

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 309
Committee Substitute Favorable 4/26/23
PROPOSED SENATE COMMITTEE SUBSTITUTE H309-PCS10579-SU-17

Short Title: Various Transportation Changes.

(Public)

Sponsors:

Referred to:

March 9, 2023

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR APPOINTMENT OF THE COMMISSIONER OF MOTOR VEHICLES BY THE GOVERNOR SUBJECT TO SENATORIAL ADVICE AND CONSENT; TO PROVIDE FLEXIBILITY IN CONTRACTING FOR NEVI FORMULA PROJECTS; TO PROVIDE FOR EVALUATION AND OVERSIGHT OF DIVISION OF MOTOR VEHICLES MODERNIZATION EFFORTS; TO MAKE VARIOUS CHANGES TO THE LAWS THAT RELATE TO THE NORTH CAROLINA RAILROAD; AND TO AUTHORIZE CREATION OF A RAIL TRANSPORTATION CORRIDOR AUTHORITY.

The General Assembly of North Carolina enacts:

APPOINTMENT OF COMMISSIONER OF MOTOR VEHICLES

SECTION 1. G.S. 20-2 reads as rewritten:

"§ 20-2. **Commissioner of Motor Vehicles; rules.**

(a) ~~Commissioner and Assistants.~~ Commissioner. – The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the ~~Secretary of the Department of Transportation.~~ Governor. The Governor shall notify the President of the Senate of the name of the person to be appointed, and the appointment shall be subject to senatorial advice and consent in conformance with G.S. 143B-9(a).

(a1) Commissioner Salary. – The Commissioner shall be paid an annual salary to be fixed by the Governor and allowed traveling expenses as allowed by law.

(a2) Assistants. – In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles.

(b) Rules. – The Commissioner may adopt rules to implement this Chapter. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner."

AUTHORIZE DEPARTMENT TO UTILIZE CONTRACT METHODOLOGY FLEXIBILITY FOR NEVI FORMULA PROGRAM PROJECTS

SECTION 2. Notwithstanding any other provision of law, the Department of Transportation is authorized to utilize, design-build, indefinite delivery, indefinite quantity,



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1 public-private partnership, or any other contracting methodology authorized by applicable
2 federal law to administer the National Electric Vehicle Infrastructure (NEVI) Formula Program.
3 For the purposes of this section, Department of Transportation projects which utilize contracting
4 methodologies authorized by this section to implement, administer, or utilize NEVI Formula
5 Program funds shall not count against Department project contract award authorization caps
6 limiting the use of certain construction methodologies.

7 8 **DIVISION OF MOTOR VEHICLES MODERNIZATION**

9 **SECTION 3.(a)** Section 11 of S.L. 2021-134 is repealed.

10 **SECTION 3.(b)** The Department of Transportation shall not renew and allow to
11 expire any contract entered into pursuant to the exemption created by Section 11 of S.L.
12 2021-134.

13 **SECTION 3.(c)** The Department of Information Technology (DIT), in consultation
14 with the Division of Motor Vehicles of the Department of Transportation (Division), shall
15 develop and issue a request for proposal (RFP) to contract with a third-party organization to
16 perform an evaluation of the Division's ongoing efforts to modernize its Information Technology
17 (IT) systems. The evaluation shall include:

- 18 (1) An in-depth analysis of the Division's plan to implement a cloud-based
19 operating system and any other updates to its IT systems.
- 20 (2) A proposed time line, including specifically identified objectives and a
21 completion date, that the Division should reasonably be able to adhere to in
22 modernizing its IT systems.
- 23 (3) An estimate of when the Division's anticipated updates to its IT systems will
24 begin directly improving the Division's customer service.
- 25 (4) An assessment of whether the Division's IT modernization efforts include
26 sufficient data security protocols, including what data the Division intends to
27 collect or store.
- 28 (5) An assessment of whether the Division has an adequate personnel
29 management plan in place to implement planned updates to its IT systems.
- 30 (6) An assessment of the Division's intended pricing structure for the provision of
31 online or remote services after the Division completes the modernization of
32 its IT systems.
- 33 (7) A discussion of any other factor the third-party organization deems relevant
34 to assessing the efficacy of the Division's modernization efforts.

35 **SECTION 3.(d)** Funding for the implementation of subsection (c) of this section
36 shall be provided by funds previously appropriated to the Division for the purpose of IT
37 modernization.

38 **SECTION 3.(e)** The Division shall report the findings of the third-party
39 organization's evaluation to the chairs of the Joint Legislative Transportation Oversight
40 Committee, the chairs of the House and Senate Transportation Appropriations Committees, and
41 the Fiscal Research Division no later than January 31, 2025.

42 **SECTION 3.(f)** No later than May 1, 2025, the Division, in consultation with DIT,
43 shall use the findings of the evaluation required by this section to select a vendor to oversee and
44 manage implementation of the cloud-based operating system. The selected vendor, in
45 consultation with the Division and DIT, shall report to the Joint Legislative Transportation
46 Oversight Committee, the Joint Legislative Commission on Governmental Operations, the chairs
47 of the House and Senate Transportation Appropriations Committees, and the Fiscal Research
48 Division on a quarterly basis. Each report shall include an update on the status of the Division's
49 modernization efforts measured against targets and objectives identified in the evaluation.
50

1 **NORTH CAROLINA RAILROAD BOARD OF DIRECTORS AND RELATED**
2 **CLARIFICATIONS**

3 **SECTION 4.(a)** Section 7.1 of S.L. 2023-136 is repealed.

4 **SECTION 4.(b)** Section 6.4 of S.L. 2023-139 is repealed.

5 **SECTION 4.(c)** G.S. 124-15 reads as rewritten:

6 "**§ 124-15. Board of directors; appointment and approval of encumbrances.**

7 (a) Notwithstanding subsection (a) of G.S. 124-6, for any State-owned railroad company
8 that has trackage in more than two counties, ~~seven-six~~ of the members of the Board of Directors
9 shall be appointed by the Governor, one member of the Board of Directors shall be the
10 Commissioner of Agriculture of the Department of Agriculture and Consumer Services, or the
11 Commissioner's designee, three of the members of the Board of Directors shall be appointed by
12 the General Assembly upon the recommendation of the Speaker of the House of Representatives
13 in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be
14 appointed by the General Assembly upon the recommendation of the President Pro Tempore of
15 the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members.
16 Of the Governor's ~~seven-six~~ appointments, one shall be from the appointees to the Board of
17 Transportation and one shall be the Secretary of Commerce or the Secretary's designee. ~~Of the~~
18 ~~initial members appointed by the Governor, three shall be appointed for terms of four years and~~
19 ~~four shall be appointed for terms of two years. Of the initial members recommended to the~~
20 ~~General Assembly by the Speaker of the House of Representatives, two shall be appointed for~~
21 ~~terms of four years and one shall be appointed for a term of two years. Of the initial members~~
22 ~~recommended to the General Assembly by the President Pro Tempore of the Senate, two shall~~
23 ~~be appointed for terms of four years and one shall be appointed for a term of two years. Thereafter~~
24 ~~all~~ All Board members shall serve four-year terms. The Board shall elect the chairman from
25 among its membership.

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

31 (c) Each member of the Board of Directors for any State-owned railroad company shall
32 have the fiduciary duties, including the duties of loyalty and care, to the State-owned railroad
33 company."

34 **SECTION 4.(d)** The appointee of the Governor replaced by the Commissioner of
35 Agriculture of the Department of Agriculture and Consumer Services, or the Commissioner's
36 designee, because of the revision to G.S. 124-15 enacted in subsection (c) of this section shall be
37 one of the appointees of the Governor with a term beginning in 2023, and the Commissioner, or
38 the Commissioner's designee, shall serve for the remainder of that term. The Board of Directors
39 shall determine which of the appointees of the Governor with a term beginning in 2023 will be
40 replaced by the Commissioner of Agriculture of the Department of Agriculture and Consumer
41 Services, or the Commissioner's designee.

42 **SECTION 4.(e)** G.S. 124-1 reads as rewritten:

43 "**§ 124-1. Control of internal improvements.**

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

48 **SECTION 4.(f)** G.S. 124-11 reads as rewritten:

49 "**§ 124-11. Definition.**

50 As used in this Chapter, the term ~~"State-Owned Railroad Company"~~ "State-owned Railroad
51 Company" shall mean a railroad company in which the State owns all of the voting stock."

1
2 **AUTHORIZE RAIL TRANSPORTATION CORRIDOR AUTHORITY**

3 **SECTION 5.(a)** Chapter 160A of the General Statutes is amended by adding a new
4 Article to read:

5 "Article 33.

6 "Rail Transportation Corridor Authority.

7 **"§ 160A-880. Title and purpose.**

8 This Article shall be known and may be cited as the "Rail Transportation Corridor Authority
9 Act." The purpose of this Article is to authorize the creation of an Authority to establish,
10 construct, purchase, maintain, equip, and operate any structure, facility, or improvement to aid
11 commerce, public transportation, and any other rail services associated with rail corridors.

12 **"§ 160A-881. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Authority. – A Rail Transportation Corridor Authority.
15 (2) Board of Trustees. – The governing board of an Authority.
16 (3) Costs. – The capital cost of a rail corridor project or special user project,
17 including:
18 a. The costs of doing any or all of the following:
19 1. Acquiring, constructing, erecting, providing, developing,
20 installing, furnishing, and equipping.
21 2. Reconstructing, remodeling, altering, renovating, replacing,
22 refurnishing, and reequipping.
23 3. Enlarging, expanding, and extending.
24 4. Demolishing, relocating, improving, grading, draining,
25 landscaping, paving, widening, and resurfacing.
26 b. The costs of all property, both real and personal and both improved
27 and unimproved, and of plants, works, appurtenances, structures,
28 facilities, furnishings, machinery, equipment, vehicles, easements,
29 water rights, air rights, franchises, and licenses used or useful in
30 connection with a rail corridor project or special user project.
31 c. The costs of demolishing or moving structures from land acquired and
32 acquiring land to which the structures are to be moved.
33 d. Financing charges, including estimated interest during the acquisition
34 or construction of a rail corridor project or special user project and for
35 one year thereafter.
36 e. The costs of services to provide plans, specifications, studies, reports,
37 surveys, and estimates of costs and revenues.
38 f. The costs of paying any interim financing, including principal,
39 interest, and premium, related to the acquisition or construction of a
40 rail corridor project or special user project.
41 g. Administrative and legal expenses and administrative charges.
42 h. The costs of establishing and maintaining debt service and other
43 reserves.
44 i. Any other services, costs, and expenses necessary or incidental to a
45 rail corridor project or special user project.
46 (4) Credit facility. – An agreement with a banking institution, an insurance
47 institution, an investment institution, or other financial institution located
48 inside or outside the United States of America that provides for prompt
49 payment, whether at maturity, presentment, or tender for purchase,
50 redemption, or acceleration, of part or all of the principal or purchase price,

- 1 redemption premium, if any, and interest on debt held by the Authority and
2 for repayment of the institution.
- 3 (5) Financing agreement. – A written instrument establishing the rights and
4 responsibilities of the Authority and the operator concerning a financed
5 special user project. A financing agreement may be a lease, a lease and lease
6 back, a sale and lease back, a lease purchase, an installment sale and purchase
7 agreement, a conditional sales agreement, a secured or unsecured loan
8 agreement, or other similar contract and may involve property in addition to
9 the financed property.
- 10 (6) Obligor. – A person, including an operator, who has entered into a financing
11 or other agreement obligating the person to make payments to the Authority
12 to finance a special user project.
- 13 (7) Operator. – The person entitled to the use or occupancy of a special user
14 project.
- 15 (8) Organizing entity. – The elected boards of county commissioners and each
16 municipality that have created or joined an Authority in accordance with
17 G.S. 160A-883.
- 18 (9) Person. – Any person, corporation, partnership, association, trust, or other
19 legal entity.
- 20 (10) Public transportation. – Transportation of passengers whether or not for hire
21 by any means of conveyance, including, but not limited to, a street or elevated
22 railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool,
23 either publicly or privately owned and operated, holding itself out to the
24 general public for the transportation of persons within or working within the
25 territorial jurisdiction of the Authority or as otherwise provided by this
26 Article.
- 27 (11) Public transportation system. – Without limitation, a combination of real and
28 personal property, structures, improvements, buildings, equipment, vehicle
29 parking, or other facilities, railroads and railroad rights-of-way whether held
30 in fee simple by quitclaim or easement, and rights-of-way, or any combination
31 thereof, used or useful for the purposes of public transportation.
- 32 (12) Rail. – Transportation of passengers, as a mode of public transportation, or
33 freight utilizing fixed or semi-fixed tracks.
- 34 (13) Railroad. – Any person or company providing transportation by rail for
35 compensation.
- 36 (14) Rail corridor. – A combination of rail line and real and personal property,
37 structures, improvements, buildings, equipment, vehicle parking, and other
38 appurtenant fixtures essential to rail operations and public transportation,
39 including any facilities, maintenance yard, marshalling yard, transfer yard,
40 utilities, pedestrian foot paths, and bicycle paths.
- 41 (15) Rail corridor project. – Any of the following that is part of or used in
42 connection with a rail corridor and is not a special user project:
- 43 a. Any land, equipment, or buildings or other structures, whether located
44 on one or more sites within a rail corridor.
- 45 b. The addition to or the rehabilitation, improvement, renovation, or
46 enlargement of any property described in sub-subdivision a. of this
47 subdivision.
- 48 The term includes infrastructure improvements, such as improvements to
49 railroad facilities, roads, bridges, and water, sewer, or electric utilities. A rail
50 corridor project may include a facility leased to one or more entities under a
51 true lease.

- 1 (16) Rail Transportation Corridor Authority. – A public body corporate and politic
2 organized in accordance with the provisions of this Article for the purposes,
3 with the powers, and subject to the restrictions hereinafter set forth.
- 4 (17) Revenues. – For a special user project, the term means rents, fees, charges,
5 payments, proceeds, or other income or profit derived from the special user
6 project or from the financing agreement or security document for the special
7 user project. For a rail corridor project, the term means rents, fees, charges,
8 payments, proceeds, or other income or profit derived from the rail corridor
9 project or from any pledge of nontax revenues, appropriation, or payment
10 made by the State or unit of local government in which the rail corridor is
11 located.
- 12 (18) Security document. – One or more written instruments establishing the rights
13 and responsibilities of the Authority to finance a special user project. A
14 security document may contain an assignment, pledge, mortgage, or other
15 encumbrance of part or all of the Authority's interest in, or right to receive
16 revenues from, a special user project or any other property provided by the
17 operator or other obligor under a financing agreement. A financing agreement
18 and a security document may be combined as one instrument.
- 19 (19) Special user project. – Any land, equipment, or buildings or other structures
20 located on one or more sites within the rail corridor and the addition to or the
21 rehabilitation, improvement, renovation, or enlargement of a structure located
22 within the rail corridor when the property is to be used as or in connection
23 with any of the following:
- 24 a. An undertaking for industry, including an industrial or a
25 manufacturing factory, mill, assembly plant, or fabricating plant; a
26 freight terminal; an industrial research, development, or laboratory
27 facility; or an industrial processing or distribution facility for industrial
28 or manufactured products.
- 29 b. A commercial, processing, mining, transportation, distribution,
30 storage, marine, aviation, rail, or environmental facility or
31 improvement.
- 32 c. Any combination of items mentioned in sub-subdivisions a. and b. of
33 this subdivision.
- 34 A special user project, during its economic life, is to be principally used by
35 one or more for-profit entities other than as lessee under a lease that has a fair
36 market value rental and is not treated as a financing lease or installment sale
37 for federal tax law purposes. A special user project may include all
38 appurtenances and incidental facilities such as land, a headquarters or office
39 facility, warehouses, distribution centers, access roads, sidewalks, utilities,
40 railway sidings, trucking and similar facilities, parking facilities, waterways,
41 docks, wharves, and other improvements necessary or convenient for the
42 construction, maintenance, and operation of any structure.
- 43 (20) Unit of local government. – A county, city, town, or municipality of this State,
44 and any other political subdivision, public corporation, authority, or district in
45 this State, that is or may be authorized by law to acquire, establish, construct,
46 improve, maintain, own, or operate a rail corridor.
- 47 (21) Unit of local government's chief administrative official. – The county
48 manager, city manager, town manager, or other person in whom the
49 responsibility for the unit of local government's administrative duties is
50 vested.

1 **"§ 160A-882. Definition of territorial jurisdiction of the Authority; rail corridor boundary**
2 **and service area designation.**

3 (a) An Authority may be created for any area of the State that, at the time of creating the
4 Authority, meets the following criteria:

5 (1) The area consists of three or more contiguous counties each containing
6 portions of an existing rail corridor, with one of the counties having a
7 population in excess of 150,000 but less than 200,000 based on the 2020
8 census and the other two contiguous counties having a population in excess of
9 75,000 but less than 90,000 based on the same census.

10 (2) The distance between the rail corridor milepost origination and termination
11 points is no more than 25 miles in length.

12 (3) If the Authority intends to receive existing rail corridor interests in property,
13 those rail property interests can be transferred to the Authority without
14 purchase of those rail corridor interests in property.

15 (4) An Authority shall not have jurisdiction over any Class I railroad, as that term
16 is defined under 49 U.S.C. § 20102 and 49 C.F.R. § 1201.1-1, nor a rail line
17 or rail corridor owned or operated by the United States Department of
18 Defense, nor a rail line owned or operated by the North Carolina Railroad
19 Company or its subsidiaries.

20 (b) The territorial jurisdiction of the Authority shall be coterminous with the boundaries
21 of the three or more organizing counties, except as provided in subdivision (3) of subsection (a)
22 of this section.

23 (c) The rail corridor service area of the Authority shall be designated by and recorded in
24 the minutes of the Board of Trustees, consistent with its purpose, and shall not exceed the
25 immediately adjacent and proximate area of the rail corridor as owned or otherwise controlled
26 by the Authority for the powers provided under G.S. 160A-886.

27 (d) The boundaries of the rail corridor of the Authority shall be designated by and
28 recorded in the minutes of the Board of Trustees once the properties and rail line making up the
29 rail corridor are in the Authority's possession or control. If there is a change in the rail corridor
30 boundaries after it is initially designated, the rail corridor designation shall be updated and
31 recorded in the minutes of the Board of Trustees at its next meeting. The Authority may not
32 extend the rail corridor into a political subdivision that is not an organizing entity under
33 G.S. 160A-883 without (i) the consent of the governing body of that political subdivision or (ii)
34 the political subdivision having first become an organizing entity as provided under
35 G.S. 160A-883(e). A majority vote of the governing body shall constitute consent. The Authority
36 may not at any time extend its rail corridor to be longer than 25 miles in compliance with
37 subdivision (2) of subsection (a) of this section through any subsequent addition.

38 (e) The designation required by subsection (d) of this section shall describe the rail
39 corridor boundaries by its rail milepost origination and termination points and one or more of the
40 following:

41 (1) Reference to a map, deed, or other title instrument.

42 (2) Metes and bounds.

43 (3) General descriptions referring to natural boundaries, boundaries of existing
44 political subdivisions, or boundaries of tracts or parcels of land.

45 **"§ 160A-883. Creation and expansion of Authority.**

46 (a) Resolution of Creation. – An Authority may be organized under the provisions of this
47 Article upon the adoption of a resolution to create such an Authority by the boards of
48 commissioners of all three or more counties within an area for which an Authority may be created
49 pursuant to G.S. 160A-882(a) and the elected board of each municipality containing a portion of
50 the rail corridor.

1 **(b) Public Hearing.** – A resolution to form an Authority under this Article shall be
2 adopted after a public hearing. Notice of the public hearing must be given at least once, not less
3 than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation
4 in the county. The notice must contain a brief statement of the substance of the proposed
5 resolution; a description of the rail corridor to be controlled, purchased, or otherwise operated by
6 the Authority; the proposed articles of incorporation of the Authority; and the time and place of
7 the public hearing.

8 **(c) Articles of Incorporation.** – A resolution to form an Authority under this Article must
9 include articles of incorporation that set forth all of the following:

10 **(1) The name of the Authority.**

11 **(2) A statement that the Authority is organized under this Article.**

12 **(3) The name of each organizing entity.**

13 **(d) Certificate of Incorporation.** – A certified copy of each resolution organizing an
14 Authority under the provisions of this Article shall be filed with the Secretary of State, together
15 with proof of publication of the notice of hearing. If the Secretary of State finds that each
16 resolution, including the articles of incorporation, conform to the provisions of this Article and
17 that the notice of hearing was properly published, then the Secretary must issue a certificate of
18 incorporation under the seal of the State and record the same in an appropriate book of record.
19 The issuance of the certificate of incorporation by the Secretary of State shall constitute the
20 Authority a public body and body politic and corporate of the State of North Carolina. The
21 certificate of incorporation is conclusive evidence of the fact that the Authority has been duly
22 created and established under the provisions of this Article.

23 **(e) Resolution to Join.** – If, at any time subsequent to the creation of an Authority, the
24 Authority proposes or otherwise intends to extend the rail corridor into a county or municipality
25 that is not already an organizing entity of the Authority, that county or municipality may join the
26 Authority under the provisions of this Article upon the adoption of a resolution to join by the
27 elected board of the county or municipality. A resolution to join an Authority under this Article
28 shall be adopted after a public hearing. Notice of the public hearing must be given at least once,
29 not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general
30 circulation in the county. The notice must contain a brief statement of the substance of the
31 proposed resolution; a description of the rail corridor to be controlled, purchased, or otherwise
32 operated by the Authority; the proposed articles of incorporation of the Authority as updated to
33 include the new organizing entity; and the time and place of the public hearing. A certified copy
34 of each resolution to join an Authority under the provisions of this Article shall be filed with the
35 Secretary of State, together with proof of publication of the notice of hearing. If the Secretary of
36 State finds that the resolution, including the updated articles of incorporation, conform to the
37 provisions of this Article and that the notice of hearing was properly published, then the Secretary
38 of State must issue an updated certificate of incorporation under the seal of the State and record
39 the same in an appropriate book of record. The updated certificate of incorporation is conclusive
40 evidence of the fact that the Authority has been duly updated under the provisions of this Article.
41 The Authority may not at any time extend its rail corridor to be longer than 25 miles in
42 compliance with G.S. 160A-882(a)(2) through any subsequent addition of a county or
43 municipality.

44 **(f) Members.** – When the Authority has been duly organized or updated and its members
45 appointed to the Board of Trustees, the chair of the Board of Trustees shall certify to the Secretary
46 of State the names and addresses of the members as well as the address of the principal office of
47 the Authority.

48 **(g) Members Not Liable.** – No member of the Board of Trustees shall be subject to any
49 personal liability or accountability by reason of their execution of any debt held by the Authority.

1 (h) Compensation of the Board of Trustees. – Members of the Board of Trustees shall
2 receive the sum of fifty dollars (\$50.00) as compensation for the attendance at each duly
3 conducted meeting of the Authority.

4 (i) The Authority shall, promptly following the close of each fiscal year, submit an
5 annual report of its activities for the preceding year to the Governor, the General Assembly, and
6 the Local Government Commission. Each report shall be accompanied by an audit of its books
7 and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted
8 with a private auditing firm, shall be paid from funds of the Authority. The Authority shall submit
9 annual reports to the Joint Legislative Commission on Governmental Operations. The reports
10 shall summarize the Authority's activities during the quarter and contain any information about
11 the Authority's activities that is requested by the Commission.

12 **"§ 160A-884. Board of Trustees.**

13 (a) Members. – The Authority shall be governed by a Board of Trustees and consist of
14 one member for each organizing entity having adopted a resolution for the creation of or a
15 resolution to join the Authority under G.S. 160A-883, and one member for each regional council
16 of government, as created pursuant to Part 2 of Article 20 of Chapter 160A of the General
17 Statutes, containing a portion of the rail corridor.

18 (b) Appointment. – The Board of Trustees seats held by each member of the organizing
19 entities having adopted a resolution for the creation of or a resolution to join the Authority shall
20 be filled by the respective unit of local government's chief administrative official or its designee.
21 The Board of Trustees seats held by each regional council of government containing a portion of
22 the rail corridor shall be held by the Executive Director of that council or the Executive Director's
23 designee.

24 (c) Ex Officio. – Any unit of local government's chief administrative official serving on
25 the Board of Trustees is an ex officio voting member as part of the duties of their office in
26 accordance with G.S. 128-1.2 and not considered to be serving in a separate office.

27 (d) Ethics. – Members of the Board of Trustees are subject to the provisions of
28 G.S. 136-13, 136-13.1, and 136-14.

29 (e) Quorum. – A majority of the membership of the Board of Trustees, excluding vacant
30 seats, shall constitute a quorum. A member who has withdrawn from a meeting without being
31 excused by a majority vote of the remaining members present shall be counted as present for the
32 purposes of determining whether or not a quorum is present. No member shall be excused from
33 voting except upon matters involving the consideration of the member's own financial interest or
34 official conduct or on matters on which the member is prohibited from voting under any other
35 provision of law.

36 (f) Action. – An affirmative vote equal to a majority of all members of the Board of
37 Trustees not excused from voting on the question at issue shall be required to authorize or commit
38 the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the
39 Authority.

40 (g) Chair and Vice-Chair of the Board of Trustees. – At the first meeting of the Board of
41 Trustees, the chair of the Board of Trustees shall be elected from the Board of Trustees'
42 membership by a majority vote of a quorum of the Board of Trustees. Also, at the first meeting
43 of the Board of Trustees, and from the remaining Board of Trustees' membership not elected as
44 chair, a vice-chair of the Board of Trustees shall be elected by a majority vote of a quorum of the
45 Board of Trustees to fulfill the roles and duties of the chair of the Board of Trustees in the chair's
46 absence. The terms of the chair and vice-chair so elected shall be for three years with no limit on
47 the number of consecutive terms for which the chair or vice-chair may serve.

48 (h) Vacancies. – All members of the Board of Trustees shall remain in office unless (i) a
49 unit of local government's chief administrative official no longer holds that office in its respective
50 government, (ii) a unit of local government's chief administrative official replaces its designee,
51 (iii) the Executive Director of the regional council of government no longer holds the office of

1 Executive Director of the council, or (iv) the Executive Director of the council replaces its
2 designee. A vacancy for the chair of the Board of Trustees shall be filled by the vice-chair for the
3 remainder of the applicable three-year term, and a special election for a replacement vice-chair
4 shall occur at the next Board of Trustees meeting pursuant to the procedure set out in subsection
5 (g) of this section. A vacancy of the vice-chair shall prompt a special election for a replacement
6 vice-chair at the next Board of Trustees meeting pursuant to the procedure set out in subsection
7 (g) of this section.

8 **"§ 160A-885. Advisory committees.**

9 The Board of Trustees may provide for the selection of such advisory committees as it may
10 find appropriate, which may or may not include members of the Board of Trustees.

11 **"§ 160A-886. Rail Transportation Corridor Authority.**

12 (a) The Authority shall have all powers necessary to execute the provisions of this
13 Article, which shall include at least the following powers:

- 14 (1) The powers of a corporate body, including the power to sue and be sued, to
15 make contracts, to adopt and use a common seal, and to alter the adopted seal
16 as needed.
- 17 (2) To make rules and regulations and create and operate agencies, committees,
18 and departments as needed to implement this Article.
- 19 (3) To pay all necessary costs and expenses in the formation, organization,
20 administration, and operation of the Authority.
- 21 (4) To employ persons deemed necessary to carry out the functions and duties
22 assigned to them by the Authority and to fix their compensation within the
23 limit of available funds.
- 24 (5) To retain and employ counsel, appraisers, auditors, architects, engineers,
25 private consultants, and real estate counselors on an annual salary, contract
26 basis, or otherwise for rendering professional or technical services from funds
27 available to the Authority.
- 28 (6) To operate a rail corridor and enter and perform contracts to provide and
29 operate rail and rail corridor services and facilities within the rail corridor
30 service area.
- 31 (7) To charge and collect fees and rents for the use of the rail corridor or for
32 services rendered in the operation of the rail corridor.
- 33 (8) To develop and make data, plans, information, surveys, and studies within the
34 territorial jurisdiction of the Authority and to prepare and make
35 recommendations in regard thereto.
- 36 (9) To enter in a reasonable manner lands, waters, or premises of the territorial
37 jurisdiction for the purpose of making data, examinations, plans, surveys, and
38 studies whereby such entry shall not be deemed a trespass except that the
39 Authority shall be liable for any actual and consequential damages resulting
40 from such entries.
- 41 (10) To purchase or finance real or personal property in the manner provided for
42 cities and counties under G.S. 160A-20.
- 43 (11) To acquire, lease as lessee with or without option to purchase, hold, own, and
44 use any property within the rail corridor service area, real or personal, tangible
45 or intangible, or any interest therein, and to sell, lease as lessor with or without
46 option to purchase, transfer, or dispose thereof, whenever the same is no
47 longer required for purposes of the Authority, or exchange same for other
48 property or rights that are useful for the Authority's purposes, including
49 construction of bridges, buildings, cargo transfer systems, culverts, facilities,
50 industrial track, main track, mass transit systems, maintenance yards,
51 marshalling yards, rights-of-way, roadbed, sidings, structures, transfer yards,

tunnels, and all other railroad appurtenances. Before constructing a bridge, the Authority shall consult with the Department of Transportation.

(12) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a rail corridor or to contract for the maintenance, operation, or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties.

(13) To make or enter contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, units of local government, public transportation authorities, and private parties, to effectuate the purpose of this Article.

(14) With the consent of the unit of local government that would otherwise have jurisdiction to exercise the powers enumerated in this subdivision, to issue certificates of public convenience and necessity, and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of rail, buses, trams, taxicabs, and other methods of public transportation that originate and terminate within the rail corridor as fully as the unit of local government is now or hereafter empowered to do within the jurisdiction of the unit of local government.

(15) To finance the costs of a rail corridor project or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such debt. The principal of and interest on the debt is payable solely from the revenues pledged to its payment and neither the State, municipality, or county is obligated to pay the principal or interest, except from such revenues.

(16) To apply for, accept, and administer loans and grants of money from any federal agency, the State, or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidence of indebtedness that are required. No indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the Authority shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

(b) To execute the powers provided in subsection (a) of this section, the Board of Trustees shall determine the policies of the Authority by majority vote of the members of the Board of Trustees present and voting, a quorum having been established. Once a policy is determined, the Board of Trustees shall communicate it to the chair, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Board of Trustees shall have the responsibility or authority to give operational directives to any employee of the Authority other than the chair.

"§ 160A-887. Fiscal accountability.

An Authority created under this Article is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-888. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality

1 thereof. The Department of Transportation may allocate to an Authority any funds appropriated
2 for rail corridors, public transportation, or any funds whose use is not restricted by law.

3 **"§ 160A-889. Special user project financing agreement.**

4 (a) Every special user project financing agreement shall contain provisions ensuring all
5 of the following:

6 (1) That the amounts payable under the financing agreement are sufficient to pay,
7 when due, the principal of, redemption premium, if any, and interest on debt
8 held to pay the costs of the special user project.

9 (2) That the operator pays all costs incurred by the Authority in connection with
10 the financing and administration of the special user project, including
11 insurance costs, the cost of administering the financing agreement and the
12 security document, and the fees and expenses of the fiscal agent or trustee,
13 paying agents, attorneys, consultants, and others.

14 (3) That the operator pays all of the costs and expenses of operation, maintenance,
15 and upkeep of the special user project.

16 (b) The financing agreement, if in the nature of a lease agreement, shall either provide
17 that the obligor shall have an option to purchase, or require that the obligor purchase, the special
18 user project upon the expiration or termination of the financing agreement subject to the condition
19 that payment in full of the debt principal shall have been made.

20 (c) The financing agreement may provide the Authority with rights and remedies in the
21 event of a default by the obligor, including, without limitation, any one or more of the following:

22 (1) Acceleration of all amounts payable under the financing agreement.

23 (2) Reentry and repossession of the special user project.

24 (3) Termination of the financing agreement.

25 (4) Leasing or sale of foreclosure of the special user project to others.

26 (5) Taking whatever actions at law or in equity may appear necessary or desirable
27 to collect the amounts payable under, and to enforce covenants made in, the
28 financing agreement.

29 (d) The Authority's interest in a special user project under a financing agreement may be
30 that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured
31 party, or otherwise, but the Authority need not have any ownership or possessory interest in the
32 special user project.

33 (e) The Authority may assign all or any of its rights and remedies under the financing
34 agreement to debt holders under a security document.

35 (f) The financing agreement may contain additional provisions as in the determination
36 of the Board of Trustees are necessary or convenient to effectuate the purposes of this Article.

37 **"§ 160A-890. County and municipal agreements.**

38 Any county or municipality in which all or part of the rail corridor is located may enter into
39 an agreement with the Authority providing for payments to be made by the county or
40 municipality, as applicable, to the Authority. A county or municipality may not enter into an
41 agreement to make payments to the Authority until after the Authority designates the rail
42 corridor. Neither the county nor municipality's obligations under the agreement shall constitute
43 a pledge of its faith and credit. The Authority has the power and authorization to enter into
44 agreements with such local governments as provided in the Interlocal Cooperation Act,
45 G.S. 160A-460 through G.S. 160A-466.

46 **"§ 160A-891. Taxation of property.**

47 The property of the Authority, both real and personal, its acts, activities, and income shall be
48 exempt from any tax or tax obligation; in the event of any lease of Authority property, or other
49 arrangement which amounts to a leasehold interest, to a private party, this exemption shall not
50 apply to the value of such leasehold interest, nor shall it apply to the income of the lessee.
51 Otherwise, however, for the purpose of taxation, when property of the Authority is leased to

1 private parties solely for the purpose of the Authority, the acts and activities of the lessee shall
2 be considered as the acts and activities of the Authority and the exemption. The interest on debt
3 or obligations held by the Authority shall be exempt from State taxes. Property that is part of or
4 is located on the rail corridor and is not owned by the Authority, including property that is part
5 of a special user project, is not exempt from tax due to its location.

6 **"§ 160A-892. Authority of Utilities Commission not affected.**

7 (a) Except as otherwise provided in this Article, nothing in this Article shall be construed
8 to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or
9 the right of appeal to the North Carolina Utilities Commission as provided by law.

10 (b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees,
11 charges, routes, and schedules of an Authority for service within the rail corridor.

12 **"§ 160A-893. Removal and relocation of utility structures.**

13 (a) The Authority shall have the power to require any public utility, railroad, or other
14 public service corporation owning or operating any installations, structures, equipment,
15 apparatus, appliances, or facilities in, upon, under, over, across, or along any ways on which the
16 Authority has the right to own, construct, operate, or maintain its rail corridor, to relocate such
17 installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in
18 the sole discretion of the affected public utility, railroad, or other public service corporation, to
19 remove such installations, structures, equipment, apparatus, appliances, or facilities from their
20 locations.

21 (b) If the owner or operator thereof fails or refuses to relocate them, the Authority may
22 proceed to do so.

23 (c) The Authority shall provide any necessary new locations and necessary real estate
24 interests for such relocation, and for that purpose the power of eminent domain as provided in
25 G.S. 160A-894 may be exercised provided the new locations shall not be in, on, or above, a
26 public highway; the Authority may also acquire the necessary new locations by purchase or
27 otherwise.

28 (d) Any affected public utility, railroad, or other public service corporation shall be
29 compensated for any real estate interest taken in a manner consistent with G.S. 160A-894, subject
30 to the right of the Authority to reduce the compensation due by the value of any property
31 exchanged under this section.

32 (e) The method and procedures of a particular adjustment to the facilities of a public
33 utility, railroad, or other public service corporation shall be covered by an agreement between
34 the Authority and the affected party or parties.

35 (f) The Authority shall reimburse the public utility, railroad, or other public service
36 corporation, for the cost of relocations or removals which shall be the entire amount paid or
37 incurred by the utility properly attributable thereto after deducting the cost of any increase in the
38 service capacity of the new installations, structures, equipment, apparatus, appliances, or
39 facilities and any salvage value derived from the old installations, structures, equipment,
40 apparatus, or appliances.

41 **"§ 160A-894. Acquisition, disposition, or exchange of real property.**

42 (a) The Authority shall have continuing power to acquire, by gift, grant, devise,
43 exchange, purchase, lease with or without option to purchase, or any other lawful method,
44 including, but not limited to, the power of eminent domain, the fee or any lesser interest in real
45 or personal property for use by the Authority. The Authority may not acquire or take by eminent
46 domain nor by any means, including federal regulatory action, property owned or operated by
47 any Class I railroad, as that term is defined under 49 U.S.C. § 20102 and 49 C.F.R. § 1201.1-1,
48 nor a rail line or rail corridor owned or operated by the United States Department of Defense, nor
49 a rail line owned or operated by the North Carolina Railroad Company or its subsidiaries, without
50 that railroad's consent.

1 (b) Exercise of the power of eminent domain by the Authority shall be in accordance with
2 Chapter 40A of the General Statutes.

3 (c) Exchange. – The Authority may exchange any property it acquires for other property
4 usable in carrying out the powers conferred on the Authority and also, upon the payment of just
5 compensation, may remove a building or another structure from land needed for its purposes and
6 reconstruct the structure on another location. The Authority may not use the power of eminent
7 domain to acquire property for exchange.

8 (d) Site Selection. – In selecting one or more sites for adjoining rail facilities or property
9 for shell or storage buildings, the Authority shall consider comprehensive plans and land-use
10 regulations adopted by local governments and the capability of local governments to provide
11 services as specified in subdivisions (1) through (3) of this subsection. This subsection shall not
12 be construed to require the Authority to comply with any local ordinance, regulation, or plan
13 except as may be otherwise specifically provided by federal or State law, regulation, or rule.
14 Plans, regulations, and capabilities to be considered are:

15 (1) Local comprehensive plans, including education, emergency response, law
16 enforcement, water supply, stormwater management, solid waste
17 management, and wastewater treatment.

18 (2) Local land use regulations, including appearance, floodplain zoning,
19 subdivision zoning, and watershed protection elements.

20 (3) The capability of local governments to provide services and manage growth
21 and development related to the establishment of the rail corridor.

22 **"§ 160A-895. Termination.**

23 Whenever the Board of Trustees shall by resolution determine that the purposes for which
24 the Authority was formed have been substantially fulfilled and that debt held and all other
25 obligations incurred by the Authority have been fully paid or satisfied, the Board may declare
26 the Authority to be dissolved. On the effective date of the resolution, the title to all funds and
27 other property owned by the Authority at the time of the dissolution shall vest in and possession
28 of the funds and other property shall be delivered to the State."

29 **SECTION 5.(b)** G.S. 160A-20 reads as rewritten:

30 **"§ 160A-20. Security interests.**

31 ...

32 (h) Local Government Defined. – As used in this section, the term "unit of local
33 government" means any of the following:

34 ...

35 (16) A Rail Transportation Corridor Authority created pursuant to Article 33 of
36 this Chapter."

37
38 **SEVERABILITY CLAUSE**

39 **SECTION 6.** If any section or provision of this act is declared unconstitutional or
40 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
41 the part declared to be unconstitutional or invalid.

42
43 **EFFECTIVE DATE**

44 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
45 law.