

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 116
PROPOSED COMMITTEE SUBSTITUTE H116-PCS10869-RW-22

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~~ 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 ~~Two~~ years.



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1 Within ~~five~~two years –

2 (1) No suit, action or proceeding shall be brought or maintained against a
3 railroad company owning or operating a railroad for damages or
4 compensation for right-of-way or use and occupancy of any lands by the
5 company for use of its railroad unless the action or proceeding is
6 commenced within ~~five~~two years after the lands have been entered upon for
7 the purpose of constructing the road, or within two years after it is in
8 ~~operation~~operation, whichever shall occur earlier.

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

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

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

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

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

41 (a) Whenever, in their construction, the works of any railroad corporation shall cross
42 lawfully established public roads or ways, the corporation shall so construct its works as not to
43 impede the passage or transportation of persons or property along the same. If any railroad
44 corporation shall so construct its crossings with public streets, thoroughfares or highways, or
45 keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or
46 endanger the passage or transportation of persons or property along, over or across the same,
47 the governing body of the county, city or town, or other public road authority having charge,
48 control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in
49 writing, directing it to place any such crossing in good condition, so that persons may cross and
50 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" ("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 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 servicing 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
51 this 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
4 G.S. 136-199. The certification provided under this subsection shall be
5 signed by 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. Except in regard to railroad crossings, failure to respond to the request for
21 written consent within 60 days shall be deemed to be approval of the request for written
22 consent by the railroad company unless the railroad owns the railroad corridor in fee simple.
23 Nothing herein shall be construed to alter or affect the property rights of the railroad or adjacent
24 or underlying landowners.

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 two new subsections 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.

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

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

5 **"§ 160A-1. Application and meaning of terms.**

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

9 (1) "Charter" means the entire body of local acts currently in force applicable to
10 a particular city, including articles of incorporation issued to a city by an
11 administrative agency of the State, and any amendments thereto adopted
12 pursuant to 1917 Public Laws, Chapter 136, Subchapter 16, Part VIII,
13 sections 1 and 2, or Article 5, Part 4, of this Chapter.

14 (2) "City" means a municipal corporation organized under the laws of this State
15 for the better government of the people within its jurisdiction and having the
16 powers, duties, privileges, and immunities conferred by law on cities, towns,
17 and villages. The term "city" does not include counties or municipal
18 corporations organized for a special purpose. "City" is interchangeable with
19 the terms "town" and "village," is used throughout this Chapter in preference
20 to those terms, and shall mean any city as defined in this subdivision without
21 regard to the terminology employed in charters, local acts, other portions of
22 the General Statutes, or local customary usage. The terms "city" or
23 "incorporated municipality" do not include a municipal corporation that,
24 without regard to its date of incorporation, would be disqualified from
25 receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of
26 status as a city under this sentence shall not affect the levy or collection of
27 any tax or assessment, or any criminal or civil liability, and shall not serve to
28 escheat any property until five years after the end of such status as a city, or
29 until September 1, 1991, whichever comes later.

30 (3) "Council" means the governing board of a city. "Council" is interchangeable
31 with the terms "board of aldermen" and "board of commissioners," is used
32 throughout this Chapter in preference to those terms, and shall mean any city
33 council as defined in this subdivision without regard to the terminology
34 employed in charters, local acts, other portions of the General Statutes, or
35 local customary usage.

36 (4) "General law" means an act of the General Assembly applying to all units of
37 local government, to all cities, or to all cities within a class defined by
38 population or other criteria, including a law that meets the foregoing
39 standards but contains a clause or section exempting from its effect one or
40 more cities or all cities in one or more counties.

41 (5) "Local act" means an act of the General Assembly applying to one or more
42 specific cities by name, or to all cities within one or more specifically named
43 counties. "Local act" is interchangeable with the terms "special act,"
44 "public-local act," and "private act," is used throughout this Chapter in
45 preference to those terms, and shall mean a local act as defined in this
46 subdivision without regard to the terminology employed in charters, local
47 acts, or other portions of the General Statutes.

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

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

1 (7a) "Railroad corridor" means, for purposes of Article 19 of this Chapter, any
2 railroad real property, including, but not limited to, a railroad right-of-way,
3 whether held in fee or easement, regardless of the means by which title was
4 acquired, and regardless of whether railroad tracks are located on the land.
5 The term also includes rail-related real property owned by a Regional Public
6 Transportation Authority organized pursuant to Article 26 of this Chapter,
7 the Charlotte Area Transit System, and the Department of Transportation.

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

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

18 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

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

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

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

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

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

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

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

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

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

30 **§ 160A-368. Access to development within a railroad corridor.**

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

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

- 1 (1) A copy of the railroad's written consent obtained under subsection (a) of this
2 section; or
3 (2) A certification that no consent of a railroad is required under subsection (a)
4 of this section because the development plan sought does not fall within a
5 railroad corridor according to railroad maps filed pursuant to G.S. 136-199.
6 The certification provided under this subsection shall be signed by the
7 applicant under penalty of perjury."

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

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

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

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

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

41 "(g1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
42 then the following provisions in this subsection and subsection (g2) of this section shall apply.
43 A city shall not permit any land located within a railroad corridor to be dedicated or reserved as
44 open space or open area without first obtaining the written consent of the railroad company. For
45 purposes of this subsection, the city planning board, commission, or other department with
46 jurisdiction over development plans shall require any applicant seeking dedication or
47 reservation to obtain written consent of the railroad company by contacting the railroad
48 company by certified mail, return receipt requested, through its current registered agent at the
49 address on file with the North Carolina Department of the Secretary of State. The railroad
50 company shall have 60 days from receipt of a request for written consent made under this
51 section to approve, deny with an explanation, or respond with its requirements. Failure to

1 respond to the request for written consent within 60 days shall be deemed to be approval of the
2 request for written consent by the railroad company unless the railroad owns the railroad
3 corridor in fee simple. Nothing herein shall be construed to alter or affect the property rights of
4 the railroad or adjacent or underlying landowners.

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

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

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

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

20 **"§ 160A-417. Permits.**

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

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

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

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

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

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

1 replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute
2 a Class 1 misdemeanor.

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

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

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

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

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

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

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

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

50 b. A certification that no consent of a railroad is required under this
51 subsection because the permit sought does not fall within a railroad

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

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

7 **SECTION 19.** This act becomes effective October 1, 2010. Sections 9, 10, 11, 12,
8 14, 15, 16, 17, and 18 of this act apply to actions taken by city or county entities on or after
9 October 1, 2010.