

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 116
Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/6/09

Short Title: Railroad Corridor Management.

(Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING MANAGEMENT AND PROTECTION OF RAILROAD
CORRIDORS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON A
COMPREHENSIVE RAIL SERVICE PLAN FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

"§ 1-51. ~~Five~~ Three years.

Within ~~five~~ three 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~~three years after the lands have been entered upon
6 for 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~~three years after the cause of action accrues, and the jury shall assess
12 the entire amount of damages which the party aggrieved is entitled to
13 recover by 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.** Chapter 136 of the General Statutes is amended by adding a new
13 section to read:

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

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

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

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

42 **SECTION 7.** G.S. 153A-1 reads as rewritten:

43 **"§ 153A-1. Definitions.**

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

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

- 1 (4) "General law" means an act of the General Assembly that applies to all units
2 of local government, to all counties, to all counties within a class defined by
3 population or other criteria, to all cities, or to all cities within a class defined
4 by population or other criteria, including a law that meets the foregoing
5 standards but contains a clause or section exempting from its effect one or
6 more counties, cities, or counties and cities.
- 7 (5) "Local act" means an act of the General Assembly that applies to one or
8 more specific counties, cities, or counties and cities by name. "Local act" is
9 interchangeable with the terms "special act," "special law," "public-local
10 act," and "private act," is used throughout this Chapter in preference to those
11 terms, and means a local act as defined in this subdivision without regard to
12 the terminology employed in local acts or other portions of the General
13 Statutes.
- 14 (6) "Publish," "publication," and other forms of the verb "to publish" mean
15 insertion in a newspaper qualified under G.S. 1- 597 to publish legal
16 advertisements in the county.
- 17 (7) "Railroad corridor" means, for purposes of Article 18 of this Chapter, any
18 railroad real property, including, but not limited to, a railroad right-of-way,
19 whether held in fee or easement, regardless of the means by which title was
20 acquired, and regardless of whether railroad tracks are located on the land.
21 The term also includes rail-related real property owned by a Regional Public
22 Transportation Authority organized pursuant to Article 26 of Chapter 160A
23 of the General Statutes, the Charlotte Area Transit System, and the
24 Department of Transportation."

25 **SECTION 8.** G.S. 153A-331 is amended by adding two new subsections to read:

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

46 (a2) The applicant shall provide directly to the county planning board, commission, or
47 other department with jurisdiction over subdivision control ordinances the written consent of
48 the railroad obtained under subsection (a1) of this section. Receipt by the county planning
49 board, commission, or other department with jurisdiction over development plans from the
50 applicant of either of the following may be relied upon in all respects by the county in
51 determining whether to allow the dedication or reservation of recreation areas or of open spaces

1 or open areas in accordance with subsection (a1) of this section, and the county shall have no
2 liability resulting from reliance thereon:

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

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

10 **SECTION 9.** Chapter 153A of the General Statutes is amended by adding a new
11 section to read:

12 "**§ 153A-336. Access to development within a railroad corridor.**

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

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

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

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

41 **SECTION 10.** G.S. 153A-340 is amended by adding two new subsections to read:

42 "(j) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
43 then the provisions in subsections (j) and (k) of this section shall apply. A county shall not
44 permit any land located within a railroad corridor to be dedicated or reserved as open space or
45 open area without first obtaining the written consent of the railroad company. For purposes of
46 this subsection, the county planning board, commission, or other department with jurisdiction
47 over development plans shall require any applicant seeking dedication or reservation to obtain
48 the written consent of the railroad company by contacting the railroad company by certified
49 mail, return receipt requested, through its current registered agent at the address on file with the
50 North Carolina Department of the Secretary of State. The railroad company shall have 60 days
51 from receipt of a request for written consent made under this section to approve, deny with an

1 explanation, or respond with its requirements. Failure to respond to the request for written
2 consent within 60 days shall be deemed to be approval of the request for written consent by the
3 railroad company unless the railroad owns the railroad corridor in fee simple. In lieu of
4 obtaining consent of the railroad company, a county may allow an open space credit for acreage
5 subject to a railroad easement without public dedication or reservation if the purpose of the
6 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be
7 construed to alter or affect the property rights of the railroad or adjacent or underlying
8 landowners.

9 (k) The applicant shall provide directly to the county planning board, commission, or
10 other department with jurisdiction over development plans the written consent of the railroad
11 obtained under subsection (j) of this section. Receipt by the county planning board,
12 commission, or other department with jurisdiction over development plans from the applicant
13 of either of the following may be relied upon in all respects by the county in determining
14 whether to allow the dedication or reservation of recreation areas or of open spaces or open
15 areas in accordance with subsection (j) of this section, and the county shall have no liability
16 resulting from reliance thereon:

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

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

24 **SECTION 11.** G.S. 153A-357 reads as rewritten:

25 **"§ 153A-357. Permits.**

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

- 27 (1) The construction, reconstruction, alteration, repair, movement to another
28 site, removal, or demolition of any building;
29 (2) The installation, extension, or general repair of any plumbing system;
30 (3) The installation, extension, alteration, or general repair of any heating or
31 cooling equipment system; or
32 (4) The installation, extension, alteration, or general repair of any electrical
33 wiring, devices, appliances, or equipment

34 without first securing from the inspection department with jurisdiction over the site of the work
35 each permit required by the State Building Code and any other State or local law or local
36 ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a
37 provision that the work done shall comply with the State Building Code and all other applicable
38 State and local laws and local ordinances and regulations. Nothing in this section shall require a
39 county to review and approve residential building plans submitted to the county pursuant to
40 Section R-110 of Volume VII of the North Carolina State Building Code; provided that the
41 county may review and approve such residential building plans as it deems necessary. No
42 permit may be issued unless the plans and specifications are identified by the name and address
43 of the author thereof; and if the General Statutes of North Carolina require that plans for certain
44 types of work be prepared only by a registered architect or registered engineer, no permit may
45 be issued unless the plans and specifications bear the North Carolina seal of a registered
46 architect or of a registered engineer. If a provision of the General Statutes of North Carolina or
47 of any ordinance requires that work be done by a licensed specialty contractor of any kind, no
48 permit for the work may be issued unless the work is to be performed by such a duly licensed
49 contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for
50 any construction, installation, repair, replacement, or alteration costing five thousand dollars
51 (\$5,000) or less in any single-family residence or farm building unless the work involves: the

1 addition, repair or replacement of load bearing structures; the addition (excluding replacement
2 of same size and capacity) or change in the design of plumbing; the addition, replacement or
3 change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or
4 equipment; the use of materials not permitted by the North Carolina Uniform Residential
5 Building Code; or the addition (excluding replacement of like grade of fire resistance) of
6 roofing. Violation of this section constitutes a Class 1 misdemeanor.

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

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

23 (1) For those permit applications for work or activity that is within a railroad
24 corridor and within 50 feet of any railroad track, railroad bridge, or other
25 railroad facility, the inspection department with jurisdiction over the site of
26 the work or activity shall not grant a permit to an applicant who has not first
27 obtained a written agreement with the railroad company.

28 (2) For those permit applications for work or activity that is within the railroad
29 corridor and greater than 50 feet from any railroad track, railroad bridge, or
30 other railroad facility, the applicant shall provide written notice to the
31 railroad company of the application at the time the application is submitted
32 to the inspection department with jurisdiction over the site of the work or
33 activity by sending the notice to the railroad company by certified mail,
34 return receipt requested, through its current registered agent at the address on
35 file with the North Carolina Department of the Secretary of State.

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

40 (4) For permit applications sought under subdivision (1) of this subsection, the
41 applicant shall provide directly to the inspection department with jurisdiction
42 over the site of the work or activity a copy of the written agreement entered
43 into with the railroad company. Receipt by the inspection department from
44 the applicant of either of the following may be relied upon in all respects by
45 the inspection department in determining whether to issue the permit in
46 accordance with this subsection, and the inspection department shall have no
47 liability resulting from its reliance thereon:

48 a. A copy of the railroad's written agreement obtained under this
49 subsection; or

50 b. A certification that no written agreement with a railroad is required
51 under this subsection because the permit sought is not for work or

1 activity that falls within a railroad corridor and within 50 feet of any
2 railroad track, railroad bridge, or other railroad facility according to
3 railroad maps filed pursuant to G.S. 136-199. The certification
4 provided under this subsection shall be signed by the applicant under
5 penalty of perjury.

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

9 **SECTION 12.** G.S. 160A-1 reads as rewritten:

10 **"§ 160A-1. Application and meaning of terms.**

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

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

1 subdivision without regard to the terminology employed in charters, local
2 acts, or other portions of the General Statutes.

3 (6) "Mayor" means the chief executive officer of a city by whatever title known.

4 (7) "Publish," "publication," and other forms of the verb "to publish" mean
5 insertion in a newspaper qualified under G.S. 1-597 to publish legal
6 advertisements in the county or counties in which the city is located.

7 (7a) "Railroad corridor" means, for purposes of Article 19 of this Chapter, any
8 railroad real property, including, but not limited to, a railroad right-of-way,
9 whether held in fee or easement, regardless of the means by which title was
10 acquired, and regardless of whether railroad tracks are located on the land.
11 The term also includes rail-related real property owned by a Regional Public
12 Transportation Authority organized pursuant to Article 26 of this Chapter,
13 the Charlotte Area Transit System, and the Department of Transportation.

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

23 **SECTION 13.** G.S. 160A-296 reads as rewritten:

24 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

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

29 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper
30 repair.

31 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for
32 travel and free from unnecessary obstructions.

33 (3) The power to open new streets and alleys, and to widen, extend, pave, clean,
34 and otherwise improve existing streets, sidewalks, alleys, and bridges, and to
35 acquire the necessary land therefor by dedication and acceptance, purchase,
36 or eminent domain.

37 (4) The power to close any street or alley either permanently or temporarily.

38 (5) The power to regulate the use of the public streets, sidewalks, alleys, and
39 bridges.

40 (6) The power to regulate, license, and prohibit digging in the streets, sidewalks,
41 or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or
42 appliances of any kind either on, above, or below the surface. To the extent a
43 municipality is authorized under applicable law to impose a fee or charge
44 with respect to activities conducted in its rights-of-way, the fee or charge
45 must apply uniformly and on a competitively neutral and nondiscriminatory
46 basis to all comparable activities by similarly situated users of the
47 rights-of-way.

48 (7) The power to provide for lighting the streets, alleys, and bridges of the city.

49 (8) The power to grant easements in street rights-of-way as permitted by
50 G.S. 160A-273.

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

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

7 (c) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
8 then the provisions in this subsection and subsection (d) of this section shall apply. In
9 exercising the power granted under subsection (a) of this section, a city shall not establish or
10 accept for dedication any new public street, sidewalk, alley, bridge, or other ways of public
11 passage within a railroad corridor as defined in G.S. 160A-1(7a) without first requiring any
12 applicant to obtain the written consent of the railroad company. For purposes of this subsection,
13 the city shall require any applicant seeking dedication or reservation to obtain written consent
14 of the railroad company by contacting the railroad company by certified mail, return receipt
15 requested, through its current registered agent at the address on file with the North Carolina
16 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
17 a request for written consent made under this section to approve, deny with an explanation, or
18 respond with its requirements. Failure to respond to the request for written consent within 60
19 days shall be deemed to be approval of the request for written consent by the railroad company
20 unless the railroad owns the railroad corridor in fee simple. Nothing herein shall be construed
21 to alter or affect the property rights of the railroad or adjacent or underlying landowners.

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

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

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

34 **SECTION 14.** Chapter 160A of the General Statutes is amended by adding a new
35 section to read:

36 "**§ 160A-368. Access to development within a railroad corridor.**

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

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

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

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

13 **SECTION 15.** G.S. 160A-372 is amended by adding two new subsections to read:

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

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

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

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

49 **SECTION 16.** G.S. 160A-381 is amended by adding two new subsections to read:

50 **"(g1)** When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
51 then the provisions in this subsection and subsection (g2) of this section shall apply. A city

1 shall not permit any land located within a railroad corridor to be dedicated or reserved as open
2 space or open area without first obtaining the written consent of the railroad company. For
3 purposes of this subsection, the city planning board, commission, or other department with
4 jurisdiction over development plans shall require any applicant seeking dedication or
5 reservation to obtain written consent of the railroad company by contacting the railroad
6 company by certified mail, return receipt requested, through its current registered agent at the
7 address on file with the North Carolina Department of the Secretary of State. The railroad
8 company shall have 60 days from receipt of a request for written consent made under this
9 section to approve, deny with an explanation, or respond with its requirements. Failure to
10 respond to the request for written consent within 60 days shall be deemed to be approval of the
11 request for written consent by the railroad company unless the railroad owns the railroad
12 corridor in fee simple. In lieu of obtaining consent of the railroad company, a city may allow an
13 open space credit for acreage subject to a railroad easement without public dedication or
14 reservation if the purpose of the credit is to preserve the railroad corridor for future railroad
15 purposes. Nothing herein shall be construed to alter or affect the property rights of the railroad
16 or adjacent or underlying landowners.

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

- 24 (1) A copy of the railroad's written consent obtained under subsection (g1) of
25 this section; or
26 (2) A certification that no consent of a railroad is required under subsection (g1)
27 of this section because the dedication or reservation sought does not fall
28 within a railroad corridor according to railroad maps filed pursuant to
29 G.S. 136-199. The certification provided under this subsection shall be
30 signed by the applicant under penalty of perjury."

31 **SECTION 17.** G.S. 160A-417 reads as rewritten:

32 **"§ 160A-417. Permits.**

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

- 34 (1) The construction, reconstruction, alteration, repair, movement to another
35 site, removal, or demolition of any building or structure,
36 (2) The installation, extension, or general repair of any plumbing system,
37 (3) The installation, extension, alteration, or general repair of any heating or
38 cooling equipment system, or
39 (4) The installation, extension, alteration, or general repair of any electrical
40 wiring, devices, appliances, or equipment,

41 without first securing from the inspection department with jurisdiction over the site of the work
42 any and all permits required by the State Building Code and any other State or local laws
43 applicable to the work. A permit shall be in writing and shall contain a provision that the work
44 done shall comply with the State Building Code and all other applicable State and local laws.
45 Nothing in this section shall require a city to review and approve residential building plans
46 submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State
47 Building Code; provided that the city may review and approve such residential building plans
48 as it deems necessary. No permits shall be issued unless the plans and specifications are
49 identified by the name and address of the author thereof, and if the General Statutes of North
50 Carolina require that plans for certain types of work be prepared only by a registered architect
51 or registered engineer, no permit shall be issued unless the plans and specifications bear the

1 North Carolina seal of a registered architect or of a registered engineer. When any provision of
2 the General Statutes of North Carolina or of any ordinance requires that work be done by a
3 licensed specialty contractor of any kind, no permit for the work shall be issued unless the work
4 is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C
5 of Chapter 143 shall be required for any construction, installation, repair, replacement, or
6 alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm
7 building unless the work involves: the addition, repair or replacement of load bearing
8 structures; the addition (excluding replacement of same size and capacity) or change in the
9 design of plumbing; the addition, replacement or change in the design of heating, air
10 conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not
11 permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding
12 replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute
13 a Class 1 misdemeanor.

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

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

23 (d) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
24 then the following provisions of this subsection shall apply. To preserve and protect railroad
25 corridors for safety and future use and recognizing the right of the railroad to use its corridors
26 at anytime in the future, no permit shall be issued pursuant to subsection (a) of this section for
27 activity within a railroad corridor before the inspection department with jurisdiction over the
28 site of the work or activity has verified that written agreement has been obtained from the
29 railroad company as required by this subsection. The provisions of this subsection shall not
30 apply to permits issued under subsection (a) of this section solely for repairs of existing
31 buildings, plumbing systems, heating or cooling equipment systems, or electrical wiring,
32 devices, or appliances and equipment.

33 (1) For those permit applications for work or activity that is within a railroad
34 corridor and within 50 feet of any railroad track, railroad bridge, or other
35 railroad facility, the inspection department with jurisdiction over the site of
36 the work or activity shall not grant a permit to an applicant who has not first
37 obtained a written agreement with the railroad company.

38 (2) For those permit applications for work or activity that is within the railroad
39 corridor and greater than 50 feet from any railroad track, railroad bridge, or
40 other railroad facility, the applicant shall provide written notice to the
41 railroad company of the application at the time the application is submitted
42 to the inspection department with jurisdiction over the site of the work or
43 activity by sending the notice to the railroad company by certified mail,
44 return receipt requested, through its current registered agent at the address on
45 file with the North Carolina Department of the Secretary of State.

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

50 (4) For permit applications sought under subdivision (1) of this subsection, the
51 applicant shall provide directly to the inspection department with jurisdiction

1 over the site of the work or activity a copy of the written agreement entered
2 into with the railroad company. Receipt by the inspection department from
3 the applicant of either of the following may be relied upon in all respects by
4 the inspection department in determining whether to issue the permit in
5 accordance with this subsection, and the inspection department shall have no
6 liability resulting from its reliance thereon:

7 a. A copy of the railroad's written agreement obtained under this
8 subsection; or

9 b. A certification that no written agreement with a railroad is required
10 under this subsection because the permit sought is not for work or
11 activity that falls within a railroad corridor and within 50 feet of any
12 railroad track, railroad bridge, or other railroad facility according to
13 railroad maps filed pursuant to G.S. 136-199. The certification
14 provided under this subsection shall be signed by the applicant under
15 penalty of perjury.

16 (5) Nothing herein shall be construed as altering the reach and effect of
17 applicable federal law to the railroad or rail carriers, not to alter or affect the
18 property rights of the railroad."

19 **SECTION 18.** This act becomes effective October 1, 2010. Sections 8, 9, 10, 11,
20 13, 14, 15, 16, and 17 of this act apply to actions taken by city or county entities on or after
21 October 1, 2010.