

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 701*

Short Title: Toll Road and Bridge Authority Created. (Public)

Sponsors: Senators Gulley; Carpenter, Hoyle, Kerr, Lucas, Rand, and Rucho.

Referred to: Transportation.

March 26, 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 Article 6F of Chapter 136 of the General Statutes is repealed.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, feeder roads and approaches, and converted free highways and other facilities.

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, who shall serve as chairman of the Authority Board, and six members
16 who shall be appointed by the Governor, at least three of whom shall reside in
17 metropolitan areas.

18 (d) Board of Transportation Members. -- Not more than two members of the
19 North Carolina Board of Transportation, in addition to the Secretary of Transportation,
20 may serve as members of the Authority Board.

21 (e) Staggered Terms. -- The initial appointments by the Governor to the
22 Authority Board shall consist of two members appointed to terms ending January 14,
23 2003, two members appointed to terms ending January 14, 2005, and two members
24 appointed to terms ending January 14, 2007.

25 Thereafter, at the expiration of each stipulated term of office, all appointments shall
26 be to a term of six years from the date of the expiration of the term.

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

30 (g) Removal of Board Members. -- Each appointed member of the Authority
31 Board, notwithstanding subsection (e) of this section, shall serve at the pleasure of the
32 Governor.

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 bylaws with respect to the calling
40 of meetings, quorums, voting procedures, the keeping of records, and other
41 organizational, staffing, and administrative matters as the Authority Board may
42 determine.

1 (k) Executive Director and Other Employees. -- The Authority Board shall
2 appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at
3 its pleasure.

4 The Executive Director shall be the Authority's chief administrative officer and shall
5 be responsible for the daily administration of the toll roads and bridges constructed,
6 maintained, or operated pursuant to this Article.

7 The Executive Director or his designee shall appoint, employ, dismiss, and within
8 the limits approved by the Authority Board, fix the compensation of such other
9 employees as he deems necessary to carry out this Article.

10 (l) Office. -- The offices of the Authority may be housed in one or more facilities
11 of the Department of Transportation.

12 **"§ 136-89.183. Powers of the Authority.**

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

15 (1) The powers of a corporate body, including the power to sue and be
16 sued, to make contracts, to adopt and use a common seal, and to alter
17 the adopted seal as needed.

18 (2) To study, plan, develop, design, establish, purchase, construct, operate,
19 and maintain a Turnpike Project, either on its own initiative or at the
20 request of the Board of Transportation.

21 (3) To rent, lease, purchase, acquire, own, encumber, dispose of, or
22 mortgage real or personal property, including the power to acquire
23 property by eminent domain pursuant to G.S. 136-89.184.

24 (4) To fix, revise, charge, and collect tolls and fees for the use of the
25 Turnpike Authority.

26 (5) To issue bonds or notes of the Authority as provided in this Article.

27 (6) To establish, construct, purchase, maintain, equip, and operate any
28 structure or facilities associated with the Turnpike System.

29 (7) To pay all necessary costs and expenses in the formation, organization,
30 administration, and operation of the Authority.

31 (8) To apply for, accept, and administer loans and grants of money or real
32 or personal property from any federal agency, from the State or its
33 political subdivisions, local government, or from any other public or
34 private sources available.

35 (9) To adopt, alter, or repeal its own bylaws or rules implementing the
36 provisions of this Article.

37 (10) To employ consulting engineers, architects, attorneys, real estate
38 counselors, appraisers, and other consultants and employees as may be
39 required in the judgment of the Authority and to fix and pay their
40 compensation from funds available to the Authority.

41 (11) To select and retain financial consultants, underwriters, and bond
42 attorneys in connection with the issuance of any bonds and to pay for
43 their services out of the proceeds of any bond issue for which their
44 services were performed.

- 1 (12) To execute financing agreements, security documents, and other
2 instruments necessary in exercising its power under this Article.
3 (13) To receive and use appropriations from the State.
4 (14) To adopt procedures to govern its procurement of services and
5 delivery of Turnpike Projects.
6 (15) To perform or procure any portion of services required by the
7 Authority.
8 (16) To use officers, employees, agents, and facilities of the Department of
9 Transportation for the purposes and upon the terms as may be mutually
10 agreeable.
11 (17) To contract for the construction, maintenance, and operation of a
12 Turnpike Project.
13 (18) To expend such funds as it deems necessary to enter into partnership
14 agreements with political subdivisions of the State, or with private
15 entities, for the purpose of financing the cost of acquiring,
16 constructing, equipping, operating, or maintaining any Turnpike
17 Project.

18 (b) To execute the powers provided in subsection (a) of this section, the
19 Authority shall determine its policies by majority vote of the members of the Authority
20 present and voting, a quorum having been established. Once a policy is established, the
21 Authority Board shall communicate it to the Executive Director, who shall have the sole
22 and exclusive authority to execute the policy of the Authority. No member of the
23 Authority Board shall have the responsibility or authority to give operational directives
24 to any employee of the Authority other than the Executive Director.

25 **"§ 136-89.184. Acquisition of real property.**

26 (a) General. -- The Authority may acquire public or private real property by
27 purchase, negotiation, gift, or devise, or condemnation that it determines to be necessary
28 and convenient for the construction, expansion, enlargement, extension, improvement,
29 or operation of a Turnpike Project. When the Authority acquires real property owned by
30 the State, the Secretary of the Department of Administration shall execute and deliver to
31 the Authority a deed transferring fee simple title to the property to the Authority.

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

35 **"§ 136-89.185. Taxation of property of Authority.**

36 Property owned by the Authority is exempt from taxation in accordance with Section
37 2 of Article V of the North Carolina Constitution.

38 **"§ 136-89.186. Audit.**

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

41 **"§ 136-89.187. Conversion of free highways.**

42 The Authority Board, with the concurrence of the Board of Transportation, may
43 convert a segment of the non-tolled State highway system to a toll facility if that

1 conversion is the most feasible and economic means to accomplish a desired expansion
2 or extension improvements to the State highway system.

3 **"§ 136-89.188. Tolls on converted highways.**

4 The Authority Board may impose a toll for travel over existing non-tolled State
5 highways if converted to a toll facility consistent with this Article.

6 **"§ 136-89.189. Use of surplus revenues.**

7 The Authority Board may authorize the use of surplus revenue of the Turnpike
8 System to pay the costs of other Turnpike Projects or for any other lawful purpose
9 consistent with this Article.

10 **"§ 136-89.190. Lease, sale, or conveyance of Turnpike Projects.**

11 The Authority may lease, sell, grant a concession or franchise, or otherwise convey
12 all or a portion of the Turnpike System to another governmental or private entity, if such
13 conveyance is in the best interest of the State.

14 **"§ 136-89.191. Turnpike Authority revenue bonds.**

15 (a) The Authority Board, in cooperation with the Department of State Treasurer,
16 by the adoption of a bond resolution, may authorize the issuance of bonds to pay all or a
17 portion of the cost of a Turnpike Project or to refund any previously issued bonds.

18 (b) The Authority may sell bonds at public or private sale in a manner and for a
19 price it determined to be in the best interest of the Authority.

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

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

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

27 **"§ 136-89.192. Payment of bonds; State credit not pledged.**

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

30 **"§ 136-89.193. Cost participation by Department of Transportation.**

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

33 **"§ 136-89.194. Equity distribution formula.**

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

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

40 **"§ 136-89.195. Annual plan of work; annual and quarterly reports.**

41 (a) Annual Plan of Work. -- The Authority shall annually develop a plan of work
42 for the fiscal year, describing the activities and projects to be undertaken, accompanied
43 by a budget. This annual plan of work shall be subject to the concurrence of the Board
44 of Transportation.

1 **(b) Annual Reports.** -- The Authority shall, promptly following the close of each
2 fiscal year, submit an annual report of its activities for the preceding year to the
3 Governor, the General Assembly, and the Department of Transportation. Each report
4 shall be accompanied by an audit of its books and accounts.

5 **(c) Quarterly Reports.** -- The Authority shall submit quarterly reports to the Joint
6 Legislative Transportation Oversight Committee. The reports shall summarize the
7 Authority's activities during the quarter and contain any information about the
8 Authority's activities that is requested by the Committee.

9 **"§ 136-89.196. Laws applicable to the Authority; exceptions.**

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

15 **(b) Purchases of Supplies, Material, Equipment, and Building Contracts.** -- For
16 the purposes of implementing this Article, the Authority is exempted from the
17 provisions of G.S. 136-28.1 and G.S. 136-28.4 and Articles 3 and 8 of Chapter 143 of
18 the General Statutes and all rules associated with those provisions."

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

21 **"§ 20-158.2. Control of vehicles on Turnpike System.**

22 The North Carolina Turnpike Authority may control vehicles at appropriate places
23 by erecting traffic control devices to collect tolls.

24 Failure to pay a proper toll, as evidenced by a traffic control photographic system or
25 other enforcement mechanism, is a noncriminal violation for which a civil penalty set
26 by the Turnpike Authority shall be assessed."

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

28 "(b) Funds in the Trust Fund are annually appropriated to the Department of
29 Transportation to be allocated and used as provided in this subsection. A sum, not to
30 exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust
31 Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year
32 by the Department for expenses to administer the Trust Fund. Operation of the North
33 Carolina Turnpike Authority is an eligible administrative expense under this subsection.
34 The rest of the funds in the Trust Fund shall be allocated and used as follows:

35 (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design,
36 and construct the projects of the Intrastate System described in G.S.
37 136-179 and to pay debt service on highway bonds and notes that are
38 issued under the State Highway Bond Act of 1996 and whose proceeds
39 are applied to these projects.

40 (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and
41 construct the urban loops described in G.S. 136-180 and to pay debt
42 service on highway bonds and notes that are issued under the State
43 Highway Bond Act of 1996 and whose proceeds are applied to these
44 urban loops.

1 (3) Six and one-half percent (6.5%) to supplement the appropriation to
2 cities for city streets under G.S. 136-181.

3 (4) Six and one-half percent (6.5%) for secondary road construction as
4 provided in G.S. 136-182 and to pay debt service on highway bonds
5 and notes that are issued under the State Highway Bond Act of 1996
6 and whose proceeds are applied to secondary road construction.

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

11 **SECTION 5.** G.S. 126-5 is amended by adding a new subdivision to read:

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

14 ...

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

16 **SECTION 6.** G.S. 120-123 is amended by adding a new subdivision to read:

17 "**§ 120-123. Service by members of the General Assembly on certain boards and**
18 **commissions.**

19 No member of the General Assembly may serve on any of the following boards or
20 commissions:

21 ...

22 (75) The North Carolina Turnpike Authority."

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