

Article 2A.

State Transportation Generally.

**§ 136-44.1. Statewide transportation system; policies.**

The Department of Transportation shall develop and maintain a statewide system of roads, highways, and other transportation systems commensurate with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board of Transportation shall formulate general policies and plans for a statewide transportation system. The Board shall formulate policies governing the construction, improvement and maintenance of roads, highways, and other transportation systems of the State with due regard to farm-to-market roads and school bus routes. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 2009-266, s. 18.)

**§ 136-44.2. Budget and appropriations.**

(a) The Director of the Budget shall include in the "Current Operations Appropriations Act" an enumeration of the purposes or objects of the proposed expenditures for each of the maintenance and improvement programs for that budget period for the State primary, secondary, State parks road systems, and other transportation systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall also include State-maintained, nonhighway modes of transportation.

(b) All maintenance and improvement programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

(c) Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

(d) The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

(e) The "Current Operations Appropriations Act" shall also contain the proposed appropriations of State funds for use in each Highway Division for maintenance and improvement of secondary roads, to be allocated in accordance with G.S. 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction, maintenance, and improvement of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.6.

(f) If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this subsection. The Director

of the Budget shall allocate the excess to a reserve (i) for access and public roads or (ii) for other urgent road construction or road maintenance needs. The use of this reserve shall be subject to the following:

- (1) Restrictions on use. – No more than five million dollars (\$5,000,000) from this reserve may be spent on a single project. Funds from this reserve being used for an "other urgent road construction or road maintenance need" project cannot be used for nontransportation administrative costs, nontransportation information technology costs, or any economic development purpose.
  - (2) Approval. – The Department of Transportation shall submit for approval to the Director of the Budget all expenditures from the reserve established under this subsection.
  - (3) Reporting. – At least five days, not including State holidays or weekend days, prior to submitting an expenditure request to the Director of the Budget under subdivision (2) of this subsection, the Department of Transportation shall submit a report on the expenditure request to the Fiscal Research Division and to the members of the House Appropriations Subcommittee on Transportation and the Senate Appropriations Committee on Department of Transportation. Such report shall be certified by the chief financial officer of the Department of Transportation and shall include (i) a project description, (ii) whether the project is for access and public roads or for other urgent needs, (iii) a justification of the project, (iv) the total project cost, (v) the amount of funding for the project coming from the reserve, and (vi) other funding sources for the project.
  - (4) Carryforward. – If on the last day of the fiscal year the balance in the reserve established by this subsection is greater than five million dollars (\$5,000,000), then the Director of the Budget shall transfer the amount in excess of that sum to the Reserve for General Maintenance in the Highway Fund.
- (f1) The credit reserve for the Highway Fund consists of the following:
- (1) The unreserved credit balance in the Highway Fund on the last day of the fiscal year to the extent the balances exceed the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year.
  - (2) The unallotted and unencumbered balances on the last day of the fiscal year for the following:
    - a. Funds appropriated from the Highway Fund for the multimodal programs of the Department, consisting of funds for bicycle and pedestrian, railroad, aviation, and public transportation programs, excluding funds deposited in the Freight Rail & Rail Crossing Safety Improvement Fund.
    - b. Funds appropriated from the Highway Fund for the construction programs of the Department, consisting of funds for secondary construction, access and public service roads, spot safety improvement, small urban construction, and economic development programs.
  - (3) The unencumbered and unexpended balances on the last day of the fiscal year for the following:
    - a. Central and program administration.
    - b. Transfers to other State agencies or departments not used or returned.

- (4) The remaining balance for (i) any open project that has been inactive for two or more years after construction of the project has been completed or (ii) any project that is not obligated during the first two fiscal years in which funds are appropriated.

(g) The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars (\$100,000) before any other allocations from the appropriations for State maintenance for primary and secondary road systems are made, based upon the same proportion as is appropriated to each system. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b); 1989, c. 799, s. 12(a); 1991 (Reg. Sess., 1992), c. 907, s. 2; c. 1044, s. 35; 1997-443, s. 32.5; 2005-276, s. 28.1; 2005-382, s. 1; 2009-266, s. 19; 2011-145, s. 28.35(b); 2012-142, s. 24.6; 2013-125, s. 1; 2013-183, s. 2.2(a), (b); 2014-100, s. 34.19(a); 2016-94, s. 35.24(d); 2018-97, s. 7.1(a); 2021-180, s. 41.15(c).)

**§ 136-44.2A: Repealed by Session Laws 2013-183, s. 2.3(b), effective July 1, 2014.**

**§ 136-44.2B. Reports to appropriations committees of General Assembly.**

In each year that an appropriation bill is considered by the General Assembly, the Department of Transportation shall make a report to the appropriations committee of each House on all services provided by the Department to the public for which a fee is charged. The report shall include an analysis of the cost of each service and the fee charged for that service. (1975, c. 875, s. 8; 1981, c. 690, s. 5.)

**§ 136-44.2C: Repealed by Session Laws 2013-183, s. 2.4, effective July 1, 2013.**

**§ 136-44.2D. Secondary unpaved road paving program.**

The Department of Transportation shall expend fifty percent (50%) of the funds allocated to the paving of unpaved secondary roads for the paving of unpaved secondary roads based on a statewide prioritization. The Department shall expend the remainder of the funds equally among the 14 Highway Divisions for the paving of unpaved secondary roads within each Highway Division based on the same statewide prioritization. The Department shall pave the eligible unpaved secondary roads that receive the highest priority ranking within this statewide prioritization. Nothing in this subsection shall be interpreted to require the Department to pave any unpaved secondary roads that do not meet secondary road system addition standards as set forth in G.S. 136-44.10 and G.S. 136-102.6. The Highway Trust Fund shall not be used to fund the paving of unpaved secondary roads. (2013-183, s. 2.5; 2016-94, s. 35.7(a).)

**§ 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, and in a manner that ensures to the extent practicable that the funds are eligible for federal reimbursement or cost sharing with the federal funds.

(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 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.

(f) Notification of Governor; Reimbursement. – The Secretary shall notify the Governor within 24 hours of determining that anticipated emergency expenses by the Department under this section will exceed the funds in the Emergency Reserve. Upon notification, the Governor shall immediately proceed under G.S. 166A-19.20(e). Federal reimbursements for funds expended in relation to a major disaster, declared in accord with subsection (c) of this section, shall be used to reimburse expenditures from the following accounts in order of priority:

- (1) Emergency Reserve, subject to the limitation in subsection (d) of this section.
- (2) Reserve for General Maintenance in the Highway Fund.
- (3) Savings Reserve. (2019-251, s. 1.3(b); 2020-69, s. 5; 2020-91, s. 4.7(a), (b).)

### **§ 136-44.3. Report on the condition of the State highway system and maintenance funding needs.**

The Department shall establish performance standards for the maintenance and operation of the State highway system. In each even-numbered year, the Department of Transportation shall survey the condition of the State highway system and shall prepare a report of the findings of the survey. The report shall provide both quantitative and qualitative descriptions of the condition of the system and shall provide estimates of the following:

- (1) The annual cost to meet and sustain the established performance standards for the State highway system, delineated by costs to the primary or secondary system, to include the following categories of work: (i) contract resurfacing, (ii) pavement preservation, (iii) routine highway maintenance, (iv) disasters and emergencies, (v) structurally sound bridge maintenance, and (vi) structurally unsound bridge rehabilitation, repair, or replacement.

- (2) Projected system condition and corresponding optimal funding requirements for a seven-year plan to sustain established performance standards. The report shall also identify target levels of service for each maintenance activity and assess historical program performance across divisions, including project delivery rates, staffing, and direct and indirect costs. The Department shall clearly denote prioritized maintenance needs and recommended resource allocations and distribution methods to achieve each target.
- (3) Any significant variations in system conditions among highway divisions. The report shall include an examination of how well the highway divisions streamline project delivery, maximize efficiency, and prioritize spending based on needs and make recommendations on ways to improve these processes. The report shall analyze the cost of delivering maintenance activities by division and make recommendations on how to reduce these costs regionally and statewide.
- (4) An assessment of the level of congestion throughout the primary highway system based on traffic data, and a ranking of the most congested areas based on travel time reliability and the average number of congested hours, together with the Department's recommendations for congestion reduction and mobility improvement.
- (5) An analysis of existing highway division staffing levels and recommendations to ensure staffing levels are distributed appropriately based on need.
- (6) A cross-divisional comparison summary document, not to exceed one page in length, which includes the divisional performance data described in subdivision (2) of this section as well as the most deficient roads and bridges in each division.

The report on the condition of the State highway system and maintenance funding needs shall be presented to the Joint Legislative Transportation Oversight Committee by December 31 of each even-numbered year, and copies shall be made available to any member of the General Assembly upon request. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 39; 1997-443, s. 32.19; 2007-164, s. 1; 2013-360, s. 34.8; 2014-100, s. 34.11(c).)

**§ 136-44.3A. Highway Maintenance Improvement Program.**

- (a) Definitions. – The following definitions apply in this Article:
  - (1) Repealed by Session Laws 2021-180, s. 41.55(b), effective July 1, 2021.
  - (2) Repealed by Session Laws 2021-180, s. 41.55(b), effective July 1, 2021.
  - (3) Highway Maintenance Improvement Program. – The schedule of State highway maintenance projects required under G.S. 143B-350(f)(4a).
  - (4) Highway Maintenance Improvement Program Needs Assessment. – A report of the amount of funds needed and the quantity of work to be accomplished to meet and sustain the performance standards for the State highway system in each of the maintenance program categories.
  - (5) Repealed by Session Laws 2021-180, s. 41.55(b), effective July 1, 2021.
  - (6) Pavement preservation treatment. – A pavement preservation treatment is a roadway improvement practice that improves roadway quality and extends or renews the pavement life. Types of pavement preservation treatment include hot-mixed asphalt overlays, cape seal treatment, chip seal treatment, microsurfacing, crack sealing, slurry seal, and fog seal.

- (7) Rehabilitation. – A contract resurfacing maintenance program that involves applying multiple layers of pavement that exceed two inches.
- (8) Resurfacing. – A contract resurfacing program that involves applying one layer that does not exceed two inches of pavement.
- (9) Repealed by Session Laws 2021-180, s. 41.55(b), effective July 1, 2021.
- (b) Road Quality Improvement of Pavement Preservation Treatments. – It is the intent of the General Assembly that (i) the Department use asphalt pavement preservation treatments that are high-quality, long-lasting, and provide a smooth road surface and (ii) the Department increase its contractual use of pavement preservation treatments.
- (c) Highway Maintenance Improvement Program. – After the annual inspection of roads within the State highway system, all of the following shall occur:
  - (1) The Chief Engineer shall establish the annual cost to meet and sustain the performance standards for pavement, bridge, and general maintenance activities for the State highway system.
  - (2) The Division Engineer for each highway division shall determine and report to the Chief Engineer a five-year improvement schedule, sorted by county, for pavement, bridge, and general maintenance activities within each highway division. The schedule shall be based on the amount of funds appropriated to the pavement, bridge, and general maintenance programs in the fiscal year preceding the issuance of the Highway Maintenance Improvement Program for all five years of the Highway Maintenance Improvement Program. State funding for the Highway Maintenance Improvement Program shall be limited to funds appropriated from the State Highway Fund.
- (d) Repealed by Session Laws 2015-241, s. 29.17C(b), effective July 1, 2015.
- (d1) Restriction and Encumbrance Schedule. – Notwithstanding any other provision of law, funds appropriated for the contract maintenance resurfacing program may not be transferred to another account to be used for another purpose. Beginning in the 2015-2016 fiscal year, the Department of Transportation shall spend or encumber all funds appropriated for the contract maintenance resurfacing program by June 30 of the fiscal year in which the funds were appropriated.
- (e) Single Chip Seal Treatment Prohibited on Access Routes. – Except as authorized in subsection (f) of this section, and unless used in combination with a slurry seal, microsurfacing, or resurfacing treatment, the Department shall not use single chip seal treatment on access routes for Surface Transportation Assistance Act Dimensioned Vehicles.
- (f) Authorized Use of Single Chip Seal Treatment on Secondary Roads. – The Department may use single chip seal treatments on secondary roads only under any of the following conditions:
  - (1) The secondary road has a daily traffic volume of less than 15,000 vehicles. Single chip treatments used under this subdivision shall be capped with a final riding surface of sand or material of equivalent size to fill voids to create a smooth riding surface.
  - (2) The single chip seal treatment is used in combination with a slurry seal, microsurfacing, or resurfacing treatment.
  - (3) The condition of the secondary road requires a rough surface to improve traction, such as a secondary road in a mountainous community or another area with low skid resistance.

(f1) Chip Seal Treatment Prohibited on Subdivision Streets. – Unless used in combination with a fog seal, the Department shall not use chip seal treatment on subdivision streets.

(g) Report. – The Department shall submit the Highway Maintenance Improvement Program and Highway Maintenance Improvement Program Needs Assessment to the General Assembly by June 1 of each year. If the General Assembly is in session, the Department shall report to the House of Representatives Appropriations Subcommittee on Transportation, the Senate Appropriations Committee on Transportation, and the Fiscal Research Division. If the General Assembly is not in session, the Department shall report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division. (2014-100, s. 34.11(b); 2015-241, s. 29.17C(b); 2016-94, s. 35.23; 2017-57, s. 34.11(a), (b); 2021-180, s. 41.55(b).)

**§ 136-44.4: Repealed by Session Laws 2018-74, s. 5, effective July 1, 2018.**

**§ 136-44.5: Repealed by Session Laws 2013-183, s. 2.6(b), effective July 1, 2014.**

**§ 136-44.6. Uniformly applicable formula for the allocation of funds for primary and secondary road maintenance.**

The Department of Transportation, in consultation with its Division Engineers, shall develop biennially a uniformly applicable formula for the allocation of funds in the Highway Fund for maintenance on primary and secondary roads in each Highway Division. The formula shall take into consideration the number of paved and unpaved miles of state-maintained secondary roads in each Highway Division and such other factors as experience may dictate. In developing the allocation formula, the Department of Transportation shall allocate funding to Highway Divisions and create a plan of action to reallocate funds among Highway Divisions based upon expenditures of the first three quarters. Each Division Engineer shall have discretion in using funds allocated under this section to his or her Highway Division for maintenance activities. Allotments shall be made available to Highway Divisions on a quarterly basis, based upon the Spend Plan developed by the Department. The Department shall create a plan for reallocation to maximize use of funds with the fiscal year. This section shall not apply to projects to pave unpaved roads under G.S. 136-44.2D. (1973, c. 507, s. 3; 1975, c. 716, s. 7; c. 753; 2013-183, s. 2.6(c); 2016-94, s. 35.24(c); 2020-91, s. 5.10.)

**§ 136-44.7. Secondary roads; right-of-way acquisition.**

(a), (b) Repealed by Session Laws 2013-183, s. 2.7, effective July 1, 2013.

(c) When it is necessary for the Department of Transportation to acquire a right-of-way in order to pave a secondary road or undertake a maintenance project, the Department shall negotiate the acquisition of the right-of-way for a period of up to six months. At the end of that period, if one or more property owners have not dedicated the necessary right-of-way and at least seventy-five percent (75%) of the property owners adjacent to the project and the owners of the majority of the road frontage adjacent to the project have dedicated the necessary property for the right-of-way and have provided funds required by Department rule to the Department to cover the costs of condemning the remaining property, the Department shall initiate condemnation proceedings pursuant to Article 9 of this Chapter to acquire the remaining property necessary for the project.

(d) The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all circumstances the safety of the public is not compromised and the minimum accepted design

practice is satisfied. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 8; 1989, c. 692, s. 1.9; 1991 (Reg. Sess., 1992), c. 900, s. 99; 2001-501, s. 2; 2002-86, s. 1; 2013-183, s. 2.7.)

**§ 136-44.7A. Submission of secondary roads construction programs to State agencies.**

When the Department of Transportation proposes to pave an unpaved secondary road that crosses land controlled by a State agency, the Department of Transportation shall obtain the approval of that State agency before paving that secondary road. (1996, 2nd Ex. Sess., c. 18, s. 19.7.)

**§ 136-44.7B. Permit issuance by Department of Environmental Quality transportation construction projects.**

Once the Department of Environmental Quality or any agency within the Department of Environmental Quality has issued a permit that is required for a transportation construction project to be undertaken by or on behalf of the Department of Transportation pursuant to the Transportation Improvement Program, that permit shall remain in effect until the project is completed. The permit shall not expire and shall not be modified or canceled for any reason, including a subsequent change in federal law or regulations or in State law or rules, unless at least one of the following occurs:

- (1) The modification or cancellation is requested by the Department of Transportation.
- (2) The modification or cancellation is clearly required by a change in federal law or regulations and a failure to modify or cancel the permit by the Department of Environmental Quality will or may result in a loss of federal program delegation or a significant reduction in the availability of federal funds to the Department of Environmental Quality or to the Department of Transportation.
- (3) The modification or cancellation is clearly required by a change in State law as a result of an act of the General Assembly that includes a statement that the General Assembly specifically intends the change in State law to apply to ongoing transportation construction projects.
- (4) The modification or cancellation is ordered by a court of competent jurisdiction.
- (5) The nature or scope of the transportation construction project is significantly expanded or otherwise altered.
- (6) Federal law or regulation requires that the permit expire at the end of a specific term of years. (2003-284, s. 29.6; 2015-241, s. 14.30(u).)

**§ 136-44.7C. Analysis and approval of Department of Transportation environmental policies or guidelines affecting transportation projects.**

(a) Analysis Required. – The Department of Transportation shall conduct an analysis of any proposed environmental policy or guideline adopted by the Department that affects Department of Transportation projects to determine if the policy or guideline will result in an increased cost to Department of Transportation projects.

(b) Report of Analysis; Approval of Policy or Guideline Required. – The analysis of a proposed policy or guideline required by subsection (a) of this section shall be reported to the Board of Transportation at least 30 days prior to the proposed effective date of the policy or guideline, and shall not go into effect until approved by the Board of Transportation. (2005-276, s. 28.8(b).)



**§ 136-44.7D. Bridge construction guidelines.**

A bridge crossing rivers and streams in watersheds shall be constructed to accommodate the hydraulics of a flood water level equal to the water level projected for a 100-year flood for the region in which the bridge is built. The bridge shall be built without regard for the riparian buffer zones as designated by the Department of Environmental Quality, Division of Water Resources. No Memorandums of Agreement may be made between Departments to bypass this construction mandate. No agency rules shall be enacted contrary to this section. (2007-551, s. 4; 2013-413, s. 57(g); 2014-115, s. 17; 2015-241, s. 14.30(u).)

**§ 136-44.7E. Compliance with federal guidelines for transportation projects.**

The Department may continue to use the Merger '01 process provided the relevant portions of P.L. 109-59, Section 6002, (SAFETEA-LU) are incorporated to ensure the Department as the recipient agency is the co-lead agency with the United States Department of Transportation, delegating all other federal, state, or local agencies as participating or cooperating agencies. The Department's designation as a co-lead agency shall inure to the Department the authority to determine the purpose and need of a project and to determine viable alternatives. Any conflict between cooperating or participating agencies and the Department shall be resolved by the Department in favor of the completion of the project in conflict. (2007-551, s. 5.)

**§ 136-44.8. Submission of unpaved secondary roads paving programs to the Boards of County Commissioners.**

(a) Repealed by Session Laws 2013-183, s. 2.8(a), effective July 1, 2013.

(a1) In each county having unpaved roads programmed for paving, representatives of the Department of Transportation shall annually provide to the board of county commissioners in those counties a list of roads proposed for the annual paving program approved by the Board of Transportation. The paving priority list shall include the priority rating of each secondary road paving project included in the proposed paving program according to the criteria and standards adopted by the Board of Transportation. In addition to the list required under this subsection, the Department of Transportation shall annually provide to the board of county commissioners a summary of unpaved secondary road projects completed in the particular county for the prior calendar year, including an indication as to which projects were not completed on schedule and a detailed explanation as to why the projects were not completed on schedule.

(b) through (d) Repealed by Session Laws 2013-183, s. 2.8(a), effective July 1, 2013.

(e) Repealed by Session Laws 2013-183, s. 2.8(b), effective July 1, 2014.

(f) The unpaved secondary roads paving programs adopted by the Board of Transportation shall be followed by the Department of Transportation unless changes are approved by the Board of Transportation and notice of any changes is given to the board of county commissioners. Upon request, the most recent unpaved secondary roads paving programs adopted shall be submitted to any member of the General Assembly. The Department of Transportation shall make the annual construction program for each affected county available to the newspapers having a general circulation in the county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 9; 1981, c. 536; 2013-183, ss. 2.8(a), (b); 2015-241, s. 29.12(c).)

**§ 136-44.9: Repealed by Session Laws 2015-241, s. 29.12(d), effective July 1, 2015.**

**§ 136-44.10. Additions to secondary road system.**

The Board of Transportation shall adopt uniform statewide or regional standards and criteria which the Department of Transportation shall follow for additions to the secondary road system. These standards and criteria shall be promulgated and copies made available for free distribution. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, ss. 8, 21.)

**§ 136-44.11. Right-of-way acquisitions; preliminary engineering annual report.**

(a) The Department of Transportation shall include in its annual report projects for which preliminary engineering has been performed more than two years but where there has been no right-of-way acquisition, projects where right-of-way has been acquired more than two years but construction contracts have not been let. The report shall include the year or years in which the preliminary engineering was performed and the cost incurred, the number of right-of-way acquisitions for each project, the dates of the first and last acquisition and the total expenditure for right-of-way acquisition. The report shall include the status of the construction project for which the preliminary engineering was performed or the right-of-way acquired and the reasons for delay, if any.

(b) Requests to the Board of Transportation for allocation of funds for the purchase of right-of-way shall include an estimated time schedule to complete all necessary right-of-way purchases related to a specific project, and a proposed date to award construction contracts for that project. If the anticipated construction contract date is more than two years beyond the estimated completion of the related right-of-way purchases, the approval of both the Board of Transportation and the Director of the Budget is required. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1981, c. 859, s. 69.)

**§ 136-44.12. Maintenance of roads and parking lots in areas administered by the Division of Parks and Recreation.**

The Department of Transportation shall maintain all roads and parking lots which are not part of the State Highway System, leading into and located within the boundaries of all areas administered by the Division of Parks and Recreation of the Department of Natural and Cultural Resources.

All such roads and parking lots shall be planned, designed, and engineered through joint action between the Department of Transportation and the Division of Parks and Recreation of the Department of Natural and Cultural Resources. This joint action shall encompass all accepted park planning and design principles. Particular concern shall be given to traffic counts and vehicle weight, minimal cutting into or through any natural and scenic areas, width of shoulders, the cutting of natural growth along roadways, and the reduction of any potential use of roads or parking lots for any purpose other than by park users. All State park roads and parking lots shall conform to the standards regarding width and other roadway specifications as agreed upon by the Division of Parks and Recreation of the Department of Natural and Cultural Resources and the Department of Transportation.

The State park road systems may be closed to the public in accordance with approved park practices that control the use of State areas so as to protect these areas from overuse and abuse and provide for functional use of the park areas, or for any other purpose considered in the best interest of the public by the Division of Parks and Recreation of the Department of Natural and Cultural Resources.

Nothing herein shall be construed to include the transfer to the Department of Transportation the powers now vested in the Division of Parks and Recreation of the Department of Natural and

Cultural Resources relating to the patrol and safeguarding of State park roads or State park parking lots. (1973, c. 123, ss. 1-3; 1977, c. 771, s. 4; 1989, c. 727, s. 218(89); c. 799, s. 12(b); 1991 (Reg. Sess., 1992), c. 907, s. 3; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(ww).)

**§ 136-44.13. Reserved for future codification purposes.**

**§ 136-44.14. Curb ramps or curb cuts for handicapped persons.**

(a) Curbs constructed on each side of any street or road, where curbs and sidewalks are provided and at other major points of pedestrian flow, shall meet the following minimum requirements:

- (1) No less than two curb ramps or curb cuts shall be provided per lineal block, located at intersections.
- (2) In no case, shall the width of a curb ramp or curb cut be less than 40 inches.
- (3) The maximum gradient of such curb ramps or curb cuts shall be eight and thirty-three one-hundredths percent (8.33%) (12 inches slope for every one-inch rise) in relationship to the grade of the street or road.
- (4) One curb ramp or curb cut may be provided under special conditions between each radius point of a street turnout of an intersection, if adequate provisions are made to prevent vehicular traffic from encroaching on the ramp.

(b) Minimum requirements for curb ramps or curb cuts under subsection (a) shall be met (i) in the initial construction of such curbs, and (ii) whenever such curbs are reconstructed, including, but not limited to, reconstruction for maintenance procedures and traffic operations, repair, or correction of utilities.

(c) The Department of Transportation, Division of Highways, Highway Design Section, is authorized and directed to develop guidelines to implement this Article in consultation with the Governor's Study Committee on Architectural Barriers (or the Committee on Barrier-Free Design of the Governor's Committee on Employment of the Handicapped if the Governor's Study Committee on Architectural Barriers ceases to exist). All curb ramps or curb cuts constructed or reconstructed in North Carolina shall conform to the guidelines of the Highway Design Section.

(d) The Department of Transportation, Division of Highways, Highway Design Section, is authorized and directed to provide free copies of this Article together with implementary guidelines and standards, to municipal and county governments and public utilities operating within the State. (1973, c. 718, ss. 1-4.)

**§ 136-44.15: Expired.**

**§ 136-44.16. Authorized use of contract maintenance resurfacing program funds.**

(a) Of the contract maintenance resurfacing program funds appropriated by the General Assembly to the Department of Transportation, an amount not to exceed fifteen percent (15%) of the Board of Transportation's allocation of these funds may be used for widening existing narrow pavements.

(b) The uses of slurry seal treatments, microsurfacing treatments, and thin lift asphalt overlays for pavement preservation treatments are authorized uses of contract maintenance resurfacing program funds. (1997-443, s. 32.12; 2003-112, s. 1; 2014-100, s. 34.11(d).)

**§ 136-44.17. Pavement preservation program.**

(a) Program Established. – The Department of Transportation shall establish the pavement preservation program.

(b) Eligible Activities or Treatments. – Applications eligible for funding under the pavement preservation program include the following preservation activities or treatments for asphalt pavement structures:

- (1) Chip seals, slurry seals, fog seals, sand seals, scrub seals, and cape seals.
- (2) Microsurfacing.
- (3) Profile milling not covered by resurfacing.
- (4) Asphalt rejuvenators.
- (5) Open graded asphalt friction course.
- (6) Overlays less than 1,000 feet in length.
- (7) Diamond grinding.
- (8) Joint sealing.
- (9) Dowel bar retrofit.
- (10) Partial-depth or full-depth repairs and reclamations.
- (11) Ultra-thin whitetopping.
- (12) Thin lift and sand asphalt overlays.
- (13) Asphalt crack sealing.
- (14) Pavement markers and markings.

(c) Ineligible Activities or Treatments. – The pavement preservation program shall not include the following preservation activities or treatments:

- (1) Contract resurfacing activities or major pavement rehabilitation treatments and pretreatments that are used in combination with a resurfacing treatment, such as profile milling or chip seals.
- (2) Routine maintenance activities used to maintain and preserve the condition of roads. Treatments include, but are not limited to, pothole patching, rut filling, cleaning of roadside ditches and structures, shoulder maintenance, and retracing of pavement markings.
- (3) Maintenance and preservation activities performed on bridges or culverts.
- (4) Activities related to positive guidance or signal maintenance program functions.

(d) Encumbrance Schedule. – Beginning in the 2015-2016 fiscal year, the Department of Transportation shall spend or encumber all funds appropriated by the General Assembly to the Department for the pavement preservation program by June 30 of the fiscal year for which the funds were appropriated. (2014-100, s. 34.11(f); 2015-241, s. 29.17(a); 2017-57, s. 34.9.)

**§ 136-44.18. Reserved for future codification purposes.**

**§ 136-44.19. Reserved for future codification purposes.**