

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1697*

Short Title: Toll Road Enforcement/Authority Changes. (Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL
3 FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE
4 AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH
5 CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT
6 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 20 of the General Statutes is amended by adding a
9 new Article to read:

"Article 18.

"Toll Enforcement.

10 **"§ 20-400. Definitions.**

11 Unless the context requires otherwise, the following definitions apply to this Article
12 to the defined words and phrases and their cognates:

- 13 (1) Authority. – The North Carolina Turnpike Authority acting directly or
14 through its duly authorized officers or agents to collect tolls or fees for
15 the use of any road, bridge, or tunnel designated as a toll facility.
16 (2) Processing agent. – A person or a public or private agency authorized
17 by the Authority, responsible for the processing of the notices of
18 unpaid tolls pursuant to this Article.
19 (3) Toll enforcement officer. – A person authorized by the Authority to
20 review and issue toll evasion citations and penalties in accordance with
21 this Article and the operating procedures of the Authority.
22 (4) Toll evasion violation. – The use of a toll facility without payment of
23 tolls as set and established by the Authority.
24 (5) Toll facility. – Any road, bridge, or tunnel for which tolls or fees may
25 be charged for the use thereof pursuant to Article 6H of Chapter 136 of
26 the General Statutes.

27 **"§ 20-401. Payment of toll on toll facility required.**
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1 (a) A person shall not use a toll facility without payment of tolls as established in
2 accordance with the operating procedures of the Authority.

3 (b) If a vehicle is determined by automated or electronic imaging devices, visual
4 observation, or otherwise to have operated on a toll facility without payment of a toll,
5 the owner of the vehicle may be issued a notice of unpaid toll by the Authority, or a
6 processing agent, within 72 hours of the toll facility use.

7 (1) The notice shall specifically set forth the following:

8 a. The approximate date, time, and segment or segments of the toll
9 facility or facilities used.

10 b. The image of the vehicle registration plate when an electronic
11 image is available.

12 c. If practicable, the registration expiration date and the make of
13 the vehicle.

14 d. The amount of the toll and any processing fee due.

15 e. The date payment is due and information regarding how
16 payment may be made.

17 f. A clear and concise explanation of the procedures for contesting
18 the toll and appealing an adverse decision.

19 (2) The notice shall be processed by officials or agents of the Authority, or
20 a processing agent, and shall be forwarded by personal service or first
21 class mail to the address given on the motor vehicle registration.

22 (3) If accurate information concerning the identity and address of the
23 registered owner of the vehicle is not available to the processing agent
24 within 30 days of the violation, the Authority or processing agent shall
25 have an additional 45 calendar days to obtain such information and
26 forward the notice of unpaid toll.

27 (4) Where the registered owner is a repeat violator, the processing agent
28 may forward the notice of unpaid toll within 90 calendar days of the
29 violation. 'Repeat violator' means any registered owner that has had
30 more than five violations issued pursuant to this section in any 30-day
31 period within the preceding 12-month period. Notwithstanding this
32 section, a law enforcement officer may issue a citation as appropriate
33 pursuant to this Chapter to a repeat violator when the officer observes
34 such individual immediately operating a vehicle, identified in five or
35 more violations, on a toll facility.

36 (c) If the owner fails to comply with the direction on the notice of unpaid toll by
37 failing to pay the toll and any processing fee due or contest the toll within 30 days after
38 the date the notice of unpaid toll is served or mailed, the owner shall have waived the
39 right to contest the toll and may be issued a toll evasion violation citation subject to a
40 civil penalty not to exceed one hundred dollars (\$100.00) pursuant to G.S. 20-405. The
41 Authority shall establish procedures for the collection of these penalties and may
42 enforce the penalties by civil action in the nature of debt.

43 (d) The owner of a vehicle shall be responsible for a toll unless the owner can
44 furnish evidence that the vehicle was, at the time of the violation, in the care, custody,

1 or control of another person. The owner of the vehicle shall not be responsible for a toll
2 if the owner of the vehicle, within 30 days after the date of personal service or mailing
3 of the notice of unpaid toll, furnishes the Authority or processing agent either of the
4 following:

5 (1) A sworn affidavit stating the name and address of the person or
6 company who had the care, custody, and control of the vehicle. If the
7 vehicle involved was, at the time, a long-term lease or rental, as
8 defined in G.S. 105-187.1, the affidavit must be supported with
9 evidence that supports the affidavit that may include a copy of the
10 written lease or rental agreement.

11 (2) A sworn affidavit stating that the vehicle involved was, at the time,
12 stolen. The affidavit must be supported with evidence that supports the
13 affidavit, including insurance or police report information.

14 (3) A sworn affidavit stating that the vehicle involved, at the time, had
15 been sold or transferred by the registered owner, served to another
16 person prior to the date of the alleged violation. The affidavit must be
17 supported with evidence that supports the affidavit that may include a
18 copy of the certificate of title or insurance information.

19 (e) A toll evasion violation shall be deemed a noncriminal violation for which no
20 points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the
21 vehicle nor insurance points as authorized by G.S. 58-36-65.

22 **"§ 20-402. Processing fee.**

23 (a) Outsourcing. – The Authority may contract for the processing of notices of
24 unpaid tolls that remain outstanding 72 hours or more after a vehicle operates upon a
25 toll facility without payment of the toll.

26 (b) Fee. – For any unpaid toll that remains outstanding 72 hours or more after a
27 vehicle operates upon a toll facility without payment of the toll, the Authority may
28 establish a processing fee to cover only the actual expenses related to collecting unpaid
29 tolls, not to exceed ten (\$10.00) dollars.

30 (c) Use. – A processing fee is a receipt of the Authority and shall be applied only
31 to the actual costs of collecting unpaid tolls. The proceeds must be credited to a special
32 account within the Authority and shall be expended only as provided in this subsection.
33 The proceeds of the fee shall not be used for any purpose that is not directly and
34 primarily related to the collection of unpaid tolls. The Authority may use the proceeds
35 for the purposes listed in this subsection. Any remaining fee proceeds shall remain in
36 the special account until spent for the costs of collection of unpaid tolls. The Authority
37 and the Office of State Budget and Management shall account for all expenditures from
38 the fund using accounting procedures that clearly distinguish cost allocable to collecting
39 unpaid tolls from costs allocable to other purposes and demonstrate that none of the fee
40 proceeds are used for any purpose other than collecting unpaid tolls.

41 (d) Application of Fees. – The Authority may apply the fee proceeds for the
42 following purposes:

43 (1) To pay contractors for collecting unpaid tolls pursuant to subsection
44 (a) of this section.

- 1 (2) To pay for vehicle registration identifying services, not to exceed five
2 hundred thousand dollars (\$500,000) per year.
- 3 (3) To pay for personal service, postage or other delivery charges for
4 correspondence directly and primarily relating to collecting unpaid
5 tolls, not to exceed five hundred thousand dollars (\$500,000) per year.
- 6 (4) To pay for toll collection operating expenses for the Authority's
7 Customer Service Center, including employees, equipment, hardware,
8 and software directly and primarily related to collecting unpaid tolls.

9 **"§ 20-403. Administrative adjudication.**

10 The Authority shall institute a nonjudicial administrative hearing procedures to
11 review citations or penalties issued or assessed under this Article, said hearings which
12 may be conducted by either the Authority or an Administrative Hearing Officer
13 appointed by the Authority. The provisions of Chapter 150B of the General Statutes
14 shall not apply to the Authority or its hearing officers.

15 **"§ 20-404. Judicial review.**

16 (a) The contestant may seek judicial review of the Authority or processing
17 agency's final decision by filing a written notice of appeal to the district court, in the
18 county where the alleged violation took place, within 20 days after the mailing of the
19 final decision by the Authority or processing agent. On appeal the standard of review
20 shall be de novo. The contents of the Authority or processing agent's file in the case on
21 appeal shall be received in evidence if the contents can be shown not to create an unfair
22 prejudice toward the alleged violator. A copy of a toll evasion citation shall be prima
23 facie evidence of the facts stated therein. A copy of the written notice of appeal shall be
24 served upon the Authority or the processing agent in a manner consistent with Rule 4 of
25 the North Carolina Rules of Civil Procedure.

26 (b) If no written notice of appeal of the Authority or Administrative Hearing
27 Officer decision is filed within the period set forth in subsection (a) of this section, the
28 decision shall be deemed final.

29 (c) If the toll evasion penalty has not been deposited and the decision is adverse
30 to the contestant, the Authority or processing agent may, promptly after the decision
31 becomes final, proceed to collect the penalty under G.S. 20-405.

32 (d) Vehicle registration shall be suspended pursuant to G.S. 20-54 for
33 nonpayment of tolls, fees, or penalties assessed pursuant to this Article if the tolls, fees,
34 or penalties remain unpaid 6 months beyond the date a decision is deemed final
35 pursuant to subsection (b) and (c) of this section.

36 **"§ 20-405. Toll evasion penalties.**

37 (a) A schedule of toll evasion penalties for toll evasion violations shall be
38 established by the Authority, but shall not exceed the amount of the unpaid toll plus one
39 hundred dollars (\$100.00) per violation.

40 (b) Toll evasion penalties under this Article shall be collected as civil penalties.

41 (c) If the toll evasion penalty is received by the person authorized to receive the
42 deposit of the toll evasion penalty and there is no contest as to that toll evasion
43 violation, the proceedings under this Article shall terminate.

1 (d) The amount of the unpaid toll shall be retained by or remitted to the
2 Authority. The clear proceeds from the citations issued pursuant to this Article shall be
3 paid to the Civil Penalty and Forfeiture Fund. For the purposes of determining the clear
4 proceeds derived from the citations, the following expenses, not to exceed ten percent
5 (10%) of the civil penalty assessed pursuant to subsection (b) of this section, are
6 authorized to be deducted from each civil penalty assessed pursuant to the provisions of
7 subsection (b) of this section:

8 (1) The cost of materials and postage directly related to the printing and
9 mailing of a citation sent to the owner and, if necessary, the driver of
10 the vehicle.

11 (2) The cost of computer services directly related to the production and
12 mailing of a citation described in subdivision (1) of this subsection.

13 (e) The Authority may assess a collection assistance fee against the owner and, if
14 necessary, driver of the vehicle under the following conditions:

15 (1) The civil penalty has not been paid within 30 days after a toll evasion
16 citation is issued including a statement that a collection assistance fee
17 will be assessed if the penalty is not paid within said time period. A
18 collection assistance fee shall not exceed twenty percent (20%) of the
19 civil penalty assessed pursuant to this section.

20 (2) Collection assistance fees shall be placed in a separate fund that may
21 be used only for the purpose of paying for the costs of collection
22 expended to collect civil penalties that remain unpaid 30 days pursuant
23 to subdivision (1) of this subsection.

24 Amounts collected must be credited first to the payment of the civil penalty and then
25 to the collection assistance fee.

26 **"§ 20-406. Use of information.**

27 No information obtained pursuant to this Article shall be used for any purpose other
28 than to facilitate the enforcement of toll collections pursuant to this Article, unless
29 required for law enforcement investigative purposes or otherwise ordered by a court of
30 competent jurisdiction.

31 **"§ 20-407. Authority to enter into cooperative and reciprocal agreements.**

32 The Authority is authorized to enter into cooperative and reciprocal agreements with
33 other states or their agents to receive and share vehicle identification information,
34 including registered vehicle owner names and addresses and such other information
35 necessary to facilitate the enforcement of toll collections with respect to nonresident
36 vehicles."

37 **SECTION 2.** G.S. 20-54 is amended by adding a new subdivision to read:

38 "(10) The North Carolina Turnpike Authority has provided notice to the
39 owner of a registered vehicle that is subject to unpaid tolls, fees, or
40 penalties assessed in accordance with Article 18 of this Chapter."

41 **SECTION 3.** G.S. 20-63(g) reads as rewritten:

42 "(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor
43 vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or
44 partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or

1 who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any
2 part or portion of a registration plate or the figures or letters thereon, or who shall place
3 or deposit or cause to be placed or deposited any oil, grease, or other substance upon
4 such registration plates for the purpose of making dust adhere thereto, or who shall
5 deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall
6 display a number plate in other than a horizontal upright position, shall be guilty of a
7 Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or
8 cause to be covered any part or portion of a registration plate or the figures or letters
9 thereon by any device designed or intended to prevent or interfere with the taking of a
10 clear photograph of a registration plate by a traffic control or toll collection system
11 using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator
12 of a motor vehicle who shall otherwise intentionally cover any number or registration
13 renewal sticker on a registration plate with any material that makes the number or
14 registration renewal sticker illegible commits an infraction and shall be fined under
15 G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that
16 are not designed or intended to prevent or interfere with the taking of a clear photograph
17 of a registration plate by a traffic control or toll collection system using cameras.

18 **SECTION 4.** G.S. 136-89.183(a)(2) reads as rewritten:

19 "(2) To study, plan, develop, and undertake preliminary design work on up
20 to nine Turnpike Projects. At the conclusion of these activities, the
21 Turnpike Authority is authorized to design, establish, purchase,
22 construct, operate, and maintain the following projects:

- 23 a. Triangle Parkway-Parkway Expressway, including segments
24 also known as NC 540, Triangle Parkway and Western Wake
25 Freeway in Wake and Durham Counties.
- 26 b. Gaston East-West Connector, also known as the
27 Garden Parkway.
- 28 c. Monroe Connector/Connector/Bypass.
- 29 d. Cape Fear Skyway.
- 30 e. A bridge of more than two miles in length going from the
31 mainland to a peninsula bordering the State of
32 Virginia, Virginia, pursuant to G.S. 136.89.183A.
- 33 f. I-540 in Wake and Durham Counties.

34 Any other project proposed by the Authority in addition to the projects
35 listed in this subdivision must be approved by the General Assembly
36 prior to construction.

37 A Turnpike Project selected for construction by the Turnpike
38 Authority shall be included in any applicable locally adopted
39 comprehensive transportation plans and shall be shown in the current
40 State Transportation Improvement Plan prior to the letting of a
41 contract for the Turnpike Project."

42 **SECTION 5.** G.S. 136-89.183 by adding a new subsection to read:

43 "(c) Notwithstanding any other provisions of law to the contrary, all moneys
44 received by the Authority shall be deemed to be trust funds to be held and applied solely

1 as provided in this Article. The resolution authorizing any obligations or trust agreement
2 securing the same may provide that nay of such moneys may be temporarily invested
3 pending the disbursement thereof and shall provide that any officer with whom, or any
4 bank or trust company with which, such moneys shall be deposited shall act as trustee of
5 such moneys and shall hold and apply the same for the purposes hereof, subject to such
6 regulations as such resolution or trust agreement may provide. Subject to any such
7 regulations in a resolution or trust agreement, any moneys received by the Authority and
8 available to the Authority may be invested by the Authority in any investments
9 permitted by G.S. 159-30, except that for purposes of G.S. 159-30(b) the Authority may
10 deposit moneys at interest in banks or trust companies outside as well as in this State, as
11 long as moneys on deposit outside this State are collateralized to the same extent and
12 manner as if deposited in this State."

13 **SECTION 6.** G.S. 136-89.194 reads as rewritten:

14 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

15 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a
16 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in
17 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State
18 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and
19 duties on the Turnpike System as on any other highway or public vehicular area.

20 (b) Contracting. – For the purposes of implementing this Article, the Authority
21 shall solicit competitive proposals for the construction of Turnpike Projects in
22 accordance with the provisions of Article 2 of this Chapter. Contracts for professional
23 engineering services and other kinds of professional or specialized services necessary in
24 connection with construction of Turnpike Projects shall be solicited in accordance with
25 procedures utilized by the Department of Transportation.

26 (c) Alternative Contracting Methods. – Notwithstanding the provisions of
27 subsection (b) of this section, the Authority may authorize the use of alternative
28 contracting methods if:

- 29 (1) The authorization applies to an individual project;
- 30 (2) The Authority has concluded, and documented in writing, that the
31 alternative contracting method is necessary because the project cannot
32 be completed utilizing the procedures of Article 2 of this Chapter
33 within the necessary time frame or available funding or for other
34 reasons the Authority deems in the public interest;
- 35 (3) The Authority has provided, to the extent possible, for the solicitation
36 of competitive proposals prior to awarding a contract; and
- 37 (4) The approved alternative contracting method provides for reasonable
38 compliance with the disadvantaged business participation goals of
39 G.S. 136-28.4.

40 (d) Entry for Surveys. – The Turnpike Authority and its employees and
41 contractors shall have the same right of entry for surveys, borings, soundings, or
42 examinations as granted the Department of Transportation in G.S. 136-120.

43 (e) Documents and Records. – The diaries kept in connection with construction
44 or repair contracts entered into by the Turnpike Authority and any analysis generated by

1 any bid analysis and management system, including work papers, documents, and the
2 output of automated systems associated with the analyses of bids of the Turnpike
3 Authority, shall have the same public record status as the records of the Department of
4 Transportation in G.S. 136-28.5.

5 (f) Adjustment and Resolution of Turnpike Construction Claim. – The provisions
6 of G.S. 136-29 shall apply to the Turnpike Authority except that references in
7 G.S. 136-29 to Turnpike Authority and the 'State Highway Administrator' shall be to the
8 'Turnpike Authority' and the 'Chief Engineer', respectively. References in G.S. 136-29
9 to a 'State Highway' shall be to a 'Turnpike facility.'

10 (g) Article 3 of Chapter 143 of the General Statutes shall not apply to the
11 Turnpike Authority, but as feasible, the Authority may use the services of the
12 Department of Administration in procuring goods and services for the Authority not
13 specific to establishing and operating toll revenue systems.

14 (g) Article 3D of Chapter 147 of the General Statutes shall not apply to the
15 Turnpike Authority, but as feasible, the Authority may use the services of State
16 Information Technology in procuring equipment, goods, and services not specific to
17 establishing and operating toll revenue systems.

18 (h) Chapter 150B of the General Statutes shall not apply to the Turnpike
19 Authority, except as provided in G.S. 136-89.194(f)."

20 **SECTION 7.** G.S. 47-30(l) reads as rewritten:

21 "(l) The provisions of this section shall not apply to the registration of highway
22 right-of-way plans provided for in ~~G.S. 136-19.4~~ G.S. 136-19.4, the Turnpike Authority
23 right-of-way plans provided for in G.S. 136-89.184A, nor to registration of roadway
24 corridor official maps provided in Article 2E of Chapter 136."

25 **SECTION 8.** Chapter 136 of the General Statutes is amended by adding a
26 new section to read:

27 **"§ 136-89.184A. Registration of right-of-way plans.**

28 (a) A copy of the cover sheet and plan and profile sheets of the final right-of-way
29 plans for all Turnpike Authority projects, on those projects for which plans are
30 prepared, under which right-of-way or other interest in real property is acquired or
31 access is controlled shall be certified by the Turnpike Authority to the register of deeds
32 of the county or counties within which the project is located. The Authority shall certify
33 said plan sheets to the register of deeds within two weeks from their formal approval by
34 the Board of Directors.

35 (b) The copy of the plans certified to the register of deeds shall consist of a
36 Xerox, photographic, or other permanent copy, except for plans electronically
37 transmitted pursuant to subsection (c) of this section and shall measure approximately
38 17 inches by 11 inches including no less than one and one-half inches binding space on
39 the left-hand side.

40 (c) With the approval of the county in which the right-of-way plans are to be
41 filed, the Authority may transmit the plans electronically.

42 (d) Notwithstanding any other provision of law, upon receipt of the original
43 certified copy of the right-of-way plans, the register of deeds shall record the
44 right-of-way plans and place the same in a book maintained for that purpose, and the

1 register of deeds shall maintain a cross-index to the right-of-way plans by number of
2 roads affected, if any, and by identification number. No probate before the clerk of the
3 superior court shall be required.

4 (e) If after the approval of said final right-of-way plans, the Board of Directors
5 shall by resolution alter or amend said right-of-way or control of access, the Turnpike
6 Authority, within two weeks from the adoption by the Board of Directors of the
7 alteration or amendment, shall certify to the register of deeds in the county or counties
8 within which the project is located a copy of the amended plan and profile sheets
9 approved by the Board of Directors and the register of deeds shall remove the original
10 plan sheets and record the amended plan sheets in lieu thereof.

11 (f) The register of deeds in each county shall collect a fee from the Turnpike
12 Authority for recording right-of-way plans and profile sheets in the amount set out in
13 G.S. 161-10."

14 **SECTION 9.** Chapter 136 of the General Statutes is amended by adding a
15 new section to read:

16 "**§ 136-89.184B. Project cost estimates.**

17 All cost estimates prepared for the purpose of comparing bids shall be confidential
18 and shall not be disclosed until after the opening of bids for a project."

19 **SECTION 10.** Sections 1, 2 and 3 of this act become effective December 1,
20 2008. The remainder of this act is effective when it becomes law.