

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 174*
Committee Substitute Favorable 3/19/13

Short Title: NC Railroad Company Reporting and Dividends.

(Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) STRENGTHEN OVERSIGHT, ANNUAL REPORTING, AND STRATEGIC PLANNING BY THE NORTH CAROLINA RAILROAD COMPANY, (2) REQUIRE A ONE-TIME CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE REPAIRS AND RENOVATIONS RESERVE ACCOUNT, (3) REQUIRE AN ANNUAL CASH DIVIDEND OF THE NORTH CAROLINA RAILROAD COMPANY TO THE REPAIRS AND RENOVATIONS RESERVE ACCOUNT, AND (4) REQUIRE THE TRANSFER OF LOW-INCOME NON-CORRIDOR PROPERTIES FROM THE NORTH CAROLINA RAILROAD COMPANY TO BE SOLD WITH THE NET PROCEEDS TO THE REPAIRS AND RENOVATIONS RESERVE ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. Reporting and oversight. – (a) G.S. 124-1 reads as rewritten:

"§ 124-1. **Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in ~~G.S. 124-3~~. G.S. 124-17."

SECTION 1.(b) Article 2 of Chapter 124 of the General Statutes is amended by adding a new section, G.S. 124-15. G.S. 124-6(b), as amended by Section 3.3(a) of S.L. 1999-431, is recodified as G.S. 124-15(a). G.S. 124-5(b) is recodified as G.S. 124-15(b). G.S. 124-15, as created and amended by this subsection, reads as rewritten:

"§ 124-15. **Board of directors; appointment and approval of encumbrances.**

(a) Notwithstanding subsection (a) of ~~this section~~, G.S. 124-6, for any State-owned railroad company ~~organized as a corporation in which the State is the owner of all the voting stock and which that~~ has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, one may also be an appointee to the Board of Transportation and one may also be an appointee to the North Carolina Economic Development Board. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be



* H 1 7 4 - V - 2 *

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

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

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

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

14 (a) Any State-owned railroad company shall prepare and maintain a comprehensive
15 strategic plan and capital investment plan that includes a mission statement describing the
16 purpose of the company and clear goals that address the strategic issues facing the company.

17 (b) Any State-owned railroad company shall develop and implement a formalized
18 performance management system based on its strategic plan. The performance management
19 system shall measure and monitor progress toward achieving strategic objectives. When
20 performance fails to achieve strategic objectives within the time period established in the plan,
21 a State-owned railroad company shall take corrective action."

22 **SECTION 1.(d)** Article 2 of Chapter 124 of the General Statutes is amended by
23 adding a new section, G.S. 124-17. G.S. 124-3(b) is recodified as G.S. 124-17(b). G.S. 124-3(c)
24 is recodified as G.S. 124-17(c). G.S. 124-17, as created and amended by this subsection, reads
25 as rewritten:

26 **"§ 124-17. Enhanced annual report of State-owned railroad company; additional**
27 **reporting requirements to Governor and General Assembly.**

28 (a) A State-owned railroad company shall submit an annual report to the Joint
29 Legislative Commission on Governmental Operations and the Joint Legislative Transportation
30 Oversight Committee. The report shall include the following:

- 31 (1) The information required under G.S. 124-3.
- 32 (2) A copy of the strategic plan and capital investment plan required under
33 G.S. 124-16.
- 34 (3) Any failures to meet strategic objectives and what corrective actions were
35 taken under G.S. 124-16(b).
- 36 (4) Anticipated dividends for the next three fiscal years.
- 37 (5) A description of the State-owned railroad company's business, subsidiaries,
38 and markets in which it operates.
- 39 (6) A list of the properties owned by the State-owned railroad company.
- 40 (7) A list of the directors and executive officers of the State-owned railroad
41 company and a description of the background and experience of each.
- 42 (8) A description of the State-owned railroad company's code of ethics and
43 conflicts of interest policy.
- 44 (9) A summary of the fees paid to an accounting firm during the year.
- 45 (10) A list of the compensation paid to directors and officers of the State-owned
46 railroad company.
- 47 (11) A description of the State-owned railroad company's disagreements with its
48 accountants if there has been a change in accountants.
- 49 (12) A description of any transactions between the State-owned railroad company
50 and its directors, officers, and their family members.

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

8 (c) Confidential information includes (i) information related to a proposed specific
9 business transaction where inspection, examination, or copying of the records would frustrate
10 the purpose for which the records were created, or (ii) information that is subject to
11 confidentiality obligations of a railroad company. Confidential information is exempt from
12 Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a)."

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

18 **SECTION 3.** Annual cash dividend. – (a) G.S. 124-5.1 reads as rewritten:

19 "~~§ 124-5.1. State use of North Carolina Railroad Company dividends.~~dividends deposited
20 to the Repairs and Renovations Reserve Account.

21 (a) ~~Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of~~
22 ~~the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company~~
23 ~~received by the State shall be applied to reduce the obligations described in subsection (c) of~~
24 ~~Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L.~~
25 ~~1999-237. Any dividends of the North Carolina Railroad Company received by the State shall~~
26 ~~be used by the Department of Transportation for the improvement of the property of the North~~
27 ~~Carolina Railroad Company as recommended and approved by the Board of Directors of the~~
28 ~~North Carolina Railroad Company. The improvements may include the following project types:~~

29 (1) ~~Railroad and industrial track rehabilitation.~~

30 (2) ~~Railroad signal and grade crossing protection.~~

31 (3) ~~Bridge improvements.~~

32 (4) ~~Corridor protection.~~

33 (5) ~~Industrial site acquisition.~~deposited into the Repairs and Renovations
34 Reserve Account.

35 (b) ~~Effective January 1, 2000, interest shall not be accrued or otherwise charged on the~~
36 ~~remaining balance of the obligations described in subsection (c) of Section 32.30 of S.L.~~
37 ~~1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Interest accrued on~~
38 ~~those obligations relating to periods prior to January 1, 2000, shall be deemed paid and~~
39 ~~contributed by the State to the capital of the North Carolina Railroad Company."~~

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

42 "**§ 124-18. Dividends required of State-owned railroad company.**

43 Any State-owned railroad company that has trackage in more than two counties shall issue
44 an annual cash dividend to the State. The amount of the annual dividend shall be twenty-five
45 percent (25%) of the company's income from its trackage rights agreements for the prior year.
46 Such a dividend is due by January 15 of each year, and interest shall accrue at the rate of prime
47 plus one percent (1%) if the payment is not paid by the due date. Directors of any State-owned
48 railroad company who vote for or assent to any dividend under this section shall not be held
49 liable under G.S. 55-8-33."

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

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

| 5 | Property Description | County | Nearest Town | Parcel ID |
|----|---------------------------------|---------------|---------------------|--------------------------------------|
| 6 | Burke Street Lot | Alamance | Gibsonville | 107493 |
| 7 | 4th Street Lot | Carteret | Morehead | 638620808907000 |
| 8 | Bridges St. Lot | Carteret | Morehead | 638620911461000 |
| 9 | Newport Lot | Carteret | Newport | 634814246231000 |
| 10 | Station & Former Industrial Lot | Carteret | Morehead | 638620718127000 |
| 11 | Waterfront & Riparian Rights | Carteret | Morehead | 638620708857000 & 638620709868000 |
| 12 | | | | |
| 13 | Wye Ppty. Extension | Carteret | Morehead | 637616924807000 |
| 14 | Wye Property | Carteret | Morehead | 637620923019000 |
| 15 | Clarks Lot | Craven | Clarks | 8-221-035 |
| 16 | N. Craven St. Lot | Craven | New Bern | 8-003-241-A |
| 17 | Tiffany & Bright Sts. Property | Lenoir | Kinston | 11185 & 26555 |
| 18 | Morrisville Former Depot | Wake | Morrisville | 0755-14-6475 |
| 19 | Waynesboro Lot | Wayne | Goldsboro | 2599119118 |

20 For purposes of this section, the value of the real property dividend shall be based
21 upon either an appraisal of the fair market value of the parcel as of the date of transfer of the
22 parcel to the State or the ad valorem tax value for the parcel for the year of transfer, as
23 determined by the Board of Directors of any State-owned railroad company.

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

28 **SECTION 4.(b)** Notwithstanding G.S. 124-5.1 and G.S. 136-16.6, the Department
29 of Administration shall sell the properties issued as dividends under this section.
30 Notwithstanding any other provision of law, the Department of Administration may deduct the
31 costs of selling the property from the proceeds of the sales and deposit the proceeds of the sales
32 into the Repairs and Renovations Reserve Account.

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