

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2002-133
HOUSE BILL 644

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. 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 and bridge 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) "Department" means the North Carolina Department of Transportation.
- (2) "Turnpike Authority" means the public agency created by this Article.
- (3) "Authority Board" means the governing board of the Turnpike Authority.
- (4) "Turnpike Project" means a road, bridge, or tunnel project planned, or planned and constructed, in accordance with the provisions of this Article.
- (5) "Turnpike System" means collectively all Turnpike Projects developed in accordance with the provisions of this Article.

"§ 136-89.182. North Carolina Turnpike Authority.

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

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

(c) Authority Board. – The North Carolina Turnpike Authority shall be governed by a nine-member Authority Board consisting of two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, two members appointed by the General

Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, four members appointed by the Governor, and the Secretary of Transportation. Each appointing authority shall appoint members who reside in diverse regions of the State. The Chair of the Authority shall be selected by the Authority Board.

(d) Board of Transportation Members. – No more than two members of the North Carolina Board of Transportation may serve as members of the Authority Board.

(e) Staggered Terms. – One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and three of the initial appointments of the Governor shall be appointed to terms ending January 14, 2007. One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the initial appointments of the Governor shall be appointed to terms ending January 14, 2005. The Secretary of Transportation shall serve as an ex officio voting member of the Board. Thereafter, at the expiration of each stipulated term of office, all appointments shall be to a term of four years from the date of the expiration of the term.

(f) Vacancies. – All members of the Authority Board shall remain in office until their successors are appointed and qualified. The original appointing authority may appoint a member to serve out the unexpired term of any member.

(g) Removal of Board Members. – Each member of the Authority Board, notwithstanding subsection (e) of this section, shall serve at the pleasure of the appointing authority. The Chair of the Authority serves at the pleasure of the Authority Board.

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

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

(j) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall be submitted to the Board of Transportation and the Joint Legislative Transportation Oversight Committee for review and comment at least 45 days prior to adoption by the Authority Board.

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

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

"§ 136-89.183. Powers of the Authority.

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

- (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.
- (2) To study, plan, develop, design, establish, purchase, construct, operate, and maintain three Turnpike Projects, either on its own initiative or at the request of the Board of Transportation. One of the Turnpike Projects shall be located in whole or in part in a county with a population equal to or greater than 650,000 persons, according to the latest decennial census, and one Turnpike Project shall be located in a county or counties that each have a population of fewer than 650,000 persons, according to the latest decennial census. A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project.
- (3) To study, plan, develop and undertake preliminary design work on three Turnpike Projects, in addition to the three turnpike projects described in subdivision (2) of this subsection, either on its own initiative or at the request of the Board of Transportation. The Authority shall take no further action on a project described by this subdivision unless authorized to do so by Statute.
- (4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 136-89.184.
- (5) To fix, revise, charge, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.
- (6) To issue bonds or notes of the Authority as provided in this Article.
- (7) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with the Turnpike System.
- (8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.
- (9) To apply for, accept, and administer loans and grants of money or real or personal property from any federal agency, the State or its political subdivisions, local governments, or any other public or private sources available.
- (10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article, in accordance with the review and comment requirements of G.S. 136-89.182(j).
- (11) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.
- (12) To receive and use appropriations from the State and federal government.
- (13) To adopt procedures to govern its procurement of services and delivery of Turnpike Projects.
- (14) To perform or procure any portion of services required by the Authority.

- (15) To use officers, employees, agents, and facilities of the Department for the purposes and upon the terms as may be mutually agreeable.
- (16) To contract for the construction, maintenance, and operation of a Turnpike Project.
- (17) To enter into partnership agreements, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project.

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

"§ 136-89.184. Acquisition of real property.

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

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

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

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

"§ 136-89.186. Audit.

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

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

The Authority Board is prohibited from converting any segment of the nontolled State highway system to a toll facility.

"§ 136-89.188. Use of revenues.

(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for Authority administration costs; Turnpike Project development, right-of-way acquisition, construction, operation, and maintenance; and debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.

(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.

(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs.

"§ 136-89.189. Turnpike Authority revenue bonds.

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall

be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

"§ 136-89.190. Sale of Turnpike Authority revenue bonds.

Revenue bonds of the Authority issued pursuant to G.S. 136-89.189 and the State and Local Government Revenue Bond Act shall be sold in accordance with and pursuant to Article 7 of Chapter 159 of the General Statutes.

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

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

"§ 136-89.192. Equity distribution formula.

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

Other revenue from the sale of the Authority's bonds or notes, project loans, or toll collections shall not be included in the distribution formula.

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

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

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

(c) Semiannual Reports. – The Authority shall submit semiannual reports to the Joint Legislative Transportation Oversight Committee, and more frequent reports if requested. The reports shall summarize the Authority's activities during the preceding six months, and shall contain any information about the Authority's activities that is requested by the Committee.

(d) Report Prior to Let of Contracts. – The Authority shall consult with and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations prior to the letting of any contract for Turnpike Project construction authorized under G.S. 136-183(a)(2).

(e) Report Prior to Study and Design. – The Authority shall consult with and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations prior to the study, planning, development or design of any Turnpike Project authorized under G.S. 136-89.183(a)(3).

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

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

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

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

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

- (2) The Authority has concluded, and documented in writing, that the alternative contracting method is necessary because the project cannot be completed utilizing the procedures of Article 2 of this Chapter within the necessary time frame or available funding or for other reasons the Authority deems in the public interest;
- (3) The Authority has provided, to the extent possible, for the solicitation of competitive proposals prior to awarding a contract; and
- (4) The approved alternative contracting method provides for reasonable compliance with the disadvantaged business participation goals of G.S. 136-28.4.

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

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

"§ 136-89.196. Removal of tolls.

The Authority shall, upon fulfillment of and subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds, remove tolls from a Turnpike Project.

"§ 136-89.197. Maintenance of nontoll routes.

The Department shall maintain an existing, alternate, comparable nontoll route corresponding to each Turnpike Project constructed pursuant to this Article."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

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

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

SECTION 3. G.S. 136-176(b) reads as rewritten:

"(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The rest of the funds in the Trust Fund shall be allocated and used as follows:

- (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.
- (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State

Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

- (3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.
- (4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

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

SECTION 4. G.S. 126-5(c1) is amended by adding a new subdivision to read:

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

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

SECTION 5. G.S. 120-123 is amended by adding a new subdivision to read:
"§ 120-123. Service by members of the General Assembly on certain boards and commissions.

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

...
(75) The North Carolina Turnpike Authority."

SECTION 6. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, ~~and a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56,~~ and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government."

SECTION 7. G.S. 159-81(3) read as rewritten:

"(3) 'Revenue bond project' means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by the State or a municipality to pay the costs of the undertaking:

- a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
- b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

- c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
- d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
- e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
- f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
- g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
- h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
- i. Hospitals and other health-related facilities.
- j. Public auditoriums, gymnasiums, stadiums, and convention centers.
- k. Recreational facilities.
- l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.
- m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
- n. Facilities for the use of any agency or agencies of the government of the United States of America.
- o. Structural and natural stormwater and drainage systems of all types.
- p. In the case of the North Carolina Turnpike Authority, a Turnpike Project, as defined in G.S. 136-89.181, including the planning and design of a Turnpike Project, that is designated by the Authority to be a revenue bond project.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project."

SECTION 8. G.S. 159-96 is amended by adding a new subsection to read:

"(e) In the case of a Turnpike Project of the North Carolina Turnpike Authority, the Turnpike Project may be located anywhere in the State the Authority is authorized to maintain a Turnpike Project."

SECTION 9. The Authority shall evaluate the feasibility of encouraging mass transit and ridesharing in its proposed toll road facilities.

SECTION 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of September, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:41 p.m. this 3rd day of October, 2002