

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1734*
PROPOSED COMMITTEE SUBSTITUTE H1734-PCS50920-SU-89

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19 **SECTION 1.** G.S. 136-11 is repealed.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



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1 between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts
2 established under this subsection as the target amounts to be expended in the region for ~~those~~
3 ~~seven years that period.~~"

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

5 **"§ 136-18. Powers of Department of Transportation.**

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

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

12"

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

14 **"§ 136-18. Powers of Department of Transportation.**

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

16 ...

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

50"

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

1 **"§ 136-18. Powers of Department of Transportation.**

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

3 ...

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

13"

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

15 **"§ 136-18. Powers of Department of Transportation.**

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

17 ...

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

35"

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

37 **"§ 136-18. Powers of Department of Transportation.**

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

39 ...

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

51"

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

2 "**§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**
3 **women-owned businesses in highway transportation contracts.**

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

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

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

1 regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as
2 defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

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

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

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

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

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

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

20 **SECTION 10.** G.S. 136-89.189 reads as rewritten:

21 "**§ 136-89.189. Turnpike Authority revenue bonds.**

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

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

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

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

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

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

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

45 "**§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of**
46 **Transportation.**

47 The Secretary of Transportation shall be the head of the Department of Transportation. He
48 shall carry out the day-to-day operations of the Department and shall be responsible for
49 carrying out the policies, programs, priorities, and projects approved by the Board of
50 Transportation. He shall be responsible for all other transportation matters assigned to the
51 Department of Transportation, except those reserved to the Board of Transportation by statute.

1 Except as otherwise provided for by statute, the Secretary shall have all the powers and duties
2 as provided for in Article 1 of Chapter 143B including the responsibility for all management
3 functions for the Department of Transportation. The Secretary shall be vested with authority to
4 adopt design criteria, construction specifications, and standards as required for the Department
5 of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the
6 Secretary's designee shall be vested with authority to promulgate rules and regulations
7 concerning all transportation functions assigned to the Department.

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

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

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

21 ...

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

31"

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

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

34 "§ 159-81. Definitions.

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

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

51"

1

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