

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1094
Committee Substitute Favorable 4/29/97

Short Title: Repeal/Recodify Railroad Laws.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE
GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN
RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND
CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(6) reads as rewritten:

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

Section 2. G.S. 62-3(22) reads as rewritten:

"(22) 'Private carrier' means any ~~person~~ person, other than a carrier by rail, not
included in the definitions of common carrier, which transports in
intrastate commerce in its own vehicle or vehicles property of which
such person is the owner, lessee, or bailee, when such transportation is
for the purpose of sale, lease, rent, or bailment, or when such
transportation is purely an incidental adjunct to some other established

1 private business owned and operated by such person other than the
2 transportation of household goods for compensation."

3 Section 3. G.S. 62-3(23) reads as rewritten:

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

- 7 1. Producing, generating, transmitting, delivering or
8 furnishing electricity, piped gas, steam or any other like
9 agency for the production of light, heat or power to or for
10 the public for compensation; provided, however, that the
11 term 'public utility' shall not include persons who
12 construct or operate an electric generating facility, the
13 primary purpose of which facility is for such person's own
14 use and not for the primary purpose of producing
15 electricity, heat, or steam for sale to or for the public for
16 compensation;
- 17 2. Diverting, developing, pumping, impounding, distributing
18 or furnishing water to or for the public for compensation,
19 or operating a public sewerage system for compensation;
20 provided, however, that the term 'public utility' shall not
21 include any person or company whose sole operation
22 consists of selling water to less than 10 residential
23 customers, except that any person or company which
24 constructs a water system in a subdivision with plans for
25 10 or more lots and which holds itself out by contracts or
26 other means at the time of said construction to serve an
27 area containing more than 10 residential building lots shall
28 be a public utility at the time of such planning or holding
29 out to serve such 10 or more building lots, without regard
30 to the number of actual customers connected;
- 31 3. Transporting persons or household goods by street,
32 suburban or interurban bus ~~or railways~~ for the public for
33 compensation;
- 34 4. Transporting persons or household goods by ~~railways or~~
35 ~~motor vehicles, vehicle~~ or any other form of transportation
36 for the public for compensation, except motor carriers
37 exempted in G.S. 62-260, ~~and except carriers by rail, or~~
38 carriers by air;
- 39 5. Transporting or conveying gas, crude oil or other fluid
40 substance by pipeline for the public for compensation;
- 41 6. Conveying or transmitting messages or communications
42 by telephone or telegraph, or any other means of

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

- 1 e. The term 'public utility' shall include the University of North
2 Carolina insofar as said University supplies telephone service,
3 electricity or water to the public for compensation from the
4 University Enterprises defined in G.S. 116-41.1(9).
- 5 f. The term 'public utility' shall include the Town of Pineville
6 insofar as said town supplies telephone services to the public for
7 compensation. The territory to be served by the Town of
8 Pineville in furnishing telephone services, subject to the Public
9 Utilities Act, shall include the town limits as they exist on May 8,
10 1973, and shall also include the area proposed to be annexed
11 under the town's ordinance adopted May 3, 1971, until January 1,
12 1975.
- 13 g. The term 'public utility' shall not include a hotel, motel, time
14 share or condominium complex operated primarily to serve
15 transient occupants, which imposes charges to occupants for
16 local, long-distance, or wide area telecommunication services
17 when such calls are completed through the use of facilities
18 provided by a public utility, and provided further that the local
19 services received are rated in accordance with the provisions of
20 G.S. 62-110(d) and the applicable charges for telephone calls are
21 prominently displayed in each area where occupant rooms are
22 located.
- 23 h. The term 'public utility' shall not include the resale of electricity
24 by (i) a campground operated primarily to serve transient
25 occupants, or (ii) a marina; provided that (i) the campground or
26 marina charges no more than the actual cost of the electricity
27 supplied to it, (ii) the amount of electricity used by each campsite
28 or marina slip occupant is measured by an individual metering
29 device, (iii) the applicable rates are prominently displayed at or
30 near each campsite or marina slip, and (iv) the campground or
31 marina only resells electricity to campsite or marina slip
32 occupants.
- 33 i. The term 'public utility' shall not include the State, the Office of
34 the State Controller, or the Microelectronics Center of North
35 Carolina in the provision or sharing of switched broadband
36 telecommunications services with non-State entities or
37 organizations of the kind or type set forth in G.S. 143B-426.39.
- 38 j. The term 'public utility' shall not include any person, not
39 otherwise a public utility, conveying or transmitting messages or
40 communications by mobile radio communications service.
41 Mobile radio communications service includes one-way or two-
42 way radio service provided to mobile or fixed stations or
43 receivers using mobile radio service frequencies."

1 Section 4. G.S. 62-300(a) reads as rewritten:

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

5 (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court
6 of Appeals or the Supreme Court, and with each notice of
7 application for a writ of certiorari.

8 (2) With each application for a new certificate for motor ~~and rail~~-carrier
9 rights, the fee shall be two hundred fifty dollars (\$250.00) when filed
10 by Class 1 motor ~~and rail~~-carriers, one hundred dollars (\$100.00)
11 when filed by Class 2 motor ~~and rail~~-carriers, and twenty-five dollars
12 (\$25.00) when filed by Class 3 motor ~~and rail~~-carriers, and twenty-
13 five dollars (\$25.00) as filing fee for any amendment thereto so as to
14 extend or enlarge the scope of operations thereunder, and twenty-
15 five dollars (\$25.00) for each broker who applies for a brokerage
16 license under the provisions of this Chapter.

17 (3) With each application for a general increase in rates, fares and
18 charges and for each filing of a tariff which seeks general increases
19 in rates, fares and charges, the fee will be five hundred dollars
20 (\$500.00) for Class A utilities and Class 1 motor ~~and rail~~-carriers,
21 two hundred fifty dollars (\$250.00) for Class B utilities and Class 2
22 motor ~~and rail~~-carriers, one hundred dollars (\$100.00) for Class C
23 utilities and twenty-five dollars (\$25.00) for Class D utilities and
24 Class 3 motor ~~and rail~~-carriers; provided that in the case of an
25 application or tariff for a general increase in rates filed by a tariff
26 agent for more than one carrier, the applicable fee shall be the
27 highest fee prescribed for any motor carrier included in the
28 application or tariff. This fee shall not apply to applications for
29 adjustments in particular rates, fares, or charges for the purpose of
30 eliminating inequities, preferences or discriminations or to
31 applications to adjust rates and charges based solely on the increased
32 cost of fuel used in the generation or production of electric power.

33 (4) One hundred dollars (\$100.00) with each application by motor
34 carrier of passengers for the abandonment or permanent or
35 temporary discontinuance of transportation service previously
36 authorized in a certificate.

37 ~~(4a) Two hundred fifty dollars (\$250.00) with each application for
38 discontinuance of train service, or for a change in or discontinuance
39 of station facilities.~~

40 (5) With each application for a certificate of public convenience and
41 necessity or for any amendment thereto so as to extend or enlarge
42 the scope of operations thereunder, the fee shall be two hundred fifty
43 dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00)

- 1 for Class B utilities, and twenty-five dollars (\$25.00) for Class C and
2 D utilities and twenty-five dollars (\$25.00) for any other person
3 seeking a certificate of public convenience and necessity.
- 4 (5a) With each application by a bus company for an original certificate of
5 authority or for any amendment thereto or to an existing certificate
6 of public convenience and necessity so as to extend or enlarge the
7 scope of operations thereunder the fee shall be two hundred fifty
8 dollars (\$250.00).
- 9 (6) With each application for approval of the issuance of securities or
10 for the approval of any sale, lease, hypothecation, lien, or other
11 transfer of any household goods or operating rights of any carrier or
12 public utility over which the Commission has jurisdiction, the fee
13 shall be two hundred fifty dollars (\$250.00) for Class A utilities and
14 Class 1 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for
15 Class B utilities and Class 2 motor ~~and rail~~ carriers, and twenty-five
16 dollars (\$25.00) for Class C and D utilities and Class 3 motor ~~and rail~~
17 carriers; provided, that in the case of sales, leases and transfers
18 between two or more carriers or utilities, the applicable fee shall be
19 the highest fee prescribed for any party to the transaction.
- 20 (7) Ten dollars (\$10.00) with each application, petition, or complaint not
21 embraced in (2) through (6) of this section, wherein such
22 application, petition, or complaint seeks affirmative relief against a
23 carrier or public utility over which the Commission has jurisdiction.
24 This fee shall not apply to applications for adjustments in particular
25 rates, fares or charges for the purpose of eliminating inequities,
26 preferences or discriminations; nor shall this fee apply to
27 applications, petitions, or complaints made by any county, city or
28 town; nor shall this fee apply to applications or petitions made by
29 individuals seeking service or relief from a public utility.
- 30 (8) Repealed by Session Laws 1985, c. 454, s. 18.
- 31 (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of
32 testimony, but not less than five dollars (\$5.00) for any such
33 transcript.
- 34 (10) Twenty cents (20¢) for each page of copies of papers, orders,
35 certificates or other records, but not less than one dollar (\$1.00) for
36 any such order or record, plus five dollars (\$5.00) for formal
37 certification of any such paper, order or record.
- 38 (11), (12) Repealed by Session Laws 1985, c. 454, s. 18.
- 39 (13) Two hundred fifty dollars (\$250.00) with each application for a
40 certificate of public convenience and necessity to construct a
41 transmission line.
- 42 (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise
43 exempt from Commission regulation under Public Law 103-305 to

1 participate in standard transportation practices as set out by the
2 Commission."

3 Section 5. G.S. 62-192, 62-207, 62-222, 62-227, 62-228, 62-229, 62-230, 62-
4 231, 62-232, 62-233, 62-234, 62-238, 62-238.1, 62-239, 62-242, 62-245, 62-246, and 62-
5 247 are repealed.

6 Section 6. Article 11 of Chapter 62 of the General Statutes, as amended by
7 Section 5 of this act, G.S. 62-220, 62-221, 62-223, 62-224, 62-225, 62-226, 62-237, 62-
8 240, 62-241, 62-243, and 62-244, is recodified as Article 15 of Chapter 136 of the
9 General Statutes, G.S. 136-190 through G.S. 136-200.

10 Section 7. G.S. 62-237, recodified as G.S. 136-196 by Section 6 of this act,
11 reads as rewritten:

12 **"§ 136-196. To regulate crossings and to abolish grade crossings.**

13 The ~~Commission~~Department may require the raising or lowering of any tracks or
14 roadway at any grade crossing in a road or street not forming a link in or part of the State
15 highway system and designate who shall pay for the same by partitioning the cost of said
16 work and the maintenance of such crossing among the railroads and municipalities
17 interested in accordance with the formula provided for grade crossing alterations or
18 eliminations on the State highway system in G.S. 136-20(b)."

19 Section 8. G.S. 62-243, recodified as G.S. 136-199 by Section 6 of this act,
20 reads as rewritten:

21 **"§ 136-199. Violation of rules causing injury; damages.**

22 If any railroad company doing business in this State shall, in violation of any rule or
23 regulation provided by the ~~Commission~~Department, inflict any wrong or injury on any
24 person, such person shall have a right of action and recovery for such wrong or injury, in
25 any court having jurisdiction thereof, and the damages to be recovered shall be the same
26 as in an action between individuals, except that in case of willful violation of law such
27 railroad company shall be liable to exemplary damages: Provided, that all suits under this
28 Chapter shall be brought within one year after the commission of the alleged wrong or
29 injury."

30 Section 9. This act is effective when it becomes law.