

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 174\*

Short Title: NC Railroad Company Reporting and Dividends. (Public)

Sponsors: Representative Howard (Primary Sponsor).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Finance.

February 28, 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 GENERAL FUND, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE GENERAL FUND, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NON-CORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO THE STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

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~~ 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, two shall also be appointees to the Board of Transportation. 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



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

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

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

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

14 (a) Any State-owned railroad company shall prepare and maintain a comprehensive  
15 strategic plan that includes a mission statement describing the purpose of the company and  
16 clear goals that address the strategic 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 required under G.S. 124-16.

33 (3) Any failures to meet strategic objectives and what corrective actions were  
34 taken under G.S. 124-16(b).

35 (4) The information required by Form 10-K that public companies must file  
36 with the U.S. Securities and Exchange Commission pursuant to sections 13  
37 and 15(d) of the Securities Exchange Act of 1934, as amended. If a  
38 particular reporting requirement of Form 10-K is not relevant to the railroad  
39 company, the report shall include an explanation why.

40 (5) Anticipated dividends for the next three fiscal years.

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

48 (c) Confidential information includes (i) information related to a proposed specific  
49 business transaction where inspection, examination, or copying of the records would frustrate  
50 the purpose for which the records were created, or (ii) information that is subject to

1 confidentiality obligations of a railroad company. Confidential information is exempt from  
 2 Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

3 **SECTION 2.** One-time cash dividend. – Notwithstanding G.S. 124-5.1 and  
 4 G.S. 136-16.6, any State-owned railroad company, as defined under G.S. 124-11, that has  
 5 trackage in more than two counties shall issue a cash dividend in the amount of fifteen million  
 6 five hundred thousand dollars (\$15,500,000), which shall be deposited into the General Fund,  
 7 no later than June 30, 2013.

8 **SECTION 3.** Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:  
 9 "**§ 124-5.1. State use of North Carolina Railroad Company dividends, dividends deposited**  
 10 **to General Fund.**

11 (a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of~~  
 12 ~~the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company~~  
 13 ~~received by the State shall be applied to reduce the obligations described in subsection (c) of~~  
 14 ~~Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L.~~  
 15 ~~1999-237. Any dividends of the North Carolina Railroad Company received by the State shall~~  
 16 ~~be used by the Department of Transportation for the improvement of the property of the North~~  
 17 ~~Carolina Railroad Company as recommended and approved by the Board of Directors of the~~  
 18 ~~North Carolina Railroad Company. The improvements may include the following project types:~~

- 19 (1) ~~Railroad and industrial track rehabilitation.~~
- 20 (2) ~~Railroad signal and grade crossing protection.~~
- 21 (3) ~~Bridge improvements.~~
- 22 (4) ~~Corridor protection.~~
- 23 (5) ~~Industrial site acquisition, deposited into the General Fund.~~

24 (b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the~~  
 25 ~~remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L.~~  
 26 ~~1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on~~  
 27 ~~those obligations relating to periods prior to January 1, 2000, shall be deemed paid and~~  
 28 ~~contributed by the State to the capital of the North Carolina Railroad Company."~~

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

31 "**§ 124-18. Dividends required of State-owned railroad company.**

32 Any State-owned railroad company that has trackage in more than two counties shall issue  
 33 an annual cash dividend to the State. The minimum amount of the annual dividend is  
 34 twenty-five percent (25%) of the company's income from its trackage rights agreements for the  
 35 prior year. Such a minimum dividend is due by January 15 of each year, and interest shall  
 36 accrue at the rate of prime plus one percent (1%) if the payment is not paid by the due date."

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

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

42 <b>Property Description</b>	<b>County</b>	<b>Nearest Town</b>	<b>Parcel ID</b>
43 Burke Street Lot	Alamance	Gibsonville	107493
44 4th Street Lot	Carteret	Morehead	638620808907000
45 Bridges St. Lot	Carteret	Morehead	638620911461000
46 Newport Lot	Carteret	Newport	634814246231000
47 Station & Former Industrial Lot	Carteret	Morehead	638620718127000
48 Waterfront & Riparian Rights	Carteret	Morehead	638620708857000 & 638620709868000
50 Wye Ppty. Extension	Carteret	Morehead	637616924807000
51 Wye Property	Carteret	Morehead	637620923019000

1	Clarks Lot	Craven	Clarks	8-221-035
2	N. Craven St. Lot	Craven	New Bern	8-003-241-A
3	Tiffany & Bright Sts. Property	Lenoir	Kinston	11185 & 26555
4	Hillsborough Former Depot Lot	Orange	Hillsborough	9864755143
5	Morrisville Former Depot	Wake	Morrisville	0755-14-6475
6	Waynesboro Lot	Wayne	Goldsboro	2599119118

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

11 **SECTION 4.(b)** Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department  
12 of Administration shall sell the properties issued as dividends under this section and deposit the  
13 proceeds of the sales into the General Fund. Notwithstanding any other provision of law, the  
14 Department of Administration may deduct the costs of selling the property from the proceeds of  
15 the sales.

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