

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

2

**HOUSE BILL 253*
Committee Substitute Favorable 5/31/05**

Short Title: NC Turnpike Authority Changes.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE NORTH CAROLINA TURNPIKE AUTHORITY TO
2 ADOPT TRANSPORTATION CORRIDOR OFFICIAL MAPS, TO INCREASE
3 THE NUMBER OF PROJECTS THE AUTHORITY MAY UNDERTAKE FROM
4 THREE TO NINE, AND TO AMEND THE AUTHORITY OF THE
5 DEPARTMENT OF TRANSPORTATION TO ISSUE A PRIVATE PILOT TOLL
6 PROJECT LICENSE.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 136-44.50 reads as rewritten:

10 **"§ 136-44.50. Transportation corridor official map act.**

11 (a) A transportation corridor official map may be adopted or amended by any of
12 the following:

13 (1) The governing board of any city for any thoroughfare included as part
14 of a comprehensive plan for streets and highways adopted pursuant to
15 G.S. 136-66.2 or for any proposed public transportation corridor
16 included in the adopted long-range transportation plan.

17 (2) The Board of Transportation for any portion of the existing or
18 proposed State highway system or for any public transportation
19 corridor, to include rail, that is in the Transportation Improvement
20 Program.

21 (3) Regional public transportation authorities created pursuant to Article
22 26 of Chapter 160A of the General Statutes or regional transportation
23 authorities created pursuant to Article 27 of Chapter 160A of the
24 General Statutes for any proposed public transportation corridor, or
25 adjacent station or parking lot, included in the adopted long-range
26 transportation plan.

27 (4) The North Carolina Turnpike Authority for any project being studied
28 pursuant to G.S. 136-89.183.

1 Before a city adopts a transportation corridor official map that extends beyond the
2 extraterritorial jurisdiction of its building permit issuance and subdivision control
3 ordinances, or adopts an amendment to a transportation corridor official map outside the
4 extraterritorial jurisdiction of its building permit issuance and subdivision control
5 ordinances, the city shall obtain approval from the Board of County Commissioners.

6 No transportation corridor official map shall be adopted or amended, nor may any
7 property be regulated under this Article until:

8 (1) The governing board of the city, the regional transportation authority,
9 the North Carolina Turnpike Authority, or the Department of
10 Transportation has held a public hearing in each county affected by the
11 map on the proposed map or amendment. Notice of the hearing shall
12 be provided:

13 a. By publication at least once a week for four successive weeks
14 prior to the hearing in a newspaper having general circulation in
15 the county in which the transportation corridor to be designated
16 is located.

17 b. By two week written notice to the Secretary of Transportation,
18 the Chairman of the Board of County Commissioners, and the
19 Mayor of any city or town through whose corporate or
20 extraterritorial jurisdiction the transportation corridor passes.

21 c. By posting copies of the proposed transportation corridor map
22 or amendment at the courthouse door for at least 21 days prior
23 to the hearing date. The notice required in sub-subdivision a.
24 above shall make reference to this posting.

25 d. By first-class mail sent to each property owner affected by the
26 corridor. The notice shall be sent to the address listed for the
27 owner in the county tax records.

28 (2) A permanent certified copy of the transportation corridor official map
29 or amendment has been filed with the register of deeds. The
30 boundaries may be defined by map or by written description, or a
31 combination thereof. The copy shall measure approximately 20 inches
32 by 12 inches, including no less than one and one-half inches binding
33 space on the left-hand side.

34 (3) The names of all property owners affected by the corridor have been
35 submitted to the Register of Deeds.

36 (b) Transportation corridor official maps and amendments shall be distributed
37 and maintained in the following manner:

38 (1) A copy of the official map and each amendment thereto shall be filed
39 in the office of the city clerk and in the office of the district engineer.

40 (2) A copy of the official map, each amendment thereto and any variance
41 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
42 tax supervisor of any county and tax collector of any city affected
43 thereby. The portion of properties embraced within a transportation
44 corridor and any variance granted shall be clearly indicated on all tax

1 maps maintained by the county or city for such period as the
2 designation remains in effect.

3 (3) Notwithstanding any other provision of law, the certified copy filed
4 with the register of deeds shall be placed in a book maintained for that
5 purpose and cross-indexed by number of road, street name, or other
6 appropriate description. The register of deeds shall collect a fee of five
7 dollars (\$5.00) for each map sheet or page recorded.

8 (4) The names submitted as required under subdivision (a)(3) of this
9 section shall be indexed in the "grantor" index by the Register of
10 Deeds.

11 (c) Repealed by Session Laws 1989, c. 595, s. 1.

12 (d) Within one year following the establishment of a transportation corridor
13 official map or amendment, work shall begin on an environmental impact statement or
14 preliminary engineering. The failure to begin work on the environmental impact
15 statement or preliminary engineering within the one-year period shall constitute an
16 abandonment of the corridor, and the provisions of this Article shall no longer apply to
17 properties or portions of properties embraced within the transportation corridor. A city
18 may prepare environmental impact studies and preliminary engineering work in
19 connection with the establishment of a transportation corridor official map or
20 amendments to a transportation corridor official map. When a city prepares a
21 transportation corridor official map for a street or highway that has been designated a
22 State responsibility pursuant to G.S. 136-66.2, the environmental impact study and
23 preliminary engineering work shall be reviewed and approved by the Department of
24 Transportation. An amendment to a corridor shall not extend the two-year period
25 provided by this section unless it establishes a substantially different corridor in a
26 primarily new location.

27 (e) The term "amendment" for purposes of this section includes any change to a
28 transportation corridor official map, including:

29 (1) Failure of the Department of Transportation, the North Carolina
30 Turnpike Authority, a city, or a regional transportation authority to
31 begin work on an environmental impact statement or preliminary
32 engineering as required by this section; or

33 (2) Deletion of the corridor from the transportation corridor official map
34 by action of the Board of Transportation, the North Carolina Turnpike
35 Authority, or deletion of the corridor from the long-range
36 transportation plan of a city or regional transportation authority by
37 action of the city or regional transportation authority governing Board.

38 (f) The term "transportation corridor" as used in this Article does not include
39 bikeways or greenways."

40 **SECTION 2.** G.S. 136-89.183 reads as rewritten:

41 **"§ 136-89.183. Powers of the Authority.**

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

- 1 (1) The powers of a corporate body, including the power to sue and be
2 sued, to make contracts, to adopt and use a common seal, and to alter
3 the adopted seal as needed.
- 4 (2) To study, plan, develop, and undertake preliminary design work on up
5 to nine Turnpike Projects. At the conclusion of these activities, the
6 Turnpike Authority is authorized to ~~To study, plan, develop, design,~~
7 ~~establish, purchase, construct, operate, and maintain three up to nine~~
8 ~~Turnpike Projects. Projects, either on its own initiative or at the request~~
9 ~~of the Board of Transportation.~~ One of the Turnpike Projects shall be
10 located in whole or in part in a county with a population equal to or
11 greater than 650,000 persons, according to the latest decennial census,
12 and one Turnpike Project shall be located in a county or counties that
13 each have a population of fewer than 650,000 persons, according to the
14 latest decennial census. One of the Turnpike Projects shall be a bridge
15 of more than two miles in length going from the mainland to a
16 peninsula bordering the State of Virginia. A Turnpike Project selected
17 for construction by the Turnpike Authority shall be included in any
18 applicable locally adopted comprehensive transportation plans and
19 shall be shown in the current State Transportation Improvement Plan
20 prior to the letting of a contract for the Turnpike Project.
- 21 ~~(3) To study, plan, develop and undertake preliminary design work on~~
22 ~~three Turnpike Projects, in addition to the three turnpike projects~~
23 ~~described in subdivision (2) of this subsection, either on its own~~
24 ~~initiative or at the request of the Board of Transportation. The~~
25 ~~Authority shall take no further action on a project described by this~~
26 ~~subdivision unless authorized to do so by Statute.~~
- 27 (4) 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 (5) To fix, revise, charge, and collect tolls and fees for the use of the
31 Turnpike Projects. Prior to the effective date of any toll or fee for use
32 of a Turnpike Facility, the Authority shall submit a description of the
33 proposed toll or fee to the Board of Transportation, the Joint
34 Legislative Transportation Oversight Committee and the Joint
35 Legislative Commission on Governmental Operations for review.
- 36 (6) To issue bonds or notes of the Authority as provided in this Article.
- 37 (7) To establish, construct, purchase, maintain, equip, and operate any
38 structure or facilities associated with the Turnpike System.
- 39 (8) To pay all necessary costs and expenses in the formation, organization,
40 administration, and operation of the Authority.
- 41 (9) To apply for, accept, and administer loans and grants of money or real
42 or personal property from any federal agency, the State or its political
43 subdivisions, local governments, or any other public or private sources
44 available.

- 1 (10) 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 (11) To utilize employees of the Department; to contract for the services of
5 consulting engineers, architects, attorneys, real estate counselors,
6 appraisers, and other consultants; to employ administrative staff as
7 may be required in the judgment of the Authority; and to fix and pay
8 fees or compensation to the Department, contractors, and
9 administrative employees from funds available to the Authority.
- 10 (12) To receive and use appropriations from the State and federal
11 government.
- 12 (13) To adopt procedures to govern its procurement of services and
13 delivery of Turnpike Projects.
- 14 (14) To perform or procure any portion of services required by the
15 Authority.
- 16 (15) To use officers, employees, agents, and facilities of the Department for
17 the purposes and upon the terms as may be mutually agreeable.
- 18 (16) To contract for the construction, maintenance, and operation of a
19 Turnpike Project.
- 20 (17) To enter into partnership agreements, agreements with political
21 subdivisions of the State, and agreements with private entities, and to
22 expend such funds as it deems necessary, pursuant to such agreements,
23 for the purpose of financing the cost of acquiring, constructing,
24 equipping, operating, or maintaining any Turnpike Project.

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

33 **SECTION 3.** G.S. 136-89.172 reads as rewritten:

34 "**§ 136-89.172. Private Pilot Toll Project.**

35 (a) Authority to License. – The Department of Transportation is authorized to
36 issue a license to an applicant to finance, design, construct, maintain, improve, own, or
37 operate solely from private resources one pilot toll transportation project within the
38 State of North Carolina. Any license authorized by this section must be issued on or
39 before July 1, ~~2003~~2009.

40 (b) Requirement for Finding of Need. – Prior to the issuance of any license under
41 this section, the Department shall make a written determination that the proposed
42 project is in the public interest.

43 (c) Submission of Financial Data. – A person applying for a license to construct a
44 project under this section shall submit detailed financial data to the Department

1 concerning the ability of applicant to finance the proposed project. The Department
2 shall independently analyze the data submitted for each project proposal.

3 (d) License Period. – A license issued under this section shall not exceed 50
4 years from beginning of the operations of the road or bridge. A license may be renewed
5 for an additional 50-year term at the discretion of the Department and in conformity
6 with this Article.

7 (e) State Use for Other Purposes. – A license issued pursuant to this section shall
8 reserve unto the State or its designee the authority to enter and utilize the project
9 right-of-way for other transportation or utility-related purposes, as long as those
10 purposes do not interfere with the use by the licensee.

11 (f) Terms of License. – Additional terms and conditions of any license issued
12 pursuant to this section shall be within the discretion of the Department of
13 Transportation, and shall include, in addition to any other requirements:

- 14 (1) Provisions establishing minimum design and construction standards
15 for the project.
- 16 (2) Provisions establishing minimum maintenance standards for the
17 project and the responsibility for such maintenance.
- 18 (3) Provisions requiring that appropriate traffic signs and other traffic
19 control devices be erected and maintained on the project.
- 20 (4) Provisions establishing the rights and duties of the parties regarding
21 infrastructure improvements and connections between the project and
22 the State highway system.
- 23 (5) Provisions regarding any type of access control, if any, that may be
24 required for the project.
- 25 (6) Provisions establishing the relative responsibilities of the licensee and
26 the Department of Transportation to keep the completed project open
27 and accessible to the public.
- 28 (7) Provisions requiring that the State of North Carolina, its agencies,
29 officials, and employees be indemnified and held harmless by the
30 licensee for any liability incurred on the project in connection with
31 project construction, maintenance, or operation.
- 32 (8) Provisions concerning location of the project.

33 (g) Department Powers. – The Department may exercise any power possessed by
34 it with respect to the development and construction of State transportation projects to
35 facilitate the development and construction of transportation projects pursuant to this
36 Article.

37 (h) Acquisition of Project Property. – A person licensed to construct a project
38 under this section shall make all reasonable efforts to acquire all right-of-way interests
39 required for the project through private negotiation. The Department is authorized to
40 exercise its power of eminent domain to acquire property rights necessary for
41 construction and maintenance of the project only as to those property interests that
42 cannot be acquired by the licensee at a reasonable price through private negotiation, and
43 only as required to control access to the project. A licensee requesting that the
44 Department exercise its power of eminent domain shall be required to reimburse the

1 Department in the full amount of its costs incurred in acquiring the necessary property
2 interests for the private portion of the project, including any negotiated settlement or
3 jury verdict, and any attorneys' fees that may be awarded. The acquisition of property
4 interests necessary for inclusion in a project licensed under this section is hereby
5 declared to be for a public transportation purpose.

6 (i) Transfer of Department Property to Licensee. – Notwithstanding the
7 provisions of G.S. 136-19, should the Department determine that a licensed project
8 require property interests held by the Department, such interests as the Department
9 determines to be necessary may be conveyed to the licensee for fair market value.

10 (j) Applicability of Other Laws. – For the purpose of entering into contractual
11 licensing agreements under this section, the Department of Transportation is exempted
12 from any provision of the General Statutes that conflicts with the purposes of this
13 section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under
14 this section shall not be included in the distribution formula under G.S. 136-17.2A but
15 shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A
16 licensee under this section shall endeavor to comply with the provisions of
17 G.S. 136-28.4 concerning participation by disadvantaged businesses.

18 (k) Applicability of Motor Vehicle Laws. – Any project licensed by the
19 Department of Transportation under the authority granted in this section shall be
20 considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as
21 defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including
22 the State Highway Patrol and the Division of Motor Vehicles, shall have the same
23 powers and duties on such projects as on any other highway or public vehicular area.

24 (l) Exclusive License. – Upon the issuance of a license by the Department of
25 Transportation, no further license of any type may be required by the State or local
26 government body for the ownership, construction, or operation of the project.

27 (m) Definitions. – The following definitions apply as used in this section:

28 (1) "Person" means any natural person, partnership, corporation, trust,
29 association, sole proprietorship, or any other legal entity other than the
30 State or its agencies, institutions, or political subdivisions.

31 (2) "Project" means a ~~privately constructed, maintained, and operated toll~~
32 ~~highway, road, bridge, or other transportation related facility.~~ bridge of
33 more than two miles in length going from the mainland to a peninsula
34 bordering the State of Virginia.

35 (3) "Licensee" means a person authorized through a contractual agreement
36 with the Department of Transportation to finance, design, construct,
37 maintain, improve, own, or operate, or any combination thereof, a
38 project.

39 (n) Report. – The Department shall report to the Joint Legislative Transportation
40 Oversight Committee and to the Joint Transportation Appropriations Subcommittee by
41 February 1, 2001, and every year thereafter, on any toll project planning, construction,
42 or operation commenced pursuant to the provisions of this Article."

43 **SECTION 4.** This act is effective when it becomes law.