

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1515 (First Edition)

SHORT TITLE: NCRR Amendments

SPONSOR(S): Representatives Church; Buchanan, Crawford, Culp, Hill, Rayfield, and Yongue.

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 2000-01 FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05

REVENUES

General Fund

Highway Fund

Please See the Assumptions and Methodology Section

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina Railroad, DOT, Court System

EFFECTIVE DATE: December 1, 2000

BILL SUMMARY: Enacts new Art. 2 of GS Ch. 124 specifying powers of State-owned railroad company (including modifying the power of eminent domain). Enacts new Art. 3 of GS Ch. 124 establishing procedure for summary removal of encroachments upon property owned by State-owned railroad company. Makes additional conforming amendments to GS Ch. 124. Enacts new GS 136-199 providing that, in absence of clear and unambiguous language to contrary, conveyance of property to State-owned railroad company is presumed to include all subsurface rights below and all air rights above property. Amends GS 62-180 to provide that right to construct, maintain, and operate power and phone lines along railroad may be acquired only by agreement or eminent domain pursuant to GS 62-185. Enacts new GS 14-280.1 to create criminal offense (Class 2 misdemeanor) for trespassing on railroad right-of-way. Exempts employees of State-owned railroad company from provisions of GS Ch. 97. Allows, without consent of General Assembly, sale or transfer of stock in NC Railroad Company (NCRR) owned by State of NC to entity that is wholly owned by State or pursuant to reorganization of NCRR. Provides that dividends of NCRR received by State must be used to reduce specified obligations of NCRR and for improvement of NCRR property. Provides that, effective Jan. 1, 2000, interest

shall not be accrued on balance of specified NCRB obligations and that interest accrued for period prior to Jan. 1, 2000 is deemed paid and contributed by State to capital of NCRB. Effective Dec. 1, 2000.

ASSUMPTIONS AND METHODOLOGY:

SUMMARY

The North Carolina Railroad (NCRB) has an obligation to pay the State of North Carolina \$42 million plus interest in repayment of a loan from the General Fund. The North Carolina Railroad has an income of \$11 million per year that is available to repay that obligation or for other purposes. If the General Assembly does not act the obligation will not be repaid.

If HB 1515 is enacted, the \$11 million per year will be used for improvement of the property of the NCRB at the direction of the NCRB Board of Directors. The NCRB obligation of \$42 million will be reduced each year by the \$11 million that the NCRB spends on these improvements. No interest will be charged. The General Fund will receive no payments and the obligation will be reduced to zero in approximately four years.

If HB 1515 is not enacted, the applicable law will be G.S. 136-16.6 and the \$11 million per year will be spent by DOT on railroad improvement projects as part of the Transportation Improvement Program. The NCRB will not direct or approve the expenditure of these funds. The General Fund will still be owed \$42 million plus interest by the NCRB but will receive no repayments.

HB 1515 has civil and criminal provisions that would have some impact on the court system, but data are not available to estimate the extent of the impact or to quantify the cost.

DISCUSSION

Sec. 32-30(b) of S.L. 97-443 placed \$61,000,000 of the General Fund unreserved credit balance in a Railroad Reserve Account. These funds were used in April 1998 to purchase the interest of the minority shareholders of the North Carolina Railroad (NCRB), giving the State of North Carolina full ownership. A promissory note was executed pledging the repayment of these funds to the State Treasurer with interest. The funding legislation provided that the term and schedule of payment of principal and interest were to be established by the action of the General Assembly upon recommendation of the Director of the Budget.

In 1999 NCRB and Norfolk Southern reached a trackage rights agreement by which Norfolk Southern operates and maintains the entire NCRB line and pays NCRB \$11 million annually.

In the 1999 budget, the General Assembly provided for the use of \$19 million of NCRB income available in early 2000 (from NCRB's agreement with Norfolk Southern) for specified railroad improvements. The budget bill applied the \$19 million to the initial \$61 million of state reserve funds used to acquire the NCRB, resulting in a current balance of \$42 million plus accrued interest.

In February 2000 the State Budget Officer submitted a recommended repayment plan to the General Assembly as required by law. His recommendation is to continue to use NCRR income for railroad improvement projects and that the remaining \$42 million obligation continue to be reduced by NCRR's distributions, as in the 1999 budget. Finally, he recommends that no interest be due. Sections 2 and 3 of HB 1515 are consistent with the State Budget Officer's recommendation.

If HB 1515 is enacted, the interest will be forgiven and the State's asset will be drawn down from \$42 million to zero in approximately four years, as the NCRR receives \$11 million annually and distributes this as income to the State of North Carolina. These dividends will be used "for the improvement of the property of the North Carolina Railroad as recommended and approved by the Board of Directors of the North Carolina Railroad Company." (HB 1515, Section 2)

If HB 1515 is not enacted, the State will still have an asset of \$42 million plus interest on its books, but there will be no provision for repayment of the loan unless legislation is passed to set the terms of the repayment schedule. The applicable law will be G.S. 136-16.6, which was passed before the buyout and before the agreement with Norfolk Southern, at a time when the annual dividends were small and irregular. G.S. 136-16.6 provides that the dividends of the North Carolina Railroad shall be credited to the Highway Fund and used by the Department of Transportation for railroad purposes. The projects are to be included in the Transportation Improvement Program. The allowable project types are as follows:

1. Track and signal improvements for passenger service.
2. Rail passenger stations and multimodal transportation centers.
3. Grade crossing protection, elimination, and hazard removal.
4. Rail rolling stock cars and locomotives.
5. Rail rehabilitation.
6. Industrial rail access.

In summary, under either HB 1515 or under current law (G.S. 136-16.6) the dividends (now at \$11 million per year) paid to the State as a result of its ownership of North Carolina Railroad Company stock will be used for railroad improvements and will not be available to the General Fund. Under HB 1515 these railroad improvements would be more broadly defined ("improvement of the property" of the NCRR) and would be controlled by the Board of Directors of NCRR, while under current law the expenditures would be more narrowly defined (six allowable project types) and would be part of the Transportation Improvement Program controlled by the Department of Transportation.

The Administrative Office of the Courts notes that Section 14 of HB 1515 gives several significant duties to clerks of court. Section 14 of the bill establishes a procedure for a state-owned railroad company to institute a summary removal action for encroachments upon state-owned railroad property or its use or occupancy. The clerk is directed to issue a summons, along with a copy of the new Article, and if the defendant fails to respond, or admits the allegations, the clerk must issue a judgment for removal of the encroachment, and may order the sheriff to remove encroachments if the defendant fails to do so. If the defendant denies any material allegation, the clerks shall hear evidence and issue judgment in the case. Appeals from the clerk's judgment would lie to the superior court, and either party may demand that the case be tried at the first session of superior court after the appeal is docketed. AOC has no data readily

available on the frequency of these actions. AOC notes that it appears that the intent and likely effect of this bill is to provide for a quicker mechanism to remove railroad encroachments than is available under existing law. To some extent, these provisions change the procedures and priorities in existing cases, as opposed to generating entirely new work for the court system. However, to the extent that such actions are numerous, the additional workload could result in a substantial impact on clerks of superior court, and without additional resources, the expedited procedures would cause delay in other cases.

Section 15 would enact new G.S. 14-280.1, trespassing on railroad right-of-way, a Class 2 misdemeanor. In 1999, nearly 22,000 defendants were charged with Class 3 misdemeanor trespass under G.S. 14-159.13, an offense that requires either notice not to enter, or posting. AOC has no data on how many of these offenses involved railroad rights of way. If prosecuted under this bill, those cases would be enhanced to Class 2 misdemeanors. In addition, new G.S. 14-280.1 does not expressly require notice or posting -- the offense is committed merely by entering or remaining on a railroad right-of-way without consent of the railroad or operator. It may be, therefore, that the new offense could be charged in circumstances not covered by existing law.

There are no data readily available from which to estimate the frequency that the new offense would be charged, either enhancing crimes being charged under current law, or as new cases. There would be an increase in court workload to the extent that existing defendants would defend the upgraded charges more vigorously, and to the extent that new defendants are brought before the court.

In summary, both the civil and criminal provisions of this bill would have some impact on the court system, but data are not available from which to estimate the extent of the impact or quantify the costs.

TECHNICAL CONSIDERATIONS:

1. Interest – S.L. 1997 –443, Section 32.30 (c) provided that the \$61 million dollar investment was to be an interest-bearing demand note in a form prescribed by the State Treasurer. The promissory note signed by the Railroad established an “applicable rate” of interest as the net rate of return generated by the State Treasurer’s Short Term Investment Fund for the preceding month. However, the promissory note provided that “the term and schedule of payment of principal and interest shall be as established by the action of the General Assembly upon recommendation of the Director of the Budget.” The Office of State Treasurer has calculated the accrued interest on the loan as about \$7.5 million through April 2000.
2. The North Carolina Railroad’s REIT Status – The NCRR is organized as a Real Estate Investment Trust for federal income tax purposes. As such it must pay out 95% (dropping to 90% in 2001) of its net income as dividends to maintain this status and avoid significant federal income taxes. If the General Assembly chooses to enact legislation that does require the repayment of the obligation to the General Fund with interest, and it wishes to avoid this taxation, it will need to set the terms and conditions of the repayment plan such that each year interest is charged on the remaining balance of the loan and the remainder of the \$11 million payment is paid as a dividend (not as repayment of principal).

3. Payment in excess of \$19 million in 2000 – The 1999 budget bill identified three purposes for which NCCR dividends could be used to reduce the obligation. These totaled \$19 million. Remaining dividends paid by the NCCR in early 2000 (totaling \$918,000) have been placed in a General Fund reserve account and remain unencumbered and unexpended until appropriated by the General Assembly.

FISCAL RESEARCH DIVISION 733-4910

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