

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1077*
PROPOSED COMMITTEE SUBSTITUTE H1077-PCS80408-SUX-36

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

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO INCREASE PUBLIC-PRIVATE PARTNERSHIPS FOR TOLLING AND
OTHER FINANCING METHODS ON TRANSPORTATION INFRASTRUCTURE
PROJECTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18 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 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. No contract for transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of such transportation infrastructure shall be executed without approval of the Local Government Commission. 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. In connection with any agreement entered into under this section, the following shall apply:



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- 1 a. Notwithstanding the provisions of Article 3 of Chapter 44A of the
2 General Statutes, an agreement entered into under this subdivision
3 may require the private entity or its contractors to provide
4 performance and payment security in the form and in the amount
5 determined by the Department of Transportation. Such performance
6 and payment security may consist of bonds, letters of credit, parent
7 guaranties, or other instruments acceptable to the Department of
8 Transportation.
- 9 b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement
10 entered into under this subdivision may allow the private entity to
11 assign, transfer, sell, hypothecate, and otherwise convey some or all
12 of its right, title, and interest in and to such agreement, and any rights
13 and remedies thereunder, to a lender, bondholder, or any other party.
14 However, in no event shall any such assignment create additional
15 debt or debt-like obligations of the State of North Carolina, the
16 Department, or any other agency, authority, commission, or similar
17 subdivision of the State to any lender, bondholder, entity purchasing
18 a participation in the right to receive the payment, trustee, trust, or
19 any other party providing financing or funding of projects described
20 in this section. The foregoing shall not preclude the Department from
21 making any payments due and owing pursuant to an agreement
22 entered into under this section.
- 23 c. The Department of Transportation, with respect to transportation
24 infrastructure financed in whole or in part by tolls, shall have the
25 powers to fix, revise, charge, and collect tolls and fees with respect to
26 such transportation infrastructure, and an agreement entered into
27 under this subdivision may allow the private entity to fix, revise,
28 charge, and collect such tolls and fees.
- 29 d. Revenues derived from transportation infrastructure that are not
30 allocated to a private entity or repayment of financing or other costs
31 under an agreement entered into under this subdivision may be used
32 for the following:
- 33 1. Administration, development, right-of-way acquisition,
34 design, construction, operation, and maintenance costs of the
35 Department for the infrastructure project that is the subject of
36 the agreement entered into under this section and for
37 infrastructure that is in the same Metropolitan Planning
38 Organization or Rural Transportation Planning Organization
39 where the infrastructure that is the subject of the agreement is
40 located.
- 41 2. Debt service on revenue bonds issued by or on behalf of the
42 Department pursuant to Article 5 of Chapter 159 of the
43 General Statutes.
- 44 3. Other financing costs related to transportation infrastructure.
- 45 4. The establishment of debt service reserve funds.
- 46 5. Any other lawful purpose.

47 ...

- 48 (43) The Department may exercise the powers and duties set forth in Article 6H
49 of this Chapter independently of the North Carolina Turnpike Authority and
50 may contract to exercise those powers and duties through a vendor, subject
51 to the provisions of subdivision (39) of this section and provided that bonds

1 to finance costs of infrastructure projects described in subdivision (39) of
2 this section shall be issued under Article 5 of Chapter 159 of the General
3 Statutes, and G.S. 159-88 shall be satisfied for such issues if the bonds are
4 obligations secured by a pledge of revenues allocated to a private entity
5 under subdivision (39) of this section."

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

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

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

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

- 26 (1) Administration, development, right-of-way acquisition, design, construction,
27 operation, and maintenance costs of the Authority for the infrastructure
28 project that is the subject of the agreement entered into under this section
29 and for infrastructure that is in the same Metropolitan Planning Organization
30 or Rural Transportation Planning Organization where the infrastructure that
31 is the subject of the agreement is located.
32 (2) Debt service on revenue bonds issued by or on behalf of the Authority
33 pursuant to Article 5 of Chapter 159 of the General Statutes.
34 (3) Other financing costs related to transportation infrastructure.
35 (4) The establishment of debt service reserve funds.
36 (5) Any other lawful purpose."

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