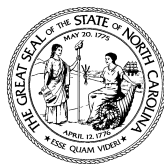




**NORTH CAROLINA  
BOARD OF TRANSPORTATION  
STUDY**

**CONDUCTED BY KPMG PEAT MARWICK LLP  
IN ASSOCIATION WITH MGT OF AMERICA, INC.  
(UNDER CONTRACT TO THE NORTH CAROLINA STATE AUDITOR'S  
OFFICE)**



APRIL 1998



**Peat Marwick LLP**

150 Fayetteville Street Mall  
Suite 1200  
Post Office Box 29543  
Raleigh, NC 27626-0543

April 15, 1998

Mr. Ralph Campbell, Jr.  
State Auditor of North Carolina  
Office of the State Auditor  
300 North Salisbury Street  
Raleigh, North Carolina 27603

Dear Mr. Campbell,

This report presents the results of our performance audit of the North Carolina Board of Transportation. The audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

## **PURPOSE**

The State Auditor has undertaken a comprehensive performance audit of the Board of Transportation. Specific objectives of this performance audit were to:

- Review Board composition, membership requirements and function
- Review the Board's ethics policy
- Analyze the role of members in selecting projects to be included in the Transportation Improvement Program
- Analyze members' use of discretionary funding
- Analyze the relationship of the Board and the Department's staff in the decision-making process
- Recommend strategies for change

## **BACKGROUND**

The Board is the governing body of the Department of Transportation (NCDOT). It is responsible for formulating policies and priorities for all modes of transportation under the Department, including allocating transportation funding, prioritizing and approving Transportation Improvement Program projects, awarding construction contracts and promulgating related rules and regulations. It consists of 26 members, including the Secretary of Transportation, who serves as Chairman.



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The Board has been in the front pages of the news for months, charged with mixing political influence and State highway decisions. Recently, Governor James B. Hunt Jr. and the new Secretary, Norris Tolson, have implemented some changes regarding ethics policies and DOT organization and personnel. The Senate Select Committee on Transportation Board and Commissions Reform and the Joint Transportation Oversight Committee are considering further changes to the Board.

## **RESULTS IN BRIEF**

North Carolina's Board shares similarities with boards in other states: it has some members appointed by the Governor, a small staff, and now requires members to complete annual financial disclosure forms. However, the NCDOT Board differs from its peers in some significant ways. With 26 members, it is the largest transportation board in the nation (the next largest is Virginia's, with 16 members) and is one of the few without a confirmation process for gubernatorial appointments. It is also unusual in requiring the Secretary to serve as chair, having a large number of standing committees, and having discretionary funding for transportation projects.

There are several factors supporting the need for a Board: strong consensus among stakeholders about its importance; the large size of NCDOT; the responsibility for managing local roads; the potential to provide an alternative, outside perspective; and the need for another source of citizen input. However, the Board's current statutory roles are conflicting in terms of representing statewide interests versus those of specific Highway Division interests. It is too focused on project-specific issues, and not focused enough on strategic policy and oversight roles. Furthermore, the availability of highway discretionary funds for use by members creates the perception of political influence in project priorities.

The current structure and composition of the Board are not well suited to fulfilling its responsibilities. It is too large to effectively carry out its duties, the appointment process does not necessarily include the appropriate checks and balances, and there are minimal skill/experience requirements for membership. These factors contribute to the widespread perception that appointments to the Board are based on political contributions.

## **RECOMMENDATIONS**

North Carolina should have a Board to help assure that DOT is managing and delivering services effectively and efficiently. The North Carolina General Statutes outlining the Board's responsibilities should be revised, however, to emphasize its policy and oversight roles. The Board should continue to approve the State's Transportation Improvement Program and make sure that there are adequate criteria for prioritizing project selection. In the same vein, the General Assembly should eliminate the current discretionary funding and create a \$24 million Small Project Fund in the Department.

The Board should be reduced to 13 members, including seven regional members and six at-large members, with the Secretary of Transportation serving in an ex-officio capacity. The members should elect the Chair and Vice-Chair biannually. Members' terms should be staggered.

All Board members should be appointed by the Governor and confirmed by the General Assembly. Credible, objective criteria for selecting members should be established, including particular skill/experience requirements for a number of slots. To further enhance the Board's effectiveness, all members should receive an early and thorough orientation on Board roles and responsibilities.

## **CONCLUSION**

The Board of Transportation can play a pivotal role in balancing the State's diverse transportation requirements and injecting public input into the process. Fulfilling this role will require a strong commitment—not just from Board members, but the General Assembly, Governor, Secretary of Transportation, local officials, business executives and the public—to a different kind of Board.

KPMG Peat Marwick, LLP

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# NORTH CAROLINA BOARD OF TRANSPORTATION STUDY

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# 1. INTRODUCTION/EXECUTIVE SUMMARY

The North Carolina Board of Transportation has been in the front pages of the news for months, charged with mixing political influence and State highway decisions.

In the heat of current emotion and rhetoric, it is easy to take accusations at face value and point fingers of blame—without full assessment of the facts. It is far more difficult to remain objective, independent and focused on the future. That’s why State Auditor Ralph Campbell and former Secretary of Transportation Garland Garrett called for performance reviews of the Board of Transportation (BOT) and Department of Transportation (DOT), and brought in outside consultants to conduct the work.

Professionals from KPMG Peat Marwick LLP and MGT of America, Inc. have spent the last two months assessing the Board and considering strategies to help the State and its Department of Transportation move forward. We respectfully submit this report outlining our findings and recommendations to the State Auditor, Governor, General Assembly, Secretary of Transportation and people of North Carolina.

## BACKGROUND

The problems that have surfaced in recent months are not new, North Carolina political leaders and observers agree. In fact, they have been a concern for decades:

- In the late 1950s, Governor Luther Hodges attempted to strip some of the politics out of road-building decisions by streamlining the Highway Commission (the Board’s predecessor) to seven members.
- In 1977, Governor James B. Hunt Jr. challenged the Board of Transportation to restore public confidence, saying: “For too long, the words highways and politics have been virtually synonymous.”
- In 1989, Secretary of Transportation James Harrington reported that, “The history of State highway programs reflects the central and growing role of political involvement in highway location and construction projects.”
- In 1992, the Institute for Southern Studies Report found a close correlation between appointments to the Board and campaign contributions.

What is new, however, is the environment in which the Board is operating.

**Rapid growth.** The forces of growth are redefining North Carolina’s cities, towns and rural areas—and outstripping the State’s ability to keep up. Meanwhile, the importance of the physical movement of people, products and services continues to grow, raising the stakes for new and improved roads and public transportation.

**Public satisfaction.** The Highway Trust Fund, established in 1989, allocates funding for construction projects—not maintenance. Recent news accounts have expressed concern that highway maintenance has been deferred and is taking a toll on the State’s roads.

**Increased scrutiny.** The Board is subject to closer scrutiny by the media and public policy groups today, including a much closer examination of how tax dollars are spent, who finances political campaigns and what contributors get for their donations. Two of the State’s major newspapers have assigned teams of reporters to cover the story. Also, organizations representing the entire political spectrum—the John Locke Foundation, Democracy South, North Carolina Alliance for Transportation and the North Carolina Alliance for Democracy—released a joint letter calling for major reforms in the Board and DOT.

It is clear to everyone that the old way of doing business must come to an end. State legislators, policy groups, academicians and other concerned citizens have proposed various solutions, such as:

- Abolish the Board altogether
- Reduce the number of members
- Reserve slots for people with expertise in specific areas related to transportation
- Assure that members do not represent specific DOT Divisions
- Require gubernatorial appointments to be approved by the General Assembly
- Limit the Board’s role to setting broad funding allocations, not selecting individual projects
- Make the Board more diverse
- Restrict members’ contributions to political campaigns

In fact, the State’s leaders have already taken action. Governor Hunt signed Executive Order #127 to prevent potential conflicts of interest by members appointed to State regulatory boards and commissions. The Order requires more detailed statements from gubernatorial appointees and bolsters the authority of the State Board of Ethics.

The Governor has also appointed a new Secretary, Norris Tolson, with the authority to implement a “dramatic overhaul” of DOT. Secretary Tolson has quickly made significant structural and personnel changes, signaling a new approach to transportation decisions. Meanwhile, the Joint Legislative Transportation Oversight Committee and the Senate Select Committee on Transportation Board and Commissions Reform are studying options for consideration in the next legislative session.



To provide an objective basis for analysis and further action, the State Auditor and Department of Transportation agreed that the State Auditor would manage a performance review of the Board of Transportation. Through the State procurement process, KPMG was selected to conduct the study. MGT of America, Inc. served as a subcontractor to KPMG.

## OBJECTIVES AND METHODOLOGY

The Request for Proposals called for a comprehensive performance review of the Board of Transportation—within an aggressive timetable. Specifically, the Project Team was asked to:

- Review the composition, membership requirements and function of the Board
- Review the Board’s ethics policy
- Analyze the role of Board members in selecting projects to be included in the Transportation Improvement Program
- Analyze Board members’ use of discretionary funding
- Analyze the relationship of the Board and the Department’s staff in the decision-making process
- Recommend strategies for change, including how such changes could be implemented

Toward that end, we spent the last two months assessing the current organization and practices of the Board, considering alternatives and developing the recommendations explained in the following pages. The audit was performed in accordance with Government Accounting Standards, issued by the Comptroller General of the United States. Activities included:

**Reviewing data.** The Project Team collected and reviewed information pertinent to the Board of Transportation and, as necessary, the Department of Transportation. These materials included organizational charts, planning and budget documents, administrative procedures, news articles and all available plans for proposed changes in the Board.

**Conducting interviews and focus groups.** We gained valuable insight and perspectives from interviews with Board members, former DOT Secretaries, members of the State Board of Ethics, legislators, leaders of policy groups and academicians. In addition, the team conducted focus group meetings with the Board’s ethics committee, Metropolitan Planning Organizations (MPOs) and other stakeholders.

**Comparing North Carolina to other states.** We reviewed published national data on state transportation boards and interviewed knowledgeable representatives from other states to form a basis for comparison of the Board’s structure, composition, governance and ethics policies. The states surveyed—Delaware, Florida, Iowa, Massachusetts, Ohio, South Carolina, Texas and Virginia—represent a wide range of approaches.

**Researching “desirable practices” in board governance.** The team extended its analysis beyond the governance of transportation, to consider model parameters and desirable practices of board governance and operation in the private sector, non-profit organizations and other public sector programs.

Based on this information, we considered various alternatives to the Board’s current organization, structure and policies—and identified the best mechanisms for moving forward.

## COMPARATIVE OVERVIEW

Every county, community, business and resident in the state is touched by the decisions made by the Department of Transportation. Naturally, there is great interest in what projects get built, when and where they are built, and who builds them.

Providing the necessary infrastructure is an extremely complex task, however, involving many variables, billions of dollars and increasingly high stakes. To oversee this process, the General Assembly established the Board of Transportation. The Board is the governing body of DOT, responsible by law for formulating “policies and priorities for all modes of transportation.” It is a huge task, including allocating transportation funding, prioritizing and approving Transportation Improvement Program projects, awarding construction contracts and promulgating related rules and regulations.

DOT’s Board has gone through many changes since its creation as the Highway Commission in 1915. It is now composed of 26 members. Of these, 22 members are appointed by the Governor (including the Secretary of Transportation), two are appointed by the President Pro Tempore of the Senate and two by the Speaker of the House of Representatives. Fourteen members must represent the State’s highway divisions, one member is the Chair of the North Carolina Rail Commission, one member must be knowledgeable about public transportation, and one member must represent the minority party. The Secretary serves as Chair.

How does the DOT Board compare to the rest of the nation? Our comparative analysis showed that 24 states have a board that controls major department functions, seven states have policy/advisory boards, and 19 states have no transportation board. Nationally, the average number of board members is between eight and nine. In 29 states, some or all board members are appointed by the Governor; 23 of these states require legislative confirmation of gubernatorial appointments.

The Project Team conducted a more detailed assessment of eight states—Delaware, Florida, Iowa, Massachusetts, Ohio, South Carolina, Texas and Virginia— representing larger DOTs and a wide range of approaches. We found that the North Carolina DOT shares similarities with its peers, but differs in several significant ways:

**Board representation.** North Carolina's Board of Transportation is the largest in the nation; it has far more district representatives than the eight peer states and more at-large representatives than its peers.

**Appointment process.** Of the 29 states where some or all Board members are appointed by the Governor, 23 require legislative confirmation. North Carolina does not have a confirmation process for gubernatorial appointees.

**Discretionary funds.** The DOT Board and Secretary have discretionary funds available: the Board has \$14 million in the Small Urban Project Fund and the Secretary has \$10 million in discretionary funding. Eight states were surveyed in detail concerning their transportation governance. Six of the eight states have transportation boards. Five of the six states with transportation boards do not have discretionary money to fund projects.

**Board chair.** Only two other boards in our study—Massachusetts and Virginia—require the Secretary of Transportation to serve as chair; the others either elect the chair or have the Governor appoint a chair.

**Committee structure.** North Carolina's Board has more standing committees (seven) than any of its peer states. In fact, only two other states—South Carolina and Virginia—have standing committees at all.

The Project Team also studied the ethics policies and programs that govern the Board. This included reviewing Executive Orders of the Governor, as well as policies and practices of the State Board of Ethics and BOT's ethics subcommittee. We then compared the State to model practices that define an effective ethics program.

Our assessment was conducted during a time of change in the ethical policies of the State and the Board. The Governor led the statewide effort by issuing Executive Order #127 in January 1998, designed to alter the appointment process to minimize conflicts of interest by all board members and exempt employees. Historically, there have been few clear, consistent ethics policies, but the BOT is now working on updating its policies and training program.

## FINDINGS AND RECOMMENDATIONS

The Project Team gathered a wealth of information about the North Carolina DOT Board, other transportation boards, overall desirable practices in board operation and ethics policies. Based on our analysis of this information, we developed the key findings and recommendations outlined in the remainder of this report. Our conclusions are highlighted here to provide a high level summary.

**Exhibit 1-1: Summary of Findings and Recommendations**

<b>Findings</b>	<b>Recommendations</b>	<b>pp.</b>
Roles of Board, as statutorially defined, are inherently conflicting	Revise NC General Statutes to emphasize the Board's oversight role and to eliminate conflicting language	4.5
Board is too focused on project-specific prioritization and contract approvals, and inadequately focused on strategic, policy and DOT oversight roles	Annually approve the overall Transportation Improvement Program and periodically review the adequacy of DOT priority setting processes used in preparing the TIP Establish a dollar threshold for BOT construction contract approval	4.6
Unlike many public boards, the Board of Transportation is required to have the Secretary serve as Chair	Have the Board elect a Chair and Vice-Chair who work in partnership with the DOT Secretary Require the Secretary to serve as an ex-officio Board member and to assist the Board leadership and members as necessary	4.7
Availability of highway discretionary funds promotes the perceived politicization of project priorities and encourages direct Board and General Assembly involvement in project-level decision making	Eliminate discretionary funding programs and create a \$24 million Small Project Fund that allocates funding based on a documented priority-setting process	4.10
Board is too large to effectively perform statutory and proposed responsibilities	Reduce Board size to 13 members (not counting the Secretary who would serve as an ex-officio member) Create a Board of 7 regional and 6 at-large members	4.11
Unlike most states, North Carolina's General Assembly appoints members to the Board of Transportation Unlike most transportation boards throughout the country, NCBOT appointments are not confirmed	Have all Board members appointed by the Governor and confirmed by the General Assembly	4.13
There is a widespread perception that Board appointments are based on political considerations	Appoint individuals dedicated to North Carolina transportation issues to serve on the BOT	4.14
There are minimal skill/experience requirements for Board membership	Establish diverse skill/experience requirements for Board members	4.15
Board terms are not staggered, which diminishes continuity of membership	Stagger Board membership terms	4.16
BOT does not receive adequate management information and reports	BOT should receive monthly management reports to aid in oversight responsibilities	4.16
New Board members are not adequately oriented on the role of the Board	Ensure that Board members are oriented properly on their duties, responsibilities and powers	4.17
The Board's one staff person is sufficient	Maintain the current Board staff level	4.18
The current code of ethics for the Board has several important weaknesses	Board's ethics subcommittee should develop and periodically review a BOT-specific code of ethics	5.6
The State Board of Ethics is limited in its ability to prevent, detect and respond to misconduct Several State agencies develop ethical rules and	Enable individuals to report misconduct confidentially, anonymously and without fear of retribution Consider providing a uniform code of conduct	5.8

policies that impact the Board of Transportation	Consider ways to improve ethics oversight statewide	
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**NEXT STEPS**

Transportation is a study in conflict. On the one hand, people want good roads; on the other hand, no one wants a project in his backyard. Most citizens recognize the need for mass transit, yet there is often a reluctance to make the necessary investments and use public transportation. Decision-makers know that the State must look far into the future when planning its infrastructure, but the natural tendency is to address immediate needs.

The Board of Transportation can play a pivotal role in balancing these diverse requirements and injecting public input into the process. Getting there, however, will require a strong commitment—not just from Board members, but the General Assembly, Governor, Secretary of Transportation, local officials, business executives and the public—for a different kind of Board.

The new Board of Transportation, as proposed in these pages, will focus on issues of statewide concern, actively pursuing its oversight role, rather than becoming involved in project-specific decision making. Its decisions and actions will serve the interest of the entire State and restore the public's confidence.

Responsibility for this profound shift starts at the top. The General Assembly and Governor must work together to create a climate of change. The Secretary must work as a partner with the Board, keeping members informed and involved in policy decisions. Finally, the Board must restructure itself—in terms of organization, structure, agenda and responsibilities—according to its new charge.

When all these pieces come together, the Board of Transportation will truly serve the people of North Carolina. And that is what this report is all about.

## 2. OVERVIEW OF NCDOT BOARD

### OVERVIEW

The Board of Transportation (BOT) is charged with significant powers and responsibilities. As the governing body of the North Carolina Department of Transportation (DOT), it is responsible by law for formulating “policies and priorities for all modes of transportation” under the Department. That includes:

- Allocating transportation funding
- Prioritizing and approving Transportation Improvement Program projects
- Awarding construction contracts
- Promulgating related rules and regulations

When you consider the sheer size of the Department—an annual budget of \$2.4 billion and over 13,000 employees—you get an idea of the challenge facing the Board. In fact, North Carolina’s DOT maintains the nation’s second largest highway system with over 78,000 miles throughout a geographically diverse State.

Adding to the complexity, the Department is one of few in the nation that manages both state and local roads. Its activities involve highly technical issues in diverse areas: planning, design, construction, bridges, mass transit, rail, aviation, and maintenance.

To understand the Board’s role, then, it is necessary to understand something about the Department, as well as the basics of the Board itself. This chapter presents that overview.

### TRANSPORTATION IN NORTH CAROLINA

North Carolina’s transportation system is exceptional in that the Department of Transportation (DOT) manages both State and local roads. In addition, the State is responsible for overseeing a sizable network of airports, seaports, trains and mass transit systems.

This system is North Carolina’s link to the rest of the nation and the world. It has helped build the State’s robust economy by carrying a growing volume of traffic, making markets accessible to industry and stimulating new development. It is also a key element in the growth and quality of life here.

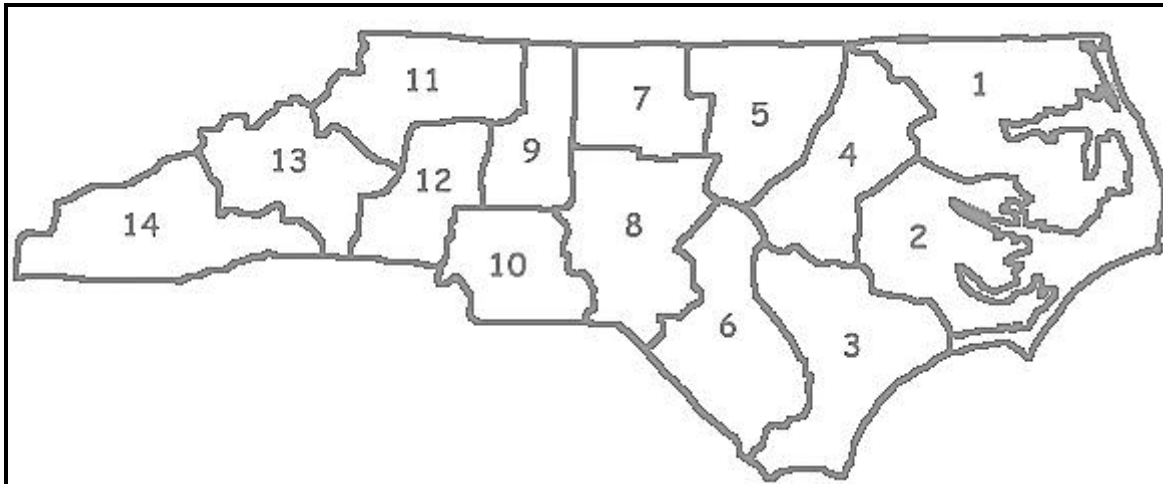
DOT is responsible for managing the planning, construction, maintenance and operation of this vast, diverse transportation system. To fulfill this mandate, it employs 13,000 employees and manages a \$2.4 billion annual budget. The budget—which includes General Fund money, federal funds and revenues from gasoline taxes, licenses fees and other taxes—is among the largest and most complex in State government.

The Department's activities involve highly technical issues in diverse areas. Specific responsibilities include:

- Planning for the State's long-range transportation needs
- Developing the State Transportation Improvement Program, which sets priorities for the next seven years
- Providing opportunities for public input into the decision-making process
- Evaluating the social, economic and environmental impact of transportation projects
- Designing and managing construction of new highways and bridges
- Maintaining over 78,000 miles of roadways and 17,000 bridges
- Developing and managing the State's plan for public transportation, rail, ferries, bicycle transportation and aviation

To balance statewide transportation priorities, the State is divided into 14 Highway Divisions, which serve as regional centers representing the State's 100 counties.

#### **Exhibit 2-1: North Carolina's 14 Highway Divisions**



The diversity of North Carolina's regions and their transportation needs create challenges to the State and the DOT. And as the State becomes more urbanized, these issues will only become more complex and important.

#### **HISTORY OF THE BOARD**

North Carolina first established a state Highway Commission in 1915, at the beginning of the automobile age. The Commission, made up of the Governor and six members, was charged with employing a State highway engineer to provide technical assistance to county road-building efforts.

Since then, the Highway Commission—now the Board of Transportation—has gone through many changes:

- **1921:** The General Assembly grants the Commission road building responsibilities, transferring control of 5,500 miles of county roads and expanding the Board to nine members and a chairman, all appointed by the Governor and subject to confirmation by the Senate.
- **1931:** In the middle of the Depression, the legislature includes the remaining county roads in the State system, establishing highway construction as a State responsibility and reducing the Board to seven members.
- **1933:** The Commission is merged into the State Highway and Public Works Commission; Senate confirmation of members is eliminated.
- **1937:** The Commission is expanded to 10 members, selected from 10 districts, plus a chairman.
- **1953:** The Governor is authorized to expand the number of Highway Divisions—and Board members—up to 15.
- **1957:** The Commission is abolished and a new State Highway Commission established, consisting of seven members from different areas of the State.
- **1961:** A new State Highway Commission is created, with a chairman and 18 members.
- **1973:** The existing Commission is replaced by a 12-member Board of Transportation, including a chairman and nine members appointed by the Governor and three members of the General Assembly.
- **1977:** The Board is expanded to 23 members and a chairman, with 21 members appointed by the Governor (14 representing the Divisions and seven at-large); two legislators appointed by the General Assembly; and the Secretary of Transportation designated as chairman.
- **1982:** Legislative members are removed from the Board and replaced with members appointed by the General Assembly.
- **1993:** One at-large Board member is eliminated and replaced by the Chairman of the North Carolina Rail Council; at least one at-large member must possess broad public transit knowledge.
- **1997:** Two additional General Assembly appointments are added, expanding the Board to 26 members.



At the end of 1997, allegations of improper activities on the part of the Board and the Department surfaced in the press. These speculations drove diverse leaders, including the Governor, House Majority Leader, Senate Select Committee, State Auditor, Attorney General, and non-profit policy groups, to call for fundamental change in the oversight of North Carolina's transportation program.

## COMPOSITION AND STRUCTURE OF THE BOARD

The current Board of Transportation is larger than ever, with 26 members—22 appointed by the Governor (including the Secretary of Transportation), two appointed by the President Pro Tempore of the Senate and two by the Speaker of the House of Representatives. The Secretary serves as Board Chair.

Requirements for Board membership are:

- 14 members must represent the State's Highway Divisions (these members must live in the Division they represent)
- One member is the Chairman of the North Carolina Rail Commission
- One member must possess "broad knowledge of public transportation"
- One member must represent the minority party, not held by the Governor

The Board members appointed by the Governor serve at the Governor's pleasure; their terms expire with the Governor's term. Those appointed by the Speaker of the House and Senate President Pro Tempore serve two-year terms. Unlike the gubernatorial appointees, General Assembly appointees are not required to complete economic interest statements prior to appointment.

Serving on the Board is a major investment of time and effort. Although Board meetings are held monthly, members also serve on at least one of its seven standing committees: finance and programming; secondary roads, maintenance and equipment; audit and control; transit, rail and ferry; motor vehicles; safety and emergency issues; and special committee on road, bridges and ferry naming. The committees, where most of the Board's work is accomplished, can meet more frequently. In addition, individual members become involved in project identification and prioritization—a role which can consume huge amounts of volunteer time.

## ROLE OF THE BOARD

In the wake of highly publicized incidents involving members of the Board, there have been many proposals for change. Most of the discussion has focused on what the composition of the Board should be, how many members it should have, what qualifications should be required and how members should be appointed.

The real question, however, is what is the purpose of the Board? Is it intended to represent particular constituencies or the State as a whole? Should its focus be on setting policy, representing constituents and/or overseeing DOT operations? State statutes spell out the answers. According to North Carolina General Statute 136-17.2:

“The chairman and members of the Board of Transportation shall represent the entire State in transportation matters and not represent any particular person, persons or area.”

Additional legislation passed in the 1997 session of the General Assembly further articulates the Board’s role. According to that bill, G.S. 143B-350, the Board of Transportation shall have the following duties and powers:

- To formulate policies and priorities for all modes of transportation under the Department of Transportation
- To advise the Secretary on matters to achieve the maximum public benefit in performance of the functions assigned to the Department
- To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation
- To approve a schedule of all major transportation improvement projects and their anticipated costs for a period of seven years into the future
- To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it
- 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
- To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal aid funds which may be available
- To approve all highway construction programs
- To approve all highway construction projects and plans for the construction of projects
- To review all statewide maintenance functions
- To award all highway construction contracts

- To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain
- To promulgate rules, regulations and ordinances concerning all transportation functions assigned to the Department

The legislation further specifies that the ability of a municipality to pay for any transportation improvement project shall not be a factor considered by the Board in developing and approving a schedule of major projects. In addition, the Board is allowed to delegate to the Secretary of Transportation the authority to approve highway construction projects, award contracts and promulgate rules and regulations.

### 3. COMPARATIVE OVERVIEW

In this chapter, we consider the North Carolina Board of Transportation in comparison to similar boards in other states, as well as to several other statewide boards in North Carolina.

#### INTRODUCTION

Understanding how other states and other boards operate provides a useful context in which to evaluate the North Carolina Board of Transportation (DOT or NCDOT). As part of this Board review, therefore, the Project Team conducted a comparative analysis of other state transportation departments. This chapter summarizes the results of that analysis, as follows:

- National Transportation Board Overview
- Overview of Selected DOT Boards
- Overview of Selected DOTs Without Boards
- Overview of Selected North Carolina State Agency Boards

Please note that our recommendations for the North Carolina DOT Board are not based solely on the results of this analysis. The Project Team supplemented these findings with other project tasks—including in-depth interviews, survey results, and our experiences with DOTs across the nation—to develop the findings and recommendations outlined in the remainder of this chapter.

#### NATIONAL DOT BOARD OVERVIEW

How does the North Carolina Transportation Board compare to the rest of the nation? Exhibit 3-1, on the following page, considers all 50 DOTs, identifies those with boards and summarizes the characteristics of these boards. The analysis of national trends in board structure and composition helped formulate some recommendations for the North Carolina BOT.

**Exhibit 3-1: National Summary of State BOT Statistics\***

States with a board that controls major functions of a Transportation Department	24
States with policy/advisory boards	7
States with no transportation board	19
Average number of board members	8.6
States where some or all board members are appointed by the Governor	29
States with legislative confirmation of board members	23
States where some board members are appointed by the legislature	3
States where some or all board members are elected	3
States where the department head is appointed by the Governor	38
States where the department head is confirmed by the legislature	32

\* Data were collected from Giles S. Perry's "50 State Survey of Transportation Board and Commission Structures" December 16, 1997. Mr. Perry is a Legislative Researcher for NC's General Assembly.

With 26 members, North Carolina DOT's Board is significantly larger than the national average of 8.6 board members. As noted above, 31 of the 50 states have transportation boards. Twenty-four boards control major functions of the state DOT while seven are policy/advisory boards. In all but two of the 31 DOT boards, some or all members are appointed by the Governor. Unlike in North Carolina, the majority of those 29 boards (79 percent) additionally require legislative confirmation of appointments. There is no confirmation process for North Carolina's Transportation Board members.

**OVERVIEW OF SELECTED DOT BOARDS**

KPMG conducted a more detailed comparative assessment of eight DOT boards to further analyze board powers, roles, organization and composition, and to identify common characteristics and "desirable practices." The selected boards include a mix of large and small boards, representing mostly larger DOTs (based on highway miles); boards with and without members representing local regions; and some boards identified as potential "model" boards. One of the states—Massachusetts—has a professional Board, made up entirely of full-time DOT employees. Our assessment also included an overview of two DOTs without boards to better understand their operation and the potential benefits of not having a board. Exhibit 3-2 summarizes the characteristics of boards selected:

**Exhibit 3-2: Comparative Analysis**

	<b>Department Budget<sup>1</sup></b> <b>(\$ million)</b>	<b>Board Budget<sup>2</sup></b> <b>(\$ thousand)</b>	<b>Total Miles of State-Maintained Highways</b>	<b>Number of Employees</b>	<b>Number of Board Members<sup>3</sup></b>
<b>North Carolina</b>	<b>\$2,400</b>	<b>\$ 126</b>	<b>78,000</b>	<b>13,265</b>	<b>26</b>
<b>Delaware</b>	430	0	5,000	1,900	9
<b>Florida</b>	3,500	395	12,000	9,815	9
<b>Iowa</b>	630	170	10,000	3,851	7
<b>Massachusetts</b>	1,900	2,500	4,000	2,300	5
<b>Ohio</b>	1,900	90	21,000	6,539	7
<b>South Carolina</b>	740	103	42,000	5,384	7
<b>Texas</b>	3,700	250	78,000	14,519	3
<b>Virginia</b>	2,400	1,000	57,000	9,940	16

North Carolina's BOT shares several similarities with the boards chosen for our comparative analysis. Notably, all of the boards examined have at-large representatives and at least one board member appointed by the Governor. Two of these boards—Florida and Virginia—also have district/regional representatives appointed by the Governor. South Carolina has district representatives appointed by the legislature.

The following sections further define North Carolina's Board of Transportation in comparison to the six states with boards.

**Board Size and Representation.** As noted above, North Carolina's 26 member BOT is significantly larger than the national average of 8.6 members. Virginia has the nation's second largest BOT with 16 members. The North Carolina Board also has 10 more district and seven more at-large representatives than the average of those boards surveyed for this study.

**Board Appointment Procedures.** The lack of a confirmation process for gubernatorial appointments distinguishes North Carolina's BOT from the other boards we studied. Five out of six boards surveyed require legislative approval for at least one board appointee. Massachusetts is the only board in our analysis that does not require legislative confirmation. On the other hand, North Carolina's BOT is generally in line with its peers when it comes to board term lengths. Five of the six boards have term lengths of four years: Texas, the only exception, has 6-year terms.

<sup>1</sup> The Department Budget includes both capital and operational budgets.

<sup>2</sup> The Board Budget includes salaries, expenses, and administrative costs.

<sup>3</sup> Or Commission members

**Board Membership Qualifications.** North Carolina’s BOT membership requirements are generally in line with those boards studied. It is one of three boards in our study—along with Florida and Massachusetts—that have professional requirements for members.

**Board Composition.** North Carolina Transportation’s Board composition is different from its peers in its chair leadership and standing committees. The Secretary of Transportation is Chairman of NCDOT’s Board. Only two boards in our study, Massachusetts and Virginia, require the Secretary to serve in this capacity; the remaining boards either elect the chair annually or have the chair appointed by the Governor. Similarly, only two other boards—South Carolina and Virginia—have standing committees and none have as many as North Carolina. NCDOT’s Board staff level (i.e., one secretary) is generally in line with its peers; most boards have 0 to 4 staff people assigned to the board.

**Board Ethical Parameters.** The Governor has recently revised the State’s ethics code, significantly increasing its scope and effectiveness. NCDOT Board members now have to complete annual financial disclosure forms and follow other new ethics procedures. These new ethical practices are in line with peer boards: of the six boards we reviewed, four require members to complete annual financial disclosure forms.

### Common Themes Identified in Comparative Analysis

Key themes consistently emerged as part of our analysis of the six DOTs with boards. These themes include the following:

- All boards have at-large representatives
- All have the Governor appoint at least one board representative
- All reimburse members for expenses
- Five out of six boards require legislative confirmation of gubernatorial appointees
- Five out of six boards have at least monthly meetings
- Five out of six boards compensate members for their time (amount varies by state)
- Five out of six boards do not have discretionary funds for transportation improvement projects
- Four out of six boards must complete an annual conflict of interest (disclosure form) statement
- Four out of six boards do not have committees
- Two out of six boards have skill/experience requirements

The boards surveyed identified “desirable practices and practices to avoid” for DOT boards as shown in the following listing:

**Exhibit 3-3: Desirable Board Practices and Practices to Avoid**

<b>Desirable Board Practices</b>	<b>Board Practices to Avoid</b>
Be non-partisan	Micro-managing issues
Be non-parochial	Involvement in day-to-day operations
Be independent	Lack of board member involvement in policy and goal setting
Have diverse membership	
Encourage members to think “outside the box”	
Embrace creativity and innovation	
Have quality members	

Successful DOT boards strive to be non-partisan, non-parochial and independent. Those surveyed indicated that micro-management of issues and involvement in day-to-day operations detract from the policy/advisory role of boards. They added that if the governor and legislature appoint innovative individuals with diverse professional backgrounds, there is a greater likelihood of having an effective board and DOT.

**OVERVIEW OF DOTs WITHOUT BOARDS**

KPMG also looked at two of the nation’s 19 DOTs without boards—Delaware DOT and Ohio DOT—to see how they operate. Ironically, we found that while these DOTs may not have a formal “Board,” they do have bodies that operate almost like boards.

In Delaware, the Council on Transportation (CT) oversees the DOT. The CT acts as a policy/advisory body, responsible for reviewing and advising on the department’s performance, approving a 6-year capital improvement program, approving realignment projects and providing general oversight.

The CT is comprised of nine members who are appointed by the Governor and serve 3-year terms. At least two representatives must be from each county and one elected as chair. CT members are not compensated for their time or expenses; they do not have to meet any statutory professional requirements. The CT meets three times a year and holds six public hearings, split evenly between its three counties.



Ohio has an oversight body called the Transportation Review Advisory Council (TRAC). TRAC's primary role is to: approve or amend the prioritization process submitted by the Director of Transportation; develop and approve a list of projects that will not cause spending to significantly exceed funding forecasts; and act as a board of appeals for municipalities that have a complaint about prioritization processes.

TRAC has seven at-large members: five appointed by the Governor (including the chair), one by the Speaker of the House, and one by the Senate President. The following professional requirements are stipulated: two transportation experts, one finance expert, one member from the Ohio Expenditure Council, two with no special interest, and the Secretary of Transportation. Members, who serve 5-year terms, meet six times a year and are paid \$5,000 per year plus expenses.

As these descriptions indicate, Delaware and Ohio both have councils that provide at least some form of DOT oversight. While the CT is more comprehensive and similar to the boards in our analysis, TRAC also has an important advisory role in ensuring DOT compliance. Both states realize the importance of having an organizational structure that provides checks and balances.

## **OVERVIEW OF LARGE NORTH CAROLINA STATE AGENCY BOARDS**

As part of our analysis, we also reviewed North Carolina statutes on board composition, duties and powers for several other large State agency boards: the Board of Governors of the University of North Carolina System, the State Board of Education and the State Board of Community Colleges. Our objective was to identify any desirable and/or consistent board practices and consider their application to the NCDOT Board. We determined, however, that each board shares similarities only at the macro level. Any application to NCDOT's Board would therefore be difficult to implement due to variances in board formulas, requirements, and responsibilities.

The Project Team examined major areas of board operation, including board representation, appointment procedures, professional requirements and financial oversight. Our assessment indicated that the State has no consistent formula for the composition of its boards: each board uses a different district/regional structure in the appointment of its local representatives. Also, each board—except for the Board of Governors of the University of North Carolina System—has both district and at-large representatives. The Board of Governors is the largest board with 33 members, and the Board of Education is the smallest with 14 members.

In other words, there are few consistent formulas, requirements or responsibilities found among the State's boards. Each board is comprised differently and has distinct appointment procedures, professional requirements, and oversight responsibilities. Nevertheless, the boards share some similarities: most have both district and at-large representatives, most do not have an appointee confirmation process, most have some professional requirements, and most have budget oversight responsibility.

## 4. GOVERNANCE AND ORGANIZATION

This chapter identifies issues relating to the powers, duties and composition of the North Carolina Board of Transportation (BOT). Specifically, it explores options considered by the Project Team regarding the Board, examines the purpose and role of a board, assesses the value of a board for the North Carolina Department of Transportation (DOT), and proposes specific role and composition changes necessary for making the Board an effective oversight body. We begin this chapter by describing the parameters and areas essential to address and develop conclusions, then move forward with specific recommendations for change.

The chapter is organized into three sections:

- Consideration of Options: The Need for a Board
- Role of the Board: Governance, Powers and Duties
- Structure of the Board: Organization and Composition

### CONSIDERATION OF OPTIONS: THE NEED FOR A BOARD

Why continue to have a Board of Transportation? That is the first question the Project Team assessed in considering the range of governance alternatives for North Carolina.

Based on interviews and focus groups meetings, we found an overwhelming consensus that there *should* be a board. Board members, legislators, public policy leaders and concerned citizens and stakeholders all said the same thing: a board is essential.

These stakeholders expressed discomfort with having one of the largest government agencies—and one that has a major impact on the State’s economic development, environment and quality of life—operate without oversight. There is a strong sense that transportation planners and engineers should not be making decisions alone.

Internal and external stakeholders agree on the value of having people representing different places and perspectives come to consensus on decisions for the State. Many Board members, however, see representing constituents in their Divisions as the first priority, while most of those outside the system place a higher focus on providing more of a statewide focus.

In addition, the Project Team’s research indicates that boards can play a valuable role, particularly in the public sector environment. Boards can provide an outside perspective free from bureaucratic guidelines and policies. They can build credibility, as well as serve as a critical intermediary between governments and citizens. Further, boards can provide value as advocates for their organization.

A board will not provide value, however, unless it is effective. There are critical elements that characterize successful boards<sup>4</sup>:

- Members are outstanding individuals with integrity, competence, insight and dedication to the board's purpose
- Members bring diverse backgrounds, experiences and perspectives to the board for collective thinking
- Members are concerned about the best interests of the organization (i.e., State) as a whole
- Members raise questions and debate issues that challenge the status quo
- Board size is not too large to diminish interaction and individual accountability
- Members have courage to act on decisions
- Board responsibilities and powers are clear

The Project Team therefore concluded that there are convincing reasons to retain a Board of Transportation, including to help:

- Ensure that the Department is serving the public interest
- Promote credibility by assuring that funds are allocated in a rational and equitable way
- Provide oversight of DOT management and operations
- Promote accountability, compliance with laws and regulations, and fulfillment of mandated responsibilities
- Oversee development of a long-range plan that meets statewide transportation needs
- Assure that State transportation policies and regulations support statewide goals and objectives

Our conclusion is that a board can provide value to a DOT. Above, we identify specific benefits that a board can bring. The remainder of this report details specific recommendations that, if implemented, will help assure that the new Board of Transportation provides value to the Department and to North Carolina citizens. Exhibit 4-1 summarizes our recommendations for the new Board, and the following pages describe our findings and recommendations in more detail.

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<sup>4</sup> Some of the ideas for Board roles and best practices were taken from "Inside the Boardroom: A Reprise" by William G. Bowen (president of the Andrew W. Mellon Foundation)

**Exhibit 4-1: Summary of Recommendations on New Board Role and Organization**

<b>Board Characteristics</b>	<b>Current</b>	<b>Recommended</b>
<b>Total Board Members</b> (Not including the DOT Secretary)	25	13
<b>Geographic Appointments</b>	14	7
<b>At-large Appointments</b>	11	6
<b>Who Appoints Board</b>	Governor appoints 21 General Assembly appoints 4	Governor appoints 13
<b>Who Confirms Board</b>	No confirmation process	General Assembly confirms
<b>Term Length</b>	4 yrs- Governor appointees  2 years- General Assembly appointees	4 years
<b>Staggered Terms</b>	No	Yes
<b>Board Skills/Experience Requirements</b>	1 at-large public transportation expert  1 at-large minority party  1 Chair of Rail Council	1 engineering/construction 1 business mgmt/finance 1 environmental 1 public transportation 1 economic development expert
<b>Chair and Vice-Chair Selection</b>	Secretary of Transportation serves as Chair	BOT elects Chair and Vice-Chair biannually
<b>Board Designated Staff</b>	1 Board Secretary	1 Board Secretary

## ROLE OF THE BOARD: GOVERNANCE, POWERS AND DUTIES

This section addresses issues relating to Board governance including:

- Role of the Board
- At-large versus geographic membership
- Specific powers
  - Project selection
  - Contract approval
- Leadership
- Secretary of Transportation's role
- Discretionary funding

Below we detail the findings and recommendations for these issues. In most instances, we present one finding followed by a corresponding recommendation. However, there are some cases where several findings result in one or more recommendations. There also are instances where one finding results in multiple recommendations.

**Finding: *Roles of Board, as statutorially defined, are inherently conflicting.***

North Carolina General Statute (G.S.) 136-17.2 references the power of the Board of Transportation and describes it as follows (see Appendix for full statute):

“...Members of the Board of Transportation shall represent the entire State in transportation matters and not represent any particular person, persons or area...”

G.S. 143B-350 details the powers and duties of the Board and within itself presents varying duties. The first section parallels the role described above, providing (see Appendix for full statute):

“...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...”

However, a later part of the same statute offers an additional role that conflicts with the statewide responsibility identified in the above statutes. G.S. 143B-350(h) reads:

“Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision.”

There is an inherent tension between the Board's Division and overall statewide responsibilities. Historically, members have opted to focus primarily on the Division-related responsibilities.

**Finding:** *The Board is too focused on project-specific prioritization and contract approvals, and inadequately focused on strategic, policy, and DOT oversight roles.*

Interviews with Board members and other stakeholders, review of BOT agendas and meeting minutes, and our analysis indicate that the Board is overly focused on tactical roles such as project selection, prioritization and contract approvals, and inadequately focused on higher level roles, such as strategic planning, policy reviews and DOT oversight.

Many Board members indicated they routinely spend 50 to 60 hours per week visiting potential project sites, responding to taxpayer transportation concerns, working closely with DOT to help prioritize and identify projects and attending various community and Board meetings. One factor encouraging Board members' project focus is the existence of the \$1 million discretionary funding for each DOT Division.

While such a time commitment is commendable for a part-time volunteer board, we question the need for and appropriateness of this level of involvement of the Board on project-specific matters. Most part-time state transportation boards do not become directly involved in this level of priority-setting decisions.

By statute (G.S. 143B-350), the BOT approves all construction contracts. Many other state transportation boards do not approve all contracts, but only those above specified cost thresholds. The objective of limited involvement in contract approval is to focus Board resources on strategic, oversight, policy and regulatory roles.

Board roles that are receiving inadequate focus include:

- Oversight of DOT relative to plan implementation and budget adherence
- Strategic planning for DOT
- Reviewing DOT priority setting processes (not projects) and their application in the overall State Transportation Improvement Program (STIP)
- Addressing policy issues such as:
  - A fiscally balanced STIP
  - Adequacy of state funding for transportation programs
  - Overall allocations of funding for construction, maintenance and public transportation
- Quality of DOT services to its numerous stakeholders

**Recommendation:** *Revise North Carolina General Statutes to emphasize the oversight role of the Board and to eliminate conflicting language.*

The Board should focus on oversight, policy formulation and regulatory responsibilities. Specifically, it should monitor DOT performance, advise on Department policy and approve a long-range plan, among other responsibilities. The Board should no longer be involved in individual project review, selection or scheduling. Instead, members should focus on higher level strategic issues that balance local and statewide needs. Types of oversight, policy and regulatory responsibilities should include the following:

- Oversee the performance of DOT

- Engage in strategic planning, including setting goals and approving strategies, for achieving the goals
- Ensure that DOT’s plans and programs are fiscally achievable
- Evaluate DOT’s progress toward the goals
- Ascertain that the resources needed to accomplish the objectives are in place and properly allocated
- Approve DOT policy and regulations, and recommend changes, as appropriate
- Ensure that the Board and DOT operate responsibly (ethically) and carry out an effective system of governance at the Board level

Although most of the recommended Board powers and duties are authorized by North Carolina General Statutes, there is considerable room for interpretation on how and to what level the Board should carry out its responsibilities. We recommend eliminating or revising those statutes that promote Board focus on detailed project-specific matters that conflict with the proposed oversight role, as depicted in Exhibit 4-2.

**Exhibit 4-2: Recommended Changes to Statutory Language**

Current General Statute 143B-350	Recommended Changes to the Statute
<p><b>G.S. 143B-350. Section H</b></p> <p>Each member of the Board appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division</p>	<p><b>Delete</b> section H of G.S. 143B-350</p>
<p><b>G.S. 136-17.2</b></p> <p>...The Board shall provide that one or more of its members or representatives shall publicly hear any person concerning transportation matters in each of said geographic areas of the State</p>	<p><b>Delete</b> G.S. 136-17.2</p> <p><i>Note:</i> Board members should be encouraged but not required to participate in public hearings</p>

**Recommendation:** *Annually approve the Transportation Improvement Program (TIP) and periodically review the adequacy of DOT priority-setting processes used in preparing the TIP.*

As specified by statute, the Board should continue to approve the annual overall Transportation Improvement Program (TIP). The Board should also periodically review the adequacy of DOT’s adopted and documented priority-setting processes for the various categories of projects included in the TIP. Such a review should be done at least every four years.

It is likely that Board members will continue to receive requests for funding projects and complaints to fix transportation problems in Divisions around the state. However, the lead responsibility for prioritizing individual projects should be DOT's, not individual Board members appointed regionally or at large.

DOT should follow documented project evaluation and priority-setting practices in setting such priorities. Secretary Tolson recently revised some of these processes and developed procedures for requesting funds including Small Urban, Public Access and Elimination Funds.

**Recommendation:** *Establish a dollar threshold for BOT construction contract approval.*

The Board of Transportation should not approve all construction contracts. Instead, members should establish a dollar threshold below which Board approval is not necessary and give the Secretary authority to approve such contracts. There are various ways to assess appropriate levels for contract approval. One option is to conduct an analysis of construction contracts over the past year to identify a median or average, and establish that as a threshold cost. Alternatively, the Board could consult other transportation departments to identify average approval levels. As an example, the Project Team identified boards that approve only those contracts above \$5 million.

The objective of limiting Board involvement in individual project selection and construction contract approval is to free BOT time to focus more on strategic planning, policy making and statewide decision making.

**Finding:** *Unlike many public boards, the Board of Transportation is required to have the Secretary serve as Chair.*

The Secretary of Transportation manages DOT and also oversees the Board. As Chair, the Secretary leads BOT meetings and helps determine meeting agendas. The Vice-Chair, who is also appointed by the Governor, assists the Secretary with these duties. The Board has less autonomy over agenda setting, policy making and planning than if the Chair and Vice-Chair were selected directly by the appointed members. Many boards of public organizations have their CEO equivalent—such as the Secretary—serve as an ex-officio member without voting rights. Our comparative assessment identified that four out of six of the DOTs surveyed require a Board member to serve as Chair.

**Recommendation:** *Have the Board elect a Chair and Vice-Chair who work in partnership with the DOT Secretary.*

Board members should have authority to select their Chair and Vice-Chair. The BOT should elect the Chair and Vice-Chair every two years and limit appointment to two successive “terms,” allowing a member who has served two terms to be re-elected after a minimum break of one-term. The Chair and Vice-Chair should coordinate closely with the Secretary. Specific examples of Chair and Vice-Chair responsibilities include:

- Developing BOT meeting agenda



- Calling special/emergency meetings
- Leading monthly meetings
- Evaluating, establishing and as appropriate, abolishing Board Committees in conjunction with Board decision-making practices
- Identifying monthly management reports for BOT review

**Recommendation:** *Require the Secretary to serve as an ex-officio Board member and to assist the Board leadership and members as necessary.*

The Secretary should remain a Board member but serve in ex-officio capacity. As a non-voting member, the Secretary will serve as the DOT liaison to the Board. In that capacity, he/she will work closely with the BOT, ensure that information requested by members is provided, and identify DOT staff to present materials to the Board as appropriate. The Secretary and the Board should work together to develop and approve policy, goals, regulations and a strategic plan for the Department.

Specifically, we view Board-related responsibilities of the Secretary as follows<sup>5</sup>:

- Assist the Board in establishing the DOT vision and strategic/long-range plan
- Help the Board focus on the goals and objectives embodied in that vision and plan
- Ensure that performance data and management information are collected, monitored and shared with the Board
- Help the Board assess DOT performance
- Advise the Board on adoption of policy and regulations, and changes to each as needed

**Finding:** *Availability of highway discretionary funds promotes the perceived politicization of project priorities and encourages direct Board and General Assembly involvement in project-level decision making.*

Senate Bill 352 Section 32.4 authorizes and describes two types of discretionary funds for highway improvements:

- \$14 million Small Urban Construction Program, which allocates \$1 million annually to each of the 14 Divisions
- \$10 million may be spent annually at the discretion of the DOT Secretary, but in practice is split

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<sup>5</sup> Some of the ideas for Secretary role related to the Board were taken from “Inside the Boardroom: A Reprise” by William G. Bowen (president of the Andrew W. Mellon Foundation)

equally between the Secretary, Speaker of the House and the Senate President Pro Tempore

The Small Urban Construction Program stipulates that its funds be used for small construction projects located within one mile radius of corporate limits. This program allows Board members to allocate funding for small projects not funded by DOT but identified as priorities by the Board member and/or the division engineer.

The \$10 million discretionary fund can “be used for rural or small urban highway improvements, industrial access roads, and spot safety projects.” Subject to this guideline, the Secretary, Speaker of the House and President Pro Tempore have significant latitude in selecting projects for funding.

Only one out of the six boards surveyed have discretionary funding programs like those described for North Carolina. Exhibit 4-3 below illustrates this in detail.

#### **Exhibit 4-3: Discretionary Funding**

<b>Board State</b>	<b>Discretionary Funding</b>
<b>North Carolina</b>	<b>Board oversees \$14 Million (\$1 Million per Highway Division) \$10 Million split between General Assembly and Governor</b>
<b>Florida</b>	None
<b>Iowa</b>	None
<b>Massachusetts</b>	None
<b>South Carolina</b>	None
<b>Texas</b>	Commission oversees a discretionary fund called Strategic Priority; has flexibility to select projects that may not meet other funding criteria
<b>Virginia</b>	None

Although the \$24 million covered in these two programs is only about 1 percent of DOT’s annual budget, the perceived impact is much greater. There is a widespread perception that these programs promote the politicization of DOT’s priority setting processes and contribute to real and perceived conflicts of interest.

In an effort to openly and more rigorously evaluate and justify the investment of limited transportation funds to meet the State’s sizable needs, Secretary Tolson in March 1998 announced new processes to propose, evaluate and approve the use of funds in each of these two categories of projects. The Secretary’s proposal includes a requirement for anyone requesting Contingency and Small/Urban to complete an application process that includes a signed, written justification. Requests will be reviewed by a committee which will give its recommendations to the Secretary for consideration. Finally, projects will be placed on the BOT agenda.

**Recommendation:** *Eliminate discretionary funding programs and create a \$24 million Small Project Fund that allocates funding based on a documented priority-setting process.*

Senate Bill 352 should be amended to eliminate the \$14 million Small Urban Construction Program and the \$10 million discretionary fund for the Secretary of Transportation. In its place, the General Assembly should authorize a \$24 million Small Project Fund.

This fund should be used for small projects of the following types:

- Projects (e.g. under \$200,000) that are not included in the TIP
- Emergency projects
- Projects that support economic development
- Projects that address local congestion problems

DOT should be directed to document procedures for proposing, evaluating, prioritizing and approving such projects. Public input to this process should be encouraged through public meetings and other opportunities for inputs in each of DOT's 14 Divisions.

The above changes will encourage more open and rigorous assessment of applicable projects within DOT; will provide the public, the Board, and General Assembly with information on specific projects to be funded by the Small Project Fund; will discourage direct board member and General Assembly involvement in project specific decisions; and will help reduce the potential for perceived and real conflicts of interest.

## STRUCTURE OF THE BOARD: COMPOSITION AND ORGANIZATION

This section addresses issues relating to Board composition and organization including:

- Board size
- Board selection process
- Skills/experience requirements
- Term parameters
  - Length
  - Staggering
- Management reports
- Board orientation
- Board staff

**Finding:** *The Board is too large to effectively perform statutory and proposed responsibilities.*

North Carolina's BOT is the largest in the country. Almost all stakeholders and Board members interviewed for this study agree that it is too large. Transportation boards across the nation average 8.9 members compared to North Carolina's 26. The Project Team found that the current size can often impede exchange of information and organized discussion on issues. For example, most BOT votes are uncontested and unanimous.

A smaller Board could facilitate improved interaction and capitalize more on the professional expertise and insight brought by the Board members. This could result in improved oversight of DOT and enhanced Board consideration of issues requiring their action.

**Recommendation:** *Reduce Board size to 13 members (not counting the Secretary who would serve as an ex-officio member).*

The General Assembly should reduce the Board size to 13. Prior to 1977, the DOT Board averaged 11 members. When the Highway and Urban Transit Commissions merged in 1977, however, membership increased dramatically to 24 members. Reducing Board membership to a more manageable size could improve Board communication and DOT oversight, if properly structured.

**Recommendation:** *Create a Board of 7 regional and 6 at-large members.*

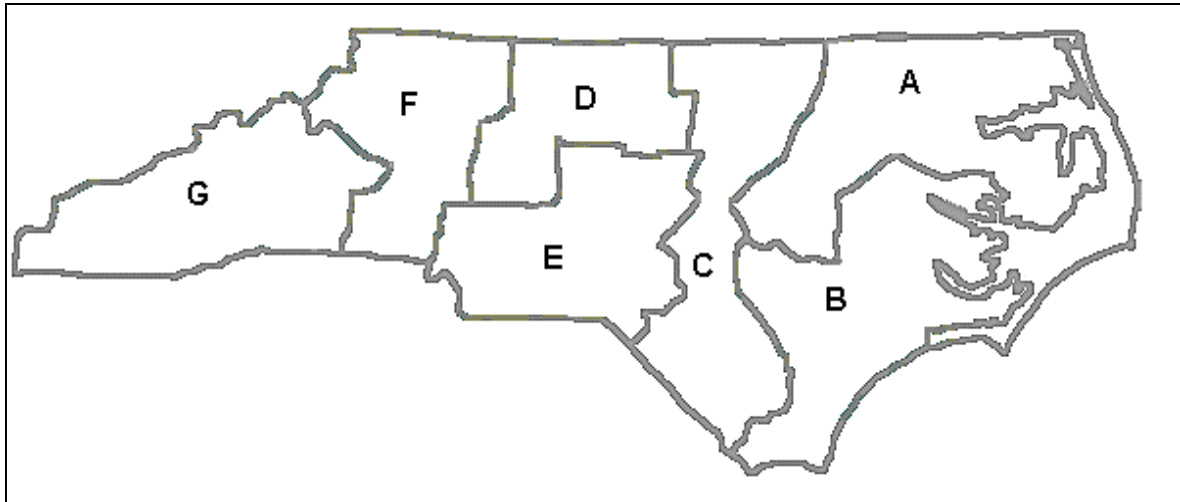
We recommend that the Board be composed of seven regionally selected members and six at-large members (not including the Secretary). Our recommendation is based on analysis of the current Board, input from Board members and stakeholders, and our assessment of best practices nationally.

The seven regional members should be appointed from each of the seven equity formula regions as proposed in the Trust Fund Law; (see Appendix for General Statute 136-17.2, "Distribution formulas for the Interstate Highway Systems"). Each of the seven equity regions represent two Highway Divisions. The regions were developed to help allocate Intrastate System project funds and State and federal-aid funds equitably and timely. This regional structure is compatible with

addressing citizen input and complaints brought to the Divisions and Board members.

We further recommend that no more than two Board members live in any one of the seven regions. Exhibit 4-4 below identifies these regions:

**Exhibit 4-4: North Carolina's 7 Equity Regions**



**Finding:** *Unlike most states, North Carolina's General Assembly appoints members to the Board of Transportation.*

The BOT is composed of 22 members (including the DOT Secretary) appointed by the Governor, two members appointed by the Speaker of the House and two appointed by the President Pro Tempore. While it is typical for the General Assembly to make appointments to large State boards, it is not a common practice nationwide. In 25 out of 31 states with transportation boards or commissions—81 percent—the Governor appoints all board members. The few States that permit legislative appointments still require the Governor to appoint the majority of members.

**Finding:** *Unlike most transportation boards throughout the country, NCBOT appointments are not confirmed.*

In North Carolina, the Governor appoints the majority of BOT members (85 percent). The appointments do not require General Assembly confirmation. While most states allow their Governor to appoint all transportation board members, the appointees must be confirmed by their legislature.

A confirmation process provides additional assurance that individuals appointed to the Board are the appropriate people to share oversight of North Carolina's second largest state agency with a \$2.4 billion budget and a staff of over 13,000. Furthermore, a confirmation process can help ensure a diversified Board that better reflects statewide interests.

Of the six DOT boards reviewed in our comparative analysis, five require at least one branch of the legislature to approve all nominees. Twenty-three of the 31 DOT boards have membership confirmed by the legislature. Clearly, most states consider such a confirmation process desirable. Exhibit 4-5 below identifies appointment procedures and term lengths for BOTs surveyed for this comparative overview.

#### **Exhibit 4-5: Board Appointment Procedures**

	<b>Who Appoints Board</b>	<b>Who Confirms Board</b>	<b>Term Length</b>
<b>North Carolina</b>	<b>Governor appoints 22 General Assembly appoints 2</b>	<b>No confirmation required</b>	<b>4 years for Governor Appointees 2 years for General Assembly Appointees</b>
<b>Florida</b>	Governor	All confirmed by Senate	4 years
<b>Iowa</b>	Governor	All confirmed by Senate	4 years staggered
<b>Massachusetts</b>	Governor	No confirmation required	4 years
<b>South Carolina</b>	Governor appoints 1 (at-large) Legislative delegation appoints 6 (district)	Governor appointee is confirmed by Senate	4 years
<b>Texas</b>	Governor	All confirmed by Senate	6 years staggered
<b>Virginia</b>	Governor	All confirmed by legislature	4 years staggered

**Recommendation:** *Have all Board members appointed by the Governor and confirmed by the General Assembly.*

All 13 Board members should be appointed by the Governor and confirmed by the General Assembly. The General Assembly should conduct confirmation hearings on gubernatorial appointments to the BOT every two years (consistent with the staggered term recommendation). Considering that North Carolina has the second largest state-maintained highway system in the nation, and that the DOT is the State's second largest agency (based on budget), the State should make every effort to assure that BOT member selection is an open process.

**Finding:** *There is a widespread perception that Board appointments are based on political considerations.*

Newspaper articles and analyses conducted by several private groups have documented the political contributions of various Board members, their families and associates to State elected officials. These articles and reports—and the recent charges of conflicts of interest by several Board members—have escalated the concern that political considerations are the primary basis for selecting members. These accusations undermine the credibility of the Board, the Department and the State’s Board member nomination and approval processes.

The selection of individuals to serve as Board members is a subjective process. Many factors are likely to be considered including:

- Willingness to serve
- Confidence of the appointing authority (e.g., Governor, Speaker of the House, or President Pro Tempore) in the individual
- Location of residence
- Knowledge of transportation and related issues
- Political affiliation

The State has not developed criteria that suggest the desirable characteristics of BOT members. Such criteria will not only be of use to the appointing authorities, but will also help reestablish public and stakeholder confidence in Board appointees.

**Recommendation:** *Appoint individuals dedicated to North Carolina transportation issues to serve on the BOT.*

It is important to eliminate the current perception that political contributions and fund-raising acumen are the primary criteria for Board membership. The BOT influences the quality of life, environmental conditions and economic attractiveness and competitiveness of the State. It is important that its members possess the skills, experience, leadership, and credibility to effectively discharge their duties.

Based on research of public and private sector boards, the following criteria should be considered by appointing authorities to select highly qualified and credible future Board members:

- Members are outstanding individuals with integrity, competence and insight
- Members are dedicated to the Board’s purpose
- Members bring diverse backgrounds, experiences and perspectives to the Board for collective thinking
- Members are concerned about the best interests of the organization (i.e., State) as a whole

**Finding:** *There are minimal skill/experience requirements for Board membership.*

Board skill/experience criteria are limited to the following:

- The Chair of NC Rail Commission
- One member with “broad knowledge of public transportation”

Stakeholders interviewed for this study do not believe that appointed individuals are sufficiently professionally diverse to make transportation-related decisions. Many further suspect that individuals identified for Board appointment are significant political contributors. Whether or not these accusations are valid, the perceptions exist and can damage Board credibility.

Most stakeholders interviewed for this study agreed that Board members with a diversity of professional requirements will better serve DOT.

**Recommendation:** *Establish diverse skill/experience requirements for Board members.*

A best practice in appointing board members is to have diverse backgrounds, experiences and perspectives applicable to a state’s transportation program and its many issues. In this regard, we recommend that the Board include at least one person with broad knowledge in each of following areas:

- Environment
- Public transportation
- Business management/Finance administration
- Engineering/Construction
- Economic development

The State should also eliminate the following requirements: “Chair of NC Rail Commission”, a member with “broad knowledge of public transportation”, and one member from the opposite party of the Governor. Additionally, the State should prohibit individuals from serving simultaneously as an elected official and BOT member. Allowing current elected officials to serve on the Board may present potential conflicts of interest.

**Finding:** *Board terms are not staggered, which diminishes continuity of membership.*

Board members are appointed or reappointed at the beginning of a Governor’s term for four years. The practice of appointing all new appointees every four years impedes transfer of experience and knowledge from Board to Board. To maintain a knowledge base and ensure continuity, many transportation boards—42 percent—have staggered terms.



**Recommendation: *Stagger Board membership terms.***

The proposed appointment cycle should start when the next Governor takes office. The next Governor should appoint seven Board members at the start of his or her term, and six members after two years. Each member should serve 4-year terms. By starting off with seven appointments at the beginning of each gubernatorial term, the Governor will be assured majority representation throughout his or her term. The six members appointed mid-term will carry over to the next Governor's term.

The Project Team considered instituting term limits, but found it unnecessary. With each Governor limited to two consecutive terms, Board changeover is likely without instituting BOT term limits.

**Finding: *BOT does not receive adequate management information and reports.***

The BOT does not get sufficient management information, such as financial reports on each DOT funding program (e.g., Highway Trust, Highway Fund, Federal Funds and Bonds). Additionally, Board members get few if any reports that evaluate the performance of the Department.

**Recommendation: *BOT should receive monthly management reports to aid in oversight responsibilities.***

The Board should define the type of management information it needs to provide adequate oversight consistent with new responsibilities. This could include reports such as:

- Financial summaries of actual versus projected dollars for each fund type
- Information on the Department's performance (e.g., status against overall goals, objectives and performance measures)
- DOT status on key programs and projects

One of the first tasks of the Board should be to work with the Secretary and DOT managers to identify the management information appropriate to its role and responsibilities.

**Finding: *New members are not adequately oriented on the role of the Board.***

New members go through an orientation of DOT operations, but there is no orientation of Board duties. Many members indicated that their roles or responsibilities were not formally explained. The majority of orientation time is spent describing the varying responsibilities of DOT, which is critical for members to understand. However, Board members also need to clearly understand their powers, roles and responsibilities. Secretary Tolson recognizes the need for improved Board orientation and has proposed to allocate time for training at each monthly Board meeting.

**Recommendation:** *Ensure that Board members are oriented properly on their duties, responsibilities and powers.*

All new Board members should receive an orientation that clearly outlines their responsibilities—and describes what is outside the scope of their powers. This orientation should also include a section that details ethical responsibilities and parameters. Orientation should be offered every two years to align with the recommendation for staggered terms.

**Finding:** *The Board’s one staff person is sufficient.*

Some Board members and DOT stakeholders have suggested a need for a BOT staff beyond the current staff level of one secretary. However, our comparative assessment showed that DOT’s Board staff level is generally in line with its peers, and that most boards have few, if any, staff people assigned directly to members. Boards requiring information for decision making often rely on department staff to provide such information.

The Exhibit 4-6 highlights board staffing practices:

**Exhibit 4-6: Board Staff**

Board State	Board Designated Staff	
<b>North Carolina</b>	<b>1 Total</b>	<b>1 Board Secretary</b>
<b>Florida</b>	4 Total	
	1 Executive Director	1 Asst. Executive Director
	1 Senior Analyst	1 Administrative Asst.
<b>Iowa</b>	1 Total (part-time only)	
<b>Massachusetts</b>	None	
<b>South Carolina</b>	None	
<b>Texas</b>	4 Total	
	3 Executive Asst. (1 per Commissioner)	1 Secretary
<b>Virginia</b>	None	

**Recommendation:** *Maintain the current Board staff level.*

We recommend retaining a Board secretary but not adding to BOT staff for the following reasons:

- A separate Board staff may create an unnecessary adversarial relationship between the BOT and DOT
- BOT staff would likely duplicate efforts of department staff
- The existence of a BOT staff would add unnecessary costs to DOT and the taxpayers of North Carolina

## 5. ETHICS POLICIES AND PRACTICES

This chapter assesses the ethics policies and programs that govern the conduct of the Board of Transportation (BOT). Our assessment is based on extensive reviews of both State and Board-specific policies and practices, widely recognized “best practices” in the design and administration of ethics programs, and comparisons with programs governing other state transportation boards.

### BACKGROUND

Ethics policies are in place to help ensure that the conduct of public officials and employees is appropriate and can be fairly evaluated. A comprehensive framework of ethics management addresses three key objectives:

- Preventing misconduct
- Detecting misconduct
- Responding to misconduct

The policies and procedures for preventing, detecting, and responding to misconduct are most effectively administered within an overall ethics program.

The framework of ethics programs and policies that apply to the Board and Department of Transportation come from several sources, including the Governor and the State Board of Ethics.

- **Executive Orders.** Since January 1998, Executive Order No. 127 defines and clarifies the ethical responsibilities of gubernatorial appointees. Prior to January 1998, the Governor’s Executive Order No. 1 provided the basis for the conduct of gubernatorial appointees.
- **State Board of Ethics.** The primary purpose of the State Board of Ethics is to review economic interest statements completed by executive branch appointees and to identify potential conflicts of interest. Executive Order No. 127 has expanded the role of the Board of Ethics by broadening its responsibilities and directing it to hire additional staff.

It should also be noted that a Senate Select Committee on Transportation Board and Commissions Reform was formed in December 1997, and has been focused primarily on ethical policies and issues related to the Board and Department of Transportation.

In addition to these external sources of ethical policies and directives, the Board of Transportation has developed its own ethics policy and has an active ethics subcommittee. The Board is in the process of updating its ethical policies to address Executive Order No. 127.

**COMPARATIVE ASSESSMENT**

Although the specific ethics policies and programs of public and private organizations vary, there is a set of model practices that define an effective ethics program<sup>6</sup>. We have used KPMG’s proprietary tools to compare these model practices to the framework of ethical policies, programs, and practices that apply to the North Carolina Board of Transportation. Our comparison focuses on the Board of Transportation, but also (by necessity) considers the role of the State Board of Ethics, which plays a prominent role in ethics oversight of the Board of Transportation. Exhibit 5-1 presents the results of this comparison.

**Exhibit 5-1: Comparison Relative to Model Ethics Policies and Programs**

MODEL ETHICS POLICY AND PROGRAM PRACTICES	FOR NCBOT, POLICY/PRACTICE IS...		
	IN PLACE	PARTIALLY IN PLACE	NOT IN PLACE
<b>Systems to Prevent Misconduct - Standards of Conduct (Executive Order No. 127 and Board of Transportation ethics policies)</b>			
Code includes wide spectrum of major laws, regulations, and ethical standards			✓
Standards of conduct are consistent across state government			✓
Code includes description of ethics program and uses easy to understand terms and expressions		✓	
Code includes clear instructions on how to seek advice or report misconduct		✓	
Code includes policies on confidentiality, anonymity, and non-retaliation			✓
Code includes guidance on ethical decision-making			✓
Code is distributed to all public officials to whom it applies	✓		
<b>Systems to Prevent Misconduct - Ethics Program Oversight (State Board of Ethics)</b>			
Board of Ethics duties are formally documented	✓		
Board of Ethics has authority to develop/approve standards of conduct			✓
Board of Ethics has authority to establish criteria for appointment, evaluation, and dismissal of officials		✓	
Board of Ethics has authority to direct investigations	✓		
Board of Ethics has responsibility for ethics advisory and reporting systems		✓	
Board of Ethics has authority to direct ethics communications, training, and development	✓		
Board of Ethics convenes on a regular basis			✓
Board of Ethics has regular and open access to the Governor and other public officials	✓		
Board of Ethics has resources and funding to carry out its responsibilities		✓	

<sup>6</sup> The criteria against which many public and private organizations assess their ethics programs are derived in part from guidelines developed by U.S. Sentencing Commission. These guidelines are widely regarded as establishing the leading model for effective governmental and corporate compliance/ethics programs.

**Exhibit 5-1: Comparison Relative to Model Ethics Policies and Programs (continued)**

MODEL ETHICS POLICY AND PROGRAM PRACTICES	FOR NCBOT, POLICY/PRACTICE IS...		
	IN PLACE	PARTIALLY IN PLACE	NOT IN PLACE
<b>Systems to Prevent Misconduct - Disclosure and Conflict of Interest Review</b>			
Potential conflicts of interest are evaluated for public officials prior to their appointment		✓	
Officials are required to submit statements of economic interest prior to beginning service	✓		
Rigorous review process exists for evaluating statements of economic interest for potential conflicts		✓	
Findings of potential conflicts of interest disqualify officials from serving office		✓	
Statements of economic interest are documented and filed	✓		
Statements of economic interest are audited for accuracy			✓
Statements of economic interest are re-certified on an annual basis	✓		
Quality standards exist for review processes		✓	
<b>Systems to Prevent Misconduct - Ethics Policy/Program Communications and Training</b>			
Ethics communications are tailored to address highest risk areas			✓
Ethics communications occur on a regular basis			✓
Ethics communications cover a wide spectrum of major laws, regulations, and ethics standards			✓
Ethics communications utilize various formats and mediums			✓
Ethics communications are integrated within an overall ethics program		✓	
Ethics communications are documented and filed	✓		
Ethics training plans are tailored to address highest risk areas			✓
Ethics training occurs on a regular basis		✓	
Ethics training covers a wide spectrum of major laws, regulations, and ethics standards			✓
Ethics training is integrated within an overall ethics program			✓

**Exhibit 5-1: Comparison Relative to Model Ethics Policies and Programs (continued)**

MODEL ETHICS POLICY AND PROGRAM PRACTICES	FOR NCBOT, POLICY/PRACTICE IS...		
	IN PLACE	PARTIALLY IN PLACE	NOT IN PLACE
<b>Systems to Detect Misconduct</b>			
Resources where public employees can report misconduct of officials are clearly described and publicized		✓	
Agency heads are charged with monitoring responsibility of public officials	✓		
Systems are in place to protect confidentiality, allow anonymity, and prohibit retaliation of those reporting misconduct			✓
Ethics advisory and reporting systems are integrated within an overall ethics program			✓
Auditing for compliance with ethics policies occurs at BOT			✓
<b>Systems to Respond to Misconduct</b>			
Reports of misconduct must be investigated	✓		
Appropriate resources are applied to conducting investigations		✓	
Investigations are documented	✓		
Outcomes of investigations are reported to senior-level officials	✓		
Investigations are integrated with overall ethics program		✓	
Mechanisms exist to ensure consistent and appropriate disciplinary actions		✓	
Enforcement and discipline are integrated with overall ethics program			✓
<b>Ethics Program Management</b>			
Liability inventory of all laws and standards are documented to identify proper conduct			✓
Program objectives rely on a core process to prevent, detect and respond to misconduct		✓	
Risk assessment is performed to identify nature, magnitude and root cause of process failures			✓
Disclosure review processes are periodically evaluated for quality and effectiveness			✓
Ethics communications and training are periodically evaluated for quality and effectiveness			✓
Advice and reporting systems are periodically evaluated for quality and effectiveness			✓
Mechanisms exist to regularly modify ethics program in light of experiences over time		✓	
Enforcement and discipline are periodically evaluated for quality and effectiveness			✓

As this exhibit illustrates, many key practices are only partially in place or are not in place at all within the framework of ethics policies and programs that apply to the Board of Transportation. Significant gaps between model practices and those in place for the Board are addressed more specifically in our findings and recommendations.

In addition to the model practices comparison, we selected six representative state transportation boards for

comparison with the North Carolina BOT relative to their ethical programs and policies. Key results of this comparison are provided in Exhibit 5-2.

**Exhibit 5-2: Board of Transportation Comparison - Selected Ethics Compliance Practices**

	<b>Ethical Standards of Conduct</b>	<b>Compliance Audits for Conflicts of Interest</b>	<b>Responsibility for Ethical Compliance/Counseling</b>
<b>North Carolina</b>	<b>Commissioners must meet state statutory standards of conduct and Board-specific provisions</b>	<b>Board members must complete annual financial disclosure form</b>	<b>Attorney General North Carolina Ethics Board</b>
<b>Florida</b>	Commissioners must meet state statutory standards of conduct and Commission-specific provisions	There are no reviews unless a situation develops and is brought to the attention of the Commission	Exec. Director of the Commission gives advice on conflicts of interest
<b>Iowa</b>	Commissioners must meet state statutory standards of conduct and Commission-specific provisions	Commissioners must complete annual financial disclosure form	Attorney General Iowa Campaign Disclosure & Ethics Board
<b>Massachusetts</b>	Commissioners must meet state statutory standards of conduct	Commissioners must complete annual financial disclosure form	Massachusetts Ethics Commission
<b>South Carolina</b>	Commissioners must meet state statutory standards of conduct	Board members must complete an annual financial disclosure form	South Carolina's Ethics Commission
<b>Texas</b>	Commissioners must meet state statutory standards of conduct and Commission specific provisions	Governor's Appointment Office  Texas Ethics Commission State Auditor	Texas Ethics Commission Office of General Counsel
<b>Virginia</b>	Board members must meet state statutory standards of conduct	Commissioners must complete annual disclosure form	Attorney General

Several similarities emerge from this focused comparison of ethics compliance practices:

- Five out of seven boards in the comparison group, including North Carolina’s Board of Transportation, require members to complete annual financial disclosure forms
- All members of boards in the comparison group are required to follow state statutory standards of conduct; some boards also augment state standards with their own specific standards
- All states included in the comparison group make provisions for promulgating and enforcing ethical standards of conduct, usually through a state-level ethics commission

These results are incorporated in our findings and recommendations, as appropriate.



## FINDINGS AND RECOMMENDATIONS

This section details issues identified related to the Board of Transportation's ethics policies and practices. We present our finding or group of findings followed by one or more recommendation.

**Finding:** *The current code of ethics for the Board of Transportation has several important weaknesses.*

The Governor has issued executive orders defining standards of conduct for persons appointed to State boards and heads of agencies. Additionally, each State board and agency may adopt its own code of ethics, provided that the rules contained in that code meet or expand on the Governor's standards. NCBOT currently has an ethics policy in place.

At present, Executive Order 127 serves as the ethical guide for gubernatorial appointees, including those on the Board of Transportation. Executive Order 127, however, mainly addresses conflicts of interest; other areas typically included in a code of ethics are not addressed. Furthermore, the "Rules of Conduct for Public Officials" identified in Executive Order 127 apply only to the Governor's appointees on the Board, not legislative appointees. The Board of Transportation recognizes this and is developing its own ethical policies to cover all members.

**Recommendation:** *The Board's ethics subcommittee should develop and periodically review a BOT-specific code of ethics.*

The ethics subcommittee of the Board of Transportation should continue developing a BOT-specific ethics policy. While the rules under Executive Order No. 127 provide a foundation, the Board's ethics committee should consider clarifying and extending the requirements of the Order, such as:

- Defining the term "family member"
- Defining the phrase "an individual with whom or business with which the public official is associated"
- Defining the phrase "anything of value"

As part of this effort, the BOT should develop a liability inventory that catalogs all laws and regulations that apply to members.

**Finding:** *The State Board of Ethics is limited in its ability to prevent, detect and respond to misconduct by Board of Transportation members and new appointees.*

The State Board of Ethics has responsibility to identify potential conflict of interests for gubernatorial appointees, including those on the Board of Transportation. In this capacity, it provides a key ethics

oversight function. It reviews 2,500 statements of economic interest annually. However, the State Board of Ethics’ role is limited. Currently, one staff member is responsible for carrying out much of the State Board of Ethics’ duties such as reviewing statements of economic interest and issuing advisory opinions. No specific and formal evaluation criteria and guidance are provided to the State Board of Ethics staff person who evaluates economic interest statements. Economic interest statements are not audited to ensure their accuracy.

The State Board of Ethics has virtually no enforcement authority relative to opinions it renders. In one instance, the State Board of Ethics gave the opinion that a Board of Transportation appointee *would likely* encounter conflicts of interest in carrying out his official duties after reviewing the appointee’s economic interest statement, but it had no authority to prevent the member’s eventual appointment to office. Later, that individual engaged in activities that led to his resignation and investigations into his conduct.

Most importantly, current Board of Ethics policies (such as those individuals submitting misconduct reports do so in writing and identify themselves) strongly reduce the likelihood that someone will report instances of misconduct. The State Board of Ethics has met only three times in the past five years and has investigated only one complaint during that time.

**Finding: *Several State agencies/branches develop ethical rules and policies that impact the Board of Transportation.***

As shown in Exhibit 5-3, several State officials and entities formulate and enforce ethics policies that apply to the Board of Transportation.

**Exhibit 5-3: Responsibilities for Board of Transportation Ethics Policies and Procedures**

Responsibility/Activity	Responsible Party						
	Governor	Legislature	Board of Ethics	Attorney General	State Auditor	DOT Secretary	BOT Ethics Committee
Sets ethics policies for gubernatorial appointed officials	✓			✓1			✓2
Sets ethics policies for legislative appointed officials		✓					✓2
Establishes practices and procedures to carry out ethics policies			✓				
Has <i>de facto</i> responsibility and accountability for BOT conduct	✓	✓					
Conducts economic interest reviews of BOT members			✓				
Communicates ethics standards to BOT			✓	✓3		✓	
Conducts training for BOT members on ethics standards			✓	✓3			
Monitors BOT compliance with ethics rules						✓	

**Exhibit 5-3: Responsibilities for Board of Transportation Ethics Policies and Procedures (cont.)**

Responsibility/Activity	Responsible Party						
	Governor	Legislature	Board of Ethics	Attorney General	State Auditor	DOT Secretary	BOT Ethics Committee
Serves as a resource for advice on ethics standards			✓	✓			
Serves as a resource for reporting suspected misconduct			✓	✓	✓		
Has authority to render binding opinions related to ethical conduct	✓	✓ 4					
Has authority to take disciplinary action	✓	✓ 4					
Investigates suspected misconduct of board members			✓ 5	✓ 5	✓ 5		
Oversees management efforts for compliance	✓						

**Notes to Exhibit:**

- 1 The Office of the Attorney General drafts standards set by the Governor.
- 2 Agency boards have the option to draft ethics standards of their own.
- 3 The Office of the Attorney General has provided communication and training on an informal basis. Formal responsibility for communication and training was given to the Board of Ethics under Executive Order No. 127.
- 4 Authority reaches to legislative appointees only.
- 5 Investigations may also be performed by federal and State bureaus of investigation.

Our assessment found that ethics policy development and ethics program administration is not coordinated effectively, which is creating confusion, inefficiencies and conflicting policies and procedures. For example, Board of Transportation members are directed to seek ethics advice from the Attorney General’s office or from the Board of Ethics. This practice may provide Board of Transportation members with inconsistent advice and hinder the various entities with ethics oversight responsibilities from learning about the full breadth of questions that arise.

**Recommendation:** *Enable individuals to report misconduct confidentially, anonymously and without fear of retribution.*

Under the current framework for ethical oversight of the Board of Transportation, the State Board of Ethics should change its policies to enable individuals to report misconduct confidentially, anonymously and without fear of retribution. This could be accommodated in part by utilizing a telephone “hot line” for individuals to refer allegations of misconduct.

**Recommendation:** *Consider providing State officials with a uniform code of conduct.*

Many stakeholders interviewed for this study agree that North Carolina needs a clear, comprehensive and enforceable ethics code that applies to all State officials and employees. A State code of ethics could be structured in such a way that it:

- Sets the tone for the public officials' responsibility to fulfill ethical and legal obligations
- Reflects the culture and unique operating environment of the organization
- Uses common expressions and language that is easy to understand
- Includes frequent and varied question and answer sections or illustrative examples on the application of all key standards
- Describes the organization and structure of the organization(s) responsible for the State's ethics program (such as the State Board of Ethics)
- Provides direction to resources that can be used to seek advice or to report misconduct
- Explains policies on confidentiality, anonymity and retaliation

**Recommendation:** *Consider additional ways to improve ethics oversight on a statewide basis.*

We recommend that the Governor and General Assembly consider assessing how the State addresses ethics oversight. Although the Governor's Executive Order No. 127 provides the State Board of Ethics with expanded powers, responsibilities, independence and funding, more should be done to identify a primary ethics oversight body for all State officials.

One option for consideration is whether ethics programs covering all branches of government should be overseen by an independent State Board of Ethics or some other entity. Such an entity could be empowered to:

- Establish ethics policies
- Coordinate management systems to prevent, detect and respond to misconduct by public officials
- Perform due diligence (such as reviewing potential conflicts of interest)
- Perform communication and training related to ethics standards
- Audit and monitor efforts to detect violations of ethics laws or policies
- Act as a resource where individuals may seek advice or report misconduct confidentially, anonymously and without fear of retribution
- Respond to detected violations (including investigations and modification of systems to prevent and detect misconduct)

If such an ethics board were instituted, it would require adequate staffing and financial resources staff to accomplish its mission.

The analysis for this type of study falls outside the scope of this performance review. However, the potential benefits—improved integration, higher quality, and economies of scale in administering ethics policies and processes—justifies further exploration of these considerations.

## APPENDIX

### NORTH CAROLINA GENERAL STATUTES

**G.S. 136-17.2A.**      **Distribution formula for funds expended on Intrastate System and Transportation Improvement Program (*see attached*)**

**G.S. 143B-350.**      **Board of Transportation -- organization; powers and duties, etc. (*see attached*)**

**ARTICLE 2. Powers and Duties of Department and Board Transportation.**

136-17. [Repealed.]

(Repealed, 1973, c. 507, s. 3.)

136-17.1. [Repealed.]

(Repealed, 1977, c. 464, s. 13.)

136-17.2. Members of the Board of Transportation represent entire State.

The chairman and members of the Board of Transportation shall represent the entire State in transportation 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 transportation matters in each of said geographic areas of the State.

(1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1987, c. 783, s. 3; 1993, c. 483, s. 3.)

136-17.2A. Distribution formula for funds expended on Intrastate System and Transportation Improvement Program.

(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than funds expended on an urban loop project listed in G.S. 136-180, shall be distributed throughout the State in accordance with this section. For purposes of this distribution, the counties of the State are grouped into seven distribution regions as follows:

(1) Distribution Region A consists of the following counties:

Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties:

Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties:

Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties:

Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties:

Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following counties:

Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

- (7) Distribution Region G consists of the following counties:  
Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.
- (b) Until ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:
- (1) Twenty-five percent (25%) on the estimated number of miles to complete the Intrastate System projects in that distribution region compared to the estimated number of miles to complete the total Intrastate System;
  - (2) Fifty percent (50%) on the estimated population of the distribution region compared to the total estimated population of the State; and
  - (3) Twenty-five percent (25%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.
- (c) When ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:
- (1) Sixty-six percent (66%) on the estimated population of the distribution region compared to the total estimated population of the State; and
  - (2) Thirty-four percent (34%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.
- (d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any consecutive seven-year period, the amount expended in a distribution region must be between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts established under this subsection as the target amounts to be expended in the region for those seven years.
- (e) In making the calculation under this section, the Secretary shall use the most recent estimates of population certified by the State Budget Officer.
- (f) In developing the schedules of improvements to be funded from the Trust Fund and of improvements to be made under the Transportation Improvement Program, the Board of Transportation shall consider the highway needs of every county in a distribution region and shall make every reasonable effort to schedule the construction of highway improvements in a manner that addresses the needs of every county in the region in an equitable and timely manner.

(1989, c. 692, s. 1.4; c. 770, s. 74.7.)

**Part 2. Board of Transportation--Secondary Roads Council.**

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.

(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.

(e) 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. 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) The Board of Transportation shall have 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;
- (3) To ascertain the transportation needs and the alternative means to provide for these needs through an



integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

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

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

(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;

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

The ability of a municipality 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).

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

(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.

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

[Editor's Note: 1995 Act 490, Section 65, provides that Act 490 applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began.]

i) 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.

(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, c. 443 s. 32.1; 1977 c. 495, s. 88.)