

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 116
Committee Substitute Favorable 4/15/09

Short Title: Railroad Corridor Management.

(Public)

Sponsors:

Referred to:

February 11, 2009

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 have
30 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 –

36 (1) No suit, action or proceeding shall be brought or maintained against a
37 railroad company owning or operating a railroad for damages or



1 compensation for right-of-way or use and occupancy of any lands by the
2 company for use of its railroad unless the action or proceeding is
3 commenced within ~~five-two~~ years after the lands have been entered upon for
4 the purpose of constructing the road, or within two years after it is in
5 ~~operation.~~operation, whichever shall occur earlier.

- 6 (2) No suit, action or proceeding shall be brought or maintained against a
7 railroad company for damages caused by the construction of the road, or the
8 repairs thereto, unless such suit, action or proceeding is commenced within
9 ~~five-two~~ years after the cause of action accrues, and the jury shall assess the
10 entire amount of damages which the party aggrieved is entitled to recover by
11 reason of the trespass on his property."

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

13 "(a) If property has been taken by an act or omission of a condemnor listed in
14 ~~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
15 no complaint containing a declaration of taking has been filed the owner of the property, may
16 initiate an action to seek compensation for the taking. The action may be initiated within 24
17 months of the date of the taking of the affected property or the completion of the project
18 involving the taking, whichever shall occur later. The complaint shall be filed in the superior
19 court and shall contain the following: the names and places of residence of all persons who are,
20 or claim to be, owners of the property, so far as the same can by reasonable diligence be
21 ascertained; if any persons are under a legal disability, it must be so stated; a statement as to
22 any encumbrances on the property; the particular facts which constitute the taking together with
23 the dates that they allegedly occurred, and; a description of the property taken. Upon the filing
24 of said complaint summons shall issue and together with a copy of the complaint be served on
25 the condemnor. The allegations of said complaint shall be deemed denied; however, the
26 condemnor within 60 days of service summons and complaint may file answer thereto. If the
27 taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the
28 court the estimated amount of compensation for the taking. Notice of the deposit shall be given
29 to the owner. The owner may apply for disbursement of the deposit and disbursement shall be
30 made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the
31 condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat
32 of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall
33 be followed for the purpose of determining all matters raised by the pleadings and the
34 determination of just compensation."

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

36 **"§ 136-192. Obstructing highways; defective crossings; notice; failure to repair after**
37 **notice misdemeanor.**

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

48 (b) The notice may be served upon the agent of the offending railroad located nearest to
49 the defective or dangerous crossing about which the notice is given, or it may be served upon
50 the section master whose section includes such crossing. Such notice may be served by

1 delivering a copy to such agent or section master, or by registered or certified mail addressed to
2 either of such persons.

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

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

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

12 **SECTION 7.** Chapter 136 of the General Statutes is amended to add a new section

13 to read:

14 **"§ 136-199. Filing of railroad corridor maps.**

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

25 (b) When a railroad company files railroad corridor maps pursuant to subsection (a) of
26 this section, the railroad company shall file a "Notice of Filing Railroad Corridor Maps" ("Map
27 Notice") with the register of deeds in the county where the railroad corridor and other railroad
28 property is located. This Map Notice shall identify that the railroad corridor maps have been
29 filed under subsection (a) of this section. For purposes of indexing with the register of deeds
30 only, the railroad company(s) shown on the recorded Map Notice as filing the Map Notice may
31 be deemed by the register of deeds to be the "Grantors" and the only parties to the instrument.

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

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

40 **"§ 153A-1. Definitions.**

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

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

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

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

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

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

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

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

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

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

49 (2) A certification that no consent of a railroad is required under subsection (a1)
50 of this section because the dedication or reservation sought does not fall
51 within a railroad corridor according to railroad maps filed pursuant to

1 G.S. 136-199. The certification provided under this subsection shall be
2 signed by the applicant under penalty of perjury."

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

5 **"§ 153A-336. Access to development within a railroad corridor.**

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

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

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

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

34 **SECTION 11.** G.S. 153A-340 is amended by adding two new subsections to read:

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

50 (k) The applicant shall provide directly to the county planning board, commission, or
51 other department with jurisdiction over development plans the written consent of the railroad

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

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

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

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

15 **"§ 153A-357. Permits.**

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

- 17 (1) The construction, reconstruction, alteration, repair, movement to another
18 site, removal, or demolition of any building;
19 (2) The installation, extension, or general repair of any plumbing system;
20 (3) The installation, extension, alteration, or general repair of any heating or
21 cooling equipment system; or
22 (4) The installation, extension, alteration, or general repair of any electrical
23 wiring, devices, appliances, or equipment

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

48 (b) No permit shall be issued pursuant to subsection (a) of this section for any
49 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by
50 G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the
51 Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local

1 government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the
2 site of the activity.

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

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

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

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

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

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

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

46 (5) Nothing herein shall be construed as altering the reach and effect of
47 applicable federal law to the railroad or rail carriers, nor to alter or affect the
48 property rights of the railroad."

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

50 **"§ 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, or other ways of public
50 passage within a railroad corridor as defined in G.S. 160A-1(7a) without first requiring any
51 applicant to obtain the written consent of the railroad company. For purposes of this subsection,

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

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

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

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

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

24 **"§ 160A-368. Access to development within a railroad corridor.**

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

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

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

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

1 **SECTION 16.** G.S. 160A-372 is amended by adding two new subsections to read:

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

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

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

33 **SECTION 17.** G.S. 160A-381 is amended by adding two new subsections to read:

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

49 (g2) The applicant shall provide directly to the city planning board, commission, or other
50 department with jurisdiction over development plans the written consent of the railroad
51 obtained under subsection (g1) of this section. Receipt by the city planning board, commission,

1 or other department with jurisdiction over development plans from the applicant of either of the
2 following may be relied upon in all respects by the city in determining whether to permit the
3 dedication or reservation of open space or open area in accordance with subsection (g1) of this
4 section, and the city shall have no liability whatsoever resulting from reliance thereon:

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

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

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

13 **"§ 160A-417. Permits.**

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

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

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

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

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

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

46 (b) No permit shall be issued pursuant to subsection (a) of this section for any
47 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by
48 G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the
49 Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local
50 government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the
51 site of the activity.

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

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

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

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

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

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

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

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

47 (5) Nothing herein shall be construed as altering the reach and effect of
48 applicable federal law to the railroad or rail carriers, not to alter or affect the
49 property 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.