

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2314*
Committee Substitute Favorable 7/1/08
Senate Commerce, Small Business and Entrepreneurship Committee Substitute
Adopted 7/10/08

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY
2 LOCAL GOVERNMENT FINANCIAL PARTICIPATION IN DEPARTMENT OF
3 TRANSPORTATION PROJECTS, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 143B-350(f1) reads as rewritten:

8 "(f1) ~~Municipal~~Local Government Participation. – The ability of a ~~municipality~~
9 local government to pay in part or whole for any transportation improvement project
10 shall not be a factor considered by the Board of Transportation in its development and
11 approval of a schedule of major State highway system improvement projects to be
12 undertaken by the Department under G.S. 143B-350(f)(4)."

13 **SECTION 2.** G.S. 136-18(27) reads as rewritten:

14 "(27) The Department of Transportation is authorized to establish policies
15 and promulgate rules providing for voluntary local government,
16 property owner or highway user participation in the costs of
17 maintenance or improvement of roads which would not otherwise be
18 necessary or would not otherwise be performed by the Department of
19 Transportation and which will result in a benefit to the property owner
20 or highway user. By way of illustration and not as a limitation, such
21 costs include those incurred in connection with drainage improvements
22 or maintenance, driveway connections, dust control on unpaved roads,
23 surfacing or paving of roads and the acquisition of rights-of-way.
24 ~~Property~~Local government, property owner and highway user
25 participation can be in the form of materials, money, or land (for
26 right-of-way) as deemed appropriate by the Department of

1 Transportation. The authority of this section shall not be used to
2 authorize, construct or maintain toll roads or bridges."

3 **SECTION 3.** G.S. 136-44.50 reads as rewritten:

4 "**§ 136-44.50. Transportation corridor official map act.**

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

- 7 (1) The governing board of any ~~city~~local government for any
8 thoroughfare included as part of a comprehensive plan for streets and
9 highways adopted pursuant to G.S. 136-66.2 or for any proposed
10 public transportation corridor included in the adopted long-range
11 transportation plan.
- 12 (2) The Board of Transportation for any portion of the existing or
13 proposed State highway system or for any public transportation
14 corridor, to include rail, that is in the Transportation Improvement
15 Program.
- 16 (3) Regional public transportation authorities created pursuant to Article
17 26 of Chapter 160A of the General Statutes or regional transportation
18 authorities created pursuant to Article 27 of Chapter 160A of the
19 General Statutes for any proposed public transportation corridor, or
20 adjacent station or parking lot, included in the adopted long-range
21 transportation plan.
- 22 (4) The North Carolina Turnpike Authority for any project being studied
23 pursuant to G.S. 136-89.183.
- 24 (5) The Wilmington Urban Area Metropolitan Planning Organization for
25 any project that is within its urbanized boundary and identified in
26 G.S. 136-179.

27 Before a city adopts a transportation corridor official map that extends beyond the
28 extraterritorial jurisdiction of its building permit issuance and subdivision control
29 ordinances, or adopts an amendment to a transportation corridor official map outside the
30 extraterritorial jurisdiction of its building permit issuance and subdivision control
31 ordinances, the city shall obtain approval from the Board of County Commissioners.

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

- 34 (1) The governing board of the city, ~~the county~~, the regional transportation
35 authority, the North Carolina Turnpike Authority, or the Department of
36 Transportation has held a public hearing in each county affected by the
37 map on the proposed map or amendment. Notice of the hearing shall
38 be provided:
- 39 a. By publication at least once a week for four successive weeks
40 prior to the hearing in a newspaper having general circulation in
41 the county in which the transportation corridor to be designated
42 is located.
- 43 b. By two week written notice to the Secretary of Transportation,
44 the Chairman of the Board of County Commissioners, and the

- 1 Mayor of any city or town through whose corporate or
2 extraterritorial jurisdiction the transportation corridor passes.
- 3 c. By posting copies of the proposed transportation corridor map
4 or amendment at the courthouse door for at least 21 days prior
5 to the hearing date. The notice required in sub-subdivision a.
6 above shall make reference to this posting.
- 7 d. By first-class mail sent to each property owner affected by the
8 corridor. The notice shall be sent to the address listed for the
9 owner in the county tax records.
- 10 (2) A permanent certified copy of the transportation corridor official map
11 or amendment has been filed with the register of deeds. The
12 boundaries may be defined by map or by written description, or a
13 combination thereof. The copy shall measure approximately 20 inches
14 by 12 inches, including no less than one and one-half inches binding
15 space on the left-hand side.
- 16 (3) The names of all property owners affected by the corridor have been
17 submitted to the Register of Deeds.
- 18 (b) Transportation corridor official maps and amendments shall be distributed
19 and maintained in the following manner:
- 20 (1) A copy of the official map and each amendment thereto shall be filed
21 in the office of the city clerk and in the office of the district engineer.
- 22 (2) A copy of the official map, each amendment thereto and any variance
23 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
24 tax supervisor of any county and tax collector of any city affected
25 thereby. The portion of properties embraced within a transportation
26 corridor and any variance granted shall be clearly indicated on all tax
27 maps maintained by the county or city for such period as the
28 designation remains in effect.
- 29 (3) Notwithstanding any other provision of law, the certified copy filed
30 with the register of deeds shall be placed in a book maintained for that
31 purpose and cross-indexed by number of road, street name, or other
32 appropriate description. The register of deeds shall collect a fee of five
33 dollars (\$5.00) for each map sheet or page recorded.
- 34 (4) The names submitted as required under subdivision (a)(3) of this
35 section shall be indexed in the "grantor" index by the Register of
36 Deeds.
- 37 (c) Repealed by Session Laws 1989, c. 595, s. 1.
- 38 (d) Within one year following the establishment of a transportation corridor
39 official map or amendment, work shall begin on an environmental impact statement or
40 preliminary engineering. The failure to begin work on the environmental impact
41 statement or preliminary engineering within the one-year period shall constitute an
42 abandonment of the corridor, and the provisions of this Article shall no longer apply to
43 properties or portions of properties embraced within the transportation corridor. A ~~city~~
44 local government may prepare environmental impact studies and preliminary

1 engineering work in connection with the establishment of a transportation corridor
2 official map or amendments to a transportation corridor official map. When a city or
3 county prepares a transportation corridor official map for a street or highway that has
4 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental
5 impact study and preliminary engineering work shall be reviewed and approved by the
6 Department of Transportation. An amendment to a corridor shall not extend the
7 one-year period provided by this section unless it establishes a substantially different
8 corridor in a primarily new location.

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

- 11 (1) Failure of the Department of Transportation, the North Carolina
12 Turnpike Authority, a city, a county, or a regional transportation
13 authority to begin work on an environmental impact statement or
14 preliminary engineering as required by this section; or
15 (2) Deletion of the corridor from the transportation corridor official map
16 by action of the Board of Transportation, the North Carolina Turnpike
17 Authority, or deletion of the corridor from the long-range
18 transportation plan of a ~~city~~-city, county, or regional transportation
19 authority by action of the ~~city~~-city, county, or regional transportation
20 authority governing Board.

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

23 **SECTION 4.** G.S. 136-44.52 reads as rewritten:

24 **"§ 136-44.52. Variance from transportation corridor official map.**

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

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

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

38 (c1) The procedure established by a regional public transportation authority or a
39 regional transportation authority pursuant to subsection (a) of this section shall provide
40 for a hearing de novo by the Department of Transportation for any petition for variance
41 which is denied by the regional public transportation authority or the regional
42 transportation authority. All hearings held by the Department of Transportation under
43 this subsection shall be conducted in accordance with procedures established by the
44 Department of Transportation pursuant to subsection (a) of this section.

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

2 (1) Even with the tax benefits authorized by this Article, no reasonable
3 return may be earned from the land; and

4 (2) The requirements of G.S. 136-44.51 result in practical difficulties or
5 unnecessary hardships."

6 **SECTION 5.** G.S. 136-44.53 reads as rewritten:

7 "**§ 136-44.53. Advance acquisition of right-of-way within the transportation**
8 **corridor.**

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

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

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

43 (d) In exercising the authority granted by this section, a ~~municipality~~ local
44 government is authorized to expend ~~municipal~~ its funds for the protection of

1 rights-of-way shown on a duly adopted transportation corridor official map whether the
2 right-of-way to be acquired is located inside or outside ~~the~~a municipal corporate
3 limits."

4 **SECTION 6.** G.S. 136-66.3 reads as rewritten:

5 "**§ 136-66.3. ~~Municipal-Local government~~ participation in improvements to the**
6 **State highway system.**

7 (a) Municipal Participation Authorized. – A municipality may, but is not required
8 to, participate in the right-of-way and construction cost of a State highway improvement
9 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in
10 the municipality or its extraterritorial jurisdiction.

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

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

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

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

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

39 (d) Authorization to Participate in Development-Related Improvements. – When
40 in the review and approval by a ~~municipality-local government~~ of plans for the
41 development of property abutting the State highway system it is determined by the
42 municipality that improvements to the State highway system are necessary to provide
43 for the safe and orderly movement of traffic, the ~~municipality-local government~~ is
44 authorized to construct, or have constructed, said improvements to the State highway

1 system in vicinity of the development. For purposes of this section, improvements
2 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and
3 drainage facilities. All improvements to the State highway system shall be constructed
4 in accordance with the specifications and requirements of the Department of
5 Transportation and be approved by the Department of Transportation.

6 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement
7 with the Department of Transportation, a county or municipality may reimburse the
8 Department of Transportation for the cost of all improvements, including additional
9 right-of-way, for a street or highway improvement projects approved by the Board of
10 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
11 that the Department of Transportation would normally include in the project.

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

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

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

42 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
43 agreement, the Department of Transportation shall retain authority to pay the full cost of

1 acquiring rights-of-way where the proposed project is deemed important to a
2 coordinated State highway system.

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

8 (j) ~~Municipality-Local Governments~~ Party to Rights-of-Way Proceeding. – Any
9 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for
10 any State highway system street or highway shall be a proper party in any proceeding in
11 court relating to the acquisition of such rights-of-way.

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

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

17 "**§ 136-98. Counties authorized to participate in costs of road construction and**
18 **~~maintenance.~~maintenance, participation is voluntary.**

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

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

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

28 **SECTION 8.** This act is effective when it becomes law.