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SESSION 2017

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SENATE BILL 391
Transportation Committee Substitute Adopted 5/31/17
PROPOSED COMMITTEE SUBSTITUTE S391-PCS15211-RBx-21

Short Title: Ferry Transportation Authority.

(Public)

Sponsors:

Referred to:

March 28, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CREATION OF A FERRY TRANSPORTATION
3 AUTHORITY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 160A of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 29.

8 "Ferry Transportation Authority.

9 "**§ 160A-680. Title and purpose.**

10 This Article shall be known and may be cited as the "Ferry Transportation Authority Act."
11 The purpose of this Article is to authorize creation of an Authority to provide reliable and safe
12 public ferry transportation services in its service area.

13 "**§ 160A-681. Definitions.**

14 The following definitions apply in this Article:

- 15 (1) Authority. – The Ferry Transportation Authority.
16 (2) Board of Trustees. – The governing board of the Authority.
17 (3) Ferry Transportation Authority. – A public body corporate and politic
18 organized in accordance with the provisions of this Article for the purposes,
19 with the powers, and subject to the restrictions hereinafter set forth.
20 (4) Ferry transportation service. – Transportation of passengers or freight by any
21 means of conveyance, including a ferry, barge, vehicle, or tram.
22 (5) Ferry transportation system. – A combination of real and personal property,
23 structures, improvements, buildings, equipment, maritime vessels, vehicles,
24 vehicle parking, trams, shuttle buses, docks, terminals, and other facilities
25 necessary for the maintenance and operation of a ferry transportation
26 service. The term does not include public streets, roads, or highways.
27 (6) Unit of local government. – A county, city, town, or municipality of this
28 State, and any other political subdivision, public corporation, authority, or
29 district in this State, that is or may be authorized by law to acquire, establish,
30 construct, enlarge, improve, maintain, own, or operate a ferry transportation
31 system.
32 (7) Unit of local government's chief administrative official. – The county
33 manager, city manager, town manager, or other person in whom the
34 responsibility for the unit of local government's administrative duties is
35 vested.



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- 1 (8) Vessel. – Watercraft or other artificial contrivance used, or capable of being
2 used, as a means of transportation of passengers or freight on water.

3 **"§ 160A-682. Service area of Authority.**

4 The boundaries of the service area of the Authority shall be determined by the Board of
5 Trustees, consistent with the purpose of the Authority. The service area of an authority created
6 pursuant to this Article may include, but cannot exceed, all of the following:

- 7 (1) The area of a tidal river, and adjoining estuaries, in the vicinity of a
8 municipality that is only accessible by vessel.
9 (2) Terminals, parking, maintenance facilities, facilities utilized for tram and bus
10 service, and other related facilities in or in the vicinity of the same tidal river
11 and a municipality that is only accessible by vessel.
12 (3) Terminals, parking, maintenance facilities, facilities utilized for tram and bus
13 service, and other related facilities in or in the vicinity of the same tidal river
14 and a municipality in which the mainland terminal used to provide ferry
15 transportation service is located.

16 **"§ 160A-683. Creation of Authority.**

17 (a) Resolution of Creation. – An Authority may be organized under the provisions of
18 this Article upon the adoption of a resolution to create such an Authority by each of the
19 following:

- 20 (1) The elected board of a municipality only accessible by vessel.
21 (2) The elected board of a municipality where any mainland terminal of the
22 Authority is located.
23 (3) The board of commissioners of the county where the Authority is located.

24 (b) Public Hearing. – A resolution to form an Authority under this Article shall be
25 adopted after a public hearing. Notice of the public hearing must be given at least once, not less
26 than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation
27 in the county. The notice must contain a brief statement of the substance of the proposed
28 resolution, the proposed articles of incorporation of the Authority, and the time and place of the
29 public hearing.

30 (c) Articles of Incorporation. – A resolution to form an Authority under this Article
31 must include articles of incorporation that set forth all of the following:

- 32 (1) The name of the Authority.
33 (2) A statement that the Authority is organized under this Article.
34 (3) The name of each organizing entity.

35 (d) Certificate of Incorporation. – A certified copy of each resolution organizing an
36 Authority under the provisions of this Article shall be filed with the Secretary of State, together
37 with proof of publication of the notice of hearing. If the Secretary of State finds that each
38 resolution, including the articles of incorporation, conform to the provisions of this Article and
39 that the notice of hearing was properly published, then the Secretary must issue a certificate of
40 incorporation under the seal of the State and record the same in an appropriate book of record.
41 The issuance of the certificate of incorporation by the Secretary of State shall constitute the
42 Authority, a public body and body politic and corporate of the State of North Carolina. The
43 certificate of incorporation is conclusive evidence of the fact that the Authority has been duly
44 created and established under the provisions of this Article.

45 (e) Officers. – When the Authority has been duly organized and its officers elected, the
46 secretary of the Authority shall certify to the Secretary of State the names and addresses of the
47 officers as well as the address of the principal office of the Authority.

48 **"§ 160A-684. Board of Trustees.**

49 (a) Members. – The Board of Trustees consists of 11 members. The Mayor and Mayor
50 Pro Tempore of the municipality only accessible by vessel serve as ex officio voting members.
51 The remaining nine members serve staggered three-year terms and are appointed as provided in

1 subsection (b) of this section. Members of the Board of Trustees shall receive the sum of fifty
2 dollars (\$50.00) as compensation for attendance at each duly conducted meeting of the
3 Authority.

4 (b) Appointment. – Nine members of the Board of Trustees are appointed as provided
5 in this subsection. The members must be residents of this State at the time of appointment and
6 must maintain their residency during the duration of their term. Appointed members serve at
7 the pleasure of the appointing authority. A vacancy in a term prior to the expiration of the term
8 must be filled by the appropriate appointing authority. The members are appointed as follows:

9 (1) One member by the Governor.

10 (2) Two members by the General Assembly under G.S. 120-121, one of whom
11 is appointed upon the recommendation of the President Pro Tempore of the
12 Senate and one of whom is appointed upon the recommendation of the
13 Speaker of the House of Representatives.

14 (3) Three members appointed by the Secretary of the Department of
15 Transportation, at least one of whom must be a resident of the service area of
16 the Authority, as determined under G.S. 160A-682, and at least one of whom
17 must be a member of the Board of Transportation.

18 (4) One member by the board of commissioners of the county where the
19 Authority is located, who must be a resident of the county but not a resident
20 of the municipality only accessible by vessel.

21 (5) One member by the elected board of a municipality where the mainland
22 terminal of the Authority is located, who must be a resident of that
23 municipality.

24 (6) One member appointed by the elected board of a municipality only
25 accessible by vessel, who must be a resident of the municipality only
26 accessible by vessel.

27 (c) Terms. – A term begins on July 1 of the year of appointment and ends on June 30 of
28 the third year. A member appointed under subsection (b) of this section may not serve more
29 than two consecutive terms on the Board of Trustees. In calculating the number of terms
30 served, a partial term that is less than 18 months in length will not be included.

31 (d) Meetings. – The Board of Trustees must meet at least once every three months. A
32 majority of the members of the Board of Trustees constitute a quorum for the transaction of
33 business. The Board of Trustees must annually elect from its membership a chair and
34 vice-chair. The Board of Trustees may elect from its membership or appoint a nonmember to
35 serve as secretary or treasurer.

36 (e) Ethics. – Members of the Board of Trustees are subject to the provisions of
37 G.S. 136-13, 136-13.1, and 136-14.

38 (f) Reports. – The Board of Trustees must submit an annual report of its activities,
39 holdings, and finances, including an audit of its accounts by a certified public accountant, to the
40 Secretary of the Department of Transportation and to the Joint Legislative Commission on
41 Governmental Operations. The report must be submitted by October 1 of each year.

42 **"§ 160A-685. Ferry Transportation Authority.**

43 (a) Financial Accountability. – An Authority created under this Article is a public
44 authority subject to the provisions of Chapter 159 of the General Statutes.

45 (b) Funds. – The establishment and operation of an Authority are governmental
46 functions and constitute a public purpose. The State or any unit of local government may, but is
47 not obligated to, appropriate funds to support the establishment and operation of the Authority.
48 The State or any unit of local government may also dedicate, sell, convey, donate, or lease any
49 of their interests in any property to the Authority. An Authority may apply for grants or any
50 other type of financing from the State, the United States, or any department, agency, or
51 instrumentality thereof.

- 1 (c) General Powers. – The general powers of the Authority include any one or more of
2 the following:
- 3 (1) To sue and be sued.
4 (2) To have a seal.
5 (3) To make rules and regulations, not inconsistent with this Article, for its
6 organization and internal management.
7 (4) To employ persons deemed necessary to carry out the functions and duties
8 assigned to them by the Authority and to fix their compensation within the
9 limit of available funds.
10 (5) With the approval of the unit of local government's chief administrative
11 official, to use officers, employees, agents, and facilities of the unit of local
12 government for such purposes and upon such terms as may be mutually
13 agreeable.
14 (6) To retain and employ counsel, auditors, engineers, and private consultants
15 on an annual salary, contract basis, or otherwise for rendering professional
16 or technical services and advice.
17 (7) To acquire, lease as lessee with or without option to purchase, hold, own,
18 and use any property, real or personal, tangible or intangible, or any interest
19 therein, and to sell, lease as lessor with or without option to purchase,
20 transfer, or dispose thereof, whenever the same is no longer required for
21 purposes of the Authority, or exchange same for other property or rights that
22 are useful for the Authority's purposes, including, but not necessarily limited
23 to, barge service, marine maintenance, ferry terminals, and parking facilities.
24 (8) To acquire by gift, purchase, lease as lessee with or without option to
25 purchase or otherwise to construct, improve, maintain, repair, operate, or
26 administer any component parts of a ferry transportation system or to
27 contract for the maintenance, operation, or administration thereof, or to lease
28 as lessor the same for maintenance, operation, or administration by private
29 parties, including, but not necessarily limited to, barge service, marine
30 maintenance, ferry terminals, and parking facilities.
31 (9) To accept gifts or grants of money, real or personal property, or services
32 from a person, the State, the federal government, or a unit of local
33 government.
34 (10) To make or enter into contracts, agreements, deeds, leases with or without
35 option to purchase, conveyances or other instruments, including contracts
36 and agreements with the United States, the State of North Carolina, and units
37 of local government.
38 (11) To purchase or finance real or personal property in the manner provided for
39 cities and counties under G.S. 160A-20.
40 (12) To surrender to the State of North Carolina, upon the approval of the
41 Secretary of the Department of Administration, any property no longer
42 required by the Authority.
43 (13) To develop and make data, plans, information, surveys, and studies within
44 the service area of the Authority and to prepare and make recommendations
45 in regard thereto.
46 (14) To enter in a reasonable manner lands, waters, or premises for the purpose of
47 making surveys, soundings, drillings, and examinations whereby such entry
48 shall not be deemed a trespass except that the Authority shall be liable for
49 any actual and consequential damages resulting from such entries.

- 1 (15) To make, enter into, and perform contracts with private parties and
2 transportation companies with respect to the management and operation of
3 ferry transportation services.
- 4 (16) To make, enter into, and perform contracts with other entities for the joint
5 use of property or rights, for the establishment of connecting routes, joint
6 fares, or transfer of passengers.
- 7 (17) To make, enter into, and perform agreements with governmental entities for
8 payments to the Authority for the transportation of persons for whom the
9 governmental entities desire transportation.
- 10 (18) With the consent of the unit of local government that would otherwise have
11 jurisdiction to exercise the powers enumerated in this subdivision, to issue
12 certificates of public convenience and necessity, and to grant franchises and
13 enter into franchise agreements, and in all respects to regulate the operation
14 of ferries, buses, trams, taxicabs, and other methods of public passenger
15 transportation that originate and terminate within the service area of the
16 Authority as fully as the unit of local government is now or hereafter
17 empowered to do within the jurisdiction of the unit of local government.
- 18 (19) To operate a ferry transportation system and to enter into and perform
19 contracts to provide and operate ferry transportation services and facilities,
20 and to own or lease property, facilities, and equipment necessary or
21 convenient therefor, and to rent, lease, or otherwise sell the right to do so to
22 any person, public or private; further, to obtain grants, loans, and assistance
23 from the United States, the State of North Carolina, any public body, or any
24 private source whatsoever, but may not operate or contract for the operation
25 of a ferry transportation system outside the service area of the Authority.
- 26 (20) To enter into and perform contracts and agreements with other public
27 transportation authorities, regional public transportation authorities, or units
28 of local government pursuant to the provisions of Part 1 of Article 20 of this
29 Chapter; further, to enter into contracts and agreements with private
30 transportation companies, but this subdivision does not authorize the
31 operation of, or contracting for the operation of, service of a ferry
32 transportation system outside the service area of the Authority.
- 33 (21) To operate public transportation systems extending service into any political
34 subdivision of the State of North Carolina, unless a particular unit of local
35 government operating its own public transportation system or franchising the
36 operation of a public transportation system by majority vote of its governing
37 board shall deny consent, but such service may not extend more than 10
38 miles outside of the service area of the Authority.
- 39 (22) To do all things necessary or convenient to carry out its purpose and to
40 exercise the powers granted to the Authority.
- 41 (23) To facilitate the coordination of transportation plans in the service area.
- 42 (24) To maintain databases for the projection of future travel demands in the
43 service area.
- 44 (25) To provide other transportation related services within the service area of the
45 Authority, as determined by the Board of Trustees in its discretion.
- 46 (26) To contract for, or to provide and maintain, with respect to the facilities and
47 property owned, leased, operated, or under the control of the Authority, and
48 within the service area thereof, a security force to protect persons and
49 property, dispense unlawful or dangerous assemblages and assemblages that
50 obstruct full and free passage, control pedestrian and vehicular traffic, and
51 otherwise preserve and protect the public peace, health, and safety. A

1 member of the security force shall be a peace officer and, as such, shall have
2 authority equivalent to the authority of a police officer of the city or county
3 in which the member is discharging those duties.

4 (27) Except as restricted by covenants in bonds, notes, or equipment trust
5 certificates, to set in its sole discretion rates, fees, and charges for use of its
6 ferry transportation system.

7 (28) To issue bonds and bond anticipation notes under the Local Government
8 Revenue Bond Act, Articles 5 and 9 of Chapter 159 of the General Statutes,
9 or as otherwise provided by law, for the purpose of acquiring, constructing,
10 improving, maintaining, operating, or financing a ferry transportation system
11 or any part thereof and to refund, whether or not in advance of maturity or
12 the earliest redemption date, any such bonds or notes. As provided in
13 G.S. 159-94, the principal of and interest on the bond is payable solely from
14 the revenues pledged to its payment and neither the State nor the
15 municipality is obligated to pay the principal or interest, except from such
16 revenues.

17 **"§ 160A-686. Rates, fees, charges, routes, and schedules.**

18 (a) Notice. – The Board of Trustees must give at least 30 days' public notice of any
19 change to rates, fees, charges, routes, or schedules, except as necessitated by an emergency
20 situation. The Board of Trustees must report any change to rates, fees, charges, routes, or
21 schedules to the Secretary of the Department of Transportation and to the Joint Legislative
22 Commission on Governmental Operations.

23 (b) Regulation. – Notwithstanding G.S. 62-3(23)a.3. and 4., the North Carolina Utilities
24 Commission shall not have jurisdiction over the provision of ferry transportation service within
25 the Authority's service area.

26 **"§ 160A-687. Competition.**

27 (a) Prohibition. – No equipment of the Authority may be used for charter, tour, or
28 sight-seeing service, except as provided by this section.

29 (b) Charter Services. – Equipment of the Authority may be used for occasional charter
30 service events, if all of the following conditions are met:

31 (1) The use of the equipment for the charter service is approved in writing by
32 the Board of Trustees.

33 (2) The revenues received by the Authority from the provision of the charter
34 service exceed fully allocated expenses.

35 (3) The charter service does not adversely affect regularly scheduled ferry
36 transportation services provided by the Authority.

37 **"§ 160A-688. Power of eminent domain.**

38 The Authority shall have continuing power to acquire, by gift, grant, devise, exchange,
39 purchase, lease with or without option to purchase, or any other lawful method, including the
40 power of eminent domain, the fee or any lesser interest in real or personal property for use by
41 the Authority. Exercise of the power of eminent domain by the Authority shall be in accordance
42 with Chapter 40A of the General Statutes.

43 **"§ 160A-689. Termination.**

44 The Board of Trustees may terminate the existence of the Authority at any time when it has
45 no outstanding indebtedness. In the event of such termination, all property and assets of the
46 Authority not otherwise encumbered shall automatically become the property of the State of
47 North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and
48 liabilities of the Authority."

49 **SECTION 2.** G.S. 62-3(23) reads as rewritten:

50 **"§ 62-3. Definitions.**

51 As used in this Chapter, unless the context otherwise requires, the term:

1 ...

2 (23) ...

3 m. The term "public utility" shall not include a Ferry Transportation
4 Authority created pursuant to Article 29 of Chapter 160A of the
5 General Statutes."

6 **SECTION 3.** G.S. 159-81(1) reads as rewritten:

7 **"§ 159-81. Definitions.**

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

10 (1) "Municipality" means a county, city, town, incorporated village, sanitary
11 district, metropolitan sewerage district, metropolitan water district,
12 metropolitan water and sewerage district, county water and sewer district,
13 water and sewer authority, hospital authority, hospital district, parking
14 authority, special airport district, special district created under Article 43 of
15 Chapter 105 of the General Statutes, regional public transportation authority,
16 regional transportation authority, regional natural gas district, regional sports
17 authority, airport authority, joint agency created pursuant to Part 1 of Article
18 20 of Chapter 160A of the General Statutes, a joint agency authorized by
19 agreement between two cities to operate an airport pursuant to G.S. 63-56,
20 ~~and~~ the North Carolina Turnpike Authority described in Article 6H of
21 Chapter 136 of the General Statutes and transferred to the Department of
22 Transportation pursuant to G.S. 136-89.182(b), and a Ferry Transportation
23 Authority created pursuant to Article 29 of Chapter 160A of the General
24 Statutes, but not any other forms of State or local government."

25 **SECTION 4.** G.S. 160A-20(h) is amended by adding a new subdivision to read:

26 "(15) A Ferry Transportation Authority created pursuant to Article 29 of this
27 Chapter."

28 **SECTION 5.(a)** To achieve the staggered terms for the nine members of the Board
29 of Trustees in accordance with G.S. 160A-684(b), as enacted by Section 1 of this act, and
30 notwithstanding the term of office provisions in G.S. 160A-684(c), as enacted by Section 1 of
31 this act, the terms of the individuals serving on the initial Board of Trustees will be as provided
32 below:

- 33 (1) The appointee of the Governor shall serve for a one-year term, expiring June
34 30 in the year following the creation of the Authority.
- 35 (2) The appointee of the President Pro Tempore of the Senate shall serve for a
36 one-year term, expiring June 30 in the year following the creation of the
37 Authority.
- 38 (3) The appointee of the Speaker of the House of Representatives shall serve for
39 a one-year term, expiring June 30 in the year following the creation of the
40 Authority.
- 41 (4) The appointees of the Secretary of the Department of Transportation shall
42 each serve for a two-year term, expiring June 30 in the second year
43 following the creation of the Authority.
- 44 (5) The appointee of the board of commissioners described in
45 G.S. 160A-684(b)(4), as enacted by Section 1 of this act, shall serve for a
46 three-year term, expiring June 30 in the third year following the creation of
47 the Authority.
- 48 (6) The appointee of the elected board of the municipality described in
49 G.S. 160A-684(b)(5), as enacted by Section 1 of this act, shall serve for a
50 three-year term, expiring June 30 in the third year following the creation of
51 the Authority.

1 (7) The appointee of the elected board of the municipality described in
2 G.S. 160A-684(b)(6), as enacted by Section 1 of this act, shall serve for a
3 three-year term, expiring June 30 in the third year following the creation of
4 the Authority.

5 **SECTION 5.(b)** This section becomes effective upon the issuance of a certificate
6 of incorporation by the Secretary of State for a Ferry Transportation Authority created under
7 Article 29 of Chapter 160A of the General Statutes, as enacted by Section 1 of this act.

8 **SECTION 6.(a)** If (i) a Ferry Transportation Authority is created pursuant to
9 Article 29 of Chapter 160A of the General Statutes, as enacted by Section 1 of this act, and (ii)
10 an existing, privately owned ferry transportation service is currently operating a ferry
11 transportation system in the service area of the Authority, as described in G.S. 160A-682, as
12 enacted by Section 1 of this act, pursuant to a Certificate of Public Convenience and Necessity
13 issued by the North Carolina Utilities Commission in effect as of the effective date of this act,
14 then the assets used and useful for the ferry transportation system, as defined in G.S. 160A-681,
15 as enacted by Section 1 of this act, and owned by the private ferry transportation service or its
16 affiliates shall be acquired, by purchase, gift, lease, or otherwise, by that Authority at or below
17 their appraised value, such purchase to be financed by bonds or notes issued by the Authority
18 or other financing mechanisms permitted under Article 29 of Chapter 160A of the General
19 Statutes, as enacted by Section 1 of this act. Upon the purchase of these assets by that
20 Authority, the Certificate of Public Convenience and Necessity issued by the North Carolina
21 Utilities Commission to such privately owned ferry transportation service shall be terminated
22 and all franchise rights to operate a ferry transportation system utilizing these assets will be
23 transferred at that time to the Authority without further action by the North Carolina Utilities
24 Commission.

25 **SECTION 6.(b)** If (i) a Ferry Transportation Authority is created pursuant to
26 Article 29 of Chapter 160A of the General Statutes, as enacted by Section 1 of this act, (ii) an
27 existing, privately owned ferry transportation service is currently operating a ferry
28 transportation system in the service area of the Authority, as described in G.S. 160A-682, as
29 enacted by Section 1 of this act, and (iii) the Ferry Transportation Authority acquires the assets
30 used and useful for the ferry transportation system, as defined in G.S. 160A-681, as enacted by
31 Section 1 of this act, from the privately owned ferry transportation service, then the initial rates,
32 fees, charges, routes, and schedules of the Ferry Transportation Authority must be the same
33 rates, fees, charges, routes, and schedules in effect for such existing, privately owned ferry
34 transportation service as of the date of its acquisition by the Authority.

35 **SECTION 6.(c)** This section becomes effective upon the issuance of a certificate
36 of incorporation by the Secretary of State for a Ferry Transportation Authority created pursuant
37 to Article 29 of Chapter 160A of the General Statutes, as enacted by Section 1 of this act.

38 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
39 law.