

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 334

Short Title: Department of Transportation Reforms. (Public)

Sponsors: Senators Berger of Rockingham; and Allran.

Referred to: Commerce.

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE BOARD OF TRANSPORTATION MEMBERS TO SIGN SWORN STATEMENTS OF INTEREST AT EVERY BOARD MEETING, TO TRANSFER CERTAIN POWERS OF THE BOARD OF TRANSPORTATION TO THE DEPARTMENT OF TRANSPORTATION, AND TO REQUIRE THE SECRETARY OF TRANSPORTATION TO DEVELOP AND IMPLEMENT A PROFESSIONAL APPROVAL PROCESS TO BE USED TO APPROVE ALL TRANSPORTATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-350(e) reads as rewritten:

"(e) Organization and Meetings of the Board. – Within 60 days after January 15, 2001, and thereafter within 60 days following the beginning of the regular term of the Governor, the Governor or his designee shall call the Board into session. The Board shall select a chair and vice-chair from among its membership for two-year terms. The Board may select a chair or vice-chair for one additional two-year term. The Board of Transportation shall meet once in each 60 days 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 chairman 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. In addition to the disclosure statements and ethical requirements of this section, every Board member present at every meeting of the Board, having been duly convened, shall sign a sworn statement detailing the extent to which the member has any financial, professional, or other interest in any project being considered by the Board and upon which the member intends to comment, debate, or cast a vote, as required by subsection (k) of this section. Disclosure of a professional, financial, or other interest in a project does not prohibit the participation by a member in any debate or vote so long as the provisions of subsection (k) of this section are complied with. 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."

SECTION 2. G.S. 143B-350(f) reads as rewritten:

"(f) Duties of the Board. – The Board of Transportation has the following duties and powers:

- (1) To formulate policies and priorities for all modes of transportation under the Department of Transportation.
- (2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department.



- 1 (3) To ascertain the transportation needs and the alternative means to provide
2 for these needs through an integrated system of transportation taking into
3 consideration the social, economic and environmental impacts of the various
4 alternatives.
- 5 (4) ~~To approve a schedule of all major transportation improvement projects and
6 their anticipated cost for a period of seven years into the future. This
7 schedule is designated the Transportation Improvement Program; it must be
8 published and copies must be available for distribution. The document that
9 contains the Transportation Improvement Program, or a separate document
10 that is published at the same time as the Transportation Improvement
11 Program, must include the anticipated funding sources for the improvement
12 projects included in the Program, a list of any changes made from the
13 previous year's Program, and the reasons for the changes.~~
- 14 (5) To consider and advise the Secretary of Transportation upon any other
15 transportation matter that the Secretary may refer to it.
- 16 (6) To assist the Secretary of Transportation in the performance of his duties in
17 the development of programs and approve priorities for programs within the
18 Department.
- 19 (7) To allocate all highway construction and maintenance funds appropriated by
20 the General Assembly as well as federal-aid funds which may be available.
- 21 ~~(8) To approve all highway construction programs.~~
- 22 ~~(9) To approve all highway construction projects and construction plans for the
23 construction of projects.~~
- 24 (10) To review all statewide maintenance functions.
- 25 ~~(11) To award all highway construction contracts.~~
- 26 ~~(12) To authorize the acquisition of rights of way for highway improvement
27 projects, including the authorization for acquisition of property by eminent
28 domain.~~
- 29 (12a) To approve partnership agreements with the North Carolina Turnpike
30 Authority, private entities, and authorized political subdivisions to finance,
31 by tolls, contracts, and other financing methods authorized by law, the cost
32 of acquiring, constructing, equipping, maintaining, and operating
33 transportation infrastructure in this State, with priority given to highways,
34 roads, streets, and bridges.
- 35 ~~(13) To promulgate rules, regulations, and ordinances concerning all
36 transportation functions assigned to the Department."~~

37 **SECTION 3.** G.S. 143B-350(g) is repealed.

38 **SECTION 4.** G.S. 143B-350(k) reads as rewritten:

39 "(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics
40 applicable to members of the Board, including the Secretary. Any code of ethics adopted by the
41 Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code
42 of ethics adopted pursuant to this subsection shall include a prohibition against a member
43 taking action as a Board member when a conflict of interest, or the appearance of a conflict of
44 interest, exists. To avoid a conflict or the appearance of a conflict of interest, every Board
45 member present at every meeting of the Board, having been duly convened, shall sign a sworn
46 statement detailing the extent to which the member has any financial, professional, or other
47 interest in any project being considered by the Board and upon which the member intends to
48 comment, debate, or cast a vote during the meeting. Disclosure of a professional, financial, or
49 other interest in a project does not prohibit the participation by a member in any debate or vote
50 so long as the provisions of this subsection regarding disclosure and recusal are complied with.
51 The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest

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

15 **SECTION 5.** G.S. 136-18(1) reads as rewritten:

16 "(1) The approval and general supervision over all matters relating to the
17 construction of the State highways,highways. This includes, but is not
18 limited to, the approval of all highway construction programs, highway
19 construction projects, construction plans for construction projects, the award
20 and letting of contracts therefor, and the selection of materials to be used in
21 the construction of State highways under the authority of this Chapter."

22 **SECTION 6.** G.S. 136-18 is amended by adding a new subdivision to read:

23 "(1a) To approve a schedule of all major transportation improvement projects and
24 their anticipated cost for a period of seven years into the future. This
25 schedule is designated the Transportation Improvement Program; it must be
26 published and copies must be available for distribution. The document that
27 contains the Transportation Improvement Program, or a separate document
28 that is published at the same time as the Transportation Improvement
29 Program, must include the anticipated funding sources for the improvement
30 projects included in the Program, a list of any changes made from the
31 previous year's Program, and the reasons for the changes."

32 **SECTION 7.** G.S. 136-18 is amended by adding a new subdivision to read:

33 "(4a) To promulgate rules, regulations, and ordinances concerning all
34 transportation functions assigned to the Department."

35 **SECTION 8.** G.S. 136-18(16) reads as rewritten:

36 "(16) The Department of ~~Transportation, pursuant to a resolution of the Board of~~
37 ~~Transportation,Transportation~~ shall have authority, under the power of
38 eminent domain and under the same procedure as provided for the
39 acquirement of rights-of-way, to acquire title in fee simple to parcels of land
40 for the purpose of exchanging the same for other real property to be used for
41 the establishment of rights-of-way or for the widening of existing
42 rights-of-way or the clearing of obstructions that, in the opinion of the
43 Department of Transportation, constitute dangerous hazards at intersections.
44 Real property may be acquired for such purposes only when the owner of the
45 property needed by the Department of Transportation has agreed in writing
46 to accept the property so acquired in exchange for that to be used by the
47 Department of Transportation, and when, in the opinion of the Department
48 of Transportation, an economy in the expenditure of public funds and the
49 improvement and convenience and safety of the highway can be effected
50 thereby."

1 **SECTION 9.** The Secretary of Transportation shall develop and implement an
2 approval process for all matters related to highway construction and maintenance. The overall
3 approval process shall include a process for assessing highway construction and maintenance
4 needs based on established and measurable criteria and shall include criteria for prioritization
5 of projects within programs based on short- and long-term cost savings. The approval process
6 shall be fair and impartial and based solely on the selected criteria without regard for location
7 or value of the project. The Secretary of Transportation shall report on the plan and its
8 implementation to the Joint Legislative Transportation Oversight Committee, the House and
9 Senate Appropriations Subcommittees on Transportation, and the Fiscal Research Division of
10 the General Assembly, no later than January 1, 2010. The Secretary shall include in his report
11 any recommended changes in legislation that will effectuate the approval process.

12 **SECTION 10.** This act is effective when it becomes law.