



PAT McCrory
Governor

NICHOLAS J. TENNYSON
Secretary

June 9, 2016

Dear Senate Transportation Chairs,

It is my understanding that HB954, Terminate Agreement for Tolling of I-77, has been referred to the Senate Transportation Committee. The Department has a number of concerns regarding the bill which we request you take into consideration. The bill title says "Terminate Agreement for Tolling of I-77." Language in the bill (and the preamble information) says that the public private partnership agreement is to be cancelled, but does not appear to direct that the *project* be cancelled. More specifically, HB954 directs the North Carolina Department of Transportation to terminate the I-77 Comprehensive Agreement "CA" pursuant to Section 17.1.1.7, which is termination for developer default. The Department is not aware of any such default.

The title of the bill should accurately reflect the legislative intent and the project reality. I-77 is not being tolled; all currently existing "free" capacity will remain. As it is written, the bill will prohibit the use of P-3 managed lane projects, however the bill does not prohibit the use of tolls. Furthermore, as it currently stands, the bill would prohibit the use of a P-3 for all projects on I-77 in Mecklenburg County, which would prohibit the use of a P-3 to carry out the \$1 Billion plus expansion of I-77 south of Charlotte.

The reserve account and project list identified in Sections 2 & 3 overrules and delays implementation of STI identified projects in some cases. This allows the legislature to overrule local decisions and specifically select transportation projects. The chart below identifies projects to be suspended, and the funds for those projects are diverted to a reserve account to pay the costs to cancel the CA. These projects total approximately \$261M. As with any transportation project programed in the STIP, projects are programed over multiple years, such that the total funds will not be fully realized until FY 2025.



Section 3 Project Description
NC 73 widening, Poplar Tent Rd to US 29
I-77/Gilead Road Interchange
I-77/NC 73 interchange
NC 73 widening, NC 115 to Davidson-Concord Rd
US 21/Gilead Road intersection
NC 73 widening, West Catawba Ave to Northcross Ave
US 21 widening, Northcross Center Court to Westmoreland Rd
US 21 widening, Gilead Rd to Holly Point Dr
NC 115 widening, Harris Blvd to I-485
US 21 widening, Sunset Rd to WT Harris Blvd
I-77/Hambright & I-77/Lakeview direct connect interchanges
NC 73 widening, NC 16 Bus in Lincoln Co to West Catawba Ave

Among the projects listed in Section 3 are projects that are funded through a bonus allocation under STI that is available only for projects that include toll supported debt. Unless the I-77 managed lane project moves forward as a toll project, the bonus allocation funds would not be available, therefore not providing any reserve amount for possible future payment. The other projects in Section 3 have varying commencement dates in the STIP and, as such, would not provide a reserve fund amount within the next five years unless they displaced projects already identified for construction in an earlier time (and in a different part of the region or state).

Based on these projections and the State Auditor's report, additional funding is likely required to meet the costs associated with canceling the CA. The Auditor's report determined a Fair Market Value of \$302M and demobilization costs of \$4.7M as of October 31, 2015. Should this project continue as a non P3 STI Transition project, approximately \$500M will be needed to cover the construction cost. In sum, it is projected to cost approximately \$800 M to cancel the CA and complete the project. To replace the developer funding (\$100M PABS, \$189M TIFIA, \$250 Cintra Equity), it would have unknown effects to the Department and other projects throughout the state. As it currently stands, this project is projected to be completed in 2018 at a cost of \$94M to the state.



Section 6 says this bill is to have no effect on the Strategic Transportation Investments Act. However, all of the actions described by the bill nullify decisions made pursuant to that Act. If HB954 becomes law, Department will not be able to proceed with confidence on any other projects identified in the STIP, if a similar “notwithstanding” bill could be used at any time to re-arrange or cancel contracts for project construction.

Sincerely,

/s/ Nicholas Tennyson

Nicholas J. Tennyson
Secretary, North Carolina Department of Transportation

