

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

**H.B. 1077**  
**May 22, 2012**  
**HOUSE PRINCIPAL CLERK**

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HOUSE DRH11316-MEz-158\* (05/09)

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

Sponsors: Representatives Frye and Mills (Primary Sponsors).

Referred to:

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.