

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

H

2

HOUSE BILL 644  
Committee Substitute Favorable 6/18/01

Short Title: Toll Road and Bridge Authority Created.

(Public)

Sponsors:

Referred to:

March 15, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE PUBLIC TOLL ROADS AND BRIDGES IN NORTH  
3 CAROLINA AND THE CREATION OF A TURNPIKE AUTHORITY.

4 The General Assembly of North Carolina enacts:

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 Article 6F of Chapter 136 of the General Statutes is repealed.

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

8 "Article 6H.

9 "Public Toll Roads and Bridges.

10 "**§ 136-89.180. Legislative findings.**

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

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

21 "**§ 136-89.181. Definitions.**

22 The following definitions apply to this Article:

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

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

26 (3) "Turnpike Project" means any part of the State highway system,  
27 including primary and secondary roads, bridges, tunnels, and feeder  
28 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 member designated by the Secretary of  
32 Transportation shall serve at the pleasure of the Secretary. The Chair of the Authority  
33 serves at the pleasure of the Authority Board.

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

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

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

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

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

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

17 **"§ 136-89.183. Powers of the Authority.**

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

- 20 (1) The powers of a corporate body, including the power to sue and be  
21 sued, to make contracts, to adopt and use a common seal, and to alter  
22 the adopted seal as needed.
- 23 (2) To study, plan, develop, design, establish, purchase, construct, operate,  
24 and maintain a Turnpike Project, either on its own initiative or at the  
25 request of the Board of Transportation.
- 26 (3) To rent, lease, purchase, acquire, own, encumber, dispose of, or  
27 mortgage real or personal property, including the power to acquire  
28 property by eminent domain pursuant to G.S. 136-89.184.
- 29 (4) To fix, revise, charge, and collect tolls and fees for the use of the  
30 Turnpike Projects.
- 31 (5) To issue bonds or notes of the Authority as provided in this Article.
- 32 (6) To establish, construct, purchase, maintain, equip, and operate any  
33 structure or facilities associated with the Turnpike System.
- 34 (7) To pay all necessary costs and expenses in the formation, organization,  
35 administration, and operation of the Authority.
- 36 (8) To apply for, accept, and administer loans and grants of money or real  
37 or personal property from any federal agency, from the State or its  
38 political subdivisions, local government, or from any other public or  
39 private sources available.
- 40 (9) To adopt, alter, or repeal its own bylaws or rules implementing the  
41 provisions of this Article, in accordance with the review and comment  
42 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.

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

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

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

33 (e) 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 seventy percent (70%) of the excess revenue derived in each fiscal year from a Turnpike  
36 Project for necessary expansion of the capacity of the Turnpike Project, or if no  
37 expansion is necessary, for other Turnpike Projects in the same region, as defined in  
38 G.S. 136-17.2A(a).

39 **"§ 136-89.189. Turnpike Authority revenue bonds.**

40 (a) The Authority Board, by the adoption of a bond resolution, and with the  
41 approval of the State Treasurer and the Local Government Commission, may authorize

1 the issuance of bonds to pay all or a portion of the cost of a Turnpike Project or to  
2 refund any previously issued bonds.

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

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

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

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

13 **"§ 136-89.190. Payment of bonds; State credit not pledged.**

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

16 **"§ 136-89.191. Cost participation by Department of Transportation.**

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

19 **"§ 136-89.192. Equity distribution formula.**

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

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

26 **"§ 136-89.193. Annual plan of work; annual and quarterly reports.**

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

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

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

39 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

40 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a  
41 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in  
42 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State

1 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and  
2 duties on the Turnpike System as on any other highway or public vehicular area.

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

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

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

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

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

20 (4) The approved alternative contracting method provides for reasonable  
21 compliance with the disadvantaged business participation goals of G.S.  
22 136-28.4.

23 **§ 136-89.195. Internet report of funds expended.**

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

30 **§ 136-89.196. Removal of tolls.**

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

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

37 **§ 20-158.2. Control of vehicles on Turnpike System.**

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

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

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."

1

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