

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1077*

Short Title: Increase DOT Public-Private Partnerships.-AB (Public)

Sponsors: Representatives Frye and Mills (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PUBLIC-PRIVATE PARTNERSHIPS FOR TOLLING AND
3 OTHER FINANCING METHODS ON TRANSPORTATION INFRASTRUCTURE
4 PROJECTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 TRANSPORTATION OVERSIGHT COMMITTEE.

6 The General Assembly of North Carolina enacts:

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

8 "§ 136-18. Powers of Department of Transportation.

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

10 ...

11 (39) To enter into partnership agreements with private entities, and authorized
12 political subdivisions to finance, by tolls, contracts, and other financing
13 methods authorized by law, the cost of acquiring, constructing, equipping,
14 maintaining, and operating transportation infrastructure in this State, and to
15 plan, design, develop, acquire, construct, equip, maintain, and operate
16 transportation infrastructure in this State. An agreement entered into under
17 this subdivision requires the concurrence of the Board of Transportation.
18 The Department shall report to the Chairs of the Joint Legislative
19 Transportation Oversight Committee, the Chairs of the House of
20 Representatives Appropriations Subcommittee on Transportation, and the
21 Chairs of the Senate Appropriations Committee on the Department of
22 Transportation, at the same time it notifies the Board of Transportation of
23 any proposed agreement under this subdivision. Any contracts for
24 construction of highways, roads, streets, and bridges which are awarded
25 pursuant to an agreement entered into under this section shall comply with
26 the competitive bidding requirements of Article 2 of this Chapter. In
27 connection with any agreement entered into under this section, the following
28 shall apply:

29 a. Notwithstanding the provisions of Article 3 of Chapter 44A, an
30 agreement entered into under this subdivision may require the private
31 entity or its contractors to provide performance and payment security
32 in the form and in the amount determined by the Department of
33 Transportation. Such performance and payment security may consist
34 of bonds, letters of credit, parent guaranties, or other instruments
35 acceptable to the Department of Transportation.



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- 1 b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement
2 entered into under this section may allow the private entity to assign,
3 transfer, sell, hypothecate, and otherwise convey some or all of its
4 right, title, and interest in and to such agreement, and any rights and
5 remedies thereunder, to a lender, bondholder, or any other party.
6 c. The Department of Transportation, with respect to transportation
7 infrastructure financed in whole or in part by tolls, shall have the
8 powers to fix, revise, charge, and collect tolls and fees with respect to
9 such transportation infrastructure, and an agreement entered into
10 under this section may allow the private entity to fix, revise, charge,
11 and collect such tolls and fees.
12 d. Revenues derived from transportation infrastructure that are not
13 allocated to a private entity or repayment of financing or other costs
14 under an agreement entered into under this section may be used for
15 the following:
16 1. Administration, development, right-of-way acquisition,
17 design, construction, operation, and maintenance costs of the
18 Department.
19 2. Debt service on revenue bonds issued by or on behalf of the
20 Department.
21 3. Other financing costs related to transportation infrastructure.
22 4. The establishment of debt service reserve funds.
23 5. Any other lawful purpose.

24 ...

- 25 (41) The Department shall, prior to the beginning of construction, determine
26 whether all sidewalks and other facilities primarily intended for the use of
27 pedestrians and bicycles that are to be constructed within the right-of-way of
28 a public street or highway that is a part of the State highway system or an
29 urban highway system must be constructed of permeable pavement.
30 "Permeable pavement" means paving material that absorbs water or allows
31 water to infiltrate through the paving material. Permeable pavement
32 materials include porous concrete, permeable interlocking concrete pavers,
33 concrete grid pavers, porous asphalt, and any other material with similar
34 characteristics. Compacted gravel shall not be considered permeable
35 pavement.
36 (42) The Department may exercise the powers and duties set forth in Article 6H
37 of this Chapter independently of the Authority and may contract to exercise
38 those powers and duties through a vendor, subject to the provisions of
39 subdivision (39) of this section."

40 **SECTION 2.** This act is effective when it becomes law.