

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1183

Short Title: NCRR Amendments.

(Public)

Sponsors: Senators Dalton; Carter, Garrou, Hartsell, Kerr, Lee, Metcalf, and Wellons.

Referred to: Commerce.

May 9, 2000

A BILL TO BE ENTITLED

**AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE
NORTH CAROLINA RAILROAD STUDY COMMISSION.**

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

1 "No stock owned by the State of North Carolina in the North Carolina Railroad
2 Company shall be sold or transferred except with the prior consent of the General
3 Assembly, except as part of a transaction or series of transactions relating to (i) a plan
4 of merger or consolidation of that company with another company, and where the State
5 will be the owner of all of the voting stock in the merged or consolidated ~~corporation-~~
6 corporation; (ii) a transfer of the stock of that company to a corporation, limited liability
7 company, or any other entity that is wholly owned by the State; or (iii) the reorganization
8 of that company."

9 Section 2. Notwithstanding the provisions of G.S. 136-16.6, in order to
10 increase the capital of the North Carolina Railroad Company, any dividends of the North
11 Carolina Railroad Company received by the State shall be applied to reduce the
12 obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by
13 subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina
14 Railroad Company received by the State shall be used by the Department of
15 Transportation for the improvement of the property of the North Carolina Railroad as
16 recommended and approved by the Board of Directors of the North Carolina Railroad
17 Company.

18 Section 3. Effective January 1, 2000, interest shall not be accrued or otherwise
19 charged on the remaining balance of the obligations described in subsection (c) of
20 Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L.
21 1999-237. Interest accrued on those obligations relating to periods prior to January 1,
22 2000, shall be deemed paid and contributed by the State to the capital of the North
23 Carolina Railroad Company.

24 Section 4. G.S. 124-1 reads as rewritten:

25 "**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

26 The Governor and Council of State shall have charge of all the State's interest in all
27 railroads, canals and other works of internal improvements. The Board of Directors of a
28 State-owned railroad company, as defined in G.S. 124-11, shall be responsible for
29 managing its affairs and for reporting as set forth in G.S. 124-3."

30 Section 5. G.S. 124-2 is repealed.

31 Section 6. G.S. 124-3 reads as rewritten:

32 "**§ 124-3. Report of railroad, canal, etc.; contents.**

33 The president or other chief officer of every railroad, canal, or other public work of
34 internal improvement in which the State owns an interest, shall, ~~when required to do so by~~
35 ~~the Governor, report annually to the Joint Legislative Commission on Governmental~~
36 Operations. make or cause to be made to the Governor and Council of State a written report of
37 ~~its affairs.~~—This report shall show:

- 38 (1) Number of shares owned by the State.
- 39 (2) Number of shares owned otherwise.
- 40 (3) ~~Face-Par~~ Face-Par value of ~~such the~~ shares.
- 41 ~~(4) Market value of each of such shares.~~
- 42 ~~(5) Amount of bonded debt, and for what purpose contracted.~~
- 43 ~~(6) Amount of other debt, and how incurred.~~

- ~~(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.~~
- ~~(8) Amount of gross receipts for past year, and from what sources derived.~~
- ~~(9) An itemized account of expenditures for past year.~~
- ~~(10) Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~
- ~~(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.~~
- ~~(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.~~
- (4) Annual financial statements, including notes, audited by an independent certified public accounting firm.
- (5) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
- (6) Acquisitions or dispositions of real property since the last report.

Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor."

Section 7. G.S. 124-4 is repealed.

Section 8. G.S. 124-5 reads as rewritten:

"§ 124-5. Approval of encumbrance on State's interest in corporations.

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company, as defined in G.S. 124-11, shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer shall report these acquisitions and dispositions in accordance with G.S. 124-3(6).

Section 9. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes are recodified as Article 1 of that Chapter to be entitled "Internal Improvements."

Section 10. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"STATE-OWNED RAILROAD COMPANY.

"§ 124-11. Definition.

'State-owned railroad company'. – A railroad company in which the State owns all of the voting stock.

"§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. – A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. – A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise of the power granted pursuant to this section shall be in accordance with the procedures of Article 2 of Chapter 40A of the General Statutes. Title to and right of possession of property acquired pursuant to this section shall vest in accordance with G.S. 40A-42(a).

"§ 124-13. Effect on State-owned railroad company charter.

Nothing in this Article repeals or modifies any State-owned company charter."

Section 11. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-199. Property interest of a State-owned railroad company.

In the absence of clear and unambiguous language to the contrary, a conveyance of property or presumptive grant to a State-owned railroad company shall be presumed to include all subsurface rights below and all air rights above the property."

Section 12. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 13. G.S. 62-180 reads as rewritten:

"§ 62-180. Use of railroads and public highways.

Any person operating electric power, telegraph or telephone lines or authorized by law to establish ~~such~~ those lines, has the right to construct, maintain and operate ~~such~~ those lines along any railroad or public highway, but ~~such~~ those lines shall be so constructed and maintained as not to obstruct or hinder unreasonably the usual travel on ~~such~~ the railroad or highway. Any right to construct, maintain, and operate these lines along any railroad shall be acquired only by agreement or eminent domain as provided in G.S. 62-185."

Section 14. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"SUMMARY REMOVAL OF ENCROACHMENTS.**"§ 124-21. Procedure for summary removal of encroachments upon railroad property.**

Any encroachment upon (i) State-owned railroad company property, as defined in G.S. 124-11, or (ii) the use or occupancy of State-owned railroad company property, without the express permission of the State-owned railroad company and after written demand is made upon the encroaching party for removal of the encroachment, may be removed from the State-owned railroad company property in the manner prescribed in this Article. The written demand made upon the encroaching party required by this section shall include a copy of this Article and shall be delivered by certified mail return receipt requested to the last known address of the encroaching party.

"§ 124-22. Filing of complaint.

The State-owned railroad company shall file a complaint for the removal of the encroachment with the clerk of superior court in the county in which the encroachment exists. If the encroachment exists in more than one county, the State-owned railroad company may file in any county where any of the encroachments exist for the removal of encroachments owned or operated by the same defendant.

"§ 124-23. Summons issued by the clerk of superior court.

When the State-owned railroad company files a complaint pursuant to this Article and requests the clerk to issue an order for the removal of any encroachment from State-owned railroad company property, the clerk shall issue a summons, along with a copy of this Article, requiring the defendant to appear at a certain time and place not to exceed 60 days from the service of the summons to answer the complaint. The State-owned railroad company shall not claim damages for the encroachment or the removal of the encroachment in this proceeding but may seek that recovery by separate action in a court of competent jurisdiction.

"§ 124-24. Service of summons.

The summons shall be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

"§ 124-25. Judgment by confession or where State-owned railroad company has proved case.

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the State-owned railroad company proves the State-owned railroad company's ownership of an easement, lease, license, right-of-way, or any other interest in the property at issue; and (ii) defendant fails to prove that defendant's use of the property does not interfere with the property interest owned or held by the State-owned railroad company by a preponderance of the evidence, or in lieu of (i) and (ii) above, the defendant admits the allegations of the complaint, judgment shall be issued by the clerk that all of the encroachments shall be removed by the defendant from the State-owned railroad company property within 15 days of the judgment. If the defendant fails to remove the encroachment within the time prescribed in this section, the clerk may order the sheriff of the relevant county to remove the encroachment or to effect other

1 remedies as directed by the clerk and all costs for removal shall be taxed upon defendant
2 by the clerk and paid to the State-owned railroad company.

3 **"§ 124-26. Trial by the clerk of superior court.**

4 If the defendant, by the defendant's answer, denies any material allegation in the
5 complaint, the clerk of superior court shall hear the evidence and give judgment as the
6 clerk shall find the facts to be.

7 **"§ 124-27. Appeal.**

8 Upon appeal from a judgment rendered in accordance with G.S. 124-25 or G.S. 124-
9 26 to the superior court as provided in Article 27A of Chapter 1 of the General Statutes,
10 either party may demand that the case be tried at the first session of the superior court
11 after the appeal is docketed. The presiding judge, in the judge's discretion, may first try
12 any pending case in which the rights of the parties or the public demand it. The
13 presiding judge may order repleading or further pleading by some or all of the parties in
14 accordance with the Rules of Civil Procedure; may try the action on stipulation as to the
15 issue; or may try it on the pleadings as filed. If the case has not been previously
16 continued in superior court, the court shall continue the case for an appropriate period of
17 time if any party initiates discovery or files a motion to allow further pleadings as
18 provided in this section, or for summary judgment pursuant to Rule 56 of the Rules of
19 Civil Procedure.

20 During an appeal by the defendant from a judgment for the State-owned railroad
21 company under this Article, a stay of execution of judgment shall not be available to the
22 defendant and the State-owned railroad company may proceed with removal of the
23 encroachment in accordance with G.S. 124-25. In the event it is determined, after the
24 exhaustion of all appellate remedies of the State-owned railroad company, that (i) the
25 State-owned railroad company did not possess ownership of an easement, lease, license,
26 right-of-way, or any other interest in the property at issue, or (ii) the defendant's use of
27 the subject property did not interfere with the property interest owned or held by the
28 State-owned railroad company, the State-owned railroad company shall reimburse the
29 defendant for the value of the property removed, determined as of the time of removal, by
30 the State-owned railroad company pursuant to a judgment or order issued according to
31 G.S. 124-25 and that reimbursement shall be the defendant's sole remedy for the
32 wrongful removal of any encroachment. In lieu of providing the foregoing
33 reimbursement, the State-owned railroad company may elect to condemn the property in
34 accordance with this Article or Chapter 40A with the value of the property taken being
35 determined as of the date the judgment was rendered in the hearing before the clerk
36 pursuant to G.S. 124-26, and the value of the property taken pursuant to the
37 condemnation shall be the defendant's sole remedy for the wrongful removal of any
38 encroachment."

39 Section 15. Chapter 14 of the General Statutes is amended by adding a new
40 section to read:

41 **"§ 14-280.1. Trespassing on railroad right-of-way.**

1 (a) Offense. – A person commits the offense of trespassing on railroad right-of-
2 way if he enters and remains on the railroad right-of-way without the consent of the
3 railroad company or the person operating the road.

4 (b) Crossings. – Nothing in this section shall apply to a person crossing the
5 railroad right-of-way at a public or private crossing.

6 (c) Legally abandoned rights-of-way. – This section shall not apply to any right-
7 of-way that has been legally abandoned pursuant to an order of a federal or state agency
8 having jurisdiction over the right-of-way and is not being used for railroad services.

9 (d) Classification. – Trespassing on railroad right-of-way is a Class 2
10 misdemeanor."

11 Section 16. G.S. 97-13(a) reads as rewritten:

12 "(a) Employees of Certain Railroads. – This Article shall not apply to railroads or
13 railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60
14 or any section thereof relating to the liability of railroads for injuries to employees, nor
15 upon the trial of any action in tort for injuries not coming under the provisions of this
16 Article, shall any provision herein be placed in evidence or be permitted to be argued to
17 the jury. Provided, however, that the foregoing exemption to railroads and railroad
18 employees shall not apply to employees of a State-owned railroad company, as defined in
19 G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall
20 apply to electric street railroads and employees thereof and to this extent the provisions of
21 Article 8 of Chapter 60 are hereby amended."

22 Section 17. Section 27.25(k) of S.L. 1999-237 reads as rewritten:

23 "Section 27.25(k) Report. – The ~~commission~~ Commission shall submit a ~~final~~
24 interim report to the General Assembly on or before May 1, 2000. The Commission shall
25 submit a final report to the General Assembly by January 15, 2001. Upon filing of the
26 final report, the Commission shall terminate."

27 Section 18. This act becomes effective December 1, 2000. Section 14 of this
28 act becomes effective December 1, 2000, and applies to offenses occurring on or after
29 that date.