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May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO REFORM THE BOARD OF TRANSPORTATION BY ALTERING ITS GOVERNANCE STRUCTURE, AUTHORIZING A NEW ETHICS POLICY, REQUIRING DISCLOSURE OF POLITICAL CONTRIBUTIONS BY BOARD MEMBERS, INCREASING PUBLIC PARTICIPATION IN ITS DECISIONS, AND CHANGING THE PENALTIES FOR MISUSE OF A DOT BOARD POSITION.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 8 of Chapter 143B of the General Statutes 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~~

1 general statewide interest to the purely local desires of any particular area. The Board  
2 may, from time to time, provide that one or more of its members or representatives shall  
3 hear any person or persons concerning transportation.

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

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

20 (d) ~~The Board of Transportation shall have four members appointed by the  
21 General Assembly. Two of these members shall be appointed upon the recommendation  
22 of the Speaker of the House of Representatives, and two shall be appointed upon the  
23 recommendation of the President Pro Tempore of the Senate in accordance with G.S.  
24 120-121. The initial members appointed by the General Assembly shall serve for terms  
25 expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms  
26 beginning July 1 of odd-numbered years. Vacancies in appointments made by the  
27 General Assembly shall be filled in accordance with G.S. 120-122.~~

28 (a) Board of Transportation. – There is hereby created a Board of Transportation. The  
29 Board shall carry out its duties consistent with the needs of the State as a whole. The  
30 diversity and size of the State require that regional differences be considered by Board  
31 members as they develop transportation policy and projects for the benefit of the citizens  
32 of the State.

33 (b) Membership of the Board. –

34 (1) Number, appointment. – The Board of Transportation shall have 19  
35 voting members. Fourteen of the members shall be division members  
36 appointed by the Governor. Five shall be at-large members appointed  
37 by the Governor. The Secretary of Transportation shall serve as an ex  
38 officio nonvoting member of the Board. No more than two members of  
39 the Board may reside in the same highway division.

40 (2) Division members. – One member shall be appointed from and a  
41 resident of each of the 14 highway divisions. The Governor, in selecting  
42 division members, shall consider for appointment persons suggested by  
43 the Transportation Advisory Committees located within each division.

1 Division members shall direct their primary effort to developing  
2 transportation policy and addressing transportation problems in the  
3 region they represent. Division members shall regularly consult with  
4 and consider the views of local government units and transportation  
5 advisory committees in the region they represent.

6 (3) At-large members. – Five members shall be appointed by the Governor  
7 from the State at large. At-large members appointed pursuant to this  
8 subdivision shall develop transportation policy and address  
9 transportation problems with a statewide perspective. At-large members  
10 appointed under this subdivision shall possess the following  
11 qualifications:

12 a. One at-large member shall be a person with expertise in  
13 environmental issues affecting the State;

14 b. One at-large member shall be a person familiar with the State  
15 Ports and aviation;

16 c. One at-large member shall be a person residing in an urban area  
17 of the State with broad knowledge of and experience in  
18 transportation issues affecting urban areas;

19 d. One at-large member shall be a person residing in a rural area of  
20 the State with broad knowledge of and experience in  
21 transportation issues affecting rural areas;

22 e. One at-large member shall be a person with expertise in mass  
23 transit.

24 (c) Staggered Terms. – The terms of all Board members serving on the Board prior  
25 to January 15, 1999, shall expire on January 14, 1999. A new board of 19 members shall  
26 be appointed with terms beginning on January 15, 1999. The Board shall serve the  
27 following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the  
28 three at-large members filling the positions designated in subdivisions (b)(3)a., b., and e.,  
29 of this section shall serve two-year terms beginning on January 15, 1999, and four-year  
30 terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14  
31 and the two at-large members filling the positions designated in subdivisions (b)(3)c. and  
32 d. of this section shall serve four-year terms beginning January 15, 1999, and four-year  
33 terms thereafter.

34 (d) Holdover Terms; Vacancies; Removal. – Members shall continue to serve until  
35 their successors are appointed. The Governor may appoint a member to serve out the  
36 unexpired term of any Board member. The Governor may remove any member of the  
37 Board for any cause the Governor finds sufficient. The Governor shall remove any  
38 member of the Board upon conviction of a felony, conviction of any other offense  
39 involving a violation of the Board member's official duties, or a violation of the  
40 provisions of subsections (i), (j), and (k) of this section or any other code of ethics  
41 applicable to members of the Board as determined by the Governor or the Governor's  
42 designee.

1       (e) Organization and Meetings at the Board. – Within 60 days after January 15,  
2 1999, and thereafter within 60 days following the beginning of the regular term of the  
3 Governor, the Governor or his designee shall call the Board into session. The Board shall  
4 then select a chair and vice-chair from among its membership for two-year terms. The  
5 Board may select a chair or vice-chair for one additional two-year term. The Board of  
6 Transportation shall meet once in each 60 days at such regular meeting times as the  
7 Board may by rule provide and at any place in the State as the Board may provide. The  
8 Board may hold special meetings at any time at the call of the chairman or any three  
9 members. The Board shall have the power to adopt and enforce rules and regulations for  
10 the government of its business and proceedings. The Board shall keep minutes of its  
11 meetings, which shall at all times be open to public inspection. The majority of the Board  
12 shall constitute a quorum for the transaction of business. Board members shall receive per  
13 diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and  
14 G.S. 138-6, as appropriate.

15       (f) Duties of the Board. – The Board of Transportation shall have duties and  
16 powers:

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

- 1 (9) To approve all highway construction projects and construction plans for  
2 the construction of projects;
- 3 (10) To review all statewide maintenance functions;
- 4 (11) To award all highway construction contracts;
- 5 (12) To authorize the acquisition of rights-of-way for highway improvement  
6 projects, including the authorization for acquisition of property by  
7 eminent domain;
- 8 (13) To promulgate rules, regulations, and ordinances concerning all  
9 transportation functions assigned to the Department.

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

14 (g) Delegation of Board Duties. – The Board of Transportation may, in its  
15 discretion, delegate to the Secretary of Transportation the authority:

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

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

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

26 (i) Disclosure of Contributions. – A person appointed to the Board of  
27 Transportation shall disclose at the time the appointment of the person is officially made  
28 public any contributions the person or the person's immediate family made to the political  
29 campaign of the appointing Governor in the two years preceding the date of appointment.  
30 The term 'immediate family', as used in this subsection, means a person's spouse,  
31 children, parents, brothers, and sisters. Disclosure forms shall be filed with the Governor  
32 or the Governor's designee and in a manner as prescribed by the Governor. Disclosure  
33 forms shall not be a public record under the provisions of Chapter 132 of the General  
34 Statutes until such time as the appointment of the person filing the statement is officially  
35 made public.

36 (j) Disclosure of Campaign Fund-raising. – A person appointed to the Board of  
37 Transportation shall disclose at the time the appointment of the person is officially made  
38 public any contributions the person personally acquired in the two years prior to  
39 appointment for: any political campaign for a statewide or legislative elected office in  
40 North Carolina; any political party executive committee or political committee acting on  
41 behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed  
42 with the Governor or the Governor's designee and in a manner as prescribed by the  
43 Governor. Disclosure forms shall not be a public record under the provisions of Chapter

1 132 of the General Statutes until such time as the appointment of the person filing the  
2 statement is officially made public.

3 (k) Ethics Policy. – The Board shall adopt a code of ethics applicable to members  
4 of the Board. Any code of ethics adopted by the Board shall be supplemental to any  
5 other code of ethics that may be applicable to members of the Board. A code of ethics  
6 adopted pursuant to this subsection shall:

7 (1) Include a prohibition against a member taking action as a Board  
8 member when a conflict of interest, or the appearance of a conflict of  
9 interest, exists. The ethics policy adopted pursuant to this section shall  
10 specify that a conflict of interest exists when the use of the Board  
11 member's position, or any official action taken by the Board member,  
12 would result in financial benefit, direct or indirect, to the Board  
13 member, a member of the Board member's immediate family, or an  
14 individual with whom, or business with which, the Board member is  
15 associated. The ethics policy adopted pursuant to this section shall  
16 specify that an appearance of a conflict of interest exists when a  
17 reasonable person would conclude from the circumstances that the  
18 Board member's ability to protect the public interest, or perform public  
19 duties, would be compromised by personal interest, even in the absence  
20 of an actual conflict of interest. The performance of usual and  
21 customary duties associated with the public position or the advancement  
22 of public policy goals or constituent services, without compensation,  
23 shall not constitute the use of the Board member's position for financial  
24 benefit. The conflict of interest provision of the ethics policy adopted  
25 pursuant to this section shall not apply to financial or other benefits  
26 derived by a Board member that the Board member would enjoy to an  
27 extent no greater than that which other citizens of the State would or  
28 could enjoy.

29 (2) Require the filing of a statement of economic interest. The statement of  
30 economic interest shall include a listing of the nominee's legal,  
31 equitable, or beneficial interest in real estate holdings in the State, and a  
32 statement of the nominee's financial interest in any business related to  
33 the State's transportation system. The statement of economic interest  
34 shall be filed with the Governor, or the Governor's designee, and in a  
35 manner as prescribed by the Governor.

36 (3) Require the filing of a statement of association. The statement of  
37 association shall include a statement of the nominee's membership or  
38 other affiliation with, including offices held, in societies, organizations,  
39 or advocacy groups pertaining the State's transportation system. The  
40 statement of association shall be filed with the Governor, or the  
41 Governor's designee, and in a manner as prescribed by the Governor.

42 Any statement of economic interest or statement of association filed with the  
43 Governor or the Governor's designee shall not be a public record under the provisions of

1 Chapter 132 of the General Statutes until such time as the appointment of the person  
2 filing the statement is officially made public.

3 (k1) Additional Requirements for Disclosure Statements. – All disclosure  
4 statements required under subsections (i), (j), and (k) of this section must be sworn  
5 written statements, and all such statements must be completed and filed prior to the  
6 beginning of any person's term on the Board.

7 (l) Ethics and Board Duties Education. – The Board shall institute and conduct  
8 annually an education program on ethics and on the duties and responsibilities of Board  
9 members. The training session shall be comprehensive in nature and shall include input  
10 from the Institute of Government, the Board of Ethics, the Attorney General's Office, the  
11 University of North Carolina Highway Safety Research Center, and senior career  
12 employees of the various divisions of the Department. This program shall include an  
13 initial orientation for new members of the Board and continuing education programs for  
14 Board members at least once each year."

15 Section 2. Article 1 of Chapter 136 is amended by adding a new section to  
16 read:

17 **"§ 136-11.1. Local consultation on transportation projects.**

18 Prior to any action of the Board on a transportation project, the Department shall  
19 inform all municipalities and counties affected by a planned transportation project and  
20 request each affected municipality or county to submit within 45 days a written resolution  
21 expressing their views on the project. A municipality or county may designate a  
22 Transportation Advisory Committee to submit its response to the Department's request  
23 for a resolution. Upon receipt of a written resolution from all affected municipalities and  
24 counties or their designees, or the expiration of the 45-day period, whichever occurs first,  
25 the Board may take action. The Department and the Board shall consider, but shall not  
26 be bound by, the views of the affected municipalities and counties on each transportation  
27 project. The failure of a county or municipality to express its views within the time  
28 provided shall not prevent the Department or the Board from taking action. The  
29 Department shall not be required to send notice under this section if it has already  
30 received a written resolution from the affected county or municipality on the planned  
31 transportation project. 'Action of the Board', as used in this section, includes approval by  
32 the Board of: the Transportation Improvement Program and amendments to the  
33 Transportation Improvement Program, the Secondary Roads Paving Program and  
34 amendments to the Secondary Roads Paving Program, access and public service road  
35 projects, contingency projects, small urban projects, and spot safety projects. The 45-day  
36 notification provision may be waived upon a finding by the Secretary of Transportation  
37 that emergency action is required. Such findings must be reported to the Joint Legislative  
38 Transportation Oversight Committee."

39 Section 2.1. Chapter 136 is amended by adding a new section to read:

40 **"§ 136-13.3. Specified employees and others to disclose real estate holdings.**

41 (a) Disclosure. – The Secretary of Transportation shall require the following  
42 persons to disclose in a sworn written statement all legal, equitable, and beneficial  
43 interests in real estate of that person or the person's immediate family:

1           (1) Any employee of the Department who holds a supervisory position that  
2           involves right-of-way or appraisal; or

3           (2) Any other person who provides right-of-way or appraisal services to the  
4           Department on a contractual basis.

5           (b) Affected Persons. – The Secretary shall establish a list of the employees and  
6 others who are subject to the requirements of subsection (a) of this section, and update it  
7 by February 1 of each year.

8           (c) Failure to Comply With Disclosure Requirement. – A false or incomplete  
9 statement filed pursuant to this section, or failure to file a statement pursuant to this  
10 section, shall subject an employee to disciplinary action for cause pursuant to Chapter  
11 126 of the General Statutes.

12           (d) Records Open. – The list of affected persons and any disclosure statements  
13 filed with the Board under this section shall be public records in accordance with Chapter  
14 132 of the General Statutes."

15           Section 3. (a) G.S. 136-14 reads as rewritten:

16 **"§ 136-14. Members not eligible for other employment with Department; no sales to**  
17 **Department by employees; members not to sell or trade property with**  
18 **Department; profiting from official ~~position.~~ position; misuse of**  
19 **confidential information by Board members.**

20           (a) No Board member of the Board of Transportation shall be eligible to any other  
21 employment in connection with the Department of Transportation, and no Department.

22           (b) No Board member of the Board of Transportation or any salaried employee of the  
23 Department of Transportation shall furnish or sell any supplies or materials, directly or  
24 indirectly, to the Department of Transportation, nor shall any Department.

25           (c) No Board member of the Board of Transportation, shall, directly or indirectly,  
26 engage in any transaction involving the sale of or trading of real or personal property  
27 with the Department of Transportation, or Department.

28           (d) No Board member shall profit in any manner by reason of his the Board  
29 member's official action or his official position, except to receive such salary, fees and  
30 allowances as by law provided.

31           (e) No Board member shall take any official action or use the Board member's  
32 official position which profits in any manner the Board member's immediate family, a  
33 business with which the Board member or the Board member's immediate family has a  
34 business association, or a client of the Board member or the Board member's immediate  
35 family with whom the Board member, or the Board member's immediate family, has an  
36 existing business relationship for matters before the Board.

37           (f) No Board member, in contemplation of official action by the Board member,  
38 by the Board, or in reliance on information which was made known to the Board member  
39 in the Board member's official capacity and which has not been made public, shall  
40 commit any of the following acts:

41           (1) Acquire a pecuniary interest in any property, transaction, or enterprise  
42 or gain any pecuniary benefit which may be affected by such  
43 information or official action; or



- 1           (2) Intentionally aid another to do any of the above acts.  
2       (g) As used in this section, the following terms mean:  
3           (1) 'Board'. – The Board of Transportation.  
4           (2) 'Board member'. – A member of the Board of Transportation.  
5           (3) 'Business association'. – A director, employee, officer, or partner of a  
6           business entity, or owner of more than ten percent (10%) interest in any  
7           business entity.  
8           (4) 'Department'. – The Department of Transportation.  
9           (5) 'Immediate family'. – Spouse, children, parents, brothers, and sisters.  
10          (6) 'Official action'. – Actions taken while a Board member related to or in  
11          connection with the person's duties as a Board member including, but  
12          not limited to, voting on matters before the Board, proposing or  
13          objecting to proposals for transportation actions by the Department or  
14          the Board, discussing transportation matters with other Board members  
15          or Department staff or employees in an effort to further the matter after  
16          the conflict of interest has been discovered, or taking actions in the  
17          course and scope of the position as a Board member and actions leading  
18          to or resulting in profit.  
19          (7) 'Profit'. – Receive monetary or economic gain or benefit, including an  
20          increase in value whether or not recognized by sale or trade.

21       (h) Violation of this section shall be a Class F-H felony which may include a fine  
22 of not more than twenty thousand dollars (\$20,000), or three times the value of the  
23 transaction-transaction, whichever amount is greater."

24       (b) Chapter 136 of the General Statutes is amended by adding a new section to  
25 read:

26 **"§ 136-14.3. Felony for legislator to receive or solicit campaign contribution in**  
27 **return for influencing action of Department of Transportation.**

28       It is a Class F felony for any member of the General Assembly to receive or solicit  
29 any campaign contribution in return for any promise to influence any action of the  
30 Department of Transportation or the Board of Transportation or for any person to falsely  
31 accuse another of violating the provisions of this statute."

32       Section 4. The Secretary of the Department of Transportation shall study  
33 realignment and reorganization of the 14 Transportation Divisions of the State to more  
34 closely match the urban and rural regions that have developed in the State over the past  
35 40 years and to improve the efficiency of the operations of the Department. The  
36 Secretary shall give primary consideration to the boundaries of the metropolitan planning  
37 regions of the State as he considers realignment of the Transportation Divisions. The  
38 Secretary shall report his findings to the General Assembly on or before December 31,  
39 1998.

40       Section 5. The Department of Transportation shall develop a plan to establish  
41 Rural Transportation Planning Organizations (RPOs) as a counterpart to the existing  
42 Metropolitan Planning Organizations (MPOs). The Department shall report its plan to  
43 establish these organizations to the General Assembly by December 31, 1998.

1           Section 6. The Department of Transportation shall study the backlog of  
2 maintenance needs for the State's highways and suggest methods for addressing this  
3 issue, including sources of funds. The Department shall report its findings and  
4 recommendations to the General Assembly by December 31, 1998.

5           Section 7. Section 1 of this act becomes effective January 15, 1999. Members  
6 of the Board of Transportation serving on January 14, 1999, shall continue to serve until  
7 the date their successors are appointed. Section 2 of this act becomes effective December  
8 31, 1998, and applies to actions taken by the Board of Transportation on or after April 1,  
9 1999. Section 3 of this act becomes effective December 1, 1998, and applies to offenses  
10 committed on or after that date. The remainder of this act is effective when it becomes  
11 law.