

Part 2. Board of Transportation.

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

(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. The Board shall carry out its duties consistent with the fiduciary responsibility to ensure the solvency of the State Highway Fund and Highway Trust Fund.

(b) Membership of the Board. –

- (1) Number, appointment. – The Board of Transportation shall have 20 voting members. Voting members shall be appointed as provided in subdivisions (2) and (3) of this subsection for terms of office beginning July 31 of the year of initial appointment, and every four years thereafter. Fourteen of the members shall be division members appointed by the Governor. Six members shall be at-large members appointed by the General Assembly, three upon recommendation of the President Pro Tempore of the Senate and three upon recommendation of the Speaker of the House of Representatives. 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 be a resident of each of the 14 highway divisions. Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent. The Governor shall appoint one member from each of the fourteen divisions as follows:
  - a. Division 1, beginning in 2020.
  - b. Division 2, beginning in 2022.
  - c. Division 3, beginning in 2020.
  - d. Division 4, beginning in 2022.
  - e. Division 5, beginning in 2022.
  - f. Division 6, beginning in 2020.
  - g. Division 7, beginning in 2022.
  - h. Division 8, beginning in 2022.
  - i. Division 9, beginning in 2020.
  - j. Division 10, beginning in 2022.
  - k. Division 11, beginning in 2022.
  - l. Division 12, beginning in 2020.
  - m. Division 13, beginning in 2022.
  - n. Division 14, beginning in 2020.
- (3) At-large members. – Six at-large members shall be appointed as follows:
  - a. Two members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, beginning in 2020.
  - b. One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, beginning in 2022.
  - c. Two members appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, beginning in 2020.

d. One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, beginning in 2022.

(c) Staggered Terms. – The terms of all Board members serving on the Board prior to July 31, 2020, shall expire on July 30, 2020. A new board of 20 voting members shall be appointed with terms beginning on July 31, 2020.

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

(e) Organization and Meetings of the Board. – Within 30 days after July 31, 2020, the Governor shall call the Board into session. The Governor shall select a chair from among the Board's membership for a two-year term. The Board shall select a vice-chair from among its membership for a two-year term. The Governor may select a chair for one additional two-year term. The Board may select a vice-chair for one additional two-year term. The Board of Transportation shall meet at least once a month at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chair or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties and Powers of the Board. – The primary duty of the Board of Transportation shall be to serve as fiduciaries of the State Highway Fund and Highway Trust Fund and ensure the solvency of those funds when carrying out the Board's duties and powers. The Board of Transportation has the following duties and powers:

- (1) To formulate policies and priorities, accountability and performance metrics for all modes, divisions, and central office of the Department of Transportation, including personnel within those divisions, and to hold those modes, divisions, and personnel accountable to those metrics.
- (1a) To review and take action on each Spend Plan developed by the Department of Transportation as required by G.S. 143C-6-11.1. An approved Spend Plan must be fiscally responsible while accomplishing transportation goals across the State.
- (1b) To ensure that the Department of Transportation is operating within the approved Spend Plan.
- (1c) To review and approve the Department's use of bonds, including for federally funded projects.
- (2) To advise the Secretary on matters to increase the performance, efficiency, and effectiveness of the day-to-day operations of the Department of Transportation.
- (3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation.

- (4) To approve a schedule of all major transportation improvement projects and their anticipated cost. This schedule is designated the Transportation Improvement Program. The Board shall publish the schedule in a format that is easily reproducible for distribution and make copies available for distribution in accordance with the process established for public records in Chapter 132 of the General Statutes.
- (4a) To approve a schedule of State highway maintenance projects and their anticipated cost. This schedule is designated the Highway Maintenance Improvement Program and is established in G.S. 136-44.3A. The Board shall publish the schedule on the Department's Web site by April 1 of each year. The document that contains the Highway Maintenance Improvement Program shall include the anticipated funding sources for the improvement projects included in the Highway Maintenance Improvement Program, a list of any changes made from the previous year's Highway Maintenance Improvement Program, and the reasons for the changes.
- (5) Repealed by Session Laws 2020-91, s. 5.1(a), effective July 31, 2020.
- (6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department.
- (7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available.
- (8) To approve all highway construction programs.
- (9) To approve all highway construction projects and construction plans for the construction of projects.
- (10) To review all statewide maintenance functions.
- (11) To award all highway construction contracts.
- (12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain.
- (12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and bridges.
- (13) Repealed by Session Laws 2010-165, s. 13, effective August 2, 2010.

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

(f2) Approval of aircraft and ferry purposes. – Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

(g) Delegation of Board Duties. – The Board of Transportation shall delegate to the Secretary of Transportation the authority under subdivisions (1) and (2) of this subsection, and may delegate the authority under subdivision (3) of this subsection:

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

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

(g1) Limitation on Board Duties. – The Board of Transportation shall not make decisions on individual contracts, projects, or personnel matters.

(h) Repealed by Session Laws 2020-91, s. 5.1(a), effective July 31, 2020.

(i) Disclosure of Contributions. – A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation on or after July 31, 2020, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor or officer recommending appointment in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection shall include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature, conducted in conjunction with the State Ethics Commission, and shall include input from the School of Government at the University of North Carolina at Chapel Hill, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

(n) Repealed by Session Laws 2020-91, s. 5.1(a), effective July 31, 2020.

(o) Additional Ethics Requirements. – Board members shall sign a sworn statement that they will abide by the disclosure, ethics, and education requirements of this section and of Chapter 138A of the General Statutes. Following the convening of each Board of Transportation meeting, and prior to the conduct of business, each Board member shall sign a sworn statement that the member has no financial, professional, or other interest in any project being considered on the meeting agenda. To the extent the Board member has such an interest, the chair and member shall take all appropriate steps to ensure that the interest is properly evaluated and addressed in accordance with law and that the member is not permitted to act on any matter in which the member has a disqualifying conflict of interest.

(p) Reports. – Notwithstanding any other provision of law, any report required to be submitted by the Board to the General Assembly or a committee thereof is due by the 15th day of the month that the report is due. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60; 1997-443, s. 32.1; 1997-495, s. 88(a); 1998-169, ss. 1, 2; 2006-201, s. 15; 2006-230, s. 1(c); 2006-264, s. 29(n); 2007-439, s. 2; 2008-180, s. 1; 2010-165, ss. 12, 13; 2012-84, ss. 1, 3; 2014-100, s. 34.11(a); 2015-241, ss. 29.12(b), 29.12(h); 2017-6, s. 3; 2017-57, s. 34.12; 2018-146, ss. 3.1(a), (b), 6.1; 2020-91, s. 5.1(a).)