

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 116

Short Title: Railroad Corridor Management. (Public)

Sponsors: Representatives Rapp, Dickson, Sutton (Primary Sponsors); K. Alexander, M. Alexander, Allen, Barnhart, Bordsen, Brisson, Carney, Coates, Cole, Dockham, Earle, England, Fisher, Glazier, Goforth, Goodwin, Harrell, Harrison, Hilton, Hughes, Insko, Johnson, Lucas, Luebke, McComas, McGee, Parmon, Ross, Steen, Stiller, and R. Warren.

Referred to: Transportation, if favorable, Judiciary II, if favorable, Finance.

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  
30 have abandoned the railroad right-of-way.

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

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



1 **"§ 1-51. ~~Five~~Two years.**

2 Within ~~five~~two years –

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

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

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

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

40 **"§ 136-192. Obstructing highways; defective crossings; notice; failure to repair after  
41 notice misdemeanor.**

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

1 (b) The notice may be served upon the agent of the offending railroad located nearest to  
2 the defective or dangerous crossing about which the notice is given, or it may be served upon  
3 the section master whose section includes such crossing. Such notice may be served by  
4 delivering a copy to such agent or section master, or by registered or certified mail addressed to  
5 either of such persons.

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

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

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

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

17 **"§ 136-199. Filing of railroad corridor maps.**

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

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

26 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
27 then the following provisions in subsections (a1) and (a2) of this section shall apply. A  
28 subdivision control ordinance shall not allow the dedication or reservation of recreation areas  
29 servng residents of the immediate neighborhood of the subdivision, or of any other dedication  
30 or 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. Nothing herein shall be construed  
41 to alter or affect the property rights of the railroad or adjacent or underlying landowners.

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

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

1           (2) A certification that no consent of a railroad is required under subsection (a1)  
2           of this section because the dedication or reservation sought does not fall  
3           within a railroad corridor according to railroad maps filed pursuant to G.S.  
4           136-199. The certification provided under this subsection shall be signed by  
5           the applicant under penalty of perjury."

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

8 **"§ 153A-336. Access to development within a railroad corridor.**

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

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

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

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

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

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

1 corridor in fee simple. Nothing herein shall be construed to alter or affect the property rights of  
2 the railroad or adjacent or underlying landowners.

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

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

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

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

19 **"§ 153A-357. Permits.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 13.** G.S. 160A-1 reads as rewritten:**"§ 160A-1. Application and meaning of terms.**

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

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



1 acquired, and regardless of whether railroad tracks are located on the land.  
2 The term also includes rail-related real property owned by a Regional Public  
3 Transportation Authority organized pursuant to Article 26 of this Chapter,  
4 the Charlotte Area Transit System, and the Department of Transportation.

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

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

15 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

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

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

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

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

48 (c) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
49 then the following provisions in this subsection and subsection (d) of this section shall apply. In  
50 exercising the power granted under subsection (a) of this section, a city shall not establish or  
51 accept for dedication any new public street, sidewalk, alley, bridge, crossing, or other ways of

1 public passage within a railroad corridor as defined in G.S. 160A-1(7a) without first requiring  
2 any applicant to obtain the written consent of the railroad company. For purposes of this  
3 subsection, the city shall require any applicant seeking dedication or reservation to obtain  
4 written consent of the railroad company by contacting the railroad company, by certified mail,  
5 return receipt requested, through its current registered agent at the address on file with the  
6 North Carolina Department of the Secretary of State. The railroad company shall have 60 days  
7 from receipt of a request for written consent made under this section to approve, deny with an  
8 explanation, or respond with its requirements. Failure to respond to the request for written  
9 consent within 60 days shall be deemed to be approval of the request for written consent by the  
10 railroad company unless the railroad owns the railroad corridor in fee simple. Nothing herein  
11 shall be construed to alter or affect the property rights of the railroad or adjacent or underlying  
12 landowners.

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

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

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

27 **"§ 160A-368. Access to development within a railroad corridor.**

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

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

- 48 (1) A copy of the railroad's written consent obtained under subsection (a) of this  
49 section; or  
50 (2) A certification that no consent of a railroad is required under subsection (a)  
51 of this section because the development plan sought does not fall within a

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

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

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

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

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

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

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

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

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

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

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

16        "**§ 160A-417. Permits.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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