

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-145
HOUSE BILL 1630

AN ACT TO AUTHORIZE CONSTRUCTION OF PILOT PRIVATELY FUNDED ROAD OR BRIDGE PROJECTS FUNDED BY TOLLS AND TO DIRECT THE DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF STATE-OWNED AND STATE-OPERATED TOLL ROADS OR BRIDGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"Article 6G.

"Private Pilot Toll Project.

"§ 136-89.168. Legislative findings.

It is hereby declared that the existing State road system is becoming increasingly congested and overburdened with traffic in many areas of the State; that the sharp surge of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate road improvements; and that an adequate answer to this challenge will require the State to be innovative and utilize several new approaches to transportation improvements in North Carolina. It is the purpose of this Article to authorize the construction of no more than two private toll road projects as pilots. In doing this, the Department of Transportation is directed to focus on using toll roads to alleviate commuter traffic congestion. It is the intent that there be no toll on existing State roads.

"§ 136-89.169. Private Pilot Toll Project.

(a) Authority to License. – The Department of Transportation is authorized to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate solely from private resources one pilot toll transportation project within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, 2003.

(b) Requirement for Finding of Need. – Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is in the public interest.

(c) Submission of Financial Data. – A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance the proposed project. The Department shall independently analyze the data submitted for each project proposal.

(d) License Period. – A license issued under this section shall not exceed 50 years from beginning of the operations of the road or bridge. A license may be renewed for an additional 50-year term at the discretion of the Department and in conformity with this Article.

(e) State Use for Other Purposes. – A license issued pursuant to this section shall reserve unto the State or its designee the authority to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(f) Terms of License. – Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and shall include, in addition to any other requirements:

- (1) Provisions establishing minimum design and construction standards for the project.
- (2) Provisions establishing minimum maintenance standards for the project and the responsibility for such maintenance.
- (3) Provisions requiring that appropriate traffic signs and other traffic control devices be erected and maintained on the project.
- (4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system.
- (5) Provisions regarding any type of access control, if any, that may be required for the project.
- (6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public.
- (7) Provisions requiring that the State of North Carolina, its agencies, officials, and employees be indemnified and held harmless by the licensee for any liability incurred on the project in connection with project construction, maintenance, or operation.
- (8) Provisions concerning location of the project.

(g) Department Powers. – The Department may exercise any power possessed by it with respect to the development and construction of State transportation projects to facilitate the development and construction of transportation projects pursuant to this Article.

(h) Acquisition of Project Property. – A person licensed to construct a project under this section shall make all reasonable efforts to acquire all right-of-way interests required for the project through private negotiation. The Department is authorized to exercise its power of eminent domain to acquire property rights necessary for construction and maintenance of the project only as to those property interests that cannot be acquired by the licensee at a reasonable price through private negotiation, and only as required to control access to the project. A licensee requesting that the Department exercise its power of eminent domain shall be required to reimburse the Department in the full amount of its costs incurred in acquiring the necessary property interests for the private portion of the project, including any negotiated settlement or

jury verdict, and any attorneys' fees that may be awarded. The acquisition of property interests necessary for inclusion in a project licensed under this section is hereby declared to be for a public transportation purpose.

(i) Transfer of Department Property to Licensee. – Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project require property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. – For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A licensee under this section shall endeavor to comply with the provisions of G.S. 136-28.4 concerning participation by disadvantaged businesses.

(k) Applicability of Motor Vehicle Laws. – Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(l) Exclusive License. – Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(m) Definitions. – The following definitions apply as used in this section:

- (1) 'Person' means any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.
- (2) 'Project' means a privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility.
- (3) 'Licensee' means a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(n) Report. – The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article."

Section 2. The Department shall study the feasibility of construction of State-owned and State-operated toll roads and the areas where any State-owned and State-operated toll roads are proposed and report its findings to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:16 a.m. this 2nd day of August, 2000