

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

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.~~

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

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

21 **(b) Composition of the Board. –**

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

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

40 **(3) At-large members; qualifications. – Five members shall be nominated**
41 **from the State at large. No more than one at-large member shall reside**
42 **in a highway division. The at-large members shall possess the**
43 **following qualifications:**

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

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

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

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

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

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

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

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

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

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

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

1 expertise in one or more of the following areas: engineering, land-use
2 planning, environmental issues, public transportation and passenger rail,
3 and governmental accounting. Staff authorized under this subdivision
4 shall be subject to the supervision, direction and control of the Board
5 and shall serve at the pleasure of the Board.

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

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

- 12 (1) To approve all highway construction projects and construction plans for
13 the construction of projects;
- 14 (2) To award all highway construction contracts;
- 15 (3) To promulgate rules, regulations, and ordinances concerning all
16 transportation functions assigned to the Department.

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

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

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

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

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

- 42 (2) Secretary of Transportation. – No person shall be eligible for
43 employment as Secretary of Transportation if the person or an

1 immediate family member of the person made a contribution exceeding
2 five hundred dollars (\$500.00) per year to the political campaign of the
3 Governor or any candidate for Governor in the two years preceding the
4 person's employment as Secretary. The Secretary of Transportation
5 shall publicly disclose in writing under oath all real estate holdings and
6 any transportation related business interests prior to beginning his or her
7 employment as Secretary. Disclosure forms shall be filed with the Board
8 of Ethics. The Secretary of Transportation is prohibited from making a
9 political contribution exceeding five hundred dollars (\$500.00) per year
10 to the political campaigns of the Governor, any candidate for Governor,
11 any member of the General Assembly, or any candidate for the General
12 Assembly while serving as Secretary."

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

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

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

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

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

28 **"§ 143B-348.1. Qualifications of the Secretary of Transportation.**

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

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

32 **"§ 136-13. Malfeasance of officers and employees of Department of Transportation,**
33 **members of Board of Transportation, contractors, and others.**

34 (a) It is unlawful for any person, firm, or corporation to directly or indirectly
35 corruptly give, offer, or promise anything of value to any officer or employee of the
36 Department of Transportation or member of the Board of Transportation, or to promise
37 any officer or employee of the Department of Transportation or any member of the Board
38 of Transportation to give anything of value to any other person with intent:

39 (1) To influence any official act of any officer or employee of the
40 Department of Transportation or member of the Board of
41 Transportation;

42 (2) To influence such member of the Board of Transportation, or any
43 officer or employee of the Department of Transportation to commit or

1 aid in committing, or collude in, or allow, any fraud, or to make
2 opportunity for the commission of any fraud on the State of North
3 Carolina; and

- 4 (3) To induce a member of the Board of Transportation, or any officer or
5 employee of the Department of Transportation to do or omit to do any
6 act in violation of his lawful duty.

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

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

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

- 15 (3) Being induced to do or omit to do any act in violation of his official
16 duty.

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

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

31 Section 6. There is appropriated from the Highway Fund to the Department of
32 Transportation the sum of five hundred thousand dollars (\$500,000) for fiscal year 1998-
33 99 for use by the Board of Transportation to hire five staff members to assist the Board in
34 carrying out its statutory duties. The Board shall hire a staff director, an administrative
35 assistant, and three other professional staff members with expertise in one or more of the
36 following areas: engineering, land-use planning, environmental issues, public
37 transportation and passenger rail, and governmental accounting. Staff authorized under
38 this section shall be subject to the supervision, direction, and control of the Board and
39 shall serve at the pleasure of the Board.

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