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Short Title: Toll Road and Bridge Authority Created.

(Public)

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Sponsors:

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Referred to:

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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**SECTION 1.** Article 6F of Chapter 136 of the General Statutes is repealed.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 project included in the Transportation Improvement Program that is part of the State highway system,

1 including primary and secondary roads, bridges, tunnels, and feeder  
2 roads and approaches.

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

5 **"§ 136-89.182. North Carolina Turnpike Authority.**

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

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

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

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

22 (e) Staggered Terms. – The initial appointments by the Governor to the Authority  
23 Board shall consist of three members appointed to terms ending January 14, 2003, and  
24 three members appointed to terms ending January 14, 2005. The initial member of the  
25 Board designated by the Secretary of Transportation shall serve a term ending January  
26 14, 2005. Thereafter, at the expiration of each stipulated term of office, all appointments  
27 shall be to a term of four years from the date of the expiration of the term.

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

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

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

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

41 (j) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with  
42 respect to the calling of meetings, quorums, voting procedures, the keeping of records,

1 and other organizational, staffing, and administrative matters as the Authority Board  
2 may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall  
3 be submitted to the Board of Transportation and the Joint Legislative Transportation  
4 Oversight Committee for review and comment at least 45 days prior to adoption by the  
5 Authority Board.

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

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

18 **"§ 136-89.183. Powers of the Authority.**

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

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

- 1           (9) To adopt, alter, or repeal its own bylaws or rules implementing the  
2           provisions of this Article, in accordance with the review and comment  
3           requirements of G.S. 136-89.182(j).
- 4           (10) To utilize employees of the Department of Transportation; to contract  
5           for the services of consulting engineers, architects, attorneys, real  
6           estate counselors, appraisers, and other consultants; to employ  
7           administrative staff as may be required in the judgment of the  
8           Authority; and to fix and pay fees or compensation to the Department,  
9           contractors, and administrative employees from funds available to the  
10           Authority.
- 11           (11) To select and retain financial consultants, underwriters, and bond  
12           attorneys in connection with the issuance of any bonds and to pay for  
13           their services out of the proceeds of any bond issue for which their  
14           services were performed.
- 15           (12) To execute financing agreements, security documents, and other  
16           instruments necessary in exercising its power under this Article.
- 17           (13) To receive and use appropriations from the State.
- 18           (14) To adopt procedures to govern its procurement of services and  
19           delivery of Turnpike Projects.
- 20           (15) To perform or procure any portion of services required by the  
21           Authority.
- 22           (16) To use officers, employees, agents, and facilities of the Department of  
23           Transportation for the purposes and upon the terms as may be mutually  
24           agreeable.
- 25           (17) To contract for the construction, maintenance, and operation of a  
26           Turnpike Project.
- 27           (18) To enter into partnership agreements, including agreements for the  
28           issuance of obligations by a nonprofit corporation in compliance with  
29           the provisions of federal Rev. Rul. 63-20, agreements with political  
30           subdivisions of the State, and agreements with private entities, and to  
31           expend such funds as it deems necessary, pursuant to such an  
32           agreement, for the purpose of financing the cost of acquiring,  
33           constructing, equipping, operating, or maintaining any Turnpike  
34           Project.
- 35           (b) To execute the powers provided in subsection (a) of this section, the  
36           Authority shall determine its policies by majority vote of the members of the Authority  
37           present and voting, a quorum having been established. Once a policy is established, the  
38           Authority Board shall communicate it to the Executive Director or the Director's  
39           designee, who shall have the sole and exclusive authority to execute the policy of the  
40           Authority. No member of the Authority Board shall have the responsibility or authority  
41           to give operational directives to any employee of the Authority other than the Executive  
42           Director or the Director's designee.

1 **"§ 136-89.184. Acquisition of real property.**

2 (a) General. – The Authority may acquire public or private real property by  
3 purchase, negotiation, gift, or devise, or condemnation that it determines to be necessary  
4 and convenient for the construction, expansion, enlargement, extension, improvement,  
5 or operation of a Turnpike Project. When the Authority acquires real property owned by  
6 the State, the Secretary of the Department of Administration shall execute and deliver to  
7 the Authority a deed transferring fee simple title to the property to the Authority.

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

11 **"§ 136-89.185. Taxation of property of Authority.**

12 Property owned by the Authority is exempt from taxation in accordance with Section  
13 2 of Article V of the North Carolina Constitution.

14 **"§ 136-89.186. Audit.**

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

17 **"§ 136-89.187. Conversion of free highways prohibited.**

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

20 **"§ 136-89.188. Use of revenues.**

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

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

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

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

38 (e) If not required for debt service, operation, and maintenance of the Turnpike  
39 Project, as provided in subsection (b) of this section, the Authority shall use at least  
40 seventy percent (70%) of the excess revenue derived in each fiscal year from a Turnpike  
41 Project for necessary expansion of the capacity of the Turnpike Project or, if no

1 expansion is necessary, for other Turnpike Projects in the same region, as defined in  
2 G.S. 136-17.2A(a).

3 **"§ 136-89.189. Turnpike Authority revenue bonds.**

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

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

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

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

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

18 **"§ 136-89.190. Payment of bonds; State credit not pledged.**

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

21 **"§ 136-89.191. Cost participation by Department of Transportation.**

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

24 **"§ 136-89.192. Equity distribution formula.**

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

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

31 **"§ 136-89.193. Annual plan of work; annual and quarterly reports.**

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

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

40 (c) Quarterly Reports. – The Authority shall submit quarterly reports to the Joint  
41 Legislative Transportation Oversight Committee. The reports shall summarize the

1 Authority's activities during the quarter and contain any information about the  
2 Authority's activities that is requested by the Committee.

3 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

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

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

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

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

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

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

26 (4) The approved alternative contracting method provides for reasonable  
27 compliance with the disadvantaged business participation goals of G.S.  
28 136-28.4.

29 **"§ 136-89.195. Internet report of funds expended.**

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

36 **"§ 136-89.196. Removal of tolls.**

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

41 **"§ 136-89.197. Maintenance of non-toll routes.**

1        The Department shall maintain an alternate, non-toll primary route corresponding to  
2 each toll road project constructed pursuant to this Article."

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

5 **"§ 20-158.2. Control of vehicles on Turnpike System.**

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

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

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

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

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

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

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

41                ...

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

1           **SECTION 6.** G.S. 120-123 is amended by adding a new subdivision to read:  
2   "**§ 120-123. Service by members of the General Assembly on certain boards and**  
3           **commissions.**

4       No member of the General Assembly may serve on any of the following boards or  
5   commissions:

6           ...

7           (75) The North Carolina Turnpike Authority."

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