

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH50022-RWz-2 (01/02)

Short Title: Railroad Corridor Management.

(Public)

Sponsors: Representatives Rapp and Dickson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING MANAGEMENT AND PROTECTION OF RAILROAD
3 CORRIDORS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON A
4 COMPREHENSIVE RAIL SERVICE PLAN FOR NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 1-44 reads as rewritten:

7 "§ 1-44. No title by possession of right-of-way.

8 No railroad, plank road, turnpike or canal company may be barred of, or presumed to have
9 conveyed, any real estate, right-of-way, easement, leasehold, or other interest in the soil which
10 has been condemned, or otherwise obtained for its use, as a right-of-way, depot, station house
11 or place of landing, by any statute of limitation or by occupation of the same by any person
12 ~~whatever, whatever, or by any act or acts constituting estoppel or waiver.~~"

13 SECTION 2. G.S. 1-44.1 reads as rewritten:

14 "§ 1-44.1. Presumption of abandonment of railroad right-of-way.

15 (a) A railroad shall not be found to have abandoned a right-of-way or any parcel of land
16 in which it holds an easement interest unless the railroad first records a certificate of
17 abandonment in the office of the Register of Deeds for the county where the right-of-way is
18 located. Upon the filing of the certificate of abandonment, the right-of-way or parcel of land is
19 deemed abandoned. Nothing herein shall be construed to affect or revive a previously
20 abandoned right-of-way or corridor. Any railroad which has removed its tracks from a
21 right-of-way and has not replaced them in whole or in part within a period of seven (7) years
22 after such removal and which has not made any railroad use of any part of such right-of-way
23 after such removal of tracks for a period of seven (7) years after such removal, shall be
24 presumed to have abandoned the railroad right-of-way.

25 (b) The provisions of subsection (a) of this section shall become effective on or after
26 January 1, 2010. Prior to January 1, 2010, any railroad which has removed its tracks from a
27 right-of-way and has not replaced them in whole or in part within a period of seven years after
28 such removal and which has not made any railroad use of any part of such right-of-way after
29 such removal of tracks for a period of seven years after such removal, shall be presumed to
30 have abandoned the railroad right-of-way.

31 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, a railroad
32 shall not be found to have abandoned a right-of-way held in fee under any circumstances."

33 SECTION 3. G.S. 1-51 reads as rewritten:

34 "§ 1-51. ~~Five~~ Two years.

35 Within ~~five~~ two years –



- 1 (1) No suit, action or proceeding shall be brought or maintained against a
2 railroad company owning or operating a railroad for damages or
3 compensation for right-of-way or use and occupancy of any lands by the
4 company for use of its railroad unless the action or proceeding is
5 commenced within ~~five~~two years after the lands have been entered upon for
6 the purpose of constructing the road, or within two years after it is in
7 ~~operation~~operation, whichever shall occur earlier.
- 8 (2) No suit, action or proceeding shall be brought or maintained against a
9 railroad company for damages caused by the construction of the road, or the
10 repairs thereto, unless such suit, action or proceeding is commenced within
11 ~~five~~two years after the cause of action accrues, and the jury shall assess the
12 entire amount of damages which the party aggrieved is entitled to recover by
13 reason of the trespass on his property."

14 **SECTION 4.** G.S. 40A-51(a) reads as rewritten:

15 "(a) If property has been taken by an act or omission of a condemnor listed in
16 ~~G.S. 40A-3(b) or (c)~~G.S. 40A-3(a)(4), (b), or (c) or a railroad pursuant to G.S. 40A-3(a)(1) and
17 no complaint containing a declaration of taking has been filed the owner of the property, may
18 initiate an action to seek compensation for the taking. The action may be initiated within 24
19 months of the date of the taking of the affected property or the completion of the project
20 involving the taking, whichever shall occur later. The complaint shall be filed in the superior
21 court and shall contain the following: the names and places of residence of all persons who are,
22 or claim to be, owners of the property, so far as the same can by reasonable diligence be
23 ascertained; if any persons are under a legal disability, it must be so stated; a statement as to
24 any encumbrances on the property; the particular facts which constitute the taking together with
25 the dates that they allegedly occurred, and; a description of the property taken. Upon the filing
26 of said complaint summons shall issue and together with a copy of the complaint be served on
27 the condemnor. The allegations of said complaint shall be deemed denied; however, the
28 condemnor within 60 days of service summons and complaint may file answer thereto. If the
29 taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the
30 court the estimated amount of compensation for the taking. Notice of the deposit shall be given
31 to the owner. The owner may apply for disbursement of the deposit and disbursement shall be
32 made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the
33 condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat
34 of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall
35 be followed for the purpose of determining all matters raised by the pleadings and the
36 determination of just compensation."

37 **SECTION 5.** G.S. 136-192 reads as rewritten:

38 "**§ 136-192. Obstructing highways; defective crossings; notice; failure to repair after**
39 **notice misdemeanor.**

40 (a) Whenever, in their construction, the works of any railroad corporation shall cross
41 lawfully established public roads or ways, the corporation shall so construct its works as not to
42 impede the passage or transportation of persons or property along the same. If any railroad
43 corporation shall so construct its crossings with public streets, thoroughfares or highways, or
44 keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or
45 endanger the passage or transportation of persons or property along, over or across the same,
46 the governing body of the county, city or town, or other public road authority having charge,
47 control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in
48 writing, directing it to place any such crossing in good condition, so that persons may cross and
49 property be safely transported across the same.

50 (b) The notice may be served upon the agent of the offending railroad located nearest to
51 the defective or dangerous crossing about which the notice is given, or it may be served upon

1 the section master whose section includes such crossing. Such notice may be served by
2 delivering a copy to such agent or section master, or by registered or certified mail addressed to
3 either of such persons.

4 (c) If the railroad corporation shall fail to put such crossing in a safe condition for the
5 passage of persons and property within 30 days from and after the service of the notice, it shall
6 be guilty of a Class 1 misdemeanor. Each calendar month which shall elapse after the giving of
7 the notice and before the placing of such crossing in repair shall be a separate offense.

8 (d) This section shall in nowise be construed to abrogate, repeal or otherwise affect any
9 existing law now applicable to railroad corporations with respect to highway and street
10 crossings; but the duty imposed and the remedy given by this section shall be in addition to
11 other duties and remedies now prescribed by law."

12 **SECTION 6.** G.S. 136-194 is repealed.

13 **SECTION 7.** Chapter 136 of the General Statutes is amended to add a new section
14 to read:

15 **"§ 136-199. Filing of railroad corridor maps.**

16 (a) A railroad company may cause to be filed railroad corridor maps and any revisions
17 thereto showing existing railroad corridors and other railroad property with the Department of
18 Transportation Rail Division. Railroad corridor maps filed pursuant to this subsection shall be
19 filed electronically and made publicly available on a Web site maintained by the Department of
20 Transportation Rail Division. When a railroad company files the railroad corridor maps
21 pursuant to this subsection, the maps shall be conspicuously stamped or marked "For
22 Informational Purposes Only, Pursuant to G.S. 136-199" and shall identify the name of the
23 railroad company that owns, and if different, operates the railroad corridor, including trade
24 names. Information included in the maps is for informational purposes only and shall not result
25 in a presumption of ownership in the railroad company or any other party.

26 (b) When a railroad company files railroad corridor maps pursuant to subsection (a) of
27 this section, the railroad company shall file a "Notice of Filing Railroad Corridor Maps"
28 ("Notice") with the Register of Deeds in the county where the railroad corridor and other
29 railroad property is located. This Notice shall identify that the railroad corridor maps have been
30 filed under subsection (a) of this section. For purposes of indexing with the Register of Deeds
31 only, the railroad company(s) shown on the Notice as filing the Notice shall be listed under
32 both the "Grantor" and "Grantee."

33 (c) When a railroad company files railroad corridor maps pursuant to subsection (a) of
34 this section, a copy of the railroad corridor maps, and any revisions thereto, provided under
35 subsection (a) of this section also shall be furnished to the North Carolina Society of Surveyors
36 pursuant to a license agreement for use by the North Carolina Society of Surveyors. Maps
37 provided to the North Carolina Society of Surveyors pursuant to this subsection shall be for
38 informational purposes only and shall not result in a presumption of ownership in the railroad
39 company or any other party."

40 **SECTION 8.** G.S. 153A-1 reads as rewritten:

41 **"§ 153A-1. Definitions.**

42 Unless otherwise specifically provided, or unless otherwise clearly required by the context,
43 the words and phrases defined in this section have the meaning indicated when used in this
44 Chapter.

- 45 (1) "City" means a city as defined by G.S. 160A-1(2), except that it does not
46 include a city that, without regard to its date of incorporation, would be
47 disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a).
48 (2) "Clerk" means the clerk to the board of commissioners.
49 (3) "County" means any one of the counties listed in G.S. 153A-10.
50 (4) "General law" means an act of the General Assembly that applies to all units
51 of local government, to all counties, to all counties within a class defined by

1 population or other criteria, to all cities, or to all cities within a class defined
2 by population or other criteria, including a law that meets the foregoing
3 standards but contains a clause or section exempting from its effect one or
4 more counties, cities, or counties and cities.

5 (5) "Local act" means an act of the General Assembly that applies to one or
6 more specific counties, cities, or counties and cities by name. "Local act" is
7 interchangeable with the terms "special act," "special law," "public-local
8 act," and "private act," is used throughout this Chapter in preference to those
9 terms, and means a local act as defined in this subdivision without regard to
10 the terminology employed in local acts or other portions of the General
11 Statutes.

12 (6) "Publish," "publication," and other forms of the verb "to publish" mean
13 insertion in a newspaper qualified under G.S. 1- 597 to publish legal
14 advertisements in the county.

15 (7) "Railroad corridor" means, for purposes of Article 18 of this Chapter, any
16 railroad real property, including, but not limited to, a railroad right-of-way,
17 whether held in fee or easement, regardless of the means by which title was
18 acquired, and regardless of whether railroad tracks are located on the land.
19 The term also includes rail-related real property owned by a Regional Public
20 Transportation Authority organized pursuant to Article 26 of Chapter 160A
21 of the General Statutes, the Charlotte Area Transit System, and the
22 Department of Transportation."

23 **SECTION 9.** G.S. 153A-331 is amended by adding a new subsection to read:

24 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
25 then the following provisions in subsections (a1) and (a2) of this section shall apply. A
26 subdivision control ordinance shall not allow the dedication or reservation of recreation areas
27 servicing residents of the immediate neighborhood of the subdivision, or of any other dedication
28 or reservation of open spaces or open areas within a railroad corridor without first obtaining the
29 written consent of the railroad company. For purposes of this subsection, the county planning
30 board, commission, or other department with jurisdiction over subdivision control ordinances
31 shall require any applicant seeking dedication or reservation to obtain written consent of the
32 railroad company by contacting the railroad company, by certified mail, return receipt
33 requested, through its current registered agent at the address on file with the North Carolina
34 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
35 a request for written consent made under this section to approve, deny with an explanation, or
36 respond with its requirements. Failure to respond to the request for written consent within 60
37 days shall be deemed to be approval of the request for written consent by the railroad company
38 unless the railroad owns the railroad corridor in fee simple. Nothing herein shall be construed
39 to alter or affect the property rights of the railroad or adjacent or underlying landowners.

40 (a2) The applicant shall provide directly to the county planning board, commission, or
41 other department with jurisdiction over subdivision control ordinances the written consent of
42 the railroad obtained under subsection (a1) of this section. Receipt by the county planning
43 board, commission, or other department with jurisdiction over development plans from the
44 applicant of either of the following may be relied upon in all respects by the county in
45 determining whether to allow the dedication or reservation of recreation areas or of open spaces
46 or open areas in accordance with subsection (a1) of this section, and the county shall have no
47 liability whatsoever resulting from reliance thereon:

48 (1) A copy of the railroad's written consent obtained under subsection (a1) of this
49 section; or

50 (2) A certification that no consent of a railroad is required under subsection (a1)
51 of this section because the dedication or reservation sought does not fall

1 within a railroad corridor according to railroad maps filed pursuant to G.S.
2 136-199. The certification provided under this subsection shall be signed by
3 the applicant under penalty of perjury."

4 **SECTION 10.** Chapter 153A of the General Statutes is amended by adding a new
5 section to read:

6 "§ 153A-336. Access to development within a railroad corridor.

7 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
8 then the following provisions in subsections (a) and (b) of this section shall apply. A county
9 shall not approve any development plan where the sole means of ingress to and egress from the
10 property being developed is a roadway that encroaches upon a railroad corridor without first
11 obtaining the written consent of the railroad company. For purposes of this section, the county
12 planning board, commission, or other department with jurisdiction over development plans
13 shall require any applicant for a development plan to obtain the written consent of the railroad
14 company by contacting the railroad company, by certified mail, return receipt requested,
15 through its current registered agent at the address on file with the North Carolina Department of
16 the Secretary of State. The railroad company shall have 60 days from receipt of a request for
17 written consent made under this section to approve, deny with an explanation, or respond with
18 its requirements. Failure to respond to the request for written consent within 60 days shall be
19 deemed to be approval of the request for written consent by the railroad company unless the
20 railroad owns the railroad corridor in fee simple. Nothing herein shall be construed to alter or
21 affect the property rights of the railroad or adjacent or underlying landowners. Nothing herein
22 shall apply to railroad crossings.

23 (b) The applicant shall provide directly to the county the written consent of the railroad
24 obtained under subsection (a) of this section. Receipt by the county from the applicant of either
25 of the following may be relied upon in all respects by the county in determining whether to
26 approve any development plan under subsection (a) of this section, and the county shall have
27 no liability whatsoever resulting from reliance thereon:

28 (1) A copy of the railroad's written consent obtained under subsection (a) of this
29 section; or

30 (2) A certification that no consent of a railroad is required under subsection (a)
31 of this section because the development plan sought does not fall within a
32 railroad corridor according to railroad maps filed pursuant to G.S. 136-199.
33 The certification provided under this subsection shall be signed by the
34 applicant under penalty of perjury."

35 **SECTION 11.** G.S. 153A-340 is amended by adding a new subsection to read:

36 "(j) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
37 then the following provisions in subsections (j) and (k) of this section shall apply. A county
38 shall not permit any land located within a railroad corridor to be dedicated or reserved as open
39 space or open area without first obtaining the written consent of the railroad company. For
40 purposes of this subsection, the county planning board, commission, or other department with
41 jurisdiction over development plans shall require any applicant seeking dedication or
42 reservation to obtain the written consent of the railroad company by contacting the railroad
43 company, by certified mail, return receipt requested, through its current registered agent at the
44 address on file with the North Carolina Department of the Secretary of State. The railroad
45 company shall have 60 days from receipt of a request for written consent made under this
46 section to approve, deny with an explanation, or respond with its requirements. Failure to
47 respond to the request for written consent within 60 days shall be deemed to be approval of the
48 request for written consent by the railroad company unless the railroad owns the railroad
49 corridor in fee simple. Nothing herein shall be construed to alter or affect the property rights of
50 the railroad or adjacent or underlying landowners.

1 (k) The applicant shall provide directly to the county planning board, commission, or
2 other department with jurisdiction over development plans the written consent of the railroad
3 obtained under subsection (j) of this section. Receipt by the county planning board,
4 commission, or other department with jurisdiction over development plans from the applicant
5 of either of the following may be relied upon in all respects by the county in determining
6 whether to allow the dedication or reservation of recreation areas or of open spaces or open
7 areas in accordance with subsection (j) of this section, and the county shall have no liability
8 whatsoever resulting from reliance thereon:

9 (1) A copy of the railroad's written consent obtained under subsection (j) of this
10 section; or

11 (2) A certification that no consent of a railroad is required under subsection (j)
12 of this section because the dedication or reservation sought does not fall
13 within a railroad corridor according to railroad maps filed pursuant to
14 G.S. 136-199. The certification provided under this subsection shall be
15 signed by the applicant under penalty of perjury."

16 **SECTION 12.** G.S. 153A-357 reads as rewritten:

17 **"§ 153A-357. Permits.**

18 (a) No person may commence or proceed with:

19 (1) The construction, reconstruction, alteration, repair, movement to another
20 site, removal, or demolition of any building;

21 (2) The installation, extension, or general repair of any plumbing system;

22 (3) The installation, extension, alteration, or general repair of any heating or
23 cooling equipment system; or

24 (4) The installation, extension, alteration, or general repair of any electrical
25 wiring, devices, appliances, or equipment

26 without first securing from the inspection department with jurisdiction over the site of the work
27 each permit required by the State Building Code and any other State or local law or local
28 ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a
29 provision that the work done shall comply with the State Building Code and all other applicable
30 State and local laws and local ordinances and regulations. Nothing in this section shall require a
31 county to review and approve residential building plans submitted to the county pursuant to
32 Section R-110 of Volume VII of the North Carolina State Building Code; provided that the
33 county may review and approve such residential building plans as it deems necessary. No
34 permit may be issued unless the plans and specifications are identified by the name and address
35 of the author thereof; and if the General Statutes of North Carolina require that plans for certain
36 types of work be prepared only by a registered architect or registered engineer, no permit may
37 be issued unless the plans and specifications bear the North Carolina seal of a registered
38 architect or of a registered engineer. If a provision of the General Statutes of North Carolina or
39 of any ordinance requires that work be done by a licensed specialty contractor of any kind, no
40 permit for the work may be issued unless the work is to be performed by such a duly licensed
41 contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for
42 any construction, installation, repair, replacement, or alteration costing five thousand dollars
43 (\$5,000) or less in any single-family residence or farm building unless the work involves: the
44 addition, repair or replacement of load bearing structures; the addition (excluding replacement
45 of same size and capacity) or change in the design of plumbing; the addition, replacement or
46 change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or
47 equipment; the use of materials not permitted by the North Carolina Uniform Residential
48 Building Code; or the addition (excluding replacement of like grade of fire resistance) of
49 roofing. Violation of this section constitutes a Class 1 misdemeanor.

50 (b) No permit shall be issued pursuant to subsection (a) of this section for any
51 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by

1 G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the
2 Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local
3 government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the
4 site of the activity.

5 (c) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
6 then the following provisions shall apply. To preserve and protect railroad corridors for safety
7 and future use and recognizing the right of the railroad to use its corridors at any time in the
8 future, no permit shall be issued pursuant to subsection (a) of this section for activity within a
9 railroad corridor before the inspection department with jurisdiction over the site of the work or
10 activity has verified that written consent has been obtained from the railroad company as
11 required by this subsection. The provisions of this subsection shall not apply to permits issued
12 under subsection (a) of this section solely for repairs of existing buildings, plumbing systems,
13 heating or cooling equipment systems, or electrical wiring, devices, or appliances and
14 equipment.

15 (1) For those permit applications for work or activity within a railroad corridor,
16 the inspection department with jurisdiction over the site of the work or
17 activity shall require as a condition of granting a permit that the permit
18 applicant obtain the written consent of the railroad company by contacting
19 the railroad company, by certified mail, return receipt requested, through its
20 current registered agent at the address on file with the North Carolina
21 Department of the Secretary of State.

22 (2) The railroad company shall have 60 days from receipt of the request for
23 written consent made under this subsection to approve, deny with an
24 explanation, or respond with its requirements. Failure to respond to the
25 request for written consent within 60 days shall be deemed to be approval of
26 the request for written consent by the railroad company unless the railroad
27 owns the railroad corridor in fee simple. Nothing herein shall be construed to
28 alter or affect the property rights of the railroad or adjacent or underlying
29 landowners.

30 (3) A railroad company is a party aggrieved for the purpose of appealing any
31 permitting decision by the inspection department with jurisdiction over the
32 site of the work or activity that is inconsistent with the railroad company's
33 property rights or its right to use the property for railroad purposes.

34 (4) The applicant shall provide directly to the inspection department with
35 jurisdiction over the site of the work or activity the written consent of the
36 railroad obtained under this subsection. Receipt by the inspection
37 department from the applicant of either of the following may be relied upon
38 in all respects by the inspection department in determining whether to issue
39 the permit in accordance with this subsection, and the inspection department
40 shall have no liability whatsoever resulting from its reliance thereon:

41 a. A copy of the railroad's written consent obtained under this
42 subsection; or

43 b. A certification that no consent of a railroad is required under this
44 subsection because the permit sought does not fall within a railroad
45 corridor according to railroad maps filed pursuant to G.S. 136-199.
46 The certification provided under this subsection shall be signed by
47 the applicant under penalty of perjury.

48 (5) Nothing herein shall be construed to alter or affect the existing property
49 rights of the railroad."

50 **SECTION 13.** G.S. 160A-1 reads as rewritten:

51 **"§ 160A-1. Application and meaning of terms.**

1 Unless otherwise specifically provided, or unless otherwise clearly required by the context,
2 the words and phrases defined in this section shall have the meaning indicated when used in
3 this Chapter.

- 4 (1) "Charter" means the entire body of local acts currently in force applicable to
5 a particular city, including articles of incorporation issued to a city by an
6 administrative agency of the State, and any amendments thereto adopted
7 pursuant to 1917 Public Laws, Chapter 136, Subchapter 16, Part VIII,
8 sections 1 and 2, or Article 5, Part 4, of this Chapter.
- 9 (2) "City" means a municipal corporation organized under the laws of this State
10 for the better government of the people within its jurisdiction and having the
11 powers, duties, privileges, and immunities conferred by law on cities, towns,
12 and villages. The term "city" does not include counties or municipal
13 corporations organized for a special purpose. "City" is interchangeable with
14 the terms "town" and "village," is used throughout this Chapter in preference
15 to those terms, and shall mean any city as defined in this subdivision without
16 regard to the terminology employed in charters, local acts, other portions of
17 the General Statutes, or local customary usage. The terms "city" or
18 "incorporated municipality" do not include a municipal corporation that,
19 without regard to its date of incorporation, would be disqualified from
20 receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of
21 status as a city under this sentence shall not affect the levy or collection of
22 any tax or assessment, or any criminal or civil liability, and shall not serve to
23 escheat any property until five years after the end of such status as a city, or
24 until September 1, 1991, whichever comes later.
- 25 (3) "Council" means the governing board of a city. "Council" is interchangeable
26 with the terms "board of aldermen" and "board of commissioners," is used
27 throughout this Chapter in preference to those terms, and shall mean any city
28 council as defined in this subdivision without regard to the terminology
29 employed in charters, local acts, other portions of the General Statutes, or
30 local customary usage.
- 31 (4) "General law" means an act of the General Assembly applying to all units of
32 local government, to all cities, or to all cities within a class defined by
33 population or other criteria, including a law that meets the foregoing
34 standards but contains a clause or section exempting from its effect one or
35 more cities or all cities in one or more counties.
- 36 (5) "Local act" means an act of the General Assembly applying to one or more
37 specific cities by name, or to all cities within one or more specifically named
38 counties. "Local act" is interchangeable with the terms "special act,"
39 "public-local act," and "private act," is used throughout this Chapter in
40 preference to those terms, and shall mean a local act as defined in this
41 subdivision without regard to the terminology employed in charters, local
42 acts, or other portions of the General Statutes.
- 43 (6) "Mayor" means the chief executive officer of a city by whatever title known.
- 44 (7) "Publish," "publication," and other forms of the verb "to publish" mean
45 insertion in a newspaper qualified under G.S. 1-597 to publish legal
46 advertisements in the county or counties in which the city is located.
- 47 (7a) "Railroad corridor" means, for purposes of Article 19 of this Chapter, any
48 railroad real property, including, but not limited to, a railroad right-of-way,
49 whether held in fee or easement, regardless of the means by which title was
50 acquired, and regardless of whether railroad tracks are located on the land.
51 The term also includes rail-related real property owned by a Regional Public

1 Transportation Authority organized pursuant to Article 26 of this Chapter,
2 the Charlotte Area Transit System, and the Department of Transportation.

- 3 (8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this
4 Chapter, a bona fide department which, as determined by the Commissioner
5 of Insurance, is classified as not less than class "9" in accordance with rating
6 methods, schedules, classifications, underwriting rules, bylaws or
7 regulations effective or applied with respect to the establishment of rates or
8 premiums used or charged pursuant to Article 36 or Article 40 of Chapter 58
9 of the General Statutes, and which operates fire apparatus and equipment of
10 the value of five thousand dollars (\$5,000) or more; but it does not include a
11 municipal fire department."

12 **SECTION 14.** G.S. 160A-296 reads as rewritten:

13 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

14 (a) A city shall have general authority and control over all public streets, sidewalks,
15 alleys, bridges, and other ways of public passage within its corporate limits except to the extent
16 that authority and control over certain streets and bridges is vested in the Board of
17 Transportation. General authority and control includes but is not limited to all of the following:

- 18 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper
19 repair.
20 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for
21 travel and free from unnecessary obstructions.
22 (3) The power to open new streets and alleys, and to widen, extend, pave, clean,
23 and otherwise improve existing streets, sidewalks, alleys, and bridges, and to
24 acquire the necessary land therefor by dedication and acceptance, purchase,
25 or eminent domain.
26 (4) The power to close any street or alley either permanently or temporarily.
27 (5) The power to regulate the use of the public streets, sidewalks, alleys, and
28 bridges.
29 (6) The power to regulate, license, and prohibit digging in the streets, sidewalks,
30 or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or
31 appliances of any kind either on, above, or below the surface. To the extent a
32 municipality is authorized under applicable law to impose a fee or charge
33 with respect to activities conducted in its rights-of-way, the fee or charge
34 must apply uniformly and on a competitively neutral and nondiscriminatory
35 basis to all comparable activities by similarly situated users of the
36 rights-of-way.
37 (7) The power to provide for lighting the streets, alleys, and bridges of the city.
38 (8) The power to grant easements in street rights-of-way as permitted by
39 G.S. 160A-273.

40 (a1) A city with a population of 250,000 or over according to the most recent decennial
41 federal census may also exercise the power granted by subdivision (a)(3) of this section within
42 its extraterritorial planning jurisdiction. Before a city makes improvements under this
43 subsection, it shall enter into a memorandum of understanding with the Department of
44 Transportation to provide for maintenance.

45 (b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992.

46 (c) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
47 then the following provisions in this subsection and subsection (d) of this section shall apply. In
48 exercising the power granted under subsection (a) of this section, a city shall not establish or
49 accept for dedication any new public street, sidewalk, alley, bridge, crossing, or other ways of
50 public passage within a railroad corridor as defined in G.S. 160A-1(7a) without first requiring
51 any applicant to obtain the written consent of the railroad company. For purposes of this

1 subsection, the city shall require any applicant seeking dedication or reservation to obtain
2 written consent of the railroad company by contacting the railroad company, by certified mail,
3 return receipt requested, through its current registered agent at the address on file with the
4 North Carolina Department of the Secretary of State. The railroad company shall have 60 days
5 from receipt of a request for written consent made under this section to approve, deny with an
6 explanation, or respond with its requirements. Failure to respond to the request for written
7 consent within 60 days shall be deemed to be approval of the request for written consent by the
8 railroad company unless the railroad owns the railroad corridor in fee simple. Nothing herein
9 shall be construed to alter or affect the property rights of the railroad or adjacent or underlying
10 landowners.

11 (d) The applicant shall provide directly to the city the written consent of the railroad
12 obtained under subsection (c) of this section. Receipt by the city from the applicant of either of
13 the following may be relied upon in all respects by the city in determining whether to establish
14 or accept for dedication or reservation any new public passage under subsection (c) of this
15 section, and the city shall have no liability whatsoever resulting from reliance thereon:

16 (1) A copy of the railroad's written consent obtained under subsection (c) of this
17 section; or

18 (2) A certification that no consent of a railroad is required under subsection (c)
19 of this section because the dedication or reservation sought does not fall
20 within a railroad corridor according to railroad maps filed pursuant to
21 G.S. 136-199. The certification provided under this subsection shall be
22 signed by the applicant under penalty of perjury."

23 **SECTION 15.** Chapter 160A of the General Statutes is amended by adding a new
24 section to read:

25 **"§ 160A-368. Access to development within a railroad corridor.**

26 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
27 then the following provisions in subsections (a) and (b) of this section shall apply. A city shall
28 not approve any development plan where the sole means of ingress to and egress from the
29 property being developed is a roadway that encroaches upon a railroad corridor without first
30 obtaining the written consent of the railroad company. For purposes of this section, the city
31 shall require as a condition of approving a development plan that any applicant obtain written
32 consent of the railroad company by contacting the railroad company, by certified mail, return
33 receipt requested, through its current registered agent at the address on file with the North
34 Carolina Department of the Secretary of State. The railroad company shall have 60 days from
35 receipt of a request for written consent made under this section to approve, deny with an
36 explanation, or respond with its requirements. Failure to respond to the request for written
37 consent within 60 days shall be deemed to be approval of the request for written consent by the
38 railroad company unless the railroad owns the railroad corridor in fee simple. Nothing herein
39 shall be construed to alter or affect the property rights of the railroad or adjacent or underlying
40 landowners. Nothing herein shall apply to railroad crossings.

41 (b) The applicant shall provide directly to the city the written consent of the railroad
42 obtained under subsection (a) of this section. Receipt by the city from the applicant of either of
43 the following may be relied upon in all respects by the city in determining whether to approve
44 any development plan under subsection (a) of this section, and the city shall have no liability
45 whatsoever resulting from reliance thereon:

46 (1) A copy of the railroad's written consent obtained under subsection (a) of this
47 section; or

48 (2) A certification that no consent of a railroad is required under subsection (a)
49 of this section because the development plan sought does not fall within a
50 railroad corridor according to railroad maps filed pursuant to G.S. 136-199.

1 The certification provided under this subsection shall be signed by the
2 applicant under penalty of perjury."

3 **SECTION 16.** G.S. 160A-372 is amended by adding a new subsection to read:

4 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
5 then the following provisions in this subsection and subsection (a2) of this section shall apply.
6 A subdivision control ordinance shall not allow the dedication or reservation of recreation areas
7 servicing residents of the immediate neighborhood of the subdivision or of any other dedication
8 or reservation of open spaces or open areas within a railroad corridor without first obtaining the
9 written consent of the railroad company. For purposes of this subsection, the city planning
10 board, commission, or other department with jurisdiction over subdivision control ordinances
11 shall require any applicant seeking dedication or reservation to obtain written consent of the
12 railroad company by contacting the railroad company, by certified mail, return receipt
13 requested, through its current registered agent at the address on file with the North Carolina
14 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
15 a request for written consent made under this section to approve, deny with an explanation, or
16 respond with its requirements. Failure to respond to the request for written consent within 60
17 days shall be deemed to be approval of the request for written consent by the railroad company
18 unless the railroad owns the railroad corridor in fee simple. Nothing herein shall be construed
19 to alter or affect the property rights of the railroad or adjacent or underlying landowners.

20 (a2) The applicant shall provide directly to the city planning board, commission, or other
21 department with jurisdiction over subdivision control ordinances the written consent of the
22 railroad obtained under subsection (a1) of this section. Receipt by the city planning board,
23 commission or other department with jurisdiction over development plans from the applicant of
24 either of the following may be relied upon in all respects by the city in determining whether to
25 allow the dedication or reservation of recreation areas or of open spaces or open areas in
26 accordance with subsection (a1) of this section, and the city shall have no liability whatsoever
27 resulting from reliance thereon:

28 (1) A copy of the railroad's written consent obtained under subsection (a1) of
29 this section; or

30 (2) A certification that no consent of a railroad is required under subsection (a1)
31 of this section because the dedication or reservation sought does not fall
32 within a railroad corridor according to railroad maps filed pursuant to
33 G.S. 136-199. The certification provided under this subsection shall be
34 signed by the applicant under penalty of perjury."

35 **SECTION 17.** G.S. 160A-381 is amended by adding a new subsection to read:

36 "(g1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
37 then the following provisions in this subsection and subsection (g2) of this section shall apply.
38 A city shall not permit any land located within a railroad corridor to be dedicated or reserved as
39 open space or open area without first obtaining the written consent of the railroad company. For
40 purposes of this subsection, the city planning board, commission, or other department with
41 jurisdiction over development plans shall require any applicant seeking dedication or
42 reservation to obtain written consent of the railroad company by contacting the railroad
43 company, by certified mail, return receipt requested, through its current registered agent at the
44 address on file with the North Carolina Department of the Secretary of State. The railroad
45 company shall have 60 days from receipt of a request for written consent made under this
46 section to approve, deny with an explanation, or respond with its requirements. Failure to
47 respond to the request for written consent within 60 days shall be deemed to be approval of the
48 request for written consent by the railroad company unless the railroad owns the railroad
49 corridor in fee simple. Nothing herein shall be construed to alter or affect the property rights of
50 the railroad or adjacent or underlying landowners.

1 (g2) The applicant shall provide directly to the city planning board, commission, or other
2 department with jurisdiction over development plans the written consent of the railroad
3 obtained under subsection (g1) of this section. Receipt by the city planning board, commission,
4 or other department with jurisdiction over development plans from the applicant of either of the
5 following may be relied upon in all respects by the city in determining whether to permit the
6 dedication or reservation of open space or open area in accordance with subsection (g1) of this
7 section, and the city shall have no liability whatsoever resulting from reliance thereon:

8 (1) A copy of the railroad's written consent obtained under subsection (g1) of
9 this section; or

10 (2) A certification that no consent of a railroad is required under subsection (g1)
11 of this section because the dedication or reservation sought does not fall
12 within a railroad corridor according to railroad maps filed pursuant to
13 G.S. 136-199. The certification provided under this subsection shall be
14 signed by the applicant under penalty of perjury."

15 **SECTION 18.** G.S. 160A-417 reads as rewritten:

16 "**§ 160A-417. Permits.**

17 (a) No person shall commence or proceed with:

18 (1) The construction, reconstruction, alteration, repair, movement to another
19 site, removal, or demolition of any building or structure,

20 (2) The installation, extension, or general repair of any plumbing system,

21 (3) The installation, extension, alteration, or general repair of any heating or
22 cooling equipment system, or

23 (4) The installation, extension, alteration, or general repair of any electrical
24 wiring, devices, appliances, or equipment,

25 without first securing from the inspection department with jurisdiction over the site of the work
26 any and all permits required by the State Building Code and any other State or local laws
27 applicable to the work. A permit shall be in writing and shall contain a provision that the work
28 done shall comply with the State Building Code and all other applicable State and local laws.
29 Nothing in this section shall require a city to review and approve residential building plans
30 submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State
31 Building Code; provided that the city may review and approve such residential building plans
32 as it deems necessary. No permits shall be issued unless the plans and specifications are
33 identified by the name and address of the author thereof, and if the General Statutes of North
34 Carolina require that plans for certain types of work be prepared only by a registered architect
35 or registered engineer, no permit shall be issued unless the plans and specifications bear the
36 North Carolina seal of a registered architect or of a registered engineer. When any provision of
37 the General Statutes of North Carolina or of any ordinance requires that work be done by a
38 licensed specialty contractor of any kind, no permit for the work shall be issued unless the work
39 is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C
40 of Chapter 143 shall be required for any construction, installation, repair, replacement, or
41 alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm
42 building unless the work involves: the addition, repair or replacement of load bearing
43 structures; the addition (excluding replacement of same size and capacity) or change in the
44 design of plumbing; the addition, replacement or change in the design of heating, air
45 conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not
46 permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding
47 replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute
48 a Class 1 misdemeanor.

49 (b) No permit shall be issued pursuant to subsection (a) of this section for any
50 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by
51 G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the

1 Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local
2 government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the
3 site of the activity.

4 (c) **(Effective April 1, 2009)** No permit shall be issued pursuant to subsection (a) of
5 this section for any land-disturbing activity that is subject to, but does not comply with, the
6 requirements of G.S. 113A-71.

7 (d) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
8 then the following provisions of this subsection shall apply. To preserve and protect railroad
9 corridors for safety and future use and recognizing the right of the railroad to use its corridors
10 at any time in the future, no permit shall be issued pursuant to subsection (a) of this section for
11 activity within a railroad corridor before the inspection department with jurisdiction over the
12 site of the work or activity has verified that written consent has been obtained from the railroad
13 company as required by this subsection. The provisions of this subsection shall not apply to
14 permits issued under subsection (a) of this section solely for repairs of existing buildings,
15 plumbing systems, heating or cooling equipment systems, or electrical wiring, devices, or
16 appliances and equipment.

17 (1) For those permit applications for work or activity within a railroad corridor,
18 the inspection department with jurisdiction over the site of the work or
19 activity shall require as a condition of granting a permit that the permit
20 applicant obtain the written consent of the railroad company by contacting
21 the railroad company, by certified mail, return receipt requested, through its
22 current registered agent at the address on file with the North Carolina
23 Department of the Secretary of State.

24 (2) The railroad company shall have 60 days from receipt of the request for
25 written consent made under this subsection to approve, deny with an
26 explanation, or respond with its requirements. Failure to respond to the
27 request for written consent within 60 days shall be deemed to be approval of
28 the request for written consent by the railroad company unless the railroad
29 owns the railroad corridor in fee simple. Nothing herein shall be construed to
30 alter or affect the property rights of the railroad or adjacent or underlying
31 landowners.

32 (3) A railroad company is a party aggrieved for the purpose of appealing any
33 permitting decision by the inspection department with jurisdiction over the
34 site of the work or activity that is inconsistent with the railroad company's
35 property rights or its right to use the property for railroad purposes.

36 (4) The applicant shall provide directly to the inspection department with
37 jurisdiction over the site of the work or activity the written consent of the
38 railroad obtained under this subsection. Receipt by the inspection
39 department from the applicant of either of the following may be relied upon
40 in all respects by the inspection department in determining whether to issue
41 the permit in accordance with the subsection, and the inspection department
42 shall have no liability whatsoever resulting from its reliance thereon:

43 a. A copy of the railroad's written consent obtained under this
44 subsection; or

45 b. A certification that no consent of a railroad is required under this
46 subsection because the permit sought does not fall within a railroad
47 corridor according to railroad maps filed pursuant to G.S. 136-199.
48 The certification provided under this subsection shall be signed by
49 the applicant under penalty of perjury.

50 (5) Nothing herein shall be construed to alter or affect the existing property
51 rights of the railroad."

1 **SECTION 19.** This act becomes effective October 1, 2010. Sections 9, 10, 11, 12,
2 14, 15, 16, 17, and 18 of this act apply to actions taken by city or county entities on or after
3 October 1, 2010.