

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 45

Short Title: Transfer Ports Authority to DOT.

(Public)

Sponsors: Senator Jordan.

Referred to: Appropriations.

February 5, 1997

A BILL TO BE ENTITLED

**AN ACT TO TRANSFER THE NORTH CAROLINA STATE PORTS AUTHORITY
AND THE NORTH CAROLINA PORTS RAILWAY COMMISSION TO THE
DEPARTMENT OF TRANSPORTATION, AND TO AMEND THE
RESPONSIBILITIES OF THE BOARD OF TRANSPORTATION.**

The General Assembly of North Carolina enacts:

Section 1. The North Carolina State Ports Authority, as set forth in Part 10 of Article 10 of Chapter 143B of the General Statutes, is transferred to the Department of Transportation in accordance with this act. Except as otherwise provided in this act, this transfer has all the elements of a Type II transfer as defined by G.S. 143A-6(b).

Section 2. Part 10 of Article 10 of Chapter 143B of the General Statutes is recodified as Part 10 of Article 8 of Chapter 143B of the General Statutes, G.S. 143B-363.1 through G.S. 143B-363.16.

Section 3. The North Carolina Ports Railway Commission, as set forth in Part 11 of Article 10 of Chapter 143B of the General Statutes, is transferred to the Department of Transportation in accordance with this act. This transfer has all the elements of a Type II transfer as defined by G.S. 143A-6(b).

Section 4. Part 11 of Article 10 of Chapter 143B of the General Statutes is recodified as Part 11 of Article 8 of Chapter 143B of the General Statutes, G.S. 143B-364.1 through G.S. 143B-364.4.

1 Section 5. G.S. 143B-452, as recodified as G.S. 143B-363.1 by Section 2 of
2 this act, reads as rewritten:

3 **"§ 143B-363.1. Creation of Authority – membership; appointment, terms and**
4 **vacancies; officers; meetings and quorum; compensation.**

5 The North Carolina State Ports Authority is hereby created. The North Carolina State
6 Ports Authority shall be located within the Department of Transportation, but the power
7 of the Authority to employ, direct, and supervise personnel shall be as provided in this
8 Part. It shall be governed by a board composed of nine members and hereby designated
9 as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11
10 members and hereby designated as the Authority. ~~The General Assembly suggests and~~
11 ~~recommends that no person be appointed to the Authority who is domiciled in the district of the~~
12 ~~North Carolina House of Representatives or the North Carolina Senate in which a State port is~~
13 ~~located.~~—The Governor shall appoint seven members to the Authority, and the General
14 Assembly shall appoint two members of the Authority. Effective July 1, 1983, the
15 Authority shall consist of seven persons appointed by the Governor, and four persons
16 appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint
17 six members to the Authority, in addition to the Secretary of ~~Commeree,~~ Commerce, or
18 the Secretary's designee, who shall serve as a voting member of the Authority by virtue
19 of his office. The Secretary of Commerce shall fill the first vacancy occurring after July
20 1, 1989, in a position on the Authority over which the Governor has appointive power.
21 Effective July 1, 1997, the Authority shall consist of 12 members with the addition of the
22 Secretary of Transportation or the Secretary's designee, who shall serve as a voting
23 member of the Authority by virtue of office.

24 The initial appointments by the Governor shall be made on or after March 8, 1977,
25 two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to
26 expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all
27 appointments made by the Governor shall be for a term of six years.

28 To stagger further the terms of members:

- 29 (1) Of the members appointed by the Governor to replace the members
30 whose terms expire on July 1, 1991, one member shall be appointed to a
31 term of five years, to expire on June 30, 1996; the other member shall
32 be appointed for a term of six years, to expire on June 30, 1997;
- 33 (2) Of the members appointed by the Governor to replace the members
34 whose terms expire on July 1, 1993, one member shall be appointed to a
35 term of five years, to expire on June 30, 1998; the other member shall
36 be appointed to a term of six years, to expire on June 30, 1999;
- 37 (3) Of those members appointed by the Governor to replace the members
38 whose terms expire on July 1, 1995, one member shall be appointed to a
39 term of five years, to expire on June 30, 2000; the other member shall
40 be appointed to a term of six years, to expire on June 30, 2001.

41 Thereafter, at the expiration of each stipulated term of office all appointments made
42 by the governor shall be for a term of six years.

1 The members of the Authority appointed by the Governor shall be selected from the
2 State-at-large and insofar as practicable shall represent each section of the State in all of
3 the business, agriculture, and industrial interests of the State. Any vacancy occurring in
4 the membership of the Authority appointed by the Governor shall be filled by the
5 Governor for the unexpired term. The Governor may remove a member appointed by the
6 Governor only for reasons provided by G.S. 143B-13.

7 The General Assembly shall appoint two persons to serve terms expiring June 30,
8 1983. The General Assembly shall appoint four persons to serve terms beginning July 1,
9 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the
10 two appointments to be made in 1982, one shall be made upon the recommendation of the
11 Speaker, and one shall be made upon the recommendation of the President of the Senate.
12 Of the four appointments made in 1983 and biennially thereafter, two shall be made upon
13 the recommendation of the President of the Senate, and two shall be made upon the
14 recommendation of the Speaker. To stagger further the terms of members:

15 (1) Of the members appointed upon the recommendation of the Speaker to
16 replace the members whose terms expire on June 30, 1991, one member
17 shall be appointed to a term of one year, to expire on June 30, 1992; the
18 other member shall be appointed to a term of two years, to expire on
19 June 30, 1993;

20 (2) Of the members appointed upon the recommendation of the President of
21 the Senate to replace the members whose terms expire on June 30, 1991,
22 one member shall be appointed to a term of one year, to expire on June
23 30, 1992; the other member shall be appointed to a term of two years, to
24 expire on June 30, 1993. Successors to these persons for terms
25 beginning on or after January 1, 1997, shall be appointed by the General
26 Assembly upon the recommendation of the President Pro Tempore of
27 the Senate.

28 Thereafter, at the expiration of each stipulated term of office all appointments made
29 by the General Assembly shall be for terms of two years.

30 Appointments by the General Assembly shall be made in accordance with G.S. 120-
31 121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.
32 Members appointed by the General Assembly may be removed only for reasons provided
33 by G.S. 143B-13.

34 The Governor shall appoint from the members of the Authority the chairman and
35 vice-chairman of the Authority. The members of the Authority shall appoint a treasurer
36 and secretary of the Authority.

37 The Authority shall meet once in each 60 days at such regular meeting time as the
38 Authority by rule may provide and at any place within the State as the Authority may
39 provide, and shall also meet upon the call of its chairman or a majority of its members. A
40 majority of its members shall constitute a quorum for the transaction of business. The
41 members of the Authority shall not be entitled to compensation for their services, but
42 they shall receive per diem and necessary travel and subsistence expense in accordance
43 with G.S. 138-5."

1 Section 6. G.S. 143B-454, as recodified as G.S 143B-363.3 by Section 2 of
2 this act, reads as rewritten:

3 **"§ 143B-363.3. Powers of Authority.**

4 (a) In order to enable it to carry out the purposes of this Part, the said Authority shall:

- 5 (1) Have the powers of a body corporate, including the power to sue and be
6 sued, to make contracts, and to adopt and use a common seal and to
7 alter the same as may be deemed expedient;
- 8 (2) Have the authority to make all necessary contracts and arrangements
9 with other port authorities of this and other states for the interchange of
10 business, and for such other purposes as will facilitate and increase the
11 business of the North Carolina State Ports Authority;
- 12 (3) Be authorized and empowered to rent, lease, buy, own, acquire,
13 mortgage, otherwise encumber, and dispose of such property, real or
14 person, as said Authority may deem proper to carry out the purposes and
15 provisions of this Part, all or any of them;
- 16 (4) Be authorized and empowered to acquire, construct, maintain, equip and
17 operate any wharves, docks, piers, quays, elevators, compresses,
18 refrigeration storage plants, warehouses and other structures, and any
19 and all facilities needful for the convenient use of the same in the aid of
20 commerce, including the dredging of approaches thereto, and the
21 construction of beltline roads and highways and bridges and causeways
22 thereon, and other bridges and causeways necessary or useful in
23 connection therewith, and shipyards, shipping facilities, and
24 transportation facilities incident thereto and useful or convenient for the
25 use thereof, excluding terminal railroads; railroads. Prior approval of the
26 Board of Transportation shall be required for all capital improvement
27 projects, equipment purchases, and facility maintenance projects
28 requiring the expenditure of funds in excess of five hundred thousand
29 dollars (\$500,000). Requests for appropriations from the General Fund
30 shall be approved by the Board of Transportation and submitted to the
31 Governor through the Department of Transportation;
- 32 (5) The Authority shall appoint an Executive Director, whose salary shall
33 be fixed by the Authority, to serve at its pleasure. The Executive
34 Director or his designee shall appoint, employ, dismiss and, within the
35 limits of available funding, fix the compensation of such other
36 employees as he deems necessary to carry out the purposes of this Part.
37 There shall be an executive committee consisting of the chairman of the
38 Authority and two other members elected annually by the Authority.
39 The executive committee shall be vested with authority to do all acts
40 which are authorized by the bylaws of the Authority. Members of the
41 executive committee shall serve until their successors are elected;

- 1 (6) Establish an office for the transaction of its business at such place or
2 places as, in the opinion of the Authority, shall be advisable or
3 necessary in carrying out the purposes of this Part;
- 4 (7) Be authorized and empowered to create and operate such agencies and
5 departments as said board may deem necessary or useful for the
6 furtherance of any of the purposes of this Part;
- 7 (8) Be authorized and empowered to pay all necessary costs and expenses
8 involved in and incident to the formation and organization of said
9 Authority, and incident to the administration and operation thereof, and
10 to pay all other costs and expenses reasonably necessary or expedient in
11 carrying out and accomplishing the purposes of this Part;
- 12 (9) Be authorized and empowered to apply for and accept loans and grants
13 of money from any federal agency or the State of North Carolina or any
14 political subdivision thereof or from any public or private sources
15 available for any and all of the purposes authorized in this Article, and
16 to expend the same in accordance with the directions and requirements
17 attached thereto, or imposed thereon by any such federal agency, the
18 State of North Carolina, or any political subdivision thereof, or any
19 public or private lender or donor, and to give such evidences of
20 indebtedness as shall be required, provided, however, that no
21 indebtedness of any kind incurred or created by the Authority shall
22 constitute an indebtedness of the State of North Carolina, or any
23 political subdivision thereof, and no such indebtedness shall involve or
24 be secured by the faith, credit or taxing power of the State of North
25 Carolina, or any political subdivision thereof;
- 26 (10) Be authorized and empowered to act as agent for the United States of
27 America, or any agency, department, corporation, or instrumentality
28 thereof, in any matter coming within the purposes or powers of the
29 Authority;
- 30 (11) Have power to adopt, alter or repeal its own bylaws, rules and
31 regulations governing the manner in which its business may be
32 transacted and in which the power granted to it may be enjoyed, and
33 may provide for the appointment of such committees, and the functions
34 thereof, as the Authority may deem necessary or expedient in
35 facilitating its business;
- 36 (12) Be authorized and empowered to do any and all other acts and things in
37 this Part authorized or required to be done, whether or not included in
38 the general powers in this section mentioned; and
- 39 (13) Be authorized and empowered to do any and all things necessary to
40 accomplish the purposes of this Part: Provided, that said Authority shall
41 not engage in shipbuilding.

42 The property of the Authority shall not be subject to any taxes or assessments thereon.

1 Prior to taking any action under this subsection, the Authority may consult with the
2 Advisory Budget Commission.

3 (b) In order to execute the powers enumerated in subsection (a), the Authority
4 shall determine the policies of the North Carolina State Ports Authority by majority vote
5 of all members of the Authority present and voting. Once a policy is determined, the
6 Authority shall communicate it to the Executive Director, who shall have the sole and
7 exclusive authority to execute the policy of the Authority. No member of the Authority
8 shall have responsibility or authority to give operational directives to any employee of the
9 North Carolina State Ports Authority other than the Executive Director.

10 (c) Notwithstanding any other provision of this section, the Authority shall submit
11 its annual operating budget and plan to the Board of Transportation on or before May 15
12 of each year."

13 Section 7. G.S. 143B-455, as recodified as G.S. 143B-363.4 by Section 2 of
14 this act, reads as rewritten:

15 "**§ 143B-363.4. Approval of acquisition and disposition of real property.**

16 Any transactions relating to the acquisition or disposition of real property or any
17 estate or interest in real property, by the North Carolina State Ports Authority, shall be
18 subject to prior review by the Governor and Council of State, and shall become effective
19 only after the same has been approved by the Governor and Council of State. Upon the
20 acquisition of real property or other estate therein, by the North Carolina State Ports
21 Authority, the fee title or other estate shall vest in and the instrument of conveyance shall
22 name the 'North Carolina State Ports Authority' as grantee, lessee, or transferee. Upon
23 the disposition of real property or any interest or estate therein, the instrument of
24 conveyance or transfer shall be executed by the North Carolina State Ports Authority.
25 The approval of any transaction by the Governor and Council of State may be evidenced
26 by a duly certified copy of excerpt of minutes of the meeting of the Governor and
27 Council of State, attested by the private secretary to the Governor or the Governor,
28 reciting such approval, affixed to the instrument of acquisition or transfer, and said
29 certificate may be recorded as a part thereof, and the same shall be conclusive evidence
30 of review and approval of the subject transaction by the Governor and Council of State.
31 The Governor, acting with the approval of the Council of State, may delegate the review
32 and approval of such classes of lease, rental, easement, or right-of-way transactions as he
33 deems advisable, and he may likewise delegate the review and approval of the severance
34 of buildings and timber from the land.

35 In addition to the above requirements, any acquisition or disposition of any interest in
36 real property of a fair market value of five hundred thousand dollars (\$500,000) or more
37 shall require the prior approval of the Board of Transportation."

38 Section 8. G.S. 143B-456(b), as recodified as G.S. 143B-363.6(b) by Section
39 2 of this act, reads as rewritten:

40 "(b) Prior to the sale and delivery of any bonds or notes by the Authority, the
41 Governor and the Board of Transportation shall approve the general purposes of and the
42 general security provisions for any such bonds or notes. Such bonds or notes may be sold
43 in such manner, either at public or private sale, and for such price as the Authority shall

1 determine. Bonds or notes may be issued under the provisions of this Part without
2 obtaining, except as otherwise expressly provided in this Part, the consent of any
3 department, division, commission, board, body, bureau or agency of the State, and
4 without any other proceedings or the happening of any conditions or things other than
5 those proceedings, conditions or things which are specifically required by this Part and
6 the provisions of the resolution authorizing the issuance of such bonds or notes or the
7 trust agreement securing the same. Prior to taking any action under this subsection, the
8 Governor may consult with the Advisory Budget Commission."

9 Section 9. G.S. 143B-431(a) reads as rewritten:

10 "(a) The functions of the Department of Commerce, except as otherwise expressly
11 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall
12 include:

13 (1) All of the executive functions of the State in relation to economic
14 development including by way of enumeration and not of limitation, the
15 expansion and recruitment of environmentally sound industry, labor
16 force development, the promotion of and assistance in the orderly
17 development of North Carolina counties and communities, the
18 promotion and growth of the travel and tourism industries, the
19 development of our State's ports, energy resource management and
20 energy policy development;

21 (2) All functions, powers, duties and obligations heretofore vested in an
22 agency enumerated in Article 15 of Chapter 143A, to wit:

- 23 a. The State Board of Alcoholic Control,
- 24 b. The North Carolina Utilities Commission,
- 25 c. The Employment Security Commission,
- 26 d. The North Carolina Industrial Commission,
- 27 e. State Banking Commission and the Commissioner of Banks,
- 28 f. Savings and Loan Association Division,
- 29 g. The State Savings Institutions Commission,
- 30 h. Credit Union Commission,
- 31 i. The North Carolina Milk Commission,
- 32 j. The North Carolina Mutual Burial Association Commission,
- 33 k. The North Carolina Rural Electrification Authority,
- 34 ~~l. The North Carolina State Ports Authority,~~

35 all of which enumerated agencies are hereby expressly transferred by a
36 Type II transfer, as defined by G.S. 143A-6, to this recreated and
37 reconstituted Department of Commerce; and,

38 (3) All other functions, powers, duties and obligations as are conferred by
39 this Chapter, delegated or assigned by the Governor and conferred by
40 the Constitution and laws of this State. Any agency transferred to the
41 Department of Commerce by a Type II transfer, as defined by G.S.
42 143A-6, shall have the authority to employ, direct and supervise
43 professional and technical personnel, and such agencies shall not be

1 accountable to the Secretary of Commerce in their exercise of quasi-
2 judicial powers authorized by statute, notwithstanding any other
3 provisions of this Chapter, ~~provided that the authority of the North Carolina~~
4 ~~State Ports Authority to employ, direct and supervise personnel shall be as~~
5 ~~provided in Part 10 of this Article. Chapter."~~

6 Section 10. G.S. 143B-433(a) reads as rewritten:

- 7 "(a) (1) The North Carolina Alcoholic Beverage Control Commission,
8 (2) The North Carolina Utilities Commission,
9 (3) The Employment Security Commission,
10 (4) The North Carolina Industrial Commission,
11 (5) State Banking Commission,
12 (6) Savings and Loan Association Division,
13 (7) The State Savings Institutions Commission,
14 (8) Credit Union Commission,
15 (9) The North Carolina Milk Commission,
16 (10) The North Carolina Mutual Burial Association Commission,
17 (11) North Carolina Cemetery Commission,
18 (12) The North Carolina Rural Electrification Authority,
19 (13) Repealed by Session Laws 1985, c. 757, s. 179(d),
20 (14) North Carolina Science and Technology Research Center,
21 ~~(15) The North Carolina State Ports Authority,~~
22 (16) North Carolina National Park, Parkway and Forests Development
23 Council,
24 (17) Economic Development Board,
25 (18) Labor Force Development Council,
26 (19) Energy Policy Council,
27 (20) Energy Division,
28 (21) Navigation and Pilotage Commissions established by Chapter 76 of the
29 General Statutes.
30 (22) Repealed by Session Laws 1993, c. 321, s. 313(b)."

31 Section 11. G.S. 143B-346 reads as rewritten:

32 **"§ 143B-346. Department of Transportation – purpose and functions.**

33 The general purpose of the Department of Transportation is to provide for the
34 necessary planning, construction, maintenance, and operation of an integrated statewide
35 transportation system for the economical and safe transportation of people and goods as
36 provided for by law. The Department shall also provide and maintain an accurate register
37 of transportation vehicles as provided by statutes, and the Department shall enforce the
38 laws of this State relating to transportation safety assigned to the Department. The
39 Department of Transportation shall be responsible for all of the transportation functions
40 of the executive branch of the State as provided by law except those functions delegated
41 to the Utilities Commission, ~~the State Ports Authority, Commission~~ and the Commissioners
42 of Navigation and Pilotage as provided for by Chapter 76. The major transportation
43 functions include aeronautics, highways, mass transportation, motor vehicles, State ports,

1 and transportation safety as provided for by State law. The Department of Transportation
2 shall succeed to all functions vested in the Board of Transportation and the Department of
3 Motor Vehicles on July 1, 1977."

4 Section 12. G.S. 143B-350 is amended by adding a new subsection to read:

5 "(i) In addition to the above duties and powers, the Board of Transportation shall
6 have the following duties and powers in regard to the State Ports Authority:

7 (1) To approve all capital improvement projects, equipment purchases, and
8 facility maintenance projects requiring the expenditure of funds in
9 excess of five hundred thousand dollars (\$500,000);

10 (2) To review and approve the annual operating budget and plan which the
11 State Ports Authority shall submit on or before May 15 of each year."

12 Section 13. The Office of State Personnel shall undertake a comprehensive
13 review of the personnel policies and procedures of the North Carolina State Ports
14 Authority and the salaries, benefits, and other terms and conditions of employment with
15 the Ports Authority, and shall determine whether it would be beneficial to include the
16 employees of the Ports Authority under the State Personnel Act. Upon request of the
17 Office of State Personnel, all other State departments and agencies shall furnish to the
18 Office of State Personnel any information in their possession or available to them. The
19 Office of State Personnel shall submit a final report of its findings and recommendations
20 to the Governor, the Speaker of the House of Representatives, the President Pro Tempore
21 of the Senate, the Joint Legislative Transportation Oversight Committee, and the
22 Legislative Library by April 1, 1998.

23 Section 14. This act becomes effective July 1, 1997.