DOT, rather than the Treasurer, make loan transfers of a total of \$100 million from the Highway Trust Fund to the Highway Fund. However, in keeping with existing law, S.L. 2019-251 provides that the loans can be made only pursuant to a repayment schedule approved by DST. Implicit in the authority of DST to approve a repayment schedule either proposed by the requesting agency or crafted by DST itself is the authority to require information necessary to approve only repayment schedules that are viable. That is, DST, before approving a repayment schedule, must have access to information from which it can conclude that the repayments can and will be made in the amounts specified and at the time required under the proposed repayment schedule.

(2) The temporary rules are clear and unambiguous in establishing a procedure for agencies to submit requests for short-term loans, including identifying the information that is needed and describing the review process.

(3) These temporary rules are reasonably necessary to implement an enactment of the General Assembly. They provide a process for the review and approval of requests for short-term loans between the Highway Fund and the Highway Trust Fund while allowing DST to maintain the fund balances required to fulfill the repayment obligations for bonds or other outstanding instruments that must be repaid from the Highway Fund or Highway Trust Fund.

(4) These temporary rules were adopted in accordance with the requirements of N.C. Gen. Stat. § 150B-21.1; specifically: the proposed rules were published on the Office of Administrative Hearings website; interested persons received notice; a public hearing was held and a public comment period was open for twenty-three business days to accept comments (a minimum of fifteen business days is required).

AN ACT TO MAKE REVENUE ADJUSTMENTS, IMPLEMENT BUDGET STABILIZATION MEASURES, AND ENHANCE TRANSPARENCY AND ACCOUNTABILITY AT THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

PART I. REVENUE ADJUSTMENTS AND BUDGET STABILIZATION MEASURES

BUILD NC BONDS

SECTION 1.1.(a) Notwithstanding G.S. 142-97(4), for the 2019-2020 fiscal year, the Department of the State Treasurer shall authorize the issuance and sale of Build NC Bonds in the amount of four hundred million dollars (\$400,000,000).

SECTION 1.1.(b) Nothing in this section shall be construed as modifying the Build NC Bonds limit set forth in G.S. 142-97(3).

LOAN TO HIGHWAY FUND

SECTION 1.2.(a) Notwithstanding any provision of law to the contrary, the Department of Transportation shall transfer one hundred million dollars (\$100,000,000) in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund according to the following schedule:

- (1) \$50,000,000 on or before February 1, 2020.
- (2) \$50,000,000 on or before May 1, 2020.

SECTION 1.2.(b) The Department of Transportation shall repay the Highway Trust Fund loan according to a repayment schedule approved by the Department of the State Treasurer.

TRANSPORTATION EMERGENCY RESERVE

SECTION 1.3.(a) Legislative Intent. – It is the intent of the General Assembly that the Transportation Emergency Reserve shall only be used for major disasters and not for snow and ice removal or non-declared emergency operations.

SECTION 1.3.(b) Article 2A of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-44.2E. Transportation Emergency Reserve.

(a) Creation. – The Transportation Emergency Reserve (Emergency Reserve) is established as a special fund in the Department of Transportation.

(b) Funding; Use of Funds. – Subject to subsection (d) of this section, no later than July 30 of each fiscal year, the Department of Transportation shall transfer from the Highway Fund to the Emergency Reserve the sum of one hundred twenty-five million dollars (\$125,000,000), and these funds are hereby appropriated for expenses related to an emergency. For purposes of this section, the term "emergency" has the same meaning as in G.S. 166A-19.3.

(c) Access to Funds. – The Department may only use funds in the Emergency Reserve after the President of the United States issues a declaration under the Stafford Act (42 U.S.C. §§

5121 – 5207) that a major disaster exists in the State. The Secretary of Transportation shall ensure all funds in the Emergency Reserve are accessed and used pursuant to this section.

(d) Limitation on Funds. – The total funds in the Emergency Reserve shall not exceed the sum of one hundred twenty-five million dollars (\$125,000,000). If a transfer under subsection (b) of this section would cause the Emergency Reserve to exceed this limitation, the amount transferred shall equal the difference between one hundred twenty-five million dollars (\$125,000,000) and the amount of funds in the Emergency Reserve on the transfer date set forth in subsection (b) of this section.

(e) Evaluation of Emergency Reserve. – No later than February 1 of the first year of the 2021-2023 fiscal biennium, and biennially thereafter, the Department of the Transportation shall submit a report on the Emergency Reserve to the House of Representatives Appropriations Committee on Transportation, the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division. The report shall contain the results of an evaluation of the Emergency Reserve, based on a methodology developed jointly by the Office of State Budget and Management and the Department of Transportation, to determine the minimum amount of funds needed in the Emergency Reserve."

SECTION 1.3.(c) G.S. 143C-6-11 is amended by adding a new subsection to read:

"(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 may, in coordination with the Office of State Budget and Management (OSBM), reduce the budget for every departmental division, grant-in-aid, and category of expenditures, excluding salaries, 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."

SECTION 1.3.(d) No later than 30 days from the effective date of this section, the State Controller shall transfer from the unreserved balance in the General Fund to the Emergency Reserve the sum of sixty-four million dollars (\$64,000,000).

SECTION 1.3.(e) Revise Department of Transportation Base Budget. – The Department of Transportation, in consultation with the Office of State Budget and Management, shall revise the Department base budget to increase the amount of funds available for snow and ice removal and emergency expenditures.

SECTION 1.3.(f) This section is effective when it becomes law.

MAP ACT PAYMENTS

SECTION 1.4.(a) Limitation on Funds to Pay Map Act Settlement Costs. – The Department of Transportation may use no more than one hundred fifty million dollars (\$150,000,000) each fiscal year to pay compensation for damages arising from the Department's recordation of a transportation corridor map under Article 2E of Chapter 136 of the General Statutes (Map Act). This limitation does not apply to the payment of compensation for Map Act damages arising from a Turnpike project. For purposes of this section, the term "Turnpike project" has the same meaning as in G.S. 136-89.181.

SECTION 1.4.(b) G.S. 136-113 reads as rewritten:

"§ 136-113. Interest as a part of just compensation.

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the legal rate on said amount from the date of taking to the date of satisfaction of the judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. For purposes of this section, the term "legal rate" means the prime lending rate, as published by the Board of Governors of the Federal Reserve System on the first business day of the calendar month immediately preceding the date of taking. The legal rate established under this section

shall not exceed the legal rate set in G.S. 24-1. An amount awarded as damages shall bear simple, not compounding, interest."

SECTION 1.4.(c) Subsection (a) of this section becomes effective December 1, 2019, and applies to all pending and future claims and causes of action arising from the recordation of a transportation corridor map under Article 2E of Chapter 136 of the General Statutes. Subsection (b) of this section becomes effective January 1, 2020, and applies to causes of action filed on or after that date.

FEMA REIMBURSEMENT

SECTION 1.5.(a) 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.

SECTION 1.5.(b) This section is effective when it becomes law.

REMOVE REQUIRED REPAYMENT OF GENERAL FUND LOAN

SECTION 1.6. Section 7 of S.L. 2019-15 reads as rewritten:

~~"SECTION 7. Repayment and Reversion of Loaned Funds. – Upon reaching the amount limitation set forth in Section 5 of this act or June 30, 2021, whichever occurs earlier, the Department shall transfer ninety million dollars (\$90,000,000) to the Office of the State Controller for deposit in the Savings Reserve and shall transfer the remaining balance in the Fund to the Highway Fund and close the Fund."~~

DISASTER RELIEF FUNDS

SECTION 1.7. In addition to any other funds appropriated during the 2019-2020 fiscal year, there is appropriated from the General Fund to the Department of Transportation the sum of thirty-six million dollars (\$36,000,000) to be used as follows:

- (1) \$30,000,000 for current and future activities related to recovery from Hurricane Dorian such as debris removal and repair of highway infrastructure damage.
- (2) \$2,000,000 for the Living Shoreline projects.
- (3) \$2,000,000 to expand the Flood Inundation Mapping Alert Network for Transportation.
- (4) \$2,000,000 for a Flood Risk and Vulnerability Assessment on the Strategic Highway Corridor System.

PART II. TRANSPARENCY AND ACCOUNTABILITY MEASURES

BUDGET ACCOUNTABILITY REPORTING

SECTION 2.1.(a) G.S. 143C-6-11 reads as rewritten:

"§ 143C-6-11. Highway appropriation.

...

(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) Beginning Combined Cash Balance Total
 - a. Highway Fund Total
 - b. Highway Trust Fund Total
- (2) 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
- (3) Ending Combined Cash Balance Total
 - a. Highway Fund Total
 - b. Highway Trust Fund Total
- (4) Reserved Cash
 - a. Statutory Cash Balance
 - b. GARVEE/Federal Repayment Reserve
 - c. Transportation Emergency Reserve
 - d. Other Reserves
 - e. Trustee Accounts – Build NC proceeds
 - f. Trustee Accounts – GARVEE
 - g. Trustee Accounts – Other Bonds

(o) Balance Sheet Report. – By the third 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."

SECTION 2.1.(b) Subsection (c) of Section 34.23 of S.L. 2014-100 is repealed.

SECTION 2.1.(c) This section is effective when it becomes law.

PERFORMANCE AUDIT OF DEPARTMENT OF TRANSPORTATION

SECTION 2.3.(a) The Office of the State Auditor shall conduct a performance audit of the Department of Transportation. The audit shall include an examination of the following:

- (1) Budget adherence by department, division, and highway division.
- (2) Timeliness of federal reimbursement requests and timeliness of the Department's responses to any federal requests for additional information or action.
- (3) Department controls and oversight of divisions and highway divisions as to cash management, project coordination and delivery, and budget adherence.
- (4) Efficacy of communication and coordination within the Department.
- (5) Efficacy of cash management by the Department.
- (6) Other items the State Auditor deems relevant to study.

SECTION 2.3.(b) By March 1, 2020, the State Auditor and the Department of Transportation shall report to the Joint Legislative Commission on Governmental Operations, Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division. The State Auditor report shall contain the performance audit required by this section. The Department of Transportation report shall contain the Department's plan of action in response to the performance audit. The Department of Transportation shall give the State Auditor full access to all data necessary to complete the audit and the report.

FINANCIAL MANAGEMENT REPORT

SECTION 2.4. By January 15, 2020, the Department of Transportation shall submit a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on:

- (1) Internal management by department, division, and highway division of cash and finances, including all financial controls, policies, and approval processes for contracts and expenses.
- (2) Projected total cost of remaining Map Act claims and an assessment of Map Act settlement cost versus total litigation exposure of every remaining claim exceeding one million dollars (\$1,000,000).
- (3) Actions taken by the Department in response to the "Monthly Projected Ending Cash Balance" report presented to the Joint Legislative Transportation Oversight Committee meeting of November 8, 2018.
- (4) The Department summary of the McKinsey Report and measures taken by the Department to (i) ensure each Highway Division does not exceed its budget, (ii) enhance coordination and communication between the Financial Management Division and the Division Engineers, (iii) make changes to the base budget for the Highway Fund that increases funding for disaster-related expenses and for the Highway Trust Fund to include anticipated Map Act related expenses, (iv) address contracting restrictions that do not permit changes when necessary, (v) establish key performance indicators that include cash management measures, and (vi) develop real-time reporting of data throughout the Department.
- (5) Factors taken into consideration and justification for Department employee salary adjustments, including any consideration of the Department's financial position.
- (6) The Department authority, justification, and procedures for Highway Division offices to exceed annual budgeted amounts and to borrow from a future fiscal year's allocation.
- (7) The total amount of funds loaned from the Highway Trust Fund to the Highway Fund, the legal authority to make the loans, the justification for the loans, the use of the loaned funds, and the Department's plan to restore the funds to the Highway Trust Fund.
- (8) A review of the Highway Fund and Highway Trust Fund including (i) history and statutory authority, (ii) rationale for transfers between the funds, and (iii) use of Highway Fund for all accounts payable.
- (9) The total amount of funds spent on outside contractors by highway division for the 2018-2019 fiscal year.
- (10) An assessment of Department contracting procedures, proposed changes to increase the Department's contract flexibility in addressing cash flow variances, and any legal or regulatory obstacles impeding the proposed changes.
- (11) Department internal audits: history, frequency, and findings.

(12) Any recommendations for legislation.

PART III. EFFECTIVE DATE

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of November, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:33 a.m. this 18th day of November, 2019

§ 147-86.15. Cash management of the Highway Fund and the Highway Trust Fund.

The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for cash management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this section. (2001-424, s. 27.23(b).)

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of State Treasurer

RULE CITATION: All Forms

DEADLINE FOR RECEIPT: 5:00 P.M. April 15, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On your Findings of Need Forms, did you intend to check "A recent change in federal or State budgetary policy" in Box 6?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: April 15, 2020

TEMPORARY RULE

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of State Treasurer

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: 5:00 P.M. April 15, 2020

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In reviewing this Rule, the staff recommends the following technical changes be made:

Please consider adding G.S. 147-86.10 to your history notes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: April 15, 2020

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of State Treasurer

RULE CITATION: 20 NCAC 01I .0101

DEADLINE FOR RECEIPT: 5:00 P.M. April 15, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (4), is the term "transfer" used in this Subchapter as defined?

If you keep (4), how does the State Treasurer determine a transfer of cash is necessary? What factors are considered?

If you delete (4), please review line 9.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: April 15, 2020

1 20 NCAC 01I .0101 is adopted under temporary procedures, with changes, as follows:

2
3 **SUBCHAPTER 01I – CASH MANAGEMENT**

4
5 **20 NCAC 01I .0101 DEFINITIONS**

6 The following definitions apply to this ~~Section~~Subchapter:

7 (1) ~~“Existing Loan” means an allocation of cash made to the Highway Fund from the Highway Trust~~
8 ~~Fund, which was made prior to the effective date of the Rules in this Subchapter, and that is not a~~
9 ~~“Short-Term Loan” or “Transfer.”~~

10 ~~(1)(2)~~ “Highway Fund” means the special revenue fund to which revenue designated for transportation-
11 related operations, maintenance, and improvements is deposited.

12 ~~(2)(3)~~ “Highway Trust Fund” means the fund created pursuant to G.S. 136-176.

13 ~~(3)(4)~~ “Short-Term Loan” means an allocation of cash either from the Highway Fund to the Highway Trust
14 Fund or from the Highway Trust Fund to the Highway Fund, by the State Treasurer, made pursuant
15 to G.S. 147-86.15, which complies with the short-term loan process requirements of this
16 ~~Rule, Subchapter~~, consisting of a term of 12 months or ~~less~~fewer from the date of the allocation, at
17 which time the allocation of cash must be fully repaid to the fund from ~~where~~which the allocation
18 originated.

19 ~~(4)(5)~~ “Transfer” means any other movement of cash between the Highway Fund and Highway Trust Fund
20 by the State Treasurer that the State Treasurer determines to be necessary to fulfill the obligations
21 of G.S. Chapter 147, Article 6A, that is not a “Short-Term Loan.”

22
23 *History Note: Authority G.S. 147-86.15;*

24 *Temporary Adoption Eff.*

25

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

1. DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, loan deadline established in S.L. 2019-251.
2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of fiscal year 2019-2020 (June 30, 2020) and seeks to enable compliance with G.S. 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.
3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

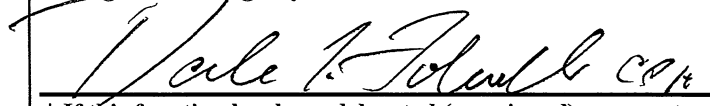
9. Rule-making Coordinator:

Laura Rowe
Phone:
919-814-3851
E-Mail:
Laura.Rowe@nctreasurer.com

Agency contact, if any:

Cindy Aiken
Phone:
919-814-3846
E-Mail: Cindy.Aiken@nctreasurer.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of State Treasurer

RULE CITATION: 20 NCAC 011 .0102

DEADLINE FOR RECEIPT: 5:00 P.M. April 15, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), is this internal agency management? See G.S. 150B-2(8a)(a)?

If (a) does not pertain to internal agency management, under what circumstances may the Treasurer initiate a short-term loan? How does the Treasurer make this determination? What factors are considered?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: April 15, 2020

1 20 NCAC 01I .0102 is adopted under temporary rule procedures, with changes, as follows:

2

3 **20 NCAC 01I .0102 SHORT-TERM LOANS AND REQUESTS FOR SHORT-TERM LOANS**

4 (a) The State Treasurer may initiate Short-Term Loans to effectuate the purposes of G.S. 147-86.15.

5 (b) The State Treasurer may receive a request from another state agency to make a Short-Term Loan. This request
6 shall be made as follows:

7 (1) The agency shall send a written request to the address in 20 NCAC 01A .0101 to the attention of
8 the State Treasurer, with copies to the Director of the State and Local Government Finance
9 Division, and the Chief Financial Officer of the Department of State Treasurer.

10 (2) The written request shall contain the following information:

11 (A) The requested amount of the Short-Term Loan;

12 (B) The specific purpose(s) of the Short-Term Loan;

13 (C) The anticipated disbursements and anticipated receipts to document the need for the
14 Short-Term Loan, including the associated budget codes;

15 (D) The anticipated recipients of all the Short-Term Loan proceeds and the amount to be
16 received by any contractors, vendors, suppliers, local, State or federal agencies, or other
17 third parties that will receive Short-Term Loan proceeds in order to fulfill the purpose of
18 the Short-Term Loan;

19 (E) The anticipated repayment schedule, including date(s) of repayment, amounts to be
20 repaid at each repayment date, method(s) of repayment (i.e. Cash Management Control
21 System transfer);

22 (F) The current cash balances of the Highway Fund and the Highway Trust Fund;

23 (G) The projected cash balances remaining in the Highway Fund and Highway Trust
24 Fund after the Short-Term Loan is made; ~~and~~

25 (H) The projected balances of total outstanding Short-Term Loans made pursuant to
26 G.S. 147-86.15 after the new Short-Term ~~loan~~ Loan is ~~made~~ made; ~~and~~

27 (I) The projected balance of total outstanding Existing Loans after the new Short-Term Loan
28 is made.

29

30 *History Note: Authority G.S. 147-86.15;*

31 *Temporary Adoption Eff.*

32

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

1. DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, loan deadline established in S.L. 2019-251.
2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of fiscal year 2019-2020 (June 30, 2020) and seeks to enable compliance with G.S. 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.
3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

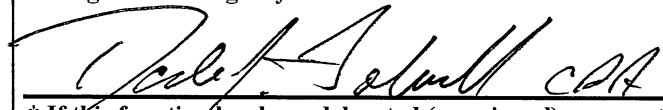
9. Rule-making Coordinator:

Laura Rowe
Phone:
919-814-3851
E-Mail:
Laura.Rowe@nctreasurer.com

Agency contact, if any:

Cindy Aiken
Phone:
919-814-3846
E-Mail: Cindy.Aiken@nctreasurer.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Print

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1 20 NCAC 01I .0103 is adopted under temporary rule procedures as follows:

2

3 **20 NCAC 01I .0103 REVIEW AND APPROVAL**

4 (a) Within 10 business days of receipt of all of the information required in Rule 20 NCAC 01I .0102, the State
5 Treasurer, or designee, shall review and render a decision to approve or deny the requested Short-Term Loan. The
6 State Treasurer, or designee, may approve the amount requested for a Short-Term Loan in whole or in part.

7 (b) In reviewing a request for a Short-Term Loan, the State Treasurer, or designee:

8 (1) shall consider the amount of any bonds currently outstanding where the source of repayment of
9 any portion of outstanding bonds is from the Highway Fund or Highway Trust Fund;

10 (2) shall consider whether approval of the Short-Term Loan accomplishes the purposes of G.S. 147-
11 86.15; and

12 (3) may request additional information relevant to the uses or the repayment of the Short-Term Loan
13 from the agency requesting the Short-Term Loan.

14 (c) If the Short-Term Loan is denied, in whole or in part, the State Treasurer, or designee, shall inform the agency in
15 writing.

16 (d) If the Short-Term Loan is approved, in whole or in part, the State Treasurer, or designee, shall inform the agency
17 of the approval in writing and confirm that the Short-Term Loan may be made.

18

19 *History Note: Authority G.S. 147-86.15;*

20 *Temporary Adoption Eff.*

21

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

1. DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, loan deadline established in S.L. 2019-251.
2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of fiscal year 2019-2020 (June 30, 2020) and seeks to enable compliance with G.S. 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.
3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

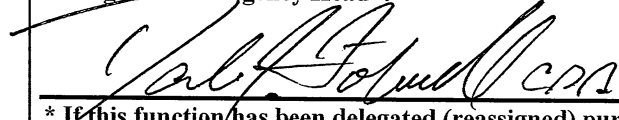
9. Rule-making Coordinator:

Laura Rowe
Phone:
919-814-3851
E-Mail:
Laura.Rowe@nctreasurer.com

Agency contact, if any:

Cindy Aiken
Phone:
919-814-3846
E-Mail: Cindy.Aiken@nctreasurer.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Print

Save

Reset

1 20 NCAC 01I .0104 is adopted under temporary rule procedures, with changes, as follows:

2

3 **20 NCAC 01I .0104 TRACKING SHORT-TERM LOAN PROCEEDS**

4 (a) Agencies requesting Short-Term Loans made under this ~~Section~~Subchapter shall be responsible for tracking all
5 Short-Term Loan amounts and providing the State Treasurer with information on the use of Short-Term Loan
6 proceeds.

7 (b) The agency requesting the Short-Term Loan shall provide to the State Treasurer on a monthly basis, for the
8 duration of the Short-Term Loan, the following information:

- 9 (1) The name, physical address and phone number of recipients of Short-Term Loan
10 proceeds in the preceding 30-day period;
- 11 (2) The amount of Short-Term Loan proceeds received by recipients in the preceding 30-day
12 period;
- 13 (3) The reason that Short-Term Loan proceeds were paid to the recipients identified in
14 subparagraph (b)(1) of this Rule;
- 15 (4) An explanation of the account codes or budget codes used by the agency who requested
16 the Short-Term Loan in order to track the payment of Short-Term Loan proceeds.

17

18 *History Note: Authority G.S. 147-86.15;*

19 *Temporary Adoption Eff.*

20

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

1. DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020, loan deadline established in S.L. 2019-251.
2. The Treasurer has been mandated to issue four hundred million dollars in Build NC Bonds by the end of fiscal year 2019-2020 (June 30, 2020) and seeks to enable compliance with G.S. 142-97(1), which requires the Highway Trust Fund to be the source of repayment of Build NC Bonds. Ensuring that a sufficient balance remains within the Highway Trust Fund to pay bond principal and interest amounts is part of the fiduciary responsibility of the Treasurer.
3. The Department of Transportation has announced plans to change its accounting practices for Highway Fund and Highway Trust Fund money starting in July 2020.
4. The standards of G.S. 150B-21.9 have been met.

[SEE ATTACHED FOR MORE INFORMATION ON THESE FOUR REASONS]

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
 Agency submitted request for consultation on:
 Consultation not required. Cite authority:
- No

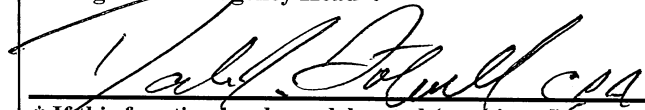
9. Rule-making Coordinator:

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Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Print

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TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of State Treasurer

RULE CITATION: 20 NCAC 01I .0105

DEADLINE FOR RECEIPT: 5:00 P.M. April 15, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Where is the State Treasurer's statutory authority to inspect an agency's ledgers, books, or other records during the duration of a short-term loan?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: April 15, 2020

1 20 NCAC 01I .0105 is adopted under temporary rule procedures, with changes, as follows:

2

3 **20 NCAC 01I .0105 RECORDS INSPECTION AND RETENTION**

4 (a) Any agency requesting the State Treasurer make a Short-Term Loan under this ~~section~~, Subchapter shall allow the
5 State Treasurer to inspect that agency's ledgers, books or other records (both paper and electronic) for purposes of
6 verifying the appropriate use of Short-Term Loan proceeds during the duration of the Short-Term Loan and for a
7 period of seven years thereafter.

8 (b) The State Treasurer shall submit a written request to the agency head requesting to inspect the agency's ledgers,
9 books or other records (both paper and electronic) under this Rule.

10 (c) The agency requesting the Short-Term Loan shall be responsible for maintaining all records associated with the
11 Short-Term Loan request, tracking of Short-Term Loan proceeds and repayment records pursuant to Chapter 132 of
12 the North Carolina General Statutes.

13

14 *History Note: Authority G.S. 147-86.15;*

15 *Temporary Adoption Eff.*

16



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

DATE: January 17, 2020
TO: Joint Legislative Transportation Oversight Committee
FROM: Johanna Reese
Deputy Secretary for Intergovernmental Affairs
SUBJECT: S.L. 2019-251 Financial Management Report

Section 2.4 of Session Law 2019-251 requires DOT to report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on a variety of items related to financial management. The following report provides an overview of the circumstances that led to passing of this legislation along with department actions in response to the cash balance status.

As you are aware, NCDOT followed legislative directives to develop and implement policies and procedures that would accelerate project delivery, providing North Carolinians the projects they want, need, and in some cases had been waiting for many years to come to fruition. In addition, the state suffered from numerous severe weather events that significantly depleted our operations and maintenance budgets. The department's budget also was affected by unexpected legal expenses resulting from Map Act settlements. DOT will continue to look for opportunities to build infrastructure and provide services to operate a safe, economically competitive transportation system in the state.

Mailing Address:
NC DEPARTMENT OF TRANSPORTATION
SECRETARY'S OFFICE
1501 MAIL SERVICE CENTER
RALEIGH, NC 27699-1501

Telephone: (919) 707-2800
Fax: (919) 733-9150
Customer Service: 1-877-368-4968

Website: www.ncdot.gov

Location:
1 SOUTH WILMINGTON STREET
RALEIGH, NC 27601

FINANCIAL MANAGEMENT REPORT

SECTION 2.4. By January 15, 2020, the Department of Transportation shall submit a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on:

- (1) Internal management by department, division, and highway division of cash and finances, including all financial controls, policies, and approval processes for contracts and expenses.
- (2) Projected total cost of remaining Map Act claims and an assessment of Map Act settlement cost versus total litigation exposure of every remaining claim exceeding one million dollars (\$1,000,000).
- (3) Actions taken by the Department in response to the "Monthly Projected Ending Cash Balance" report presented to the Joint Legislative Transportation Oversight Committee meeting of November 8, 2018.
- (4) The Department summary of the McKinsey Report and measures taken by the Department to (i) ensure each Highway Division does not exceed its budget, (ii) enhance coordination and communication between the Financial Management Division and the Division Engineers, (iii) make changes to the base budget for the Highway Fund that increases funding for disaster-related expenses and for the Highway Trust Fund to include anticipated Map Act related expenses, (iv) address contracting restrictions that do not permit changes when necessary, (v) establish key performance indicators that include cash management measures, and (vi) develop real-time reporting of data throughout the Department.
- (5) Factors taken into consideration and justification for Department employee salary adjustments, including any consideration of the Department's financial position.
- (6) The Department authority, justification, and procedures for Highway Division offices to exceed annual budgeted amounts and to borrow from a future fiscal year's allocation.
- (7) The total amount of funds loaned from the Highway Trust Fund to the Highway Fund, the legal authority to make the loans, the justification for the loans, the use of the loaned funds, and the Department's plan to restore the funds to the Highway Trust Fund.
- (8) A review of the Highway Fund and Highway Trust Fund including (i) history and statutory authority, (ii) rationale for transfers between the funds, and (iii) use of Highway Fund for all accounts payable.
- (9) The total amount of funds spent on outside contractors by highway division for the 2018-2019 fiscal year.
- (10) An assessment of Department contracting procedures, proposed changes to increase the Department's contract flexibility in addressing cash flow variances, and any legal or regulatory obstacles impeding the proposed changes.
- (11) Department internal audits: history, frequency, and findings.
- (12) Any recommendations for legislation.

(1) Internal management by department, division, and highway division of cash and finances, including all financial controls, policies, and approval processes for contracts and expenses.

NCDOT's SAP accounting system includes a function called "availability control" that prevents programs from exceeding operating budgets. Availability control will not allow administrative budgets to expend or commit more than the total operating budget for a given unit. If staff enters a commitment or expenditure that would exceed the operating budget, the SAP user receives a warning message and is not allowed to post the document. Likewise, SAP availability control also prevents the transfer of project appropriations or allotments if funding is not sufficient.

Other measures are within SAP to govern financial transactions in project accounting. Project Systems (PS) is the SAP project management module used by DOT to plan and monitor work performed throughout the agency. Often the work monitored represents individual start-to-finish projects with a defined completion; however, the department also uses PS to track ongoing routine tasks. The entire work effort managed via PS is referred to as a **project**, whether it be an actual start-to-finish project (e.g. the addition of a turn lane at an intersection) or ongoing routine tasks performed each year (e.g. bridge maintenance in a division).

The first step in managing a project is to determine how the work should be organized. Some projects group specific tasks into phases (e.g. preliminary engineering, right of way, construction); other projects are organized by county and type of work performed (e.g. guardrail repair, roadside environmental, traffic services).

To organize a project using PS, the user creates a hierarchy resembling an organizational chart. The complete hierarchy is referred to as the **work breakdown structure (WBS)**. The individual building blocks of the hierarchy are called **WBS elements**. In SAP, a number is assigned to the entire project; each WBS element within the project is also assigned a number.

Some work breakdown structures require several levels of WBS elements to organize the work, while others may only have a single WBS element. The complexity of the structure depends on the level of detail desired in tracking project information, especially project funding and expenses. Reporting codes such as project type, project sub-type, project system, division, county, phase and fund source are included in WBS elements to provide reporting mechanisms.

Once WBS elements are created within the highway divisions, modal transportation divisions and other divisions, they are submitted via electronic workflow for approval. Because WBS elements are used to allot funding and record expenses associated with a project, a funding document is sent to the Financial Management Division indicating which WBS elements should be funded and for what amounts. The Financial Management Division reviews these WBS elements and amounts both internally and with the Chief Operating Officer (COO). After the COO and Financial Management approve the funding, WBS elements are released. Once a WBS element has been released, the WBS element number may be entered on timesheets, purchase

orders, contracts, invoices (services or materials), expense reports, etc. to track costs associated with the work performed.

Each WBS element is assigned a **system status**, which determines if expenses can be charged to the WBS elements in SAP. Only the Financial Management Division can change the system status. The following system statuses are used at NCDOT:

- **CRTD (Created)** – The WBS element has been created within a project but has not yet been released for charging expenses. No expenses can be recorded.
- **REL (Released)** – The WBS element has been released and can be used to track expenses associated with timesheets, goods issues, invoices, etc.
- **CLSD (Closed)** – The WBS element has been closed and cannot be used to record additional project expenses; this status is set after all work is complete. No expenses can be recorded. (WBS elements created to track ongoing routine tasks are rarely closed and are used year to year.)

In many cases, Board of Transportation approval is also required prior to Financial Management releasing and funding a new WBS element. Specific WBS elements are included on the BOT agenda and approved during the monthly BOT meeting prior to Financial Management releasing a WBS element for expenditures and approval of funding for the WBS element.

In addition to overall department procedures, individual divisions have increased oversight as follows.

Division of Highways

DOH has implemented several internal management controls regarding financial management. The chief engineer and his committee of staff weekly review all highway division expenditures greater than \$1000 for approval on each individual project. The divisions are projecting expenditures for the remainder of the fiscal year on a project by project basis to better model the expenditures. Divisions have completed initial projections and will update them on a quarterly basis to better refine them for future fiscal years. The allocations for the bridge program and resurfacing are occurring on a 6-month basis with more refined contract times to better model those expenditures. Financial measurement measures are now part of staff key performance indicators.

Division of Motor Vehicles

To increase management control of expenditures DMV now requires approval at the Deputy Commissioner level at a minimum for all procurements regardless of the amount. Additionally, the Deputy Commissioner, Commissioner and Chief Deputy Secretary must provide approval for procurements that are over \$5,000 or require a purchase order.

Ferry, Aviation, Rail, and Integrated Mobility divisions

The non-highway modes – including aviation, integrated mobility (formerly public transit/bicycle/pedestrian), rail, and ferry – have added several management control policies. All modal expenditures require approval of the Deputy Secretary for Multimodal and

are limited to mission critical. Each division has provided a monthly cash flow forecast and for any month that they spend beyond the forecast the modal director is required to provide a memo to the Deputy Secretary explaining why and how they will correspondingly reduce expenditures the following month. These requirements have also been added to each director's VIP performance management system allowing for stronger accountability. The Rail Division has added an additional layer of financial control and oversight by adopting and adhering to the Rail Division Financial Oversight and Monitoring Policy. The Aviation Division requires the signatures of the manager of finance and grants as the invoice reconciler and the division director as the approver for expenditures.

Invoice Approval Process

Vendor invoice is processed by DOT through the HiCAMS system (construction firms), by email/mail to the DOT unit managing the project/contract/goods, or through the grant system (grantees).

Level 1 Review

Invoice is reviewed by unit to verify that work performed/goods received/quantities, etc. was performed and/or received. The invoice may be in the reviewing unit office for an undetermined amount of time until verification is complete. This is a manual process. The invoice is placed into SAP by the DOT unit after review and approval.

Reviews may be delayed due to:

- Discrepancy between quantities invoiced and verified.
- Work performed outside of the period of performance.
- Worked performed is not in compliance with contract or agreement terms.
- Discrepancy between rate invoiced and rate approved.
- Necessary backup documentation is not attached by vendor.

Level 2 Review

Consultant invoices are routed in SAP to OIG for review for rate compliance. Grant system invoices are routed in SAP to OIG for a grant compliance review.

HiCAMS invoices are routed to the central Construction Office for compliance review. Right of Way payments are routed in SAP to the central Right of Way Office for compliance review. Upon approval, these are submitted to SAP for payment.

Municipal/Governmental invoices are routed in SAP to Program Development for agreement term compliance.

Reviews may be delayed due to work performed being non-compliant with federal and state regulations and requirements and/or executed agreement terms.

Level 3 Review

Fiscal receives invoices in SAP and reviews to verify the correct vendor is being paid, vendor address/info is correct, amount of invoice in SAP equals the approved invoice, proper level of approval is documented, and the invoice is not a duplicated payment.

Reviews may be delayed due to discrepancies in any of the above reviews by Fiscal.

Fiscal processes invoice for payment.

Payment is released.

(2) Projected total cost of remaining Map Act claims and an assessment of Map Act settlement cost versus total litigation exposure of every remaining claim exceeding one million dollars (\$1,000,000).

Providing an accurate projected total cost of remaining Map Act claims is difficult due to uncertainty in the law regarding the value of Map Act claims, the large number of variables that influence an individual settlement, and the fact that property owners continue to file new claims. Based on settlements to date, NCDOT projects that 207 remaining claims as of the date of this report will cost an additional \$178,724,634. (This does not include acquisition costs for parcels for which an owner has not made a claim.)

Thirty remaining claims are projected to cost in excess of \$1,000,000, with a total projected settlement cost of \$92,026,299. Projecting maximum litigation exposure is highly speculative. Reporting any formula used to project that exposure or projecting the maximum exposure on any pending claim would reveal privileged information and negatively impact the department's position during settlement negotiations and trial.

(3) Actions taken by the Department in response to the "Monthly Projected Ending Cash Balance" report presented to the Joint Legislative Transportation Oversight Committee meeting of November 8, 2018.

NCDOT responded to cash balance projections as of November 8, 2018 by:

- June 4, 2019 sold \$600 million in Grant Anticipation Revenue Vehicle ("GARVEE") Bonds. Through November, \$106 million in proceeds have been received.
- On June 27, 2019, the Department sold \$300 million in Limited Obligation (Build NC) Bonds. Through November, \$91 million in proceeds have been received.
- August 30, 2019 suspended preliminary engineering on approximately 900 transportation projects.

In addition, the department took the following steps listed below.

JANUARY 2019

- Reduced contractor-operated rental equipment by 39% and DOT-operated by 44%
- Suspended routine maintenance activities such as pipe replacement, full depth patching, pavement markings, sign replacements and ditch maintenance

SPRING 2019

- Suspended all contract advertisements for contract resurfacing and pavement preservation activities from March 2019 to present; contract advertisements for FY 2020 will be modified and reduced
- Reduced bridge replacement and bridge preservation contract advertisements; bridge projects that are critical in nature will proceed

- Suspended all non-essential travel and training statewide
- Suspended all non-critical facilities maintenance and repairs statewide
- Suspended all non-essential purchases for materials and/or other supplies statewide
- Suspended all leasing of rental equipment statewide
- Suspended supplemental contract maintenance activities statewide, except where contractors are assisting with safety or other emergency related activities that cannot be fulfilled in house
- Maintenance crews focusing activities on those that do not require heavy/costly material purchases, unless items are needed for emergencies or other safety related issues

SUMMER 2019

- Statewide reduction of temporary employee usage
- Statewide reduction of embedded consultant usage
- Statewide reduction of other contract employees, e.g. mowing contractors
- Statewide hiring reduction for all vacancies
- Reduced Highway Fund programs by 10 percent compared to the base budget and 15 percent compared to the conference budget
- Delay for one year contract advertisements not tied to a bond sale or a federal discretionary grant
- Delay for 6 months ROW acquisition unless the project is tied to a bond sale or a federal discretionary grant
- Close and/or reduce labor hours at rest areas after peak season, unless they are on the interstate

As a result of these actions, the ending cash balance for November 2019 was \$342 million, instead of the \$244 million (below the \$290 million statutory minimum) forecast in the November 2018 report.

Attached are memos from Secretary Jim Trogdon outlining department actions regarding cash balance.

(4) The Department summary of the McKinsey Report and measures taken by the Department to (i) ensure each Highway Division does not exceed its budget, (ii) enhance coordination and communication between the Financial Management Division and the Division Engineers, (iii) make changes to the base budget for the Highway Fund that increases funding for disaster-related expenses and for the Highway Trust Fund to include anticipated Map Act related expenses, (iv) address contracting restrictions that do not permit changes when necessary, (v) establish key performance indicators that include cash management measures, and (vi) develop real-time reporting of data throughout the Department.

The department summary of the McKinsey Report is available [here](#).

DOT has established several workgroups to:

- Add reporting by operating division to the dashboard – Each highway and operational division has projected monthly expenditures for each WBS. Programs will update these projections quarterly. DOT will use this data to develop a better cash model for maintenance and operations. Staff will compare the monthly expenditures to projections to refine the model.
- Formalize the structure of the Financial Planning Committee, including required membership, data and reports – The FPC structure has been formalized, and the committee will continue to review monthly spend plan targets and actual expenditures, revenues and all other information relevant to the NCDOT cash position. The eastern and western deputy chief engineers are required to attend the FPC meetings. The chair of the FPC will provide regular updates and recommendations to an Executive Action Work Group.
- Establish an Executive Action Work Group to receive updates and recommendations from the FPC – The work group is established and meeting regularly; membership is the Secretary, COO, Chief Deputy Secretary and CFO.
- Improve two-way communication between fiscal and operational staff in development and refinement of cash model – The expenditure projections referenced above will be part of this process. DOT staff is meeting weekly with SAS to incorporate various upgrades to the SAS construction model for centrally let projects, as well as developing SAS forecasting tools to forecast operations expenditures. Also, the chief financial officer is attending regular meetings of the division engineers and participating in discussions related to operations spending.
- Improve snow and ice disaster budgeting through implementation of Section 1.3(c) and (e) of S.L. 2019-251 – Each highway division will have spending targets beginning FY 2021.
- Propose changes to operations and maintenance contracts – While current contract provisions such as those addressing availability of funds, termination of contracts, and elimination of work provide some flexibility, the authority is very general. DOT is working with industry on developing more specific contract language (further details below in item 10).

- Include cash management measures in key performance indicators to be part of performance metrics – Programs throughout the department are adding cash management measures to performance metrics where appropriate.
- Increase the use of source data from DOT's financial system (SAP) to feed the cash model and dashboards directly – An internal group is working with our IT contractor to provide the department with improved tools to forecast expenditures for Highway Fund programs. We currently have access to the Bridge Program tool and expect others to follow soon.
- Pilot for Enterprise Asset Management to improve data quantity and quality for all operations and maintenance activities – DOT is exploring opportunities to transition its enterprise asset management activities to its current enterprise resource planning system (SAP) to improve the quality of operations and maintenance cost data. Currently, the department is using a secondary system to facilitate asset management/maintenance planning and program implementation efforts that requires nightly transfers of information between the secondary system and SAP. The initial pilot for this effort will be in divisions 2, 4, and 6 and will include transitioning day to day work management activities to SAP that will directly tie activity costs to the asset level.

(5) Factors taken into consideration and justification for Department employee salary adjustments, including any consideration of the Department's financial position.

During the 2018 legislative session, the General Assembly gave NCDOT the authority to use a private sector human resources firm to conduct a classification and compensation study, and then use those results to adjust compensation to help decrease the department's high vacancy rate – around 20% department wide at the start of the pilot. (S.L. 2018-5, Section 34.19)

Maintaining a qualified workforce is critical to keeping our state's transportation system operating safely, projects delivered on time and having the expertise needed to respond to disasters such as hurricanes and rockslides. Without these employees, DOT could not design, build and maintain a safe transportation system. The market adjustments equated to an annual increase of \$55 million to payroll, or approximately 1 percent of the department's revenue. With high vacancies, DOT was having to supplement this loss of work product with contractors and embedded consultants at a higher cost. Other voids required additional overtime compensation. The market adjustments will significantly reduce these costs due to stability of the department's workforce.

From 2009 to 2019, DOT's number of employees dropped from over 14,700 to about 9,300 FTEs, yet the value of centrally-let projects has increased from \$944 million to \$3 billion. The department's annual budget (including federal dollars) increased from \$4 billion to \$5.1 billion. Forty-five percent of the workforce is over 50 years old, and 20% of employees will be eligible to retire within five years.

The classification and compensation study showed that many DOT positions were below a market reference point (MRP) salary rate:

- Engineering – 82% below;
- Operations and trades – 96% below;
- Safety and inspection – 97% below.

Salaries below market rates are particularly challenging in the current tight labor market.

Highway Division Vacancy Rate Pre-pilot

Div 1 – 20%	Div 6 – 27%	Div 11 – 22%
Div 2 – 27%	Div 7 – 18%	Div 12 – 21%
Div 3 – 25%	Div 8 – 15%	Div 13 – 14%
Div 4 – 21%	Div 9 – 10%	Div 14 – 11%
Div 5 – 34%	Div 10 – 19%	

Note: On January 11 JLTOC received the most recent statutorily required biennial report on the classification and compensation pilot.

(6) The Department authority, justification, and procedures for Highway Division offices to exceed annual budgeted amounts and to borrow from a future fiscal year's allocation.

The Department of Transportation capital and operations projects are multi-year projects with federal and state laws that guide NCDOT from scheduling to completion of projects. Some Federal Highway Administration (FHWA) projects as well as STI construction projects can be open for 10 years or more from planning to completion. Operations projects such as contract resurfacing and the bridge program can be open for two or more years. Therefore, NCDOT is a cash flow and multi-year allotment agency. G.S. 143C-6-11, which directs highway appropriations, in section (b) states "Transportation project funds shall be budgeted, expended, and accounted for on a "cash flow" basis." Section (h) states that allotments shall be multiyear allotments and shall be based on estimated revenue. Section (k) directs the department to use cash flow financing to the extent possible to fund transportation projects. G.S. 136-176 (d) states a contract may be let for projects from the Trust Fund in accordance with the cash-flow provisions of G.S. 143C-6-11.

Historically, NCDOT has used cash flow procedures to pay for Highway Trust Fund projects and – per federal guidelines – done the same with FHWA projects. Contract resurfacing projects in the Highway Fund have been cash-flowed since the 1990's. In February 2017, NCDOT submitted a letter to the Office of State Budget and Management (OSBM) to inform the state budget director that it was our intent to start using the cash flow mechanism to fund other Highway Fund operations projects. NCDOT submits the appropriate budget entries, along with supporting documentation, which are approved by OSBM to cash flow certain funding within the Highway Fund and Highway Trust Fund.

Project delays, unexpected issues and right of way negotiations can increase the cost of a project above what has been estimated. If a project has overruns, G.S. 136-16.10 gives the chief financial officer the authority to eliminate overdrafts at the beginning of each fiscal year. These overdrafts are covered with budget authority at the beginning of the fiscal year before other projects, with the same funding source, can be allotted.

(7) The total amount of funds loaned from the Highway Trust Fund to the Highway Fund, the legal authority to make the loans, the justification for the loans, the use of the loaned funds, and the Department's plan to restore the funds to the Highway Trust Fund.

The total amount loaned from the Highway Trust Fund to the Highway Fund since 2017 is \$1,140,300,000.

Session Law 2001-424 directed the department to reorganize its cash management procedures and implement cash flow financing of highway construction projects in order to accelerate project delivery and reduce the combined cash balance of the Highway Fund and Highway Trust Fund. As noted in the March 2001 Joint Legislative Transportation Oversight Committee Cash Management Study, the inability to make loans between the funds would restrict the department's ability to implement cash-flow financing of highway projects and reduce the combined cash balance. The legislature subsequently codified this mandate in G.S. 143C-6-11, which contains a targeted range for combined cash balance of the Highway Fund and Highway Trust Fund along with a requirement that the department utilize cash flow financing to meet the targeted range.

Part of S.L. 2001-424 established General Statute 147-86.15 granting the State Treasurer the authority to combine the balances of the Highway Fund and the Highway Trust Fund and to make short-term loans between the funds. On August 1, 2019, the State Treasurer and the department clarified the procedure for making loans between the funds; that agreement is attached.

Use of loaned funds

The \$1.1 billion in advances from the Highway Trust Fund to the Highway Fund were part of a major departmental effort to accelerate projects and reduce excess cash balances as required by Section 34.23(a) to (d) of Session Law 2014-100. This effort to accelerate transportation programs took place over several years, but most of the financial impact of the acceleration took place starting in FY 2017-18. Between July 2017 through March 2019, the loans plus other department revenue were deployed to:

- Fund disaster relief efforts associated with hurricanes Florence, Michael, and Matthew, as well as snow and ice removal;
- Accelerate STIP construction;
- Accelerate highway operations and maintenance projects including contract resurfacing, bridge replacement, pavement preservation, bridge preservation, roadside environmental programs and general maintenance.

Starting in July 2017, NCDOT expended roughly \$1.0 billion in cash to accelerate STIP projects. The department is unable to distinguish the STIP projects that received accelerated funding from those that did not; the expenditure of cash to accelerate the STIP was a benefit to the program overall. Several STIP projects started ahead of schedule during this time period include:

- I-4739: I-40 Widening Between Raleigh and NC 42: **286 days accelerated**
- U-2412A: Greensboro/High Point - SR 1486-SR 4121 (Greensboro/High Point Road) from proposed US 311 Bypass to West of SR 1480 (Vickery Chapel Road): **286 days accelerated**
- B-4974: Replace Bridge 51 Over Pee Dee River on NC 24-73-27: **101 days accelerated**
- I-5852A: I-73/US 421, from I-85 to I-40 in Greensboro - Pavement Rehabilitation: **381 days accelerated**
- I-5825: I-77/US 21 from SR 1577 (Tyvola Road) to I-277 In Charlotte-Pavement Rehabilitation: **109 days accelerated**

DOT used roughly \$258 million in cash to fund several activities related to disaster relief for Hurricanes Florence, Michael and Matthew, as well as address problems related to snow and ice. These activities included:

- event preparation including staging equipment and and prepositioning materials;
- outfitting trucks with snowplows and spreaders, mixing and placing anti-icing materials;
- installing signs and detours routes in damaged areas;
- Replacing washed out or damaged drainage pipe;
- Repairing or replacing damaged bridges;
- Repairing shoulder wash outs and bridge approach wash outs;
- Repairing roadway slopes and damaged pavement from mud or rockslides;
- Repairing pavement damaged by high water;
- Clearing debris from the roadway;
- Removing debris from the right of way after the roadway is cleared and passable;
- Removing debris from waterways that has accumulated next to bridge structures or culverts;
- Plowing snow and placing salt.

DOT used \$521 million in cash to accelerate projects related to maintaining the state highway network. These accelerated activities included:

- Bridge replacements and rehabilitation activities such as deck overlays, joint replacement, girder and foundation repairs, and painting of steel girders.
- Bridge maintenance and preservation activities include deck pothole repairs, sweeping debris from decks, cleaning drains, washing girders to remove brine from snow and ice activities, and clearing vegetation adjacent to bridges.
- Contract resurfacing program activities include resurfacing and rehabilitation of pavements, patching or milling severely distressed areas ahead of resurfacing or rehab, replacement of pavement markings and markers, and minor grading to reestablish proper shoulder sections on resurfaced or rehabbed routes.
- Pavement preservation activities include application of asphalt surface treatments, asphalt overlays on subdivision routes, and crack sealing asphalt pavement to extend the time between resurfacing applications; on concrete pavement, preservation activities include repairs and grinding to improve surfaces, and joint cleaning and sealing; other activities include reestablishing pavement markings and markers;

- Roadside environmental activities include routine mowing, string trimming, litter removal, clearing brush and tree debris, herbicide treatments, maintenance of landscape beds, maintenance of rest area facilities and grounds, and maintenance of stormwater retention ponds;
- General maintenance activities include pot hole repairs, pavement patching, correcting low or high shoulders, addressing drainage related issues, replacing pipe, removal of debris from the roadway including dead animals, repair of guardrail, sign replacement, pavement marking installation, maintenance and timing adjustments for traffic signals, Incident Management Assistance Patrol (IMAP), and management of multiple District Office functions such as review and approval of driveway permit applications, encroachment agreements, and new subdivision plans.

Repayment plan

Between now and the end of FY 2023-24, NCDOT will fully reimburse the \$1.1 billion in advances from the Highway Trust Fund to the Highway Fund. Most of these advances, over \$600 million, will be addressed as NCDOT restructures the way federal funds flow through the NCDOT budget and accounting system, and thereby eliminates the single largest driver behind the advances. In FY 2017-18 and FY 2018-19, as NCDOT worked to accelerate transportation projects, \$600 million was advanced from the HTF to the HF specifically to accelerate construction projects that will ultimately be funded by federal revenues. The three interrelated factors that require advances from the HTF to accelerate federal construction are listed below.

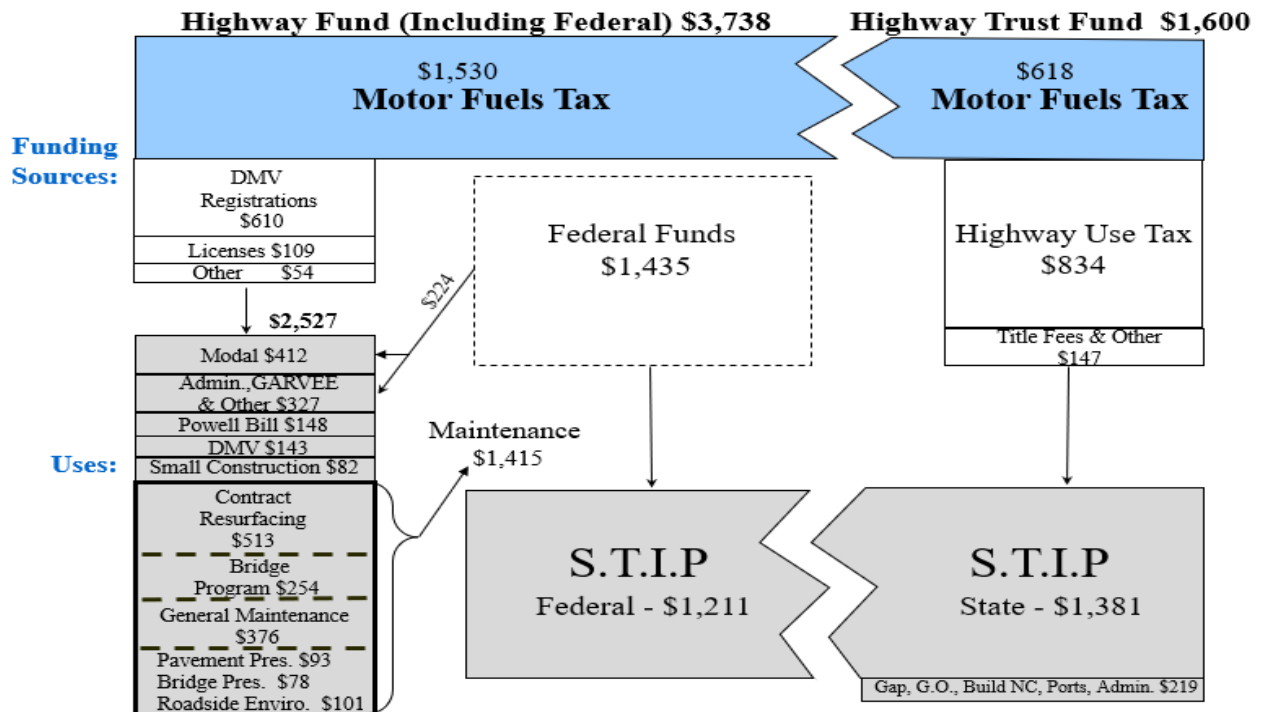
1. The chart on the following page illustrates that the State Transportation Improvement Program (STIP) is integrated into both the HF and HTF. The STIP program is represented by a block broken into two parts, the one on the left reflecting expenditures of funds from the Highway Fund, and the block on the right reflecting expenditures of funds from the Highway Trust Fund.
2. The chart further shows that the HF revenues for the STIP are federal, but that the HTF revenues for the STIP are from State sources.
3. Because federal law prohibits the advancement of federal funds, the acceleration of federally funded (HF) projects in the STIP required the initial advancement of State funds from the HTF.

Of the \$1.1 billion in advances from the HTF to the HF in FY 2017-18 and FY 2018-19, \$600 million directly relate to these three factors and features of the NCDOT budget structure.

Restructuring the Highway Trust Fund and Highway Fund to include all STIP revenues in the Highway Trust Fund will consolidate all capital revenues and expenditures in one governmental fund. It will also deemphasize a mostly false distinction between federal and State STIP projects; although federal revenue sources in the Highway Fund are easily distinguished from State revenue sources in the Highway Trust Fund, the vast majority of STIP projects are eligible to receive most of their funding from federal sources, State sources, or both. Finally, the restructuring will also reduce the \$1.1 billion balance of advances from the Highway Trust Fund to the Highway Fund by over \$600 million. NCDOT plans to implement this structural budget change between July 1, 2020, and September 30, 2020. We anticipate the \$600 million

reduction in the balance of advances to be reflected in financial reports in FY 2020-21, and possibly FY 2021-22.

The remaining balance of \$500 million in advances will be paid down between now and the end of FY 2023-24. NCDOT will generate excess cash balances in the Highway Fund by reductions in maintenance and other operations program expenditures, and through future federal reimbursements for disaster expenditures.



(8) A review of the Highway Fund and Highway Trust Fund including (i) history and statutory authority, (ii) rationale for transfers between the funds, and (iii) use of Highway Fund for all accounts payable.

In 1915, North Carolina took its first step towards becoming “the Good Roads State,” with the creation of the Highway Commission. The Commission was initially more of an advisory body to counties than a road building organization, but the public was clamoring for a centralized highway system. In 1917, the General Assembly authorized the creation of the Highway Maintenance Fund (1917, c. 141), which was shortly renamed into the Highway Fund (1919, ch.189, s.8). Initially, the Highway Fund was supported by vehicle registration fees, but the fund was small, and the state owned very few roads.

In 1921, policy makers realized that the state needed a unified state highway system to remain competitive, and the General Assembly authorized the state to take over 5,500 miles of county roads. To pay for this, a one cent per gallon motor fuel tax was imposed in addition to the registration fees already created. The Highway Fund was also funded with a \$50 million state highway bond, with the express purpose of connecting every county seat. The state would go on to raise the gas tax to five cents per gallon and authorize another \$65 million bond.

In 1931, the economic demands of the Great Depression forced the legislature, under Governor Gardner, to assume control over county roads. The Highway Fund grew accordingly. In 1947, the General Assembly outlawed any use of the Highway Fund other than its intended purpose.

From this point on, the Fund grew as the scope of the state’s control over state roads expanded. In 1949, a \$200 million bond was approved, and the gas tax rose to 7 cents. In 1951, the Powell Bill (G.S. 136-41.1 through 136-41.4) ceded all city roads part of the state highway system. In exchange, the gas tax increased by an extra half cent to be given to municipalities to take care of all other streets.

The Highway Fund was bolstered in 1965 with a new \$300 million bond issue, but it was becoming apparent that the state was consistently needing more money. Under Governor Robert Scott (1969-1973), the gas tax was increased to nine cents, Powell Bill funding increased to one cent per gallon, and licenses and fees increased from 20 to 35 per cent. In 1977, another \$300 million bond issue was passed. The gas tax rose to twelve cents in 1981, and then again to fifteen-and-a-half cents per gallon in 1986. Still, the need for creating and maintaining roads were stretching the Highway Fund.

Policy makers became concerned that the budget did not meet the needs of a growing state. In 1985, Governor Jim Martin created the Transportation Task Force to recommend revenue options to increase transportation funding. The Task Force, made up of legislative and civic leaders, concluded that “inadequate revenue and increasing demand have combined to produce staggering highway needs.” The task force recommended increasing the gas tax, adding a sales tax on fuel, and lifting the cap on motor vehicle sales taxes. As a compromise, the

1986 legislature passed a \$200 million highway bill that included a 2 cent per gallon motor fuel tax increase and a 3% sales tax increase on motor fuel, amounting to a 3 ½ cent per gallon increase.

S.L. 1987-873 established the Highway Study Commission to “recommend both short range and long-range funding solutions.” The Commission’s final report to the 1989 General Session recommended the creation of the Highway Trust Fund along with the establishment of the Interstate Highway System. The study recommended \$8.6 billion be raised over 12 years through a 3 cent per gallon increase in the motor fuel tax, a 4% tax on the wholesale price of motor fuel, and a 2% title transfer tax.

Established in 1989 by S.L. 1989-692, the Highway Trust Fund (G.S. 136-176) was developed to accomplish four goals, including:

- Complete the Interstate Highway System with a goal, according to NCDOT Secretary Jim Harrington, of providing a four-lane highway within 10 miles of 96% of the population;
- Construct seven urban loops, totaling over 200 miles;
- Pave all secondary roads used by at least 50 vehicles per day, which amounted to approximately 10,000 miles of dirt roads; and
- Increase funding to municipalities.

The Highway Trust Fund was supported by three sources of revenue:

- Motor fuel tax
The motor fuels tax was raised 5.25 cents per gallon and a variable 7% rate on the wholesale price was added. The additional wholesale factor added an additional 3.4 cents per gallon tax. The legislation directed that 25% of the motor fuels tax be deposited in the Highway Trust Fund. The formula remained unchanged until S.L. 2015-2, which set a variable motor fuel tax rate based on changes in population and the Consumer Price Index for energy.
- Highway Use Tax
The General Assembly repealed a 2% sales tax on the purchase of motor vehicles and replaced it with a 3% Highway Use Tax. All proceeds are deposited into the Highway Trust Fund. The tax rate remains the same today.
- Vehicle titling fees
Titling fees were increased with most of the fee revenues deposited in the Highway Trust Fund.

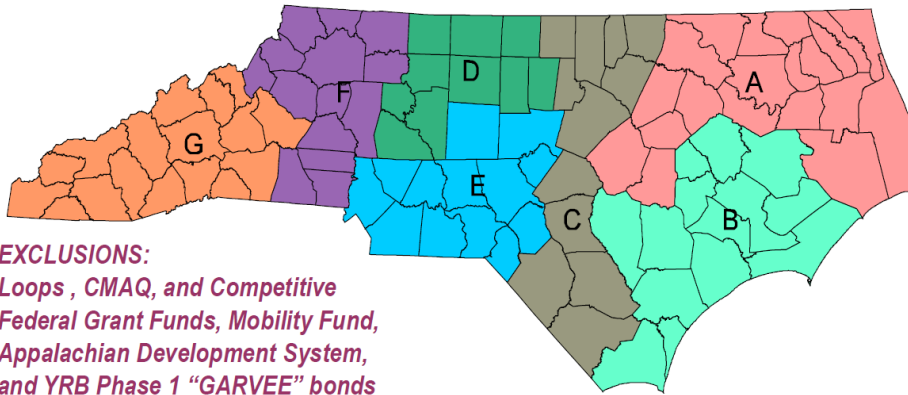
While there are some off-the top expenditures, revenues were allocated as follows:

- 61.95% for intrastate projects and related debt service.
- 25.05% for Urban Loops and related debt service
- 6.50% for municipal street aid

Funding was distributed through the Equity Formula to seven regions. As shown below, the equity formula included three factors: population, the percentage of the Interstate System that were not complete, and by equal share.

Transportation Spending 1989 Equity Formula

50% POPULATION OF REGION AS PERCENT OF STATE	25% REMAINING INTRASTATE SYSTEM MILES	25% EQUAL SHARE
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The Equity Formula, along with various exclusions that were added in later years, was repealed and replaced by the 2013 Strategic Transportation Investment (STI) law (S.L. 2013-183). The STI law distributes funding to three tiers based on a quantitative scoring method.

- Statewide Mobility Tier
 Receiving 40% of the funds, the statewide tier focuses on addressing congestion and improving travel time. Project selection is 100% based on quantitative data. Eligible roads include the state's interstate system, National Highway System routes, toll roads, and other designated roads. Capital projects for the state's ten largest commercial airports and Class 1 railroad track also qualify for Statewide funding.
- Regional Impact Tier
 Receiving 30% of the funds, the regional tier aims to improve connectivity. Selection is based on 70% quantitative data and 30% local input from affected metropolitan and rural transportation planning organizations. Funds are distributed to seven regions composed of 2 of the 14 highway divisions each. Eligible projects include all statewide projects, all primary roads, all commercial airports, and multi-county public transit entities, ferry vessels and capital improvements, and rail service spanning two or more counties.
- Division Needs Tier
 Receiving the remaining 30% of funds, the division category addresses local needs. Funds are distributed 50% based on quantitative data and 50% local input. Eligible projects include all statewide and regional projects, plus secondary roads, general aviation airports, bicycle and pedestrian projects, single county public transit entities, ferry replacement vessels, and rail terminals and stations.

The two main funds within the Department of Transportation are the Highway Fund (HF) and the Highway Trust Fund (HTF). Both funds are authorized by General Statutes contained in Chapters 136 and 143C. Monies withdrawn and deposited to these funds are under the guidance and policies established by the Office of State Controller (OSC), Office of State Budget and Management (OSBM) and the Office of the State Treasurer (OST). The HTF has dedicated revenue sources for funding: Motor Fuels Tax (29%), Highway Use Tax, Fees and Investment Income.

When the HTF was created in 1989, NCDOT Financial Management worked with OSC, OSBM and OST to establish general ledger accounts, a cash account and a new budget code for the HTF. To facilitate the processing of invoices, amounts due are paid from the HF. A due to/from automated process transfers funds within DOT's accounting system from the HTF to the HF to reimburse the HF for payments made on behalf of the HTF. This process is efficient and does not require the person entering an invoice to decide which fund the invoice should be paid from. Also, DOT has projects that are funded from both the HF and the HTF. At the time of invoice entry, a single project may be entered on the document. Once the transaction is split (automated process) to the various funding sources assigned to that project, the due to/from process determines the amount the HTF owes the HF. A Cash Management Control System (CMCS) entry is made to transfer cash from the HTF budget code to the HF budget code. If expenditures are transferred from a HTF project to a HF project the HF then owes the HTF cash and the same process is followed as described above.

(9) The total amount of funds spent on outside contractors by highway division for the 2018-2019 fiscal year.

**Management Consultant Contracts (mostly preliminary engineering)
Invoices Paid by Division FY19**

Highway Division	Amount Paid
1	\$18,759,567.96
2	\$32,631,421.63
3	\$53,696,917.57
4	\$33,160,832.27
5	\$69,438,139.49
6	\$49,609,160.64
7	\$46,151,568.58
8	\$23,272,388.33
9	\$45,787,390.05
10	\$67,525,581.85
11	\$16,343,258.48
12	\$40,041,781.48
13	\$32,461,772.89
14	\$41,872,109.34
Central	\$190,696.82
Ferry	\$1,255,197.41
*Other	\$67,768,111.67
Muti Divisional	\$190,318.92
Statewide	\$56,321,581.58

*Includes CMPO's created by Aviation, Bicycle, Right of Way, State Road Maintenance, Turnpike and other Non-Division of Highway Units.

**Construction Contracts
Estimates for FY19**

NCDOT Division	Hicams Estimates Posted
Division 1	\$171,009,559.68
Division 2	\$192,750,719.02
Division 3	\$185,962,270.01
Division 4	\$198,531,427.63
Division 5	\$329,307,697.24
Division 6	\$184,617,516.31
Division 7	\$243,525,761.14
Division 8	\$155,863,250.14
Division 9	\$346,547,595.59
Division 10	\$285,557,765.50
Division 11	\$144,844,829.50
Division 12	\$160,203,178.61
Division 13	\$155,278,326.17
Division 14	\$116,813,318.00
Central	\$3,657.12
Ferry Division	\$3,241,704.72
Statewide	\$686,925.30
TOTAL FY19	2,874,745,501.68

(10) An assessment of Department contracting procedures, proposed changes to increase the Department's contract flexibility in addressing cash flow variances, and any legal or regulatory obstacles impeding the proposed changes.

The department has reviewed current standard contract provisions, such as Availability of Funds (directed by GS 143C-6-11) and Schedule of Estimated Completion Progress, that provide limited flexibility to address cash flow variances. While granting general authority to limit the scope or delay the timing of contract work, DOT would be required to compensate the contractor for the changes. More specific abilities would enable DOT to better address changes in financial circumstances through contract adjustments.

In an effort to provide further management tools to the department, and to provide certainty and reduce potential risks to both the department and contractor, DOT is considering, with industry input, modifications to the Schedule of Estimated Completion Progress contract provision. Currently this provision prescribes the percent of funding available for construction per fiscal year, giving the department the authority to limit total payouts to the percentage indicated in the provision. The proposed modifications would:

- Allow the chief engineer to delay work;
- Provide for contract time extension for delayed work;
- Define the delay period with no adjustments in compensation;
- Define the timeframe for payments amounts that exceed fiscal year authorization percentages.

The proposed changes may conflict with the language of GS 143-134.3 “No damage for delay clause,” which prescribes that the state cannot enforce contractual language that forbids or limits compensable damages for delays caused solely by the owner. The draft changes have been presented to the general contracting and asphalt industries for review and comments, with further discussion anticipated upon completion of their review.

(11) Department internal audits: history, frequency, and findings.

History

Note: The details of this summary are provided (specifically prior to April 2013) to the extent information was available through discussions with employees who have extensive tenure at NCDOT.

The Office of Inspector General (OIG) was created in 2008 as a result of an NCDOT study. Audit operations (the External Audit Branch and the Internal Audit Unit) were merged within one unit to form OIG, which is led by the Inspector General (IG).

Prior to creation of OIG

- The External Audit Branch consisted of the following three units 1) Consultant, 2) Rail & Utility and 3) Single Audit Compliance. The units were aligned within the Fiscal Management Division. The consultant unit focused on consultant overhead rates, other direct non-salary costs and consultant invoice reviews, consultant pay rates, pre-awards, and post audits; the Rail and Utility Unit focused on rail contracts and invoices, and the Single Audit Compliance Unit focused on grant and allocation funds passed from NCDOT to subrecipients.
- The Powell Bill program was aligned within the External Audit Branch under the Single Audit Compliance Unit.
- The Internal Audit Unit was led by a chief internal auditor and had reporting lines to the Secretary of Transportation.

Subsequent to creation of OIG/Changes made April 2013 and later

- The Rail & Utility Unit was merged with the Consultant Unit. In addition, consultant work related the NC Turnpike Authority was flowing through the Consultant Unit and the unit name was changed to reflect the business – Consultant, Utility, Rail and Turnpike Unit (CURT). The CURT Unit reported directly to the IG.
- A Special Project and Standards position was created in 2009 or 2010 as a direct report to the IG. This position focused on EEP Mitigation and uploading documents to the Internal Audit Council.
- A Management Engineer position, eventually reclassified to an Administrative-related position, was transferred to OIG from another unit. This position had responsibilities related to processing HR position actions and assembling data for OIG quarterly reporting to the Internal Audit Council.
- The Powell Bill program also transferred to OIG and reported under Single Audit Compliance.
- The Single Audit Compliance Unit and the Internal Audit Unit reported directly to the IG.
- A position was transferred from IT to the Internal Audit Unit and the position was to assist with IT audits. This position was vacated prior to April 2013.

- An IT auditor was hired around 2012; however, did not focus on IT audits and subsequently vacated the position in 2013.
- An Investigations Unit was created in 2008 and reported directly to the IG. The Unit was staffed through personnel from other Units and realignment of different functional areas within NCDOT as follows:
 - Two positions from the Rail Unit joined the Investigations team.
 - Approximately four DBE positions (non-audit positions) were transferred in from another Unit. This group focused on contractor compliance and DBE utilization and primarily worked in field offices (one position was housed in Raleigh). (*Note*: To better align audit operations and align the work being performed by the positions, these positions were transferred to the Office of Civil Rights in late 2013/early 2014 as the work aligned with that unit.)
 - An individual classified as a Management Engineer from another unit served as an investigator. (*Note*: This position was eventually vacated and ultimately through internal transfer and reallocation of positions through HR, OIG was allocated an auditor position for the Investigations Unit during 2013 or 2014.)
 - Two filled engineering positions from another unit, whose focus was Bid Monitoring, served on the Investigations Team. (*Note*: These positions were eventually transferred back to the originating Unit sometime during the latter part of 2013/early 2014).
 - A filled HR tech (or similar) non-audit position was transferred from another unit to the Investigations Team. (*Note*: This position, once vacated, was either transferred back to the originating unit or abolished through RIFs during 2014.)
 - A forensics position was created with OIG.
 - A Deputy IG position was created sometime during 2011 or 2012. This position reported directly to the IG. The Internal Audit Unit, Single Audit Compliance Unit and CURT Unit then reported directly to the Deputy IG.
 - During 2013, the Investigations Unit began reporting to the Deputy IG.

Additional Changes subsequent to April 2013 and current OIG structure

- Realignments to focus on audit and investigative work (as noted above and continuing)
- Combining job duties of HR tech, budget and administrative
- Change focus of Single Audit Compliance to audit programs (program level and subrecipient level) for improvements (desk reviews as a planning tool rather than considering an audit engagement)
- Reallocate Deputy IG position to advanced position to increase audit staff.
- Implement more risk-based focus on audits.
- Improve internal processes – Peer Review improvement.
- Adherence to Yellow Book and Red Book standards – integration into audit working papers.
- Increased audit skill sets – recruitments
- Reallocation up of positions to align with needs to fulfill audit objectives.

25 positions:

- 1 - Audit Director
- 1 - Administrative Specialist
- 1 - Internal Audit Unit and Single Audit Compliance Unit Manager
- 5 - Internal Audit Staff - 2 vacancies
- 6 - Single Audit Compliance Staff – 4 vacancies
- 7 - CURT Staff – 1 vacancy
- 4 - Investigations Staff – 1 vacancy (filled effective 1/23/20)

Four Areas of Operation:

- 1) Internal Audit – Internal controls, compliance with federal and state laws/ regulations and NCDOT policies and procedures, operational – efficiency/effectiveness of NCDOT programs
- 2) Single Audit Compliance
 - Compliance and internal controls - Federal pass-through funds and state financial assistance provided by NCDOT to governmental and non-governmental agencies
 - Mitigation – pending realignment.
- 3) Consultant, Utility, Rail and Turnpike Unit (CURT) – pre-awards (review consultant contracts); overhead compliance with FAR; workflow approval of invoices for consultant services
- 4) Investigations
 - Investigate allegations of fraud, waste, abuse or related misconduct
 - Manage the anonymous NCDOT Fraud Hotline
 - Provide IT forensic investigation services for cases involving violations of NCDOT-owned computers
 - Provides monitoring services involving acceptable computer use
 - Responsible for fulfilling email requests in response to public records requests, legal requests and internal management requests

Attached is the most recent charter of the OIG.

Audit frequency

OIG staff annually conducts a performance audit of internal controls (EAGLE audit), including financial, compliance processes, IT general, and end-user computing controls. The 2019 EAGLE audit is attached, and previous fiscal year audits are available. Staff also reviews annual submissions of overhead rates by consultants and conducts a variety of investigations.

In FY 2019, OIG conducted 36 investigations on subjects such as improper computer use, improper use of state vehicles, improper hiring practices and various improper work practices. In addition, OIG conducted 276 reviews of consultant rates, and reviewed consultant invoices. Redacted versions of these reports are available.

So far in FY 2020, OIG has conducted 11 investigations on subjects such as improper computer use, improper use of Powell Bill funds, and various improper work practices. In addition, OIG has conducted 178 reviews of consultant rates, and reviewed consultant invoices. Redacted versions of these reports are available.

Note: The Program Evaluation Division is planning an evaluation of the department's internal audit program.

(12) Any recommendations for legislation.

NCDOT is still evaluating needs for legislative changes. Recommendations would be a part of the department's legislative package for the 2020 short session.