

JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE



REPORT TO THE
2005 SESSION OF THE
2005 GENERAL ASSEMBLY
OF NORTH CAROLINA

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January 20, 2005

TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:

The Joint Legislative Transportation Oversight Committee herewith submits to you for your consideration its January 2005 report. The report was prepared by the Joint Legislative Transportation Oversight Committee pursuant to G.S. 120-70.51(b).

Representative James W. Crawford, Jr.

Senator Clark Jenkins

Representative Danny F. McComas

Cochairs

JOINT LEGISLATIVE TRANSPORTATION
OVERSIGHT COMMITTEE

COMMITTEE PROCEEDINGS

August 3, 2004

The first meeting of the Joint Legislative Transportation Oversight Committee following the 2004 Session took place at 1:00 p.m. August 3, 2004 in Room 1228 of the Legislative Building.

The Committee heard presentations from: Secretary Norris Tolson, of the Department of Revenue, on funds from the Department's Fuel Tax Action Plan; and David Rose, Dye Management Group, Inc., on its NCDOT project delivery study.

October 11, 2004

The second meeting of the Committee following the 2004 Session took place October 11, 2004 at 1:30 p.m. in Room 1228 of the Legislative Building.

The Committee heard presentations from: Len Sanderson, State Highway Administrator, NCDOT, on the project delivery study implementation; Robert Cooney, Dye Management, Inc., on the status of Highway Trust Fund projects; Mark Foster, Chief Financial Officer, NCDOT, on e-procurement at NCDOT; Laura Cove, Group Manager, Technical Services Group, NCDOT, on NCDOT's multi-modal Transportation Plan; Grover Nicholson, Chief, Underground Storage Tank Section, DENR, on the Leaking Underground Storage Tank Cleanup Fund; and David King, Deputy Secretary for Transit, NCDOT, on the ferry division dredging investigation.

November 9, 2004

The third meeting of the Committee following the 2004 Session took place November 9, 2004 at 1:30 p.m. in Room 1228 of the Legislative Building.

The Committee heard presentations from: Steve Varnedoe, Chief Engineer, Operations, NCDOT; John Muth, Deputy Director for Development and Chief Development Officer, CATS, on the Charlotte Area Transit System; John Claflin, General Manager, TTA, on the Triangle Transit Authority; Mike Kozak, Assistant Director, Public Transportation Division, NCDOT, on the Amendment to the State's Full Funding Grant Agreement with the City of Charlotte for the South Corridor Light Rail Project; Mark Foster, Chief Financial Officer, NCDOT, on e-procurement at NCDOT; Betsy Bailey, Executive Director, North Carolina Public Transportation Association, on transportation-related drug and alcohol tests; and Reginald Watkins, Senior Deputy Attorney General, on the NCDOT Franklin County land issue.

December 13, 2004

The fourth meeting of the Committee following the 2004 session took place December 13, 2004 at 1:30 p.m. in Room 1228 of the Legislative Building.

The Committee heard presentations from: Greg Thorp, Director, Project Development and Environmental Analysis, NCDOT, on hurricane evacuations; Lacy Love, Director, Asset Management, NCDOT, on the condition of the State Highway System; George Tatum, Commissioner, DMV and Dan Johnston, North Carolina Association of Motor Vehicle Contract Agents, on customer service at DMV and at tag agencies; Scott Saylor, President, NCR, on the North Carolina Railroad Company; Calvin Leggett, Manager, Program Development Branch, NCDOT, on the NC Turnpike Authority; and Mike Mangum, State Purchasing Officer and Fred Allen, Executive Director, NC Aggregates Association, on e-procurement.

Following these presentations, Giles S. Perry, Committee Counsel, presented six NCDOT legislative proposals for committee consideration and approval at its January meeting.

January 20, 2005

The fifth and final meeting of the Committee in the 2003-2004 Interim took place January 20, 2005 at 9:30 a.m. in Room 643 of the Legislative Office Building.

The Committee met jointly on the morning of January 20 with the Environmental Review Commission and heard presentations from: John F. Sullivan, III, Division Administrator, Federal Highway Administration, US Department of Transportation and Richard B. Hamilton, Executive Director, Wildlife Resources Commission, on the issue of threatened and endangered freshwater mussels and highway construction; Gregory J. Thorpe, Director, Project Development and Environmental Analysis, NCDOT and Deborah M. Barbour, Director, Preconstruction Branch, Division of Highways, NCDOT, on the Clayton US 70 Bypass project; Grover Nicholson, Chief, Underground Storage Tank Section, Division of Waste Management, DENR, Robin W. Smith, Assistant Secretary for Planning and Policy, DENR, Mark Fostro, Chief Financial Officer, Financial Management Division, NCDOT and Kevin L. Matthews, Director of Governmental Relations, AIG Environmental, on leaking underground storage tanks.

On the afternoon of January 20, the Committee first met jointly with the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and heard from Bryan Beatty, Secretary, Department of Crime Control and Public Safety, Bob Brinson, Chairman, Criminal Justice Information Network, Major Woody Sandy, State Highway, and Paul Meyer, Assistant General Counsel, NC Association of County Commissioners, on the VIPER Voice Interoperability Plan for Emergency Responders.

At the conclusion of the joint meeting, the Committee continued with a presentation from Queen Crittenton, Director, Civil Rights and Business Development, NCDOT, on the NCDOT second-generation disparity study recommendations.

Following this presentation, the Committee reviewed and recommended for introduction to the short session of the General Assembly the proposed legislation included in this report.

Following review of the proposed legislation, the Committee approved a resolution, attached, concerning the Garden Parkway and the Cape Fear Skyway. The Committee also received the report, attached, of the Highway Trust Fund Study Committee.

**MEMBERSHIP OF THE
JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE
2003-2004
G.S. 120-70.50**

Pro Tempore's Appointments

Speaker's Appointments

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LEGISLATIVE PROPOSALS

At its January, 2005 meeting, the Committee approved for transmittal to the 2005 Session of the General Assembly the following proposals:

Proposal #1
DOT Minority/Women Businesses Program
Draft # 2005-RW-3

This proposal revises DOT's disadvantaged, minority, and women's business goals program based on a recently completed disparity study and applicable court decisions.

Section 1 of the proposal replaces the current 10% minority and 5% women contract participation goal with a requirement for a study every 5 years of DOT's utilization of minority-owned and women-owned businesses. The proposal requires DOT to implement a specific program to remedy evidence of discrimination documented by the study, including "aspirational" minority-owned and women-owned contractor utilization goals. The proposal requires DOT to report semiannually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned or women-owned businesses. The proposal provides for a sunset of August 31, 2009.

This proposal would become effective when it becomes law.

Proposal #2
DOT Retired Engineers
Draft # 2005-RW-4

Section 1 of the proposal removes the cap on post-retirement earnings for retired engineers and engineering technicians.

This proposal would become effective July 1, 2005.

Proposal #3
GARVEE Bond Issuance
Draft # 2005-RW-5

Section 1 of the proposal directs the Secretary of Transportation and the State Treasurer to form a committee to plan for implementation of the act and to submit a report to the co-chairs of the Transportation Appropriations Subcommittee and co-chairs of the Joint Legislative Transportation Oversight Committee.

Section 2 of the proposal authorizes the Department of Transportation to issue GARVEE bonds or other eligible debt financing instruments to finance federal-aid highway projects. GARVEE bonds are Grant Anticipation Revenue Vehicles, authorized by federal law, that use anticipated future federal highway funds to finance highway project construction.

The authority to issue GARVEE bonds would become effective July 1, 2006. The implementation plan would be due prior to that, on March 1, 2006.

Proposal #4
8-Year Drivers License/Internet DL Renewal
Draft # 2005-RW-6

Section 1 of the proposal:

-- authorizes DMV to issue an eight-year drivers license to a person at least 18 years old but less than 38 years old.

-- authorizes internet renewal of drivers licenses of any person at least 25 years old but less than 60 years old who has no more than two reportable accidents, no restrictions on his or her license in the prior year, no more than four drivers license points, and who submits results of a recent eye exam. Internet renewal would be for a period of five years, and would be limited to renewal of a license issued at a drivers license office.

The proposal would become effective January 1, 2006.

Proposal #5
Interest on Highway Condemnation Awards
Draft # 2005-RW-7

Section 1 of the proposal changes the rate of interest paid on highway condemnation awards from 8%, under current law, to the average rate earned by the State Treasurer on investments within the State's Fixed Income Investment Fund during the month preceding the date of judgment.

The proposal would become effective January 1, 2006, and apply to condemnation actions filed on or after that date.

Proposal #6
DOT Driveway Connection Changes
Draft # 2005-RW-8

Under current law, DOT can require driveway connection permit applicants to construct improvements, such as additional acceleration and deceleration lanes and medians, on any US or NC route, and on any secondary road if the *current* traffic volume at the site of the new driveway meets or exceeds 4,000 vehicles per day.

Section 1 of the proposal would amend the authority of the Department of Transportation concerning issuance of driveway connection permits in two ways:

First, the proposal would authorize DOT to require driveway permit applicants to install traffic control devices on any US or NC route, and on any secondary route that also meets the conditions described below; and

Second, the proposal would authorize DOT to require driveway permit applicants to make improvements on any secondary road where the *combined existing traffic and traffic generated by the proposed development* meets or exceeds 4,000 vehicles per day, or if DOT thinks an unsafe condition will be created.

The proposal would become effective July 1, 2005.

PROPOSAL #1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-3 [v.2] (12/2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/28/2005 4:39:11 PM

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by ~~disadvantaged~~disadvantaged minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this ~~State~~State, based on a compelling governmental interest, to encourage and promote participation by ~~disadvantaged~~disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and ~~all other State agencies, institutions, and political subdivisions among themselves~~ in all efforts to conduct outreach and to encourage and promote the use of ~~disadvantaged~~disadvantaged minority-owned and women-owned businesses in these contracts.

(b) ~~A ten percent (10%) goal is established for participation by minority businesses and a five percent (5%) goal for participation by women businesses is established in contracts let by the Department of Transportation for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and for the procurement of materials for these projects. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for these purposes, and shall endeavor to award to women businesses at least five percent (5%), by value, of the contracts it lets for these purposes. The Department shall adopt written procedures specifying the steps it will take to achieve these goals. The Department shall give equal opportunity for contracts it lets without~~

regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified. At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in highway contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) Based upon the findings of the Department's Second Generation Disparity Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish annual aspirational goals, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These annual aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with methodology specified in the Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:

- (1) "Disadvantaged business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 23.62.26.5 or any subsequently promulgated replacement regulation.
- (2) "Minority" has the same meaning as in 49 C.F.R. § 23.5:includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace, and that have been adversely affected in their ability to obtain contracts with the Department.

(d) The Department shall report semiannually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, 2009."

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

PROPOSAL #2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-4 [v.2] (12/2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/28/2005 4:40:00 PM

Short Title: DOT Retired Engineers.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REMOVE THE CAP ON EARNINGS BY RETIRED DEPARTMENT OF
TRANSPORTATION ENGINEERS AND ENGINEERING TECHNICIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-3(8) is amended by adding a new sub-subdivision to read:

"c1. The computation of postretirement earnings of a beneficiary under sub-subdivision c. of this subdivision who has been retired at least six months and has not been employed in any capacity with the Department of Transportation for at least six -months immediately preceding the effective date of reemployment shall not include earnings while the beneficiary is employed with the Department of Transportation as an engineer or engineering technician. The Department of Transportation shall certify to the Retirement System that a beneficiary is employed by the Department of Transportation as a retired engineer or retired engineering technician.

A 'retired engineer' or 'retired engineering technician' means a beneficiary of the Teachers' and State Employees' Retirement System of the State of North Carolina who has been retired at least six months, has not been employed in any capacity with the Department of Transportation for at least six months immediately preceding the effective date of reemployment, is determined by the Department of Transportation to have had satisfactory performance during the last year of employment, and who is employed as an engineer or engineering technician. A retired engineer or engineering technician shall be treated the same as a

probationary employee except that a retired engineer or engineering technician is not eligible for career status.

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 2. This act becomes effective July 1, 2005.

PROPOSAL #3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-5 [v.3] (12/2)

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1/28/2005 4:42:32 PM

Short Title: GARVEE Bond Issuance.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE TREASURER TO ISSUE "GARVEE" GRANT ANTICIPATION REVENUE VEHICLE BONDS ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION AND TO DIRECT THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND THE STATE TREASURER TO DEVELOP AN IMPLEMENTATION PLAN FOR ISSUANCE OF THE BONDS.

The General Assembly of North Carolina enacts:

SECTION 1. The Secretary of the Department of Transportation and the State Treasurer shall jointly form a committee to develop a plan to implement the provisions of this act. The plan shall address all financial, legal, and practical issues involved in issuing "GARVEE" bonds. The two Departments shall jointly submit their implementation plan to the cochairs of the Transportation Appropriations Subcommittee and the cochairs of the Joint Legislative Transportation Oversight Committee by March 1, 2006.

SECTION 2. G.S. 136-18 is amended by adding a new subdivision to read:

"(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt financing instruments to finance Federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any GARVEE or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (1) that the principal and interest of such debt

does not exceed the total amount of federal transportation funds authorized to the state in the prior federal fiscal year; and (2) that the principal and interest of such debt does not exceed 15% of the expected federal revenue shown for the seven year period in the most recently adopted Transportation Improvement Program."

SECTION 3. Section 2 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law.

PROPOSAL #4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-6 [v.3] (12/2)

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Short Title: 8-Year Drivers License/Internet DL Renewal.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EIGHT-YEAR DRIVERS LICENSES AND INTERNET
RENEWAL OF DRIVERS LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Expiration and Temporary License.
~~The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. A first drivers license may be issued for a shorter duration if the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration issued by the United States Department of State. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.~~

Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection.

- (1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 shall expire on the person's 21st birthday.
- (2) Duration of license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 38 years old expires eight years after the date of issuance. A drivers license issued to a person at least 38 years old expires five years after the date of issuance.

- (3) Internet renewal of license authorized for certain persons. – The Division is authorized to renew a drivers license electronically in accordance with this subdivision. The Division may waive the sign tests for applicants renewing electronically. A person who holds a commercial drivers license and is required by federal regulations to be retested shall not renew electronically. A person may renew his or her drivers license electronically for one five-year period at the time of each expiration of a license issued in a drivers license office if all of the following apply:
- a. The person has no more than two reportable accidents on his or her drivers license record in the previous year.
 - b. The person has no restrictions other than a restriction for corrective lenses on his or her drivers license record in the previous year.
 - c. The person has four or fewer drivers license points.
 - d. The person is at least 25 years old and less than 60 years old.
 - e. The person has obtained an eye examination by a licensed ophthalmologist or licensed optometrist within 12 months prior to the date of electronic renewal, and the results of the examination are submitted to the Division by the ophthalmologist or optometrist to the Division at the time of the application for the electronic renewal.
- (4) Duration of license for certain visa holders. – A drivers license that was issued by the Division and is renewed by the Division expires ~~five years~~ at the end of the period provided by this subsection after the expiration date of the license that is renewed unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of State. A person may apply to the Division to renew a license during the 180 day period before the license expires. The Division may not accept an application for renewal made before the 180 day period begins.
- (5) Renewal by Mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:
- ~~(1)~~a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.
 - ~~(2)~~b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

SECTION 2. This act becomes effective January 1, 2006.

PROPOSAL #5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-7 [v.3] (12/2)

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1/28/2005 4:43:56 PM

Short Title: Interest on Highway Condemnation Awards. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE RATE OF INTEREST ALLOWED ON HIGHWAY
CONDEMNATION AWARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-113 reads as rewritten:

"§ 136-113. Interest as a part of just compensation.

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the ~~legal rate as provided in G.S. 24-1~~ average rate earned by the State Treasurer on investments within the State's Short Term Fixed Income Investment Fund during the month preceding the date of judgment on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article."

SECTION 2. This act becomes effective January 1, 2006, and applies to condemnation actions filed on or after that date.

PROPOSAL #6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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BILL DRAFT 2005-RW-8 [v.2] (12/2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/28/2005 4:40:53 PM

Short Title: DOT Driveway Connection Changes.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO AMEND THE AUTHORITY OF THE DEPARTMENT OF
TRANSPORTATION CONCERNING DRIVEWAY CONNECTIONS TO STATE
HIGHWAYS .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(29) reads as rewritten:

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

"(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, ~~and~~ traffic storage lanes ~~lanes~~, traffic control devices, and medians by others for the driveway connections ~~into~~ onto any United States route, or North Carolina route, and on any secondary road route ~~with an~~ where the combined existing traffic and projected traffic generated by the proposed development meets or exceeds an average daily traffic volume of 4,000 vehicles per day or more. if, in the opinion of the Department of Transportation, an unsafe condition will be created."

SECTION 2. This act becomes effective July 1, 2005.

COMMITTEE RESOLUTION

Committee Resolution

Study of Acceleration of Construction of the Garden Parkway and Cape Fear Skyway

Joint Legislative Transportation Oversight Committee

January 20, 2005

The Joint Legislative Transportation Oversight Committee requests that the Department of Transportation and Department of State Treasurer jointly study and develop a proposal to provide appropriate debt financing to accelerate the construction schedules for the Garden Parkway and Cape Fear Skyway projects identified in G.S. 136-180(a). The study shall address financial, legal, and practical issues involved in various financing options including special indebtedness under Article 9 of Chapter 142 of the General Statutes, revenue bonds supported by toll revenues, and other appropriate types of debt.

The Committee requests that the two Departments jointly report their findings and recommendations, including any proposed legislation, by April 15, 2005, to the cochairs of the Joint Legislative Transportation Oversight Committee.

**HIGHWAY TRUST FUND
STUDY COMMITTEE REPORT
AND
APPENDIX**

Highway Trust Fund Study Committee
S.L. 2003-284, Sec. 29.12

Findings and Recommendations

- **Complete the Projects in the Original Highway Trust Fund**
The original Highway Trust Fund (HTF) legislation created a mechanism to plan and finance an important part of the state's transportation infrastructure and to enhance economic development throughout the State.
S.L. 2004-124 Section 30.21 specifies that priority in use of Highway Trust Fund funds shall be given to those routes listed in the original Highway Trust Fund intrastate project list. (Appendix, Part 1)
- **Recognize the Need for Change**
The changes made to the structure of the Highway Trust Fund by the General Assembly in 2003 and 2004 were a recognition that changes in development and travel patterns had created a need to make additional projects eligible for inclusion in the Highway Trust Fund and for the Board of Transportation to have greater flexibility in the design of HTF projects. (Appendix, Part 1)
- **Improve Project Delivery**
Improvements are needed in project delivery by DOT. A study commissioned by the General Assembly found a number of shortcomings and recommended improvements. DOT has been studying these recommendations and developing an implementation plan. The General Assembly should continue to monitor progress and encourage improvements in the Department's project delivery process. (Appendix, Part 5)
- **Provide a Balanced Transportation System**
A balanced transportation system is necessary to provide transportation alternatives to all North Carolinians. The original Highway Trust Fund provided only limited support for "other modes," approximately \$5 million per year. However, between FY2002 and FY2005 the General Assembly authorized the use of \$190 million of HTF cash balances for transit and rail. Under current law HTF support of transit and rail will revert to previous levels, leaving support of these modes to the Highway Fund at a time when the State's major metropolitan areas have committed to large transit projects to be funded with state support.
- **Funding and Priorities**
The Long Range Multimodal Plan approved by the Board of Transportation in 2004 calculates transportation needs over the next 25 years at \$84 billion, versus expected revenues of \$55 billion, leaving a gap of approximately \$30 billion. The

General Assembly needs to provide additional revenues for transportation infrastructure or provide statutory guidance to the Board of Transportation on dividing limited funds among highway and non-highway modes and, for its highway investments, between:

- Maintenance and Preservation
- Modernization
- Expansion

The General Assembly should consider expanding the state's toll road program, establishing a roads lottery, and authorizing additional bonding authority, perhaps at the local level for local projects.

For many years there was a transfer of \$170 million per year from the HTF to the General Fund. In recent years several hundred million dollars of additional revenue have been transferred. The General Assembly should consider limiting the transfer to \$170 million per year. (Appendix, Parts 2 and 4)

- **Greater Role for Local Government**

The provision of transportation infrastructure has generally been a state role in North Carolina since the 1930's. However, local government controls many of the land use and investment decisions that determine the need for transportation improvements. The General Assembly should consider granting greater authority to local government to plan for and finance local transportation improvements.

APPENDIX

Part 1: Legislation

- Highway Study Commission established in 1987 and made recommendations to the 1989 General Assembly
- Highway Trust Fund (HTF) law enacted in July 1989
- Purposes of Highway Trust Fund
 - Address a backlog of road improvement needs
 - Provide a safe and convenient network of 4-lane highways connecting major population centers to support statewide growth and economic development objectives
 - Construct loop and connector facilities in seven of the state's major urban areas to relieve congestion and enhance mobility
- Original Provisions
 - Define and complete intrastate system
 - 3600-mile network of 4-lane highways
 - 113 miles of Interstate improvements
 - Construct seven urban loops
 - Provide additional funds to pave unpaved secondary roads with more than 50 vehicles per day
 - Provide additional funds for municipal street systems
 - Establish Joint Legislative Transportation Oversight Committee
- Funding from motor fuels tax, Highway Use Tax, vehicle certificate of title fees and certain other fees, investment income earned by the HTF
- 1996 Bond Referendum
 - Authorized \$950 billion in bonds to accelerate construction
 - Bond sales completed Fall 2004
- 2001 Session - SB 1005 - Use of \$687 million of HTF cash balances over three years
 - Pavement preservation - \$470 million
 - Preliminary engineering - \$45 million
 - Traffic signal systems - \$45 million
 - Public transportation, etc. - \$120 million
 - Small construction projects - \$7 million
- North Carolina: Moving Ahead! SL 2003-383 - \$700 million over two years
 - Funded by sale of remaining HTF bonds
 - \$630 million for highway maintenance and modernization
 - \$70 million for public transportation, etc.
- SL 2003-284
 - Sec. 29.11 amended the list of urban loops to be constructed as part of the Highway Trust Fund
 - Sec. 29.22 authorized the use of Highway Trust Fund funds to meet State matching requirements to receive federal-aid highway funds

- SL 2004-124
 - Sec. 30.19 further amended the list of urban loops to be constructed
 - Sec. 30.21
 - Redefined the routes that are part of the Intrastate Highway System
 - Authorized use of HTF funds on all intrastate system routes in addition to those listed under prior law
 - Authorized DOT to construct some segments of the intrastate system with fewer than four lanes if projected traffic volumes and environmental considerations dictate fewer lanes
 - Lists all routes that are part of the intrastate highway system
 - Specifies that priority in the use of the HTF funds shall be given to those routes listed in the original intrastate project list
 - Made changes in the list of eligible intrastate projects
 - Eliminates the sunset on the HTF supplement for secondary roads
 - Provides that, once all the urban loop projects of the HTF are funded, they would be considered part of the intrastate system, and all allocations of revenue for urban loops will be credited to the intrastate account within the HTF

Part 2: Highway Trust Fund Revenue and Availability

Source	FY2002-03 Actual	FY2003-04 Actual	FY2004-05 Projected
Motor Fuel Taxes	\$283,055,951	\$310,767,003	\$318,688,000
Highway Use Tax	\$552,758,580	\$608,986,699	\$613,484,000
Title Fees	\$90,859,931	\$95,923,899	\$99,327,000
Investment Income	\$11,730,292	\$8,925,134	\$6,000,000
Total Revenue	\$938,404,754	\$1,024,602,735	\$1,037,499,000
Minus transfer to General Fund	(\$377,400,000)	(\$252,422,125)	(\$242,586,830)
Total Revenues	\$561,004,754	\$772,180,610	\$794,912,170
Cash Balance and Moving Ahead (Bond Spending)*	\$227,000,000	\$512,000,000	\$400,000,000
Total Available	\$788,004,754	\$1,284,180,610	\$1,194,912,170

*The spending of cash balances ended in FY2003-04. The spending of bond funds for the Moving Ahead program ends in FY2004-05.

Part 3: Trust Fund Progress
(October 2004)

	Intrastate	% of System	Loops	% of System
<u>1989 status</u>				
Total system miles	3600	100%	211	100%
Miles already complete in 1989	1843	51%	0	0%
Estimated total miles to complete	1757	49%	211	100%
Estimated cost to complete	\$5.33 billion		\$2.11 billion	
Projected cost per mile	\$3.0 million		\$10.0 million	

Funds authorized as of FY 2004¹ \$5.03 billion \$2.41 billion

Status excluding 2003 & 2004 Legislative changes

Total miles complete as of FY 2004	2671	74%	114	50%
Remaining miles to complete	926 ²	26%	112 ^b	50%
Estimated remaining costs (does <u>not</u> include preliminary engineering)	\$6.07 billion		\$2.15 billion	
Projected cost per mile	\$6.6 million		\$19.2 million	

Status including 2003 Legislative changes

Total miles complete as of FY 2004	2671	74%	114	36%
Remaining miles to complete	920 ^b	26%	202 ^b	64%
Estimated remaining costs (does <u>not</u> include preliminary engineering)	\$6.00 billion		\$3.20 billion ³	
Projected cost per mile	\$6.5 million		\$15.8 million	

Status including 2003 & 2004 Legislative changes

Total miles complete as of FY 2004	2671	74%	114	30%
Remaining miles to complete	962 ^b	26%	265 ^b	70%
Estimated remaining costs (does <u>not</u> include preliminary engineering)	\$6.44 billion		\$4.29 billion ^c	
Projected cost per mile	\$6.7 million		\$16.2 million	

¹ Includes preliminary engineering

² reflects mileage adjustments since 1989

³ Cost for Durham loop is not known and is not included in estimates of remaining costs

Part 4: Transportation Resources and Needs

From North Carolina Board of Transportation *Charting a New Direction for NCDOT: North Carolina’s Statewide Multimodal Transportation Plan*:

“Based on conservative assumptions about revenue growth and adjusting for inflation, NCDOT estimates that a total of \$55 billion (constant 2001 dollars) will be available for transportation investment over the next 25 years. (Page 2)

In total, the Statewide Transportation Plan identifies that North Carolina will need to spend more than \$84 Billion (constant 2001 dollars) over the next 25 years to meet all anticipated transportation investment needs. Total needs figures...reflect the combined backlog and accruing needs for maintenance, preservation, modernization, and expansion. (Page 3)”

**25-Year Needs
(billions of constant 2001 dollars)**

Mode	Statewide	Regional	Subregional	Total
Highways	\$31.090	\$9.087	\$26.407	\$66.584
ITS	\$1.092			\$1.092
Transit		\$6.500	\$4.100	\$10.600
Passenger Rail	\$2.923	\$.572		\$3.495
Freight Rail	\$.282		\$.263	\$.545
Ferries	\$.749	\$.310		\$1.059
Bike/Ped	\$.030	\$.030	\$.240	\$.300
Aviation				\$1.017
Total	\$36.166	\$16.499	\$31.010	\$84.692

Part 5: Study of NCDOT Highway Construction Project Delivery

(By Dye Management for Joint Legislative Transportation Oversight Committee)

What Causes Delay?

- Project delivery has become substantially more complex.
 - ▶ Changing State demographics and public attitudes.
 - ▶ Increasingly sophisticated public.
 - ▶ Need to consider secondary and cumulative impacts, which requires thousands of hours of additional analysis work.\
 - ▶ Labor force transition and shortages.
 - ▶ Nature of Trust Fund Projects.
 - ▶ NEPA process incompatibility issues.
- Complexity of the process dictates need for strong systems, processes and project management utilizing highly experienced resources.

- NCDOT has limited enterprise level program management for managing and executing project delivery program.
- NCDOT is also hampered by difficulties in recruiting and retaining resources and by a “brain drain” created by the on-going loss of experienced, senior resources.

Major Findings

- **Limited Overall Program Delivery Accountability**
 - ▶ Weak accountability and reporting mechanisms to General Assembly, customers, and partners.
 - ▶ Limited senior level management oversight and control.
 - ▶ Need for a stronger management culture.
 - ▶ Absence of basic management information (e.g. progress against major milestones, schedule and budget status, etc.)

- **NCDOT not meeting delivery commitments**
 - ▶ Data analyzed for projects let during CY 2001 - 2003 indicates that actual construction costs on average doubled from the initial estimate when the project was put in the TIP.
 - ▶ TIP is not an effective multi-year delivery plan with wide variations between the year when a project is originally targeted for letting in the TIP and when it is actually let.
 - ▶ 12 month let list has limited usefulness in predicting when projects are actually let.

- **Limited accountability for projects and weak project management practices**
 - ▶ Absence of scope, schedule, and budget management controls, procedures, accountabilities, and metrics.
 - ▶ Need to apply project management principles and practices.
 - ▶ No formalized training or career path for Project Managers.
 - ▶ Need for standardized processes and a supporting Project Delivery manual.
 - ▶ Need for project management tools (e.g. quick access to budget and status information, templates, standards, best practices, etc.)

- **Need to build on successful environmental process improvements**
 - ▶ Merger 01 process is very positive – need to ensure process driven by work standards.
 - ▶ Collaborative working relationships have been established with state and federal resource agencies.
 - ▶ Resource agency data suggests on whole timely processing of permit applications.
 - ▶ NC may be doing more environmental documents than necessary.
 - ▶ EIS delivery times close to national average.
 - ▶ Potentially some EAs should have been done as an EIS.
 - ▶ 50+ environmental streamlining initiatives underway but fragmented – limited department-wide prioritization and coordination.

- **Human resource challenges impact NCDOT effectiveness**
 - ▶ High turnover of PDEA and Preconstruction staff.
 - ▶ Difficulty in recruiting and retaining specialist positions.
 - ▶ Limited program-level human resource planning.

Recommendations: Overall

- Institute culture of program-level management, control, and oversight from the top down.
- Set strategic department wide objectives for program, project delivery performance and align managers goals, business improvements against their accomplishment.
- Apply project management principles – institute scope, schedule, and budget management practices at the project level.
- Establish project control system to provide management reporting and accountability mechanisms.
- Stabilize environmental process and introduce accountability mechanisms.

Key Recommendations

Improving Program Delivery Predictability

- Institute senior management program delivery management team.
- Establish program office for project delivery.
- Establish actively managed multi-year delivery plan with input from both NCDOT and resource agencies.
- Change TIP to include a development and delivery component.
- Drive let list off updated delivery plan.
- Change Trust Fund law so cross section not predefined.

Reducing Project Delivery Time

- More effective project management and coordination.
 - ▶ Strengthen Project Management as a discipline.
 - ▶ For the most complex projects pilot dedicated delivery team approach.
 - ▶ Evaluate alternative delivery options and pilot through NC Turnpike Authority or projects as appropriate.
- Develop end to end project development manual as an urgent priority, along with supporting templates and tools.
- Establish project delivery time standards and manage against.
- Introduce schedule accountability into Merger 01 process.

Ensure Program/Project Delivery Information

- Implement project control system.
 - ▶ Facilitates senior management exception reporting capability.
 - ▶ Provides accountability through project status reporting (e.g. VDOT Project Dashboard).
 - ▶ Start from PMII networks as basis for standardized process and delivery times, etc.

Environmental Processes

- Establish state-wide objectives for both environmental stewardship and transportation.
- Stabilize and further institutionalize Merger 01 process.
 - ▶ Document procedures.
 - ▶ Set timelines for issue resolution.
 - ▶ Provide meeting facilitation.
- Enterprise level prioritization, coordination, and management of 50+ other environmental initiatives to ensure focus.

NCDOT Staff Retention

- Conduct program level human resource planning
 - ▶ Identify staff bottlenecks.
 - ▶ Tie human resource decisions to needs of multi-year delivery plan.
 - ▶ Develop succession planning process.
- Establish recruiting and retention plan.
 - ▶ May require statute changes.

Consultant Procurement

- Shorten consultant procurement time.
- Establish a centralized procurement function to manage and administer all consultant contracts.
- Simplify consultant contract approval processes including considering increasing thresholds requiring BOT approval.

Review of Highway Trust Fund Project Delivery Status

- Report to the General Assembly on status of Highway Trust Fund projects.
- Develop a high level forecast on project readiness.

Highway Trust Fund Project Analysis Approach

- Inventory Highway Trust Fund Projects.
- Classify Highway Trust Fund projects in:
 - ▶ Not started.
 - ▶ In preconstruction.
 - ▶ In construction.
 - ▶ Completed.
- Classify projects according to type: Intrastate or loops.
- For projects in preconstruction, determine current Project Management Improvement Initiative (PMii) status based on project manager input.
- For projects in preconstruction, determine expected letting date based on project type and current milestone using:
 - ▶ PMii average duration on preconstruction projects.
 - ▶ Project manager's expected duration.

- For projects which are not started, determine anticipated project duration based on:
 - ▶ PMii metrics.
 - ▶ Project manager input or input from other NCDOT staff (if no project manager assigned) on expected duration.

Response by DOT to Project Management Study
November 10, 2004

Mr. Len Sanderson, DOT Highway Administrator, told the Committee that in response to the NCDOT Project Delivery Study, Secretary Tippetts has set up six work groups that are aligned with the major parts of the Study. The six work groups are doing the following:

- Developing a formalized business plan, which would have the strategies and the performance measures to accomplish the work within DOT.
- Looking at the issue of development/delivery TIP. How DOT would go about transforming and converting the current TIP to a 2-step TIP.
- Strengthening program management.
- Evaluating work force issues.
- Assessing environmental issues.
- Studying consultant procurement issues.

Mr. Sanderson stated that the charge to these work groups is to deliberate and evaluate the recommendations that are contained within the Study. The focus of the Study is on the pre-construction part of project delivery, but the construction phase is important as well and the working groups are looking at possible improvements to both phases. Another area of work for the groups is to identify barriers and constraints as to the way DOT is conducting business today. Also, Mr. Sanderson told the Committee that the working groups were identifying legislative issues and possible legislative changes that translate into a more efficient project planning and delivery process.

Mr. Sanderson ended his presentation by stating that the project delivery process is a long and complex process and is very deliberate. It is more complicated than it was fifteen years ago because of various laws, rules and regulations. The Study contains several recommendations, but the Department of Transportation has not been standing still. There have been significant improvements within the Department, such as:

- Merger 01 process, which is the Transportation and Environmental decision-making process. DOT does not control this process. They are only a party in the collaborative process between DOT, the Federal Highway Administration and the resource agencies that make critical decisions for a project.
- The Project Management Improvement Initiative (PMII). Full implementation is expected February 15, 2005 and it will help DOT to track projects and help them to determine if they are hitting the mark.
- The Ecology Enhancement Program. Through this program, DOT is trying to address mitigation ahead of time so it is not controlling the delivery of a project.

Mr. Sanderson further stated that he felt that the “pre” TIP concept would be beneficial because the cost overruns on a project come from not knowing the scope of the project ahead of time. Also, with regard to using an EIS, EA, or categorical exclusion for a project, DOT does a risk analysis to determine which one fits best for the project. They need to have the answers for questions and challenges that may come as a result of which document was used for the project.