
Coates' Canons Blog: State Funding for Municipal Road Projects: Powell Bill Funds

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UPDATE September 2013: During the 2013 legislative session, the

General Assembly modified the distribution of Powell Bill funds to municipalities. See S.L. 2013-183.

For which of the following projects may Powell Bill funds be expended?

1. The Village of Pothole paves and seal-coats its primary public road.
2. The City of Troubled Waters builds a bridge adjoining two public roads.
3. The Town of Stormville removes snow from public streets.
4. The Village of Speeders installs traffic lights.
5. The Town of Refuse purchases a garbage truck to be used to collect garbage off of town streets.
6. Walker County constructs sidewalks adjoining several highly-traveled public roads.
7. The Village of Grassy Knoll mows the grass along a state highway located in the village.
8. Level City grades roads in a privately-maintained subdivision in the city.

Before revealing the answers, let's first review what Powell Bill funds are and how they are distributed.

Authority for Municipalities to Control Public Streets

North Carolina municipalities are authorized to control "all public streets, sidewalks, alleys, bridges, and other ways of public passage within (their) corporate limits" (collectively municipal streets) except to the extent that the control and authority over certain streets or bridges is "vested in the Board of Transportation." **G.S. 160A-296**. Control of municipal streets also imposes a duty on municipalities to "keep the public streets, sidewalks, alleys, and bridges in proper repair," and the "keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions." All of which costs money, of course.

Source of Powell Bill Funds

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. North Carolina levies motor fuel taxes pursuant to a formula that increases taxes when the wholesale price of motor fuels increases. **G.S. 136-41.1** appropriates a certain percentage of this revenue, plus an additional percentage of the net proceeds of the North Carolina Highway Trust Fund, to eligible municipalities across the state. The total FY 2010 allocation to municipalities was \$134,299,711.21. See 2010 North Carolina State Street-Aid Adjusted Allocations to Municipalities. (Note that counties do not receive this assistance because their authority to construct or maintain streets is significantly more limited.) 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.

Distribution of Powell Bill Funds

The available funds are distributed among eligible municipalities according to a two-part formula. Three-quarters of the local proceeds are distributed on a per capita basis and one-quarter according to the number of miles of non-state streets in each municipality. Street mileage information comes from annual reports by each municipality to the State Department of Transportation; annual population estimates come from the State Office of Budget and Management. In the past, the money has been distributed annually, by October 1 each year. The General Assembly recently amended the distribution schedule to provide for two separate allocations—one-half of the appropriated funds will be distributed on or before October 1 and the remaining funds will be distributed on or before January 1. See **Section 28.10 of S.L. 2011-145 (HB 200)**).

Eligibility Requirements

To receive Powell Bill funds a municipality incorporated on or after January 1, 1945, must satisfy the following eligibility requirements:

- The municipality has conducted the most recent election required by its charter or general law for electing municipal officials.
- The municipality has levied *an ad valorem* (property) tax for the current fiscal year of at least \$0.05 per \$100 valuation, and it has actually collected at least 50 percent of the total *ad valorem* tax levied for the preceding fiscal year.
- The municipality has formally adopted a budget ordinance in substantial compliance with applicable law.
- The municipality has appropriated funds for at least two of the following services if it was incorporated prior to January 1, 2000, and at least four of the following services if it was incorporated on or after that date—police protection; fire protection; solid waste collection or disposal; water distribution; street maintenance; street construction or right-of-way acquisition; street lighting; and zoning. **G.S. 136-41.2.**

A municipality incorporated before January 1, 1945, must have conducted an election to elect municipal officers within the four-year next preceding the allocation of funds. It also must currently impose an *ad valorem* tax (no minimum rate specified) or provide other funds for the general operating expenses of the municipality. **G.S. 136-41.2A.**

Furthermore, no municipality may receive Powell Bill funds unless it maintains public streets that are within its jurisdiction and that do not form part of the State highway system. See **S.L. 2011-145 (HB 200)**.

Use of Powell Bill Funds

Municipalities may use Powell Bill funds “only for the purpose of 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 located within the rights-of-way of public streets and highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.” **G.S. 136-41.3**. Street maintenance includes street cleaning and snow removal. Permitted construction expenditures include all phases of construction: right-of-way acquisitions; legal and engineering expenses; salaries, wages, and fringe benefits; materials for construction; payments to contractors, and so forth. Municipalities also may use gasoline tax money for traffic control devices and signs, and debt service on street bonds. They may not use it for street lighting, on- or off-street parking, traffic police, or thoroughfare planning.

The North Carolina Department of Transportation (DOT) puts out a detailed guidance (**DOT Guidance**) on allowable expenditures. Municipal officials should follow the guidance closely because **G.S. 136-41.3** makes it “unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure” of Powell Bill funds for an unauthorized purpose. It further provides that “[a]ny member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures,” and it directs the municipal finance officer to file a statement under oath each year with the Secretary of Transportation showing in detail the expenditure of Powell Bill funds.

Use It (Powell Bill Allocation) or Lose It

A municipality may not accumulate more than 10 Powell Bill allocations. If it does, DOT deducts an amount equal to the excess from the unit’s next allocation. **G.S. 136-41.3**. That used to mean that a municipality could amass ten years’ worth of Powell Bill distributions. Going forward, there will be two allocations each year so a municipality only may accumulate 5 years’ worth. The General Assembly, however, has directed DOT to adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations.

Hypothetical Questions

Back now to the quiz– For which of the following projects may Powell Bill funds be expended?

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4. The Village of Speeders installs traffic lights.
5. The Town of Refuse purchases a garbage truck to be used to collect garbage off of town streets.
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7. The Village of Grassy Knoll mows the grass along a state highway located in the village.
8. Level City grades roads in a privately-maintained subdivision in the city.

The answer is that (1.), (2.), (3.), and (4.) are all projects for which Powell Bill funds may be expended. The remaining projects may not be funded with Powell Bill monies. Project (5.) is not an authorized expenditure according to the **DOT Guidance**. The problem with project (6.) is that counties do not receive Powell Bill funds. Project (7.) is not an authorized expenditure according to the **DOT Guidance**. And project (8.) is not authorized because the roads are not public.



Links

- canons.sog.unc.edu/state-funding-for-municipal-road-projects-powell-bill-funds/potholes/
- www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H817v10.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-296.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.1.html
- www.ncleg.net/Sessions/2011/Bills/House/PDF/H200v9.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.2A.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_136/GS_136-41.3.html
- www.ncdot.gov/programs/Powell_Bill/