

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 2023

Short Title: Gastonia Powell Bill Exception.

(Local)

Sponsors: Representatives Dickson, Gamble (Co-Sponsors); and Joye.

Referred to: Appropriations.

June 6, 1994

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF GASTONIA TO USE POWELL BILL FUNDS
FOR SIDEWALKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-41.3 reads as rewritten:

"§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns 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, highways, or for the planning, construction, and maintenance of sidewalks~~ along public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each

1 municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a
2 statement under oath with the Secretary of Transportation showing in detail the
3 expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the
4 preceding year and the balance on hand.

5 No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be
6 permitted to accumulate for a period greater than permitted by this section. Interest on
7 accumulated funds shall be used only for the purposes permitted by the provisions of
8 G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum
9 of the past 10 allocations made, shall have an amount equal to such excess deducted
10 from the next allocation after receipt of the report required by this section. Such
11 deductions shall be carried over and added to the amount to be allocated to
12 municipalities for the following year.

13 In the discretion of the local governing body of each municipality receiving funds by
14 virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of
15 Transportation to do the work of maintenance, repair, construction, reconstruction,
16 widening or improving the streets in such municipality; or it may let contracts in the
17 usual manner as prescribed by the General Statutes to private contractors for the
18 performance of said street work; or may undertake the work by force account. The
19 Department of Transportation within its discretion is hereby authorized to enter into
20 contracts with municipalities for the purpose of maintenance, repair, construction,
21 reconstruction, widening or improving streets of municipalities. And the Department of
22 Transportation in its discretion may contract with any city or town which it deems
23 qualified and equipped so to do that the city or town shall do the work of maintaining,
24 repairing, improving, constructing, reconstructing, or widening such of its streets as
25 form a part of the State highway system.

26 In the case of each eligible municipality, as defined in G.S. 136-41.2, having a
27 population of less than 5,000, the Department of Transportation shall upon the request
28 of such municipality made by official action of its governing body, on or prior to June 1,
29 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for
30 the years thereafter do such street construction, maintenance, or improvement on
31 nonsystem streets as the municipality may request within the limits of the current or
32 accrued payments made to the municipality under the provisions of G.S. 136-41.1.

33 In computing the costs, the Department of Transportation may use the same rates for
34 equipment, rental, labor, materials, supervision, engineering and other items, which the
35 Department of Transportation uses in making charges to one of its own department or
36 against its own department, or the Department of Transportation may employ a
37 contractor to do the work, in which case the charges will be the contract cost plus
38 engineering and inspection. The municipality is to specify the location, extent, and type
39 of the work to be done, and shall provide the necessary rights-of-way, authorization for
40 the removal of such items as poles, trees, water and sewer lines as may be necessary,
41 holding the Department of Transportation free from any claim by virtue of such items of
42 cost and from such damage or claims as may arise therefrom except from negligence on
43 the part of the Department of Transportation, its agents, or employees.

1 If a municipality elects to bring itself under the provisions of the two preceding
2 paragraphs, it shall enter into a two-year contract with the Department of Transportation
3 and if it desires to dissolve the contract at the end of any two-year period it shall notify
4 the Department of Transportation of its desire to terminate said contract on or before
5 April 1 of the year in which such contract shall expire; otherwise, said contract shall
6 continue for an additional two-year period, and if the municipality elects to bring itself
7 under the provisions of the two preceding paragraphs and thereafter fails to pay its
8 account to the Department of Transportation for the fiscal year ending June 30, by
9 August 1 following the fiscal year, then the Department of Transportation shall apply
10 the said municipality's allocation under G.S. 136-41.1 to this account until said account
11 is paid and the Department of Transportation shall not be obligated to do any further
12 work provided for in the two preceding paragraphs until such account is paid.

13 Section 143-129 of the General Statutes relating to the procedure for letting
14 of public contracts shall not be applicable to contracts undertaken by any municipality
15 with the Department of Transportation in accordance with the provisions of the three
16 preceding paragraphs.

17 The Department of Transportation is authorized to apply a municipality's share of
18 funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the
19 following accounts of the municipality with the said Department of Transportation,
20 which the municipality fails to pay:

- 21 (1) Cost sharing agreements for right-of-way entered into pursuant to G.S.
22 136-66.3, but not to exceed ten percent (10%) of any one year's
23 allocation until the debt is repaid,
- 24 (2) The cost of relocating municipally owned waterlines and other
25 municipally owned utilities on a State highway project which is the
26 responsibility of the municipality,
- 27 (3) For any other work performed for the municipality by the Department
28 of Transportation or its contractor by agreement between the
29 Department of Transportation and the municipality, and
- 30 (4) For any other work performed that was made necessary by the
31 construction, reconstruction or paving of a highway on the State
32 highway system for which the municipality is legally responsible."

33 Sec. 2. G.S. 136-66.1(4) reads as rewritten:

- 34 "(4) If the governing body of any municipality shall determine that it is in
35 the best interest of its citizens to do so, it may expend its funds for the
36 purpose of making the following improvements on streets within its
37 corporate limits which form a part of the State highway system:
- 38 a. Construction of curbing and guttering;
 - 39 b. Adding of lanes for automobile parking;
 - 40 c. Constructing street drainage facilities which may by reasonable
41 engineering estimates be attributable to that amount of surface
42 water collected upon and flowing from municipal streets which
43 do not form a part of the State highway system;

- 1 d. Constructing sidewalks; ~~provided, that no part of the funds~~
2 allocated to the municipality by G.S. 136-41.1 may be
3 ~~expended for sidewalk purposes.~~ sidewalks; or
4 e. Intersection improvements, if the governing body determines
5 that such improvements will decrease traffic congestion,
6 improve safety conditions, and improve air quality.

7 In exercising the authority granted herein, the municipality may,
8 with the consent of the Department of Transportation, perform the
9 work itself, or it may enter into a contract with the Department of
10 Transportation to perform such work. Any work authorized by this
11 subdivision shall be financed entirely by the municipality and be
12 approved by the Department of Transportation.

13 The cost of any work financed by a municipality pursuant to this
14 subdivision may be assessed against the properties abutting the street
15 or highway upon which such work was performed in accordance with
16 the procedures of either Article 10 of Chapter 160A of the General
17 Statutes or any charter provisions or local acts applicable to the
18 particular municipality."

19 Sec. 3. This act applies only to the City of Gastonia in Gaston County.

20 Sec. 4. This act is effective upon ratification and applies to allocations made
21 under G.S. 136-41.1 and G.S. 136-41.2 before or after that date.