

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

4

SENATE BILL 971

Public Utilities Committee Substitute Adopted 6/18/92

Third Edition Engrossed 7/9/92

Fourth Edition Engrossed 7/20/92

Short Title: Railroad Transfer/Ferries.

(Public)

Sponsors:

Referred to:

May 27, 1992

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

"(9) 'Contract carrier' means any ~~person~~ person, except a rail carrier, which under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities

1 Commission, engages in the transportation of persons or property for
2 compensation, except as exempted in G.S. 62-260."

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

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

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

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

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

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

Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

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

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

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

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

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

The Commission may conduct a program of accident prevention and public safety covering all public utilities with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a ~~railroad or~~ highway involving a ~~public utility, or any accident in connection with any other~~ public utility. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Commission, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Commission may adopt reasonable rules and regulations for the safety of the public as affected by public utilities and the safety of public utility employees. The Commission shall cooperate with and coordinate its activities for public

1 utilities with similar programs of the Division of Motor Vehicles, the Insurance
2 Department, the Industrial Commission and other organizations engaged in the
3 promotion of highway safety and employee safety."

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

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

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

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

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

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

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

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

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

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

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

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

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

42 No rights granted or acquired under this subsection shall in any way destroy or
43 abridge the rights of the State to regulate or control any railroad company or to regulate
44 foreign corporations doing business in this State. Whenever it is necessary for any

1 railroad company doing business in this State to cross the street or streets in a town or
 2 city in order to carry out the orders of the ~~Utilities Commission~~, Department of
 3 Transportation to construct an industrial siding, the power is hereby conferred upon
 4 such railroad company to occupy such street or streets of any such town or city within
 5 the State. Provided, license so to do be first obtained from the board of aldermen, board
 6 of commissioners, or other governing authorities of such town or city.

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

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

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

13 **"§ 160A-195. Regulating speed of trains.**

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

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

18 **"§ 136-17.2. Members of the Board of Transportation represent entire State.**

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

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

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

30 Sec. 12. Article 11 of Chapter 62 of the General Statutes, G.S. 62-220 to G.S.
 31 62-247, is recodified as Article 15 of Chapter 136 of the General Statutes, G.S. 136-191
 32 to G.S. 136-219. G.S. 62-192 is recodified as G.S. 136-220 and included within Article
 33 15. G.S. 62-319 is recodified as G.S. 136-221 and included within Article 15. G.S. 62-
 34 322 is recodified as G.S. 136-222 and included within Article 15. The Revisor of
 35 Statutes shall change any references to "the Commission" to "the Department of
 36 Transportation" and shall change the reference to "G.S. 62-238.1(b)" in G.S. 62-239,
 37 recodified as G.S. 136-211, to "G.S. 136-210".

38 The following table serves as a locator for the statutes recodified by this
 39 section:

<u>Original Section Number</u>	<u>Recodified Section Number</u>
G.S. 62-220	G.S. 136-191
G.S. 62-221	G.S. 136-192
G.S. 62-222	G.S. 136-193
G.S. 62-223	G.S. 136-194

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

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

31 **"§ 136-190. Power to make and enforce rules for railroads.**

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

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

37 **"§ 136-222. Tickets; conduct of passengers.**

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

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

43 **"§ 136-205. Department of Transportation to inspect railroads as to equipment**
44 **and facilities, and to require repair.**

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

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

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

13 "**§ 136-206. To require installation and maintenance of ~~block system~~ railroad**
14 **traffic signal and control systems, block signal systems, and safety**
15 **devices; automatic signals at railroad intersections.**

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

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

29 Sec. 17. The Department of Transportation shall submit a railroad safety
30 report each quarter to the Joint Legislative Highway Oversight Committee. The report
31 shall include the number of railroad inspections performed, the number and nature of
32 any violations found, and the number and amount of any fines issued.

33 Sec. 18. Up to one hundred eighty-nine thousand dollars (\$189,000) shall be
34 allocated from the Highway Fund to the Department of Transportation for the 1992-93
35 fiscal year to implement the provisions of this act. The Legislative Research
36 Commission's Committee on Railroads and Other Public Transportation shall study the
37 issue of funding for the railroad supervision and railroad safety supervision programs
38 transferred to the Department of Transportation in this act and shall make a
39 recommendation on future funding to the 1993 General Assembly.

40 Sec. 19. This act is effective upon ratification and expires on June 30, 1993.