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SESSION 2009

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HOUSE BILL 1734*
Committee Substitute Favorable 5/27/10
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PROPOSED COMMITTEE SUBSTITUTE H1734-PCS50948-RV-70

Short Title: DOT Powers and Duties Changes.

(Public)

Sponsors:

Referred to:

May 17, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON THE
3 CONDITION OF ITS BUILDINGS; CORRECT A STATUTORY REFERENCE TO THE
4 DEPARTMENT OF TRANSPORTATION'S CHIEF FINANCIAL OFFICER;
5 ELIMINATE STATUTORY REFERENCES TO A SEVEN-YEAR TRANSPORTATION
6 IMPROVEMENT PROGRAM; CLARIFY THAT THE DEPARTMENT OF
7 TRANSPORTATION HAS AUTHORITY AND GENERAL SUPERVISION OVER ALL
8 TRANSPORTATION PROJECTS; PROVIDE THAT THE DEPARTMENT OF
9 TRANSPORTATION HAS AUTHORITY TO ENTER INTO AGREEMENTS WITH
10 LOCAL GOVERNMENTS TO RECEIVE FUNDS FOR RIGHT-OF-WAY
11 ACQUISITION; UPDATE STATUTORY REFERENCES TO THE NORTH CAROLINA
12 TURNPIKE AUTHORITY; ELIMINATE A DEPARTMENT OF TRANSPORTATION
13 REPORT ON ACCESS TO COASTAL WATERS; REVISE THE STATUTES
14 GOVERNING THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED
15 MINORITY-OWNED AND WOMEN-OWNED BUSINESSES PROGRAM; AND
16 TRANSFER TO THE SECRETARY THE POWER TO PROMULGATE DEPARTMENT
17 OF TRANSPORTATION RULES, AS RECOMMENDED BY THE JOINT
18 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE; AND PROVIDE
19 THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY TO LOCATE
20 AND ACQUIRE RIGHTS-OF-WAY FOR THE PRESENT OR FUTURE RELOCATION
21 OR INITIAL LOCATION OF DISTRIBUTED ANTENNA SYSTEMS (DAS) AS
22 PERMITTED BY LOCAL ZONING.

23 The General Assembly of North Carolina enacts:

24 SECTION 1. G.S. 136-11 is repealed.

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

26 "§ 136-16.10. Allocations by Department ~~Controller~~ Chief Financial Officer to eliminate
27 overdrafts.

28 The ~~Controller~~ Chief Financial Officer of the Department of Transportation shall allocate at
29 the beginning of each fiscal year from the various appropriations made to the Department of
30 Transportation for State Construction, State Funds to Match Federal Highway Aid, State
31 Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State



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1 maintenance and construction projects, and these allocations shall not be diverted to other
2 purposes."

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

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

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

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

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

- 14 (1) The authority and general supervision over all matters relating to the
15 ~~construction~~ construction, maintenance, and design of the State highways,
16 transportation projects, letting of contracts ~~therefore, therefor,~~ and the
17 selection of materials to be used in the construction of State highways
18 transportation projects under the authority of this Chapter."

19 **SECTION 4.(a)** G.S. 136-18(2) reads as rewritten:

20 **"§ 136-18. Powers of Department of Transportation.**

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

22 ...

- 23 (2) To take over and assume exclusive control for the benefit of the State of any
24 existing county or township roads, and to locate and acquire rights-of-way
25 for any new roads that may be necessary for a State highway system, and
26 subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire
27 such additional rights-of-way as may be necessary for the present or future
28 relocation or initial location, above or below ground, of telephone, telegraph,
29 distributed antenna systems (DAS) as permitted by local zoning, broadband
30 communications, electric and other lines, as well as gas, water, sewerage, oil
31 and other pipelines, to be operated by public utilities as defined in
32 G.S. 62-3(23) and which are regulated under Chapter 62 of the General
33 Statutes, or by municipalities, counties, any entity created by one or more
34 political subdivisions for the purpose of supplying any such utility services,
35 electric membership corporations, telephone membership corporations, or
36 any combination thereof, with full power to widen, relocate, change or alter
37 the grade or location ~~thereof~~ thereof, or alter the location or configuration of
38 such lines or systems above or below ground, and to change or relocate any
39 existing roads that the Department of Transportation may now own or may
40 acquire; to acquire by gift, purchase, or otherwise, any road or highway, or
41 tract of land or other property whatsoever that may be necessary for a State
42 transportation system and adjacent utility rights-of-way: Provided, all
43 changes or alterations authorized by this subdivision shall be subject to the
44 provisions of G.S. 136-54 to 136-63, to the extent that said sections are
45 applicable: Provided, that nothing in this Chapter shall be construed to
46 authorize or permit the Department of Transportation to allow or pay
47 anything to any county, township, city or town, or to any board of
48 commissioners or governing body thereof, for any existing road or part of
49 any road heretofore constructed by any such county, township, city or town,
50 unless a contract has already been entered into with the Department of
51 Transportation."

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

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

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

4 ...

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

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

39 "**§ 136-18. Powers of Department of Transportation.**

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

41 ...

42 (38) To enter into agreements with municipalities, counties, governmental
43 entities, or nonprofit corporations to receive funds for the ~~purpose~~ purposes
44 of advancing right-of-way acquisition or the construction schedule of a
45 project identified in the Transportation Improvement Program. If these funds
46 are subject to repayment by the Department, prior to receipt of funds,
47 reimbursement of all funds received by the Department shall be shown in the
48 existing Transportation Improvement Program and shall be reimbursed
49 within ~~seven years of receipt.~~ the period of the existing Transportation
50 Improvement Program."

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

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

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

...

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

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

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

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

...

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

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

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

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

(b) At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction,

1 construction, alteration, or maintenance of State ~~highways, roads, streets, or bridges~~
2 transportation infrastructure and in the procurement of materials for these projects. Should the
3 study show a strong basis in evidence of ongoing effects of past or present discrimination that
4 prevents or limits disadvantaged minority-owned and women-owned businesses from
5 participating in the above contracts at a level which would have existed absent such
6 discrimination, such evidence shall constitute a basis for the State's continued compelling
7 governmental interest in remedying such race and gender discrimination in ~~highway~~
8 transportation contracting. Under such circumstances, the Department shall, in conformity with
9 State and federal law, adopt by rule and contract provisions a specific program to remedy such
10 discrimination. This specific program shall, to the extent reasonably practicable, address each
11 barrier identified in such study that adversely affects contract participation by disadvantaged
12 minority-owned and women-owned businesses.

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

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

- 39 (1) "Disadvantaged ~~business~~Business" has the same meaning as "disadvantaged
40 business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently
41 promulgated replacement regulation.
42 (2) "Minority" includes only those racial or ethnicity classifications identified by
43 a study conducted in accordance with this section that have been subjected to
44 discrimination in the relevant marketplace and that have been adversely
45 affected in their ability to obtain contracts with the Department.
46 (3) "Women" means nonminority persons born of the female sex.

47 (d) The Department shall report ~~semiannually~~annually to the Joint Legislative
48 Transportation Oversight Committee on the utilization of disadvantaged minority-owned
49 businesses and women-owned businesses and any program adopted to promote contracting
50 opportunities for those businesses. Following each study of availability and utilization, the
51 Department shall report to the Joint Legislative Transportation Oversight Committee on the

1 results of the study for the purpose of determining whether the provisions of this section should
2 continue in force and effect.

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

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

5 "**§ 136-89.189. Turnpike Authority revenue bonds.**

6 The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the
7 General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue
8 bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund
9 any previously issued bonds. In connection with the issuance of revenue bonds, the Authority
10 shall have all powers of a municipality under the State and Local Government Revenue Bond
11 Act, and revenue bonds issued by the Authority shall be entitled to the protection of all
12 provisions of the State and Local Government Revenue Bond Act.

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

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

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

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

21 b. The date the Turnpike Authority determines is the maturity date
22 required for the Turnpike Project funded with the refunding bonds to
23 generate sufficient revenues to retire the refunding bonds and any
24 other outstanding indebtedness issued for that Project. The
25 Authority's determination of the appropriate maturity date is
26 conclusive and binding. In making its determination, the Authority
27 may take into account appropriate financing terms and conventions."

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

29 "**§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of**
30 **Transportation.**

31 The Secretary of Transportation shall be the head of the Department of Transportation. He
32 shall carry out the day-to-day operations of the Department and shall be responsible for
33 carrying out the policies, programs, priorities, and projects approved by the Board of
34 Transportation. He shall be responsible for all other transportation matters assigned to the
35 Department of Transportation, except those reserved to the Board of Transportation by statute.
36 Except as otherwise provided for by statute, the Secretary shall have all the powers and duties
37 as provided for in Article 1 of Chapter 143B including the responsibility for all management
38 functions for the Department of Transportation. The Secretary shall be vested with authority to
39 adopt design criteria, construction specifications, and standards as required for the Department
40 of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the
41 Secretary's designee shall be vested with authority to promulgate rules and regulations
42 concerning all transportation functions assigned to the Department.

43 All rules, regulations, ordinances, specifications, standards, and criteria adopted by the
44 Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by
45 the Board of Transportation or the Secretary of Transportation. The Secretary shall have
46 complete authority to modify any of these matters existing on July 1, 1977, except as
47 specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance,
48 specification, or standards are continued in effect under this section and the words "Board of
49 Transportation" are used, the words shall mean the "Department of Transportation" unless the
50 context makes such meaning inapplicable. All actions pending in court by or against the Board

1 of Transportation may continue to be prosecuted in that name without the necessity of formally
2 amending the name to the Department of Transportation."

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

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

6 ...

7 (4) To approve a schedule of all major transportation improvement projects and
8 their anticipated ~~cost for a period of seven years into the future.~~ cost. This
9 schedule is designated the Transportation Improvement Program; it must be
10 published and copies must be available for distribution. The document that
11 contains the Transportation Improvement Program, or a separate document
12 that is published at the same time as the Transportation Improvement
13 Program, must include the anticipated funding sources for the improvement
14 projects included in the Program, a list of any changes made from the
15 previous year's Program, and the reasons for the changes."

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

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

18 **"§ 159-81. Definitions.**

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

21 (1) "Municipality" means a county, city, town, incorporated village, sanitary
22 district, metropolitan sewerage district, metropolitan water district, county
23 water and sewer district, water and sewer authority, hospital authority,
24 hospital district, parking authority, special airport district, special district
25 created under Article 43 of Chapter 105 of the General Statutes, regional
26 public transportation authority, regional transportation authority, regional
27 natural gas district, regional sports authority, airport authority, joint agency
28 created pursuant to Part 1 of Article 20 of Chapter 160A of the General
29 Statutes, a joint agency authorized by agreement between two cities to
30 operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike
31 Authority ~~created pursuant to~~ described in Article 6H of Chapter 136 of the
32 General Statutes, ~~Statutes and transferred to the Department of~~
33 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
34 State or local government."

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