

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 644
Committee Substitute Favorable 6/18/01
Committee Substitute # 2 Favorable 8/13/01

Short Title: Toll Road and Bridge Authority Created.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC TOLL ROADS AND BRIDGES IN NORTH
CAROLINA AND THE CREATION OF A TURNPIKE AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6F of Chapter 136 of the General Statutes is repealed.

SECTION 2. Chapter 136 of the General Statutes is amended by adding a
new Article to read:

"Article 6H.

"Public Toll Roads and Bridges.

"§ 136-89.180. Legislative findings.

The General Assembly finds that the existing State road system is becoming increasingly congested and overburdened with traffic in many areas of the State; that the sharp surge of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate road improvements; and that an adequate answer to this challenge will require the State to be innovative and utilize several new approaches to transportation improvements in North Carolina.

Toll funding of highway construction is feasible in North Carolina and can contribute to addressing the critical transportation needs of the State. A toll program can speed the implementation of needed transportation improvements by funding some projects with tolls.

"§ 136-89.181. Definitions.

The following definitions apply to this Article:

(1) "Turnpike Authority" means the public agency created by this Article.

(2) "Turnpike Authority Board" means the governing board of the Turnpike Authority.

(3) "Turnpike Project" means any part of the State highway system, including primary and secondary roads, bridges, tunnels, and feeder roads and approaches.

1 (4) "Turnpike System" means collectively all Turnpike Projects developed
2 under this Article.

3 **§ 136-89.182. North Carolina Turnpike Authority.**

4 (a) Creation. – There is created a body politic and corporate to be known as the
5 "North Carolina Turnpike Authority." The Authority is constituted as a public agency,
6 and the exercise by the Authority of the powers conferred by this Article in the
7 construction, operation, and maintenance of toll roads and bridges shall be deemed and
8 held to be the performance of an essential governmental function.

9 (b) Administrative Placement. – The Authority shall be located within the
10 Department of Transportation for administrative purposes but shall exercise all of its
11 powers independently of the Department of Transportation except as otherwise
12 specified in this Article.

13 (c) Board of Directors. – The North Carolina Turnpike Authority shall be
14 governed by a seven-member Board of Directors consisting of the Secretary of
15 Transportation and six members appointed by the Governor. One Authority member
16 shall reside in each of the seven regions of the State specified in G.S. 136-17.2A(a). The
17 Chair of the Authority shall be selected by the Board of Directors.

18 (d) Board of Transportation Members. – Not more than two members of the
19 North Carolina Board of Transportation may serve as members of the Authority Board.

20 (e) Staggered Terms. – The initial appointments by the Governor to the Authority
21 Board shall consist of three members appointed to terms ending January 14, 2003, and
22 three members appointed to terms ending January 14, 2005. The initial member of the
23 Board designated by the Secretary of Transportation shall serve a term ending January
24 14, 2005. Thereafter, at the expiration of each stipulated term of office, all appointments
25 shall be to a term of four years from the date of the expiration of the term.

26 (f) Vacancies. – All members of the Authority Board shall remain in office until
27 their successors are appointed and qualify. The Governor may appoint a member to
28 serve out the unexpired term of any member appointed by the Governor.

29 (g) Removal of Board Members. – Each member of the Authority Board
30 appointed by the Governor, notwithstanding subsection (e) of this section, shall serve at
31 the pleasure of the Governor. The Chair of the Authority serves at the pleasure of the
32 Authority Board.

33 (h) Conflicts of Interest, Ethics, Etc. – Members of the Authority Board shall be
34 subject to provisions of G.S. 136-13, 136-13.1, and 136-14.

35 (i) Compensation. – The appointed members of the Authority Board shall
36 receive no salary for their services but shall be entitled to receive per diem and travel
37 allowances in accordance with the provisions of G.S. 138-5 and G.S. 138-6 as
38 appropriate.

39 (j) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with
40 respect to the calling of meetings, quorums, voting procedures, the keeping of records,
41 and other organizational, staffing, and administrative matters as the Authority Board
42 may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall

1 be submitted to the Board of Transportation and the Joint Legislative Transportation
2 Oversight Committee for review and comment at least 45 days prior to adoption by the
3 Authority Board.

4 (k) Executive Director and Administrative Employees. – The Authority Board
5 shall appoint an Executive Director, whose salary shall be fixed by the Authority, to
6 serve at its pleasure. The Executive Director shall be the Authority's chief
7 administrative officer and shall be responsible for the daily administration of the toll
8 roads and bridges constructed, maintained, or operated pursuant to this Article. The
9 Executive Director or his designee shall appoint, employ, dismiss, and within the limits
10 approved by the Authority Board, fix the compensation of administrative employees as
11 the Executive Director deems necessary to carry out this Article. The Authority shall
12 report the hiring of all administrative employees to the Joint Legislative Transportation
13 Oversight Committee within 30 days of the date of employment.

14 (l) Office. – The offices of the Authority may be housed in one or more facilities
15 of the Department of Transportation.

16 **"§ 136-89.183. Powers of the Authority.**

17 (a) The Authority shall have all of the powers necessary to execute the provisions
18 of this Article including the following:

- 19 (1) The powers of a corporate body, including the power to sue and be
20 sued, to make contracts, to adopt and use a common seal, and to alter
21 the adopted seal as needed.
- 22 (2) To study, plan, develop, design, establish, purchase, construct, operate,
23 and maintain a Turnpike Project, either on its own initiative or at the
24 request of the Board of Transportation.
- 25 (3) To rent, lease, purchase, acquire, own, encumber, dispose of, or
26 mortgage real or personal property, including the power to acquire
27 property by eminent domain pursuant to G.S. 136-89.184.
- 28 (4) To fix, revise, charge, and collect tolls and fees for the use of the
29 Turnpike Projects.
- 30 (5) To issue bonds or notes of the Authority as provided in this Article.
- 31 (6) To establish, construct, purchase, maintain, equip, and operate any
32 structure or facilities associated with the Turnpike System.
- 33 (7) To pay all necessary costs and expenses in the formation, organization,
34 administration, and operation of the Authority.
- 35 (8) To apply for, accept, and administer loans and grants of money or real
36 or personal property from any federal agency, from the State or its
37 political subdivisions, local government, or from any other public or
38 private sources available.
- 39 (9) To adopt, alter, or repeal its own bylaws or rules implementing the
40 provisions of this Article, in accordance with the review and comment
41 requirements of G.S. 136-89.182(j).

- 1 (10) To utilize employees of the Department of Transportation; to contract
2 for the services of consulting engineers, architects, attorneys, real
3 estate counselors, appraisers, and other consultants; to employ
4 administrative staff as may be required in the judgment of the
5 Authority; and to fix and pay fees or compensation to the Department,
6 contractors, and administrative employees from funds available to the
7 Authority.
- 8 (11) To select and retain financial consultants, underwriters, and bond
9 attorneys in connection with the issuance of any bonds and to pay for
10 their services out of the proceeds of any bond issue for which their
11 services were performed.
- 12 (12) To execute financing agreements, security documents, and other
13 instruments necessary in exercising its power under this Article.
- 14 (13) To receive and use appropriations from the State.
- 15 (14) To adopt procedures to govern its procurement of services and
16 delivery of Turnpike Projects.
- 17 (15) To perform or procure any portion of services required by the
18 Authority.
- 19 (16) To use officers, employees, agents, and facilities of the Department of
20 Transportation for the purposes and upon the terms as may be mutually
21 agreeable.
- 22 (17) To contract for the construction, maintenance, and operation of a
23 Turnpike Project.
- 24 (18) To enter into partnership agreements, including agreements for the
25 issuance of obligations by a nonprofit corporation in compliance with
26 the provisions of federal Rev. Rul. 63-20, agreements with political
27 subdivisions of the State, and agreements with private entities, and to
28 expend such funds as it deems necessary, pursuant to such an
29 agreement, for the purpose of financing the cost of acquiring,
30 constructing, equipping, operating, or maintaining any Turnpike
31 Project.

32 (b) To execute the powers provided in subsection (a) of this section, the
33 Authority shall determine its policies by majority vote of the members of the Authority
34 present and voting, a quorum having been established. Once a policy is established, the
35 Authority Board shall communicate it to the Executive Director or the Director's
36 designee, who shall have the sole and exclusive authority to execute the policy of the
37 Authority. No member of the Authority Board shall have the responsibility or authority
38 to give operational directives to any employee of the Authority other than the Executive
39 Director or the Director's designee.

40 **"§ 136-89.184. Acquisition of real property.**

41 (a) General. – The Authority may acquire public or private real property by
42 purchase, negotiation, gift, or devise, or condemnation that it determines to be necessary

1 and convenient for the construction, expansion, enlargement, extension, improvement,
2 or operation of a Turnpike Project. When the Authority acquires real property owned by
3 the State, the Secretary of the Department of Administration shall execute and deliver to
4 the Authority a deed transferring fee simple title to the property to the Authority.

5 (b) Condemnation. – To exercise the power of eminent domain, the Authority
6 shall commence a proceeding in its name and shall follow the procedure set forth in
7 Article 9 of Chapter 136 of the General Statutes.

8 **"§ 136-89.185. Taxation of property of Authority.**

9 Property owned by the Authority is exempt from taxation in accordance with Section
10 2 of Article V of the North Carolina Constitution.

11 **"§ 136-89.186. Audit.**

12 The operations of the Authority shall be subject to the oversight of the State Auditor
13 pursuant to Article 5A of Chapter 147 of the General Statutes.

14 **"§ 136-89.187. Conversion of free highways prohibited.**

15 The Authority Board is prohibited from converting any segment of the non-tolled
16 State highway system to a toll facility.

17 **"§ 136-89.188. Use of revenues.**

18 (a) Revenues derived from Turnpike Projects authorized under this Article shall
19 only be used for Authority administration costs; Turnpike Project development,
20 construction, operation, and maintenance; and Turnpike Project debt service or other
21 State highway construction and maintenance in accordance with subsection (d) of this
22 section.

23 (b) The Authority may use up to one hundred percent (100%) of the revenue
24 derived from a Turnpike Project for debt service on that project or for a combination of
25 debt service, operation, and maintenance of the Turnpike Project.

26 (c) The Authority shall use not more than ten percent (10%) of total revenue
27 derived from all Turnpike Projects for Authority administration costs. The Authority
28 shall endeavor to use no more than five percent (5%) of total revenue derived from all
29 Turnpike Projects for Authority administration costs.

30 (d) If not required for debt service, operation, and maintenance of the Turnpike
31 Project, as provided in subsection (b) of this section, the Authority shall use at least
32 twenty percent (20%) of the excess revenue derived in each fiscal year from a Turnpike
33 Project for other highway construction and maintenance in the next fiscal year in the
34 county in which the Turnpike Project is located.

35 (e) If not required for debt service, operation, and maintenance of the Turnpike
36 Project, as provided in subsection (b) of this section, the Authority shall use at least
37 seventy percent (70%) of the excess revenue derived in each fiscal year from a Turnpike
38 Project for necessary expansion of the capacity of the Turnpike Project or, if no
39 expansion is necessary, for other Turnpike Projects in the same region, as defined in
40 G.S. 136-17.2A(a).

41 **"§ 136-89.189. Turnpike Authority revenue bonds.**

1 (a) The Authority Board, by the adoption of a bond resolution, and with the
2 approval of the State Treasurer and the Local Government Commission, may authorize
3 the issuance of bonds to pay all or a portion of the cost of a Turnpike Project or to
4 refund any previously issued bonds.

5 (b) The Authority may sell bonds at public or private sale in a manner and for a
6 price as the Local Government Commission shall determine to be in the best interest of
7 the Authority.

8 (c) The Authority may sell bonds secured by a lien on the revenues of the
9 Turnpike System or a Turnpike Project.

10 (d) The Authority may sell bonds secured by lien of revenues subordinate to the
11 lien of other bonds.

12 (e) The Authority may execute a revenue bond indenture or other similar
13 agreement with bondholders in a form and with such covenants and provisions it finds
14 to be in the best interest of the Authority.

15 **"§ 136-89.190. Payment of bonds; State credit not pledged.**

16 Bonds issued by the Authority under this Article shall not be deemed to constitute a
17 debt of the State of North Carolina or a pledge of the full faith and credit of the State.

18 **"§ 136-89.191. Cost participation by Department of Transportation.**

19 The Department of Transportation may participate in the cost of preconstruction
20 activities, construction, maintenance, or operation of a Turnpike Project.

21 **"§ 136-89.192. Equity distribution formula.**

22 Only those funds applied to a Turnpike Project from the State Highway Fund, State
23 Highway Trust Fund, or federal-aid funds that might otherwise be used for other
24 roadway projects within the State, and are otherwise already subject to the distribution
25 formula under G.S. 136-17.2A, shall be included in the distribution formula.

26 Other revenue from the sale of bonds, project loans, or toll collections shall not be
27 included in the distribution formula.

28 **"§ 136-89.193. Annual plan of work; annual and quarterly reports.**

29 (a) Annual Plan of Work. – The Authority shall annually develop a plan of work
30 for the fiscal year, describing the activities and projects to be undertaken, accompanied
31 by a budget. This annual plan of work shall be subject to the concurrence of the Board
32 of Transportation.

33 (b) Annual Reports. – The Authority shall, promptly following the close of each
34 fiscal year, submit an annual report of its activities for the preceding year to the
35 Governor, the General Assembly, and the Department of Transportation. Each report
36 shall be accompanied by an audit of its books and accounts.

37 (c) Quarterly Reports. – The Authority shall submit quarterly reports to the Joint
38 Legislative Transportation Oversight Committee. The reports shall summarize the
39 Authority's activities during the quarter and contain any information about the
40 Authority's activities that is requested by the Committee.

41 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

1 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a
2 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in
3 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State
4 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and
5 duties on the Turnpike System as on any other highway or public vehicular area.

6 (b) Contracting. – For the purposes of implementing this Article, the Authority
7 shall solicit competitive proposals for the construction of Turnpike Projects in
8 accordance with the provision of Article 2 of this Chapter. Contracts for professional
9 engineering services and other kinds of professional or specialized services necessary in
10 connection with construction of Turnpike Projects shall be solicited in accordance with
11 procedures utilized by the Department of Transportation.

12 (c) Alternative Contracting Methods. – Notwithstanding the provisions of
13 subsection (b) of this section, the Authority may authorize the use of alternative
14 contracting methods if:

15 (1) The authorization applies to an individual project;

16 (2) The Authority has concluded, and documented in writing, that the
17 alternative contracting method is necessary because the project cannot
18 be completed utilizing the procedures of Article 2 of this Chapter
19 within the necessary time frame or available funding or for other
20 reasons the Authority deems in the public interest;

21 (3) The Authority has provided, to the extent possible, for the solicitation
22 of competitive proposals prior to awarding a contract; and

23 (4) The approved alternative contracting method provides for reasonable
24 compliance with the disadvantaged business participation goals of G.S.
25 136-28.4.

26 **"§ 136-89.195. Internet report of funds expended.**

27 The Department shall publish and update annually on its Internet web site a record
28 of all expenditures of the Turnpike Authority for highway construction, maintenance,
29 and administration. The record shall include a total expenditure amount by county. For
30 each Turnpike Project, the record shall include a readily identifiable project name or
31 location, the nature of the project, the amount of the project, the contractor for the
32 project, the date of project letting, and the actual or expected project completion date.

33 **"§ 136-89.196. Removal of tolls.**

34 The Authority shall remove tolls from a Turnpike Project when all revenue bonds
35 issued to fund the project have been repaid and satisfied in full, an adequate fund has
36 been established to maintain the Turnpike Project, and the Authority determines that no
37 additional capacity expansion is needed on the Turnpike Project."

38 **SECTION 3.** Chapter 20 of the General Statutes is amended to add a new
39 section to read:

40 **"§ 20-158.2. Control of vehicles on Turnpike System.**

41 The North Carolina Turnpike Authority may control vehicles at appropriate places
42 by erecting traffic control devices to collect tolls."

1 **SECTION 4.** G.S. 136-176(b) reads as rewritten:

2 "(b) Funds in the Trust Fund are annually appropriated to the Department of
3 Transportation to be allocated and used as provided in this subsection. A sum, not to
4 exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust
5 Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year
6 by the Department for expenses to administer the Trust Fund. Operation and project
7 development costs of the North Carolina Turnpike Authority are eligible administrative
8 expenses under this subsection. The rest of the funds in the Trust Fund shall be allocated
9 and used as follows:

- 10 (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design,
11 and construct the projects of the Intrastate System described in G.S.
12 136-179 and to pay debt service on highway bonds and notes that are
13 issued under the State Highway Bond Act of 1996 and whose proceeds
14 are applied to these projects.
- 15 (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and
16 construct the urban loops described in G.S. 136-180 and to pay debt
17 service on highway bonds and notes that are issued under the State
18 Highway Bond Act of 1996 and whose proceeds are applied to these
19 urban loops.
- 20 (3) Six and one-half percent (6.5%) to supplement the appropriation to
21 cities for city streets under G.S. 136-181.
- 22 (4) Six and one-half percent (6.5%) for secondary road construction as
23 provided in G.S. 136-182 and to pay debt service on highway bonds
24 and notes that are issued under the State Highway Bond Act of 1996
25 and whose proceeds are applied to secondary road construction.

26 The Department must administer funds allocated under subdivisions (1), (2), and (4)
27 of this subsection in a manner that ensures that sufficient funds are available to make
28 the debt service payments on bonds issued under the State Highway Bond Act of 1996
29 as they become due."

30 **SECTION 5.** G.S. 126-5(c1) is amended by adding a new subdivision to
31 read:

32 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions
33 of this Chapter shall not apply to:

34 ...

35 (21) Employees of the North Carolina Turnpike Authority."

36 **SECTION 6.** G.S. 120-123 is amended by adding a new subdivision to read:
37 "**§ 120-123. Service by members of the General Assembly on certain boards and**
38 **commissions.**

39 No member of the General Assembly may serve on any of the following boards or
40 commissions:

41 ...

42 (75) The North Carolina Turnpike Authority."

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SECTION 7. This act is effective when it becomes law.