

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

4

HOUSE BILL 1077\*  
Committee Substitute Favorable 6/26/12  
Committee Substitute #2 Favorable 6/27/12  
Senate Finance Committee Substitute Adopted 7/2/12

Short Title: PPP Pilot Toll Project/Ferry Tolls.

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PILOT PUBLIC-PRIVATE PARTNERSHIP TOLL PROJECT AND TO REALLOCATE THE MONEY APPROPRIATED FOR STUDIES RELATED TO THE MID-CURRITUCK BRIDGE PROJECT TO THE DEPARTMENT OF TRANSPORTATION, FERRY DIVISION.

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.



1           (39a) The Department of Transportation may enter into a partnership agreement  
 2           with a private entity as provided under subdivision (39) of this section for  
 3           which the provisions of this section may apply. The pilot project allowed  
 4           under this subdivision must be one that is a candidate for funding under the  
 5           Mobility Fund, that is planned for construction through a public-private  
 6           partnership, and for which a Request for Qualifications has been issued by  
 7           the Department no later than June 30, 2012.

8           a.       A private entity or its contractors must provide performance and  
 9           payment security in the form and in the amount determined by the  
 10           Department of Transportation. The form of the performance and  
 11           payment security may consist of bonds, letters of credit, parent  
 12           guaranties, or other instruments acceptable to the Department of  
 13           Transportation.

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

28           c.       The Department of Transportation may fix, revise, charge, and  
 29           collect tolls and fees to the same extent allowed under Article 6H of  
 30           Chapter 136 of the General Statutes. The Department may assign its  
 31           authority to fix, revise, charge, and collect tolls and fees to the  
 32           private entity.

33           ...

34           (43)       For the purposes of financing an agreement under subdivision (39a) of this  
 35           section, the Department of Transportation may act as a conduit issuer for  
 36           private activity bonds to the extent the bonds do not constitute a debt  
 37           obligation of the State. The issuance of private activity bonds under this  
 38           subdivision and any related actions shall be governed by The State and Local  
 39           Government Revenue Bond Act, Article 5 of Chapter 159 of the General  
 40           Statutes, with G.S. 159-88 satisfied by adherence to the requirements of  
 41           subdivisions (39) and (39a) of this section."

42           **SECTION 2.** If House Bill 950, 2011 Regular Session, becomes law, then Section  
 43           24.18(b) of that act reads as rewritten:

44           ~~"SECTION 24.18.(b) The Department of Transportation shall disregard Executive Order~~  
 45           ~~No. 116, or any other executive order pertaining to ferry tolls, and shall collect the tolls~~  
 46           ~~required by S.L. 2011-145 and this section, except for the Cherry Branch/Minnesott Beach~~  
 47           ~~route, for which the Department of Transportation shall not collect the increased tolls required~~  
 48           ~~by S.L. 2011-145 during fiscal year 2012-2013. Notwithstanding the clarifying amendment to~~  
 49           ~~G.S. 136-82 made by subsection (a) of this section and notwithstanding the increase in ferry~~  
 50           ~~toll revenue required by S.L. 2011-145, the Department of Transportation, Ferry Division, shall~~  
 51           ~~not collect the increased ferry tolls required by S.L. 2011-145 during fiscal year 2012-2013.~~

1 Notwithstanding any other provision of this act, the sum of two million dollars (\$2,000,000),  
2 nonrecurring, is not appropriated to the Turnpike Authority to supplement and advance project  
3 studies related to the Mid-Currituck Bridge project; instead, notwithstanding G.S. 136-176(b2)  
4 or any other provision of law, the sum of two million dollars (\$2,000,000), nonrecurring, of the  
5 funds appropriated to the Turnpike Authority under G.S. 136-176(b2) is transferred from the  
6 Highway Trust Fund to the Highway Fund, and that sum is appropriated from the Highway  
7 Fund to the Department of Transportation, Ferry Division, for fiscal year 2012-2013.  
8 Notwithstanding any other provision of this act, the appropriation provided elsewhere in this  
9 act for the Reserve for General Maintenance in the Highway Fund is decreased by the sum of  
10 five hundred thousand dollars (\$500,000), nonrecurring, and that sum is appropriated to the  
11 Department of Transportation, Ferry Division, for fiscal year 2012-2013."

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