

**GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 2314*
Committee Substitute Favorable 7/1/08
Senate Commerce, Small Business and Entrepreneurship Committee Substitute
Adopted 7/10/08
Fourth Edition Engrossed 7/14/08

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY
2 LOCAL GOVERNMENT FINANCIAL PARTICIPATION IN DEPARTMENT OF
3 TRANSPORTATION PROJECTS, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, AND TO
5 EXPAND THE AUTHORITY OF THE NORTH CAROLINA DEPARTMENT OF
6 TRANSPORTATION TO LOCATE AND ACQUIRE RIGHT-OF-WAY FOR THE
7 LOCATION, ABOVE OR BELOW GROUND, OF FIBER-OPTIC CABLE.
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 143B-350(f1) reads as rewritten:

11 "(f1) Municipal-Local Government Participation. – The ability of a ~~municipality~~
12 local government to pay in part or whole for any transportation improvement project
13 shall not be a factor considered by the Board of Transportation in its development and
14 approval of a schedule of major State highway system improvement projects to be
15 undertaken by the Department under G.S. 143B-350(f)(4)."

16 **SECTION 2.** G.S. 136-18(27) reads as rewritten:

17 "(27) The Department of Transportation is authorized to establish policies
18 and promulgate rules providing for voluntary local government,
19 property owner or highway user participation in the costs of
20 maintenance or improvement of roads which would not otherwise be
21 necessary or would not otherwise be performed by the Department of
22 Transportation and which will result in a benefit to the property owner
23 or highway user. By way of illustration and not as a limitation, such
24 costs include those incurred in connection with drainage improvements
25 or maintenance, driveway connections, dust control on unpaved roads,
26 surfacing or paving of roads and the acquisition of rights-of-way.

1 ~~Property~~—Local government, property owner and highway user
2 participation can be in the form of materials, money, or land (for
3 right-of-way) as deemed appropriate by the Department of
4 Transportation. The authority of this section shall not be used to
5 authorize, construct or maintain toll roads or bridges."

6 **SECTION 3.** G.S. 136-44.50 reads as rewritten:

7 "**§ 136-44.50. Transportation corridor official map act.**

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

- 10 (1) The governing board of any ~~city~~—local government for any
11 thoroughfare included as part of a comprehensive plan for streets and
12 highways adopted pursuant to G.S. 136-66.2 or for any proposed
13 public transportation corridor included in the adopted long-range
14 transportation plan.
- 15 (2) The Board of Transportation for any portion of the existing or
16 proposed State highway system or for any public transportation
17 corridor, to include rail, that is in the Transportation Improvement
18 Program.
- 19 (3) Regional public transportation authorities created pursuant to Article
20 26 of Chapter 160A of the General Statutes or regional transportation
21 authorities created pursuant to Article 27 of Chapter 160A of the
22 General Statutes for any proposed public transportation corridor, or
23 adjacent station or parking lot, included in the adopted long-range
24 transportation plan.
- 25 (4) The North Carolina Turnpike Authority for any project being studied
26 pursuant to G.S. 136-89.183.
- 27 (5) The Wilmington Urban Area Metropolitan Planning Organization for
28 any project that is within its urbanized boundary and identified in
29 G.S. 136-179.

30 Before a city adopts a transportation corridor official map that extends beyond the
31 extraterritorial jurisdiction of its building permit issuance and subdivision control
32 ordinances, or adopts an amendment to a transportation corridor official map outside the
33 extraterritorial jurisdiction of its building permit issuance and subdivision control
34 ordinances, the city shall obtain approval from the Board of County Commissioners.

35 (a1) No transportation corridor official map shall be adopted or amended, nor may
36 any property be regulated under this Article until:

- 37 (1) The governing board of the city, the county, the regional transportation
38 authority, the North Carolina Turnpike Authority, or the Department of
39 Transportation has held a public hearing in each county affected by the
40 map on the proposed map or amendment. Notice of the hearing shall
41 be provided:

42 a. By publication at least once a week for four successive weeks
43 prior to the hearing in a newspaper having general circulation in

- 1 the county in which the transportation corridor to be designated
2 is located.
- 3 b. By two week written notice to the Secretary of Transportation,
4 the Chairman of the Board of County Commissioners, and the
5 Mayor of any city or town through whose corporate or
6 extraterritorial jurisdiction the transportation corridor passes.
- 7 c. By posting copies of the proposed transportation corridor map
8 or amendment at the courthouse door for at least 21 days prior
9 to the hearing date. The notice required in sub-subdivision a.
10 above shall make reference to this posting.
- 11 d. By first-class mail sent to each property owner affected by the
12 corridor. The notice shall be sent to the address listed for the
13 owner in the county tax records.
- 14 (2) A permanent certified copy of the transportation corridor official map
15 or amendment has been filed with the register of deeds. The
16 boundaries may be defined by map or by written description, or a
17 combination thereof. The copy shall measure approximately 20 inches
18 by 12 inches, including no less than one and one-half inches binding
19 space on the left-hand side.
- 20 (3) The names of all property owners affected by the corridor have been
21 submitted to the Register of Deeds.
- 22 (b) Transportation corridor official maps and amendments shall be distributed
23 and maintained in the following manner:
- 24 (1) A copy of the official map and each amendment thereto shall be filed
25 in the office of the city clerk and in the office of the district engineer.
- 26 (2) A copy of the official map, each amendment thereto and any variance
27 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
28 tax supervisor of any county and tax collector of any city affected
29 thereby. The portion of properties embraced within a transportation
30 corridor and any variance granted shall be clearly indicated on all tax
31 maps maintained by the county or city for such period as the
32 designation remains in effect.
- 33 (3) Notwithstanding any other provision of law, the certified copy filed
34 with the register of deeds shall be placed in a book maintained for that
35 purpose and cross-indexed by number of road, street name, or other
36 appropriate description. The register of deeds shall collect a fee of five
37 dollars (\$5.00) for each map sheet or page recorded.
- 38 (4) The names submitted as required under subdivision (a)(3) of this
39 section shall be indexed in the "grantor" index by the Register of
40 Deeds.
- 41 (c) Repealed by Session Laws 1989, c. 595, s. 1.
- 42 (d) Within one year following the establishment of a transportation corridor
43 official map or amendment, work shall begin on an environmental impact statement or
44 preliminary engineering. The failure to begin work on the environmental impact

1 statement or preliminary engineering within the one-year period shall constitute an
2 abandonment of the corridor, and the provisions of this Article shall no longer apply to
3 properties or portions of properties embraced within the transportation corridor. A city
4 local government may prepare environmental impact studies and preliminary
5 engineering work in connection with the establishment of a transportation corridor
6 official map or amendments to a transportation corridor official map. When a city or
7 county prepares a transportation corridor official map for a street or highway that has
8 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental
9 impact study and preliminary engineering work shall be reviewed and approved by the
10 Department of Transportation. An amendment to a corridor shall not extend the
11 one-year period provided by this section unless it establishes a substantially different
12 corridor in a primarily new location.

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

- 15 (1) Failure of the Department of Transportation, the North Carolina
16 Turnpike Authority, a city, a county, or a regional transportation
17 authority to begin work on an environmental impact statement or
18 preliminary engineering as required by this section; or
- 19 (2) Deletion of the corridor from the transportation corridor official map
20 by action of the Board of Transportation, the North Carolina Turnpike
21 Authority, or deletion of the corridor from the long-range
22 transportation plan of a ~~city~~city, county, or regional transportation
23 authority by action of the ~~city~~city, county, or regional transportation
24 authority governing Board.

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

27 **SECTION 4.** G.S. 136-44.52 reads as rewritten:

28 "**§ 136-44.52. Variance from transportation corridor official map.**

29 (a) The Department of Transportation, the regional public transportation
30 authority, the regional transportation authority, or the ~~city~~local government which
31 initiated the transportation corridor official map shall establish procedures for
32 considering petitions for variance from the requirements of G.S. 136-44.51.

33 (b) The procedure established by the State shall provide for written notice to the
34 Mayor and Chairman of the Board of County Commissioners of any affected city or
35 county, and for the hearing to be held in the county where the affected property is
36 located.

37 (c) ~~Cities~~Local governments may provide for petitions for variances to be heard
38 by the board of adjustment or other boards or commissions which can hear variances
39 authorized by G.S. 160A-388. The procedures for boards of adjustment shall be
40 followed except that no vote greater than a majority shall be required to grant a
41 variance.

42 (c1) The procedure established by a regional public transportation authority or a
43 regional transportation authority pursuant to subsection (a) of this section shall provide
44 for a hearing de novo by the Department of Transportation for any petition for variance

1 which is denied by the regional public transportation authority or the regional
2 transportation authority. All hearings held by the Department of Transportation under
3 this subsection shall be conducted in accordance with procedures established by the
4 Department of Transportation pursuant to subsection (a) of this section.

5 (d) A variance may be granted upon a showing that:

- 6 (1) Even with the tax benefits authorized by this Article, no reasonable
7 return may be earned from the land; and
- 8 (2) The requirements of G.S. 136-44.51 result in practical difficulties or
9 unnecessary hardships."

10 **SECTION 5.** G.S. 136-44.53 reads as rewritten:

11 "**§ 136-44.53. Advance acquisition of right-of-way within the transportation**
12 **corridor.**

13 (a) After a transportation corridor official map is filed with the register of deeds,
14 a property owner has the right of petition to the filer of the map for acquisition of the
15 property due to an imposed hardship. The Department of Transportation, the regional
16 public transportation authority, the regional transportation authority, or the ~~city~~ which
17 local government that initiated the transportation corridor official map may make
18 advanced acquisition of specific parcels of property when that acquisition is determined
19 by the respective governing board to be in the best public interest to protect the
20 transportation corridor from development or when the transportation corridor official
21 map creates an undue hardship on the affected property owner. The procedure
22 established by a regional public transportation authority or a regional transportation
23 authority pursuant to subsection (b) of this section shall provide for a hearing de novo
24 by the Department of Transportation for any request for advance acquisition due to
25 hardship that is denied by an authority. All hearings held by the Department under this
26 subsection shall be conducted in accordance with procedures established by the
27 Department pursuant to subsection (b) of this section. Any decision of the Department
28 pursuant to this subsection shall be final and binding. Any property determined eligible
29 for hardship acquisition shall be acquired within three years of the finding or the
30 restrictions of the map shall be removed from the property.

31 (b) Prior to making any advanced acquisition of right-of-way under the authority
32 of this Article, the Board of Transportation or the respective governing board which
33 initiated the transportation corridor official map shall develop and adopt appropriate
34 policies and procedures to govern the advanced acquisition of right-of-way and to
35 assure that the advanced acquisition is in the best overall public interest.

36 (c) When a ~~city~~ local government makes an advanced right-of-way acquisition of
37 property within a transportation corridor official map for a street or highway that has
38 been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2,
39 the Department of Transportation shall reimburse the ~~city~~ local government for the cost
40 of any advanced right-of-way acquisition at the time the street or highway is
41 constructed. The Department of Transportation shall have no responsibility to reimburse
42 a municipality for any advanced right-of-way acquisition for a street or highway that
43 has not been designated a State responsibility pursuant to the provisions of
44 G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The ~~city~~

1 local government shall obtain the concurrence of the Department of Transportation in
2 all instances of advanced acquisition.

3 (d) In exercising the authority granted by this section, a ~~municipality~~ local
4 government is authorized to expend ~~municipal~~ its funds for the protection of
5 rights-of-way shown on a duly adopted transportation corridor official map whether the
6 right-of-way to be acquired is located inside or outside ~~the~~ a municipal corporate
7 limits."

8 **SECTION 6.** G.S. 136-66.3 reads as rewritten:

9 "**§ 136-66.3. Municipal-Local government participation in improvements to the**
10 **State highway system.**

11 (a) Municipal Participation Authorized. – A municipality may, but is not required
12 to, participate in the right-of-way and construction cost of a State highway improvement
13 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in
14 the municipality or its extraterritorial jurisdiction.

15 (b) Process for Initiating Participation. – A municipality interested in
16 participating in the funding of a State highway improvement project may submit a
17 proposal to the Department of Transportation. The Department and the municipality
18 shall include their respective responsibilities for a proposed municipal participation
19 project in any agreement reached concerning participation.

20 (c) Type of Participation Authorized. – A municipality is authorized and
21 empowered to acquire land by dedication and acceptance, purchase, or eminent domain,
22 and make improvements to portions of the State highway system lying within or outside
23 the municipal corporate limits utilizing local funds that have been authorized for that
24 purpose. All improvements to the State highway system shall be done in accordance
25 with the specifications and requirements of the Department of Transportation.

26 (c1) No TIP Disadvantage for Participation. – If a county or municipality
27 participates in a State highway system improvement project, as authorized by this
28 section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the
29 ~~municipality's~~ local government's participation does not cause any disadvantage to any
30 other project in the Transportation Improvement Program under
31 ~~G.S. 143B-350(f)(4).~~ G.S. 143B-350(f)(4) and located outside the municipality.

32 (c2) Distribution of State Funds Made Available by County or Municipal
33 Participation. – Any State or federal funds allocated to a project that are made available
34 by county or municipal participation in a project contained in the Transportation
35 Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding
36 region that the funding was allocated to under the distribution formula contained in
37 G.S. 136-17.2A.

38 (c3) Limitation on Agreements. – The Department shall not enter into any
39 agreement with a county or municipality to provide additional total funding for highway
40 construction in the county or municipality in exchange for county or municipal
41 participation in any project contained in the Transportation Improvement Program under
42 G.S. 143B-350(f)(4).

43 (d) Authorization to Participate in Development-Related Improvements. – When
44 in the review and approval by a ~~municipality~~ local government of plans for the

1 development of property abutting the State highway system it is determined by the
2 municipality that improvements to the State highway system are necessary to provide
3 for the safe and orderly movement of traffic, the ~~municipality~~ local government is
4 authorized to construct, or have constructed, said improvements to the State highway
5 system in vicinity of the development. For purposes of this section, improvements
6 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and
7 drainage facilities. All improvements to the State highway system shall be constructed
8 in accordance with the specifications and requirements of the Department of
9 Transportation and be approved by the Department of Transportation.

10 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement
11 with the Department of Transportation, a county or municipality may reimburse the
12 Department of Transportation for the cost of all improvements, including additional
13 right-of-way, for a street or highway improvement projects approved by the Board of
14 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
15 that the Department of Transportation would normally include in the project.

16 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
17 Department of Transportation shall allow the ~~municipality~~ local government a period of
18 not less than three years from the date construction of the project is initiated to
19 reimburse the Department their agreed upon share of the costs necessary for the project.
20 The Department of Transportation shall not charge a ~~municipality~~ local government any
21 interest during the initial three years.

22 (f) Report to General Assembly. – The Department shall report in writing, on a
23 monthly basis, to the Joint Legislative Commission on Governmental Operations on all
24 agreements entered into between counties, municipalities and the Department of
25 Transportation. The report shall state in summary form the contents of such agreements.

26 (g) ~~Municipal~~ Local Government Acquisition of Rights-of-Way. – In the
27 acquisition of rights-of-way for any State highway system street or ~~highway in or~~
28 ~~around a municipality, highway,~~ the county or municipality shall be vested with the
29 same authority to acquire such rights-of-way as is granted to the Department of
30 Transportation in this Chapter. In the acquisition of such rights-of-way, counties and
31 municipalities may use the procedures provided in Article 9 of this Chapter, and
32 wherever the words "Department of Transportation" appear in Article 9 they shall be
33 deemed to include "county," "municipality" or ~~municipal~~ local governing body, and
34 wherever the words "Administrator," "Administrator of Highways," "Administrator of
35 the Department of Transportation," or "Chairman of the Department of Transportation"
36 appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the
37 intention of this subsection that the powers herein granted to municipalities for the
38 purpose of acquiring rights-of-way shall be in addition to and supplementary to those
39 powers granted in any local act or in any other general statute, and in any case in which
40 the provisions of this subsection or Article 9 of this Chapter are in conflict with the
41 provisions of any local act or any other provision of any general statute, then the
42 governing body of the county or municipality may in its discretion proceed in
43 accordance with the provisions of such local act or other general statute, or, as an

1 alternative method of procedure, in accordance with the provisions of this subsection
2 and Article 9 of this Chapter.

3 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
4 agreement, the Department of Transportation shall retain authority to pay the full cost of
5 acquiring rights-of-way where the proposed project is deemed important to a
6 coordinated State highway system.

7 (i) Changes to ~~Municipal~~ Local Government Participation Agreement. – Either
8 the ~~municipality~~ local government or the Department of Transportation may at any time
9 propose changes in the agreement setting forth their respective responsibilities by giving
10 notice to the other party, but no change shall be effective until it is adopted by both the
11 municipal governing body and the Department of Transportation.

12 (j) ~~Municipality~~ Local Governments Party to Rights-of-Way Proceeding. – Any
13 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for
14 any State highway system street or highway shall be a proper party in any proceeding in
15 court relating to the acquisition of such rights-of-way.

16 (k) ~~Specified County Participation.~~ – ~~In addition to the authority given to Burke,~~
17 ~~Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these~~
18 ~~counties are authorized to participate in State highway improvement projects located~~
19 ~~anywhere in each respective county in accordance with this section."~~

20 SECTION 7. G.S. 136-98 reads as rewritten:

21 "§ 136-98. Counties authorized to participate in costs of road construction and
22 ~~maintenance.~~ maintenance, participation is voluntary.

23 (a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

24 (b) Nothing in this Article prohibits counties from establishing service districts
25 for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

26 (c) A county is authorized to participate in the cost of rights-of-way,
27 construction, reconstruction, improvement, or maintenance of a road on the State
28 highway system under agreement with the Department of Transportation. County
29 participation in improvements to the State highway system is voluntary. The
30 Department shall not transfer any of its responsibilities to counties without specific
31 statutory authority."

32 SECTION 8. G.S. 136-18(2) reads as rewritten:

33 "§ 136-18. Powers of Department of Transportation.

34 The said Department of Transportation is vested with the following powers:

35 ...

36 (2) To take over and assume exclusive control for the benefit of the State
37 of any existing county or township roads, and to locate and acquire
38 rights-of-way for any new roads that may be necessary for a State
39 highway system, and subject to the provisions of G.S. 136-19.5(a) and
40 (b) also locate and acquire such additional rights-of-way as may be
41 necessary for the present or future relocation or initial location, above
42 or below ground, of telephone, telegraph, broadband communications,
43 electric and other lines, as well as gas, water, sewerage, oil and other
44 pipelines, to be operated by public utilities as defined in G.S. 62-3(23)

1 and which are regulated under Chapter 62 of the General Statutes, or
2 by municipalities, counties, any entity created by one or more political
3 subdivisions for the purpose of supplying any such utility services,
4 electric membership corporations, telephone membership corporations,
5 or any combination thereof, with full power to widen, relocate, change
6 or alter the grade or location thereof and to change or relocate any
7 existing roads that the Department of Transportation may now own or
8 may acquire; to acquire by gift, purchase, or otherwise, any road or
9 highway, or tract of land or other property whatsoever that may be
10 necessary for a State highway system and adjacent utility
11 rights-of-way: Provided, all changes or alterations authorized by this
12 subdivision shall be subject to the provisions of G.S. 136-54 to 136-63,
13 to the extent that said sections are applicable: Provided, that nothing in
14 this Chapter shall be construed to authorize or permit the Department
15 of Transportation to allow or pay anything to any county, township,
16 city or town, or to any board of commissioners or governing body
17 thereof, for any existing road or part of any road heretofore
18 constructed by any such county, township, city or town, unless a
19 contract has already been entered into with the Department of
20 Transportation...."

21 **SECTION 9.** This act is effective when it becomes law.