

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.1 that the Department of State Treasurer intends to adopt the rules cited as 20 NCAC 01I .0101-.0105.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: March 2, 2020

Public Hearing:

Date: March 18, 2020

Time: 3:00 p.m.-4:00 p.m.

Location: Dogwood Conference Room, 3200 Atlantic Avenue, Raleigh, NC 27604

Reason for Proposed Temporary Action: *The State Treasurer is responsible for overseeing issuance and repayment of Build NC Bonds. The ability to repay bonds affects the State's credit rating. Section 1.1 of S.L. 2019-251 mandates the issuance of \$400 million in Build NC Bonds by the end of fiscal year 2019-2020. Section 147-97(1) mandates that Build NC Bonds will be repaid from the Highway Trust Fund. Section 1.2 of Session Law 2019-251 also mandates that the Department of Transportation transfer \$100 million as a loan from the Highway Trust Fund to the Highway Fund by May 1, 2020 and that the loan be repaid according to an agreed schedule with the State Treasurer. By mandating that the Dept. of Transportation make the loan transfer, S.L. 2019-251 alters the State Treasurer's cash management authority under G.S. 147-86.15 which says "The State Treasurer may combine the balances of the Highway Fund and the Highway Trust Fund for case management purposes. The State Treasurer may make short-term loans between the Funds to accomplish the purposes of this Section." The loans from the Highway Trust Fund will affect that fund balance which must be used to repay Build NC Bonds.*

These proposed Cash Management Rules seek to provide definitions of terms, including what constitutes a "short-term loan" under N.C. Gen. Stat. § 147-86.15 and to establish a process for determining whether short-term loans between the Highway Fund and Highway Trust should be made; including identifying information that will be considered in making such loans, including: how the funds will be used, who will receive the funds, why the funds are needed and the time of repayment from the Highway Fund of the short-term loans back to the Highway Trust Fund.

First, the adoption of these rules must be expedited because of the passage of Session Law 2019-251, enacted November 18, 2019. Section 1.2 of S.L. 2019-251 provides:

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

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

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

The language of this Session Law affects and alters DST's cash management authority under N.C. Gen. Stat. § 147-86.15 where the Session Law language mandates that the Department of Transportation (DOT) and not the State Treasurer "shall transfer one hundred million dollars . . . in nonrecurring funds as a loan from the Highway Trust Fund to the Highway Fund." The Session Law provides deadlines by which the two transfers must occur, with the next upcoming deadline being May 1, 2020.

DST is seeking to have the proposed Cash Management Rules in place before the May 1, 2020 deadline.

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

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

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

The end of the 2019-2020 fiscal year is June 30, 2020. While this Session Law mandates that DST issue four hundred million dollars in Build NC Bonds by June 30, 2020, the Treasurer must still issue these bonds in accordance with N.C. Gen. Stat. § 142-97. Section 147-97 is the general enabling legislation for the Build NC Bonds. Section 147-97(1) provides that:

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

The State Treasurer must issue Build NC Bonds pursuant to General Assembly mandate in S.L. 2019-251 while also continuing to ensure that the Highway Trust Fund is sufficiently funded to repay the special indebtedness resulting from the sale of Build NC Bonds. Finally, DST must work with DOT in establishing a repayment schedule of this one hundred-million-dollar loan.

Assuring that the Highway Trust Fund has sufficient monies to repay outstanding indebtedness protects the State of North Carolina's current AAA Bond Rating. Protecting this bond rating is of high public import and has far reaching public consequences as it affects the State's ability to borrow money by allowing money to be borrowed at lower rates for public projects.

With the 2019-2020 fiscal year ending June 30, 2020 by which four hundred million dollars in Build NC Bonds are sought to be issued, the temporary rulemaking process is needed to ensure Cash Management Rules are in place for the management of Highway Funds and Highway Trust Funds ahead of the approval and issuance of the four hundred million dollars in Build NC Bonds.

A third reason why the regular notice and comment period for rulemaking is contrary to the public interest is the Department of Transportation's timeline to change its budget practices. DOT said in its January 17, 2020 report to the Joint Legislative Transportation Oversight Committee that between July 1, 2020 and September 30, 2020 DOT was going to "restructure" the Highway Fund and Highway Trust Fund by consolidating all State Transportation Improvement Program (STIP) revenues into the Highway Trust Fund. This is contrary to the current practice of allocating STIP revenues to their respective funds (Highway Fund or Highway Trust Fund) and not commingling the revenues so the money can be better tracked and accounted for. The DOT report said the commingling of these funds "as a structural budget change" would accelerate the repayment of loans made from the Highway Trust Fund to the Highway Fund. The Treasurer's proposed Cash Management Rules would clarify the Treasurer's cash management process before DOT seeks to restructure the way it accounts for Highway Fund and Highway Trust Fund monies. These rules will instead establish guidelines for the repayment of "short-term loans" authorized to be made by the Treasurer under N.C. Gen. Stat. § 147-86.15.

Comment Procedures: *Comments from the public shall be directed to: Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email dst.ncac@nctreasurer.com. The comment period begins March 2, 2020 and ends April 9, 2020.*

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01I – CASH MANAGEMENT

20 NCAC 01I .0101 **DEFINITIONS**

The following definitions apply to this Section:

- (1) "Highway Fund" means the special revenue fund to which revenue designated for transportation-related operations, maintenance, and improvements is deposited.
- (2) "Highway Trust Fund" means the fund created pursuant to G.S. 136-176.
- (3) "Short-Term Loan" means an allocation of cash either from the Highway Fund to the Highway Trust Fund or from the Highway Trust Fund to the Highway Fund, by the State Treasurer, made pursuant to G.S. 147-86.15, which complies with the short-term loan process requirements of this Rule, consisting of a term of 12 months or less from the date of the allocation, at which time the allocation of cash must be fully repaid to the fund from where the allocation originated.
- (4) "Transfer" means any other movement of cash between the Highway Fund and Highway Trust Fund by the State Treasurer that the State Treasurer determines to be necessary to fulfill the obligations of G.S. Chapter 147, Article 6A, that is not a "Short-Term Loan."

Authority G.S. 147-86.15.

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

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

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

- (1) The agency shall send a written request to the address in 20 NCAC 01A .0101 to the attention of the State Treasurer, with copies to the Director of the State and Local Government Finance Division, and the Chief Financial Officer of the Department of State Treasurer.
- (2) The written request shall contain the following information:
 - (A) The requested amount of the Short-Term Loan;
 - (B) The specific purpose(s) of the Short-Term Loan;
 - (C) The anticipated disbursements and anticipated receipts to document the need for the Short-Term Loan, including the associated budget codes;
 - (D) The anticipated recipients of all the Short-Term Loan proceeds and the amount to be received by any contractors, vendors, suppliers, local, State or federal agencies, or other third parties that will receive Short-Term Loan proceeds in order to fulfill the purpose of the Short-Term Loan;

- (E) The anticipated repayment schedule, including date(s) of repayment, amounts to be repaid at each repayment date, method(s) of repayment (i.e. Cash Management Control System transfer);
- (F) The current cash balances of the Highway Fund and the Highway Trust Fund;
- (G) The projected cash balances remaining in the Highway Fund and Highway Trust Fund after the Short-Term Loan is made; and
- (H) The projected balances of total outstanding Short-Term Loans made pursuant to G.S. 147-86.15 after the new Short-Term loan is made.

Authority G.S. 147-86.15.

20 NCAC 01I .0103 REVIEW AND APPROVAL

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

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

- (1) shall consider the amount of any bonds currently outstanding where the source of repayment of any portion of outstanding bonds is from the Highway Fund or Highway Trust Fund;
- (2) shall consider whether approval of the Short-Term Loan accomplishes the purposes of G.S. 147- 86.15; and
- (3) may request additional information relevant to the uses or the repayment of the Short-Term Loan from the agency requesting the Short-Term Loan.

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

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

Authority G.S. 147-86.15.

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

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

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

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

Authority G.S. 147-86.15.

20 NCAC 01I .0105 RECORDS INSPECTION AND RETENTION

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

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

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

Authority G.S. 147-86.15.