

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1077*
Committee Substitute Favorable 6/26/12

Short Title: Increase DOT Public-Private Partnerships.-AB

(Public)

Sponsors:

Referred to:

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PUBLIC-PRIVATE PARTNERSHIPS FOR TOLLING AND
3 OTHER FINANCING METHODS ON TRANSPORTATION INFRASTRUCTURE
4 PROJECTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 TRANSPORTATION OVERSIGHT COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 136-18 reads as rewritten:

8 "§ 136-18. Powers of Department of Transportation.

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

10 ...
11 (39) To enter into partnership agreements with private entities, and authorized
12 political subdivisions to finance, by tolls, contracts, and other financing
13 methods authorized by law, the cost of acquiring, constructing, equipping,
14 maintaining, and operating transportation infrastructure in this State, and to
15 plan, design, develop, acquire, construct, equip, maintain, and operate
16 transportation infrastructure in this State. An agreement entered into under
17 this subdivision requires the concurrence of the Board of Transportation.
18 The Department shall report to the Chairs of the Joint Legislative
19 Transportation Oversight Committee, the Chairs of the House of
20 Representatives Appropriations Subcommittee on Transportation, and the
21 Chairs of the Senate Appropriations Committee on the Department of
22 Transportation, at the same time it notifies the Board of Transportation of
23 any proposed agreement under this subdivision. No contract for
24 transportation infrastructure subject to such an agreement that commits the
25 Department to make nonretainage payments for undisputed capital costs of a
26 completed transportation infrastructure to be made later than 18 months after
27 final acceptance by the Department of such transportation infrastructure
28 shall be executed without approval of the Local Government Commission.
29 Any contracts for construction of highways, roads, streets, and bridges
30 which are awarded pursuant to an agreement entered into under this section
31 shall comply with the competitive bidding requirements of Article 2 of this
32 Chapter. In connection with any agreement entered into under this section,
33 the following shall apply:

34 a. Notwithstanding the provisions of Article 3 of Chapter 44A of the
35 General Statutes, an agreement entered into under this subdivision
36 may require the private entity or its contractors to provide



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1 performance and payment security in the form and in the amount
2 determined by the Department of Transportation. Such performance
3 and payment security may consist of bonds, letters of credit, parent
4 guaranties, or other instruments acceptable to the Department of
5 Transportation.

6 b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement
7 entered into under this subdivision may allow the private entity to
8 assign, transfer, sell, hypothecate, and otherwise convey some or all
9 of its right, title, and interest in and to such agreement, and any rights
10 and remedies thereunder, to a lender, bondholder, or any other party.
11 However, in no event shall any such assignment create additional
12 debt or debt-like obligations of the State of North Carolina, the
13 Department, or any other agency, authority, commission, or similar
14 subdivision of the State to any lender, bondholder, entity purchasing
15 a participation in the right to receive the payment, trustee, trust, or
16 any other party providing financing or funding of projects described
17 in this section. The foregoing shall not preclude the Department from
18 making any payments due and owing pursuant to an agreement
19 entered into under this section.

20 c. The Department of Transportation, with respect to transportation
21 infrastructure financed in whole or in part by tolls, shall have the
22 powers to fix, revise, charge, and collect tolls and fees with respect to
23 such transportation infrastructure, and an agreement entered into
24 under this subdivision may allow the private entity to fix, revise,
25 charge, and collect such tolls and fees.

26 d. Revenues derived from transportation infrastructure that are not
27 allocated to a private entity or repayment of financing or other costs
28 under an agreement entered into under this subdivision may be used
29 for the following:

30 1. Administration, development, right-of-way acquisition,
31 design, construction, operation, and maintenance costs of the
32 Department for the infrastructure project that is the subject of
33 the agreement entered into under this section and for
34 infrastructure that is in the same Metropolitan Planning
35 Organization or Rural Transportation Planning Organization
36 where the infrastructure that is the subject of the agreement is
37 located.

38 2. Debt service on revenue bonds issued by or on behalf of the
39 Department pursuant to Article 5 of Chapter 159 of the
40 General Statutes.

41 3. Other financing costs related to transportation infrastructure.

42 4. The establishment of debt service reserve funds.

43 5. Any other lawful purpose.

44 ...

45 (43) The Department may exercise the powers and duties set forth in Article 6H
46 of this Chapter independently of the North Carolina Turnpike Authority and
47 may contract to exercise those powers and duties through a vendor, subject
48 to the provisions of subdivision (39) of this section and provided that bonds
49 to finance costs of infrastructure projects described in subdivision (39) of
50 this section shall be issued under Article 5 of Chapter 159 of the General
51 Statutes, and G.S. 159-88 shall be satisfied for such issues if the bonds are

1 obligations secured by a pledge of revenues allocated to a private entity
2 under subdivision (39) of this section."

3 **SECTION 2.** G.S. 136-89.183 is amended by adding new subsections to read:

4 "(c) Notwithstanding the provisions of Article 3 of Chapter 44A of the General Statutes,
5 an agreement entered into with respect to a Turnpike Project may require the private entity or
6 its contractors to provide performance and payment security in the form and in the amount
7 determined by the Authority. Such performance and payment security may consist of bonds,
8 letters of credit, parent guaranties, or other instruments acceptable to the Authority.

9 (d) Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into
10 with respect to a Turnpike Project may allow the private entity to assign, transfer, sell,
11 hypothecate, and otherwise convey some or all of its right, title, and interest in and to such
12 agreement, and any rights and remedies thereunder, to a lender, bondholder, or any other party.
13 However, in no event shall any such assignment create additional debt or debt-like obligations
14 of the State of North Carolina, the Department, or any other agency, authority, commission, or
15 similar subdivision of the State to any lender, bondholder, entity purchasing a participation in
16 the right to receive the payment, trustee, trust, or any other party providing financing or funding
17 of projects described in this section. The foregoing shall not preclude the Authority from
18 making any payments due and owing pursuant to an agreement entered into with respect to a
19 Turnpike Project.

20 (e) Revenues derived from a Turnpike Project that are not allocated to a private entity
21 or repayment of financing or other costs under an agreement entered into with respect to a
22 Turnpike Project may be used for the following:

23 (1) Administration, development, right-of-way acquisition, design, construction,
24 operation, and maintenance costs of the Authority for the infrastructure
25 project that is the subject of the agreement entered into under this section
26 and for infrastructure that is in the same Metropolitan Planning Organization
27 or Rural Transportation Planning Organization where the infrastructure that
28 is the subject of the agreement is located.

29 (2) Debt service on revenue bonds issued by or on behalf of the Authority
30 pursuant to Article 5 of Chapter 159 of the General Statutes.

31 (3) Other financing costs related to transportation infrastructure.

32 (4) The establishment of debt service reserve funds.

33 (5) Any other lawful purpose."

34 **SECTION 3.** This act is effective when it becomes law.