

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**SENATE BILL 29\*  
PROPOSED COMMITTEE SUBSTITUTE S29-PCS35317-RK-26**

Short Title: NC Railroad Company Reporting and Dividends.

(Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) STRENGTHEN OVERSIGHT, ANNUAL REPORTING, AND STRATEGIC PLANNING BY THE NORTH CAROLINA RAILROAD COMPANY, (2) REQUIRE A ONE-TIME CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE HIGHWAY FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE HIGHWAY FUND, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NONCORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO THE STATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Reporting and Oversight. – (a) G.S. 124-1 reads as rewritten:

**"§ 124-1. Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in ~~G.S. 124-3~~G.S. 124-17."

**SECTION 1.(b)** Article 2 of Chapter 124 of the General Statutes is amended by adding a new section, G.S. 124-15. G.S. 124-6(b), as amended by Section 3.3(a) of S.L. 1999-431, is recodified as G.S. 124-15(a). G.S. 124-5(b) is recodified as G.S. 124-15(b). G.S. 124-15, as created and amended by this subsection, reads as rewritten:

**"§ 124-15. Board of directors; appointment and approval of encumbrances.**

(a) Notwithstanding subsection (a) of ~~this section~~G.S. 124-6, for any State-owned railroad company ~~organized as a corporation in which the State is the owner of all the voting stock and which~~that has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, one shall be from the appointees to the Board of Transportation, and one shall be the Secretary of Commerce or the Secretary's designee. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the



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1 President Pro Tempore of the Senate, two shall be appointed for terms of four years and one  
2 shall be appointed for a term of two years. Thereafter all Board members shall serve four-year  
3 terms. The Board shall elect the chairman from among its membership.

4 (b) No State-owned railroad company shall sell, lease, mortgage, or otherwise  
5 encumber its franchise, right-of-way, or other property, except by and with the approval and  
6 consent of the Board of Directors of that corporation. The president or other chief officer of the  
7 State-owned railroad company shall report any acquisitions and dispositions in accordance with  
8 G.S. 124-3(10)."

9 SECTION 1.(c) Article 2 of Chapter 124 of the General Statutes is amended by  
10 adding a new section to read as follows:

11 "**§ 124-16. Strategic plan and capital investment plan required of State-owned railroad**  
12 **company; performance management system.**

13 (a) Any State-owned railroad company shall prepare and maintain a comprehensive  
14 strategic plan and a capital investment plan. The strategic plan shall include a mission  
15 statement describing the purpose of the company and clear goals that address the strategic  
16 issues facing the company.

17 (b) Any State-owned railroad company shall develop and implement a formalized  
18 performance management system based on its strategic plan. The performance management  
19 system shall measure and monitor progress toward achieving strategic objectives. When  
20 performance fails to achieve strategic objectives within the time period established in the plan,  
21 a State-owned railroad company shall take corrective action."

22 SECTION 1.(d) Article 2 of Chapter 124 of the General Statutes is amended by  
23 adding a new section, G.S. 124-17. G.S. 124-3(b) is recodified as G.S. 124-17(b). G.S. 124-3(c)  
24 is recodified as G.S. 124-17(c). G.S. 124-17, as created and amended by this subsection, reads  
25 as rewritten:

26 "**§ 124-17. Enhanced annual report of State-owned railroad company; additional**  
27 **reporting requirements to Governor and General Assembly.**

28 (a) A State-owned railroad company shall submit an annual report to the Joint  
29 Legislative Commission on Governmental Operations and the Joint Legislative Transportation  
30 Oversight Committee. The report shall include the following:

- 31 (1) The information required under G.S. 124-3.
- 32 (2) A copy of the strategic plan and the capital investment plan required under  
33 G.S. 124-16.
- 34 (3) Any failures to meet strategic objectives and what corrective actions were  
35 taken under G.S. 124-16(b).
- 36 (4) Anticipated dividends for the next three fiscal years.
- 37 (5) A description of the State-owned railroad company's business, subsidiaries,  
38 and markets in which it operates.
- 39 (6) A list of the properties owned by the State-owned railroad company.
- 40 (7) A list of the directors and executive officers of the State-owned railroad  
41 company and a description of the background and experience of each.
- 42 (8) A description of the State-owned railroad company's code of ethics and  
43 conflicts of interest policy.
- 44 (9) A summary of the fees paid to an accounting firm during the year.
- 45 (10) A list of the compensation paid to directors and officers of the State-owned  
46 railroad company.
- 47 (11) A description of the State-owned railroad company's disagreements with its  
48 accountants if there has been a change in accountants.
- 49 (12) A description of any transactions between the State-owned railroad company  
50 and its directors, officers, and their family members.

1 (b) Upon the request of the Governor or any committee of the General Assembly, a  
2 State-owned railroad company shall provide all additional information and data within its  
3 possession or ascertainable from its records. The State-owned railroad company shall not be  
4 deemed to have waived any attorney-client privilege when complying with this subsection. At  
5 the time a State-owned railroad company provides information under this section, it shall  
6 indicate whether the information is confidential. Confidential information shall be subject to  
7 subsection (c) of this section.

8 (c) Confidential information includes (i) information related to a proposed specific  
9 business transaction where inspection, examination, or copying of the records would frustrate  
10 the purpose for which the records were created, or (ii) information that is subject to  
11 confidentiality obligations of a railroad company. Confidential information is exempt from  
12 Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

13 **SECTION 2.(a)** The Freight Rail & Rail Crossing Safety Improvement Account is  
14 established within the Highway Fund as a separate, nonreverting account.

15 **SECTION 2.(b)** One-time cash dividend. – Notwithstanding G.S. 124-5.1 and  
16 G.S. 136-16.6, any State-owned railroad company, as defined under G.S. 124-11, that has  
17 trackage in more than two counties shall issue a cash dividend in the amount of fifteen million  
18 five hundred thousand dollars (\$15,500,000), which shall be deposited into the Freight Rail &  
19 Rail Crossing Safety Improvement Account no later than June 30, 2013.

20 **SECTION 3.** Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:

21 "**§ 124-5.1. State use of North Carolina Railroad Company dividends, dividends deposited**  
22 **to Highway Fund.**

23 (a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of~~  
24 ~~the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company~~  
25 ~~received by the State shall be applied to reduce the obligations described in subsection (c) of~~  
26 ~~Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L.~~  
27 ~~1999-237. Any dividends of the North Carolina Railroad Company received by the State shall~~  
28 ~~be used by the Department of Transportation for the improvement of the property of the North~~  
29 ~~Carolina Railroad Company as recommended and approved by the Board of Directors of the~~  
30 ~~North Carolina Railroad Company. The improvements may include the following project~~  
31 ~~types:~~ deposited into the Rail & Rail Crossing Safety Improvement Account, a separate  
32 nonreverting account within the Highway Fund and administered by the Department of  
33 Transportation's Rail Division. Funds from the Account shall be used for the enhancement of  
34 rail service and railroad-roadway crossing safety, and may include, but is not limited to, the  
35 following project types:

- 36 (1) ~~Railroad and industrial track rehabilitation.~~ Track and associated  
37 infrastructure improvements for rail service.
- 38 (2) ~~Railroad signal and grade crossing protection.~~ Grade crossing protection,  
39 elimination, and hazard removal.
- 40 (3) ~~Bridge improvements.~~ Signalization improvements.
- 41 (4) ~~Corridor protection.~~ Assistance for projects to improve rail access to  
42 industrial, port, and military facilities and for freight intermodal facility  
43 improvements, provided that funding assistance under this subdivision shall  
44 be subject to the same limits as that for short-line railroads under  
45 G.S. 136-44.39.
- 46 (5) ~~Industrial site acquisition.~~

47 (b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the~~  
48 ~~remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L.~~  
49 ~~1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on~~  
50 ~~those obligations relating to periods prior to January 1, 2000, shall be deemed paid and~~  
51 ~~contributed by the State to the capital of the North Carolina Railroad Company."~~

1           **SECTION 3.(b)** Article 2 of Chapter 124 of the General Statutes is amended by  
2 adding the following new section:

3 **"§ 124-18. Dividends required of State-owned railroad company.**

4           Any State-owned railroad company that has trackage in more than two counties shall issue  
5 an annual cash dividend to the State. The amount of the annual dividend is twenty-five percent  
6 (25%) of the company's income from its trackage rights agreements for the prior year. The  
7 dividend is due by January 15 of each year, and interest shall accrue at the annual rate of prime  
8 plus one percent (1%) if the payment is not paid by the due date. The Directors of any  
9 State-owned railroad company who vote for or assent to the dividend required under this  
10 section shall not be held liable under G.S. 55-8-33."

11           **SECTION 3.(c)** G.S. 136-16.6 is repealed.

12           **SECTION 4.** One-time real property dividend. – (a) Any State-owned railroad  
13 company, as defined under G.S. 124-11, that has trackage in more than two counties shall issue  
14 a dividend consisting of any of the company's noncorridor real property that is among the  
15 following parcels:

16	<b>Property Description</b>	<b>County</b>	<b>Nearest Town</b>	<b>Parcel ID</b>
17	Burke Street Lot	Alamance	Gibsonville	107493
18	4th Street Lot	Carteret	Morehead	638620808907000
19	Bridges St. Lot	Carteret	Morehead	638620911461000
20	Newport Lot	Carteret	Newport	634814246231000
21	Station & Former Industrial Lot	Carteret	Morehead	638620718127000
22	Waterfront & Riparian Rights	Carteret	Morehead	638620708857000 & 638620709868000
23				
24	Wye Ppty. Extension	Carteret	Morehead	637616924807000
25	Wye Property	Carteret	Morehead	637620923019000
26	Clarks Lot	Craven	Clarks	8-221-035
27	N. Craven St. Lot	Craven	New Bern	8-003-241-A
28	Tiffany & Bright Sts. Property	Lenoir	Kinston	11185 & 26555
29	Morrisville Former Depot	Wake	Morrisville	0755-14-6475
30	Waynesboro Lot	Wayne	Goldsboro	2599119118

31           For purposes of this section, the value of the real property dividend shall be based  
32 upon either an appraisal of the fair market value of the parcel as of the date of transfer of the  
33 parcel to the State or the ad valorem tax value for the parcel for the year of transfer, as  
34 determined by the Board of Directors of any State owned railroad company.

35           The dividend required by this section shall be issued no later than June 30, 2013.  
36 Any State-owned railroad making a dividend under this section may deduct any tax liabilities  
37 under the Internal Revenue Code triggered by this dividend from the amount of the dividend  
38 required under Section 2 of this act.

39           **SECTION 4.(b)** Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department  
40 of Administration shall sell the properties issued as dividends under this section and deposit the  
41 proceeds of the sales into the Freight Rail & Rail Crossing Safety Improvement Account of the  
42 Highway Fund. Notwithstanding any other provision of law, the Department of Administration  
43 may deduct the costs of selling the property from the proceeds of the sales.

44           **SECTION 5.** Section 3 of this act becomes effective January 1, 2014. The  
45 remainder of this act is effective when it becomes law.