

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 95

Short Title: Railroad Corridor Protection. (Public)

Sponsors: Representatives Rapp, Steen, McComas, and Barnhart (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Transportation.

February 16, 2011

A BILL TO BE ENTITLED

AN ACT CONCERNING MANAGEMENT AND PROTECTION OF RAILROAD  
CORRIDORS, AS RECOMMENDED BY THE RAILROADS STUDY COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1-44 reads as rewritten:

"§ 1-44. **No title by possession of right-of-way.**

No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right-of-way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right-of-way, depot, station house or place of landing, by any statute of limitation or by occupation of the same by any person ~~whatever~~, whatever, or by any act or acts constituting estoppel or waiver."

**SECTION 2.** G.S. 1-51 reads as rewritten:

"§ 1-51. ~~Five~~ Three years.

Within ~~five~~ three years –

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

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

**SECTION 3.** G.S. 40A-51(a) reads as rewritten:

"(a) If property has been taken by an act or omission of a condemnor listed in ~~G.S. 40A-3(b) or (c)~~ G.S. 40A-3(a)(4), (b), or (c) or a railroad pursuant to G.S. 40A-3(a)(1) and no complaint containing a declaration of taking has been filed the owner of the property, may initiate an action to seek compensation for the taking. The action may be initiated within 24 months of the date of the taking of the affected property or the completion of the project involving the taking, whichever shall occur later. The complaint shall be filed in the superior court and shall contain the following: the names and places of residence of all persons who are,



1 or claim to be, owners of the property, so far as the same can by reasonable diligence be  
2 ascertained; if any persons are under a legal disability, it must be so stated; a statement as to  
3 any encumbrances on the property; the particular facts which constitute the taking together with  
4 the dates that they allegedly occurred, and; a description of the property taken. Upon the filing  
5 of said complaint summons shall issue and together with a copy of the complaint be served on  
6 the condemnor. The allegations of said complaint shall be deemed denied; however, the  
7 condemnor within 60 days of service summons and complaint may file answer thereto. If the  
8 taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the  
9 court the estimated amount of compensation for the taking. Notice of the deposit shall be given  
10 to the owner. The owner may apply for disbursement of the deposit and disbursement shall be  
11 made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the  
12 condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat  
13 of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall  
14 be followed for the purpose of determining all matters raised by the pleadings and the  
15 determination of just compensation."

16 **SECTION 4.** G.S. 136-192 reads as rewritten:

17 "**§ 136-192. Obstructing highways; defective crossings; notice; failure to repair after**  
18 **notice misdemeanor.**

19 (a) Whenever, in their construction, the works of any railroad corporation shall cross  
20 lawfully established public roads or ways, the corporation shall so construct its works as not to  
21 impede the passage or transportation of persons or property along the same. If any railroad  
22 corporation shall so construct its crossings with public streets, thoroughfares or highways, or  
23 keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or  
24 endanger the passage or transportation of persons or property along, over or across the same,  
25 the governing body of the county, city or town, or other public road authority having charge,  
26 control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in  
27 writing, directing it to place any such crossing in good condition, so that persons may cross and  
28 property be safely transported across the same.

29 (b) The notice may be served upon the agent of the offending railroad located nearest to  
30 the defective or dangerous crossing about which the notice is given, or it may be served upon  
31 the section master whose section includes such crossing. Such notice may be served by  
32 delivering a copy to such agent or section master, or by registered or certified mail addressed to  
33 either of such persons.

34 (c) If the railroad corporation shall fail to put such crossing in a safe condition for the  
35 passage of persons and property within 30 days from and after the service of the notice, it shall  
36 be guilty of a Class 1 misdemeanor. Each calendar month which shall elapse after the giving of  
37 the notice and before the placing of such crossing in repair shall be a separate offense.

38 (d) This section shall in nowise be construed to abrogate, repeal or otherwise affect any  
39 existing law now applicable to railroad corporations with respect to highway and street  
40 crossings; but the duty imposed and the remedy given by this section shall be in addition to  
41 other duties and remedies now prescribed by law."

42 **SECTION 5.** Chapter 136 of the General Statutes is amended by adding a new  
43 section to read:

44 "**§ 136-199. Filing of railroad corridor maps.**

45 (a) A railroad company may file railroad corridor maps and any revisions thereto  
46 showing existing railroad corridors and other railroad property with the Department of  
47 Transportation Rail Division. Any railroad corridor map filed pursuant to this subsection shall  
48 indicate the county recorded book and page or file number of the deed or other legal document  
49 by which the right-of-way was acquired by the railroad company. Railroad corridor maps filed  
50 pursuant to this subsection shall be filed electronically and made publicly available on a Web  
51 site maintained by the Department of Transportation Rail Division. When a railroad company

1 files the railroad corridor maps pursuant to this subsection, the maps shall be conspicuously  
2 stamped or marked "For Informational Purposes Only, Pursuant to G.S. 136-199" and shall  
3 identify the name of the railroad company that owns, and if different, operates the railroad  
4 corridor, including trade names. Information included in the maps is for informational purposes  
5 only and shall not result in a presumption of ownership in the railroad company or any other  
6 party.

7 (b) When a railroad company files railroad corridor maps pursuant to subsection (a) of  
8 this section, the railroad company shall file a "Notice of Filing Railroad Corridor Maps" (Map  
9 Notice) with the register of deeds in the county where the railroad corridor and other railroad  
10 property is located. This Map Notice shall identify that the railroad corridor maps have been  
11 filed under subsection (a) of this section. For purposes of indexing with the register of deeds  
12 only, the railroad company(s) shown on the recorded Map Notice as filing the Map Notice may  
13 be deemed by the register of deeds to be the "Grantors" and the only parties to the instrument.

14 (c) When a railroad company files railroad corridor maps pursuant to subsection (a) of  
15 this section, a copy of the railroad corridor maps, and any revisions thereto, provided under  
16 subsection (a) of this section also shall be furnished to the North Carolina Society of Surveyors  
17 pursuant to a license agreement for use by the North Carolina Society of Surveyors. Maps  
18 provided to the North Carolina Society of Surveyors pursuant to this subsection shall be for  
19 informational purposes only and shall not result in a presumption of ownership in the railroad  
20 company or any other party."

21 **SECTION 6.** G.S. 153A-1 reads as rewritten:

22 **"§ 153A-1. Definitions.**

23 Unless otherwise specifically provided, or unless otherwise clearly required by the context,  
24 the words and phrases defined in this section have the meaning indicated when used in this  
25 Chapter.

- 26 (1) "City" means a city as defined by G.S. 160A-1(2), except that it does not  
27 include a city that, without regard to its date of incorporation, would be  
28 disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a).
- 29 (2) "Clerk" means the clerk to the board of commissioners.
- 30 (3) "County" means any one of the counties listed in G.S. 153A-10.
- 31 (4) "General law" means an act of the General Assembly that applies to all units  
32 of local government, to all counties, to all counties within a class defined by  
33 population or other criteria, to all cities, or to all cities within a class defined  
34 by population or other criteria, including a law that meets the foregoing  
35 standards but contains a clause or section exempting from its effect one or  
36 more counties, cities, or counties and cities.
- 37 (5) "Local act" means an act of the General Assembly that applies to one or  
38 more specific counties, cities, or counties and cities by name. "Local act" is  
39 interchangeable with the terms "special act," "special law," "public-local  
40 act," and "private act," is used throughout this Chapter in preference to those  
41 terms, and means a local act as defined in this subdivision without regard to  
42 the terminology employed in local acts or other portions of the General  
43 Statutes.
- 44 (6) "Publish," "publication," and other forms of the verb "to publish" mean  
45 insertion in a newspaper qualified under G.S. 1- 597 to publish legal  
46 advertisements in the county.
- 47 (7) "Railroad corridor" means, for purposes of Article 18 of this Chapter, any  
48 railroad real property, including, but not limited to, a railroad right-of-way,  
49 whether held in fee or easement, regardless of the means by which title was  
50 acquired, and regardless of whether railroad tracks are located on the land.  
51 The term also includes rail-related real property owned by a Regional Public

1 Transportation Authority organized pursuant to Article 26 of Chapter 160A  
2 of the General Statutes, the Charlotte Area Transit System, and the  
3 Department of Transportation."

4 **SECTION 7.** G.S. 153A-331 is amended by adding two new subsections to read:

5 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
6 then the provisions in subsections (a1) and (a2) of this section shall apply. A subdivision  
7 control ordinance shall not allow the dedication or reservation of recreation areas serving  
8 residents of the immediate neighborhood of the subdivision, or of any other dedication or  
9 reservation of open spaces or open areas within a railroad corridor without first obtaining the  
10 written consent of the railroad company. For purposes of this subsection, the county planning  
11 board, commission, or other department with jurisdiction over subdivision control ordinances  
12 shall require any applicant seeking dedication or reservation to obtain written consent of the  
13 railroad company by contacting the railroad company by certified mail, return receipt  
14 requested, through its current registered agent at the address on file with the North Carolina  
15 Department of the Secretary of State. The railroad company shall have 60 days from receipt of  
16 a request for written consent made under this section to approve, deny with an explanation, or  
17 respond with its requirements. Failure to respond to the request for written consent within 60  
18 days shall be deemed to be approval of the request for written consent by the railroad company  
19 unless the railroad owns the railroad corridor in fee simple. In lieu of obtaining consent of the  
20 railroad company, a subdivision control ordinance may allow an open space credit for acreage  
21 subject to a railroad easement without public dedication or reservation if the purpose of the  
22 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be  
23 construed to alter or affect the property rights of the railroad or adjacent or underlying  
24 landowners. This section shall not apply to a regulated public utility engaged in the business of  
25 producing, generating, transmitting, delivering, or furnishing electricity, as defined in  
26 G.S. 62-3(23)a.1.

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

35 (1) A copy of the railroad's written consent obtained under subsection (a1) of  
36 this section; or

37 (2) A certification that no consent of a railroad is required under subsection (a1)  
38 of this section because the dedication or reservation sought does not fall  
39 within a railroad corridor according to railroad maps filed pursuant to  
40 G.S. 136-199."

41 **SECTION 8.** Chapter 153A of the General Statutes is amended by adding a new  
42 section to read:

43 **"§ 153A-337. Access to development within a railroad corridor.**

44 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
45 then the provisions in subsections (a) and (b) of this section shall apply. A county shall not  
46 approve any development plan where the sole means of ingress to and egress from the property  
47 being developed is a roadway that encroaches upon a railroad corridor without first obtaining  
48 the written consent of the railroad company. For purposes of this section, the county planning  
49 board, commission, or other department with jurisdiction over development plans shall require  
50 any applicant for a development plan to obtain the written consent of the railroad company by  
51 contacting the railroad company by certified mail, return receipt requested, through its current

1 registered agent at the address on file with the North Carolina Department of the Secretary of  
2 State. The railroad company shall have 60 days from receipt of a request for written consent  
3 made under this section to approve, deny with an explanation, or respond with its requirements.  
4 Except in regard to railroad crossings, failure to respond to the request for written consent  
5 within 60 days shall be deemed to be approval of the request for written consent by the railroad  
6 company unless the railroad owns the railroad corridor in fee simple. Nothing herein shall be  
7 construed to alter or affect the property rights of the railroad or adjacent or underlying  
8 landowners. This section shall not apply to a regulated public utility engaged in the business of  
9 producing, generating, transmitting, delivering, or furnishing electricity, as defined in  
10 G.S. 62-3(23)a.1.

11 (b) The applicant shall provide directly to the county the written consent of the railroad  
12 obtained under subsection (a) of this section. Receipt by the county from the applicant of either  
13 of the following may be relied upon in all respects by the county in determining whether to  
14 approve any development plan under subsection (a) of this section, and the county shall have  
15 no liability resulting from reliance thereon:

16 (1) A copy of the railroad's written consent obtained under subsection (a) of this  
17 section; or

18 (2) A certification that no consent of a railroad is required under subsection (a)  
19 of this section because the development plan sought does not fall within a  
20 railroad corridor according to railroad maps filed pursuant to G.S. 136-199.

21 (c) Notwithstanding the provisions of subsection (a) of this section, if the sole means of  
22 ingress and egress to a property being developed is over an existing public roadway established  
23 and maintained by the State or municipality and within a railroad corridor and does not require  
24 the use of any additional land within the railroad corridor, then the provisions of subsection (a)  
25 of this section shall not apply and the applicant seeking approval of the development plan from  
26 the county may use that existing public roadway in its development plan without obtaining  
27 consent of the railroad. Nothing in this subsection shall be construed to alter or affect the  
28 property rights of the railroad or adjacent or underlying landowners.

29 (d) The Department of Transportation may not condition the approval of any  
30 development plan on an applicant making road improvements, including adding an additional  
31 lane, if those road improvements would be within the railroad corridor and would require the  
32 consent of the railroad under subsection (a) of this section."

33 **SECTION 9.** G.S. 153A-340 is amended by adding two new subsections to read:

34 "(j) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
35 then the provisions in this subsection and subsection (k) of this section shall apply. A county  
36 shall not permit any land located within a railroad corridor to be dedicated or reserved as open  
37 space or open area without first obtaining the written consent of the railroad company. For  
38 purposes of this subsection, the county planning board, commission, or other department with  
39 jurisdiction over development plans shall require any applicant seeking dedication or  
40 reservation to obtain the written consent of the railroad company by contacting the railroad  
41 company by certified mail, return receipt requested, through its current registered agent at the  
42 address on file with the North Carolina Department of the Secretary of State. The railroad  
43 company shall have 60 days from receipt of a request for written consent made under this  
44 section to approve, deny with an explanation, or respond with its requirements. Failure to  
45 respond to the request for written consent within 60 days shall be deemed to be approval of the  
46 request for written consent by the railroad company unless the railroad owns the railroad  
47 corridor in fee simple. In lieu of obtaining consent of the railroad company, a county may allow  
48 an open space credit for acreage subject to a railroad easement without public dedication or  
49 reservation if the purpose of the credit is to preserve the railroad corridor for future railroad  
50 purposes. Nothing herein shall be construed to alter or affect the property rights of the railroad  
51 or adjacent or underlying landowners. This section shall not apply to a regulated public utility

1 engaged in the business of producing, generating, transmitting, delivering, or furnishing  
2 electricity, as defined in G.S. 62-3(23)a.1.

3 (k) The applicant shall provide directly to the county planning board, commission, or  
4 other department with jurisdiction over development plans the written consent of the railroad  
5 obtained under subsection (j) of this section. Receipt by the county planning board,  
6 commission, or other department with jurisdiction over development plans from the applicant  
7 of either of the following may be relied upon in all respects by the county in determining  
8 whether to allow the dedication or reservation of recreation areas or of open spaces or open  
9 areas in accordance with subsection (j) of this section, and the county shall have no liability  
10 resulting from reliance thereon:

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

13 (2) A certification that no consent of a railroad is required under subsection (j)  
14 of this section because the dedication or reservation sought does not fall  
15 within a railroad corridor according to railroad maps filed pursuant to  
16 G.S. 136-199."

17 **SECTION 10.** G.S. 153A-357 reads as rewritten:

18 **"§ 153A-357. Permits.**

19 (a) No person may commence or proceed with any of the following without first  
20 securing from the inspection department with jurisdiction over the site of the work each permit  
21 required by the State Building Code and any other State or local law or local ordinance or  
22 regulation applicable to the work:

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

25 (2) The installation, extension, or general repair of any plumbing system except  
26 that in any one- or two-family dwelling unit a permit shall not be required  
27 for the connection of a water heater that is being replaced, provided that the  
28 work is performed by a person licensed under G.S. 87-21, who personally  
29 examines the work at completion and ensures that a leak test has been  
30 performed on the gas piping, and provided the energy use rate or thermal  
31 input is not greater than that of the water heater which is being replaced,  
32 there is no change in fuel, energy source, location, capacity, or routing or  
33 sizing of venting and piping, and the replacement is installed in accordance  
34 with the current edition of the State Building Code.

35 (3) The installation, extension, alteration, or general repair of any heating or  
36 cooling equipment system.

37 (4) The installation, extension, alteration, or general repair of any electrical  
38 wiring, devices, appliances, or equipment except that in any one- or  
39 two-family dwelling unit a permit shall not be required for repair or  
40 replacement of electrical lighting fixtures or devices, such as receptacles and  
41 lighting switches, or for the connection of an existing branch circuit to an  
42 electric water heater that is being replaced, provided that all of the following  
43 requirements are met:

44 a. With respect to electric water heaters, the replacement water heater is  
45 placed in the same location and is of the same or less capacity and  
46 electrical rating as the original.

47 b. With respect to electrical lighting fixtures and devices, the  
48 replacement is with a fixture or device having the same voltage and  
49 the same or less amperage.

50 c. The work is performed by a person licensed under G.S. 87-43.

- 1 d. The repair or replacement installation meets the current edition of the  
2 State Building Code, including the State Electrical Code.

3 A permit shall be in writing and shall contain a provision that the work done shall comply with  
4 the State Building Code and all other applicable State and local laws and local ordinances and  
5 regulations. Nothing in this section shall require a county to review and approve residential  
6 building plans submitted to the county pursuant to Section R-110 of Volume VII of the North  
7 Carolina State Building Code; provided that the county may review and approve such  
8 residential building plans as it deems necessary. No permit may be issued unless the plans and  
9 specifications are identified by the name and address of the author thereof; and if the General  
10 Statutes of North Carolina require that plans for certain types of work be prepared only by a  
11 registered architect or registered engineer, no permit may be issued unless the plans and  
12 specifications bear the North Carolina seal of a registered architect or of a registered engineer.  
13 If a provision of the General Statutes of North Carolina or of any ordinance requires that work  
14 be done by a licensed specialty contractor of any kind, no permit for the work may be issued  
15 unless the work is to be performed by such a duly licensed contractor. No permit issued under  
16 Articles 9 or 9C of ~~G.S. Chapter 143~~ Chapter 143 of the General Statutes shall be required for  
17 any construction, installation, repair, replacement, or alteration costing five thousand dollars  
18 (\$5,000) or less in any single-family residence or farm building unless the work involves: the  
19 addition, repair or replacement of load bearing structures; the addition (excluding replacement  
20 of same size and capacity) or change in the design of plumbing; the addition, replacement or  
21 change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or  
22 equipment; the use of materials not permitted by the North Carolina Uniform Residential  
23 Building Code; or the addition (excluding replacement of like grade of fire resistance) of  
24 roofing. Violation of this section constitutes a Class 1 misdemeanor.

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

31 (c) (1) A county may by ordinance provide that a permit may not be issued under  
32 subsection (a) of this section to a person who owes delinquent property  
33 taxes, determined under G.S. 105-360, on property owned by the person.  
34 Such ordinance may provide that a building permit may be issued to a  
35 person protesting the assessment or collection of property taxes.

36 (2) This subsection applies to Alexander, Alleghany, Anson, Bertie, Catawba,  
37 Chowan, Currituck, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes,  
38 Surry, Tyrrell, Wayne, and Yadkin Counties only.

39 (d) No permit shall be issued pursuant to subsection (a) of this section for any  
40 land-disturbing activity that is subject to, but does not comply with, the requirements of  
41 G.S. 113A-71.

42 (e) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
43 then the following provisions shall apply. To preserve and protect railroad corridors for safety  
44 and future use and recognizing the right of the railroad to use its corridors at anytime in the  
45 future, no permit shall be issued pursuant to subsection (a) of this section for activity within a  
46 railroad corridor before the inspection department with jurisdiction over the site of the work or  
47 activity has verified that written agreement has been obtained from the railroad company as  
48 required by this subsection. The provisions of this subsection shall not apply to permits issued  
49 under subsection (a) of this section solely for repairs of existing buildings, or repair or  
50 replacement of existing plumbing systems, heating or cooling equipment systems, or electrical  
51 wiring, devices, or appliances and equipment, nor to the addition of new equipment within the

1 existing building so long as such addition does not involve a change to the outside perimeter of  
2 the existing building, subject to other applicable laws. This section shall not apply to a  
3 regulated public utility engaged in the business of producing, generating, transmitting,  
4 delivering, or furnishing electricity, as defined in G.S. 62-3(23)a.1.

5 (1) For those permit applications for work or activity that is within a railroad  
6 corridor and within 50 feet of any railroad track, railroad bridge, or other  
7 railroad facility, the inspection department with jurisdiction over the site of  
8 the work or activity shall not grant a permit to an applicant who has not first  
9 obtained a written agreement with the railroad company.

10 (2) For those permit applications for work or activity that is within the railroad  
11 corridor and greater than 50 feet from any railroad track, railroad bridge, or  
12 other railroad facility, the applicant shall provide written notice to the  
13 railroad company of the application at the time the application is submitted  
14 to the inspection department with jurisdiction over the site of the work or  
15 activity by sending the notice to the railroad company by certified mail,  
16 return receipt requested, through its current registered agent at the address on  
17 file with the North Carolina Department of the Secretary of State.

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

22 (4) For permit applications sought under subdivision (1) of this subsection, the  
23 applicant shall provide directly to the inspection department with jurisdiction  
24 over the site of the work or activity a copy of the written agreement entered  
25 into with the railroad company. Receipt by the inspection department from  
26 the applicant of either of the following may be relied upon in all respects by  
27 the inspection department in determining whether to issue the permit in  
28 accordance with this subsection, and the inspection department shall have no  
29 liability resulting from its reliance thereon:

30 a. A copy of the railroad's written agreement obtained under this  
31 subsection; or

32 b. A certification that no written agreement with a railroad is required  
33 under this subsection because the permit sought is not for work or  
34 activity that falls within a railroad corridor and within 50 feet of any  
35 railroad track, railroad bridge, or other railroad facility according to  
36 railroad maps filed pursuant to G.S. 136-199.

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

40 **SECTION 11.** G.S. 160A-1 reads as rewritten:

41 **"§ 160A-1. Application and meaning of terms.**

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

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

50 (2) "City" means a municipal corporation organized under the laws of this State  
51 for the better government of the people within its jurisdiction and having the



1 powers, duties, privileges, and immunities conferred by law on cities, towns,  
2 and villages. The term "city" does not include counties or municipal  
3 corporations organized for a special purpose. "City" is interchangeable with  
4 the terms "town" and "village," is used throughout this Chapter in preference  
5 to those terms, and shall mean any city as defined in this subdivision without  
6 regard to the terminology employed in charters, local acts, other portions of  
7 the General Statutes, or local customary usage. The terms "city" or  
8 "incorporated municipality" do not include a municipal corporation that,  
9 without regard to its date of incorporation, would be disqualified from  
10 receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of  
11 status as a city under this sentence shall not affect the levy or collection of  
12 any tax or assessment, or any criminal or civil liability, and shall not serve to  
13 escheat any property until five years after the end of such status as a city, or  
14 until September 1, 1991, whichever comes later.

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

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

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

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

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

37 (7a) "Railroad corridor" means, for purposes of Article 19 of this Chapter, any  
38 railroad real property, including, but not limited to, a railroad right-of-way,  
39 whether held in fee or easement, regardless of the means by which title was  
40 acquired, and regardless of whether railroad tracks are located on the land.  
41 The term also includes rail-related real property owned by a Regional Public  
42 Transportation Authority organized pursuant to Article 26 of this Chapter,  
43 the Charlotte Area Transit System, and the Department of Transportation.

44 (8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this  
45 Chapter, a bona fide department which, as determined by the Commissioner  
46 of Insurance, is classified as not less than class "9" in accordance with rating  
47 methods, schedules, classifications, underwriting rules, bylaws or  
48 regulations effective or applied with respect to the establishment of rates or  
49 premiums used or charged pursuant to Article 36 or Article 40 of Chapter 58  
50 of the General Statutes, and which operates fire apparatus and equipment of

1 the value of five thousand dollars (\$5,000) or more; but it does not include a  
2 municipal fire department."

3 **SECTION 12.** G.S. 160A-296 reads as rewritten:

4 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

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

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

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

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

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

1 section shall not apply to a regulated public utility engaged in the business of producing,  
2 generating, transmitting, delivering, or furnishing electricity, as defined in G.S. 62-3(23)a.1.

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

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

10 (2) A certification that no consent of a railroad is required under subsection (c)  
11 of this section because the dedication or reservation sought does not fall  
12 within a railroad corridor according to railroad maps filed pursuant to  
13 G.S. 136-199."

14 **SECTION 13.** Chapter 160A of the General Statutes is amended by adding a new  
15 section to read:

16 **"§ 160A-368. Access to development within a railroad corridor.**

17 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
18 then the provisions in this subsection and subsection (b) of this section shall apply. A city shall  
19 not approve any development plan where the sole means of ingress to and egress from the  
20 property being developed is a roadway that encroaches upon a railroad corridor without first  
21 obtaining the written consent of the railroad company. For purposes of this section, the city  
22 shall require as a condition of approving a development plan that any applicant obtain written  
23 consent of the railroad company by contacting the railroad company by certified mail, return  
24 receipt requested, through its current registered agent at the address on file with the North  
25 Carolina Department of the Secretary of State. The railroad company shall have 60 days from  
26 receipt of a request for written consent made under this section to approve, deny with an  
27 explanation, or respond with its requirements. Except in regard to railroad crossings, failure to  
28 respond to the request for written consent within 60 days shall be deemed to be approval of the  
29 request for written consent by the railroad company unless the railroad owns the railroad  
30 corridor in fee simple. Nothing herein shall be construed to alter or affect the property rights of  
31 the railroad or adjacent or underlying landowners. This section shall not apply to a regulated  
32 public utility engaged in the business of producing, generating, transmitting, delivering, or  
33 furnishing electricity, as defined in G.S. 62-3(23)a.1.

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

39 (1) A copy of the railroad's written consent obtained under subsection (a) of this  
40 section; or

41 (2) A certification that no consent of a railroad is required under subsection (a)  
42 of this section because the development plan sought does not fall within a  
43 railroad corridor according to railroad maps filed pursuant to G.S. 136-199.

44 (c) Notwithstanding the provisions of subsection (a) of this section, if the sole means of  
45 ingress and egress to a property being developed is over an existing public roadway established  
46 and maintained by the State or municipality and within a railroad corridor and does not require  
47 the use of any additional land within the railroad corridor, then the provisions of subsection (a)  
48 of this section shall not apply, and the applicant seeking approval of the development plan from  
49 the city may use that existing public roadway in its development plan without obtaining consent  
50 of the railroad. Nothing in this subsection shall be construed to alter or affect the property  
51 rights of the railroad or adjacent or underlying landowners.

1       (d) The Department of Transportation may not condition the approval of any  
2 development plan on an applicant making road improvements, including adding an additional  
3 lane, if those road improvements would be within the railroad corridor and would require the  
4 consent of the railroad under subsection (a) of this section."

5       **SECTION 14.** G.S. 160A-372 is amended by adding two new subsections to read:

6       "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
7 then the provisions in this subsection and subsection (a2) of this section shall apply. A  
8 subdivision control ordinance shall not allow the dedication or reservation of recreation areas  
9 servicing residents of the immediate neighborhood of the subdivision or of any other dedication  
10 or reservation of open spaces or open areas within a railroad corridor without first obtaining the  
11 written consent of the railroad company. For purposes of this subsection, the city planning  
12 board, commission, or other department with jurisdiction over subdivision control ordinances  
13 shall require any applicant seeking dedication or reservation to obtain written consent of the  
14 railroad company by contacting the railroad company by certified mail, return receipt  
15 requested, through its current registered agent at the address on file with the North Carolina  
16 Department of the Secretary of State. The railroad company shall have 60 days from receipt of  
17 a request for written consent made under this section to approve, deny with an explanation, or  
18 respond with its requirements. Failure to respond to the request for written consent within 60  
19 days shall be deemed to be approval of the request for written consent by the railroad company  
20 unless the railroad owns the railroad corridor in fee simple. In lieu of obtaining consent of the  
21 railroad company, a subdivision control ordinance may allow an open space credit for acreage  
22 subject to a railroad easement without public dedication or reservation if the purpose of the  
23 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be  
24 construed to alter or affect the property rights of the railroad or adjacent or underlying  
25 landowners. This section shall not apply to a regulated public utility engaged in the business of  
26 producing, generating, transmitting, delivering, or furnishing electricity, as defined in  
27 G.S. 62-3(23)a.1.

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

- 36       (1) A copy of the railroad's written consent obtained under subsection (a1) of  
37 this section; or  
38       (2) A certification that no consent of a railroad is required under subsection (a1)  
39 of this section because the dedication or reservation sought does not fall  
40 within a railroad corridor according to railroad maps filed pursuant to  
41 G.S. 136-199."

42       **SECTION 15.** G.S. 160A-381 is amended by adding two new subsections to read:

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

1 company shall have 60 days from receipt of a request for written consent made under this  
2 section to approve, deny with an explanation, or respond with its requirements. Failure to  
3 respond to the request for written consent within 60 days shall be deemed to be approval of the  
4 request for written consent by the railroad company unless the railroad owns the railroad  
5 corridor in fee simple. In lieu of obtaining consent of the railroad company, a city may allow an  
6 open space credit for acreage subject to a railroad easement without public dedication or  
7 reservation if the purpose of the credit is to preserve the railroad corridor for future railroad  
8 purposes. Nothing herein shall be construed to alter or affect the property rights of the railroad  
9 or adjacent or underlying landowners. This section shall not apply to a regulated public utility  
10 engaged in the business of producing, generating, transmitting, delivering, or furnishing  
11 electricity, as defined in G.S. 62-3(23)a.1.

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

- 19 (1) A copy of the railroad's written consent obtained under subsection (g1) of  
20 this section; or  
21 (2) A certification that no consent of a railroad is required under subsection (g1)  
22 of this section because the dedication or reservation sought does not fall  
23 within a railroad corridor according to railroad maps filed pursuant to  
24 G.S. 136-199."

25 **SECTION 16.** G.S. 160A-417 reads as rewritten:

26 **"§ 160A-417. Permits.**

27 (a) No person shall commence or proceed with any of the following without first  
28 securing from the inspection department with jurisdiction over the site of the work any and all  
29 permits required by the State Building Code and any other State or local laws applicable to the  
30 work:

- 31 (1) The construction, reconstruction, alteration, repair, movement to another  
32 site, removal, or demolition of any building or structure.  
33 (2) The installation, extension, or general repair of any plumbing system except  
34 that in any one- or two-family dwelling unit a permit shall not be required  
35 for the connection of a water heater that is being replaced, provided that the  
36 work is performed by a person licensed under G.S. 87-21, who personally  
37 examines the work at completion and ensures that a leak test has been  
38 performed on the gas piping, and provided the energy use rate or thermal  
39 input is not greater than that of the water heater which is being replaced,  
40 there is no change in fuel, energy source, location, capacity, or routing or  
41 sizing of venting and piping, and the replacement is installed in accordance  
42 with the current edition of the State Building Code.  
43 (3) The installation, extension, alteration, or general repair of any heating or  
44 cooling equipment system.  
45 (4) The installation, extension, alteration, or general repair of any electrical  
46 wiring, devices, appliances, or equipment except that in any one- or  
47 two-family dwelling unit a permit shall not be required for repair or  
48 replacement of electrical lighting fixtures or devices, such as receptacles and  
49 lighting switches, or for the connection of an existing branch circuit to an  
50 electric water heater that is being replaced, provided that all of the following  
51 requirements are met:

- 1 a. With respect to electric water heaters, the replacement water heater is
- 2 placed in the same location and is of the same or less capacity and
- 3 electrical rating as the original.
- 4 b. With respect to electrical lighting fixtures and devices, the
- 5 replacement is with a fixture or device having the same voltage and
- 6 the same or less amperage.
- 7 c. The work is performed by a person licensed under G.S. 87-43.
- 8 d. The repair or replacement installation meets the current edition of the
- 9 State Building Code, including the State Electrical Code.

10 A permit shall be in writing and shall contain a provision that the work done shall comply  
11 with the State Building Code and all other applicable State and local laws. Nothing in this  
12 section shall require a city to review and approve residential building plans submitted to the  
13 city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code;  
14 provided that the city may review and approve such residential building plans as it deems  
15 necessary. No permits shall be issued unless the plans and specifications are identified by the  
16 name and address of the author thereof, and if the General Statutes of North Carolina require  
17 that plans for certain types of work be prepared only by a registered architect or registered  
18 engineer, no permit shall be issued unless the plans and specifications bear the North Carolina  
19 seal of a registered architect or of a registered engineer. When any provision of the General  
20 Statutes of North Carolina or of any ordinance requires that work be done by a licensed  
21 specialty contractor of any kind, no permit for the work shall be issued unless the work is to be  
22 performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of  
23 Chapter 143 shall be required for any construction, installation, repair, replacement, or  
24 alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm  
25 building unless the work involves: the addition, repair or replacement of load bearing  
26 structures; the addition (excluding replacement of same size and capacity) or change in the  
27 design of plumbing; the addition, replacement or change in the design of heating, air  
28 conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not  
29 permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding  
30 replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute  
31 a Class 1 misdemeanor.

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

38 (c) No permit shall be issued pursuant to subsection (a) of this section for any  
39 land-disturbing activity that is subject to, but does not comply with, the requirements of  
40 G.S. 113A-71.

41 (d) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,  
42 then the following provisions of this subsection shall apply. To preserve and protect railroad  
43 corridors for safety and future use and recognizing the right of the railroad to use its corridors  
44 at anytime in the future, no permit shall be issued pursuant to subsection (a) of this section for  
45 activity within a railroad corridor before the inspection department with jurisdiction over the  
46 site of the work or activity has verified that written agreement has been obtained from the  
47 railroad company as required by this subsection. The provisions of this subsection shall not  
48 apply to permits issued under subsection (a) of this section solely for repairs of existing  
49 buildings, or repair or replacement of existing plumbing systems, heating or cooling equipment  
50 systems, or electrical wiring, devices, or appliances and equipment, nor to the addition of new  
51 equipment within the existing building so long as such addition does not involve a change to

1 the outside perimeter of the existing building, subject to other applicable laws. This section  
2 shall not apply to a regulated public utility engaged in the business of producing, generating,  
3 transmitting, delivering, or furnishing electricity, as defined in G.S. 62-3(23)a.1.

4 (1) For those permit applications for work or activity that is within a railroad  
5 corridor and within 50 feet of any railroad track, railroad bridge, or other  
6 railroad facility, the inspection department with jurisdiction over the site of  
7 the work or activity shall not grant a permit to an applicant who has not first  
8 obtained a written agreement with the railroad company.

9 (2) For those permit applications for work or activity that is within the railroad  
10 corridor and greater than 50 feet from any railroad track, railroad bridge, or  
11 other railroad facility, the applicant shall provide written notice to the  
12 railroad company of the application at the time the application is submitted  
13 to the inspection department with jurisdiction over the site of the work or  
14 activity by sending the notice to the railroad company by certified mail,  
15 return receipt requested, through its current registered agent at the address on  
16 file with the North Carolina Department of the Secretary of State.

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

21 (4) For permit applications sought under subdivision (1) of this subsection, the  
22 applicant shall provide directly to the inspection department with jurisdiction  
23 over the site of the work or activity a copy of the written agreement entered  
24 into with the railroad company. Receipt by the inspection department from  
25 the applicant of either of the following may be relied upon in all respects by  
26 the inspection department in determining whether to issue the permit in  
27 accordance with this subsection, and the inspection department shall have no  
28 liability resulting from its reliance thereon:

29 a. A copy of the railroad's written agreement obtained under this  
30 subsection; or

31 b. A certification that no written agreement with a railroad is required  
32 under this subsection because the permit sought is not for work or  
33 activity that falls within a railroad corridor and within 50 feet of any  
34 railroad track, railroad bridge, or other railroad facility according to  
35 railroad maps filed pursuant to G.S. 136-199.

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

39 **SECTION 17.** This act becomes effective October 1, 2011. Sections 7, 8, 9, 10, 12,  
40 13, 14, 15, and 16 of this act apply to actions taken by city or county entities on or after  
41 October 1, 2011.