

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 732

Short Title: Clarify DOT Toll Enfrcmnt/Collectn./Contract. (Public)

Sponsors: Representatives W. Brawley, Iler, Torbett, and Shepard (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Transportation.

April 11, 2013

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2 A BILL TO BE ENTITLED
3 AN ACT TO CLARIFY DEPARTMENT OF TRANSPORTATION TOLL CONTRACTING,
4 COLLECTION, AND ENFORCEMENT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 136-18 reads as rewritten:

7 "§ 136-18. Powers of Department of Transportation.

8 The said Department of Transportation is vested with the following powers:

9 ...

10 (39a) a. The Department of Transportation may enter into a ~~partnership~~
11 ~~agreement up to five agreements~~ with a private entity as provided
12 under subdivision (39) of this section for which the provisions of this
13 section may ~~apply~~ apply, ~~provided that prior to the letting of the~~
14 ~~partnership agreement, (i) the project is included in the current State~~
15 ~~Transportation Improvement Plan, (ii) the project is eligible for~~
16 ~~funding under G.S. 136-188, and (iii) the project is ranked as one of~~
17 ~~the top 30 projects based on the scoring set forth in G.S. 136-188.~~
18 ~~The pilot project allowed under this subdivision must be one that is a~~
19 ~~candidate for funding under the Mobility Fund, that is planned for~~
20 ~~construction through a public-private partnership, and for which a~~
21 ~~Request for Qualifications has been issued by the Department no~~
22 ~~later than June 30, 2012.~~

23 b. A private entity or its contractors must provide performance and
24 payment security in the form and in the amount determined by the
25 Department of Transportation. The form of the performance and
26 payment security may consist of bonds, letters of credit, parent
27 guaranties, or other instruments acceptable to the Department of
28 Transportation.

29 c. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement
30 entered into under this subdivision may allow the private entity to
31 assign, transfer, sell, hypothecate, and otherwise convey some or all
32 of its right, title, and interest in and to such agreement, and any rights
33 and remedies thereunder, to a lender, bondholder, or any other party.
34 However, in no event shall any such assignment create additional
35 debt or debt-like obligations of the State of North Carolina, the



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1 Department, or any other agency, authority, commission, or similar
 2 subdivision of the State to any lender, bondholder, entity purchasing
 3 a participation in the right to receive the payment, trustee, trust, or
 4 any other party providing financing or funding of projects described
 5 in this section. The foregoing shall not preclude the Department from
 6 making any payments due and owing pursuant to an agreement
 7 entered into under this section.

8 d. ~~The Department of Transportation may fix, revise, charge, and~~
 9 ~~collect tolls and fees to the same extent allowed under Article 6H of~~
 10 ~~Chapter 136 of the General Statutes. Statutes shall apply to the~~
 11 ~~Department of Transportation and to projects undertaken by the~~
 12 ~~Department of Transportation under subdivision (39) of this section.~~
 13 The Department may assign its authority under that Article to fix,
 14 revise, charge, retain, enforce, and collect tolls and fees to the private
 15 entity.

16 ...

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

25 **SECTION 2.** G.S. 136-89.183(a)(5) reads as rewritten:

26 **"§ 136-89.183. Powers of the Authority.**

27 (a) The Authority shall have all of the powers necessary to execute the provisions of
 28 this Article, including the following:

29 ...

30 (5) To fix, revise, charge, retain, enforce, and collect tolls and fees for the use of
 31 the Turnpike Projects. Prior to the effective date of any toll or fee for use of
 32 a Turnpike Facility, the Authority shall submit a description of the proposed
 33 toll or fee to the Board of Transportation, the Joint Legislative
 34 Transportation Oversight Committee and the Joint Legislative Commission
 35 on Governmental Operations for review.

36"

37 **SECTION 3.** G.S. 136-89.188 reads as rewritten:

38 **"§ 136-89.188. Use of revenues.**

39 (a) Revenues derived from Turnpike Projects authorized under this Article shall be used
 40 only for the following:

- 41 (1) ~~Authority administration costs;~~costs.
- 42 (2) Turnpike Project development, right-of-way acquisition, design,
 43 ~~construction, operation, and maintenance;~~ maintenance, reconstruction,
 44 rehabilitation, and replacement. and
- 45 (3) ~~debt~~ Debt service on the Authority's revenue bonds or related purposes such
 46 as the establishment of debt service reserve ~~funds.~~ funds.
- 47 (4) Debt service, debt service reserve funds, and other financing costs related to
 48 any of the following:
 - 49 a. A financing undertaken by a private entity under a partnership
 50 agreement with the entity for a Turnpike Project.
 - 51 b. Private activity bonds issued under law.

1 c. Any federal or State loan, line of credit, or loan guarantee relating to
2 a Turnpike Project.

3 (5) A return on investment of any private entity under a partnership agreement
4 with the entity for a Turnpike Project.

5 (6) Any other uses granted to a private entity under a partnership agreement
6 with the entity for a Turnpike Project.

7 (b) The Authority may use up to one hundred percent (100%) of the revenue derived
8 from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination
9 of debt service and operation and maintenance expenses of the Turnpike Projects.

10 (c) The Authority shall use not more than five percent (5%) of total revenue derived
11 from all Turnpike Projects for Authority administration costs.

12 (d) Notwithstanding the provisions of subsections (a) and (b) of this section, toll
13 revenues generated from a converted segment of the State highway system previously planned
14 for operation as a nontoll facility shall only be used for the funding or financing of the right of
15 way acquisition, construction, expansion, operations, maintenance, and Authority
16 administration costs associated with the converted segment or a contiguous toll facility.

17 (e) Notwithstanding the provisions of subsection (a) of this section, excess toll revenues
18 with respect to a Turnpike Project shall be used for the funding or financing of transportation
19 projects that are within the jurisdictional limits of the applicable metropolitan planning
20 organization or rural transportation planning organization where the Turnpike Project is
21 located. For purposes of this subsection, the term "excess toll revenues" means those toll
22 revenues derived from a Turnpike Project that are not otherwise used or allocated to the
23 Authority or a private entity pursuant to subsection (a) of this section."

24 **SECTION 4.** Part 1 of Article 6H of Chapter 136 of the General Statutes is
25 amended by adding a new section to read:

26 "**§ 136-89.199. Designation of high-occupancy toll and managed lanes.**

27 Notwithstanding any other provision of this Article, the Authority may designate one or
28 more lanes of any highway, or portion thereof, within the State, including lanes that may
29 previously have been designated as HOV lanes under G.S. 20-146.2, as high-occupancy toll
30 (HOT) or other type of managed lanes; provided, however, that such designation shall not
31 reduce the number of existing general purpose lanes. In making such designations, the
32 Authority shall specify the high-occupancy requirement or other conditions for use of such
33 lanes, which may include restricting vehicle types, access controls, or the payment of tolls for
34 vehicles that do not meet the high-occupancy requirements or conditions for use."

35 **SECTION 5.** Part 2 of Article 6H of Chapter 136 of the General Statutes reads as
36 rewritten:

37 "Part 2. Collection of Tolls on Turnpike Projects.

38 ...

39 "**§ 136-89.212. Payment of toll required for use of Turnpike project.**

40 (a) A motor vehicle that is driven on a Turnpike project is subject to a toll imposed by
41 the Authority for the use of the project. If the toll is an open road toll, the person who is the
42 registered owner of the motor vehicle is liable for payment of the toll unless the registered
43 owner establishes that the motor vehicle was in the care, custody, and control of another person
44 when it was driven on the Turnpike project.

45 (b) A person establishes that a motor vehicle was in the care, custody, and control of
46 another person when it was driven on a Turnpike project by submitting to the Authority a
47 sworn affidavit stating one of the following:

48 (1) The name and address of the person who had the care, custody, and control
49 of the motor vehicle when it was driven. If the motor vehicle was leased or
50 rented under a long-term lease or rental, as defined in G.S. 105-187.1, the

1 affidavit must be supported by a copy of the lease or rental agreement or
2 other written evidence of the agreement.

3 (2) The motor vehicle was stolen. The affidavit must be supported by an
4 insurance or police report concerning the theft or other written evidence of
5 the theft.

6 (3) The person transferred the motor vehicle to another person by sale or
7 otherwise before it was driven on the Turnpike project. The affidavit must be
8 supported by insurance information, a copy of the certificate of title, or other
9 evidence of the transfer.

10 (c) If a person establishes that a motor vehicle was in the care, custody, and control of
11 another person under subsection (b) of this section, the other person shall be liable for the
12 payment of the toll and the Authority may send a bill to collect and enforce the toll in
13 accordance with this Article; provided, however, that such other person may contest such toll in
14 accordance with this Article.

15 **"§ 136-89.213. Administration of tolls and requirements for open road tolls.**

16 (a) Administration. – The Authority is responsible for collecting tolls on Turnpike
17 projects. In exercising its authority under G.S. 136-89.183 to perform or procure services
18 required by the Authority, the Authority may contract with one or more providers to perform
19 part or all of the collection functions and may enter into agreements to exchange information,
20 including confidential information under subsection (a1) of this section, that identifies motor
21 vehicles and their owners with one or more of the following entities: the Division of Motor
22 Vehicles of the Department of Transportation, another state, another toll operator, ~~or~~ a toll
23 collection-related ~~organization-organization,~~ or a private entity that has entered into a
24 partnership agreement with the Authority pursuant to G.S. 136-89.183(a)(17). Further, the
25 Authority may assign its authority to fix, revise, charge, retain, enforce, and collect tolls and
26 fees under this Article to a private entity that has entered into a partnership agreement with the
27 Authority pursuant to G.S. 136-89.183(a)(17).

28 ...

29 (b) Open Road Tolls. – If a Turnpike project uses an open road tolling system, the
30 Authority must operate a facility that is in the immediate vicinity of the Turnpike project ~~and~~
31 ~~that accepts~~ or provide an alternate means to accept cash payment of the toll and must place
32 signs on the Turnpike project that give drivers the following information:

- 33 (1) Notice that the driver is approaching a highway for which a toll is required.
34 Signs providing this information must be placed before the toll is incurred.
- 35 (2) The methods by which the toll may be paid.
- 36 (3) ~~Directions~~ If applicable, directions to the nearby facility that accepts cash
37 payment of the toll.

38 **"§ 136-89.214. Bill for unpaid open road toll.**

39 (a) Bill. – If a motor vehicle travels on a Turnpike project that uses an open road tolling
40 system and a toll for traveling on the project is not paid prior to travel or at the time of travel,
41 the Authority must send a bill by first-class mail to the registered owner of the motor vehicle or
42 the person who had care, custody, and control of the vehicle as established under
43 G.S. 136-89.212(b) for the amount of the unpaid toll. The Authority must send the bill within
44 90 days after the travel ~~occurs~~-occurs, or within 90 days of receipt of a sworn affidavit
45 submitted under G.S. 136-89.212(b) identifying the person who had care, custody, and control
46 of the motor vehicle. If a bill is not sent within the required time, the Authority waives
47 collection of the toll. The Authority must establish a billing period for unpaid open road tolls
48 that is no shorter than 15 days. A bill for a billing period must include all unpaid tolls incurred
49 by the same person during the billing period.

50 (b) Information on Bill. – A bill sent under this section must include all of the following
51 information:

- 1 (1) The name and address of the registered owner of the motor vehicle that
- 2 traveled on the Turnpike ~~project~~ or of the person identified under
- 3 G.S. 136-89.212(b).
- 4 (2) The date the travel occurred, the approximate time the travel occurred, and
- 5 each segment of the Turnpike project on which the travel occurred.
- 6 (3) An image of the registration plate of the motor vehicle, if the Authority
- 7 captured an electronic image of the motor vehicle when it traveled on the
- 8 Turnpike project.
- 9 (4) The amount of the toll due and an explanation of how payment may be
- 10 made.
- 11 (5) The date by which the toll must be paid to avoid the imposition of a
- 12 processing fee under G.S. 136-89.215 and the amount of the processing fee.
- 13 (6) A statement that a vehicle owner who has unpaid tolls is subject to a civil
- 14 penalty and may not renew the vehicle's registration until the tolls and civil
- 15 penalties are paid.
- 16 (7) A clear and concise explanation of how to contest liability for the toll.
- 17 (8) If applicable, a copy of the affidavit submitted under G.S. 136-89.212(b)
- 18 identifying the person with care, custody, and control of the motor vehicle.

19 **"§ 136-89.215. Required action upon receiving bill for open road toll and processing fee**
 20 **for unpaid toll.**

21 (a) Action Required. – A person who receives a bill from the Authority for an unpaid
 22 open road toll must take one of the following actions within 30 days of the date of the bill:

- 23 (1) Pay the bill.
- 24 (2) Send a written request to the Authority for a review of the toll.

25 (b) Fee. – If a person does not take one of the actions required under subsection (a) of
 26 this section within the required time, the Authority may add a processing fee to the amount the
 27 person owes. The processing fee may not exceed six dollars ~~(\$6.00)~~. ~~A person may not be~~
 28 ~~charged more than forty-eight dollars (\$48.00) in processing fees in a 12-month period.~~
 29 (\$6.00) for each unpaid bill.

30 The Authority must set the processing fee at an amount that does not exceed the costs of
 31 identifying the owner of a motor vehicle that is subject to an unpaid ~~toll and toll~~, billing the
 32 owner for the unpaid ~~toll~~, and collecting and enforcing the unpaid toll. The fee is a receipt
 33 of the Authority and must be applied to these costs.

34"

35 **SECTION 6.** This act is effective when it becomes law.