

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1304
Committee Substitute Favorable 6/17/98
Committee Substitute #2 Favorable 7/2/98
Committee Substitute #3 Favorable 7/7/98
Fifth Edition Engrossed 7/8/98

Short Title: Restructure DOT Board.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTRUCTURE THE BOARD OF TRANSPORTATION.
3 The General Assembly of North Carolina enacts:

4 Section 1. Effective January 15, 2001, Part 2 of Article 8 of Chapter 143B of
5 the General Statutes, as amended by Sections 2 and 3 of this act, reads as rewritten:

6 **"PART 2. BOARD OF TRANSPORTATION—SECONDARY**
7 **ROADS COUNCIL. TRANSPORTATION.**

8 **"§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

9 (a) There is hereby created a Board of Transportation. The Board shall carry out
10 its duties consistent with the needs of the State as a whole and it shall not sacrifice the
11 general statewide interest to the purely local desires of any particular area. The Board
12 may, from time to time, provide that one or more of its members or representatives shall
13 hear any person or persons concerning transportation.

14 (b) ~~The Board of Transportation shall have two ex officio members. The Secretary~~
15 ~~of Transportation shall be an ex officio member of the Board of Transportation and shall~~

1 be the chairman of the Board of Transportation. The chairman of the North Carolina Rail
2 Council shall be an ex officio member of the Board of Transportation.

3 (c) ~~The Board of Transportation shall have 20 members appointed by the~~
4 ~~Governor. One member shall be appointed from each of the 14 transportation engineering~~
5 ~~divisions and six members shall be appointed from the State at large. One at-large~~
6 ~~member shall be a registered voter of a political party other than the political party of the~~
7 ~~Governor. At least one at-large member shall possess a broad knowledge of public~~
8 ~~transportation matters. No more than two members provided for in this subsection shall~~
9 ~~reside in the same engineering division while serving in office. The initial members shall~~
10 ~~serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors~~
11 ~~are appointed and qualified. The succeeding terms of office shall be for a period of four~~
12 ~~years beginning January 15, 1981, and each four years thereafter. The Governor shall~~
13 ~~have the authority to remove for cause sufficient to himself, any member appointed by~~
14 ~~the Governor.~~

15 (d) ~~The Board of Transportation shall have four members appointed by the~~
16 ~~General Assembly. Two of these members shall be appointed upon the recommendation~~
17 ~~of the Speaker of the House of Representatives, and two shall be appointed upon the~~
18 ~~recommendation of the President Pro Tempore of the Senate in accordance with G.S.~~
19 ~~120-121. The initial members appointed by the General Assembly shall serve for terms~~
20 ~~expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms~~
21 ~~beginning July 1 of odd-numbered years. Vacancies in appointments made by the~~
22 ~~General Assembly shall be filled in accordance with G.S. 120-122.~~

23 (b) Composition of the Board. –

24 (1) Number; nomination; confirmation. – The Board of Transportation shall
25 have 19 members nominated by the Governor and subject to
26 confirmation by a majority vote of each house of the General Assembly.
27 If the nomination is made while the General Assembly is in regular
28 session, the General Assembly must act upon the nomination within 30
29 legislative days following the nomination, or before adjournment of that
30 session, whichever occurs first. If the nomination is made when the
31 General Assembly is not in session, the General Assembly must act on
32 the nomination within the first 30 legislative days of the next regular
33 session, or before the adjournment of that session, whichever occurs
34 first. If the General Assembly fails to act upon a nomination within the
35 time periods provided by this subdivision, the Board nominee shall be
36 deemed confirmed.

37 (2) Division members. – One member shall be nominated from each of the
38 14 highway divisions. Each division member shall be a resident of the
39 division he or she is nominated to represent. The Governor shall
40 consider nominating division representatives who are residents of
41 counties that have been historically underrepresented on the Board.

42 (3) At-large members; qualifications. – Five members shall be nominated
43 from the State at large. No more than one at-large member shall reside

1 in a highway division. The at-large members shall possess the
2 following qualifications:

3 a. One at-large member shall be a professional engineer;

4 b. One at-large member shall be a land-use planner;

5 c. One at-large member shall be a scientist familiar with
6 environmental issues affecting water, air, and soil;

7 d. One at-large member shall have experience in and knowledge of
8 public transportation, or a combination of experience in and
9 knowledge of public transportation and passenger rail service;
10 and

11 e. One at-large member shall be a certified public accountant with
12 background in governmental accounting.

13 (4) Partisan representation. – At least six members of the Board shall be
14 registered voters of a political party other than the political party of the
15 Governor.

16 (c) Staggered Terms. – The terms of all members serving on the Board prior to
17 January 14, 2001, shall expire on that date. The terms of seven of the division members
18 and three of the at-large members specified in this section shall initially be for four years
19 beginning January 15, 2001, and for four years thereafter. The terms of the other seven
20 division members and the other two at-large members specified in this section shall
21 initially be for two years beginning January 15, 2001, and for four years thereafter.

22 (d) Holdover Term. – Members shall continue to serve until their successors are
23 nominated and confirmed.

24 (e) Limit on Terms. – No member of the Board shall serve more than two
25 consecutive terms, plus an interim term of two years or less, or any holdover term
26 pending selection of a successor.

27 (e1) Vacancies. – The Governor may fill a vacancy on the Board by appointing an
28 interim member of the Board to complete the unexpired term of a member. If the interim
29 appointment is made at a time when the General Assembly is not in regular session, the
30 appointment must be confirmed by the General Assembly within 30 calendar days of the
31 convening of the next regular session, or the term of the interim member shall expire on
32 that date. If the interim appointment is made when the General Assembly is in regular
33 session, the appointment must be confirmed prior to the adjournment of the regular
34 session, or the term of the interim member shall expire upon adjournment.

35 (e2) Removal. – The Governor may remove any member of the Board for any cause
36 the Governor finds sufficient.

37 (e3) Organization and Meetings of the Board. – Within 60 days after January 15,
38 2001, and thereafter within 60 days following the beginning of the regular term of the
39 Governor, the Governor or his designee shall call the Board into session. The Board shall
40 then select a chair and vice-chair from among its membership. The Board of
41 Transportation shall meet once in each 60 days at such regular meeting times as the
42 Board may by rule provide and at any place in the State as the Board may provide. The
43 Board may hold special meetings at any time at the call of the chairman or any three

1 members. The Board shall have the power to adopt and enforce rules and regulations for
2 the government of its business and proceedings. The Board shall keep minutes of its
3 meetings, which shall at all times be open to public inspection. The majority of the Board
4 shall constitute a quorum for the transaction of business. Board members shall receive per
5 diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and
6 G.S. 138-6, as appropriate.

7 (f) The Board of Transportation shall have duties and powers:

- 8 (1) To formulate policies and priorities for all modes of transportation
9 under the Department of Transportation;
- 10 (2) To advise the Secretary on matters to achieve the maximum public
11 benefit in the performance of the functions assigned to the Department;
- 12 (3) To ascertain the transportation needs and the alternative means to
13 provide for these needs through an integrated system of transportation
14 taking into consideration the social, economic and environmental
15 impacts of the various alternatives.
- 16 (4) To approve a schedule of all major transportation improvement projects
17 and their anticipated cost for a period of seven years into the future.
18 This schedule is designated the Transportation Improvement Program; it
19 must be published and copies must be available for distribution. The
20 document that contains the Transportation Improvement Program, or a
21 separate document that is published at the same time as the
22 Transportation Improvement Program, must include the anticipated
23 funding sources for the improvement projects included in the Program, a
24 list of any changes made from the previous year's Program, and the
25 reasons for the changes;
- 26 (5) To consider and advise the Secretary of Transportation upon any other
27 transportation matter that the Secretary may refer to it;
- 28 (6) To assist the Secretary of Transportation in the performance of his
29 duties in the development of programs and approve priorities for
30 programs within the Department;
- 31 (7) To allocate all highway construction and maintenance funds
32 appropriated by the General Assembly as well as federal-aid funds
33 which may be available;
- 34 (8) To approve all highway construction programs;
- 35 (9) To approve all highway construction projects and construction plans for
36 the construction of projects;
- 37 (10) To review all statewide maintenance functions;
- 38 (11) To award all highway construction contracts;
- 39 (12) To authorize the acquisition of rights-of-way for highway improvement
40 projects, including the authorization for acquisition of property by
41 eminent domain;
- 42 (13) To promulgate rules, regulations, and ordinances concerning all
43 transportation functions assigned to the Department.

1 (14) To hire a Transportation Board staff executive director, an
2 administrative assistant, and three other professional staff members with
3 expertise in one or more of the following areas: engineering, land-use
4 planning, environmental issues, public transportation and passenger rail,
5 and governmental accounting. Staff authorized under this subdivision
6 shall be subject to the supervision, direction and control of the Board
7 and shall serve at the pleasure of the Board.

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

12 (g) The Board of Transportation may, in its discretion, delegate to the Secretary of
13 Transportation the authority:

14 (1) To approve all highway construction projects and construction plans for
15 the construction of projects;

16 (2) To award all highway construction contracts;

17 (3) To promulgate rules, regulations, and ordinances concerning all
18 transportation functions assigned to the Department.

19 The Secretary may, in turn, subdelegate these duties and powers.

20 (h) Each member of the Board of Transportation who is appointed to represent a
21 transportation engineering division or who resides in a division shall be consulted before
22 the Board makes a decision affecting that division.

23 (i) Board Ethics Policy. – The Board shall adopt a comprehensive ethics policy
24 governing actions by Board members. The Board Chair shall ensure that Board members
25 receive training on the ethics policy and related State laws and policies at least once a
26 year.

27 (j) Disclosure. –

28 (1) Board members. – Any person nominated for a seat on the Board of
29 Transportation shall publicly disclose in writing under oath all real
30 estate holdings and any transportation-related business interests prior to
31 confirmation and appointment to the Board. Disclosure forms shall be
32 filed with the Board of Ethics.

33 (2) Secretary of Transportation. – The Secretary of Transportation shall
34 publicly disclose in writing under oath all real estate holdings and any
35 transportation-related business interests prior to beginning his or her
36 employment as Secretary. Disclosure forms shall be filed with the
37 Board of Ethics."

38 Section 2. G.S. 143B-350(f) is amended by adding a new subdivision to read:

39 "(14) To hire a Transportation Board staff executive director, an
40 administrative assistant, and three other professional staff members with
41 expertise in one or more of the following areas: engineering, land-use
42 planning, environmental issues, public transportation and passenger rail,
43 and governmental accounting. Staff authorized under this subdivision

1 shall be subject to the supervision, direction, and control of the Board
2 and shall serve at the pleasure of the Board."

3 Section 3. G.S. 143B-350 is amended by adding a new subsection to read:

4 "(i) Board Ethics Policy. – The Board shall adopt a comprehensive ethics policy
5 governing actions by Board members. The Board Chair shall ensure that Board members
6 receive training on the ethics policy and related State laws and policies at least once a
7 year."

8 Section 4. Chapter 143B of the General Statutes is amended by adding a new
9 section to read:

10 "**§ 143B-348.1. Qualifications of the Secretary of Transportation.**

11 The Secretary of Transportation shall be a person with excellent management and
12 leadership skills and knowledge of and experience in the transportation field."

13 Section 5. G.S. 136-13 reads as rewritten:

14 "**§ 136-13. Malfeasance of officers and employees of Department of Transportation,**
15 **members of Board of Transportation, contractors, and others.**

16 (a) It is unlawful for any person, firm, or corporation to directly or indirectly
17 corruptly give, offer, or promise anything of value to any officer or employee of the
18 Department of Transportation or member of the Board of Transportation, or to promise
19 any officer or employee of the Department of Transportation or any member of the Board
20 of Transportation to give anything of value to any other person with intent:

21 (1) To influence any official act of any officer or employee of the
22 Department of Transportation or member of the Board of
23 Transportation;

24 (2) To influence such member of the Board of Transportation, or any
25 officer or employee of the Department of Transportation to commit or
26 aid in committing, or collude in, or allow, any fraud, or to make
27 opportunity for the commission of any fraud on the State of North
28 Carolina; and

29 (3) To induce a member of the Board of Transportation, or any officer or
30 employee of the Department of Transportation to do or omit to do any
31 act in violation of his lawful duty.

32 (b) It shall be unlawful for any member of the Board of Transportation, or any
33 officer or employee of the Department of Transportation, directly or indirectly, to
34 corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of
35 value for himself or any other person or entity in return for:

36 (1) Being influenced in his performance of any official act;

37 (2) Being influenced to commit or aid in committing, or to collude in, or
38 allow, any fraud, or to make opportunity for the commission of any
39 fraud on the State of North Carolina; and

40 (3) Being induced to do or omit to do any act in violation of his official
41 duty.

42 (b1) If a member of the Board of Transportation would benefit from a proposed
43 project of the Department of Transportation, and such benefit is greater than that which

1 would be realized by other persons living in the area where the project is located, then not
2 only shall that member abstain from voting on that issue, but once the conflict of interest
3 is apparent, the member shall not discuss the project with any other Board member or
4 other officer or employee of the Department except to state that a conflict of interest
5 exists. This subsection also applies where the benefit is to be realized by an immediate
6 family member or a business in which the member is a partner, officer, or director or
7 owns more than ten percent (10%) of any class of stock or more than a ten percent (10%)
8 interest.

9 (c) The violation of any of the provisions of this section shall be cause for
10 forfeiture of public office and shall be a Class H felony which may include a fine of not
11 more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of
12 the thing of value whichever is greater."

13 Section 6. There is appropriated from the Highway Fund to the Department of
14 Transportation the sum of five hundred thousand dollars (\$500,000) for fiscal year 1998-
15 99 for use by the Board of Transportation to hire five staff members to assist the Board in
16 carrying out its statutory duties. The Board shall hire a staff director, an administrative
17 assistant, and three other professional staff members with expertise in one or more of the
18 following areas: engineering, land-use planning, environmental issues, public
19 transportation and passenger rail, and governmental accounting. Staff authorized under
20 this section shall be subject to the supervision, direction, and control of the Board and
21 shall serve at the pleasure of the Board.

22 Section 7. Sections 1 and 4 of this act become effective January 15, 2001.
23 Sections 2, 3, 6, and 7 become effective July 1, 1998. Section 5 becomes effective
24 December 1, 1998, and applies to offenses occurring on or after that date.