

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1734\*  
Committee Substitute Favorable 5/27/10

Short Title: DOT Powers and Duties Changes.

(Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

1 AN ACT TO ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON THE  
2 CONDITION OF ITS BUILDINGS; CORRECT A STATUTORY REFERENCE TO THE  
3 DEPARTMENT OF TRANSPORTATION'S CHIEF FINANCIAL OFFICER;  
4 ELIMINATE STATUTORY REFERENCES TO A SEVEN-YEAR TRANSPORTATION  
5 IMPROVEMENT PROGRAM; CLARIFY THAT THE DEPARTMENT OF  
6 TRANSPORTATION HAS AUTHORITY AND GENERAL SUPERVISION OVER ALL  
7 TRANSPORTATION PROJECTS; PROVIDE THAT THE DEPARTMENT OF  
8 TRANSPORTATION HAS AUTHORITY TO ENTER INTO AGREEMENTS WITH  
9 LOCAL GOVERNMENTS TO RECEIVE FUNDS FOR RIGHT-OF-WAY  
10 ACQUISITION; UPDATE STATUTORY REFERENCES TO THE NORTH CAROLINA  
11 TURNPIKE AUTHORITY; ELIMINATE A DEPARTMENT OF TRANSPORTATION  
12 REPORT ON ACCESS TO COASTAL WATERS; REVISE THE STATUTES  
13 GOVERNING THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED  
14 MINORITY-OWNED AND WOMEN-OWNED BUSINESSES PROGRAM; AND  
15 TRANSFER TO THE SECRETARY THE POWER TO PROMULGATE DEPARTMENT  
16 OF TRANSPORTATION RULES, AS RECOMMENDED BY THE JOINT  
17 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 136-11 is repealed.

20 **SECTION 2.** G.S. 136-16.10 reads as rewritten:

21 **"§ 136-16.10. Allocations by Department ~~Controller~~ Chief Financial Officer to eliminate**  
22 **overdrafts.**

23 The ~~Controller~~ Chief Financial Officer of the Department of Transportation shall allocate at  
24 the beginning of each fiscal year from the various appropriations made to the Department of  
25 Transportation for State Construction, State Funds to Match Federal Highway Aid, State  
26 Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State  
27 maintenance and construction projects, and these allocations shall not be diverted to other  
28 purposes."  
29

30 **SECTION 3.** G. S. 136-17.2A(d) reads as rewritten:

31 "(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a  
32 distribution region an amount equal to that region's tentative percentage share of the funds that  
33 are subject to this section and are available for that fiscal year. In any ~~consecutive seven-year~~  
34 Transportation Improvement Plan period, the amount expended in a distribution region must be  
35 between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts  
36 established under this subsection as the target amounts to be expended in the region for ~~those~~  
37 seven years."



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1           **SECTION 4.** G.S. 136-18(1) reads as rewritten:

2   "**§ 136-18. Powers of Department of Transportation.**

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

- 4           (1)    The authority and general supervision over all matters relating to the  
5                ~~construction~~construction, maintenance, and design of the State ~~highways,~~  
6                transportation projects, letting of contracts therefore, and the selection of  
7                materials to be used in the construction of State ~~highways~~transportation  
8                projects under the authority of this Chapter.

9           ...."

10          **SECTION 5.** G.S. 136-18(12b) reads as rewritten:

11   "**§ 136-18. Powers of Department of Transportation.**

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

13       ...

- 14           (12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other  
15                eligible debt-financing instruments to finance federal-aid highway projects  
16                using federal funds to pay a portion of principal, interest, and related bond  
17                issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National  
18                Highway System Designation Act of 1995, Pub. L. 104-59). These bonds  
19                shall be issued by the State Treasurer on behalf of the Department and shall  
20                be issued pursuant to an order adopted by the Council of State under  
21                G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt  
22                instruments, consistent with the terms of the State and Local Government  
23                Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use  
24                under this subdivision. Prior to issuance of any "GARVEE" or other eligible  
25                debt instrument using federal funds to pay a portion of principal, interest,  
26                and related bond issuance costs, the State Treasurer shall determine (i) that  
27                the total outstanding principal of such debt does not exceed the total amount  
28                of federal transportation funds authorized to the State in the prior federal  
29                fiscal year; or (ii) that the maximum annual principal and interest of such  
30                debt does not exceed fifteen percent (15%) of the expected average annual  
31                federal revenue shown for the ~~seven-year~~ period in the most recently  
32                adopted Transportation Improvement Program. Notes issued under the  
33                provisions of this subdivision may not be deemed to constitute a debt or  
34                liability of the State or of any political subdivision thereof, or a pledge of the  
35                full faith and credit of the State or of any political subdivision thereof, but  
36                shall be payable solely from the funds and revenues pledged therefor. All the  
37                notes shall contain on their face a statement to the effect that the State of  
38                North Carolina shall not be obligated to pay the principal or the interest on  
39                the notes, except from the federal transportation fund revenues as shall be  
40                provided by the documents governing the revenue note issuance, and that  
41                neither the faith and credit nor the taxing power of the State of North  
42                Carolina or of any of its political subdivisions is pledged to the payment of  
43                the principal or interest on the notes. The issuance of notes under this Part  
44                shall not directly or indirectly or contingently obligate the State or any of its  
45                political subdivisions to levy or to pledge any form of taxation whatever or  
46                to make any appropriation for their payment.

47           ...."

48          **SECTION 6.** G.S. 136-18(38) reads as rewritten:

49   "**§ 136-18. Powers of Department of Transportation.**

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

51       ...

1 (38) To enter into agreements with municipalities, counties, governmental  
2 entities, or nonprofit corporations to receive funds for the ~~purpose~~ purposes  
3 of advancing right-of-way acquisition or the construction schedule of a  
4 project identified in the Transportation Improvement Program. If these funds  
5 are subject to repayment by the Department, prior to receipt of funds,  
6 reimbursement of all funds received by the Department shall be shown in the  
7 existing Transportation Improvement Program and shall be reimbursed  
8 within ~~seven years of receipt~~. the period of the existing Transportation  
9 Improvement Program.

10 ...."

11 **SECTION 7.** G.S. 136-18(39) reads as rewritten:

12 **"§ 136-18. Powers of Department of Transportation.**

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

14 ...

15 (39) To enter into partnership agreements with ~~the North Carolina Turnpike~~  
16 ~~Authority~~, private entities, and authorized political subdivisions to finance,  
17 by tolls, contracts, and other financing methods authorized by law, the cost  
18 of acquiring, constructing, equipping, maintaining, and operating  
19 transportation infrastructure in this State, and to plan, design, develop,  
20 acquire, construct, equip, maintain, and operate transportation infrastructure  
21 in this State. An agreement entered into under this subdivision requires the  
22 concurrence of the Board of Transportation. The Department shall report to  
23 the Chairs of the Joint Legislative Transportation Oversight Committee, the  
24 Chairs of the House of Representatives Appropriations Subcommittee on  
25 Transportation, and the Chairs of the Senate Appropriations Committee on  
26 the Department of Transportation, at the same time it notifies the Board of  
27 Transportation of any proposed agreement under this subdivision. Any  
28 contracts for construction of highways, roads, streets, and bridges which are  
29 awarded pursuant to an agreement entered into under this section shall  
30 comply with the competitive bidding requirements of Article 2 of this  
31 Chapter.

32 ...."

33 **SECTION 8.** G.S. 136-18(40) reads as rewritten:

34 **"§ 136-18. Powers of Department of Transportation.**

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

36 ...

37 (40) To expand public access to coastal waters in its road project planning and  
38 construction programs. The Department shall work with the Wildlife  
39 Resources Commission, other State agencies, and other government entities  
40 to address public access to coastal waters along the roadways, bridges, and  
41 other transportation infrastructure owned or maintained by the Department.  
42 The Department shall adhere to all applicable design standards and  
43 guidelines in implementation of this enhanced access. ~~The Department shall~~  
44 ~~report on its progress in expanding public access to coastal waters to the~~  
45 ~~Joint Legislative Commission on Seafood and Aquaculture and to the Joint~~  
46 ~~Legislative Transportation Oversight Commission no later than March 1 of~~  
47 ~~each year.~~

48 ...."

49 **SECTION 9.** G.S. 136-28.4 reads as rewritten:

50 **"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**  
51 **women-owned businesses in highway transportation contracts.**

1 (a) It is the policy of this State, based on a compelling governmental interest, to  
2 encourage and promote participation by disadvantaged minority-owned and women-owned  
3 businesses in contracts let by the Department pursuant to this Chapter for the planning, design,  
4 preconstruction, construction, alteration, or maintenance of State ~~highways, roads, streets, or~~  
5 ~~bridges~~ transportation infrastructure and in the procurement of materials for these projects. All  
6 State agencies, institutions, and political subdivisions shall cooperate with the Department of  
7 Transportation and among themselves in all efforts to conduct outreach and to encourage and  
8 promote the use of disadvantaged minority-owned and women-owned businesses in these  
9 contracts.

10 (b) At least every five years, the Department shall conduct a study on the availability  
11 and utilization of disadvantaged minority-owned and women-owned business enterprises and  
12 examine relevant evidence of the effects of race-based or gender-based discrimination upon the  
13 utilization of such business enterprises in contracts for planning, design, preconstruction,  
14 construction, alteration, or maintenance of State ~~highways, roads, streets, or bridges~~  
15 transportation infrastructure and in the procurement of materials for these projects. Should the  
16 study show a strong basis in evidence of ongoing effects of past or present discrimination that  
17 prevents or limits disadvantaged minority-owned and women-owned businesses from  
18 participating in the above contracts at a level which would have existed absent such  
19 discrimination, such evidence shall constitute a basis for the State's continued compelling  
20 governmental interest in remedying such race and gender discrimination in ~~highway~~  
21 transportation contracting. Under such circumstances, the Department shall, in conformity with  
22 State and federal law, adopt by rule and contract provisions a specific program to remedy such  
23 discrimination. This specific program shall, to the extent reasonably practicable, address each  
24 barrier identified in such study that adversely affects contract participation by disadvantaged  
25 minority-owned and women-owned businesses.

26 (b1) Based upon the findings of the Department's ~~Second Generation Disparity Study~~  
27 ~~completed in 2004, 2009 study~~ entitled "Measuring Business Opportunity: A Disparity Study of  
28 NCDOT's State and Federal Programs" hereinafter referred to as "Study", the program design  
29 shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in  
30 the Study, and the Department shall implement a comprehensive antidiscrimination  
31 enforcement policy. As appropriate, the program design shall be modified by rules adopted by  
32 the Department that are consistent with findings made in the Study and in subsequent studies  
33 conducted in accordance with subsection (b) of this section. As part of this program, the  
34 Department shall review its budget and establish ~~annual~~ aspirational goals every three years,  
35 not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged  
36 minority-owned and women-owned businesses. These ~~annual~~ aspirational goals for  
37 disadvantaged minority-owned and women-owned businesses shall be established consistent  
38 with ~~federal methodology specified in the Study, methodology,~~ and they shall not be applied  
39 rigidly on specific contracts or projects. Instead, the Department shall establish  
40 contract-specific goals or project-specific goals for the participation of such firms in a manner  
41 consistent with availability of disadvantaged minority-owned and women-owned businesses, as  
42 appropriately defined by its most recent Study, for each disadvantaged minority-owned and  
43 women-owned business category that has demonstrated significant disparity in contract  
44 utilization. Nothing in this section shall authorize the use of quotas. Any program implemented  
45 as a result of the Study conducted in accordance with this section shall be narrowly tailored to  
46 eliminate the effects of historical and continuing discrimination and its impacts on such  
47 disadvantaged minority-owned and women-owned businesses without any undue burden on  
48 other contractors. The Department shall give equal opportunity for contracts it lets without  
49 regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as  
50 defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

51 (c) The following definitions apply in this section:

1 (1) "Disadvantaged ~~business~~Business" has the same meaning as "disadvantaged  
2 business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently  
3 promulgated replacement regulation.

4 (2) "Minority" includes only those racial or ethnicity classifications identified by  
5 a study conducted in accordance with this section that have been subjected to  
6 discrimination in the relevant marketplace and that have been adversely  
7 affected in their ability to obtain contracts with the Department.

8 (3) "Women" means nonminority persons born of the female gender.

9 (d) The Department shall report ~~semiannually~~annually to the Joint Legislative  
10 Transportation Oversight Committee on the utilization of disadvantaged minority-owned  
11 businesses and women-owned businesses and any program adopted to promote contracting  
12 opportunities for those businesses. Following each study of availability and utilization, the  
13 Department shall report to the Joint Legislative Transportation Oversight Committee on the  
14 results of the study for the purpose of determining whether the provisions of this section should  
15 continue in force and effect.

16 (e) This section expires August 31, ~~2010~~ 2014."

17 **SECTION 10.** G.S. 136-89.189 reads as rewritten:  
18 **"§ 136-89.189. Turnpike Authority revenue bonds.**

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

26 Except as provided in this section, the provisions of Chapter 159 of the General Statutes,  
27 the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

28 (1) The term of a lease between the Turnpike Authority and the Department  
29 executed prior to July 27, 2009, for all or any part of a Turnpike Project may  
30 exceed 40 years, as agreed by the Authority and the Department.

31 (2) The maturity date of a refunding bond may extend to the earlier of the  
32 following:

33 a. Forty years from the date of issuance of the refunding bond.

34 b. The date the Turnpike Authority determines is the maturity date  
35 required for the Turnpike Project funded with the refunding bonds to  
36 generate sufficient revenues to retire the refunding bonds and any  
37 other outstanding indebtedness issued for that Project. The  
38 Authority's determination of the appropriate maturity date is  
39 conclusive and binding. In making its determination, the Authority  
40 may take into account appropriate financing terms and conventions."

41 **SECTION 11.** G.S. 143B-348 reads as rewritten:

42 **"§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of  
43 Transportation.**

44 The Secretary of Transportation shall be the head of the Department of Transportation. He  
45 shall carry out the day-to-day operations of the Department and shall be responsible for  
46 carrying out the policies, programs, priorities, and projects approved by the Board of  
47 Transportation. He shall be responsible for all other transportation matters assigned to the  
48 Department of Transportation, except those reserved to the Board of Transportation by statute.  
49 Except as otherwise provided for by statute, the Secretary shall have all the powers and duties  
50 as provided for in Article 1 of Chapter 143B including the responsibility for all management  
51 functions for the Department of Transportation. The Secretary shall be vested with authority to

1 adopt design criteria, construction specifications, and standards as required for the Department  
2 of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the  
3 Secretary's designee shall be vested with authority to promulgate rules and regulations  
4 concerning all transportation functions assigned to the Department.

5 All rules, regulations, ordinances, specifications, standards, and criteria adopted by the  
6 Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by  
7 the Board of Transportation or the Secretary of Transportation. The Secretary shall have  
8 complete authority to modify any of these matters existing on July 1, 1977, except as  
9 specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance,  
10 specification, or standards are continued in effect under this section and the words "Board of  
11 Transportation" are used, the words shall mean the "Department of Transportation" unless the  
12 context makes such meaning inapplicable. All actions pending in court by or against the Board  
13 of Transportation may continue to be prosecuted in that name without the necessity of formally  
14 amending the name to the Department of Transportation."

15 **SECTION 12.** G.S. 143B-350(f)(4) reads as rewritten:

16 "(f) Duties of the Board. – The Board of Transportation has the following duties and  
17 powers:

18 ...

- 19 (4) To approve a schedule of all major transportation improvement projects and  
20 their anticipated ~~cost for a period of seven years into the future.~~ cost. This  
21 schedule is designated the Transportation Improvement Program; it must be  
22 published and copies must be available for distribution. The document that  
23 contains the Transportation Improvement Program, or a separate document  
24 that is published at the same time as the Transportation Improvement  
25 Program, must include the anticipated funding sources for the improvement  
26 projects included in the Program, a list of any changes made from the  
27 previous year's Program, and the reasons for the changes.

28 ...."

29 **SECTION 13.** G.S. 143B-350(f)(13) is repealed.

30 **SECTION 14.** G.S. 159-81(1) reads as rewritten:

31 **"§ 159-81. Definitions.**

32 The words and phrases defined in this section shall have the meanings indicated when used  
33 in this Article:

- 34 (1) "Municipality" means a county, city, town, incorporated village, sanitary  
35 district, metropolitan sewerage district, metropolitan water district, county  
36 water and sewer district, water and sewer authority, hospital authority,  
37 hospital district, parking authority, special airport district, special district  
38 created under Article 43 of Chapter 105 of the General Statutes, regional  
39 public transportation authority, regional transportation authority, regional  
40 natural gas district, regional sports authority, airport authority, joint agency  
41 created pursuant to Part 1 of Article 20 of Chapter 160A of the General  
42 Statutes, a joint agency authorized by agreement between two cities to  
43 operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike  
44 Authority ~~created pursuant to described in~~ Article 6H of Chapter 136 of the  
45 General Statutes, Statutes and transferred to the Department of  
46 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of  
47 State or local government.

48 ...."

49 **SECTION 15.** This act is effective when it becomes law.