

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 563

Short Title: NC Infrastructure Development Act. (Public)

Sponsors: Senators Stein (Primary Sponsor); and Woodard.

Referred to: Rules and Operations of the Senate.

April 2, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA INFRASTRUCTURE
3 DEVELOPMENT AUTHORITY TO ENCOURAGE AND ENABLE PUBLIC-PRIVATE
4 PARTNERSHIPS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 9 of Chapter 143B of the General Statutes is amended by
7 adding a new Part to read:

8 "Part 30. North Carolina Infrastructure Development Authority.

9 "**§ 143B-426.45. Legislative findings.**

10 The General Assembly finds that the rapid growth of the State and the limited fiscal
11 resources available to provide the public services, facilities, and infrastructure needed to
12 properly accommodate that growth have created a need for new and creative ways to finance,
13 build, and maintain transportation and other public infrastructure. Public-private partnerships
14 can fill that need, but State agencies and departments in many cases lack the technical expertise
15 to properly identify projects suitable for a public-private partnership and to specify project
16 scope and negotiate project terms in a manner most beneficial to the citizens of North Carolina.

17 "**§ 143B-426.50. Definitions.**

18 The following definitions apply in this Part:

- 19 (1) "Authority" means the Infrastructure Development Authority, a public
20 agency created by this Article.
21 (2) "Authority Board" means the governing board of the Infrastructure
22 Development Authority.
23 (3) "Authority Project" means a project where the Infrastructure Development
24 Authority is the public party to the public-private partnership.
25 (4) "Public-private partnership" means a contractual agreement between a State
26 agency, department, or commission and a private sector entity in which the
27 skills and assets of the public and private sectors are shared in delivering a
28 service or facility for the use of the general public. In addition to the sharing
29 of resources, each party in a public-private partnership shares in the risks
30 and rewards potential in the delivery of the service and/or facility.

31 "**§ 143B-426.55. North Carolina Infrastructure Development Authority.**

32 (a) Creation. – There is created a body politic and corporate to be known as the "North
33 Carolina Infrastructure Development Authority." The Authority is constituted as a public
34 agency, and the exercise by the Authority of the powers conferred by this Article shall be
35 deemed and held to be the performance of an essential governmental function.



1 **(b) Administrative Placement.** – The Authority shall be located within the Department
2 of Administration for administrative purposes but shall exercise all of its powers independently
3 of the Department of Administration except as otherwise specified in this Article.

4 **(c) Authority Board.** – The Authority shall be governed by an 11-member Authority
5 Board consisting of four members appointed by the Governor, two members appointed by the
6 General Assembly upon the recommendation of the President Pro Tempore of the Senate in
7 accordance with G.S. 120-121, two members appointed by the General Assembly upon the
8 recommendation of the Speaker of the House of Representatives in accordance with
9 G.S. 120-121, the Secretary of Transportation or designee, the State Chief Information Officer
10 or designee, and the Chairman of the Public Utilities Commission or designee. Each appointing
11 authority shall appoint members who reside in diverse regions of the State. The Chair of the
12 Authority shall be selected by the Authority Board.

13 **(d) Staggered Terms.** – One of the initial appointments to the Authority Board by the
14 General Assembly upon the recommendation of the President Pro Tempore of the Senate, one
15 of the initial appointments to the Authority Board by the General Assembly upon the
16 recommendation of the Speaker of the House of Representatives, and three of the initial
17 appointments of the Governor shall be appointed to terms ending June 30, 2017. One of the
18 initial appointments to the Authority Board by the General Assembly upon the recommendation
19 of the President Pro Tempore of the Senate, one of the initial appointments to the Authority
20 Board by the General Assembly upon the recommendation of the Speaker of the House of
21 Representatives, and one of the initial appointments of the Governor shall be appointed to
22 terms ending June 30, 2015. The Secretary of Transportation, the State Chief Information
23 Officer, and the Chairman of the Public Utilities Commission shall serve as ex officio voting
24 members of the Board. Thereafter, at the expiration of each stipulated term of office, all
25 appointments shall be to a term of four years from the date of the expiration of the term.

26 **(e) Vacancies.** – All members of the Authority Board shall remain in office until their
27 successors are appointed and qualified. The original appointing authority may appoint a
28 member to serve out the unexpired term of any member.

29 **(f) Removal of Board Members.** – Each member of the Authority Board,
30 notwithstanding subsection (d) of this section, shall serve at the pleasure of the appointing
31 authority. The Chair of the Authority serves at the pleasure of the Authority Board.

32 **(g) Conflicts of Interest, Ethics.** – Members of the Authority Board shall be subject to
33 the provisions of Chapter 138A of the General Statutes.

34 **(h) Compensation.** – The appointed members of the Authority Board shall receive no
35 salary for their services but shall be entitled to receive per diem and travel allowances in
36 accordance with the provisions of G.S. 138-5 and G.S. 138-6 as appropriate.

37 **(i) Bylaws.** – The Authority Board shall adopt, change, or amend bylaws with respect
38 to the calling of meetings, quorums, voting procedures, the keeping of records, and other
39 organizational, staffing, and administrative matters as the Authority Board may determine.

40 **(j) Executive Director and Administrative Employees.** – The Authority Board shall
41 appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its
42 pleasure. The Executive Director shall be the Authority's chief administrative officer and shall
43 be responsible for the daily administration of the Authority in furtherance of the purposes set
44 forth in this Article. The Executive Director or his designee shall appoint, employ, dismiss,
45 and, within the limits approved by the Authority Board, fix the compensation of administrative
46 employees as the Executive Director deems necessary to carry out this Article.

47 **(k) Office.** – The offices of the Authority may be housed in one or more facilities of the
48 Department of Administration.

49 **"§ 143B-426.60. Purposes of Authority.**

50 The Authority shall have the following purposes:

- 1 (1) To foster the use of public-private partnerships, where appropriate, to
2 leverage public funds and provide for more rapid and efficient completion of
3 projects for the use and benefit of the public.
- 4 (2) To assist other State agencies in screening, evaluating, selecting, and
5 negotiating potential public-private partnerships to ensure that the
6 partnership is in the best interest of the State and that the contracts and other
7 project documents maximize the benefits to the State's taxpayers and
8 minimize costs.
- 9 (3) Where specifically directed and funded through appropriations by the
10 General Assembly, to undertake Authority Projects. For purposes of this
11 subdivision, Authority Projects may include:
- 12 a. Transportation projects, including highways and highway-related
13 infrastructure.
- 14 b. Public works projects, including water, sewer, and extension of
15 natural gas service, where such extension would further the policy set
16 forth in G.S. 62-2(9).
- 17 c. Information technology projects, including computer and software
18 systems performing State agency functions, wireless Internet
19 networks for public buildings and lands, and high-speed data and
20 telecommunications networks in cases where such networks would
21 not be cost-effective for a private company.

22 **"§ 143B-426.65. Powers of Authority.**

23 (a) The Authority shall have all of the powers necessary to execute the provisions of
24 this Part, including the following:

- 25 (1) The powers of a corporate body, including the power to sue and be sued, to
26 make contracts, to adopt and use a common seal, and to alter the adopted
27 seal as needed.
- 28 (2) To study, plan, develop, and undertake preliminary design work on three
29 Authority Projects, either on its own initiative or at the request of the Board
30 of Transportation, the Utilities Commission, or the State Chief Information
31 Officer. The Authority shall take no further action on a project described by
32 this subdivision unless authorized to do so by statute.
- 33 (3) In the case of projects undertaken by other State agencies where the
34 Authority acts as a consultant or project manager, to charge a reasonable fee
35 for the provisions of those services.
- 36 (4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage
37 real or personal property, including the power to acquire property by
38 eminent domain pursuant to G.S. 143B-426.70.
- 39 (5) In the case of an Authority Project involving transportation, to fix, revise,
40 charge, and collect tolls and fees for the use of the Authority Projects. Prior
41 to the effective date of any toll or fee for use of an Authority Project, the
42 Authority shall submit a description of the proposed toll or fee to the Board
43 of Transportation, the Joint Legislative Transportation Oversight Committee,
44 and the Joint Legislative Commission on Governmental Operations for
45 review.
- 46 (6) To issue bonds or notes of the Authority as provided in this Part.
- 47 (7) To pay all necessary costs and expenses in the formation, organization,
48 administration, and operation of the Authority.
- 49 (8) To apply for, accept, and administer loans and grants of money or real or
50 personal property from any federal agency, the State or its political

subdivisions, local governments, or any other public or private sources available.

(9) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article.

(10) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.

(11) To receive and use appropriations from the State and federal government.

(12) To adopt procedures to govern its procurement of services and delivery of Authority Projects.

(13) To perform or procure any portion of services required by the Authority.

"§ 143B-426.70. Acquisition of real property.

(a) General. – The Authority may acquire public or private real property by purchase, negotiation, gift, or devise, or condemnation that it determines to be necessary and convenient for the construction, expansion, enlargement, extension, improvement, or operation of an Authority Project. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Condemnation. – To exercise the power of eminent domain, the Authority shall commence a proceeding in its name and shall follow the procedure set forth in Article 9 of Chapter 136 of the General Statutes.

"§ 143B-426.75. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution.

"§ 143B-426.80. Audit.

The operations of the Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"§ 143B-426.85. Use of revenues.

(a) Revenues derived from Authority Projects authorized under this Article shall be used only for Authority administration costs; Authority Project development, right-of-way acquisition, construction, operation, and maintenance; and debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.

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

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

"§ 143B-426.90. Infrastructure Authority revenue bonds.

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that act to pay all or a portion of the cost of an Authority Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

"§ 143B-426.95. Sale of Infrastructure Authority revenue bonds.

1 Revenue bonds of the Authority issued pursuant to G.S. 136-89.189 and the State and Local
2 Government Revenue Bond Act shall be sold in accordance with and pursuant to Article 7 of
3 Chapter 159 of the General Statutes.

4 **"§ 143B-426.100. Contracting.**

5 (a) Contracting. – For the purposes of implementing this Article, the Authority shall
6 solicit competitive proposals for the construction of Authority Projects in accordance with the
7 provisions of Article 8 of Chapter 143 of the General Statutes. Contracts for professional
8 engineering services and other kinds of professional or specialized services necessary in
9 connection with construction of Authority Projects shall be solicited in accordance with such
10 procedures as the Authority Board may adopt.

11 (b) Alternative Contracting Methods. – Notwithstanding the provisions of subsection
12 (a) of this section, the Authority may authorize the use of alternative contracting methods if:

13 (1) The authorization applies to an individual project;

14 (2) The Authority has concluded, and documented in writing, that the alternative
15 contracting method is necessary because the project cannot be completed
16 utilizing the procedures of Article 8 of Chapter 143 of the General Statutes
17 within the necessary time frame or available funding or for other reasons the
18 Authority deems in the public interest;

19 (3) The Authority has provided, to the extent possible, for the solicitation of
20 competitive proposals prior to awarding a contract; and

21 (4) The approved alternative contracting method provides for reasonable
22 compliance with the disadvantaged business participation goals of G.S. 143-
23 128.2, 143-128.3, and 143-128.4."

24 **SECTION 2.** No later than January 15, 2015, the Infrastructure Development
25 Authority created by Section 1 of this act shall report to the Joint Legislative Commission on
26 Governmental Operations on its activities. The report shall also identify barriers in existing
27 statutes to the effective employment of public-private partnerships and recommend appropriate
28 legislation to remove those barriers.

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