

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1567

Short Title: Bd. of Transportation Improvements.

(Public)

Sponsors: Senators Blust; Ballantine, Carpenter, Cochrane, Forrester, Foxx, Garwood, Horton, Ledbetter, McDaniel, Moore, Rand, and Shaw of Guilford.

Referred to: Transportation.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ORGANIZATION AND OPERATIONS OF THE BOARD OF TRANSPORTATION.

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

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

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

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

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

22 **(1) Number: appointment; confirmation. – The Board of Transportation**
23 **shall have 19 members appointed by the Governor, subject to**
24 **confirmation by a majority vote of each house of the General Assembly.**

25 **(2) District members. – One member shall be appointed from each of the 14**
26 **highway districts. Each District member shall be a resident of the**
27 **district he or she is appointed to represent.**

28 **(3) At-large members; qualifications. – Five members shall be appointed**
29 **from the State at large. No more than two at-large members shall reside**
30 **in the same highway district. The at-large members shall possess the**
31 **following qualifications:**

32 **a. One at-large member shall be a professional engineer;**

33 **b. One at-large member shall be a land-use planner;**

34 **c. One at-large member shall be a scientist familiar with**
35 **environmental issues affecting water, air, and soil;**

36 **d. One at-large member shall have experience as a public**
37 **transportation professional or experience in and knowledge of the**
38 **railroad industry; and,**

39 **f. One at-large member shall be a certified public accountant with**
40 **background in governmental accounting.**

41 **(4) Partisan representation. – Six members of the Board shall be registered**
42 **voters of a political party other than the political party of the Governor.**

1 (c) Staggered Terms. – The terms of all members serving on the Board prior to
2 January 15, 1999, shall expire on that date. The terms of seven of the district members
3 and three of the at-large members specified in this section shall initially be for two years
4 beginning January 15, 1999, and for four years thereafter. The terms of the other seven
5 of the district members, and the other two of the at-large members specified in this
6 section shall be for four years beginning January 15, 1999.

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

9 (e) Vacancies. – The Governor may fill a vacancy on the Board by appointing an
10 interim member of the Board to complete the unexpired term of a member. If the interim
11 appointment is made at a time when the General Assembly is not in regular session, the
12 appointment must be confirmed by the General Assembly within 30 calendar days of the
13 convening of the next regular session, or the term of the interim member shall expire on
14 that date. If the interim appointment is made when the General Assembly is in regular
15 session, the appointment must be confirmed prior to the adjournment of the regular
16 session, or the term of the interim member shall expire upon adjournment.

17 (e1) Removal. – The Governor may remove any member of the Board for any cause
18 the Governor finds sufficient.

19 (e2) Organization and Meetings of the Board. – Within 60 days after January 15,
20 1999, and thereafter within 60 days following the beginning of the regular term of the
21 Governor, the Governor or his designee shall call the Board into session. The Board shall
22 then select a chair and vice-chair from among its membership. The Board of
23 Transportation shall meet once in each 60 days at such regular meeting times as the
24 Board may by rule provide and at any place in the State as the Board may provide. The
25 Board may hold special meetings at any time at the call of the chairman or any three
26 members. The Board shall have the power to adopt and enforce rules and regulations for
27 the government of its business and proceedings. The Board shall keep minutes of its
28 meetings, which shall at all times be open to public inspection. The majority of the Board
29 shall constitute a quorum for the transaction of business. Board members shall receive per
30 diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and
31 G.S. 138-6, as appropriate.

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

33 (1) To formulate policies and priorities for all modes of transportation
34 under the Department of Transportation;

35 (2) To advise the Secretary on matters to achieve the maximum public
36 benefit in the performance of the functions assigned to the Department;

37 (3) To ascertain the transportation needs and the alternative means to
38 provide for these needs through an integrated system of transportation
39 taking into consideration the social, economic and environmental
40 impacts of the various alternatives.

41 (4) To approve a schedule of all major transportation improvement projects
42 and their anticipated cost for a period of seven years into the future.
43 This schedule is designated the Transportation Improvement Program; it

1 must be published and copies must be available for distribution. The
2 document that contains the Transportation Improvement Program, or a
3 separate document that is published at the same time as the
4 Transportation Improvement Program, must include the anticipated
5 funding sources for the improvement projects included in the Program, a
6 list of any changes made from the previous year's Program, and the
7 reasons for the changes;

8 (5) To consider and advise the Secretary of Transportation upon any other
9 transportation matter that the Secretary may refer to it;

10 (6) To assist the Secretary of Transportation in the performance of his
11 duties in the development of programs and approve priorities for
12 programs within the Department;

13 (7) To allocate all highway construction and maintenance funds
14 appropriated by the General Assembly as well as federal-aid funds
15 which may be available;

16 (8) To approve all highway construction programs;

17 (9) To approve all highway construction projects and construction plans for
18 the construction of projects;

19 (10) To review all statewide maintenance functions;

20 (11) To award all highway construction contracts;

21 (12) To authorize the acquisition of rights-of-way for highway improvement
22 projects, including the authorization for acquisition of property by
23 eminent domain;

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

26 (14) To hire a Transportation Board staff executive director and appropriate
27 additional staff to advise the Board on planning, engineering,
28 construction, and legal matters.

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

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

35 (1) To approve all highway construction projects and construction plans for
36 the construction of projects;

37 (2) To award all highway construction contracts;

38 (3) To promulgate rules, regulations, and ordinances concerning all
39 transportation functions assigned to the Department.

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

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

1 (i) Limitations on Political Contributions by Board Members; Disclosure. – No
2 person shall be eligible for appointment to the Board of Transportation if the nominee, or
3 any of the nominee's immediate family members, made a contribution to the political
4 campaign of the appointing Governor in the two years preceding the date of nomination.
5 Any person nominated for a seat on the Board of Transportation shall publicly disclose in
6 writing under oath all real estate holdings and any transportation-related business
7 interests prior to confirmation and appointment to the Board. Disclosure forms shall be
8 filed with the Board of Ethics. Board nominees and members of the Board of
9 Transportation are prohibited from making any contribution to the political campaign of
10 the Governor, any candidate for Governor, any member of the General Assembly, or any
11 candidate for the General Assembly, during the pendency of their nomination, and during
12 the time they serve on the Board.

13 (j) Board Ethics Policy. – The Board shall adopt a comprehensive ethics policy
14 governing actions by Board members. The Board Chair shall ensure that Board members
15 receive training on the ethics policy and related State laws and policies at least once a
16 year."

17 Section 2. G.S. 136-13 reads as rewritten:

18 **"§ 136-13. Malfeasance of officers and employees of Department of Transportation,**
19 **members of Board of Transportation, contractors, and others.**

20 (a) It is unlawful for any person, firm, or corporation to directly or indirectly
21 corruptly give, offer, or promise anything of value to any officer or employee of the
22 Department of Transportation or member of the Board of Transportation, or to promise
23 any officer or employee of the Department of Transportation or any member of the Board
24 of Transportation to give anything of value to any other person with intent:

- 25 (1) To influence any official act of any officer or employee of the
26 Department of Transportation or member of the Board of
27 Transportation;
- 28 (2) To influence such member of the Board of Transportation, or any
29 officer or employee of the Department of Transportation to commit or
30 aid in committing, or collude in, or allow, any fraud, or to make
31 opportunity for the commission of any fraud on the State of North
32 Carolina; and
- 33 (3) To induce a member of the Board of Transportation, or any officer or
34 employee of the Department of Transportation to do or omit to do any
35 act in violation of his lawful duty.

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

- 40 (1) Being influenced in his performance of any official act;
- 41 (2) Being influenced to commit or aid in committing, or to collude in, or
42 allow, any fraud, or to make opportunity for the commission of any
43 fraud on the State of North Carolina; and

1 (3) Being induced to do or omit to do any act in violation of his official
2 duty.

3 **(b1) If a member of the Board of Transportation would benefit from a proposed**
4 **project of the Department of Transportation, and the benefit is greater than that which**
5 **would be realized by other persons living in the area where the road is located, then not**
6 **only shall that member abstain from voting on such issue, but once the conflict of interest**
7 **is apparent, the member may not discuss the project with any other Board member or any**
8 **officer or employee of the Department except to state that a conflict of interest exists.**

9 This subsection also applies where the benefit is to be realized by an immediate
10 family member or a business in which the member is a partner, officer or director, or
11 owns more than ten percent (10%) of any class of stock.

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

16 Section 3. There is appropriated from the Highway Fund to the Department of
17 Transportation the sum of one million five hundred thousand dollars (\$1,500,000) for the
18 fiscal year 1998-99 for use by the Board of Transportation to hire appropriate staff to
19 carry out the provisions of this act.

20 Section 4. This act becomes effective July 1, 1998.