

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1630
Committee Substitute Favorable 6/15/00
Committee Substitute #2 Favorable 6/28/00
Senate Finance Committee Substitute Adopted 7/12/00

Short Title: Toll Roads.

(Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE CONSTRUCTION OF PILOT PRIVATELY FUNDED
ROAD OR BRIDGE PROJECTS FUNDED BY TOLLS OR OTHER ALTERNATE
FINANCING METHODS, AND TO DIRECT THE DEPARTMENT OF
TRANSPORTATION TO STUDY THE FEASIBILITY OF STATE-OWNED AND
STATE-OPERATED TOLL ROADS OR BRIDGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new
Article 6G to read:

“ARTICLE 6G.

“PRIVATE PILOT TOLL PROJECT.

“§ 136-89.168. Legislative findings.

It is hereby declared that the existing State road system is becoming increasingly
congested and overburdened with traffic in many areas of the State; that the sharp surge
of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate
road improvements; and that an adequate answer to this challenge will require the State to
be innovative and utilize several new approaches to transportation improvements in

1 North Carolina. It is the purpose of this Article to authorize the construction of no more
2 than two private toll road projects as pilots. In doing this, the Department of
3 Transportation is directed to focus on using toll roads to alleviate commuter traffic
4 congestion. It is the intent that there be no toll on existing State roads.

5 **"§ 136-89.169. Private Pilot Toll Project.**

6 (a) Authority to License. – The Department of Transportation is authorized to
7 issue a license to an applicant to finance, design, construct, maintain, improve, own, or
8 operate, or any combination thereof, either solely from private resources or using a
9 combination of private or public resources, up to two pilot toll transportation projects
10 within the State of North Carolina. Any license authorized by this section must be issued
11 on or before July 1, 2003.

12 (b) Requirement for Finding of Need. – Prior to the issuance of any license under
13 this section, the Department shall make a written determination that the proposed project
14 is necessary and in the public interest.

15 (c) Submission of Financial Data. – A person applying for a license to construct a
16 project under this section shall submit detailed financial data to the Department
17 concerning the ability of applicant to finance the proposed project. The Department shall
18 independently analyze the data submitted for each project proposal.

19 (d) License Period. – A license issued under this section shall not exceed 50 years
20 from beginning of the operations of the road or bridge. A license may be renewed for an
21 additional 50-year term at the discretion of the Department and in conformity with this
22 Article.

23 (e) State Use for Other Purposes. – A license issued pursuant to this section shall
24 reserve unto the State or its designee the authority to enter and utilize the project right-of-
25 way for other transportation or utility-related purposes, as long as those purposes do not
26 interfere with the use by the licensee.

27 (f) Terms of License. – Additional terms and conditions of any license issued
28 pursuant to this section shall be within the discretion of the Department of
29 Transportation, and shall include, in addition to any other requirements:

30 (1) Provisions establishing minimum design and construction standards for
31 the project.

32 (2) Provisions establishing minimum maintenance standards for the project
33 and the responsibility for such maintenance.

34 (3) Provisions requiring that appropriate traffic signs and other traffic
35 control devices be erected and maintained on the project.

36 (4) Provisions establishing the rights and duties of the parties regarding
37 infrastructure improvements and connections between the project and
38 the State highway system.

39 (5) Provisions regarding any type of access control, if any, that may be
40 required for the project.

41 (6) Provisions establishing the relative responsibilities of the licensee and
42 the Department of Transportation to keep the completed project open
43 and accessible to the public.

1 (7) Provisions requiring that the State of North Carolina, its agencies,
2 officials, and employees be indemnified and held harmless by the
3 licensee for any liability incurred on the project in connection with
4 project construction, maintenance, or operation.

5 (8) Provisions concerning location of the project.

6 (9) Provisions concerning reasonable restrictions that would prevent the
7 State or the Department from constructing competitive transportation
8 facilities during the term of the license.

9 (g) Department Powers. – The Department may exercise any power possessed by
10 it with respect to the development and construction of State transportation projects to
11 facilitate the development and construction of transportation projects pursuant to this
12 Article.

13 (h) Acquisition of Project Property. – A person licensed to construct a project
14 under this section shall make all reasonable efforts to acquire all right-of-way interests
15 required for the project through private negotiation. The Department is authorized to
16 exercise its power of eminent domain to acquire property rights necessary for
17 construction and maintenance of the project only as to those property interests that cannot
18 be acquired by the licensee at a reasonable price through private negotiation. A licensee
19 requesting that the Department exercise its power of eminent domain shall be required to
20 reimburse the Department in the full amount of its costs incurred in acquiring the
21 necessary property interests for the private portion of the project, including any
22 negotiated settlement or jury verdict, and any attorneys' fees that may be awarded. The
23 acquisition of property interests necessary for inclusion in a project licensed under this
24 section is hereby declared to be for a public transportation purpose.

25 (i) Transfer of Department Property to Licensee. – Notwithstanding the provisions
26 of G.S. 136-19, should the Department determine that a licensed project require property
27 interests held by the Department, such interests as the Department determines to be
28 necessary may be conveyed to the licensee for fair market value.

29 (j) Applicability of Other Laws. – For the purpose of entering into contractual
30 licensing agreements under this section, the Department of Transportation is exempted
31 from any provision of the General Statutes that conflicts with the purposes of this section,
32 specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this
33 section shall not be included in the distribution formula under G.S. 136-17.2A but shall
34 require approval of the Board of Transportation under G.S. 143B-350(f)(4). A licensee
35 under this section shall endeavor to comply with the provisions of G.S. 136-28.4
36 concerning participation by disadvantaged businesses.

37 (k) Applicability of Motor Vehicle Laws. – Any project licensed by the
38 Department of Transportation under the authority granted in this section shall be
39 considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as
40 defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including
41 the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers
42 and duties on such projects as on any other highway or public vehicular area.

1 (l) Exclusive License. – Upon the issuance of a license by the Department of
2 Transportation, no further license of any type may be required by the State or local
3 government body for the ownership, construction, or operation of the project.

4 (m) Definitions. – The following definitions apply as used in this section:

5 (1) ‘Person’ means any natural person, partnership, corporation, trust,
6 association, sole proprietorship, or any other legal entity other than the
7 State or its agencies, institutions, or political subdivisions.

8 (2) ‘Project’ means a privately constructed, maintained, and operated toll
9 highway, road, bridge, or other transportation-related facility funded
10 through tolls or other alternative financing methods.

11 (3) ‘Licensee’ means a person authorized through a contractual agreement
12 with the Department of Transportation to finance, design, construct,
13 maintain, improve, own, or operate, or any combination thereof, a
14 project.

15 (n) Report. – The Department shall report to the Joint Legislative Transportation
16 Oversight Committee and to the Joint Transportation Appropriations Subcommittee by
17 February 1, 2001, and every year thereafter, on any toll project planning, construction, or
18 operation commenced pursuant to the provisions of this Article."

19 Section 2. The Department shall study the feasibility of construction of State-
20 owned and State-operated toll roads and the areas where any State-owned and State-
21 operated toll roads are proposed and report its findings to the Joint Legislative
22 Transportation Oversight Committee and to the Joint Transportation Appropriations
23 Subcommittee by February 1, 2001.

24 Section 3. This act is effective when it becomes law.