



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: NC Department of Transportation
2. Rule citation & name: 19A NCAC 02C .0116 Reimbursement of Schools for Transportation Improvements Completed on the State Highway System
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 6, 2017 b. Proposed Temporary Rule published on the OAH website: December 8, 2017 c. Public Hearing date: January 17, 2018 and January 19, 2018 d. Comment Period: December 6, 2017 - January 19, 2018 e. Notice pursuant to G.S. 150B-21.1(a3)(2): Session Law 2017-57, Effective October 1, 2017 f. Adoption by agency on: January 30, 2018 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: March 1, 2018 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Session Law 2017-57, 34.6A(a) Effective date: October 1, 2017 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
Explain: Per S.L. 2017-57 Section 34.A(a) - Road Improvements Adjacent to Schools which amends G.S. 136-18(29a), and Section 34.6A(b), which adds G.S. 160A-307.1 to Article 15 of Chapter 160 of the General Statutes, the agency is adopting temporary rules to implement the new directives.

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

The North Carolina Department of Transportation has determined that temporary rulemaking to adopt 19A NCAC 02C .0116 is necessary due to a change in the applicable state statutes.

In Session Law 2017-57 "Appropriations Act of 2017" for the 2016/2017 fiscal year, Section 34.6A the agency is directed to begin reimbursements for improvements that are not on school property, as set out in the statute. In order to begin the reimbursement process and allow schools the time to make use of the opportunity to engage in the process, the agency needs to utilize the option to adopt temporary rules given in SL 2017-57 34.6A(g).

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:

Helen Landi

Phone:

919-707-2830

E-Mail:

hlandi@ncdot.gov

Agency contact, if any:

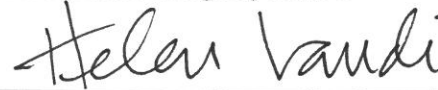
Kevin Lacy, P.E.

Phone:

919-814-5100

E-Mail: jklacy1@ncdot.gov

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:

Helen Landi

Title:

Interagency Director / Rule-making Coordinator

E-Mail: hlandi@ncdot.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-57
SENATE BILL 257**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT AND INTRODUCTION

TITLE OF ACT

SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2017."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2019, according to the following schedule:

Current Operations – General Fund	FY 2017-2018	FY 2018-2019
EDUCATION		
Community Colleges System Office	\$ 1,121,815,001	\$ 1,141,757,845
Department of Public Instruction	9,046,403,622	9,425,109,426
Appalachian State University	134,672,993	134,672,993
East Carolina University		
Academic Affairs	214,598,809	214,598,809
Health Affairs	74,373,798	75,014,745
Elizabeth City State University	31,964,712	31,154,712
Fayetteville State University	52,116,162	52,116,162

Chapter. To the extent the funds described in this subsection are not already appropriated, they are hereby appropriated to be used for the purpose set forth in this subsection."

SECTION 34.6.(b) G.S. 136-189.11 reads as rewritten:

"§ 136-189.11. Transportation Investment Strategy Formula.

...
(b) Funds Excluded From Formula. – The following funds are not subject to this section:

...
(11) Funds advanced pursuant to G.S. 136-186.

...
(e) Authorized Formula Variance. – The Department may vary from the Formula set forth in this section if it complies with the following:

...
(2) Calculation of variance. – Each year the Secretary shall calculate the amount of Regional Impact and Division Need funds allocated in that year to each division and region, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. In calculating the amount of funds obligated, the Secretary shall include any amount used as repayment for funds advanced pursuant to G.S. 136-186. In the first variance calculation under this subdivision following the end of fiscal year 2015-2016, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. In the first variance calculation under this subdivision following the end of fiscal year 2016-2017, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous two fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2017-2018, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous three fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2018-2019, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous four fiscal years. The new target amounts shall be used to fulfill the requirements of subdivision (1) of this subsection for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by Distribution Region or Division, as applicable.

...."

ROAD IMPROVEMENTS ADJACENT TO SCHOOLS

SECTION 34.6A.(a) G.S. 136-18(29a) reads as rewritten:

"(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current

North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision applies to improvements that are not located on the school property. The Department shall have the power to grant final approval of any project design under this subdivision. To facilitate completion of the evaluation and recommendations within the required 60 days, in lieu of the evaluation by the Department, schools may engage an independent traffic engineer prequalified by the Department. The resulting evaluation and recommendations from the independent traffic engineer shall also fulfill any similar requirements imposed by a unit of local government. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department, Department or the independent traffic engineer, except those highway improvements that are required for safe ingress and egress to the State highway system-system, pursuant to subdivision (29) of this section, and that are physically connected to a driveway on the school property. The total cost of any improvements to the State highway system provided by a school pursuant to this subdivision, including those improvements pursuant to subdivision (29) of this section, shall be reimbursed by the Department. Any agreement between a school and the Department to make improvements to the State highway system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Nothing in this subdivision shall preclude the Department from entering into an agreement with the school whereby the school installs the agreed upon improvements and the Department provides full reimbursement for the associated costs incurred by the school, including design fees and any costs of right-of-way or easements. The term "school," as used in this subdivision, means any facility engaged in the educational instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5. The term "improvements," as used in this subdivision, refers to all facilities within the right-of-way required to be installed to satisfy the road cross-section requirements depicted upon the approved plans. These facilities shall include roadway construction, including pavement installation and medians; ditches and shoulders; storm drainage pipes, culverts, and related appurtenances; and, where required, curb and gutter; signals, including pedestrian safety signals; street lights; sidewalks; and design fees. Improvements shall not include any costs for public utilities."

SECTION 34.6A.(b) Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-307.1. Limitation on city requirements for street improvements related to schools.

A city may only require street improvements related to schools that are required for safe ingress and egress to the municipal street system and that are physically connected to a driveway on the school site. The required improvements shall not exceed those required pursuant to G.S. 136-18(29). G.S. 160A-307 shall not apply to schools. A city may only require street improvements related to schools as provided in G.S. 160A-372. The cost of any improvements to the municipal street system pursuant to this section shall be reimbursed by the

city. Any agreement between a school and a city to make improvements to the municipal street system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Any right-of-way costs incurred by a school for required improvements pursuant to this section shall be reimbursed by the city. The term "school," as used in this section, means any facility engaged in the educational instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5."

SECTION 34.6A.(c) The Department of Transportation, in collaboration with the Department of Public Instruction, shall develop a report covering the period from July 1, 2015, through July 1, 2017, that provides all of the following information:

- (1) All schools, including private and charter, that have been opened, relocated, or expanded.
- (2) The types of road improvements required for each school identified in subdivision (1) of this subsection.
- (3) Whether each road improvement identified in subdivision (2) of this subsection is to a road maintained by the State or a municipality.
- (4) Whether each road improvement identified in subdivision (2) of this subsection is to a road adjacent to the school property.
- (5) A description of any disputes or appeals raised by the schools identified in subdivision (1) of this subsection concerning the road improvements identified in subdivision (2) of this subsection.
- (6) The total cost for each road improvement identified under subdivision (2) of this subsection.
- (7) The funding source for the payment of the costs incurred for each road improvement identified in subdivision (2) of this subsection.

SECTION 34.6A.(d) In addition to the information required under subdivisions (1) through (5) of subsection (c) of this section, and for the period covering July 2, 2017, through July 1, 2020, the report required under subsection (c) of this section shall identify (i) the number of schools, including private and charter, that will be opened, relocated, or expanded, (ii) the types of road improvements anticipated to be required for each school identified, and (iii) the total cost for each road improvement anticipated to be required for each school identified.

SECTION 34.6A.(e) The Department of Transportation shall submit the report required under subsection (c) of this section to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Education Oversight Committee by February 1, 2018.

SECTION 34.6A.(f) Any rule or policy adopted by the Department of Transportation that does not comply with the provisions of this section shall be null, void, and without effect.

SECTION 34.6A.(g) The Department of Transportation may adopt temporary rules to implement the provisions of this section. Any temporary rules adopted in accordance with this section shall remain in effect until permanent rules that replace the temporary rules become effective.

SECTION 34.6A.(h) Subsections (a) and (b) of this section become effective October 1, 2017, and apply to school openings, relocations, and expansions on or after that date. The remainder of this section is effective when it becomes law.

USE OF FUNDS IN MOBILITY/MODERNIZATION FUND

SECTION 34.7.(a) Spot Mobility Program. – Of the funds appropriated in this act to the Mobility/Modernization Fund in the Highway Fund, forty percent (40%) of the funds shall be used for a Spot Mobility Program that shall be managed by the State Traffic Engineer

EFFECTIVE DATE

SECTION 39.7. Except as otherwise provided, this act becomes effective July 1, 2017.

In the General Assembly read three times and ratified this the 22nd day of June, 2017.

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

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 10:38 a.m. this 28th day of June, 2017.

s/ James White
House Principal Clerk



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

DATE: January 25, 2017
TO: Office of Administrative Hearings
FROM: James H. Trogdon, III, Secretary
SUBJECT: Designation of Helen Landi as Rule-Making Coordinator

Pursuant to G.S. 150B-21(a), I am designating Helen Landi as Rule-Making Coordinator for the Department of Transportation. In addition, I authorize Ms. Landi under G.S. 143B-10(a) to sign any forms necessary for rule-making.

JHT/hel

cc: Helen Landi, Interagency Director/Rule-Making Coordinator

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

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

Website: www.ncdot.gov

Location:
1 SOUTH WILMINGTON STREET
RALEIGH, NC 27601

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02C .0116

DEADLINE FOR RECEIPT: Monday, February 12, 2018

NOTE WELL: *This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Temporary Rulemaking Findings of Need Form:

In Box 5, (e) is asking for the date you sent notice of this rulemaking to your interested persons and other interested persons of the temporary rule pursuant to G.S. 150B-21.1(a3)(2). Please provide that date.

In Box 6, please confirm that the attached portion of SL 2017-57 is the relevant portion of the Session Law [See Rule 26 NCAC 05 .0303(3)]

In Box 10, you were asked to submit a copy of the delegation pursuant to Rule 26 NCAC .0302(c) and .0303(2). You did not do so in the February 1, 2018 filing. Is the version attached to this rollup, submitted in January 2018, the same one you would rely upon? If not, please submit a new one.

In the Rule:

In (a), line 8, define "required" Or are you relying upon G.S. 136-18(29a) to mean only those "highway improvements that are required for safe ingress and egress to the State highway system... that are physically connected to a driveway on the school property."?

On line 8, delete the comma after "improvements"

Line 10, what is "similar" and who determines it?

On line 10, is it only free to the public? If it is free to everyone, why not delete "At no cost to the public" and state "Contact information may be accessed at ..."

In (a)(2), itemized by whom? The contractor?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 6, 2018

Why do you need lines 16 through 18? Aren't they addressed by the statute?

If you need to retain them, why isn't this its own Subparagraph? It doesn't seem to belong with itemized invoices.

In (a)(3), you refer to "options" But is this the correct term? Especially when you speak of the Department as offering the option on line 19? As I read the Session Law, the DOT is required to provide a written evaluation within 60 days after request. If the school chooses to engage its own independent prequalified traffic engineer instead, it is at the school's option. So, if you are going to retain "option," I think it needs to be made clear that it not offered by the DOT, but instead in statute.

On line 20, end the sentence after "days." Then begin the next sentence "In ..."

Line 21, insert a comma after "option" (or whatever term you use).

So that I'm clear – you are saying that the DOT may choose to engage an independent traffic engineer, rather than use its staff

On line 22, insert a semicolon between "school" and "however"

Line 22, delete "herein"

On line 23, replace the comma after "engineer" with a period.

Line 24, delete the period after "136-93.1A" and before the colon.

In (a)(4), line 25, remove the comma after "specific"

Line 26, replace "of the choosing of" with "chosen by"

On lines 26-28, if you are saying that the engineer will still have to meet the qualification standards, can't this be said in a simpler way?

On lines 27-28, what are these prequalification standards? Are they set forth in another Rule or law?

On line 28, where is this list located? How does someone get on it?

Insert a comma after "list"

Line 29, delete or define "required" and "properly"

Lines 30-31, what is your authority to extend the deadline beyond 60 days? G.S. 136-18(29a) states that you all have a reasonable time, not to exceed 60 days, to provide the written evaluation. There is no additional time allowed within the statute, so what is your authority to extend that timeframe in Rule? If you do not have this authority, remove the language in lines 30-31.

In (a)(5), line 32, why do you need "independently"?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: February 6, 2018

Lines 35-36, how does the Department do this? Based upon what?

On line 35, should you retain “site”?

In (a)(6), so that I am clear – if the request exceeds the estimate by less than 10%, it will be paid without further justification?

Line 38, how will the Department determine this? When? Based upon what?

On Page 2, line 1, delete the “and”

On line 2, what is required for the written justification?

In (a)(7), line 5, when will this estimate occur? I take it that it will be based upon the costs of similar type?

On line 5, replace “on” with “upon”

Line 5, who determines if this is “similar”?

Line 6, what is required in this written justification?

In (a)(8), line 9, what is the “approving authority”?

On line 10, end the sentence after “Department.” Then state “However, the school shall agree...”

Lines 11-12, what is the point of the sentence “Nothing herein requires...”? G.S. 136-18(29a) states:

This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department or the independent traffic engineer, except those highway improvements that are required for safe ingress and egress to the State highway system, pursuant to subdivision (29) of this section, and that are physically connected to a driveway on the school property.

In (b), lines 19-22, what are these Codes? Are they in Rule or law?

Line 22, replace “must” with “shall”

Line 22-23, what is the authority to tell the individual how to conduct the review? The statute requires pre-qualification, not setting the standard for the work.

Line 24, who is the “State Traffic Engineer” and how will this review and approval be requested and conducted?

Line 25, should “if in operation” be “if any”?

Line 28, who is the “District Engineer” and how is this approval requested and upon what is the approval based?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 6, 2018

On line 28, please insert a comma after “160A-307.1”

Please ensure that the timeframe on lines 30-31 are congruent with the timeframe in G.S. 136-18(29a). I am guessing it is, given that G.S. 136-93.1A was also added by SL 2017-57, but wanted to check.

On line 31, what is this Work Code?

On line 30, is the individual required to be an “independent traffic engineer” since the term is used on line 32?

In (c), line 33, why are you using an August 1, 2017 date? SL 2017-57, Section 36.4A(h) states:

SECTION 34.6A.(h) Subsections (a) and (b) of this section become effective October 1, 2017, and apply to school openings, relocations, and expansions on or after that date. The remainder of this section is effective when it becomes law.

In (d), lines 36-37, you are defining “temporary classroom facility” substantially the same as you defined “school” in (a)(2), but you do not have all of the language here, including the ages served. Is this intentional, or should this be the same?

On Page 3, lines 2 and 3, who is the “District Engineer”?

On line 2, replace “in which” with “where”

On line 4, what law do you mean? Does your regulated public know?

On line 5, why are you specifying this is at no cost? Isn’t everything the Department is doing in this Rule at no cost?

On line 7, may influence whom? The Department? The engineer?

What is the purpose of lines 7 to 9? This reads as a purpose statement, and is not necessary in this Rule. I suggest deleting it.

On line 10, I take it you are not doing an on-campus review because G.S. 136-18(29a) does not apply to improvements on school property?

In (e), line 12, what statutes are you referring to? Does your regulated public know?

On line 12, please insert a comma after “statutes”

On line 12, consider replacing “not to be reimbursable” with “non-reimbursable”

Replace the period at the end of line 13 with a colon.

In (e)(1), what are these standards?

In (e)(3), line 18, replace “the Department requires such improvements” with “required by the Department”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 6, 2018

In (e)(4), line 21, delete “but not limited to,”

In (e)(5), line 23, is “directly associated with and impacting” known to your regulated public?

On lines 25 through 27, consider simplifying this sentence for ease of reading. “If the school choose to place a new utility at the school site that must be moved...”

If you do not want to do that, delete “discretion, choice, or convenience” as it is redundant. I believe the intent is that if the school chose the spot, then they must pay for the change themselves. So, why do you need this extra verbiage?

In (e)(6), line 34, what is “directly associated”? Does your regulated public know?

In (e)(7), Page 4, line 1, do you mean “shall” instead of “may”? If not, then will an additional study not be required?

In (f), line 4, why not state “by a municipal street that is not State-maintained,”? Do you even need “not State-maintained”?

This sentence is very long and unwieldy. I recommend simplifying it to state: “Where a new, relocated, or expanded school is located on a property that is only served by a municipal street that is not State-maintained, the school may request a review and final determination by the Department pursuant to G.S. 160A-307.1 to assess whether the improvements required by the municipality exceed those required by G.S. 136-18(29a).”

If you want to keep the sentence as written:

On line 5, insert a comma after “G.S. 160B-307.1”

On line 6, insert a comma after “G.S. 136-18(29a)”

On line 7, replace “will” with “shall”

On line 7, delete the comma after “study” and insert an “and”

On line 8, replace “up” with “upon” or replace “Based up” with “Pursuant to”

On line 9, I suggest inserting “that are” after “roadways”

On line 9, isn’t “State-maintained” and “municipal-maintained” hyphenated?

On line 10, replace “is required” with “shall”

Why is the proposed effective date March 1, 2018, instead of the date in G.S. 150B-21.1 and 21.3?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 6, 2018

1 19A NCAC 02C .0116 is adopted under temporary procedures with changes as follows:

2
3 **19A NCAC 02C .0116 REIMBURSEMENT OF SCHOOLS FOR TRANSPORTATION IMPROVEMENTS**
4 **COMPLETED ON THE STATE HIGHWAY SYSTEM**
5

6 (a) The school shall consult with the Department by contacting the Division of Highway, Division Office, District
7 Engineer governing the specific area in which the school is located to initiate reimbursement for transportation
8 improvements. Reimbursement of all costs associated with the required transportation improvements, approved
9 school and transportation improvements, including costs of materials, equipment, and labor, shall be assessed for
10 value consistent with similar transportation improvement projects. At no cost to the public, contact information for
11 each Division Office may be accessed at <https://www.ncdot.gov/doh/divisions/>. Criteria for reimbursement are as
12 follows:

- 13 (1) The school shall comply with all of the notification provisions to the Department set forth in ~~be in~~
14 ~~compliance with~~ G.S. 136-18(29a);
- 15 (2) The school shall provide the itemized invoices of the work completed for which it is requesting
16 reimbursement, and the school shall be open for the general instruction, specialized instruction,
17 administration, or student services and support of children in any grade or combination of grades,
18 from ~~kindergarten, or any other early childhood program,~~ kindergarten through the twelfth grade;
- 19 (3) The Department shall provide to the school the option of securing the a written evaluation and written
20 recommendations within 60 days, ~~and pursuant to G.S. 136-18(1) and G.S. 136-28.1, days and in~~
21 fulfilling this option the Department may engage a prequalified traffic engineer to provide this written
22 evaluation and for the school however, nothing herein shall preclude the school from securing its own
23 prequalified engineer. Regardless of the option chosen, the written evaluation and recommendations
24 shall be prepared in compliance with G.S. 136-93.1A.: ~~recommendation;~~
- 25 (4) The school may request the Department to contract with and fund a specific, independent traffic
26 ~~engineer,~~ engineer of the choosing of the school, but any such engagement shall be considered for
27 approval on an individual basis and according to the Department's prequalification ~~standards;~~
28 standards. If the engineer being requested is not on the prequalified list the Department may take the
29 required time to properly qualify that engineer and add him or her to the prequalified list prior to the
30 commencing of work on the evaluation. The process to qualify an engineer in the manner will extend
31 the time period for the evaluation process;
- 32 (5) If the school independently hires a prequalified traffic engineer in lieu of an evaluation by the
33 Department, the Department shall only reimburse the costs of a completed independent traffic study
34 that quantifies the extent of a transportation problem or provides an analysis of a proposed
35 transportation solution for the selected school ~~site,~~ where the scope of the study is set by the
36 Department prior to commencing work on the study;
- 37 (6) Reimbursement requests regarding the independently hired traffic engineer that exceed 10 percent of
38 the estimated costs of the improvements as determined by the Department based upon the scope of the

1 requirements for the specific project and average bid costs for work of similar type and scope shall
2 require written justification from the school for the increased cost;

3 (7) Reimbursement requests for costs associated with the engineering design and analytics utilized to
4 determine the need for or execution of transportation improvements that exceed 15 percent of the
5 costs as estimated by the Department based on the costs ~~average construction cost~~ for work of similar
6 type and scope shall require written justification from the school for the increased cost; and

7 (8) The Department shall only provide reimbursement for those transportation improvements on a State
8 maintained roadway that are required by the Department. The requirements may include those
9 requested by any other approving authority so long as they are confirmed by the Department. Schools
10 may agree to install improvements that exceed those required by the Department but in so doing the
11 school shall agree to pay for the costs of those additional improvements. Nothing herein requires the
12 school to agree to make any improvements beyond those that are required by the Department. ~~that the~~
13 Department requires and any improvements completed on State maintained roadways required or
14 requested by entities other than the Department (neighborhoods, municipalities, counties) shall not be
15 subject to reimbursement by the Department. ~~The school may request that the Department review~~
16 such transportation improvements to determine if they are within the allowances of G.S. 136-29 or
17 G.S. 136-29(a).

18 (b) Any independent traffic engineer who is completing this work for the Department or for a school shall be
19 prequalified by the Department in Work Codes 205 – School and Traffic Operations Studies and 252 – Traffic
20 Impact Studies. At no cost to the public, information on Department Work Codes and prequalification may be
21 accessed at <https://connect.ncdot.gov/business/Prequal/PrequalApp/Work%20Code%20Descriptions.pdf> and
22 <https://connect.ncdot.gov/business/Prequal/Pages/default.aspx>. The engineer must follow all written guidelines and
23 standards for school studies and traffic impact analysis, and any deviation from such standards shall be subject to the
24 review and written approval of the State Traffic Engineer or his or her designee prior to completion of the study.
25 The traffic study shall assess on-campus loading and unloading of both carpoolers and, if in operation, school buses.
26 The study shall have recommendations to manage the school’s on-campus traffic queues at the entrance(s) to the
27 school, and locations within the selected school site that impact the State highway system. The engineer shall have
28 the scope of the study approved by the District Engineer prior to initiating the study. Pursuant to G.S. 160A-307.1
29 the engineer shall study those improvements that are eligible for reimbursement by the Department or
30 municipalities. The engineer shall prepare the study in compliance with the time periods set forth in G.S. 136-
31 93.1A. Any traffic data collection activities will be conducted by a firm who is prequalified in Work Code 309. This
32 work may be subcontracted to a qualified firm if the independent traffic engineer is not prequalified in this area.

33 (c) Any new, relocated, or expanded schools that opened on or after August 1, 2017, and prior to the adoption of this
34 temporary rule, shall contact their respective District Engineer Office to facilitate the request for reimbursement for
35 transportation improvements to the State highway system.

36 (d) A “temporary classroom facility” means any facility used for the general instruction, specialized instruction,
37 administration, or student services and support of children on a temporary basis while awaiting completion of a

1 school facilities project that will permanently house students. Any school that must open a temporary classroom
2 facility shall consult with District Engineer governing the specific area in which the school is located. Pursuant to
3 G.S. 136-18(29a), the District Engineer shall provide a written evaluation and recommendation on whether the
4 selected school site and its access points to the State highway system are in compliance with State law. Prior to
5 selecting a temporary classroom facility, the school may request and, at no cost, the Department may review each of
6 the prospective temporary classroom facility sites to determine the transportation impacts to off-campus activities in
7 view of factors that may influence the project's design or construction. The Department is charged to minimize the
8 improvements needed for temporary classroom facility sites. Preliminary analysis and review of each site ensures
9 minimal transportation impacts to off-campus activities at the selected school site. Any analysis performed of the
10 proposed temporary classroom facility sites shall not include transportation impacts associated with on-campus
11 activities.

12 (e) ~~The~~ Unless otherwise required by statutes the Department shall consider the following not to be reimbursable
13 improvement expenses pursuant to G.S. 136-18(29a).

- 14 (1) Improvements that exceed the Department's requirements and standards.
- 15 (2) Any connection not on the State's right-of-way but instead on the school's property.
- 16 (3) Any improvements that the Department would not require as part of G.S. 136-18(29) or G.S. 136-
17 18(29a), such as sidewalks that do not connect to other networks or curb and gutter where the
18 Department has curb and gutter, unless the Department requires such improvements on the driveway
19 permit.
- 20 (4) Any on-campus transportation improvements required to manage traffic flow, parking, and routing
21 within the property limits of the school, including, but not limited to, drop-off and pick-up queuing,
22 student and teacher parking, and loading dock expansions or relocations.
- 23 (5) New utilities required for the selected school site that are not directly associated with and impacting
24 its access points to the State highway system and their compliance with State law. The school shall
25 coordinate with the Department prior to the placement of any utilities in the State right-of-way. If,
26 upon the school's own discretion, choice, or convenience, a new utility is placed at the selected
27 school site and must be moved for a transportation improvements, the Department shall not reimburse
28 for the movement of those utilities. The Department shall only provide reimbursements for existing
29 utilities that require relocation for transportation improvements.
- 30 (6) Any improvements to the State highway system that are part of a mixed-use development site that
31 also include a school where such improvements would be required if a school were not part of the
32 development. The Department shall first analyze the site without considering the ~~temporary~~
33 ~~classroom facility~~ school facilities and then analyze the site with the ~~temporary classroom facility~~
34 school facilities included. Any improvements that are not directly associated with the ~~temporary~~
35 ~~classroom facility~~ school facilities shall not be reimbursable.
- 36 (7) Improvements made to the State highway system for developments planned for purposes other than a
37 school. Any additional improvement to the State highway required by the conversion of property to a

1 school may be eligible; however, an additional school study may be required if the Department has
2 previously been approached and analyzed the site according to a non-school or non-educational land
3 use.

4 (f) Where a new, relocated, or expanded school is located on a property that is only served by municipal street (non-
5 state maintained), per G.S. 160A-307.1 if a school wishes to have the Department assess if the required
6 improvements by a municipality exceed those required by G.S. 136-18(29) they may request a review and final
7 determination from the Department. In these cases, the Department will review the traffic study, the location and
8 determine what the Department would require for the school. Based up G.S. 136-18(29a) and G.S. 160A-307.1, the
9 Department requirements are final for all roadways state maintained as well as municipal maintained, and
10 reimbursement is required to be paid by the entity maintaining the road.

11
12 *History Note: Authority G.S. 136-18(1); 136-18(29); G.S. 136-18(29a); 136-28.1, 136-93.1A; 160A-307.1;*

13 *Temporary Rule Eff. March 1, 2018*