

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1183
RATIFIED BILL

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:

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

Section 2. G.S. 124-1 reads as rewritten:

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

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

Section 2.1. Section 7.2.(b) of S.L. 2000-67 is repealed.

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

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

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

- (1) Number of shares owned by the State.
- (2) Number of shares owned otherwise.
- (3) ~~Face~~ Par value of ~~such~~ the shares.
- (4) ~~Market value of each of such shares.~~

- (5) Amount of bonded debt, and for what purpose contracted.
- (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.~~ A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.
- (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.
- (13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

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

(b) Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records. The State-owned railroad company shall not be deemed to have waived any attorney-client privilege when complying with this subsection. At the time a State-owned railroad company provides information under this section, it shall indicate whether the information is confidential. Confidential information shall be subject to subsection (c) of this section.

(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information shall not be subject to a request under G.S. 132-6(a)."

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

Section 5. 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 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 of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10)."

Section 6. G.S. 124-1 through G.S. 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 7. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"STATE-OWNED RAILROAD COMPANY.

"§ 124-11. Definition.

As used in this Chapter, the term 'State-Owned Railroad Company' shall mean 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 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). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision.

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

Nothing in this Chapter repeals or modifies any State-owned railroad company charter or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes."

Section 8. G.S. 40A-3(a) is amended by adding a new subdivision to read:

"(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

- ... (5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2)."

Section 9. 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 10. Chapter 14 of the General Statutes is amended by adding a new section to read:

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

(a) Offense. – A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without authority granted pursuant to State or federal law.

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

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

(d) Classification. – Trespassing on railroad right-of-way is a Class 3 misdemeanor."

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

"(a) Employees of Certain Railroads. – This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to

the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 12. Section 27.25.(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. – The Commission shall study the following matters:

- (1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.
- (2) Issues important to the future of passenger and freight rail service in North Carolina. The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 13. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

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

Section 14. Sections 12, 13, and 14 of this act are effective on and after July 1, 1999. Sections 2.1 and 3 of this act are effective on and after July 1, 2000. Section 10 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

In the General Assembly read three times and ratified this the 11th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000