

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-184
HOUSE BILL 1077**

**AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A
PILOT PUBLIC-PRIVATE PARTNERSHIP TOLL PROJECT.**

The General Assembly of North Carolina enacts:

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

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

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

- ...
- (39) To enter into partnership agreements with private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of such transportation infrastructure shall be executed without approval of the Local Government Commission. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.
- (39a) The Department of Transportation may enter into a partnership agreement with a private entity as provided under subdivision (39) of this section for which the provisions of this section may apply. The pilot project allowed under this subdivision must be one that is a candidate for funding under the Mobility Fund, that is planned for construction through a public-private partnership, and for which a Request for Qualifications has been issued by the Department no later than June 30, 2012.
- a. A private entity or its contractors must provide performance and payment security in the form and in the amount determined by the Department of Transportation. The form of the performance and payment security may consist of bonds, letters of credit, parent guaranties, or other instruments acceptable to the Department of Transportation.
- b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to such agreement, and any rights



and remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this section. The foregoing shall not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this section.

c. The Department of Transportation may fix, revise, charge, and collect tolls and fees to the same extent allowed under Article 6H of Chapter 136 of the General Statutes. The Department may assign its authority to fix, revise, charge, and collect tolls and fees to the private entity.

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

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

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:42 p.m. this 16th day of July, 2012