

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 2314\*  
Committee Substitute Favorable 7/1/08

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY  
LOCAL GOVERNMENT FINANCIAL PARTICIPATION IN DEPARTMENT OF  
TRANSPORTATION PROJECTS, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 136-18(27) reads as rewritten:

"(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary local government, property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. ~~Property~~ Local government, property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges."

**SECTION 2.** G.S. 136-44.50 reads as rewritten:

"§ 136-44.50. **Transportation corridor official map act.**

(a) A transportation corridor official map may be adopted or amended by any of the following:

(1) The governing board of any ~~city~~ local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed

1 public transportation corridor included in the adopted long-range  
2 transportation plan.

3 (2) The Board of Transportation for any portion of the existing or  
4 proposed State highway system or for any public transportation  
5 corridor, to include rail, that is in the Transportation Improvement  
6 Program.

7 (3) Regional public transportation authorities created pursuant to Article  
8 26 of Chapter 160A of the General Statutes or regional transportation  
9 authorities created pursuant to Article 27 of Chapter 160A of the  
10 General Statutes for any proposed public transportation corridor, or  
11 adjacent station or parking lot, included in the adopted long-range  
12 transportation plan.

13 (4) The North Carolina Turnpike Authority for any project being studied  
14 pursuant to G.S. 136-89.183.

15 (5) The Wilmington Urban Area Metropolitan Planning Organization for  
16 any project that is within its urbanized boundary and identified in  
17 G.S. 136-179.

18 Before a city adopts a transportation corridor official map that extends beyond the  
19 extraterritorial jurisdiction of its building permit issuance and subdivision control  
20 ordinances, or adopts an amendment to a transportation corridor official map outside the  
21 extraterritorial jurisdiction of its building permit issuance and subdivision control  
22 ordinances, the city shall obtain approval from the Board of County Commissioners.

23 (a1) No transportation corridor official map shall be adopted or amended, nor may  
24 any property be regulated under this Article until:

25 (1) The governing board of the city, the county, the regional transportation  
26 authority, the North Carolina Turnpike Authority, or the Department of  
27 Transportation has held a public hearing in each county affected by the  
28 map on the proposed map or amendment. Notice of the hearing shall  
29 be provided:

30 a. By publication at least once a week for four successive weeks  
31 prior to the hearing in a newspaper having general circulation in  
32 the county in which the transportation corridor to be designated  
33 is located.

34 b. By two week written notice to the Secretary of Transportation,  
35 the Chairman of the Board of County Commissioners, and the  
36 Mayor of any city or town through whose corporate or  
37 extraterritorial jurisdiction the transportation corridor passes.

38 c. By posting copies of the proposed transportation corridor map  
39 or amendment at the courthouse door for at least 21 days prior  
40 to the hearing date. The notice required in sub-subdivision a.  
41 above shall make reference to this posting.

42 d. By first-class mail sent to each property owner affected by the  
43 corridor. The notice shall be sent to the address listed for the  
44 owner in the county tax records.

- 1 (2) A permanent certified copy of the transportation corridor official map  
2 or amendment has been filed with the register of deeds. The  
3 boundaries may be defined by map or by written description, or a  
4 combination thereof. The copy shall measure approximately 20 inches  
5 by 12 inches, including no less than one and one-half inches binding  
6 space on the left-hand side.
- 7 (3) The names of all property owners affected by the corridor have been  
8 submitted to the Register of Deeds.
- 9 (b) Transportation corridor official maps and amendments shall be distributed  
10 and maintained in the following manner:
- 11 (1) A copy of the official map and each amendment thereto shall be filed  
12 in the office of the city clerk and in the office of the district engineer.
- 13 (2) A copy of the official map, each amendment thereto and any variance  
14 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the  
15 tax supervisor of any county and tax collector of any city affected  
16 thereby. The portion of properties embraced within a transportation  
17 corridor and any variance granted shall be clearly indicated on all tax  
18 maps maintained by the county or city for such period as the  
19 designation remains in effect.
- 20 (3) Notwithstanding any other provision of law, the certified copy filed  
21 with the register of deeds shall be placed in a book maintained for that  
22 purpose and cross-indexed by number of road, street name, or other  
23 appropriate description. The register of deeds shall collect a fee of five  
24 dollars (\$5.00) for each map sheet or page recorded.
- 25 (4) The names submitted as required under subdivision (a)(3) of this  
26 section shall be indexed in the "grantor" index by the Register of  
27 Deeds.
- 28 (c) Repealed by Session Laws 1989, c. 595, s. 1.
- 29 (d) Within one year following the establishment of a transportation corridor  
30 official map or amendment, work shall begin on an environmental impact statement or  
31 preliminary engineering. The failure to begin work on the environmental impact  
32 statement or preliminary engineering within the one-year period shall constitute an  
33 abandonment of the corridor, and the provisions of this Article shall no longer apply to  
34 properties or portions of properties embraced within the transportation corridor. A city  
35 local government may prepare environmental impact studies and preliminary  
36 engineering work in connection with the establishment of a transportation corridor  
37 official map or amendments to a transportation corridor official map. When a city or  
38 county prepares a transportation corridor official map for a street or highway that has  
39 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental  
40 impact study and preliminary engineering work shall be reviewed and approved by the  
41 Department of Transportation. An amendment to a corridor shall not extend the  
42 one-year period provided by this section unless it establishes a substantially different  
43 corridor in a primarily new location.

1 (e) The term "amendment" for purposes of this section includes any change to a  
2 transportation corridor official map, including:

- 3 (1) Failure of the Department of Transportation, the North Carolina  
4 Turnpike Authority, a city, a county, or a regional transportation  
5 authority to begin work on an environmental impact statement or  
6 preliminary engineering as required by this section; or  
7 (2) Deletion of the corridor from the transportation corridor official map  
8 by action of the Board of Transportation, the North Carolina Turnpike  
9 Authority, or deletion of the corridor from the long-range  
10 transportation plan of a ~~city~~city, county, or regional transportation  
11 authority by action of the ~~city~~city, county, or regional transportation  
12 authority governing Board.

13 (f) The term "transportation corridor" as used in this Article does not include  
14 bikeways or greenways."

15 **SECTION 3.** G.S. 136-44.52 reads as rewritten:

16 **"§ 136-44.52. Variance from transportation corridor official map.**

17 (a) The Department of Transportation, the regional public transportation  
18 authority, the regional transportation authority, or the ~~city~~local government which  
19 initiated the transportation corridor official map shall establish procedures for  
20 considering petitions for variance from the requirements of G.S. 136-44.51.

21 (b) The procedure established by the State shall provide for written notice to the  
22 Mayor and Chairman of the Board of County Commissioners of any affected city or  
23 county, and for the hearing to be held in the county where the affected property is  
24 located.

25 (c) ~~Cities~~Local governments may provide for petitions for variances to be heard  
26 by the board of adjustment or other boards or commissions which can hear variances  
27 authorized by G.S. 160A-388. The procedures for boards of adjustment shall be  
28 followed except that no vote greater than a majority shall be required to grant a  
29 variance.

30 (c1) The procedure established by a regional public transportation authority or a  
31 regional transportation authority pursuant to subsection (a) of this section shall provide  
32 for a hearing de novo by the Department of Transportation for any petition for variance  
33 which is denied by the regional public transportation authority or the regional  
34 transportation authority. All hearings held by the Department of Transportation under  
35 this subsection shall be conducted in accordance with procedures established by the  
36 Department of Transportation pursuant to subsection (a) of this section.

37 (d) A variance may be granted upon a showing that:

- 38 (1) Even with the tax benefits authorized by this Article, no reasonable  
39 return may be earned from the land; and  
40 (2) The requirements of G.S. 136-44.51 result in practical difficulties or  
41 unnecessary hardships."

42 **SECTION 4.** G.S. 136-44.53 reads as rewritten:

43 **"§ 136-44.53. Advance acquisition of right-of-way within the transportation**  
44 **corridor.**

1 (a) After a transportation corridor official map is filed with the register of deeds,  
2 a property owner has the right of petition to the filer of the map for acquisition of the  
3 property due to an imposed hardship. The Department of Transportation, the regional  
4 public transportation authority, the regional transportation authority, or the ~~city~~ which  
5 local government that initiated the transportation corridor official map may make  
6 advanced acquisition of specific parcels of property when that acquisition is determined  
7 by the respective governing board to be in the best public interest to protect the  
8 transportation corridor from development or when the transportation corridor official  
9 map creates an undue hardship on the affected property owner. The procedure  
10 established by a regional public transportation authority or a regional transportation  
11 authority pursuant to subsection (b) of this section shall provide for a hearing de novo  
12 by the Department of Transportation for any request for advance acquisition due to  
13 hardship that is denied by an authority. All hearings held by the Department under this  
14 subsection shall be conducted in accordance with procedures established by the  
15 Department pursuant to subsection (b) of this section. Any decision of the Department  
16 pursuant to this subsection shall be final and binding. Any property determined eligible  
17 for hardship acquisition shall be acquired within three years of the finding or the  
18 restrictions of the map shall be removed from the property.

19 (b) Prior to making any advanced acquisition of right-of-way under the authority  
20 of this Article, the Board of Transportation or the respective governing board which  
21 initiated the transportation corridor official map shall develop and adopt appropriate  
22 policies and procedures to govern the advanced acquisition of right-of-way and to  
23 assure that the advanced acquisition is in the best overall public interest.

24 (c) When a ~~city~~ local government makes an advanced right-of-way acquisition of  
25 property within a transportation corridor official map for a street or highway that has  
26 been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2,  
27 the Department of Transportation shall reimburse the ~~city~~ local government for the cost  
28 of any advanced right-of-way acquisition at the time the street or highway is  
29 constructed. The Department of Transportation shall have no responsibility to reimburse  
30 a municipality for any advanced right-of-way acquisition for a street or highway that  
31 has not been designated a State responsibility pursuant to the provisions of  
32 G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The ~~city~~  
33 local government shall obtain the concurrence of the Department of Transportation in  
34 all instances of advanced acquisition.

35 (d) In exercising the authority granted by this section, a ~~municipality~~ local  
36 government is authorized to expend ~~municipal~~ its funds for the protection of  
37 rights-of-way shown on a duly adopted transportation corridor official map whether the  
38 right-of-way to be acquired is located inside or outside ~~the~~ a municipal corporate  
39 limits."

40 **SECTION 5.** G.S. 136-66.3 reads as rewritten:

41 "**§ 136-66.3. Municipal-Local government participation in improvements to the**  
42 **State highway system.**

43 (a) Municipal Participation Authorized. – A municipality may, but is not required  
44 to, participate in the right-of-way and construction cost of a State highway improvement

1 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in  
2 the municipality or its extraterritorial jurisdiction.

3 (b) Process for Initiating Participation. – A municipality interested in  
4 participating in the funding of a State highway improvement project may submit a  
5 proposal to the Department of Transportation. The Department and the municipality  
6 shall include their respective responsibilities for a proposed municipal participation  
7 project in any agreement reached concerning participation.

8 (c) Type of Participation Authorized. – A municipality is authorized and  
9 empowered to acquire land by dedication and acceptance, purchase, or eminent domain,  
10 and make improvements to portions of the State highway system lying within or outside  
11 the municipal corporate limits utilizing local funds that have been authorized for that  
12 purpose. All improvements to the State highway system shall be done in accordance  
13 with the specifications and requirements of the Department of Transportation.

14 (c1) No TIP Disadvantage for Participation. – If a county or municipality  
15 participates in a State highway system improvement project, as authorized by this  
16 section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the  
17 ~~municipality's local government's~~ participation does not cause any disadvantage to any  
18 other project in the Transportation Improvement Program under G.S. 143B-350(f)(4)  
19 and located ~~outside the municipality in that county~~.

20 (c2) Distribution of State Funds Made Available by County or Municipal  
21 Participation. – Any State or federal funds allocated to a project that are made available  
22 by county or municipal participation in a project contained in the Transportation  
23 Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding  
24 region that the funding was allocated to under the distribution formula contained in  
25 G.S. 136-17.2A.

26 (c3) Limitation on Agreements. – The Department shall not enter into any  
27 agreement with a county or municipality to provide additional total funding for highway  
28 construction in the county or municipality in exchange for county or municipal  
29 participation in any project contained in the Transportation Improvement Program under  
30 G.S. 143B-350(f)(4).

31 (d) Authorization to Participate in Development-Related Improvements. – When  
32 in the review and approval by a ~~municipality-local government~~ of plans for the  
33 development of property abutting the State highway system it is determined by the  
34 municipality that improvements to the State highway system are necessary to provide  
35 for the safe and orderly movement of traffic, the ~~municipality-local government~~ is  
36 authorized to construct, or have constructed, said improvements to the State highway  
37 system in vicinity of the development. For purposes of this section, improvements  
38 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and  
39 drainage facilities. All improvements to the State highway system shall be constructed  
40 in accordance with the specifications and requirements of the Department of  
41 Transportation and be approved by the Department of Transportation.

42 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement  
43 with the Department of Transportation, a county or municipality may reimburse the  
44 Department of Transportation for the cost of all improvements, including additional

1 right-of-way, for a street or highway improvement projects approved by the Board of  
2 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements  
3 that the Department of Transportation would normally include in the project.

4 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the  
5 Department of Transportation shall allow the ~~municipality~~ local government a period of  
6 not less than three years from the date construction of the project is initiated to  
7 reimburse the Department their agreed upon share of the costs necessary for the project.  
8 The Department of Transportation shall not charge a ~~municipality~~ local government any  
9 interest during the initial three years.

10 (f) Report to General Assembly. – The Department shall report in writing, on a  
11 monthly basis, to the Joint Legislative Commission on Governmental Operations on all  
12 agreements entered into between counties, municipalities and the Department of  
13 Transportation. The report shall state in summary form the contents of such agreements.

14 (g) ~~Municipal~~ Local Government Acquisition of Rights-of-Way. – In the  
15 acquisition of rights-of-way for any State highway system street or ~~highway in or~~  
16 ~~around a municipality,~~ highway, the county or municipality shall be vested with the  
17 same authority to acquire such rights-of-way as is granted to the Department of  
18 Transportation in this Chapter. In the acquisition of such rights-of-way, counties and  
19 municipalities may use the procedures provided in Article 9 of this Chapter, and  
20 wherever the words "Department of Transportation" appear in Article 9 they shall be  
21 deemed to include "county," "municipality" or ~~municipal~~ local governing body, and  
22 wherever the words "Administrator," "Administrator of Highways," "Administrator of  
23 the Department of Transportation," or "Chairman of the Department of Transportation"  
24 appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the  
25 intention of this subsection that the powers herein granted to municipalities for the  
26 purpose of acquiring rights-of-way shall be in addition to and supplementary to those  
27 powers granted in any local act or in any other general statute, and in any case in which  
28 the provisions of this subsection or Article 9 of this Chapter are in conflict with the  
29 provisions of any local act or any other provision of any general statute, then the  
30 governing body of the county or municipality may in its discretion proceed in  
31 accordance with the provisions of such local act or other general statute, or, as an  
32 alternative method of procedure, in accordance with the provisions of this subsection  
33 and Article 9 of this Chapter.

34 (h) Department Authority Concerning Rights-of-Way. – In the absence of an  
35 agreement, the Department of Transportation shall retain authority to pay the full cost of  
36 acquiring rights-of-way where the proposed project is deemed important to a  
37 coordinated State highway system.

38 (i) Changes to ~~Municipal~~ Local Government Participation Agreement. – Either  
39 the ~~municipality~~ local government or the Department of Transportation may at any time  
40 propose changes in the agreement setting forth their respective responsibilities by giving  
41 notice to the other party, but no change shall be effective until it is adopted by both the  
42 municipal governing body and the Department of Transportation.

43 (j) ~~Municipality~~ Local Governments Party to Rights-of-Way Proceeding. – Any  
44 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for

1 any State highway system street or highway shall be a proper party in any proceeding in  
2 court relating to the acquisition of such rights-of-way.

3 ~~(k) Specified County Participation.—In addition to the authority given to Burke,~~  
4 ~~Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these~~  
5 ~~counties are authorized to participate in State highway improvement projects located~~  
6 ~~anywhere in each respective county in accordance with this section."~~

7 **SECTION 6.** G.S. 136-98 reads as rewritten:

8 "**§ 136-98. Counties authorized to participate in costs of road construction and**  
9 **maintenance.** ~~maintenance, participation is voluntary.~~

10 (a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

11 (b) Nothing in this Article prohibits counties from establishing service districts  
12 for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

13 (c) A county is authorized to participate in the cost of rights-of-way,  
14 construction, reconstruction, improvement, or maintenance of a road on the State  
15 highway system under agreement with the Department of Transportation. County  
16 participation in improvements to the State highway system is voluntary. The  
17 Department shall not transfer any of its responsibilities to counties without specific  
18 statutory authority."

19 **SECTION 7.** This act is effective when it becomes law.