
Coates' Canons Blog: 2015 Powell Bill Changes

By Kara Millonzi

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In addition to local funding sources, municipalities receive some financial assistance from the State to help pay for the construction, maintenance and repair of municipal streets. The legislation that first established this distribution is known as the Powell Bill (after its principal sponsor in the North Carolina Senate), and the moneys distributed to the municipalities are referred to as Powell Bill funds. This year the legislature made a few significant changes to the Powell Bill fund authority in the state budget. This post discusses the general allocation and distribution schemes for Powell Bill funds and summarizes the recent legislative changes. Finally, the post briefly notes another new provision granting municipalities authority to raise local funds for street projects.

POWELL BILL FUNDS

Powell Bill Funds Now Subject to State Appropriations

The amount of Powell Bill funds allocated to municipalities used to be statutorily tied to the gas tax. (Most recently 10.4 percent of the net revenues from the gas tax was appropriated out of the State Highway Fund and distributed to eligible municipalities.) **Section 29.17D.(a) of S.L. 2015-241** repeals the statutory formula linking Powell Bill funds to the gas tax and instead makes the allocations subject to yearly state budget appropriations. That means the municipalities will only receive Powell Bill funds if (and only to the extent) appropriated by the General Assembly each year. The legislature appropriated \$147.5 million in Powell Bill funds for both FY2015-16 and FY2016-17.

Distribution of Powell Bill Funds

Powell Bill funds are distributed to eligible municipalities in two yearly installments—one-half of the total on or before October 1 and the other half on or before January 1 each year. Of the total amount to be distributed, 75 percent is allocated on a per capita basis and 25 percent is allocated based on the unit's proportional amount of mileage of public (non-state) streets. **G.S. 136-41.1(a)**. (A public street is "any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet.")

Powell Bill funds are only distributed to eligible municipalities. There are different eligibility criteria depending on when a municipality was incorporated. (Click [here](#) for a description of the eligibility criteria.)

Use of Powell Bill Revenue and New Earmark Language

Pursuant to **G.S. 136-44.4**, a municipality may elect to use its Powell Bill revenue for the following purposes:

1. Accept all or a portion of the funds allocated to the municipality for use as authorized by G.S. 136-41.3(a).
2. Use some or all of its allocation to match federal funds administered by the Department for independent bicycle and pedestrian improvement projects within the municipality's limits, or within the area of any metropolitan planning organization or rural transportation planning organization.
3. Elect to have some or all of the allocation reprogrammed for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural transportation planning organization.

Most units select option (1.) each year. And the 2015 legislative changes impact this option. Specifically, **Section 29.17D.(b) of S.L. 2015-241**

amends G.S. 136-41.3(a) to direct a municipality to use its Powell Bill funds “*primarily* for the resurfacing of streets within the corporate limits of the municipality” (emphasis added). The statute does not define “primarily” but presumably it means that a unit should use a significant portion of its Powell Bill revenue for this purpose. It may also mean that a unit must ensure that all of its street resurfacing projects are complete before it may divert the moneys to other purposes. The other allowable purposes include

maintaining, repairing, constructing, reconstructing, or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality’s proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways, greenways, or sidewalks.

G.S. 136-41.3(a).

The effect of this amendment is that if a municipality selects option (1.), it must use its Powell Bill revenue primarily for street resurfacing. And, note, that if a unit selects option (1.), there is still a restriction on the amount of time a municipality may carry forward the revenue from year-to-year. A unit may not accumulate more than five years’ worth of Powell Bill revenue; otherwise its future distributions will be reduced. **G.S. 136-41.3(c)**. (Small municipalities may apply to the Department of Transportation to be allowed to accumulate up to ten years’ worth of revenue.)

Reporting on a Municipality’s Use of Powell Bill Revenue

The new provisions also require the Department of Transportation to report to a legislative committee each year on the use that each municipality makes of its Powell Bill funds during the preceding year. See **Section 29.17D.(b) of S.L. 2015-241**.

ADDITIONAL LOCAL FUNDING FOR MUNICIPAL STREET PROJECTS

At the same time that the legislature limited a municipality’s use of its Powell Bill revenue, it expanded a municipality’s authority to levy a local tax to fund street construction, improvement, or repair projects. Beginning in FY2016-17, a municipality may levy up to a \$30 motor vehicle license tax on any vehicle resident in the unit. See **Section 29.27A of S.L. 2015-241**. (Municipalities currently have authority under general law to levy a \$5 per vehicle tax.) The majority of the revenue generated from the expanded tax authority is earmarked for “maintaining, repairing, constructing, reconstructing, widening, or improving public streets in the [municipality] that do not form a party of the State highway system.” The new provisions will be discussed in detail in my next post.

Although not explicit in the changes made this year, it is possible that the legislature is signaling that, in the future, municipalities will be expected to use local revenue to fund the majority (if not entirety) of street construction, improvement, and repair projects.

Links

- www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.1.html
- canons.sog.unc.edu/?p=5276
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.4.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.3.html