

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1790\*

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

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. 143B-350(f1) reads as rewritten:

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

**SECTION 2.** 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 3.** G.S. 136-44.50 reads as rewritten:

1 **"§ 136-44.50. Transportation corridor official map act.**

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

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

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

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

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

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

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

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

9 (1) Failure of the Department of Transportation, the North Carolina  
10 Turnpike Authority, a city, a county, or a regional transportation  
11 authority to begin work on an environmental impact statement or  
12 preliminary engineering as required by this section; or

13 (2) Deletion of the corridor from the transportation corridor official map  
14 by action of the Board of Transportation, the North Carolina Turnpike  
15 Authority, or deletion of the corridor from the long-range  
16 transportation plan of a ~~city~~city, county, or regional transportation  
17 authority by action of the ~~city~~city, county, or regional transportation  
18 authority governing Board.

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

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

22 **"§ 136-44.52. Variance from transportation corridor official map.**

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

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

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

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

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

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

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

6 "**§ 136-44.53. Advance acquisition of right-of-way within the transportation**  
7 **corridor.**

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

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

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

42 (d) In exercising the authority granted by this section, a ~~municipality~~ local  
43 government is authorized to expend ~~municipal~~ its funds for the protection of  
44 rights-of-way shown on a duly adopted transportation corridor official map whether the

1 right-of-way to be acquired is located inside or outside ~~the~~a municipal corporate  
2 limits."

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

4 "**§ 136-66.3. Municipal-Local government participation in improvements to the**  
5 **State highway system.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 "**§ 136-98. Counties authorized to participate in costs of road construction and**  
16 **~~maintenance.~~maintenance, participation is voluntary.**

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

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

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

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