

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-120
SENATE BILL 391

AN ACT TO AUTHORIZE THE CREATION OF A FERRY TRANSPORTATION AUTHORITY.

The General Assembly of North Carolina enacts:

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

"Article 29.

"Ferry Transportation Authority.

"§ 160A-680. Title and purpose.

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

"§ 160A-681. Definitions.

The following definitions apply in this Article:

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

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

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



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

"§ 160A-683. Creation of Authority.

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

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

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

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

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

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

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

"§ 160A-684. Board of Trustees.

(a) Members. – The Board of Trustees consists of 11 members. The Mayor and Mayor Pro Tempore of the municipality only accessible by vessel serve as ex officio voting members. The remaining nine members serve staggered three-year terms and are appointed as provided in subsection (b) of this section. Members of the Board of Trustees shall receive the sum of fifty dollars (\$50.00) as compensation for attendance at each duly conducted meeting of the Authority.

(b) Appointment. – Nine members of the Board of Trustees are appointed as provided in this subsection. The members must be residents of this State at the time of appointment and must maintain their residency during the duration of their term. Appointed members serve at

the pleasure of the appointing authority. A vacancy in a term prior to the expiration of the term must be filled by the appropriate appointing authority. The members are appointed as follows:

- (1) One member by the Governor.
- (2) Two members by the General Assembly under G.S. 120-121, one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom is appointed upon the recommendation of the Speaker of the House of Representatives.
- (3) Three members appointed by the Secretary of the Department of Transportation, at least one of whom must be a resident of the service area of the Authority, as determined under G.S. 160A-682, and at least one of whom must be a member of the Board of Transportation.
- (4) One member by the board of commissioners of the county where the Authority is located, who must be a resident of the county but not a resident of the municipality only accessible by vessel.
- (5) One member by the elected board of a municipality where the mainland terminal of the Authority is located, who must be a resident of that municipality.
- (6) One member appointed by the elected board of a municipality only accessible by vessel, who must be a resident of the municipality only accessible by vessel.

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

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

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

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

"§ 160A-685. Ferry Transportation Authority.

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

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

(c) General Powers. – The general powers of the Authority include any one or more of the following:

- (1) To sue and be sued.
- (2) To have a seal.
- (3) To make rules and regulations, not inconsistent with this Article, for its organization and internal management.

- (4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation within the limit of available funds.
- (5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
- (6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.
- (7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer, or dispose thereof, whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights that are useful for the Authority's purposes, including, but not necessarily limited to, barge service, marine maintenance, ferry terminals, and parking facilities.
- (8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a ferry transportation system or to contract for the maintenance, operation, or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, barge service, marine maintenance, ferry terminals, and parking facilities.
- (9) To accept gifts or grants of money, real or personal property, or services from a person, the State, the federal government, or a unit of local government.
- (10) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.
- (11) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.
- (12) To surrender to the State of North Carolina, upon the approval of the Secretary of the Department of Administration, any property no longer required by the Authority.
- (13) To develop and make data, plans, information, surveys, and studies within the service area of the Authority and to prepare and make recommendations in regard thereto.
- (14) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries.
- (15) To make, enter into, and perform contracts with private parties and transportation companies with respect to the management and operation of ferry transportation services.
- (16) To make, enter into, and perform contracts with other entities for the joint use of property or rights, for the establishment of connecting routes, joint fares, or transfer of passengers.

- (17) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation.
- (18) With the consent of the unit of local government that would otherwise have jurisdiction to exercise the powers enumerated in this subdivision, to issue certificates of public convenience and necessity, and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of ferries, buses, trams, taxicabs, and other methods of public passenger transportation that originate and terminate within the service area of the Authority as fully as the unit of local government is now or hereafter empowered to do within the jurisdiction of the unit of local government.
- (19) To operate a ferry transportation system and to enter into and perform contracts to provide and operate ferry transportation services and facilities, and to own or lease property, facilities, and equipment necessary or convenient therefor, and to rent, lease, or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of a ferry transportation system outside the service area of the Authority.
- (20) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of Part 1 of Article 20 of this Chapter; further, to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a ferry transportation system outside the service area of the Authority.
- (21) To operate public transportation systems extending service into any political subdivision of the State of North Carolina, unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board shall deny consent, but such service may not extend more than 10 miles outside of the service area of the Authority.
- (22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority.
- (23) To facilitate the coordination of transportation plans in the service area.
- (24) To maintain databases for the projection of future travel demands in the service area.
- (25) To provide other transportation related services within the service area of the Authority, as determined by the Board of Trustees in its discretion.
- (26) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased, operated, or under the control of the Authority, and within the service area thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages that obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. A member of the security force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which the member is discharging those duties.
- (27) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its ferry transportation system.

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

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

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

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

"§ 160A-687. Competition.

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

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

- (1) The use of the equipment for the charter service is approved in writing by the Board of Trustees.
- (2) The revenues received by the Authority from the provision of the charter service exceed fully allocated expenses.
- (3) The charter service does not adversely affect regularly scheduled ferry transportation services provided by the Authority.

"§ 160A-688. Power of eminent domain.

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

"§ 160A-689. Termination.

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

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

"§ 62-3. Definitions.

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

- ...
- (23) ...
- m. The term "public utility" shall not include a Ferry Transportation Authority created pursuant to Article 29 of Chapter 160A of the General Statutes."

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

"§ 159-81. Definitions.

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

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

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

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

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

- (1) The appointee of the Governor shall serve for a one-year term, expiring June 30 in the year following the creation of the Authority.
- (2) The appointee of the President Pro Tempore of the Senate shall serve for a one-year term, expiring June 30 in the year following the creation of the Authority.
- (3) The appointee of the Speaker of the House of Representatives shall serve for a one-year term, expiring June 30 in the year following the creation of the Authority.
- (4) The appointees of the Secretary of the Department of Transportation shall each serve for a two-year term, expiring June 30 in the second year following the creation of the Authority.
- (5) The appointee of the board of commissioners described in G.S. 160A-684(b)(4), as enacted by Section 1 of this act, shall serve for a three-year term, expiring June 30 in the third year following the creation of the Authority.
- (6) The appointee of the elected board of the municipality described in G.S. 160A-684(b)(5), as enacted by Section 1 of this act, shall serve for a three-year term, expiring June 30 in the third year following the creation of the Authority.
- (7) The appointee of the elected board of the municipality described in G.S. 160A-684(b)(6), as enacted by Section 1 of this act, shall serve for a three-year term, expiring June 30 in the third year following the creation of the Authority.

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

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

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

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

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:11 a.m. this 18th day of July, 2017