

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 507
HOUSE BILL 1063

AN ACT TO REORGANIZE THE DEPARTMENT OF TRANSPORTATION AND
HIGHWAY SAFETY AS IT RELATES TO HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 143A of the North Carolina General Statutes is amended by renumbering 143A-98 as 143A-98.1 and adding the following sections:

"§ 143A-98.2. Board of Transportation.

- (1) There is hereby created a Board of Transportation. The Board of Transportation shall formulate policies for the carrying out of highway functions assigned to the Department of Transportation and Highway Safety and it shall supervise the carrying out of these functions and perform such other duties as required by law. Notwithstanding the provisions of G.S. 143A-6, 143A-9, or any other statute, except as provided in this act, the Board of Transportation shall have complete and exclusive authority in all highway matters assigned to the Department of Transportation and Highway Safety. The Board of Transportation shall have the authority in organizing the sections, divisions, or other organizational structure of the Department of Transportation and Highway Safety involved in the carrying out of highway functions and, subject to the State Personnel Act, shall have complete authority over hiring, promotions, and dismissals of personnel in the Department of Transportation and Highway Safety paid from the Highway Fund. The Board of Transportation may, in its discretion, delegate the award of contracts, the promulgation or ordinances, and management functions to the Secretary, who in turn may subdelegate these functions. The Board of Transportation may in its discretion assign and delegate personnel functions in a manner which in its opinion will achieve maximum efficiency in carrying out highway functions.
- (2) The Board of Transportation shall consist of the following:
 - (a) The Chairman. The Secretary of Transportation and Highway Safety shall be an ex officio member of the Board of Transportation and shall be the Chairman of the Board of Transportation.
 - (b) The Board of Transportation shall have nine members appointed by the Governor. The initial Board members shall be appointed for a term to begin July 1, 1973, and shall serve until January 15, 1977, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1977, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by him, and the Governor shall make public the reason for such removal.
 - (c) The Board of Transportation shall have three members appointed from the membership of the General Assembly, in addition to those

members appointed by the Governor. One member shall be appointed by the Lieutenant Governor, one shall be appointed by the Speaker of the House of Representatives, and one shall be appointed by the Joint Caucus Leader of the Minority Party. The term of the initial Board members appointed from the membership of the General Assembly shall begin July 1, 1973, and they shall serve until January 15, 1975, or until a successor is duly appointed and qualified. The succeeding terms shall be for two years beginning January 15, 1975, and each two years thereafter. Vacancies in office shall be filled by the same official making the initial appointment to that office.

- (d) The headquarters and main office of the Board of Transportation shall be located in Raleigh, and the Board shall meet once in each 60 days at such regular meeting time as the Board by rule may provide and at any place within the State as the Board may provide, and may hold special meetings at any time or place within the State at the call of the Chairman, or any three members of the Board. The Board shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the Board. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. A majority of the Board shall constitute a quorum for the transaction of business. The members of the Board shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5.

"§ 143A-98.3. Secondary Roads Council. — There is hereby created a Secondary Roads Council. The Secondary Roads Council of the Department of Transportation and Highway Safety shall consist of fourteen members appointed by the Governor who shall serve at the pleasure of the Governor. No two council members appointed by the Governor while serving shall reside in any one of the fourteen engineering divisions as now established by G.S. 136-14.1. The Governor shall designate a member of the Council to serve as Chairman at the pleasure of the Governor. Members of the Council shall receive per diem and necessary travel and subsistence expense in accordance with the provisions of G.S. 138-5. A majority of the members of the Council shall constitute a quorum for the transaction of business. The Council shall meet at least once in each three months at such regular meeting times and places as the Council may provide, or as the Board of Transportation may otherwise provide.

The Secondary Roads Council shall have the duty of adopting annual work programs for secondary roads in each county. Each Board of County Commissioners shall be consulted in preparing the annual work programs and in case of any disagreement, the Board of County Commissioners may petition the Board of Transportation for a review. The Board shall make a determination which shall be final. In all other cases, work or action as adopted by the Secondary Roads Council shall proceed as planned, provided that any action taken by the Secondary Roads Council is subject to review by the Board of Transportation. Any action taken by the council may be overruled by a majority of the Board. The annual work programs and projects adopted shall be followed by the Department of Transportation and Highway Safety."

Sec. 2. G.S. 143A-99 is amended to read as follows:

"§ 143A-99. Succession of Powers and Duties of State Highway Commission. — The Board of Transportation shall succeed to all rights, powers, and duties heretofore vested in the State Highway Commission."

Sec. 3. G.S. 136-17 is amended to read as follows:

"§ 136-17(a). Members of the Board of Transportation Represent Entire State. — The Chairman and members of the Board of Transportation shall represent the entire State in

highway matters and not represent any particular person, persons, or area. The Board shall, from time to time, provide that one or more of its members or representatives shall publicly hear any person or persons concerning highway matters in each of said geographic areas of the State.

"§ 136-17(b). Statewide Road System, Policies. — The Department of Transportation and Highway Safety shall develop and maintain a statewide system of roads and highways commensurate 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 of Transportation shall formulate general policies and plans for a statewide system of highways. The Board shall formulate policies governing the construction, improvement and maintenance of roads and highways of the State with due regard to farm-to-market roads and school bus routes.

"§ 136-17(c). Budget and Appropriations. — The Director of the Budget shall include in the 'Budget Appropriations Bill' an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, and urban road systems. The State primary system shall include all portions of the State Highway System located outside municipal corporate limits which are designated by NC, US or Interstate numbers. The State secondary system shall include all of the State Highway System located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State Highway System located within municipal corporate limits.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of Federal-aid funds. Proposed appropriations of State matching funds for each of the Federal-aid construction programs shall be enumerated separately as well as the Federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated Federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

Notwithstanding any of the provisions of this act, the Board of Transportation shall have such powers as are necessary to comply fully with the provisions of present or future Federal aid acts.

The Board of Transportation in its discretion may alter any dollar amount set forth in the 'Budget Appropriations Bill' for any of the foregoing purposes, provided that a report of all alterations, setting forth the reason or reasons for each, shall be submitted to the House and Senate Roads Committee and the House and Senate Appropriations Subcommittee on Roads within three months after the close of the fiscal year, and provided further that no alteration may exceed ten percent (10%) of the original figure without the concurrence of the Advisory Budget Commission. The 'Budget Appropriations Bill' shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-17(f) and (g). State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-17(f) and (g).

In the event receipts and increments to the State Highway fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Board of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent of the balance to be allocated to the State Secondary Roads Program on the basis of need as

determined by the Board of Transportation and the remaining fifty percent to be allocated in accordance with G.S. 136-17(f).

"§ 136-17(d). Annual Maintenance Program, State Primary, Urban System. — The Department of Transportation and Highway Safety shall make a study of the maintenance needs and costs of the State primary and urban systems. On the basis of the costs and proposed appropriations, the Department of Transportation and Highway Safety shall develop a statewide annual maintenance program for the State Primary and Urban Systems which shall be subject to the approval of the Board of Transportation and shall take into consideration the general maintenance needs, the special maintenance needs and vehicular traffic and other factors deemed pertinent. The Department of Transportation and Highway Safety, from time to time, shall restudy the costs and criteria used as a basis for its annual maintenance program. Copies of the annual maintenance program shall be made available to members of the House and Senate Road Committees and to the members of Appropriations Sub-Committees for highway matters, as well as other interested parties, upon request at the time the 'Budget Appropriations Bill' is presented. Each Division Engineer, at the end of the fiscal year, shall certify the maintenance of highways in his division in accordance with the annual work program, along with the explanations of any deviations.

"§ 136-17(e). Annual Construction Program, State Primary, Urban Systems. — The Department of Transportation and Highway Safety shall develop an annual construction program for the state funded improvements on the primary and urban system highways and for all Federal Aid Construction programs which shall be approved by the Board of Transportation. It shall include a statement of the immediate and long-range goals. The Department shall develop criteria for determining priorities of projects to insure that the long-range goals and the statewide needs as a whole are met, which shall be approved by the Board of Transportation. The Annual Construction Program shall list all projects according to priority. A brief description of each project shall be given, identifying the highway number, county, nature of the improvement and the estimated cost of the project shall be indicated. Copies of the most recent annual work program shall be made available to the members of the House and Senate Committees on Roads and to members of the House and Senate Appropriations Sub-Committees for highway matters, at the time the 'Budget Appropriations Bill' is presented. The Department of Transportation and Highway Safety shall make annual reports after the completion of the fiscal year to be made available to the Legislative Committees and Sub-Committees for highway matters. County Commissioners, and other persons upon request. These reports shall indicate the expenditure on each of the projects and the status of all projects set out in the work program.

"§ 136-17(f). Secondary Roads, Mileage Study, Allocation of Funds. — Before July 1, in each calendar year, the Department of Transportation and Highway Safety shall make a study of all State maintained unpaved roads in the State. The study shall determine the number of miles of unpaved State maintained roads in each county, and the total number of miles of unpaved State maintained roads in the State. Except for Federal aid programs, the Department shall allocate all secondary road construction funds on the basis of a formula using the study figures. The allocation shall be as follows: each county shall receive a percentage of the total funds available for totally State-funded secondary road construction, the percentage to be determined as a factor of the number of miles of unpaved State-maintained secondary roads in the county divided by the total number of miles of unpaved State-maintained secondary roads in the State. Copies of the Department study of unpaved State-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county.

"§ 136-17(g). The Department of Transportation and Highway Safety shall develop a uniformly applicable formula for the allocation of secondary roads maintenance funds for use

in each county. The formula shall take into consideration the number of paved and unpaved miles of secondary roads in each county and such other factors as experience may dictate.

"§ 136-17(h). Secondary Roads, Annual Work Program. — The Department of Transportation and Highway Safety shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Secondary Roads Council before it shall become effective. The Department of Transportation and Highway Safety shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation and Highway Safety. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Secondary Roads Council before it shall become effective.

"§ 136-17(i). Submission of Secondary Roads Construction Programs to the County Commissioners. — Representatives of the Secondary Roads Council and of the Department of Transportation and Highway Safety shall meet with the Board of County Commissioners at a regular or special meeting of the Board of County Commissioners, notice of which meeting shall be published in a newspaper published in or having a general circulation in the county once a week for two succeeding weeks prior to the meeting and there discuss and advise, with the Board of County Commissioners and other citizens present, proposed plans and proposals in the annual construction programs for the county. After the discussions, the Board of County Commissioners shall make a written recommendation to the Secondary Roads Council as to the expenditure of funds for work in the county, and the Secondary Roads Council shall observe and follow such recommendations insofar as they are compatible with its general plans, standards, criteria and available funds, but having due regard to development plans of the county and to the maintenance and improvement of all existing roads in the county. After giving the Board of County Commissioners an opportunity to review the programs and make recommendations, the Secondary Roads Council shall adopt the annual programs. The Board of County Commissioners may petition the Board of Transportation for consideration for changes in the annual work program not allowed by the Secondary Roads Council, and the determination of the Board of Transportation shall be final. Upon final adoption of the annual work program, the same shall be published and it shall be followed, unless changes are approved by the Secondary Roads Council and notice of any changes is given the Board of County Commissioners. The Board of County Commissioners may petition the Board of Transportation for review of any changes to which it does not consent, and the determination of the Board of Transportation shall be final. The most recent annual work programs adopted shall be submitted to the House and Senate Roads Committee and the House and Senate Appropriations Sub-Committee on Roads at the time of introduction of the 'Budget Appropriations Bill'. The Department of Transportation and Highway Safety shall make available the construction work program in each county to the newspapers having a general circulation in the county.

"§ 136-17(j). Secondary Roads, Annual Statements. — The Department of Transportation and Highway Safety shall, within three months after the close of each fiscal year, prepare and file with the Board of County Commissioners a statement setting forth (a) each secondary highway designated by number, located in the county upon which the paving or improvement was made during the fiscal year; (b) the amount expended for improvements of each such secondary highway during the fiscal year; and (c) the nature of such improvements. The Department of Transportation and Highway Safety, in its annual report, shall report on each secondary road construction project including the stage of completion and funds expended. The

pertinent portion of these reports for each county shall be made available to the Board of County Commissioners.

"§ 136-17(k). **Additions to Secondary Road System.** — The Secondary Roads Council shall adopt uniform statewide or regional standards and criteria which the Department of Transportation and Highway Safety shall follow for additions to the Secondary Road System. The standards and criteria shall be subject to approval of the Board of Transportation. These standards and criteria shall be promulgated and copies made available for free distribution.

"§ 136-17(l). **Right-of-Way Acquisitions, Preliminary Engineering Annual Report.** — The Department of Transportation and Highway Safety shall include in its annual report projects for which preliminary engineering has been performed more than two years but where there has been no right-of-way acquisition, projects where right-of-way has been acquired more than two years but construction contracts have not been let. The report shall include the year or years in which the preliminary engineering was performed and the cost incurred, the number of right-of-way acquisitions for each project, the dates of the first and last acquisition and the total expenditure for right-of-way acquisition. The report shall include the status of the construction project for which the preliminary engineering was performed or the right-of-way acquired and the reasons for delay, if any."

Sec. 4. Chapter 136 is amended by adding a new section to be numbered G.S. 136-17.2 and to read as follows:

"§ 136-17.2. **Outside Counsel.** — The Attorney General is authorized to employ outside counsel as he deems necessary for the purpose of obtaining title abstracts and title certificates for highway rights-of-way and for assistance in the trial of condemnation cases involving the acquisition of rights-of-way and other interests in land for the purpose of highway construction. Compensation, as approved by the Attorney General, shall be paid out of the appropriations from the Highway Fund."

Sec. 5. Conforming Changes:

(a) Whenever the words "North Carolina State Highway Commission", "Commission", "State Highway Commission of North Carolina", "Highway Commission", or "Highway Department", when referring to the State Highway Commission, are used or appear in any statute or law of this State except in the provisions of this act, the same shall be deleted and the words Board of Transportation shall be inserted in lieu thereof, unless otherwise provided for in this act.

(b) Except as appears in this act, whenever the words "Chairman of the Highway Commission", or "Chairman of the State Highway Commission", or "Chairman" when referring to the foregoing, are used or appear in any statute or law of this State, the same shall be deleted and the words "Chairman of the Board of Transportation" shall be inserted in lieu thereof, unless otherwise provided for in this act.

Sec. 6. G.S. 136-13 shall be rewritten to read as follows:

"§ 136-13. **Malfeasance of Officers, Employees, Members of the Secondary Roads Council, Board of Transportation, Contractors, and Others.** — (a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation and Highway Safety or member of the Secondary Roads Council or Board of Transportation, or to promise any officer, employee, or member of the Board of Transportation to give anything of value to any other person with intent:

- (1) to influence any official act of any officer or employee of the Department of Transportation and Highway Safety or member of the Secondary Roads Council or Board of Transportation;
- (2) to influence such member of the Secondary Roads Council, Board of Transportation, or any officer or employee of the Department of Transportation and Highway Safety to commit or aid in committing, or

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

- (3) to induce a member of the Secondary Roads Council, Board of Transportation, or any officer or employee of the Department of Transportation and Highway Safety to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Secondary Roads Council, Board of Transportation, or any officer or employee of the Department of Transportation and Highway Safety, directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

- (1) being influenced in his performance of any official act;
- (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and
- (3) being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a felony punishable by a fine of not more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of the thing of value, whichever is greater, or imprisonment of not more than ten years, or both such fine and imprisonment."

Sec. 7. G.S. 136-13.1 shall be rewritten to read as follows:

"§ 136-13.1 **Use of Position to Influence Elections or Political Action.** — No member of the Secondary Roads Council, Board of Transportation nor any officer or employee of the Department of Transportation and Highway Safety shall be permitted to use his position to influence elections or the political action of any person."

Sec. 8. G.S. 136-14 is amended by striking the words "Member of the Highway Commission", "Member of said Commission", or "Member of the State Highway Commission", and substituting in lieu thereof the words "Member of the Board of Transportation or Secondary Roads Council". Whenever in G.S. 136-14 the words "said Commission" or "State Highway Commission" otherwise appear, they shall be deleted and the words "the Department of Transportation and Highway Safety" shall be inserted in lieu thereof.

Sec. 9. G.S. 136-14.1 shall be rewritten to read as follows:

"§ 136-14.1. **Highway Engineering Divisions.** — For purposes of administering the highway activities, the Department of Transportation and Highway Safety shall have authority to designate boundaries of Highway Engineering Divisions for the proper administration of its duties."

Sec. 10. G.S. 136-15 shall be rewritten to read as follows:

"§ 136-15. **Establishment of Administrative Districts.** — The Department of Transportation and Highway Safety may establish such administrative districts as in their opinion shall be necessary for the proper and efficient performance of highway duties. The Department may from time to time change the number of such districts, or it may change the territory embraced within the several districts, when in its opinion it is in the interest of efficiency and economy to make such change."

Sec. 11. The words "construction fund of said Commission" shall be deleted and the words "State Highway Fund" shall be inserted in lieu thereof in paragraph 3, lines 13 and 14 of G.S. 136-19.

Sec. 12. The words "under the State Highway Commission's Seal by the Secretary of the State Highway Commission" shall be deleted and the words "by the Department of Transportation and Highway Safety" shall be inserted in lieu thereof on lines 5 and 6 of G.S. 136-19.4(a).

Sec. 13. The word "secretary" shall be deleted and the word "Department" shall be inserted in lieu thereof on line 7 of G.S. 136-19.4(a).

Sec. 14. The words "Secretary to the Commission", shall be deleted and the words "Department of Transportation and Highway Safety" shall be inserted in lieu thereof in G.S. 136-19.4(d).

Sec. 15. The words "Under Seal of the State Highway Commission" shall be deleted from G.S. 136-19.4(d), line 5.

Sec. 16. The words "State Highway Purchasing Officer" shall be deleted and the words "Secretary of Transportation" shall be inserted in lieu thereof in G.S. 136-28.1(b) and (c).

Sec. 17. The words "with the approval of the State Highway Commission" shall be deleted from line 13 of G.S. 136-29(a).

Sec. 18. The words "with the approval of the State Highway Commission" shall be deleted from lines 14 and 15 of G.S. 136-29(a).

Sec. 19. The words "State Highway Commission funds" shall be deleted from line 20 of G.S. 136-66.5(a) and the words "The State Highway Fund" shall be inserted in lieu thereof.

Sec. 20. The last sentence of G.S. 136-97 shall be deleted.

Sec. 21. The word "Commissioner" shall be deleted and the word "Department" shall be inserted in lieu thereof in paragraph 2 of G.S. 20-144, line 5.

Sec. 22. G.S. 136-4 is rewritten as follows:

"§ 136-4. State Highway Administrator. — There shall be a State Highway Administrator, who shall be a career official and who shall be the administrative officer of the Department of Transportation and Highway Safety for highway matters. The State Highway Administrator shall be appointed by the Board of Transportation and he may be removed at any time by the Board of Transportation. He shall be paid a salary fixed by the Board of Transportation subject to the approval of the Advisory Budget Commission. The State Highway Administrator shall have such powers and perform such duties as the Board of Transportation shall prescribe."

Sec. 22 1/2. Whenever the words "Chairman of the State Highway Commission" and "Chairman" appear in G.S. 136-63, in lieu thereof. Council" shall be inserted in lieu thereof. G.S. 136-63 is further amended by deleting the words "have opportunity to discuss the matter with the State Highway Commission" appearing in the next to the last sentence of the section and by inserting in lieu thereof the words "have the right to petition the Board of Transportation for review".

Sec. 23. The following sections of the General Statutes of North Carolina are hereby repealed: G.S. 136-1, G.S. 136-1.1, G.S. 136-2, G.S. 136-3, G.S. 136-4.1, G.S. 136-4.2, G.S. 136-4.3, G.S. 136-5, G.S. 136-60, and G.S. 136-61.

Sec. 23 1/2. Chapter 708 of the 1971 Session Laws is hereby amended by deleting the last two sentences in the next to the last paragraph of Page 820, beginning with the word "In" in line 31, and ending with the word and numbers "7, and XII" in line 42, and by inserting in lieu thereof the following: "In the event receipts and increments in the State Highway Fund for Fiscal Year 1972-1973 shall exceed the appropriations made for that fiscal year, such excesses shall be allocated by the Director of the Budget to the Board of Transportation in accordance with the provisions of G.S. 136-17(c).

Sec. 24. This act shall become effective July 1, 1973, provided that the requirements of Sections 136-17(c), (d), (e), (f), (h), (i), (j) and (l) shall be first implemented on January 1, 1974, for the following fiscal year.

In the General Assembly read three times and ratified, this the 15th day of May, 1973.