

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1304
Committee Substitute Favorable 6/17/98

Short Title: Restructure DOT Board.

(Public)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED
AN ACT TO RESTRUCTURE THE BOARD OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

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

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

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

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

~~(b) The Board of Transportation shall have two ex officio members. The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation. The chairman of the North Carolina Rail Council shall be an ex officio member of the Board of Transportation.~~

~~(c) The Board of Transportation shall have 20 members appointed by the Governor. One member shall be appointed from each of the 14 transportation engineering~~

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

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

19 (b) Composition of the Board. –

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

33 (2) Division members. – One member shall be nominated from each of the
34 14 highway divisions. Each division member shall be a resident of the
35 division he or she is nominated to represent. The Governor shall
36 consider nominating division representatives who are residents of
37 counties that have been historically underrepresented on the Board.

38 (3) At-large members; qualifications. – Five members shall be nominated
39 from the State at large. No more than one at-large member shall reside
40 in a highway division. Each at-large member shall be nominated from a
41 county that does not have a resident division board member. The at-
42 large members shall possess the following qualifications:

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

- 1 b. One at-large member shall be a land-use planner;
2 c. One at-large member shall be a scientist familiar with
3 environmental issues affecting water, air, and soil;
4 d. One at-large member shall have experience in and knowledge of
5 public transportation, or a combination of experience in and
6 knowledge of public transportation and passenger rail service;
7 and
8 f. One at-large member shall be a certified public accountant with
9 background in governmental accounting.

10 (4) Partisan representation. – Six members of the Board shall be registered
11 voters of a political party other than the political party of the Governor.

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

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

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

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

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

33 (e3) Organization and Meetings of the Board. – Within 60 days after January 15,
34 2001, and thereafter within 60 days following the beginning of the regular term of the
35 Governor, the Governor or his designee shall call the Board into session. The Board shall
36 then select a chair and vice-chair from among its membership. The Board of
37 Transportation shall meet once in each 60 days at such regular meeting times as the
38 Board may by rule provide and at any place in the State as the Board may provide. The
39 Board may hold special meetings at any time at the call of the chairman or any three
40 members. The Board shall have the power to adopt and enforce rules and regulations for
41 the government of its business and proceedings. The Board shall keep minutes of its
42 meetings, which shall at all times be open to public inspection. The majority of the Board
43 shall constitute a quorum for the transaction of business. Board members shall receive per

1 diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and
2 G.S. 138-6, as appropriate.

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

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

1 and governmental accounting. Staff authorized under this subdivision
2 shall be subject to the supervision, direction and control of the Board
3 and shall serve at the pleasure of the Board.

4 (15) To hire as Secretary of Transportation a person with excellent
5 management and leadership skills and knowledge of and experience in
6 the transportation field. The Board shall retain the Secretary, subject to a
7 renewable employment contract for a period of four years or until the
8 next general election for Governor, whichever occurs first. The Board
9 may employ an interim Secretary for a period of up to six months during
10 the pendency of its search for a permanent Secretary.

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

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

- 17 (1) To approve all highway construction projects and construction plans for
18 the construction of projects;
- 19 (2) To award all highway construction contracts;
- 20 (3) To promulgate rules, regulations, and ordinances concerning all
21 transportation functions assigned to the Department.

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

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

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

30 (j) Limitations on Political Contributions; Disclosure. –

- 31 (1) Board members. – No person shall be eligible for appointment to the
32 Board of Transportation if the nominee, or any of the nominee's
33 immediate family members, made a contribution exceeding five
34 hundred dollars (\$500.00) per year to the political campaign of the
35 appointing Governor in the two years preceding the date of nomination.
36 Any person nominated for a seat on the Board of Transportation shall
37 publicly disclose in writing under oath all real estate holdings and any
38 transportation related business interests prior to confirmation and
39 appointment to the Board. Disclosure forms shall be filed with the
40 Board of Ethics. Board nominees and members of the Board of
41 Transportation are prohibited from making any contribution exceeding
42 five hundred dollars (\$500.00) per year to the political campaign of the
43 Governor, any candidate for Governor, any member of the General

1 Assembly, or any candidate for the General Assembly, during the
2 pendency of their nomination and during the time they serve on the
3 Board.

4 (2) Secretary of Transportation. – No person shall be eligible for
5 employment as Secretary of Transportation if the person or an
6 immediate family member of the person made a contribution exceeding
7 five hundred dollars (\$500.00) per year to the political campaign of the
8 Governor in the two years preceding the person's employment as
9 Secretary. The Secretary of Transportation shall publicly disclose in
10 writing under oath all real estate holdings and any transportation related
11 business interests prior to beginning his or her employment as
12 Secretary. Disclosure forms shall be filed with the Board of Ethics. The
13 Secretary of Transportation is prohibited from making a political
14 contribution exceeding five hundred dollars (\$500.00) per year to the
15 political campaigns of the Governor, any candidate for Governor, any
16 member of the General Assembly, or any candidate for the General
17 Assembly while serving as Secretary."

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

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

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

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

31 Section 4. G.S. 143B-9 reads as rewritten:

32 "**§ 143B-9. Appointment of officers and employees.**

33 The head of each principal State department, except those departments headed by
34 popularly elected officers, and except the Secretary of Transportation, as provided in G.S.
35 143B-350, shall be appointed by the Governor and serve at his pleasure.

36 The salary of the head of each of the principal State departments and of elected
37 officials shall be as provided by law.

38 The head of a principal State department shall appoint a chief deputy or chief
39 assistant, and such chief deputy or chief assistant shall not be subject to the State
40 Personnel Act. The salary of such chief deputy or chief assistant shall, upon the
41 recommendation of the Governor, be set by the General Assembly. Unless otherwise
42 provided for in the Executive Organization Act of 1973, and subject to the provisions of
43 the Personnel Act, the head of each principal State department shall designate the

1 administrative head of each transferred agency and all employees of each division,
2 section, or other unit of the principal State department."

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

4 **"§ 136-13. Malfeasance of officers and employees of Department of Transportation,
5 members of Board of Transportation, contractors, and others.**

6 (a) It is unlawful for any person, firm, or corporation to directly or indirectly
7 corruptly give, offer, or promise anything of value to any officer or employee of the
8 Department of Transportation or member of the Board of Transportation, or to promise
9 any officer or employee of the Department of Transportation or any member of the Board
10 of Transportation to give anything of value to any other person with intent:

11 (1) To influence any official act of any officer or employee of the
12 Department of Transportation or member of the Board of
13 Transportation;

14 (2) To influence such member of the Board of Transportation, or any
15 officer or employee of the Department of Transportation to commit or
16 aid in committing, or collude in, or allow, any fraud, or to make
17 opportunity for the commission of any fraud on the State of North
18 Carolina; and

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

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

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

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

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

32 (b1) If a member of the Board of Transportation would benefit from a proposed
33 project of the Department of Transportation, and such benefit is greater than that which
34 would be realized by other persons living in the area where the project is located, then not
35 only shall that member abstain from voting on that issue, but once the conflict of interest
36 is apparent, the member shall not discuss the project with any other Board member or
37 other officer or employee of the Department except to state that a conflict of interest
38 exists. This subsection also applies where the benefit is to be realized by an immediate
39 family member or a business in which the member is a partner, officer, or director or
40 owns more than ten percent (10%) of any class of stock.

41 (c) The violation of any of the provisions of this section shall be cause for
42 forfeiture of public office and shall be a Class H felony which may include a fine of not

1 more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of
2 the thing of value whichever is greater."

3 Section 6. There is appropriated from the Highway Fund to the Department of
4 Transportation the sum of five hundred thousand dollars (\$500,000) for fiscal year 1998-
5 99 for use by the Board of Transportation to hire five staff members to assist the Board in
6 carrying out its statutory duties. The Board shall hire a staff director, an administrative
7 assistant, and three other professional staff members with expertise in one or more of the
8 following areas: engineering, land-use planning, environmental issues, public
9 transportation and passenger rail, and governmental accounting. Staff authorized under
10 this section shall be subject to the supervision, direction, and control of the Board and
11 shall serve at the pleasure of the Board.

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