

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

6

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
Senate Transportation Committee Substitute Adopted 7/27/98

Short Title: BOT Reform.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM THE BOARD OF TRANSPORTATION BY ALTERING ITS
3 GOVERNANCE STRUCTURE, AUTHORIZING A NEW ETHICS POLICY,
4 REQUIRING DISCLOSURE OF POLITICAL CONTRIBUTIONS BY BOARD
5 MEMBERS, INCREASING PUBLIC PARTICIPATION IN ITS DECISIONS,
6 AND CHANGING THE PENALTIES FOR MISUSE OF A DOT BOARD
7 POSITION.

8 The General Assembly of North Carolina enacts:

9 Section 1. Part 2 of Article 8 of Chapter 143B of the General Statutes reads
10 as rewritten:

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

13 **"§ 143B-350. Board of Transportation – organization; powers and duties, etc.**

14 (a) ~~There is hereby created a Board of Transportation. The Board shall carry out~~
15 ~~its duties consistent with the needs of the State as a whole and it shall not sacrifice the~~
16 ~~general statewide interest to the purely local desires of any particular area. The Board~~
17 ~~may, from time to time, provide that one or more of its members or representatives shall~~
18 ~~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 divisions and six members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. At least one at-large member shall possess a broad knowledge of public transportation matters. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.~~

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

(a) Board of Transportation. – 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. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State.

(b) Membership of the Board. –

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

(2) Division members. – One member shall be appointed from and a resident of each of the 14 highway divisions. The Governor, in selecting division members, shall consider for appointment persons suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent. Division members shall

1 regularly consult with and consider the views of local government
2 units and transportation advisory committees in the region they
3 represent.

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

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

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

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

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

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

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

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

41 (e) Organization and Meetings at the Board. – Within 60 days after January 15,
42 1999, and thereafter within 60 days following the beginning of the regular term of the
43 Governor, the Governor or his designee shall call the Board into session. The Board
44 shall then select a chair and vice-chair from among its membership for two-year terms.

1 The Board may select a chair or vice-chair for one additional two-year term. The Board
2 of Transportation shall meet once in each 60 days at such regular meeting times as the
3 Board may by rule provide and at any place in the State as the Board may provide. The
4 Board may hold special meetings at any time at the call of the chairman or any three
5 members. The Board shall have the power to adopt and enforce rules and regulations for
6 the government of its business and proceedings. The Board shall keep minutes of its
7 meetings, which shall at all times be open to public inspection. The majority of the
8 Board shall constitute a quorum for the transaction of business. Board members shall
9 receive per diem and necessary travel and subsistence expenses in accordance with G.S.
10 138-5 and G.S. 138-6, as appropriate.

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

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

1 (12) To authorize the acquisition of rights-of-way for highway
2 improvement projects, including the authorization for acquisition of
3 property by eminent domain;

4 (13) To promulgate rules, regulations, and ordinances concerning all
5 transportation functions assigned to the Department.

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
8 its development and approval of a schedule of major State highway system
9 improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

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

12 (1) To approve all highway construction projects and construction plans
13 for 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) Consultation of Board Members. – Each member of the Board of
19 Transportation who is appointed to represent a transportation engineering division or
20 who resides in a division shall be consulted before the Board makes a decision affecting
21 that division.

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

32 (j) Disclosure of Campaign Fund-raising. – A person appointed to the Board of
33 Transportation shall disclose at the time the person is sworn in as a member of the
34 Board any contributions the person personally acquired in the two years prior to
35 appointment for: any political campaign for a statewide or legislative elected office in
36 North Carolina; any political party executive committee or political committee acting on
37 behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed
38 with the Governor or the Governor's designee and in a manner as prescribed by the
39 Governor. Disclosure forms shall not be a public record under the provisions of
40 Chapter 132 of the General Statutes until such time as the person filing the statement is
41 sworn in as a member of the Board.

42 (k) Ethics Policy. – The Board shall adopt a code of ethics applicable to members
43 of the Board. Any code of ethics adopted by the Board shall be supplemental to any

1 other code of ethics that may be applicable to members of the Board. A code of ethics
2 adopted pursuant to this subsection shall:

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

25 (2) Require the filing of a statement of economic interest. The statement
26 of economic interest shall include a listing of the nominee's real estate
27 holdings in the State, and a statement of the nominee's financial
28 interest in any business related to the State's transportation system. The
29 statement of economic interest shall be filed with the Governor, or the
30 Governor's designee, and in a manner as prescribed by the Governor.

31 (3) Require the filing of a statement of potential bias. The statement of
32 potential bias shall include a statement of the nominee's membership
33 or other affiliation with, including offices held, in societies,
34 organizations, or advocacy groups pertaining the State's transportation
35 system. The statement of potential bias shall be filed with the
36 Governor, or the Governor's designee, and in a manner as prescribed
37 by the Governor.

38 Any statement of economic interest or statement of potential bias filed with the
39 Governor or the Governor's designee shall not be a public record under the provisions of
40 Chapter 132 of the General Statutes until such time as the person filing the statement is
41 sworn in as a member of the Board.

42 (l) Ethics and Board Duties Education. – The Board shall institute and conduct
43 annually an education program on ethics and on the duties and responsibilities of Board
44 members. The training session shall be comprehensive in nature and shall include input

1 from the Institute of Government, the Board of Ethics, the Attorney General's Office,
 2 the University of North Carolina Highway Safety Research Center, and senior career
 3 employees of the various divisions of the Department. This program shall include an
 4 initial orientation for new members of the Board and continuing education programs for
 5 Board members at least once each year."

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

8 **"§ G.S. 136-11.1. Local consultation on transportation projects.**

9 Prior to any action of the Board on a transportation project, the Department shall
 10 inform all municipalities and counties affected by a planned transportation project and
 11 request each affected municipality or county to submit within 60 days a written
 12 resolution expressing their views on the project. Upon receipt of a written resolution
 13 from all affected municipalities and counties or the expiration of the 60-day period,
 14 whichever occurs first, the Board may take action. The Department and the Board shall
 15 consider, but shall not be bound by, the views of the affected municipalities and
 16 counties on each transportation project. The failure of a county or municipality to
 17 express their views within the time provided shall not prevent the Department or the
 18 Board from taking action. The Department shall not be required to send notice under
 19 this section if it has already received a written resolution from the affected county or
 20 municipality on the planned transportation project. 'Action of the Board', as used in this
 21 section, includes approval by the Board of: the Transportation Improvement Program,
 22 amendments to the Transportation Improvement Program, awards of highway
 23 construction contracts, funds for secondary road projects, funds for access and public
 24 service road projects, additions and abandonment to the State Secondary Road System,
 25 funds for any contingency, discretionary, or safety projects, funds for specific State
 26 construction projects, funds for any North Carolina Highway Trust Fund projects, funds
 27 for specific federal aid projects, and any other action on a transportation project."

28 Section 3. G.S. 136-14 reads as rewritten:

29 **"§ 136-14. Members not eligible for other employment with Department; no sales**
 30 **to Department by employees; members not to sell or trade property with**
 31 **Department; profiting from official ~~position.~~ position; misuse of**
 32 **confidential information by Board members.**

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

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

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

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

1 (e) No Board member shall take any official action or use the Board member's
2 official position which profits in any manner the Board member's immediate family, a
3 business with which the Board member or the Board member's immediate family has a
4 business association, or a client of the Board member or the Board member's immediate
5 family with whom the Board member, or the Board member's immediate family, has an
6 existing business relationship for matters before the Board.

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

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

14 (2) Intentionally aid another to do any of the above acts.

15 (g) As used in this section, the following terms mean:

16 (1) ' Board'. – The Board of Transportation.

17 (2) ' Board member'. – A member of the Board of Transportation.

18 (3) ' Business association'. – A director, employee, officer, or partner of a
19 business entity, or owner of more than ten percent (10%) interest in
20 any business entity.

21 (4) ' Department'. – The Department of Transportation.

22 (5) ' Immediate family'. – Spouse, children, parents, brothers, and sisters.

23 (6) ' Official action'. – Actions taken while a Board member related to or
24 in connection with the person's duties as a Board member including,
25 but not limited to, voting on matters before the Board, proposing or
26 objecting to proposals for transportation actions by the Department or
27 the Board, discussing transportation matters with other Board members
28 or Department staff or employees in an effort to further the matter after
29 the conflict of interest has been discovered, or taking actions in the
30 course and scope of the position as a Board member and actions
31 leading to or resulting in profit.

32 (7) ' Profit'. – Receive monetary or economic gain or benefit, including an
33 increase in value whether or not recognized by sale or trade.

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

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

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

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

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