

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-225
SENATE BILL 1697**

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS ON TURNPIKE PROJECTS OF THE NORTH CAROLINA TURNPIKE AUTHORITY, TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AND TO CLARIFY THE AUTHORIZATION MADE IN A PRIOR LAW TO TOLL AN EXISTING SEGMENT OF N.C. 540.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6H of Chapter 136 of the General Statutes is amended by designating the current sections in that Article as Part 1 with a heading that reads as follows:

"Part 1. Turnpike Authority and Toll Projects."

SECTION 2. Article 6H of Chapter 136 of the General Statutes, as amended by Section 1 of this act, is amended by adding a new Part to read:

"Part 2. Collection of Tolls on Turnpike Projects."

"§ 136-89.210. Definitions.

The definitions in G.S. 136-89.181 and the following definitions apply in this Article:

- (1) Reserved.
- (2) Open road toll. – A toll payable under an open road tolling system.
- (3) Open road tolling system. – A system of collecting a toll for the use of a highway that does not provide a way to pay the toll in cash while traveling on the highway.

"§ 136-89.211. Tolls for use of Turnpike project.

In exercising its authority under G.S. 136-89.183 to set tolls for the use of a Turnpike project, the Authority may not do any of the following:

- (1) Set open road tolls that vary for the same class of motor vehicle depending on the method by which the Authority identifies a motor vehicle that drives on the Turnpike project. This does not preclude the Authority from allowing a discount of up to thirty-five percent (35%) of the amount of a toll for a motor vehicle equipped with an electronic toll collection transponder.
- (2) Exempt a motor vehicle that is not a law enforcement vehicle, an emergency fire or rescue vehicle, or an emergency medical services vehicle from the requirement of paying a toll for the use of a Turnpike project.

"§ 136-89.212. Payment of toll required for use of Turnpike project.

A motor vehicle that is driven on a Turnpike project is subject to a toll imposed by the Authority for the use of the project. If the toll is an open road toll, the person who is the registered owner of the motor vehicle is liable for payment of the toll unless the registered owner establishes that the motor vehicle was in the care, custody, and control of another person when it was driven on the Turnpike project.

A person establishes that a motor vehicle was in the care, custody, and control of another person when it was driven on a Turnpike project by submitting to the Authority a sworn affidavit stating one of the following:

- (1) The name and address of the person who had the care, custody, and control of the motor vehicle when it was driven. If the motor vehicle

was leased or rented under a long-term lease or rental, as defined in G.S. 105-187.1, the affidavit must be supported by a copy of the lease or rental agreement or other written evidence of the agreement.

- (2) The motor vehicle was stolen. The affidavit must be supported by an insurance or police report concerning the theft or other written evidence of the theft.
- (3) The person transferred the motor vehicle to another person by sale or otherwise before it was driven on the Turnpike project. The affidavit must be supported by insurance information, a copy of the certificate of title, or other evidence of the transfer.

"§ 136-89.213. Administration of tolls and requirements for open road tolls.

(a) Administration. – The Authority is responsible for collecting tolls on Turnpike projects. In exercising its authority under G.S. 136-89.183 to perform or procure services required by the Authority, the Authority may contract with one or more providers to perform part or all of the collection functions and may enter into agreements to exchange information that identifies motor vehicles and their owners with one or more of the following entities: the Division of Motor Vehicles of the Department of Transportation, another state, another toll operator, or a toll collection-related organization. Identifying information obtained by the Authority through an agreement is not a public record and is subject to the disclosure limitations in 18 U.S.C. § 2721, the federal Driver's Privacy Protection Act.

(b) Open Road Tolls. – If a Turnpike project uses an open road tolling system, the Authority must operate a facility that is in the immediate vicinity of the Turnpike project and that accepts cash payment of the toll and must place signs on the Turnpike project that give drivers the following information:

- (1) Notice that the driver is approaching a highway for which a toll is required. Signs providing this information must be placed before the toll is incurred.
- (2) The methods by which the toll may be paid.
- (3) Directions to the nearby facility that accepts cash payment of the toll.

"§ 136-89.214. Bill for unpaid open road toll.

(a) Bill. – If a motor vehicle travels on a Turnpike project that uses an open road tolling system and a toll for traveling on the project is not paid within 15 days after the travel occurs, the Authority must send a bill by first-class mail to the registered owner of the motor vehicle for the amount of the unpaid toll. The Authority must send the bill within 90 days after the travel occurs. If a bill is not sent within the required time, the Authority waives collection of the toll. The Authority must establish a billing period for unpaid open road tolls that is no shorter than 15 days. A bill for a billing period must include all unpaid tolls incurred by the same person during the billing period.

(b) Information on Bill. – A bill sent under this section must include all of the following information:

- (1) The name and address of the registered owner of the motor vehicle that traveled on the Turnpike project.
- (2) The date the travel occurred, the approximate time the travel occurred, and each segment of the Turnpike project on which the travel occurred.
- (3) An image of the registration plate of the motor vehicle, if the Authority captured an electronic image of the motor vehicle when it traveled on the Turnpike project.
- (4) The amount of the toll due and an explanation of how payment may be made.
- (5) The date by which the toll must be paid to avoid the imposition of a processing fee under G.S. 136-89.215 and the amount of the processing fee.

(6) A statement that a vehicle owner who has unpaid tolls is subject to a civil penalty and may not renew the vehicle's registration until the tolls and civil penalties are paid.

(7) A clear and concise explanation of how to contest liability for the toll.

"§ 136-89.215. Required action upon receiving bill for open road toll and processing fee for unpaid toll.

(a) Action Required. – A person who receives a bill for an unpaid open road toll must take one of the following actions within 30 days after receiving the bill:

(1) Pay the bill.

(2) Send a written request to the Authority for a review of the toll.

(b) Fee. – If a person does not take one of the actions required under subsection (a) of this section within the required time, the Authority may add a processing fee to the amount the person owes. The processing fee may not exceed six dollars (\$6.00). A person may not be charged more than forty-eight dollars (\$48.00) in processing fees in a calendar year.

The Authority must set the processing fee at an amount that does not exceed the costs of identifying the owner of a motor vehicle that is subject to an unpaid toll and billing the owner for the unpaid toll. The fee is a receipt of the Authority and must be applied to these costs.

"§ 136-89.216. Civil penalty for failure to pay open road toll.

(a) Penalty. – A person who receives one or more bills for unpaid open road tolls during the first or second six-month period in a year and who has not paid the amount due on those bills within 30 days after the end of the six-month period is subject to a civil penalty of twenty-five dollars (\$25.00). The period from January 1 through June 30 of a year is the first six-month period in a year, and the period from July 1 through December 31 is the second six-month period in a year. Only one penalty may be assessed for a six-month period.

(b) Payment. – The Authority must send a notice by first-class mail to a person who is assessed a civil penalty under this section. A person who is assessed a civil penalty must pay the unpaid toll for which the civil penalty was imposed, the amount of any processing fee due, and the civil penalty within 30 days after receiving the notice.

(c) Penalty Proceeds. – A civil penalty imposed under this section is payable to the Authority or, if collected when a vehicle registration is renewed, to the Division of Motor Vehicles of the Department of Transportation. The clear proceeds of a civil penalty imposed under this section must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. The guidelines used by the Office of State Budget and Management to determine an agency's actual costs of collecting a civil penalty and the clear proceeds of the civil penalty apply to the determination of the clear proceeds of a civil penalty imposed under this section.

"§ 136-89.217. Vehicle registration renewal blocked for unpaid open road toll.

(a) Registration Block. – Failure of a person to pay an open road toll billed to the person under G.S. 136-89.214, any processing fee added under G.S. 136-89.215, and any civil penalty imposed under G.S. 136-89.216 is grounds under G.S. 20-54 to withhold the registration renewal of a motor vehicle registered in that person's name. The Authority must notify the Commissioner of Motor Vehicles of a person who owes a toll, a processing fee, or a civil penalty. When notified, the Commissioner of Motor Vehicles must withhold the registration renewal of any motor vehicle registered in that person's name.

(b) Collection by DMV. – A person whose motor vehicle registration renewal is blocked under this section may pay to the Division of Motor Vehicles of the Department of Transportation the amount owed for unpaid tolls, processing fees, and civil penalties due under this Part when renewing the vehicle registration. The Division must remit to the Authority the amount of tolls, fees, and civil penalties collected. The Division's costs of collecting tolls, fees, and civil penalties are considered a necessary expense of

the operation of the Authority, and the Authority must reimburse the Division for these costs.

"§ 136-89.218. Procedures for contesting liability for unpaid open road toll.

(a) Informal Review. – A person who receives a bill for an unpaid open road toll and who disputes liability for the toll may contest the toll by sending to the Authority a request for review of the toll. The person may include a sworn affidavit described in G.S. 136-89.212 that establishes that someone else had the care, custody, and control of the motor vehicle subject to the toll when the toll was incurred. The person must send the request for review to the Authority within 30 days after receiving the bill for the toll. A person who does not send a request for review to the Authority within this time limit waives the right to a review. If a person sends a timely request for review to the Authority, the Authority may not collect the disputed toll and any processing fee added to the bill for the toll until the conclusion of the review process in this section.

(b) Administrative Hearing. – If the Authority conducts an informal review under subsection (a) of this section and determines that the person who requested the review is liable for the toll, the Authority must send the person a notice informing the person of the Authority's determination. The person may contest this determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(c) Judicial Review. – Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision made in a contested case authorized under subsection (b) of this section."

SECTION 3. G.S. 136-89.181 reads as rewritten:

"§ 136-89.181. Definitions.

The following definitions apply to this Article:

- (1) "~~Department~~" means ~~the Department.~~ – The North Carolina Department of Transportation.
- (2) "~~Turnpike Authority~~" means ~~the Turnpike Authority.~~ – The public agency created by this Article.
- (3) "~~Authority Board~~" means ~~the Authority Board.~~ – The governing board of the Turnpike Authority.
- (4) "~~Turnpike Project~~" means ~~a Turnpike project.~~ – Either of the following:
 - a. A road, bridge, or tunnel project planned, or planned and constructed, in accordance with the provisions of this Article.
 - b. A segment of the State highway system the Authority Board converts to a tolled highway pursuant to the authorization in G.S. 136-89.187.
- (5) "~~Turnpike System~~" means ~~collectively all Turnpike Projects developed in accordance with the provisions of this Article.~~ Turnpike system. – All Turnpike projects."

SECTION 4. G.S. 136-89.183(a) reads as rewritten:

"(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, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:
 - a. ~~Triangle Parkway Expressway, including segments also known as N.C. 540, Triangle Parkway, and Western Wake Freeway in Wake and Durham Counties.~~

- b. Gaston East-West Connector-Connector, also known as the Garden Parkway.
- c. Monroe Connector-Connector/Bypass.
- d. Cape Fear Skyway.
- e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia.Virginia, pursuant to G.S. 136-89.183A.
- f. I-540 in Wake and Durham Counties.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

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) Repealed by Session Laws 2005-275, s. 2, effective August 12, 2005.
- (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.
- (6a) To invest the proceeds of bonds or notes of the Authority that are pending disbursement or other idle funds of the Authority in any investment authorized by G.S. 159-30.
- (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 with the Department of Transportation, 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. An agreement entered under this subdivision requires the concurrence of the Board of Transportation if the Department of Transportation is a party to the agreement.
- (18) To utilize incentives in any contract for development or construction of a Turnpike Project, in order to promote expedited delivery of the project."

SECTION 5. G.S. 136-89.187 reads as rewritten:

"§ 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, except for a segment of ~~Interstate N.C. 540~~ under construction as of July 1, 2006, located in Wake and Durham Counties, ~~County~~ and extending from I-40 southwest to N.C. 55, ~~the N.C. 54 exit on N.C. 540 to the N.C. 55 exit on N.C. 540.~~ No segment may be converted to a toll route pursuant to this section unless first approved by the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) of the area in which that segment is located."

SECTION 6. G.S. 136-89.194 reads as rewritten:

"§ 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) Applicable 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. Cost estimates prepared for the purpose of comparing bids for a Turnpike project are confidential and may not be disclosed until after the opening of bids for the project.

(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.

(d) Entry for Surveys. – The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120.

(e) Plans and Contract Documents. – The requirements for registering right-of-way plans set in G.S. 136-19.4 apply to right-of-way plans of the Turnpike Authority. In applying G.S. 136-19.4 to the Authority, references to the "Department" are considered references to the "Turnpike Authority" and references to the "Board" are considered references to the "Authority Board."

Diaries and analyses for contracts of the Turnpike Authority are subject to the same restrictions on disclosure that apply to diaries and analyses for contracts of the Department under G.S. 136-28.5.

(f) Construction Claims. – G.S. 136-29 applies to the adjustment and resolution of Turnpike project construction claims. In applying G.S. 136-29 to the Turnpike Authority, references to the 'Department of Transportation,' the 'State Highway Administrator,' and a 'State highway' are considered references to the 'Turnpike Authority,' the 'chief engineer of the Turnpike Authority,' and a 'Turnpike project.'

(g) Contract Exemptions. – The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system.

(2) Article 3D of Chapter 147 of the General Statutes. The Authority may use the services of the Office of Information Technology Services in procuring goods and services that are not specific to establishing and operating a toll revenue system. All contract information for contracts for information technology are subject to disclosure in accordance with G.S. 147-33.95.

(h) APA. – Chapter 150B of the General Statutes does not apply to the Turnpike Authority, except as provided in this section and G.S. 136-89.218."

SECTION 7. G.S. 20-54 is amended by adding a new subdivision to read:

"(10) The North Carolina Turnpike Authority has notified the Division that the owner of the vehicle has not paid the amount of tolls, fees, and civil penalties the owner owes the Authority for use of a Turnpike project."

SECTION 8. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that are not designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras."

SECTION 9. G.S. 47-30(1) reads as rewritten:

~~"(l) The provisions of this~~ This section shall does not apply to the registration of highway right-of-way plans provided for in ~~G.S. 136-19.4~~ G.S. 136-19.4 or ~~G.S. 136-89.184~~, nor to the registration of roadway corridor official maps provided for in Article 2E of Chapter ~~136~~, 136 of the General Statutes."

SECTION 10. G.S. 146-65 reads as rewritten:

"§ 146-65. Exemptions from Chapter.

~~None of the provisions of Chapter 146 shall~~ This Chapter does not apply to: to any of the following:

- (1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or Transportation or the North Carolina Turnpike Authority.
- (2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and powers, Authority in exercising its powers under G.S. 143B-452 through G.S. 143B-467.

~~Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement."~~

SECTION 11. G.S. 136-89.183A reads as rewritten:

"§ 136-89.183A. Accelerated Pilot Toll Bridge Project.

(a) Findings. – The General Assembly finds that there is a need for a bridge connecting the Currituck County mainland to the Currituck County Outer Banks; that the bridge should be implemented as a toll bridge; that the bridge should be implemented in a manner that protects the natural environment and quality of life on the Outer Banks; and that the character of the existing road system in Currituck County and Dare County Outer Banks should be preserved.

~~(a)(b)~~ Contract to Construct Accelerated Pilot Toll Bridge Project. – The Authority shall contract with a single private firm to design, obtain all necessary permits for, and construct the toll bridge described in G.S. 136-89.183(a)(2), known as the Mid-Currituck Bridge, a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, in order to provide accelerated, efficient, and cost-effective completion of the project.

~~(b)(c)~~ Preconstruction Participation. – In addition to the authority granted by G.S. 136-89.191, the Department shall participate in the cost of preconstruction activities related to the project described in this section, if requested by the Authority.

(d) Environmental Protection. – The Authority shall ensure that the Mid-Currituck Bridge is implemented in a manner that accomplishes all of the following:

- (1) Ensures the preservation of water quality in Currituck Sound.
- (2) Mitigates the environmental impact of the bridge on the Currituck County mainland and the Outer Banks.
- (3) Reduces traffic congestion and vehicle miles traveled, and preserves the character of the existing road system, in Dare County and Currituck County on the Outer Banks.

~~(e)(e)~~ Report on Project. – The Authority shall report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated pilot toll bridge project described in this section."

SECTION 12. Section 7 of this act becomes effective January 1, 2011. Section 8 of this act becomes effective December 1, 2008. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 9:41 p.m. this 17th day of August, 2008