

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 971
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Short Title: Railroad Transfer/Funds.

(Public)

Sponsors:

Referred to:

May 27, 1992

A BILL TO BE ENTITLED

AN ACT TO TRANSFER RAILROAD SUPERVISION AND RAILROAD SAFETY SUPERVISION FROM THE NORTH CAROLINA UTILITIES COMMISSION TO THE DEPARTMENT OF TRANSPORTATION AND TO APPROPRIATE FUNDS TO SUPPORT THE TRANSFER.

The General Assembly of North Carolina enacts:

Section 1. The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission, is transferred to the Department of Transportation.

Sec. 2. G.S. 62-3(6) reads as rewritten:

"(6) 'Common carrier' means any person which holds itself out to the general public to engage in transportation of persons or property for ~~compensation~~, compensation by any mode except rail, including transportation by train, bus, truck, boat or any other conveyance, conveyance except train, and except as exempted in G.S. 62-260."

Sec. 3. G.S. 62-3(9) reads as rewritten:

"(9) 'Contract carrier' means any ~~person~~ person, except a rail carrier, which under an individual contract or agreement with another person and

1 with such additional persons as may be approved by the Utilities
2 Commission, engages in the transportation of persons or property for
3 compensation, except as exempted in G.S. 62-260."

4 Sec. 4. G.S. 62-3(22) reads as rewritten:

5 "(22) 'Private carrier' means any ~~person~~-person, except a rail carrier, not
6 included in the definitions of common carrier or contract carrier,
7 which transports in intrastate commerce in its own vehicle or
8 vehicles property of which such person is the owner, lessee, or
9 bailee, when such transportation is for the purpose of sale, lease,
10 rent, or bailment, or when such transportation is purely an
11 incidental adjunct to some other established private business owned
12 and operated by such person other than the transportation of
13 property for compensation."

14 Sec. 5. G.S. 62-3(23) reads as rewritten:

15 "(23) a. 'Public utility' means a person, whether organized under the laws
16 of this State or under the laws of any other state or country, now or
17 hereafter owning or operating in this State equipment or facilities for:

- 18 1. Producing, generating, transmitting, delivering or
19 furnishing electricity, piped gas, steam or any other like
20 agency for the production of light, heat or power to or
21 for the public for compensation; provided, however, that
22 the term 'public utility' shall not include persons who
23 construct or operate an electric generating facility, the
24 primary purpose of which facility is for such person's
25 own use and not for the primary purpose of producing
26 electricity, heat, or steam for sale to or for the public for
27 compensation.
- 28 2. Diverting, developing, pumping, impounding,
29 distributing or furnishing water to or for the public for
30 compensation, or operating a public sewerage system for
31 compensation; provided, however, that the term 'public
32 utility' shall not include any person or company whose
33 sole operation consists of selling water to less than 10
34 residential customers, except that any person or company
35 which constructs a water system in a subdivision with
36 plans for 10 or more lots and which holds itself out by
37 contracts or other means at the time of said construction
38 to serve an area containing more than 10 residential
39 building lots shall be a public utility at the time of such
40 planning or holding out to serve such 10 or more
41 building lots, without regard to the number of actual
42 customers connected;

- 1 3. Transporting persons or property by street, suburban or
2 interurban bus ~~or railways~~ for the public for
3 compensation;
- 4 4. Transporting persons or property by ~~railways or~~ motor
5 vehicles, or any other form of transportation or express
6 service for the public for compensation, except motor
7 carriers exempted in G.S. 62-260, except rail carriers,
8 and except carriers by air;
- 9 5. Transporting or conveying gas, crude oil or other fluid
10 substance by pipeline for the public for compensation;
- 11 6. Conveying or transmitting messages or communications
12 by telephone or telegraph, or any other means of
13 transmission, where such service is offered to the public
14 for compensation.
- 15 b. The term 'public utility' shall for rate-making purposes include
16 any person producing, generating or furnishing any of the
17 foregoing services to another person for distribution to or for
18 the public for compensation.
- 19 c. The term 'public utility' shall include all persons affiliated
20 through stock ownership with a public utility doing business in
21 this State as parent corporation or subsidiary corporation as
22 defined in G.S. 55-2 to such an extent that the Commission
23 shall find that such affiliation has an effect on the rates or
24 service of such public utility.
- 25 d. The term 'public utility,' except as otherwise expressly provided
26 in this Chapter, shall not include a municipality, an authority
27 organized under the North Carolina Water and Sewer
28 Authorities Act, electric or telephone membership corporation
29 or nonprofit water membership or consumer-owned
30 corporations financed by the Farmers Home Administration, the
31 United States Department of Housing and Urban Development,
32 or any similar or successor federal financing agency, provided,
33 that (i) any such financing administration, department or agency
34 exercise substantial control over and regulation of any such
35 corporation's rates and terms and conditions of service, and (ii)
36 the members or consumer-owners of any such corporation,
37 pursuant to the corporation's articles of incorporation and
38 bylaws, shall elect the governing board of the corporation; or
39 any person not otherwise a public utility who furnishes such
40 service or commodity only to himself, his employees or tenants
41 when such service or commodity is not resold to or used by
42 others; provided, however, that any person other than a
43 nonprofit organization serving only its members, who
44 distributes or provides utility service to his employees or

1 tenants by individual meters or by other coin-operated devices
2 with a charge for metered or coin-operated utility service shall
3 be a public utility within the definition and meaning of this
4 Chapter with respect to the regulation of rates and provisions of
5 service rendered through such meter or coin-operated device
6 imposing such separate metered utility charge. If any person
7 conducting a public utility shall also conduct any enterprise not
8 a public utility, such enterprise is not subject to the provisions
9 of this Chapter. A water or sewer system owned by a
10 homeowners' association that provides water or sewer service
11 only to members or leaseholds of members is not subject to the
12 provisions of this Chapter.

13 e. The term 'public utility' shall include the University of North
14 Carolina insofar as said University supplies telephone service,
15 electricity or water to the public for compensation from the
16 University Enterprises defined in G.S. 116-41.1(9).

17 f. The term 'public utility' shall include the Town of Pineville
18 insofar as said town supplies telephone services to the public
19 for compensation. The territory to be served by the Town of
20 Pineville in furnishing telephone services, subject to the Public
21 Utilities Act, shall include the town limits as they exist on May
22 8, 1973, and shall also include the area proposed to be annexed
23 under the town's ordinance adopted May 3, 1971, until January
24 1, 1975.

25 g. The term 'public utility' shall not include a hotel, motel, time
26 share or condominium complex operated primarily to serve
27 transient occupants, which imposes charges to occupants for
28 local, long-distance, or wide area telecommunication services
29 when such calls are completed through the use of facilities
30 provided by a public utility, and provided further that the local
31 services received are rated in accordance with the provisions of
32 G.S. 62-110(d) and the applicable charges for telephone calls
33 are prominently displayed in each area where occupant rooms
34 are located."

35 Sec. 6. G.S. 62-41 reads as rewritten:

36 "**§ 62-41. To investigate accidents involving public utilities; to promote general**
37 **safety program.**

38 The Commission may conduct a program of accident prevention and public safety
39 covering all public utilities with special emphasis on highway safety and transport
40 safety and may investigate the causes of any accident on a ~~railroad or highway~~ involving
41 a ~~public utility, or any accident in connection with any other~~ public utility. Any information
42 obtained upon such investigation shall be reduced to writing and a report thereof filed in
43 the office of the Commission, which shall be subject to public inspection but such report
44 shall not be admissible in evidence in any civil or criminal proceeding arising from

1 such accident. The Commission may adopt reasonable rules and regulations for the
2 safety of the public as affected by public utilities and the safety of public utility
3 employees. The Commission shall cooperate with and coordinate its activities for public
4 utilities with similar programs of the Division of Motor Vehicles, the Insurance
5 Department, the Industrial Commission and other organizations engaged in the
6 promotion of highway safety and employee safety."

7 Sec. 7. G.S. 62-300(a) reads as rewritten:

8 "(a) The Commission shall receive and collect the following fees and charges in
9 accordance with the classification of utilities as provided in rules and regulations of the
10 Commission, and no others:

- 11 (1) Twenty-five dollars (\$25.00) with each notice of appeal to the
12 Court of Appeals or the Supreme Court, and with each notice of
13 application for a writ of certiorari.
- 14 (2) With each application for a new certificate or new permit for motor
15 ~~and rail~~ carrier rights, the fee shall be two hundred fifty dollars
16 (\$250.00) when filed by Class 1 motor ~~and rail~~ carriers, one
17 hundred dollars (\$100.00) when filed by Class 2 motor ~~and rail~~
18 carriers, and twenty-five dollars (\$25.00) when filed by Class 3
19 motor ~~and rail~~ carriers, and twenty-five dollars (\$25.00) as filing
20 fee for any amendment thereto so as to extend or enlarge the scope
21 of operations thereunder, and twenty-five dollars (\$25.00) for each
22 broker who applies for a brokerage license under the provisions of
23 this Chapter.
- 24 (3) With each application for a general increase in rates, fares and
25 charges and for each filing of a tariff which seeks general increases
26 in rates, fares and charges, the fee will be five hundred dollars
27 (\$500.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers,
28 two hundred fifty dollars (\$250.00) for Class B utilities and Class 2
29 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for Class C
30 utilities and twenty-five dollars (\$25.00) for Class D utilities and
31 Class 3 motor ~~and rail~~ carriers; provided that in the case of an
32 application or tariff for a general increase in rates filed by a tariff
33 agent for more than one carrier, the applicable fee shall be the
34 highest fee prescribed for any motor carrier included in the
35 application or tariff. This fee shall not apply to applications for
36 adjustments in particular rates, fares, or charges for the purpose of
37 eliminating inequities, preferences or discriminations or to
38 applications to adjust rates and charges based solely on the
39 increased cost of fuel used in the generation or production of
40 electric power.
- 41 (4) One hundred dollars (\$100.00) ~~with each application for~~
42 ~~discontinuance of train service, or for a change in or discontinuance of~~
43 ~~station facilities and~~ with each application by motor carrier of
44 passengers for the abandonment or permanent or temporary

- 1 discontinuance of transportation service previously authorized in a
2 certificate.
- 3 (5) With each application for a certificate of public convenience and
4 necessity or for any amendment thereto so as to extend or enlarge
5 the scope of operations thereunder, the fee shall be two hundred
6 fifty dollars (\$250.00) for Class A utilities, one hundred dollars
7 (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for
8 Class C and D utilities and twenty-five dollars (\$25.00) for any
9 other person seeking a certificate of public convenience and
10 necessity.
- 11 (5a) With each application by a bus company for an original certificate
12 of authority or for any amendment thereto or to an existing
13 certificate of public convenience and necessity so as to extend or
14 enlarge the scope of operations thereunder the fee shall be two
15 hundred fifty dollars (\$250.00).
- 16 (6) With each application for approval of the issuance of securities or
17 for the approval of any sale, lease, hypothecation, lien, or other
18 transfer of any property or operating rights of any carrier or public
19 utility over which the Commission has jurisdiction, the fee shall be
20 two hundred fifty dollars (\$250.00) for Class A utilities and Class 1
21 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for Class B
22 utilities and Class 2 motor ~~and rail~~ carriers, and twenty-five dollars
23 (\$25.00) for Class C and D utilities and Class 3 motor ~~and rail~~
24 carriers; provided, that in the case of sales, leases and transfers
25 between two or more carriers or utilities, the applicable fee shall be
26 the highest fee prescribed for any party to the transaction.
- 27 (7) Ten dollars (\$10.00) with each application, petition, or complaint
28 not embraced in (2) through (6) of this section, wherein such
29 application, petition, or complaint seeks affirmative relief against a
30 carrier or public utility over which the Commission has
31 jurisdiction. This fee shall not apply to applications for adjustments
32 in particular rates, fares or charges for the purpose of eliminating
33 inequities, preferences or discriminations; nor shall this fee apply
34 to applications, petitions, or complaints made by any county, city
35 or town; nor shall this fee apply to applications or petitions made
36 by individuals seeking service or relief from a public utility.
- 37 (8) Repealed by Session Laws 1985, c. 454, s. 18.
- 38 (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of
39 testimony, but not less than five dollars (\$5.00) for any such
40 transcript.
- 41 (10) Twenty cents (20¢) for each page of copies of papers, orders,
42 certificates or other records, but not less than one dollar (\$1.00) for
43 any such order or record, plus five dollars (\$5.00) for formal
44 certification of any such paper, order or record.

1 (11), (12) Repealed by Session Laws 1985, c. 454, s. 18."

2 Sec. 8. G.S. 40A-3(a) reads as rewritten:

3 "(a) Private Condemnors. – For the public use or benefit, the persons or
4 organizations listed below shall have the power of eminent domain and may acquire by
5 purchase or condemnation property for the stated purposes and other works which are
6 authorized by law.

7 (1) Corporations, bodies politic or persons have the power of eminent
8 domain for the construction of railroads, power generating
9 facilities, substations, switching stations, microwave towers, roads,
10 alleys, access railroads, turnpikes, street railroads, plank roads,
11 tramroads, canals, telegraphs, telephones, electric power lines,
12 electric lights, public water supplies, public sewerage systems,
13 flumes, bridges, and pipelines or mains originating in North
14 Carolina for the transportation of petroleum products, coal, gas,
15 limestone or minerals. Land condemned for any liquid pipelines
16 shall:

17 a. Not be less than 50 feet nor more than 100 feet in width; and

18 b. Comply with the provisions of G.S. 62-190(b).

19 The width of land condemned for any natural gas pipelines shall not be
20 more than 100 feet.

21 (2) School committees or boards of trustees or of directors of any
22 corporation holding title to real estate upon which any private
23 educational institution is situated, have the power of eminent
24 domain in order to obtain a pure and adequate water supply for
25 such institution.

26 (3) Franchised motor vehicle carriers or union bus station companies
27 organized by authority of the Utilities Commission, have the power
28 of eminent domain for the purpose of constructing and operating
29 union bus stations: Provided, that this subdivision shall not apply to
30 any city or town having a population of less than 60,000.

31 (4) Any railroad company has the power of eminent domain for the
32 purposes of: constructing union depots; maintaining, operating,
33 improving or straightening lines or of altering its location;
34 constructing double tracks; constructing and maintaining new yards
35 and terminal facilities or enlarging its yard or terminal facilities;
36 connecting two of its lines already in operation not more than six
37 miles apart; or constructing an industrial siding ordered by the
38 ~~Utilities Commission as provided in G.S. 62-232.~~ Department of
39 Transportation as provided in G.S. 136-203.

40 The width of land condemned for any single or double track railroad purpose shall
41 be not less than 80 feet nor more than 100 feet, except where the road may run through
42 a town, where it may be of less width, or where there may be deep cuts or high
43 embankments, where it may be of greater width.

1 No rights granted or acquired under this subsection shall in any way destroy or
 2 abridge the rights of the State to regulate or control any railroad company or to regulate
 3 foreign corporations doing business in this State. Whenever it is necessary for any
 4 railroad company doing business in this State to cross the street or streets in a town or
 5 city in order to carry out the orders of the ~~Utilities Commission~~, Department of
 6 Transportation to construct an industrial siding, the power is hereby conferred upon
 7 such railroad company to occupy such street or streets of any such town or city within
 8 the State. Provided, license so to do be first obtained from the board of aldermen, board
 9 of commissioners, or other governing authorities of such town or city.

10 No such condemnor shall be allowed to have condemned to its use, without the
 11 consent of the owner, his burial ground, usual dwelling house and yard, kitchen and
 12 garden, unless condemnation of such property is expressly authorized by statute.

13 The power of eminent domain shall be exercised by private condemnors under the
 14 procedures of Article 2 of this Chapter."

15 Sec. 9. G.S. 160A-195 reads as rewritten:

16 "**§ 160A-195. Regulating speed of trains.**

17 A city may by ordinance regulate the speed at which railroad trains may be operated
 18 within the corporate limits. Any such ordinance shall be filed with the ~~Utilities~~
 19 ~~Commission~~ Department of Transportation as required by ~~G.S. 62-238.1~~ G.S. 136-210."

20 Sec. 10. G.S. 136-17.2 reads as rewritten:

21 "**§ 136-17.2. Members of the Board of Transportation represent entire State.**

22 The chairman and members of the Board of Transportation shall represent the entire
 23 State in ~~highway~~ transportation matters and not represent any particular person, persons,
 24 or area. The Board shall, from time to time, provide that one or more of its members or
 25 representatives shall publicly hear any person or persons concerning ~~highway~~
 26 transportation matters in each of said geographic areas of the State."

27 Sec. 11. G.S. 136-18 is amended by adding a new subdivision to read:

28 "(30) The Department of Transportation shall have and exercise such
 29 general power and authority to supervise and control the railroads
 30 of the State as may be necessary to carry out the laws providing for
 31 their regulation, and all other powers and duties as may be
 32 necessary or incident to the proper discharge of its duties."

33 Sec. 12. Article 11 of Chapter 62 of the General Statutes, G.S. 62-220 to 62-
 34 247, is recodified as Article 15 of Chapter 136 of the General Statutes, G.S. 136-191 to
 35 136-219. G.S. 62-192 is recodified as G.S. 136-220 and included within Article 15.
 36 G.S. 62-319 is recodified as G.S. 136-221 and included within Article 15. G.S. 62-322
 37 is recodified as G.S. 136-222 and included within Article 15. The Revisor of Statutes
 38 shall change any references to "the Commission" to "the Department of
 39 Transportation" and shall change the reference to "G.S. 62-238.1(b)" in G.S. 62-239,
 40 recodified as G.S. 136-211, to "G.S. 136-210".

41 The following table serves as a locator for the statutes recodified by this
 42 section:

43 <u>Original Section Number</u>	<u>Recodified Section Number</u>
44 G.S. 62-220	G.S. 136-191

1	G.S. 62-221	G.S. 136-192
2	G.S. 62-222	G.S. 136-193
3	G.S. 62-223	G.S. 136-194
4	G.S. 62-224	G.S. 136-195
5	G.S. 62-225	G.S. 136-196
6	G.S. 62-226	G.S. 136-197
7	G.S. 62-227	G.S. 136-198
8	G.S. 62-228	G.S. 136-199
9	G.S. 62-229	G.S. 136-200
10	G.S. 62-230	G.S. 136-201
11	G.S. 62-231	G.S. 136-202
12	G.S. 62-232	G.S. 136-203
13	G.S. 62-233	G.S. 136-204
14	G.S. 62-234	G.S. 136-205
15	G.S. 62-235	G.S. 136-206
16	G.S. 62-236	G.S. 136-207
17	G.S. 62-237	G.S. 136-208
18	G.S. 62-238	G.S. 136-209
19	G.S. 62-238.1	G.S. 136-210
20	G.S. 62-239	G.S. 136-211
21	G.S. 62-240	G.S. 136-212
22	G.S. 62-241	G.S. 136-213
23	G.S. 62-242	G.S. 136-214
24	G.S. 62-243	G.S. 136-215
25	G.S. 62-244	G.S. 136-216
26	G.S. 62-245	G.S. 136-217
27	G.S. 62-246	G.S. 136-218
28	G.S. 62-247	G.S. 136-219
29	G.S. 62-192	G.S. 136-220
30	G.S. 62-319	G.S. 136-221
31	G.S. 62-322	G.S. 136-222.

32 Sec. 13. Article 15 of Chapter 136 of the General Statutes, as created by
33 Section 12 of this act, is amended by adding a new section to read:

34 **"§ 136-190. Power to make and enforce rules for railroads.**

35 (a) The Department of Transportation shall administer and enforce the provisions
36 of this Article, and may adopt rules needed to accomplish the administration and
37 enforcement of the provisions of this Article."

38 Sec. 14. Article 15 of Chapter 136 of the General Statutes, as created by
39 Section 12 of this act, is amended by adding a new section to read:

40 **"§ 136-222. Tickets; conduct of passengers.**

41 The provisions of G.S. 62-149, 62-150, and 62-151, regarding the use of tickets and
42 the conduct of passengers on common carriers, apply to railroads regulated under this
43 Article."

1 Sec. 15. G.S. 62-235, as recodified as G.S. 136-205 by Section 12 of this act,
2 reads as rewritten:

3 **"§ 136-205. Department of Transportation to inspect railroads as to equipment and**
4 **facilities, and to require repair.**

5 (a) The Department of Transportation is empowered and directed, from time to
6 time, to carefully examine into and inspect the condition of each railroad, its equipment
7 and facilities, in regard to the safety and convenience of the public and the railroad
8 employees; and if any are found by it to be unsafe, it shall at once notify and require the
9 railroad company to put the same in repair.

10 (b) The Department of Transportation may conduct a program of accident
11 prevention and public safety covering all railroads and may investigate the cause of any
12 railroad accident. In order to facilitate this program, any railroad involved in an
13 accident that must be reported to the Federal Railroad Administration shall also notify
14 the Department of Transportation of the occurrence of the accident."

15 Sec. 16. G.S. 62-236, as recodified as G.S. 136-206 by Section 12 of this act,
16 reads as rewritten:

17 **"§ 136-206. To require installation and maintenance of ~~block-system~~ railroad**
18 **traffic signal and control systems, block signal systems, and safety**
19 **devices; automatic signals at railroad intersections.**

20 (a) The Department of Transportation ~~is empowered and directed to~~ may require
21 any railroad company to install and put in operation and maintain upon the whole or any
22 part of its road an appropriate system of railroad signals and controls, a block signal
23 system, ~~system of telegraphy~~ or any other reasonable safety device, but no railroad
24 company shall be required to install a block system upon any part of its road unless at
25 least eight trains each way per day are operated on that part.

26 (b) The Department of Transportation ~~is empowered and directed to~~ may require,
27 when public safety demands, where two or more railroads cross each other at a common
28 grade, or any railroad crosses any stream or harbor by means of a bridge, to install and
29 maintain such a system of ~~interlocking or automatic interlocking, block, automatic, or~~
30 automatic block signals as will render it safe for engines and trains to pass over such
31 crossings or bridge without stopping, and to apportion the cost of installation and
32 maintenance between said railroads as may be just and proper."

33 Sec. 17. There is appropriated from the Highway Fund to the Department of
34 Transportation the sum of forty-seven thousand two hundred fifty dollars (\$47,250) for
35 the 1992-93 fiscal year to implement the provisions of this act. The Legislative
36 Research Commission's Committee on Railroads and Other Public Transportation shall
37 study the issue of funding for the railroad supervision and railroad safety supervision
38 programs transferred to the Department of Transportation in this act and shall make a
39 recommendation on future funding to the 1993 General Assembly.

40 Sec. 18. The Department of Transportation shall submit a railroad safety
41 report each quarter to the Joint Legislative Highway Oversight Committee. The report
42 shall include the number of railroad inspections performed, the number and nature of
43 any violations found, and the number and amount of any fines issued.

1 Sec. 19. Section 66 of Chapter 689 of the 1991 Session Laws as rewritten by
2 Section 102 of Chapter 900 of the 1991 Session Laws reads as rewritten:

3 "Sec. 66. The Department of Transportation's Equipment Fund shall pay to the
4 Highway Fund \$5,000,000 for the 1991-92 fiscal year and \$5,000,000 for the 1992-93
5 fiscal year. These funds shall be used for highway maintenance. The Department of
6 Transportation's Equipment Fund shall pay to the Highway Fund an additional
7 ~~\$8,899,254~~ \$8,946,504 for the 1992-93 fiscal year for use in the expansion ~~budget.~~
8 budget and to support the transfer of the Rail Safety Program and personnel from the
9 Utilities Commission to the Department of Transportation. The effective date of the
10 transfer of the program shall be April 1, 1993, and the added cost from the Equipment
11 Fund for the 1992-93 fiscal year to support this transfer is \$47,250."

12 Sec. 20. This act becomes effective April 1, 1993.