

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

**S**

**3**

SENATE BILL 682

Public Utilities Committee Substitute Adopted 4/28/93

House Committee Substitute Favorable 6/17/93

Short Title: C&NW Railroad Authority.

(Local)

---

Sponsors:

---

Referred to:

---

April 5, 1993

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE COUNTIES OF CALDWELL AND CATAWBA AND  
2 THE CITIES OF GRANITE FALLS, HUDSON, HICKORY, LENOIR, AND  
3 SAWMILLS TO ESTABLISH THE CAROLINA AND NORTHWESTERN  
4 RAILROAD AUTHORITY.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. (a) The Counties of Caldwell and Catawba, and the Cities of Granite  
8 Falls, Hudson, Hickory, Lenoir, and Sawmills, by similar resolution adopted by each,  
9 may create the Carolina and Northwestern Railroad Authority by following the  
10 procedures of this section. The resolutions shall be filed with the Secretary of State, and  
11 when the Secretary of State finds that all such entities have adopted similar resolutions,  
12 the Secretary of State shall issue a certificate that the Carolina and Northwestern  
13 Railroad Authority exists as a body politic and corporate as provided by this act.

14 (b) The Carolina and Northwestern Railroad Authority shall be a body politic and  
15 corporate. The authority shall be composed of nine members, appointed as follows:

- 16 (1) One each by the board of county commissioners of Caldwell and  
17 Catawba Counties for initial terms to expire June 30, 1996;  
18 (2) One by the governing board of the City of Lenoir for an initial term to  
19 expire June 30, 1996;  
20 (3) One each by the governing boards of the Cities of Hudson and Granite  
21 Falls for initial terms to expire June 30, 1995; and

- 1           (4) One each by the governing boards of the Cities of Hickory and  
2           Sawmills for initial terms to expire June 30, 1994.
- 3           (5) The President of the Caldwell County Chamber of Commerce, Inc., or  
4           a designee, and the President of the Catawba County Chamber of  
5           Commerce, Inc., or a designee.

6           Subsequent terms shall be for four years, except for the Presidents of the  
7 Chambers of Commerce who shall serve while holding office. With the exception of  
8 the Presidents of the Chambers of Commerce, any appointee must be a registered voter  
9 of the jurisdiction making the appointment. Vacancies shall be filled for the remainder  
10 of the unexpired term by the board making the original appointment. Each member  
11 shall subscribe an oath of office as provided by law and file that oath with the clerk of  
12 superior court of the county in which the appointee resides.

13           (c) The members shall be allowed reasonable compensation as determined  
14 by joint action of all of the counties and cities making appointments to the authority,  
15 and shall be paid actual expenses incurred in the transaction of business at the instance  
16 of the authority.

17           Sec. 2. The members shall serve at the pleasure of their respective appointing  
18 board. The authority shall determine its own organization and shall at its first meeting  
19 in July of each calendar year elect from its membership a chair and vice-chair, and shall  
20 elect a secretary, who shall all serve for a term of one year, or until their successors are  
21 elected and qualify, except that the initial officers may be elected as soon as the  
22 authority organizes and serve until July 1, 1994.

23           Sec. 3. (a) The authority has the powers of a railroad corporation under  
24 Article 11 of Chapter 62 of the General Statutes, and shall be considered a railroad for  
25 the purpose of that Article. Additionally, the authority may:

- 26           (1) Sue and be sued in the name of the authority, and all pleadings served  
27           upon the authority shall be served on the chair or secretary of the  
28           authority.
- 29           (2) Expend funds appropriated from time to time by the units of  
30           government making appointments to the authority, jointly or severally,  
31           for railroad purposes and to appropriate and expend funds received by  
32           the authority from fees, charges, rents, and dues arising out of the  
33           operation of the railroad, the facilities, improvements, and concessions  
34           located thereat or operated thereon.
- 35           (3) Establish, construct, control, lease, maintain, improve, operate, and  
36           regulate a railroad on lands acquired by it with buildings necessary to  
37           accommodate all types of business to operate a railroad, including  
38           parking, and any equipment to operate a railroad, to have complete  
39           authority for rules and regulations over all railroad property for the  
40           control of all types of vehicular traffic, mobile or stationary, and  
41           pedestrian traffic with respect to areas or roadways not under the  
42           control of the Department of Transportation and any rules and  
43           regulations adopted by the authority for property exclusively under its  
44           control and to have conjunctive authority to work with and cooperate

1 with all duly constituted law enforcement agencies to enforce rules and  
2 regulations established by the State of North Carolina. The penalty for  
3 violation of rules and regulations established by the authority shall be a  
4 misdemeanor and, upon conviction, shall be punishable by a fine not to  
5 exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days.  
6 All rules and regulations so adopted by the authority shall be recorded  
7 by delivering true copies thereof certified by the chairperson and  
8 secretary of the authority to the Clerks of Superior Court of Caldwell  
9 and Catawba Counties.

- 10 (4) For the public use or benefit the authority possesses the power of  
11 eminent domain and may acquire by purchase, gift, or condemnation,  
12 any property in Catawba and Caldwell Counties only for the purpose  
13 of establishing, extending, enlarging, or improving a railroad. The  
14 Carolina and Northwestern Railroad Authority is declared to be a local  
15 public condemnor under the provisions of Chapter 40A of the General  
16 Statutes and in exercising the powers of eminent domain shall follow  
17 the procedures of Article 3 of that Chapter, or as an alternative may  
18 condemn under that Chapter as if it were a railroad company. Title to  
19 the property and the right of immediate possession shall vest pursuant  
20 to G.S. 40A-42(a) if the condemnation proceeding is initiated as a  
21 public condemnor. The authority may dispose of any real or personal  
22 property belonging to it according to the procedures described in  
23 Article 12 of Chapter 160A of the General Statutes.
- 24 (5) Lease for a term of 20 years and for purposes not inconsistent with  
25 railroad purposes or usage, real or personal property or both, under the  
26 supervision of or administered by the authority.
- 27 (6) Contract with persons, firms, or corporations for terms not to exceed  
28 20 years, for the operation of passenger and freight service, scheduled  
29 or nonscheduled, and to charge and collect reasonable fees, charges,  
30 and rents for the use of such property, and services rendered in the  
31 operation thereof.
- 32 (7) Operate, own, control, regulate, lease, or grant to others the license to  
33 operate amusements or concessions for a term not exceeding 20 years.
- 34 (8) Enter into contracts, and with the prior written approval of all the  
35 governing boards making appointments, to pledge as security the  
36 property of the authority; provided, however, that neither the authority  
37 nor the individual members thereof shall have any authority to pledge  
38 the credit of or contract for any local government making  
39 appointments to the authority. With the prior written consent of the  
40 governing boards of all the units of local government making  
41 appointments to the authority, the authority may pledge any lease  
42 agreement to which it is a party as security for any loan.
- 43 (9) Adopt and use a seal.

1 (10) Contract with any federal or State agency relating to the grading,  
2 constructing, equipping, improving, maintaining, or operating of a  
3 railroad or its facilities, or both.

4 (b) The Carolina and Northwestern Railroad Authority shall enjoy governmental  
5 immunity; however, the authority may contract to insure itself and any of its officers,  
6 agents, or employees against liability for wrongful death or negligence or intentional  
7 damage to persons or property or against absolute liability for damage to persons or  
8 property caused by an act or omission of the authority or of any of its officers, agents, or  
9 employees when acting within the scope of their authority and the course of their  
10 employment. The members of the authority shall determine what liabilities and what  
11 officers, agents, and employees shall be covered by any insurance purchased pursuant to  
12 this provision.

13 Purchase of insurance pursuant to this provision waives the authority's  
14 governmental immunity to the extent of insurance coverage for any act or omission  
15 occurring in the exercise of a governmental function. By entering into an insurance  
16 contract with the authority, an insurer waives any defense based upon the governmental  
17 immunity of the authority.

18 If the authority has waived its governmental immunity pursuant to the  
19 foregoing provisions of this section, any person, or if he dies, his personal  
20 representative, sustaining damages as a result of an act or omission of the authority or  
21 any of its officers, agents, or employees occurring in the exercise of a governmental  
22 function, may sue the authority for recovery of damages. To the extent of the coverage  
23 of insurance purchased pursuant to this section governmental immunity may not be a  
24 defense to the action. Otherwise, however, the authority has all defenses available to  
25 private litigants in any action brought pursuant to these provisions without restriction,  
26 limitation, or other effect whether the defense arises from common law or by virtue of a  
27 statute.

28 Sec. 4. Nothing in this act authorizes the authority to condemn land or  
29 establish a railroad outside the boundaries of Caldwell or Catawba Counties.

30 Sec. 5. In the event of cessation of the operation of a railroad established  
31 under this act, or the abandonment of any of the property acquired under this act for  
32 railroad purposes, the title to such real or personal property, or rights under any existing  
33 lease, shall revert to and vest equally in the units of local government making  
34 appointments to the authority, and upon the sale of any property after cessation of  
35 operations, the proceeds from the sale shall vest equally in the governing boards of all  
36 the units of local government making appointments to the authority.

37 Sec. 6. This act is effective upon ratification.