



# HOUSE BILL 198: DOT Legislative Changes.

2023-2024 General Assembly

<b>Committee:</b>		<b>Date:</b>	May 2, 2023
<b>Introduced by:</b>	Reps. B. Jones, Shepard, McNeely, Tyson	<b>Prepared by:</b>	Howard Marsilio Staff Attorney
<b>Analysis of:</b>	Third Edition		

**OVERVIEW:** House Bill 198 makes various changes to transportation laws, as recommended by the North Carolina Department of Transportation (NCDOT).

### CURRENT LAW/BILL ANALYSIS:

**Section 1:** G.S. 136-44.2E(e) requires the NCDOT to submit a biennial report to the House of Representatives Appropriations Committee on Transportation, the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division on the Transportation Emergency Reserve, which includes results of its evaluation to determine the minimum amount of funds needed in the Emergency Reserve.

This section would repeal this reporting requirement.

**Section 2:** Section 1.7 of S.L. 2019-251 appropriated \$36,000,000 from the General Fund to the NCDOT, \$30,000,000 of which was to be used for current and future activities related to Hurricane Dorian recovery such as debris removal and repair of highway infrastructure damage.

This section would specify that any remaining funds under that provision for Hurricane Dorian recovery would be repurposed for the Department's Resilience Program.

**Section 3:** This section would authorize the NCDOT to establish, and submit a report based on, a pilot project to award contracts for up to five (5) transportation projects utilizing a Progressive Design-Build delivery method. Only projects less than \$500,000,000, and meeting other criteria, are eligible.

**Section 4:** Section 34.13 of S.L. 2018-5, as amended by Section 21 of S.L. 2022-68, authorized the NCDOT to establish, and submit a report based on, a pilot project to award contracts for up to five (5) transportation projects utilizing a construction manager-general contractor delivery method. Only projects less than \$500,000,000, and meeting other criteria, are eligible.

This section would increase the number of projects allowed under this pilot project from five to eight projects.

**Section 5:** G.S. 136-93.1A outlines the NCDOT's process, and time frames, for reviewing and making decisions on traffic impact analyses submitted to the Department. The Department must submit a report to the Joint Legislative Transportation Oversight Committee on the number of times the Department failed during the year preceding the report to meet the time frames and reasoning for each failure.

This section would repeal this reporting requirement.

**Section 6:** G.S. 143C-6-11(m) requires the NCDOT to submit a monthly report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division when the combined average daily

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# House Bill 198

Page 2

cash balance of the Highway Fund and the Highway Trust Fund is outside an amount equal to between fifteen and twenty percent (15-20%) of the total appropriations for the current fiscal year from those funds.

This section would repeal this reporting requirement.

**Section 7:** Various articles within Chapter 143 outline procurement requirements for State agencies.

This section would authorize the Integrated Mobility Division, of the Department, to independently establish statewide purchasing contracts with private vendors for capital assets, technology, or services related to public transportation, bicycle, pedestrian, and related modes when established through federal competitive procurement requirements promulgated by the Federal Transit Administration or Federal Highway Administration. The establishment of these statewide purchasing contracts are exempt from Department of Administration and Department of Information Technology oversight and requirements, and would require the Department to submit notices to the Department of Administration and the Department of Information Technology, and submit reports to the General Assembly, outlining the nature and scope of statewide purchasing contracts established pursuant to this authority.

**Section 8:** Article 8 of Chapter 143 outlines requirements and procedures that relate to public contracting and outlines specific requirements and procedures for public building contracts.

This section would specify that the general provisions, except for advertising and contract award provisions, of this article do not apply to building contracts entered into by the Department for the construction, alteration, or repair of facilities jointly occupied by personnel of the Division of Motor Vehicles and the North Carolina Highway Patrol, and further specifies that Department of Transportation and the Department of Administration have sole responsibility for these contracts.

**Section 9:** G.S. 136-28.1 outlines contract letting procedures for construction, maintenance, operations, and repair necessary to carry out the responsibilities of the Department.

This section would authorize the Department to specify brand names or specific manufacturers for construction materials under specific circumstances.

**Section 10:** G.S. 136-19.4 outlines the Department's obligations to file right-of-way plans for Department projects with registers of deeds.

This section would amend the right-of-way plan filing requirements by eliminating the requirement to file plan and profile sheets and eliminating the filing requirement for amended right-of-way plans.

**Section 11:** G.S. 136-76.2 relates to the NCDOT's Bridge Program, and outlines funding requirements for use in improvement to State highway system culverts and improvements to structurally deficient and functionally obsolete bridges, and further outlines when the Department must outsource to private contractors.

This section would prohibit the outsourcing of certain culvert and structure installations on low volume or non-outlet roads.

**Section 12:** Section 41.7 of S.L. 2022-74 required the State Controller to transfer the sum of \$109,834,972 from the Highway Fund to the Advance ROW Acquisition Account, of the Highway Trust Fund, for the purchase of property under the Undue Hardship Advance Acquisition Program, and also directed the Department to streamline the Undue Hardship Acquisition Program and submit quarterly reports to the General Assembly with program updates.

This section would amend the transfer directive to broaden its use to the Advance Acquisition Program generally, rather than limiting those funds to Undue Hardship Acquisitions, and would remove quarterly reporting requirements.

# House Bill 198

Page 3

**Sections 13:** S.L. 2018-16 enacted the Build NC Bond Act of 2018, which is a financing tool available to the Department using special indebtedness under certain conditions set out in that act, and that act is set to expire December 31, 2028.

This section would extend the validity of this act, by amending its expiration date to December 31, 2030.

**Sections 14:** S.L. 2018-16 enacted the Build NC Bond Act of 2018, which is a financing tool available to the Department using special indebtedness under certain conditions set out in that act. Section 41.3 of S.L. 2021-180, as amended by Section 7.1 of S.L. 2021-189, provided for a temporary suspension and modification to Build NC Bond issuance cash balance criteria, which was originally set at one billion dollars by that NC Bond Act of 2018.

This section would extend the temporary suspension of cash balance issuance criteria from June 30, 2022 to June 30, 2024, and permanently increase the cash balance issuance criteria from a one billion dollar to a two billion dollar threshold after that date.

**Section 15:** Section 34.5 of S.L. 2014-100, as amended by Section 29.7 of S.L. 2015-241, capped Department employee out-of-State travel expenditures for FY 2014-2015 onward to the amount expended during FY 2009-2010. Employee expenditures for out of state travel includes transportation, conference, registration, and education expenses, lodging, and meals.

This section would repeal that expenditure cap.

**Section 16:** Section 29.5A of S.L. 2015-241 capped the Board of Transportation out-of-State travel expenditures from FY 2015-2016 onward to \$20,000.

This section would repeal that expenditure cap.

**Section 17:** G.S. 160A-605 outlines the appointed membership requirements, among other aspects, for Regional Public Transportation Authority Boards of Trustees established under Article 26 of Chapter 160A.

This section would repeal the requirement that ex-officio members, appointed by the Secretary of Transportation, must reside within the territorial jurisdiction of the Authority.

**Section 18:** The North Carolina Turnpike Authority is a public agency, within the Department of Transportation, charged with the construction, maintenance, and operation of toll roads and bridges within this State. Current law authorizes the Authority to enter into agreements to exchange information with the Division of Motor Vehicles, other States and toll operators, and other entities outlined in law for the purpose of motor vehicle and owner identification.

This section would add insurance companies as one of the authorized information sources.

**Section 19:** The North Carolina Turnpike Authority is a public agency, within the Department of Transportation, charged with the construction, maintenance, and operation of toll roads and bridges within this State. Current law outlines procedures for sending bills by first-class mail to motor vehicle owners for the purpose of unpaid toll collection, and specifies the information a bill must contain, such as the name and address of the registered owner, turnpike segment, etc.

This section would amend bill information requirements to further require that the Vehicle Identification Number (VIN) or other vehicle identifying information appear on a bill, and additionally authorize the Authority to utilize digital communications and methods for motor vehicle owner verification to pursue a bill by first-class mail.

# House Bill 198

Page 4

**Section 20:** A person that receives a unpaid toll bill from the Turnpike Authority must either pay the bill or submit a request for bill review. The Authority is authorized to levy an additional \$6.00 processing fee, capped at \$48.00 per year, against a person that fails to act in a timely manner.

This section would increase this processing fee authorization to \$9.00, with a \$72.00 annual cap.

**Section 21:** G.S. 20-146.2 outlines the Department's, and municipalities', authority to designate managed lanes on various road systems, which include high occupancy vehicle lanes, transitway lanes, temporary peak traffic shoulder lanes, directional flow peak traffic lanes.

This section would authorize the Turnpike Authority to authorize tolling lanes designated as temporary peak traffic shoulder lanes and directional flow peak traffic lanes.

**Section 22:** Current law requires State cabinet agencies, i.e. a unit of the executive branch of State government, to hire non-information technology temporary employees through the Temporary Solutions Program.

This section would exempt the Ferry Division from Temporary Solutions Program hiring requirements when there is an established need for peak season hires or the work requires a specific skillset.

**Section 23:** Current law outlines the requirements and limitations for annual ferry priority boarding passes for vehicles providing commercial goods and services.

This section would limit issuance of commercial goods and services priority passes to individual vehicles, rather than multiple vehicles owned by the same person, and clarify that only one pass shall be issued per vehicle per year. Additionally, this section would limit priority boarding availability between 10:00 A.M. to 4:00 P.M. when departing Hatteras, and between 4:00 P.M. to 9:00 P.M. when departing Ocracoke.

**Section 24:** This section would authorize the issuance or priority vehicle boarding passes for the Hatteras-Ocracoke ferry route at an amount set by the Board of Transportation for Ocracoke residents.

**Section 25:** G.S. 63-74.5 requires the Division of Aviation of the NCDOT to submit an annual report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division of the General Assembly, which includes a summary of activities related to unmanned aircraft systems.

This section would repeal this reporting requirement.

**Section 26:** The Joint Conference Committee Report on the Current Operations Appropriations Act of 2022 (H103, June 28, 2022), provides for \$7,527,000 in non-recurring funds to match the Consolidated Rail Infrastructure and Safety Improvements (CRISI) federal grant funds for surveys, preliminary engineering, and rail improvements on the S-Line rail corridor.

This section would expand the authorized use of these funds for a future grant to develop the S-Line beyond the CRISI grant announced from FY 2021 funds.

**Section 27:** Article 11 of Chapter 136, entitled Outdoor Advertising Control Act, outlines State policies, requirements, procedures, and limitations that relate to outdoor advertising placement, relocation, removal, and related vegetation clearance and maintenance surrounding outdoor advertising. Current law authorizes the issuance of permits for selective vegetation removal by owners of outdoor advertising, sets limitations for cut or removal zones, and outlines other aspects of the permitting process for that purpose.

This section would: (i) amend maximum vegetation cut zone limits; (ii) clarify that a sign owner may also include in the cut zone, any area within ROW between the viewing zones of two sign faces on the same structure upon payment of \$150 per caliper inch to the Department; (iii) remove native redbud preservation requirements; (iv) specify that vegetation removal permits may be issued for relocated outdoor advertising, that are otherwise compliant, within 2-years of relocation; (v) specify that a new relocation

# House Bill 198

Page 5

site shall not be denied due to the presence of viewing zone obstruction by vegetation; and (vi) specify that an outdoor advertisement owner is permitted to remove any vegetation from private property to improve visibility with landowner consent.

**Section 28:** Generally, the Department maintains exclusive control of the State highway system, which includes ROW. Article 3D of Chapter 20 contains the State laws defining and governing data use and preservation requirements for automatic license plate reader systems, among other regulations.

This section would: (i) establish a pilot program to authorize the Department to enter into agreements with the State Bureau of Investigation (SBI) for the placement and use of automatic license plate reader systems on Department ROW, and specify requirements for automatic license plate reader systems for this purpose; and (ii) require the SBI to submit a report to various General Assembly committees. This pilot program would become effective July 1, 2023, and would expire on July 1, 2024.

This section would also: (i) repeal statutes to clarify that placement of automatic license plate reader systems on Department ROW is not permitted outside of the authorization under this pilot program; (ii) amend and clarify definitions and provisions applicable to automatic license plate reader system laws; and (iii) create a class 1 misdemeanor for unlawfully obtaining, accessing, preserving, or disclosing data obtained in accordance with automatic license plate reader systems laws. The provision creating a class 1 misdemeanor would become effective December 1, 2023, and apply to offenses committed on or after that date.

**Section 29:** G.S. 150B-19.3(b) specifies the percentages of privilege taxes imposed on a retailer engaged in business in the State that are transferred quarterly to the Highway Fund and Highway Trust Fund for transportation needs.

This section would increase the frequency of transfers from quarterly to monthly transfers.

**Section 30:** G.S. 143C-6-11(q) requires the NCDOT to post on their website, and submit to submit to the Board of Transportation, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division a financial statement report that includes, among other information, the Department's projected revenues and Spend Plan for the next 18-months.

This section would reduce the projection window to the current fiscal year.

**Section 31:** Current law requires the Department to report annually to the Joint Legislative Transportation Oversight Committee by March 1 on how the previous fiscal year's funds for maintenance and construction were allocated and expended. The Department is also required to submit Transportation Improvement Programs, or interim changes to the Transportation Improvement Program, to the Speaker of the House, President of the Senate, Chairs of the House and Senate Appropriations Committees, the Joint Legislative Transportation Oversight Committee, and Fiscal Research. Current law also outlines Department obligations to notify municipalities, counties, and utility providers affected by planned transportation projects and procedures for those entities to submit resolutions expressing their views on the project.

This section would: (i) modify Department reporting requirements to the General Assembly to include cost of maintenance and construction, receipts of license fees, disbursements of the Department, and other financial information relevant to the illustrate the Department's financial condition; (ii) require the Department to post Transportation Improvement Programs and interim changes on the Department's website; (iii) amend reporting requirements to remove utilities from planned transportation project notifications, and (iv) exempt planned transportation projects that appear on a published Transportation Improvement Program posted on the Department's website from notification requirements.

**Section 32:** Article 14B of Chapter 136, which includes G.S. 136-189.11, sets out the requirements of the Transportation Investment Strategy Formula which the Department uses for transportation project

# House Bill 198

Page 6

planning using certain funds. Subsection (b) of that statute specifies categories of funds that are excluded from the formula, such as federal congestion mitigation and air quality improvement program funds and funds received from the federal government that under federal law may only be used for Appalachian Development Highway System projects.

This section would exempt funds received from the federal government under the Ferry Boat and Terminal Facilities Construction Program.

**Section 33:** Article 14B of Chapter 136, which includes G.S. 136-189.11, sets out the requirements of the Transportation Investment Strategy Formula which the Department uses for transportation project planning using certain funds. Subsection (d) of that statute outlines the Transportation Investment Strategy Formula and generally outlines applicable fund distribution among Statewide Strategic Mobility Projects, Regional Impact Projects, and Division Needs Projects. The Department is prohibited from providing financial support for independent bicycle and pedestrian improvement projects, except for federal funds administered by the Department and other municipal allocations.

This section would specify that this limitation would not apply to any bicycle and pedestrian improvement project that may provide improved access to opportunities or community services for low-income, elderly, or disabled individuals.

**Section 34:** This section would authorize the Department to assess fees, not otherwise provided by law, for all programs that issue permits, approvals or certifications concerning driveways, subdivisions, traffic impact analyses, and encroachment reviews, and further specifies those fees must be applied to fund the cost of administering those programs for which the fee was assessed.

**Section 35:** Current law requires that all State departments designate no more than two liaison personnel to lobby for legislative action, with exceptions.

This section would authorize the Secretary of Transportation to designate at least one, but no more than five liaison personnel to lobby for legislative action on behalf of the Department.

**Section 36:** Article 10 of Chapter 63, entitled Operation of Unmanned Aircraft Systems, regulates unmanned aircraft systems within this State and outlines training requirements and permit requirements for commercial operation of unmanned aircraft systems.

This section would repeal Article 10 of Chapter 63 and make various conforming changes to strike references within the General Statutes, and would clarify that prosecution for offenses under this Article are not abated or affected by its repeal.

**Section 37:** Current law authorizes cities, counties, and Regional Public Transportation Authorities to contract with railroads to allocate financial responsibility for passenger rail services claims, and outlines insurance requirements for parties involved in, or affected by, passenger rail services.

This section would authorize the Department to contract with any railroad, Regional Public Transportation Authority, county, or city under certain conditions to allocate financial responsibility for passenger rail claims arising from services rendered to, or on behalf of, the Department on the S-Line corridor, and further outlines insurance requirements for that purpose.

**Section 38:** This section would make various revisions to Highway Fund and Highway Trust Fund availability schedules for the fiscal years of 2021-2022 and 2022-2023 within appropriations acts for those fiscal years.

**Section 39:** Current law outlines the requirements for vehicle control signs and signals which control motor vehicle traffic movement within this State, and outlines violations of those provisions which are enforced by traffic control photographic systems.

# House Bill 198

Page 7

This section would specify that a violation detected by a traffic control photographic system is defined as when a vehicle enters and proceeds into the intersection after the onset of the signal display of a steady circular red or steady red arrow controlling traffic approaching the intersection and the applicable red clearance interval has expired. This section would also specify that the duration of certain light change intervals shall be no less than specified on sealed traffic control plans.

**Section 40:** Current law outlines the requirements and limits that relate to State liability under the North Carolina State Tort Claims Act which include certain claim payment caps for claims against the State.

This section would raise the claim cap from one million dollars to three million dollars for the Department and would authorize the Department to purchase and maintain an umbrella policy of commercial liability insurance providing coverage in an amount up to ten million dollars. This section is effective when it becomes law and applies retroactively to January 1, 2021.

**Section 41:** Generally, the Department of Transportation is the designated agency of the State for federal funding and programs relating to public transportation, and the agency responsible for administering State funds appropriated to purchase elderly and disabled transportation services within the State.

This section would require the Department to recognize a regional council of government or regional planning commission as an eligible unit of government to apply for, accept, and administer certain rural and urban planning, operating, and capital transit grants made available through the North Carolina Department of Transportation or the Federal Transit Administration under certain conditions. This section would also authorize a regional council of government or regional planning commission to apply for and receive any funds to perform mobility management activities, and use funding to fill gaps in service, where they exist, by coordinating with existing transit agencies, nonprofit organizations, or third party operators.

**EFFECTIVE DATE:** Except at otherwise provided, this act would become effective when it becomes law.