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Short Title: Railroad Corridor Management.

(Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING MANAGEMENT AND PROTECTION OF RAILROAD
CORRIDORS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON A
COMPREHENSIVE RAIL SERVICE PLAN FOR NORTH CAROLINA.

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. 1-44.1 reads as rewritten:

"§ 1-44.1. Presumption of abandonment of railroad right-of-way.

(a) A railroad shall not be found to have abandoned a right-of-way or any parcel of land in which it holds an easement interest unless the railroad first records a certificate of abandonment in the office of the register of deeds for the county where the right-of-way is located. Upon the filing of the certificate of abandonment, the right-of-way or parcel of land is deemed abandoned. Nothing herein shall be construed to affect or revive a previously abandoned right-of-way or corridor. Any railroad which has removed its tracks from a right-of-way and has not replaced them in whole or in part within a period of seven (7) years after such removal and which has not made any railroad use of any part of such right of way after such removal of tracks for a period of seven (7) years after such removal, shall be presumed to have abandoned the railroad right-of-way.

(b) The provisions of subsection (a) of this section shall become effective on or after January 1, 2010. Prior to January 1, 2010, any railroad which has removed its tracks from a right-of-way and has not replaced them in whole or in part within a period of seven years after such removal and which has not made any railroad use of any part of such right-of-way after such removal of tracks for a period of seven years after such removal shall be presumed to have abandoned the railroad right-of-way.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a railroad shall not be found to have abandoned a right-of-way held in fee under any circumstances."

SECTION 3. G.S. 1-51 reads as rewritten:

"§ 1-51. Five Three years.



1 Within ~~five~~three years –

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

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

15 **SECTION 4.** G.S. 40A-51(a) reads as rewritten:

16 "(a) If property has been taken by an act or omission of a condemnor listed in
17 ~~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
18 no complaint containing a declaration of taking has been filed the owner of the property, may
19 initiate an action to seek compensation for the taking. The action may be initiated within 24
20 months of the date of the taking of the affected property or the completion of the project
21 involving the taking, whichever shall occur later. The complaint shall be filed in the superior
22 court and shall contain the following: the names and places of residence of all persons who are,
23 or claim to be, owners of the property, so far as the same can by reasonable diligence be
24 ascertained; if any persons are under a legal disability, it must be so stated; a statement as to
25 any encumbrances on the property; the particular facts which constitute the taking together with
26 the dates that they allegedly occurred, and; a description of the property taken. Upon the filing
27 of said complaint summons shall issue and together with a copy of the complaint be served on
28 the condemnor. The allegations of said complaint shall be deemed denied; however, the
29 condemnor within 60 days of service summons and complaint may file answer thereto. If the
30 taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the
31 court the estimated amount of compensation for the taking. Notice of the deposit shall be given
32 to the owner. The owner may apply for disbursement of the deposit and disbursement shall be
33 made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the
34 condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat
35 of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall
36 be followed for the purpose of determining all matters raised by the pleadings and the
37 determination of just compensation."

38 **SECTION 5.** G.S. 136-192 reads as rewritten:

39 "**§ 136-192. Obstructing highways; defective crossings; notice; failure to repair after**
40 **notice misdemeanor.**

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

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

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

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

14 **SECTION 6.** Chapter 136 of the General Statutes is amended by adding a new
15 section to read:

16 **"§ 136-199. Filing of railroad corridor maps.**

17 (a) A railroad company may file railroad corridor maps and any revisions thereto
18 showing existing railroad corridors and other railroad property with the Department of
19 Transportation Rail Division. Any railroad corridor map filed pursuant to this subsection shall
20 indicate the county recorded book and page or file number of the deed or other legal document
21 by which the right-of-way was acquired by the railroad company. Railroad corridor maps filed
22 pursuant to this subsection shall be filed electronically and made publicly available on a Web
23 site maintained by the Department of Transportation Rail Division. When a railroad company
24 files the railroad corridor maps pursuant to this subsection, the maps shall be conspicuously
25 stamped or marked "For Informational Purposes Only, Pursuant to G.S. 136-199" and shall
26 identify the name of the railroad company that owns, and if different, operates the railroad
27 corridor, including trade names. Information included in the maps is for informational purposes
28 only and shall not result in a presumption of ownership in the railroad company or any other
29 party.

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

37 (c) When a railroad company files railroad corridor maps pursuant to subsection (a) of
38 this section, a copy of the railroad corridor maps, and any revisions thereto, provided under
39 subsection (a) of this section also shall be furnished to the North Carolina Society of Surveyors
40 pursuant to a license agreement for use by the North Carolina Society of Surveyors. Maps
41 provided to the North Carolina Society of Surveyors pursuant to this subsection shall be for
42 informational purposes only and shall not result in a presumption of ownership in the railroad
43 company or any other party."

44 **SECTION 7.** G.S. 153A-1 reads as rewritten:

45 **"§ 153A-1. Definitions.**

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

- 49 (1) "City" means a city as defined by G.S. 160A-1(2), except that it does not
50 include a city that, without regard to its date of incorporation, would be
51 disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a).

- 1 (2) "Clerk" means the clerk to the board of commissioners.
2 (3) "County" means any one of the counties listed in G.S. 153A-10.
3 (4) "General law" means an act of the General Assembly that applies to all units
4 of local government, to all counties, to all counties within a class defined by
5 population or other criteria, to all cities, or to all cities within a class defined
6 by population or other criteria, including a law that meets the foregoing
7 standards but contains a clause or section exempting from its effect one or
8 more counties, cities, or counties and cities.
9 (5) "Local act" means an act of the General Assembly that applies to one or
10 more specific counties, cities, or counties and cities by name. "Local act" is
11 interchangeable with the terms "special act," "special law," "public-local
12 act," and "private act," is used throughout this Chapter in preference to those
13 terms, and means a local act as defined in this subdivision without regard to
14 the terminology employed in local acts or other portions of the General
15 Statutes.
16 (6) "Publish," "publication," and other forms of the verb "to publish" mean
17 insertion in a newspaper qualified under G.S. 1- 597 to publish legal
18 advertisements in the county.
19 (7) "Railroad corridor" means, for purposes of Article 18 of this Chapter, any
20 railroad real property, including, but not limited to, a railroad right-of-way,
21 whether held in fee or easement, regardless of the means by which title was
22 acquired, and regardless of whether railroad tracks are located on the land.
23 The term also includes rail-related real property owned by a Regional Public
24 Transportation Authority organized pursuant to Article 26 of Chapter 160A
25 of the General Statutes, the Charlotte Area Transit System, and the
26 Department of Transportation."

27 **SECTION 8.** G.S. 153A-331 is amended by adding two new subsections to read:

28 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
29 then the provisions in subsections (a1) and (a2) of this section shall apply. A subdivision
30 control ordinance shall not allow the dedication or reservation of recreation areas serving
31 residents of the immediate neighborhood of the subdivision, or of any other dedication or
32 reservation of open spaces or open areas within a railroad corridor without first obtaining the
33 written consent of the railroad company. For purposes of this subsection, the county planning
34 board, commission, or other department with jurisdiction over subdivision control ordinances
35 shall require any applicant seeking dedication or reservation to obtain written consent of the
36 railroad company by contacting the railroad company by certified mail, return receipt
37 requested, through its current registered agent at the address on file with the North Carolina
38 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
39 a request for written consent made under this section to approve, deny with an explanation, or
40 respond with its requirements. Failure to respond to the request for written consent within 60
41 days shall be deemed to be approval of the request for written consent by the railroad company
42 unless the railroad owns the railroad corridor in fee simple. In lieu of obtaining consent of the
43 railroad company, a subdivision control ordinance may allow an open space credit for acreage
44 subject to a railroad easement without public dedication or reservation if the purpose of the
45 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be
46 construed to alter or affect the property rights of the railroad or adjacent or underlying
47 landowners.

48 (a2) The applicant shall provide directly to the county planning board, commission, or
49 other department with jurisdiction over subdivision control ordinances the written consent of
50 the railroad obtained under subsection (a1) of this section. Receipt by the county planning
51 board, commission, or other department with jurisdiction over development plans from the

1 applicant of either of the following may be relied upon in all respects by the county in
2 determining whether to allow the dedication or reservation of recreation areas or of open spaces
3 or open areas in accordance with subsection (a1) of this section, and the county shall have no
4 liability resulting from reliance thereon:

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

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

11 **SECTION 9.** Chapter 153A of the General Statutes is amended by adding a new
12 section to read:

13 **"§ 153A-336. Access to development within a railroad corridor.**

14 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
15 then the provisions in subsections (a) and (b) of this section shall apply. A county shall not
16 approve any development plan where the sole means of ingress to and egress from the property
17 being developed is a roadway that encroaches upon a railroad corridor without first obtaining
18 the written consent of the railroad company. For purposes of this section, the county planning
19 board, commission, or other department with jurisdiction over development plans shall require
20 any applicant for a development plan to obtain the written consent of the railroad company by
21 contacting the railroad company by certified mail, return receipt requested, through its current
22 registered agent at the address on file with the North Carolina Department of the Secretary of
23 State. The railroad company shall have 60 days from receipt of a request for written consent
24 made under this section to approve, deny with an explanation, or respond with its requirements.
25 Except in regard to railroad crossings, failure to respond to the request for written consent
26 within 60 days shall be deemed to be approval of the request for written consent by the railroad
27 company unless the railroad owns the railroad corridor in fee simple. Nothing herein shall be
28 construed to alter or affect the property rights of the railroad or adjacent or underlying
29 landowners.

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

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

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

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

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

1 **SECTION 10.** G.S. 153A-340 is amended by adding two new subsections to read:

2 "(j) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
3 then the provisions in subsections (j) and (k) of this section shall apply. A county shall not
4 permit any land located within a railroad corridor to be dedicated or reserved as open space or
5 open area without first obtaining the written consent of the railroad company. For purposes of
6 this subsection, the county planning board, commission, or other department with jurisdiction
7 over development plans shall require any applicant seeking dedication or reservation to obtain
8 the written consent of the railroad company by contacting the railroad company by certified
9 mail, return receipt requested, through its current registered agent at the address on file with the
10 North Carolina Department of the Secretary of State. The railroad company shall have 60 days
11 from receipt of a request for written consent made under this section to approve, deny with an
12 explanation, or respond with its requirements. Failure to respond to the request for written
13 consent within 60 days shall be deemed to be approval of the request for written consent by the
14 railroad company unless the railroad owns the railroad corridor in fee simple. In lieu of
15 obtaining consent of the railroad company, a county may allow an open space credit for acreage
16 subject to a railroad easement without public dedication or reservation if the purpose of the
17 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be
18 construed to alter or affect the property rights of the railroad or adjacent or underlying
19 landowners.

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

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

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

34 **SECTION 11.** G.S. 153A-357 reads as rewritten:

35 "**§ 153A-357. Permits.**

36 (a) No person may commence or proceed with:

37 (1) The construction, reconstruction, alteration, repair, movement to another
38 site, removal, or demolition of any building;

39 (2) The installation, extension, or general repair of any plumbing system;

40 (3) The installation, extension, alteration, or general repair of any heating or
41 cooling equipment system; or

42 (4) The installation, extension, alteration, or general repair of any electrical
43 wiring, devices, appliances, or equipment

44 without first securing from the inspection department with jurisdiction over the site of the work
45 each permit required by the State Building Code and any other State or local law or local
46 ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a
47 provision that the work done shall comply with the State Building Code and all other applicable
48 State and local laws and local ordinances and regulations. Nothing in this section shall require a
49 county to review and approve residential building plans submitted to the county pursuant to
50 Section R-110 of Volume VII of the North Carolina State Building Code; provided that the
51 county may review and approve such residential building plans as it deems necessary. No

1 permit may be issued unless the plans and specifications are identified by the name and address
2 of the author thereof; and if the General Statutes of North Carolina require that plans for certain
3 types of work be prepared only by a registered architect or registered engineer, no permit may
4 be issued unless the plans and specifications bear the North Carolina seal of a registered
5 architect or of a registered engineer. If a provision of the General Statutes of North Carolina or
6 of any ordinance requires that work be done by a licensed specialty contractor of any kind, no
7 permit for the work may be issued unless the work is to be performed by such a duly licensed
8 contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for
9 any construction, installation, repair, replacement, or alteration costing five thousand dollars
10 (\$5,000) or less in any single-family residence or farm building unless the work involves: the
11 addition, repair or replacement of load bearing structures; the addition (excluding replacement
12 of same size and capacity) or change in the design of plumbing; the addition, replacement or
13 change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or
14 equipment; the use of materials not permitted by the North Carolina Uniform Residential
15 Building Code; or the addition (excluding replacement of like grade of fire resistance) of
16 roofing. Violation of this section constitutes a Class 1 misdemeanor.

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

23 (c) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
24 then the following provisions shall apply. To preserve and protect railroad corridors for safety
25 and future use and recognizing the right of the railroad to use its corridors at anytime in the
26 future, no permit shall be issued pursuant to subsection (a) of this section for activity within a
27 railroad corridor before the inspection department with jurisdiction over the site of the work or
28 activity has verified that written agreement has been obtained from the railroad company as
29 required by this subsection. The provisions of this subsection shall not apply to permits issued
30 under subsection (a) of this section solely for repairs of existing buildings, plumbing systems,
31 heating or cooling equipment systems, or electrical wiring, devices, or appliances and
32 equipment.

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

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

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

50 (4) For permit applications sought under subdivision (1) of this subsection, the
51 applicant shall provide directly to the inspection department with jurisdiction

1 over the site of the work or activity a copy of the written agreement entered
2 into with the railroad company. Receipt by the inspection department from
3 the applicant of either of the following may be relied upon in all respects by
4 the inspection department in determining whether to issue the permit in
5 accordance with this subsection, and the inspection department shall have no
6 liability resulting from its reliance thereon:

- 7 a. A copy of the railroad's written agreement obtained under this
8 subsection; or
9 b. A certification that no written agreement with a railroad is required
10 under this subsection because the permit sought is not for work or
11 activity that falls within a railroad corridor and within 50 feet of any
12 railroad track, railroad bridge, or other railroad facility according to
13 railroad maps filed pursuant to G.S. 136-199.

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

17 **SECTION 12.** G.S. 160A-1 reads as rewritten:

18 **"§ 160A-1. Application and meaning of terms.**

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

- 22 (1) "Charter" means the entire body of local acts currently in force applicable to
23 a particular city, including articles of incorporation issued to a city by an
24 administrative agency of the State, and any amendments thereto adopted
25 pursuant to 1917 Public Laws, Chapter 136, Subchapter 16, Part VIII,
26 sections 1 and 2, or Article 5, Part 4, of this Chapter.
27 (2) "City" means a municipal corporation organized under the laws of this State
28 for the better government of the people within its jurisdiction and having the
29 powers, duties, privileges, and immunities conferred by law on cities, towns,
30 and villages. The term "city" does not include counties or municipal
31 corporations organized for a special purpose. "City" is interchangeable with
32 the terms "town" and "village," is used throughout this Chapter in preference
33 to those terms, and shall mean any city as defined in this subdivision without
34 regard to the terminology employed in charters, local acts, other portions of
35 the General Statutes, or local customary usage. The terms "city" or
36 "incorporated municipality" do not include a municipal corporation that,
37 without regard to its date of incorporation, would be disqualified from
38 receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of
39 status as a city under this sentence shall not affect the levy or collection of
40 any tax or assessment, or any criminal or civil liability, and shall not serve to
41 escheat any property until five years after the end of such status as a city, or
42 until September 1, 1991, whichever comes later.
43 (3) "Council" means the governing board of a city. "Council" is interchangeable
44 with the terms "board of aldermen" and "board of commissioners," is used
45 throughout this Chapter in preference to those terms, and shall mean any city
46 council as defined in this subdivision without regard to the terminology
47 employed in charters, local acts, other portions of the General Statutes, or
48 local customary usage.
49 (4) "General law" means an act of the General Assembly applying to all units of
50 local government, to all cities, or to all cities within a class defined by
51 population or other criteria, including a law that meets the foregoing

- 1 standards but contains a clause or section exempting from its effect one or
2 more cities or all cities in one or more counties.
- 3 (5) "Local act" means an act of the General Assembly applying to one or more
4 specific cities by name, or to all cities within one or more specifically named
5 counties. "Local act" is interchangeable with the terms "special act,"
6 "public-local act," and "private act," is used throughout this Chapter in
7 preference to those terms, and shall mean a local act as defined in this
8 subdivision without regard to the terminology employed in charters, local
9 acts, or other portions of the General Statutes.
- 10 (6) "Mayor" means the chief executive officer of a city by whatever title known.
- 11 (7) "Publish," "publication," and other forms of the verb "to publish" mean
12 insertion in a newspaper qualified under G.S. 1-597 to publish legal
13 advertisements in the county or counties in which the city is located.
- 14 (7a) "Railroad corridor" means, for purposes of Article 19 of this Chapter, any
15 railroad real property, including, but not limited to, a railroad right-of-way,
16 whether held in fee or easement, regardless of the means by which title was
17 acquired, and regardless of whether railroad tracks are located on the land.
18 The term also includes rail-related real property owned by a Regional Public
19 Transportation Authority organized pursuant to Article 26 of this Chapter,
20 the Charlotte Area Transit System, and the Department of Transportation.
- 21 (8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this
22 Chapter, a bona fide department which, as determined by the Commissioner
23 of Insurance, is classified as not less than class "9" in accordance with rating
24 methods, schedules, classifications, underwriting rules, bylaws or
25 regulations effective or applied with respect to the establishment of rates or
26 premiums used or charged pursuant to Article 36 or Article 40 of Chapter 58
27 of the General Statutes, and which operates fire apparatus and equipment of
28 the value of five thousand dollars (\$5,000) or more; but it does not include a
29 municipal fire department."

30 **SECTION 13.** G.S. 160A-296 reads as rewritten:

31 **"§ 160A-296. Establishment and control of streets; center and edge lines.**

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

- 36 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper
37 repair.
- 38 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for
39 travel and free from unnecessary obstructions.
- 40 (3) The power to open new streets and alleys, and to widen, extend, pave, clean,
41 and otherwise improve existing streets, sidewalks, alleys, and bridges, and to
42 acquire the necessary land therefor by dedication and acceptance, purchase,
43 or eminent domain.
- 44 (4) The power to close any street or alley either permanently or temporarily.
- 45 (5) The power to regulate the use of the public streets, sidewalks, alleys, and
46 bridges.
- 47 (6) The power to regulate, license, and prohibit digging in the streets, sidewalks,
48 or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or
49 appliances of any kind either on, above, or below the surface. To the extent a
50 municipality is authorized under applicable law to impose a fee or charge
51 with respect to activities conducted in its rights-of-way, the fee or charge

1 must apply uniformly and on a competitively neutral and nondiscriminatory
2 basis to all comparable activities by similarly situated users of the
3 rights-of-way.

4 (7) The power to provide for lighting the streets, alleys, and bridges of the city.

5 (8) The power to grant easements in street rights-of-way as permitted by
6 G.S. 160A-273.

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

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

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

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

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

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

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

41 **"§ 160A-368. Access to development within a railroad corridor.**

42 (a) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
43 then the provisions in subsections (a) and (b) of this section shall apply. A city shall not
44 approve any development plan where the sole means of ingress to and egress from the property
45 being developed is a roadway that encroaches upon a railroad corridor without first obtaining
46 the written consent of the railroad company. For purposes of this section, the city shall require
47 as a condition of approving a development plan that any applicant obtain written consent of the
48 railroad company by contacting the railroad company by certified mail, return receipt
49 requested, through its current registered agent at the address on file with the North Carolina
50 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
51 a request for written consent made under this section to approve, deny with an explanation, or

1 respond with its requirements. Except in regard to railroad crossings, failure to respond to the
2 request for written consent within 60 days shall be deemed to be approval of the request for
3 written consent by the railroad company unless the railroad owns the railroad corridor in fee
4 simple. Nothing herein shall be construed to alter or affect the property rights of the railroad or
5 adjacent or underlying landowners.

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

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

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

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

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

28 **SECTION 15.** G.S. 160A-372 is amended by adding two new subsections to read:

29 "(a1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
30 then the provisions in this subsection and subsection (a2) of this section shall apply. A
31 subdivision control ordinance shall not allow the dedication or reservation of recreation areas
32 servicing residents of the immediate neighborhood of the subdivision or of any other dedication
33 or reservation of open spaces or open areas within a railroad corridor without first obtaining the
34 written consent of the railroad company. For purposes of this subsection, the city planning
35 board, commission, or other department with jurisdiction over subdivision control ordinances
36 shall require any applicant seeking dedication or reservation to obtain written consent of the
37 railroad company by contacting the railroad company by certified mail, return receipt
38 requested, through its current registered agent at the address on file with the North Carolina
39 Department of the Secretary of State. The railroad company shall have 60 days from receipt of
40 a request for written consent made under this section to approve, deny with an explanation, or
41 respond with its requirements. Failure to respond to the request for written consent within 60
42 days shall be deemed to be approval of the request for written consent by the railroad company
43 unless the railroad owns the railroad corridor in fee simple. In lieu of obtaining consent of the
44 railroad company, a subdivision control ordinance may allow an open space credit for acreage
45 subject to a railroad easement without public dedication or reservation if the purpose of the
46 credit is to preserve the railroad corridor for future railroad purposes. Nothing herein shall be
47 construed to alter or affect the property rights of the railroad or adjacent or underlying
48 landowners.

49 (a2) The applicant shall provide directly to the city planning board, commission, or other
50 department with jurisdiction over subdivision control ordinances the written consent of the
51 railroad obtained under subsection (a1) of this section. Receipt by the city planning board,

1 commission, or other department with jurisdiction over development plans from the applicant
2 of either of the following may be relied upon in all respects by the city in determining whether
3 to allow the dedication or reservation of recreation areas or of open spaces or open areas in
4 accordance with subsection (a1) of this section, and the city shall have no liability resulting
5 from reliance thereon:

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

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

12 **SECTION 16.** G.S. 160A-381 is amended by adding two new subsections to read:

13 "(g1) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
14 then the provisions in this subsection and subsection (g2) of this section shall apply. A city
15 shall not permit any land located within a railroad corridor to be dedicated or reserved as open
16 space or open area without first obtaining the written consent of the railroad company. For
17 purposes of this subsection, the city planning board, commission, or other department with
18 jurisdiction over development plans shall require any applicant seeking dedication or
19 reservation to obtain written consent of the railroad company by contacting the railroad
20 company by certified mail, return receipt requested, through its current registered agent at the
21 address on file with the North Carolina Department of the Secretary of State. The railroad
22 company shall have 60 days from receipt of a request for written consent made under this
23 section to approve, deny with an explanation, or respond with its requirements. Failure to
24 respond to the request for written consent within 60 days shall be deemed to be approval of the
25 request for written consent by the railroad company unless the railroad owns the railroad
26 corridor in fee simple. In lieu of obtaining consent of the railroad company, a city may allow an
27 open space credit for acreage subject to a railroad easement without public dedication or
28 reservation if the purpose of the credit is to preserve the railroad corridor for future railroad
29 purposes. Nothing herein shall be construed to alter or affect the property rights of the railroad
30 or adjacent or underlying landowners.

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

38 (1) A copy of the railroad's written consent obtained under subsection (g1) of
39 this section; or

40 (2) A certification that no consent of a railroad is required under subsection (g1)
41 of this section because the dedication or reservation sought does not fall
42 within a railroad corridor according to railroad maps filed pursuant to
43 G.S. 136-199."

44 **SECTION 17.** G.S. 160A-417 reads as rewritten:

45 **"§ 160A-417. Permits.**

46 (a) No person shall commence or proceed with:

47 (1) The construction, reconstruction, alteration, repair, movement to another
48 site, removal, or demolition of any building or structure,

49 (2) The installation, extension, or general repair of any plumbing system,

50 (3) The installation, extension, alteration, or general repair of any heating or
51 cooling equipment system, or

1 (4) The installation, extension, alteration, or general repair of any electrical
2 wiring, devices, appliances, or equipment,
3 without first securing from the inspection department with jurisdiction over the site of the work
4 any and all permits required by the State Building Code and any other State or local laws
5 applicable to the work. A permit shall be in writing and shall contain a provision that the work
6 done shall comply with the State Building Code and all other applicable State and local laws.
7 Nothing in this section shall require a city to review and approve residential building plans
8 submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State
9 Building Code; provided that the city may review and approve such residential building plans
10 as it deems necessary. No permits shall be issued unless the plans and specifications are
11 identified by the name and address of the author thereof, and if the General Statutes of North
12 Carolina require that plans for certain types of work be prepared only by a registered architect
13 or registered engineer, no permit shall be issued unless the plans and specifications bear the
14 North Carolina seal of a registered architect or of a registered engineer. When any provision of
15 the General Statutes of North Carolina or of any ordinance requires that work be done by a
16 licensed specialty contractor of any kind, no permit for the work shall be issued unless the work
17 is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C
18 of Chapter 143 shall be required for any construction, installation, repair, replacement, or
19 alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm
20 building unless the work involves: the addition, repair or replacement of load bearing
21 structures; the addition (excluding replacement of same size and capacity) or change in the
22 design of plumbing; the addition, replacement or change in the design of heating, air
23 conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not
24 permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding
25 replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute
26 a Class 1 misdemeanor.

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

33 (c) **(Effective April 1, 2009)** No permit shall be issued pursuant to subsection (a) of
34 this section for any land-disturbing activity that is subject to, but does not comply with, the
35 requirements of G.S. 113A-71.

36 (d) When a railroad company has filed railroad corridor maps pursuant to G.S. 136-199,
37 then the following provisions of this subsection shall apply. To preserve and protect railroad
38 corridors for safety and future use and recognizing the right of the railroad to use its corridors
39 at anytime in the future, no permit shall be issued pursuant to subsection (a) of this section for
40 activity within a railroad corridor before the inspection department with jurisdiction over the
41 site of the work or activity has verified that written agreement has been obtained from the
42 railroad company as required by this subsection. The provisions of this subsection shall not
43 apply to permits issued under subsection (a) of this section solely for repairs of existing
44 buildings, plumbing systems, heating or cooling equipment systems, or electrical wiring,
45 devices, or appliances and equipment.

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

- 1 (2) For those permit applications for work or activity that is within the railroad
2 corridor and greater than 50 feet from any railroad track, railroad bridge, or
3 other railroad facility, the applicant shall provide written notice to the
4 railroad company of the application at the time the application is submitted
5 to the inspection department with jurisdiction over the site of the work or
6 activity by sending the notice to the railroad company by certified mail,
7 return receipt requested, through its current registered agent at the address on
8 file with the North Carolina Department of the Secretary of State.
- 9 (3) A railroad company is a party aggrieved for the purpose of appealing any
10 permitting decision by the inspection department with jurisdiction over the
11 site of the work or activity that is inconsistent with the railroad company's
12 property rights or its right to use the property for railroad purposes.
- 13 (4) For permit applications sought under subdivision (1) of this subsection, the
14 applicant shall provide directly to the inspection department with jurisdiction
15 over the site of the work or activity a copy of the written agreement entered
16 into with the railroad company. Receipt by the inspection department from
17 the applicant of either of the following may be relied upon in all respects by
18 the inspection department in determining whether to issue the permit in
19 accordance with this subsection, and the inspection department shall have no
20 liability resulting from its reliance thereon:
- 21 a. A copy of the railroad's written agreement obtained under this
22 subsection; or
- 23 b. A certification that no written agreement with a railroad is required
24 under this subsection because the permit sought is not for work or
25 activity that falls within a railroad corridor and within 50 feet of any
26 railroad track, railroad bridge, or other railroad facility according to
27 railroad maps filed pursuant to G.S. 136-199.
- 28 (5) Nothing herein shall be construed as altering the reach and effect of
29 applicable federal law to the railroad or rail carriers, not to alter or affect the
30 property rights of the railroad."

31 **SECTION 18.** This act becomes effective October 1, 2010. Sections 8, 9, 10, 11,
32 13, 14, 15, 16, and 17 of this act apply to actions taken by city or county entities on or after
33 October 1, 2010.