

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1197*

Short Title: Toll Roads.

(Public)

Sponsors: Senators Gulley; Hoyle and Kerr.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CONSTRUCTION OF UP TO THREE PRIVATELY FUNDED AND THREE PUBLICALLY FUNDED TOLL ROAD OR BRIDGE PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"ARTICLE 6G.

"PRIVATE AND PUBLIC PILOT TOLL PROJECTS.

"§ 136-89.168. Private toll projects.

(a) Authority to License. – The Department of Transportation is authorized to issue up to three licenses to persons to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a transportation project within the State of North Carolina.

(b) Requirement for Finding of Need. – Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a non-toll project.

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

1 concerning the ability of applicant to finance the proposed project and the projected time
2 for the licensee to recover the cost of the licensee's investment and to make a reasonable
3 rate of return. The Department shall independently analyze the data submitted for each
4 project proposal and determine the appropriate license period.

5 (d) License Period. – A license issued under this section shall not exceed 30 years
6 in length.

7 (e) State Ownership at End of License Period. – A license issued pursuant to this
8 section shall include an agreement from the applicant to transfer all property rights to the
9 project to the State at the end of the license period.

10 (f) State Use for Other Purposes. – A license issued pursuant to this section shall
11 authorize the State or its designee to enter and utilize the project right-of-way for other
12 transportation or utility-related purposes, as long as those purposes do not interfere with
13 the use by the licensee.

14 (g) Terms of License. – Additional terms and conditions of any license issued
15 pursuant to this section shall be within the discretion of the Department of
16 Transportation, and may include, in addition to any other requirements:

17 (1) Provisions establishing minimum design and construction standards for
18 the project;

19 (2) Provisions establishing minimum maintenance standards for the project;

20 (3) Provisions requiring that necessary traffic signs and other traffic control
21 devices be erected and maintained in conformity with the Manual on
22 Uniform Traffic Control Devices as defined in G.S. 136-30(d).

23 (4) Provisions establishing the rights and duties of the parties regarding
24 infrastructure improvements and connections between the project and
25 the State highway system;

26 (5) Provisions regarding any type of access control which may be required
27 for the project;

28 (6) Provisions establishing the relative responsibilities of the licensee and
29 the Department of Transportation to keep the completed project open
30 and accessible to the public;

31 (7) Provisions requiring that the State of North Carolina, its agencies,
32 officials and employees be indemnified and held harmless by the
33 licensee for any liability incurred on the project in connection with
34 project construction, maintenance, or operation;

35 (8) Provisions concerning the circumstances under which the Department
36 will exercise its power of eminent domain; and

37 (9) Provisions concerning location of the project.

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

1 the Department exercise its power of eminent domain shall be required to reimburse the
2 Department in the full amount of its costs incurred in acquiring the necessary property
3 interests, including any negotiated settlement or jury verdict, and any attorney fees that
4 may be awarded. The acquisition of property interests necessary for inclusion in a
5 project licensed under this section is hereby declared to be for a public transportation
6 purpose.

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

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

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

23 (l) Resolution of Support Required. – The Department shall not license any
24 project under this section prior to receiving a resolution of support for the project
25 approved by the county commissioners of each county in which the project will be
26 located.

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

30 (n) Definitions. – The following definitions shall apply as used in this section:

31 (1) 'Person' shall mean any natural person, partnership, corporation, trust,
32 association, sole proprietorship, or any other legal entity other than the
33 State or its agencies, institutions, or political subdivisions.

34 (2) 'Project' shall mean a privately constructed, maintained, and operated
35 toll highway, road, bridge, or other transportation-related facility.

36 (3) 'License' shall mean a person authorized through a contractual
37 agreement with the Department of Transportation to finance, design,
38 construct, maintain, improve, own, or operate, or any combination
39 thereof, a project.

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

1 **"§ 136-89.169. State-owned and operated toll projects.**

2 (a) Authority to Construct and Operate. – The Department of Transportation is
3 authorized to construct and operate up to three toll transportation projects within the
4 State.

5 (b) Requirement for Finding of Need. – Prior to the construction of any project
6 authorized under this section, the Department shall make a written determination that the
7 proposed project is necessary and in the public interest, and that it is unlikely to be
8 constructed in the foreseeable future as a non-toll project.

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

13 Section 2. This act is effective when it becomes law and expires July 1, 2003.