

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 253*
Committee Substitute Favorable 5/31/05
Senate Transportation Committee Substitute Adopted 6/14/05
Senate Transportation Committee Substitute #2 Adopted 6/15/05

Short Title: NC Turnpike Authority Changes.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA TURNPIKE AUTHORITY TO ADOPT TRANSPORTATION CORRIDOR OFFICIAL MAPS, TO INCREASE THE NUMBER OF PROJECTS THE AUTHORITY MAY UNDERTAKE FROM THREE TO NINE, TO AUTHORIZE USE OF INCENTIVES IN TURNPIKE CONTRACTS, TO REQUIRE THE AUTHORITY TO CONTRACT WITH A SINGLE FIRM TO DESIGN, ACQUIRE PERMITS FOR, AND CONSTRUCT A DESCRIBED BRIDGE, TO AMEND THE AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION TO ISSUE A PRIVATE PILOT TOLL PROJECT LICENSE, TO REQUIRE AN EIGHTEEN-HOUR HURRICANE EVACUATION STANDARD TO BE USED FOR BRIDGE OR HIGHWAY CONSTRUCTION, AND TO EXPEDITE CONSTRUCTION OF A REPLACEMENT FOR THE HERBERT C. BONNER BRIDGE.

The General Assembly of North Carolina enacts:

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

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

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

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

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

1 (3) Regional public transportation authorities created pursuant to Article
2 26 of Chapter 160A of the General Statutes or regional transportation
3 authorities created pursuant to Article 27 of Chapter 160A of the
4 General Statutes for any proposed public transportation corridor, or
5 adjacent station or parking lot, included in the adopted long-range
6 transportation plan.

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

9 Before a city adopts a transportation corridor official map that extends beyond the
10 extraterritorial jurisdiction of its building permit issuance and subdivision control
11 ordinances, or adopts an amendment to a transportation corridor official map outside the
12 extraterritorial jurisdiction of its building permit issuance and subdivision control
13 ordinances, the city shall obtain approval from the Board of County Commissioners.

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

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

21 a. By publication at least once a week for four successive weeks
22 prior to the hearing in a newspaper having general circulation in
23 the county in which the transportation corridor to be designated
24 is located.

25 b. By two week written notice to the Secretary of Transportation,
26 the Chairman of the Board of County Commissioners, and the
27 Mayor of any city or town through whose corporate or
28 extraterritorial jurisdiction the transportation corridor passes.

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

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

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

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

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

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

5 (2) A copy of the official map, each amendment thereto and any variance
6 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
7 tax supervisor of any county and tax collector of any city affected
8 thereby. The portion of properties embraced within a transportation
9 corridor and any variance granted shall be clearly indicated on all tax
10 maps maintained by the county or city for such period as the
11 designation remains in effect.

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

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

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

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

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

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

42 (2) Deletion of the corridor from the transportation corridor official map
43 by action of the Board of Transportation, the North Carolina Turnpike
44 Authority, or deletion of the corridor from the long-range

1 transportation plan of a city or regional transportation authority by
2 action of the city or regional transportation authority governing Board.
3 (f) The term "transportation corridor" as used in this Article does not include
4 bikeways or greenways."

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

6 **"§ 136-89.183. Powers of the Authority.**

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

9 (1) The powers of a corporate body, including the power to sue and be
10 sued, to make contracts, to adopt and use a common seal, and to alter
11 the adopted seal as needed.

12 (2) To study, plan, develop, and undertake preliminary design work on up
13 to nine Turnpike Projects. At the conclusion of these activities, the
14 Turnpike Authority is authorized to ~~To study, plan, develop, design,~~
15 ~~establish, purchase, construct, operate, and maintain three up to nine~~
16 ~~Turnpike Projects. Projects, either on its own initiative or at the request~~
17 ~~of the Board of Transportation. One of the Turnpike Projects shall be~~
18 ~~located in whole or in part in a county with a population equal to or~~
19 ~~greater than 650,000 persons, according to the latest decennial census,~~
20 ~~and one Turnpike Project shall be located in a county or counties that~~
21 ~~each have a population of fewer than 650,000 persons, according to the~~
22 ~~latest decennial census. One of the Turnpike Projects shall be a bridge~~
23 ~~of more than two miles in length going from the mainland to a~~
24 ~~peninsula bordering the State of Virginia.~~ A Turnpike Project selected
25 for construction by the Turnpike Authority shall be included in any
26 applicable locally adopted comprehensive transportation plans and
27 shall be shown in the current State Transportation Improvement Plan
28 prior to the letting of a contract for the Turnpike Project.

29 ~~(3) To study, plan, develop and undertake preliminary design work on~~
30 ~~three Turnpike Projects, in addition to the three turnpike projects~~
31 ~~described in subdivision (2) of this subsection, either on its own~~
32 ~~initiative or at the request of the Board of Transportation. The~~
33 ~~Authority shall take no further action on a project described by this~~
34 ~~subdivision unless authorized to do so by Statute.~~

35 (4) To rent, lease, purchase, acquire, own, encumber, dispose of, or
36 mortgage real or personal property, including the power to acquire
37 property by eminent domain pursuant to G.S. 136-89.184.

38 (5) To fix, revise, charge, and collect tolls and fees for the use of the
39 Turnpike Projects. Prior to the effective date of any toll or fee for use
40 of a Turnpike Facility, the Authority shall submit a description of the
41 proposed toll or fee to the Board of Transportation, the Joint
42 Legislative Transportation Oversight Committee and the Joint
43 Legislative Commission on Governmental Operations for review.

44 (6) To issue bonds or notes of the Authority as provided in this Article.

- 1 (7) To establish, construct, purchase, maintain, equip, and operate any
2 structure or facilities associated with the Turnpike System.
- 3 (8) To pay all necessary costs and expenses in the formation, organization,
4 administration, and operation of the Authority.
- 5 (9) To apply for, accept, and administer loans and grants of money or real
6 or personal property from any federal agency, the State or its political
7 subdivisions, local governments, or any other public or private sources
8 available.
- 9 (10) To adopt, alter, or repeal its own bylaws or rules implementing the
10 provisions of this Article, in accordance with the review and comment
11 requirements of G.S. 136-89.182(j).
- 12 (11) To utilize employees of the Department; to contract for the services of
13 consulting engineers, architects, attorneys, real estate counselors,
14 appraisers, and other consultants; to employ administrative staff as
15 may be required in the judgment of the Authority; and to fix and pay
16 fees or compensation to the Department, contractors, and
17 administrative employees from funds available to the Authority.
- 18 (12) To receive and use appropriations from the State and federal
19 government.
- 20 (13) To adopt procedures to govern its procurement of services and
21 delivery of Turnpike Projects.
- 22 (14) To perform or procure any portion of services required by the
23 Authority.
- 24 (15) To use officers, employees, agents, and facilities of the Department for
25 the purposes and upon the terms as may be mutually agreeable.
- 26 (16) To contract for the construction, maintenance, and operation of a
27 Turnpike Project.
- 28 (17) To enter into partnership agreements, agreements with political
29 subdivisions of the State, and agreements with private entities, and to
30 expend such funds as it deems necessary, pursuant to such agreements,
31 for the purpose of financing the cost of acquiring, constructing,
32 equipping, operating, or maintaining any Turnpike Project.
- 33 (18) To utilize incentives in any contract for development or construction
34 of a Turnpike Project, in order to promote expedited delivery of the
35 project.
- 36 (b) To execute the powers provided in subsection (a) of this section, the
37 Authority shall determine its policies by majority vote of the members of the Authority
38 Board present and voting, a quorum having been established. Once a policy is
39 established, the Authority Board shall communicate it to the Executive Director or the
40 Executive Director's designee, who shall have the sole and exclusive authority to
41 execute the policy of the Authority. No member of the Authority Board shall have the
42 responsibility or authority to give operational directives to any employee of the
43 Authority other than the Executive Director or the Director's designee."

1 **SECTION 3.** Article 6H of Chapter 136 of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 136-89.183A. Accelerated Pilot Toll Bridge Project.**

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

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

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

16 **SECTION 4.** G.S. 136-89.172 reads as rewritten:

17 **"§ 136-89.172. Private Pilot Toll Project.**

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

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

26 (c) Submission of Financial Data. – A person applying for a license to construct a
27 project under this section shall submit detailed financial data to the Department
28 concerning the ability of applicant to finance the proposed project. The Department
29 shall independently analyze the data submitted for each project proposal.

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

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

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

41 (1) Provisions establishing minimum design and construction standards
42 for the project.

43 (2) Provisions establishing minimum maintenance standards for the
44 project and the responsibility for such maintenance.

- 1 (3) Provisions requiring that appropriate traffic signs and other traffic
2 control devices be erected and maintained on the project.
- 3 (4) Provisions establishing the rights and duties of the parties regarding
4 infrastructure improvements and connections between the project and
5 the State highway system.
- 6 (5) Provisions regarding any type of access control, if any, that may be
7 required for the project.
- 8 (6) Provisions establishing the relative responsibilities of the licensee and
9 the Department of Transportation to keep the completed project open
10 and accessible to the public.
- 11 (7) Provisions requiring that the State of North Carolina, its agencies,
12 officials, and employees be indemnified and held harmless by the
13 licensee for any liability incurred on the project in connection with
14 project construction, maintenance, or operation.
- 15 (8) Provisions concerning location of the project.

16 (g) Department Powers. – The Department may exercise any power possessed by
17 it with respect to the development and construction of State transportation projects to
18 facilitate the development and construction of transportation projects pursuant to this
19 Article.

20 (h) Acquisition of Project Property. – A person licensed to construct a project
21 under this section shall make all reasonable efforts to acquire all right-of-way interests
22 required for the project through private negotiation. The Department is authorized to
23 exercise its power of eminent domain to acquire property rights necessary for
24 construction and maintenance of the project only as to those property interests that
25 cannot be acquired by the licensee at a reasonable price through private negotiation, and
26 only as required to control access to the project. A licensee requesting that the
27 Department exercise its power of eminent domain shall be required to reimburse the
28 Department in the full amount of its costs incurred in acquiring the necessary property
29 interests for the private portion of the project, including any negotiated settlement or
30 jury verdict, and any attorneys' fees that may be awarded. The acquisition of property
31 interests necessary for inclusion in a project licensed under this section is hereby
32 declared to be for a public transportation purpose.

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

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

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

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

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

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

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

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

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

26 **SECTION 5.** Chapter 136 of the General Statutes is amended by adding a
27 new section to read:

28 **"§ 136-102.7. Hurricane evacuation standard.**

29 (a) Evacuation Standard. – The hurricane evacuation standard to be used for any
30 bridge or highway construction project pursuant to this Chapter shall be no more than
31 18 hours, as recommended by the State Emergency Management officials."

32 **SECTION 6.(a)** The General Assembly finds that:

33 (a) The existing Herbert C. Bonner Bridge spanning Oregon Inlet, an essential
34 link in the State's transportation network, is in imminent danger of failure and possible
35 collapse due to its low stability rating and substandard condition.

36 (b) The Herbert C. Bonner Bridge, which was opened to traffic in 1963, has
37 extended beyond its original projected life span, and that Department of Transportation
38 engineering reports indicated in 1993 that the bridge had only six years of safe usage
39 left.

40 (c) The condition of the Herbert C. Bonner Bridge poses significant imminent
41 threats to public health and safety to thousands of residents and visitors at all times, and
42 jeopardizes emergency management operations and evacuations during times of natural
43 disasters.

1 (d) The condition of the Herbert C. Bonner Bridge also threatens the economic
2 stability of the tourist economy of the region, tourism being the region's main industry,
3 and also threatens the viability of Oregon Inlet as the region's main transportation
4 corridor for commercial and recreational fishing industries.

5 (e) The replacement of the Herbert C. Bonner Bridge has been studied for over a
6 decade, during which time the condition of the bridge has continued to deteriorate at an
7 alarming rate.

8 (f) Failure or collapse of the Herbert C. Bonner Bridge will result in catastrophic
9 harm to public health, safety, and welfare, the potential harm to and loss of lives, and
10 loss of access to the Pea Island National Wildlife Refuge, which is one of our country's
11 most important natural wildlife and wildfowl habitats.

12 (g) Replacement of the Herbert C. Bonner Bridge is critical to protect public
13 health, safety, and welfare, and maintain necessary transportation access for emergency
14 management and economic purposes.

15 (h) Replacement of the Herbert C. Bonner Bridge must occur as soon as is
16 practicable, and authorization must be given to the Department of Transportation to
17 pursue expedited permitting, design, and construction to ensure that the replacement
18 bridge is open to the public before the existing bridge fails or collapses.

19 **SECTION 6.(b)** Article 6H of Chapter 136 of the General Statutes is
20 amended by adding a new section to read:

21 "**§ 136-89.183B. Accelerated Herbert C. Bonner Bridge Replacement Project.**

22 (a) Contract for Accelerated Construction of the Herbert C. Bonner Replacement
23 Bridge Project. – The Department of Transportation shall contract with a single private
24 firm to design, obtain all necessary permits for, and construct a replacement bridge for
25 the Herbert C. Bonner Bridge at Oregon Inlet, in order to provide accelerated, efficient,
26 and cost-effective completion of the project.

27 (b) Replacement Bridge; Termini. – The bridge constructed pursuant to this
28 section shall be a replacement bridge, with north and south termini located in general
29 proximity to the termini of the existing Herbert C. Bonner Bridge.

30 (c) Department to Report on Project. – The Department shall prepare a request
31 for proposals from private firms to complete the bridge project described in this section,
32 and submit the request for proposals to the Joint Legislative Transportation Oversight
33 Committee for review and comment, within 90 days after the effective date of this act.
34 The Department shall issue the request for proposals to the public 30 days after
35 submittal to the Committee for review. The Department shall report to the Committee
36 on December 1, 2005, and each December 1 thereafter until completion, on the progress
37 of the accelerated bridge project described in this section."

38 **SECTION 7.** This act is effective when it becomes law.